

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

MOTION RECORD OF THE RESPONDENT

Date: July 19 th , 2023	BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5 David T. Ullmann (LSO #42357I) Email: dullmann@blaney.com John Wolf (LSO #30165B) Email: jwolf@blaney.com Brendan Jones (LSO #56821F) Email: bjones@blaney.com Lawyers for the Respondent
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TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

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Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY* ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE* ACT, R.S.O. 1990, c. C.43, AS AMENDED

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(as at November 13, 2022)**

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TAB 1

Court File No. CV-21-00673084-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

NOTICE OF MOTION

THE MOVING PARTY, PEACE BRIDGE DUTY FREE INC. (“PBDF”) will make a motion before the Honourable Justice Kimmel of the Ontario Superior Court of Justice (Commercial List), to be heard on July 25th and 26th, 2023 at 10:00 am or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

[] in writing under subrule 37.12.1(1) because it is (*insert one of on consent, unopposed or made without notice*);

- ☐ in writing as an opposed motion under subrule 37.12.1(4)
- ☐ in person;
- ☐ by telephone conference;
- ☒ by video conference.

At the following location:

[videoconference credentials to be provided]

THE MOTION IS FOR:

1. An Order that the Buffalo and Fort Erie Public Bridge Authority (“**Authority**”) provide the following documents to PBDF within ten (10) business days of the order:
 - a. Complete copies of the minutes of the April 30th, 2021, May 28th, 2021, October 8th, 2021, and November 21st, 2021 Authority Board meetings, redacted for privilege as necessary, that are identified in the index of the Authority’s Disclosure Brief as being relevant and privileged;
 - b. Complete copies of any and all written communications, including but not limited to, letters, faxes, emails and text messages sent or received by the Authority’s board members for the period January 2020 to December 2021, inclusive, relating to the Lease, section 18.07 of the Lease, rent abatement, rent relief, and/or any other similar form of relief for either the Canadian or American duty-free store tenants;
 - c. Complete unredacted copies of the lease and rent relief agreements as between the Authority and its American duty-free store tenant;

2. The moving party's costs of this motion on a substantial indemnity basis;
3. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Overview

1. This proceeding involves the interpretation of a lease agreement dated July 28th, 2016 ("**Lease**") between the Authority as landlord, and PBDF as tenant, of the premises located at 1 Peace Bridge Plaza, Fort Erie, Ontario ("**Leased Premises**"), which is for a 15-year term with a five (5) year extension option;
2. Capitalized terms if not defined in this notice of motion are as defined in the Lease;
3. The Authority, which is a quasi-government entity, is seeking to terminate the Lease, and effectively destroy PBDF's business that has been operating from the Leased Premises since 1986 and PBDF recently invested approximately \$6 million into the Leased Premises, as a result of alleged monetary defaults resulting from governments' decision to prioritize public health by, among other things, closing the Canada-U.S. boarder to all non-essential travelers and other public health restrictions, which materially impacted PBDF's ability to generate revenue;
4. Although the parties negotiated subsection 18.07 into the Lease that specifically required the parties to consider how the changes in Applicable Laws that adversely affect sales revenues impact the terms of the Lease, the Authority has taken the position that despite the government removing the ability of PBDF to receive what it bargained for under the Lease through changes in Applicable Laws, the rental terms of the Lease have not been impacted and full Base Rent

remained payable throughout the period of boarder closure and the time that PBDF's business was materially affected;

5. PBDF has brought a cross-motion seeking, among other things:

5. A declaration in respect of whether any Base Rent is due and payable under the Lease, and if so, a determination of the amount owing, specifically with respect to the following periods impacted by introduction and changes in Applicable Laws due to the Covid-19 pandemic:

- a. The Canada Emergency Commercial Rent Assistance ("CECRA") program period from April to September 2020;*
- b. From October 2020 to November 8th, 2021, the day before the U.S.-Canada border reopened for non-essential travel (with restrictions);*
- c. November 9th, 2021 to September 30th, 2022, when the Canadian government discontinued vaccine requirement for entry and use of the ArriveCAN app;*
- d. October 1st, 2022 to the date to be determined when the U.S. border reopens for unvaccinated travellers.*

6. During the Covid-19 pandemic, the Authority entered into rent deferral agreements with both PBDF and the Authority's American duty-free store tenant, which PBDF understands to be Duty Free Americas;

7. The Authority then sought to resile from its second deferral agreement with PBDF, and demanded payment of arrears and full Rent despite knowing PBDF had no ability to pay due to the Covid-19 related changes in Applicable Laws that resulted in the closure of the store, but the Authority made no such demands from Duty Free Americas;

8. Notwithstanding the Authority's actual knowledge of the statutory eviction moratorium for commercial tenancies in Ontario, the Authority threatened to terminate the Lease for non-payment of rent;

9. PBDF has alleged at paragraph 42 of PBDF's notice of cross-motion that the Authority arbitrarily gave preferential treatment to Duty Free Americas by agreeing to accept percentage rent only on an indeterminant basis and deferring all arrears of annual minimum rent;

Disclosure issues

10. On or about April 4th, 2023, the parties appeared at a case conference before Justice Kimmel to seek, among other things, directions regarding proposed examinations under Rule 39.03 of the *Rules of Civil Procedure* and the scope of production to be made by the Authority and PBDF in advance of any such examinations;

11. In her Endorsement dated April 4th, 2023, Justice Kimmel provided directions regarding the scope of production to be made by the parties and directed that, despite any questions regarding admissibility or relevance, such documents shall be produced and available to be questioned upon;

12. The Authority's Disclosure Brief was incomplete and the Authority expurgated and improperly claimed privilege over information that otherwise should have been included in the Disclosure Brief;

13. On May 30th, 2023, Tim Clutterbuck was examined as a person designated from the Authority's board of directors in accordance with paragraph 15 of Justice Kimmel's April 4th, 2023 Endorsement;

14. The Authority refused to answer several questions on the ground that the "request goes beyond the disclosure order by Her Honour";

15. In paragraph 19.f. of her Endorsement dated June 16th, 2023, Justice Kimmel clarified that the directions provided in her April 4th, 2023 Endorsement were not intended to constitute a closed list of all potentially relevant categories of production and disclosure;

16. In paragraph 19.f. of her Endorsement dated June 16th, 2023, Justice Kimmel directed the parties that:

"The court expects concerns about privilege being addressed through redactions, rather than the withholding of entire documents, on the basis that doing so would not be relied upon as a waiver of privilege, with challenges to the redactions to be brought forward together with any other privilege challenges in a focused manner for the court's consideration and direction."

Relevant Board Meeting Minutes

17. In its Disclosure Brief served prior to examinations, the Authority identified six sets of board meetings that were relevant that its asserted privilege over;

18. At question 92 on page 38 and question 93 on page 40 of Mr. Clutterbuck's transcript, PBDF requested copies of Board of Director meeting minutes, including the six meetings listed in the Authority's Disclosure Brief over which it claimed privilege, with redactions if necessary for privilege;

19. The Authority asserted, among other things, that its lawyers were present at the meetings, and as such, the minutes were subject to solicitor-client privilege;

20. The Authority lawyers were not present according to the minutes for the November 20th, 2020 and December 17th, 2020 meetings, which have now been produced, and the minutes appear to contain no privileged information;

21. The Authority maintained complete privilege over the entirety of the minutes of the April 30th, 2021, May 28th, 2021, October 8th, 2021, and November 21st, 2021 Authority Board meetings, rather than addressing privilege concerns by redaction as directed by Justice Kimmel in paragraph 19.f. of Her Honour's Endorsement dated June 16th, 2023;

22. To the extent that the minutes include any privileged information it should be dealt with by way of redaction, while producing the document with non-privileged information, for example the people in attendance and other information, visible;

23. The meeting minutes are relevant as they were identified by the Authority in its Disclosure Brief as meetings that address requests made and responses given with respect to concessions to be provided/given under subsection 18.07 of the Lease in accordance with subparagraph 17.b.ii of Justice Kimmel's April 4th, 2023 Endorsement;

Communications between Authority Board Members

24. At question 67 on pages 22-24 of Mr. Clutterbuck's transcript, PBDF requested copies of written communications, including emails and text messages, or other written communication exchanged between the Authority's board members and/or operational staff for the period January 2020 to December 2021, that relates to the duty-free stores' tenancies on the Canadian and

American side, and PBDF agrees to further limit the scope of the request to documents relating to the Lease, subsection 18.07 of the Lease, rent abatement, rent relief, and/or any other similar form of relief for either the Canadian or American duty-free store tenants;

25. PBDF's request falls squarely within the scope of Justice Kimmel's directions as set out at paragraph 17 of her April 4th, 2023 endorsement, other than the inclusion of the American duty-free tenancy;

26. The Authority disclosed emails between the Board and two staff members, but refused to disclose any communication between Board members themselves or Board members and third parties;

27. The Authority took the position that it would not disclose these records because: (a) the directors are not given Authority-owned computers or phones and are not assigned Authority e-mail accounts; and (b) email and texts sent from or received into the directors' personal accounts are not under the control of the Authority;

28. The Authority took the position that PBDF would have to bring a motion on notice to each of the directors by serving them personally to obtain information about their communication between each other relating to the Lease, subsection 18.07 of the Lease and any rent relief discussions/communications;

29. In paragraph 15 of Justice Kimmel's April 4th, 2023 Endorsement, Her Honour directed a Rule 39.03 examination of a representative of the Authority's Board of Directors;

30. PBDF has acted reasonably by conducting one examination of a single representative of the Board of Directors to obtain the relevant available evidence in a cost effective and expedient manner in accordance with the direction of the Court;

31. The Authority's position seeks to gain an advantage from the Court's direction that was intended to streamline and expedite the matter, by purporting to require PBDF to conduct 12 Rule 39.03 examinations (one for each director), in order to obtain the communication passing between the Authority's decision makers that are relevant to the Lease, subsection 18.07 of the Lease, rent abatement, rent relief, and/or any other similar form of relief for either the Canadian or American duty-free store tenants;

Duty Free Americas Rent Relief Agreement

32. At questions 109 on page 45 and 130 on page 54 of Mr. Clutterbuck's transcript, PBDF requested copies of the American duty-free store tenant agreements and lease;

33. The Authority completely redacted a version of an American Duty-Free Store rent deferral agreement contained in Report No. 869/20 dated April 24th, 2020 at Tab F.3 of the Authority's Disclosure Brief, thereby unilaterally redacting information relating to the American duty-free store in an otherwise relevant document;

34. The Authority, through counsel, acknowledged the relevance of the lease and agreements as between the Authority and the American duty-free store to the matters at issue in this proceeding;

35. The Authority subsequently elected to take the position the agreements are not relevant and refused to produce them or produce an unredacted version of the completely redacted agreement that formed part of Report No. 869/20;

36. The available evidence indicates the American duty-free store was paying far less rent than the Authority is demanding be paid by PBDF during the Covid-19 pandemic, and that the Authority agreed to accept percentage rent only from the American duty-free store despite the two stores suffering through the same pandemic, and with PBDF facing more restrictive government health restrictions in Ontario;

37. The Authority's preferential treatment of its American duty-free tenant is relevant to whether the Authority acted reasonably in respect of its obligations under subsection 18.07 of the Lease and its duty of good faith and honest contractual performance and is specifically pleaded at paragraph 42 of the notice of cross-motion;

Other grounds

38. The documents requested by PBDF are relevant to the determination of material issues in dispute in this proceeding and ought to be produced;

39. It would be prejudicial to require PBDF to take any further steps in this proceeding, which will effectively determine PBDF's ongoing existence, without having the opportunity to obtain and review the requested information and documentation;

40. Rules 1.04(1), 30.02, 30.03, 30.06, 30.08, 30.10, 34.10 37, 39, and 57.03 of the *Rules of Civil Procedure*; and

41. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of Cristina Fulop, affirmed July 19th, 2023;
2. The transcript of the examination of Tim Clutterbuck dated May 30th, 2023;
3. The transcript of the examination of Karen Costa dated May 30th, 2023, along with exhibits;
4. PBDF's notice of cross-motion and the following affidavits exchanged between the parties:
 - a. Jim Pearce sworn December 12th, 2021, November 13th, 2022, December 2nd, 2022, and February 13th, 2023;
 - b. Ben Mills sworn January 1st, 2023;
 - c. Ron Rienas sworn September 7th, 2022, November 26th, 2022 and March 1st, 2023;
5. Undertaking chart from the examination of Tim Clutterbuck dated May 30th, 2023;
6. Such further and other evidence as counsel may provide and this Honourable Court may permit.

Date: July 19th, 2023

BLANEY McMURTRY LLP

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Lawyers for the Respondent/Moving Party
Peace Bridge Duty Free Inc.

ROYAL BANK OF CANADA

and

PEACE BRIDGE DUTY FREE INC.

Applicant

Respondent (Moving Party)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

NOTICE OF MOTION

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Peace Bridge Duty Free Inc.

TAB 2

Court File No. CV-21-00673084-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N:

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COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED

AFFIDAVIT OF CRISTINA FULOP

I, CRISTINA FULOP, of the City of Toronto, in the Province of Ontario, **AFFIRM AND
SAY AS FOLLOWS:**

1. I am a lawyer with Blaney McMurtry LLP (“**Blaneys**”), lawyers for the Respondent/Moving Party, Peace Bridge Duty Free Inc. (“**PBDF**”), and as such I have knowledge of the matters to which I hereinafter depose.

2. Where I have been advised by others, or where my knowledge or information is based on my review of documents, I have stated the source of that knowledge or information and verily believe it to be true.

Overview

3. This proceeding involves the interpretation of a lease agreement dated July 28th, 2016 (“**Lease**”) between the Authority as landlord, and PBDF as tenant, of the premises located at 1 Peace Bridge Plaza, Fort Erie, Ontario (“**Leased Premises**”), which is for a 15-year term with a 5-year extension option.

4. Capitalized terms if not defined in this affidavit are as defined in the Lease.

5. PBDF has brought a cross-motion seeking a declaration in respect of whether any Base Rent is due and payable under the Lease, and if so, a determination of the amount owing, specifically with respect to specific periods of time impacted by introduction and changes in Applicable Laws due to the Covid-19 pandemic.

6. PBDF’s cross-motion has not yet been heard. The Authority has refused to produce certain documents as detailed below.

April 4th, 2023 Case Conference

7. On April 4th, 2023, the parties appeared at a case conference before Justice Kimmel.

8. At paragraph 16 of her Endorsement, Justice Kimmel clarified that of the “3 in total” individuals to be examined, Ms. Karen Costa and “one other person to be designated from the Landlord’s Board of Directors” would provide evidence on behalf of the Authority.

9. At paragraph 17 of her Endorsement, Her Honour also provided the following directions regarding the scope of production to be made in advance of the Rule 39.03 examinations:

- a. Documents exchanged between the parties and between their respective counsel, [...]:
 - i. In the time frame in which the Lease was being negotiated (circa 2016) that relate to s. 18.07 of the Lease or its subject matter; and
 - ii. In the time frame in which the boarder restrictions came into effect and thereafter (March 2020-December 2021) with respect to the effect and implementation of s. 18.07 of the Lease.
- b. Non-privileged internal documents of the Tenant and the Landlord relating to approval and authorization:
 - i. Regarding s. 18.07 of the Lease or its subject matter when the Lease was being negotiated and signed (circa 2016). On the Landlord's side, this will also include communications between the Landlord and its external fairness advisor in the Lease RFP process; and
 - ii. Regarding the requests made and responses given with respect to concessions to be provided/given under s. 18.07 of the Lease from and after the border restrictions came into effect (in the period from March 2020 to December 2021).

Attached hereto and marked as **Exhibit "A"** is a copy of the Endorsement of Justice Kimmel dated April 4th, 2023.

10. Prior to the Rule 39.03 examinations, the Authority provided PBDF with a version of its Disclosure Brief that included an index listing documents that fell within the scope of production as directed by Justice Kimmel. The index disclosed that the Authority claimed privilege over certain documents, including minutes of six Authority Board of Directors meetings. Attached hereto and marked as **Exhibit "B"** is a copy of the index of the Authority's Disclosure Brief.

Rule 39.03 Examinations

11. On or about May 30th, 2023, PBDF examined Ms. Karen Costa in her capacity as Chief Financial Officer of the Authority.

12. During her examination, Ms. Costa gave evidence regarding the rent deferral agreement reached between the Authority and American duty-free store. This involved reviewing and discussing an email from Ms. Costa to other Authority employees dated April 27th, 2021, which the Authority produced as part of its Disclosure Brief. This email stated that both entities, being PBDF and the American duty-free store, were in default of their rent deferral agreements, and contained certain information about the rent and sales of the American duty-free store. The email with attachments was made exhibit #2 of Ms. Costa's examination. Attached hereto and marked as **Exhibit "C"** is a copy of this email, with enclosures.

13. For example, as shown at page 13 of Exhibit "C" (highlight in original):

Peace Bridge Authority
Analysis of Revenue - World Duty Free
12/31/2020 - REVISED (Karen)

	Calculated Rent			Sales				2020 Budgeted Sales
	Base	Amount paid	2020 owing	2019 Certified Sales	2020 Gross Sales	Difference	%	
1/20	100,382.88	109,714.52	210,097.40	459,453.54	508,857.00	49,403.46	10.7%	464,049
Jan. Rent Adj.					(109.20)	(109.20)		
Jan. Sales Adj.					600,740.00	17,569.10	2.9%	588,003
2/20	100,382.88	109,714.52	210,097.40	583,170.90	(451.50)	(451.50)		
Feb. Sales Adj.					583,583.41	(413,158.84)	40.8%	1,006,709
3/20	100,382.88	81,719.50	182,102.48	996,742.25	6,360.59	6,360.59		
Mar. Sales Adj.					122,170.00	(826,445.71)	-87.1%	958,102
4/20	100,382.88	19,545.54	80,537.24	948,615.71	135,026.00	(835,015.60)	-86.1%	100,383
5/20	100,382.88	21,601.55	76,781.33	970,041.60	193,290.00	(1,158,218.84)	-85.7%	100,383
6/20	100,382.88	30,926.35	69,456.53	1,351,508.84	168,248.00	(1,128,000.91)	-87.0%	100,383
7/20	100,382.88	26,918.84	73,464.04	1,296,249.91	169,387.00	(1,195,104.72)	-87.6%	100,383
8/20	100,382.88	27,101.88	73,281.02	1,364,491.72	(302.60)	(302.60)		
Mar. thru Aug. Sales Adj.					214,882.00	(921,088.67)	-81.1%	100,383
9/20	100,382.88	34,348.09	86,033.79	1,135,750.87	176,514.00	(702,546.17)	-79.9%	100,383
10/20	100,382.88	28,242.19	72,140.69	879,060.17	184,799.00	(591,701.38)	-76.2%	100,383
11/20	100,382.88	31,451.62	68,931.26	776,900.38	260,268.00	(914,904.48)	-75.8%	100,383
12/20	100,382.88	49,450.52	50,932.36	1,075,170.48	(0.89)	(0.89)		
Sept. thru Dec. Sales Adj.								
Totals	1,204,594.56	570,736.30	1,236,155.54	11,836,756.17	3,323,059.61	(8,513,696.36)	-71.9%	3,820,927
		1-12211	1-61091					
Total Rec.		570,736.30	1,236,155.54					
Per G/L		0.00	1,204,594.56					
Difference		570,736.30	-31,560.68					

Additional rent is based upon gross sales levels, less the base rent:			Crisis months Additional rent.	
0.16	first \$3,000,000	\$ 480,000.00	Apr = June sales	450,485.00
0.19	next \$3,000,000	61,381.36		\$ 72,077.78
0.21	next \$2,000,000			
0.24	next \$2,000,000			
0.25	thereafter			
		\$ 541,381.36		

14. The chart reproduced above appears to show that the American duty-free store was only paying percentage rent of between approximately 16% to 19% of its sales during the period from April 2020 to December 2020.

15. On May 30th, 2023, PBDF examined Mr. Tim Clutterbuck in his capacity as member of the Authority's Board of Directors.

16. The Authority refused to answer a number of questions on the grounds that the "request goes beyond the disclosure ordered by Her Honour." Attached hereto and marked as **Exhibit "D"** is a copy of Mr. Clutterbuck's Undertakings and Refusals Chart, and accompanying cover letter from counsel dated June 7th, 2023.

June 2023 Case Conference

17. On June 14th and 15th, 2023, the parties appeared at a further case conference before Justice Kimmel.

18. At paragraph 19.b. of her Endorsement dated June 16, 2023, Justice Kimmel clarified that her earlier directions about categories of expected disclosure "[were] not intended to be a closed list of all potentially relevant categories of production and disclosure."

19. At paragraphs 19.f. and g. of her Endorsement, Her Honour stated:

- f. The court expects concerns about privilege being addressed through redactions, rather than the withholding of entire documents, on the basis that doing so would not be relied upon as a waiver of privilege, with challenges to the redactions to be brought forward together with any other privilege challenges in a focused manner for the court's consideration and direction.
- g. Subject to legitimate proportionality and privilege considerations, the court expects questions asked during the examinations to be answered (even if under reserve of objection as to relevance).

Attached hereto and marked as **Exhibit “E”** is a copy of the Endorsement of Justice Kimmel dated June 16, 2023.

Correspondence between the parties

20. PBDF and the Authority’s lawyers exchanged the following correspondence about the production requests, among other things.

21. On June 1st, 2023, Blaney’s wrote to Gowling WLG (“**Gowlings**”), counsel for the Authority, to request production of minutes of the Board of Director meetings, among other things. Attached hereto and marked as **Exhibit “F”** is a copy of this letter.

22. In a letter dated June 2nd, 2023, Gowlings advised that the Authority’s refusal to produce “Board-related materials” was because lawyers were in attendance at the meeting, legal advice was discussed at the meeting, or the report prepared for the purposes of the meeting provided or summarized legal advice. Attached hereto and marked as **Exhibit “G”** is a copy of this letter, without enclosures.

23. On June 4th, 2023, Blaney wrote to the Authority regarding disclosure issues and examinations. Attached hereto and marked as **Exhibit “H”** is a copy of this letter.

24. On June 7th, 2023, the Authority provided unredacted copies of the November 20th, 2020 and December 17th, 2020 meeting minutes as part of Mr. Clutterbuck’s answers to undertakings (see **Exhibit “D”**). The Authority refused to produce the minutes of the other four meetings on the ground that the Authorities’ lawyers were present and provided advice to the Board. Attached hereto and marked as **Exhibit “I”** are copies of the November 20th, 2020 and December 17th, 2020 meeting minutes produced as part of Mr. Clutterbuck’s answers to undertakings.

25. On June 8th, 2023, Gowlings responded to Blaneys' June 1st and 4th, 2023 letters. Attached hereto and marked as **Exhibit "J"** is a copy of this letter, without enclosures.

26. On June 23rd, 2023, Gowlings provided additional answers to undertakings given at Mr. Clutterbuck's examination. In response to PBDF's request for unredacted copies of the meeting minutes, the Authority's answer was that the minutes of all meetings involving discussions regarding section 18.07 of the Lease had been produced. Attached hereto and marked as **Exhibit "K"** is a copy of this letter, without enclosures.

27. However, the minutes of the meetings held April 30th, 2021, May 28th, 2021, October 8th, 2021 and November 28th, 2021, over which the Authority asserted privilege had not yet been produced.

28. On June 26th, 2023, Gowlings wrote to Blaney asserting, among other things, that the Authority complied with its production and disclosure obligations. Attached as **Exhibit "L"** is a copy of that letter.

29. On June 30th, 2023, Blaney wrote to Gowlings regarding Mr. Clutterbuck's answers to undertakings and ongoing requests for disclosure of outstanding relevant documentation. Attached hereto and marked as **Exhibit "M"** is a copy of this letter.

30. On July 7th, 2023, Gowlings wrote to Blaney advising that the Authority's position was that the minutes dealt with confidential financial and other matters involving third parties and were not relevant to the issues before the Court. The Authority also claimed privilege over the April 30th, 2021, May 28th, 2021, October 8th, 2021 and November 28th, 2021 meeting minutes. Attached hereto and marked as **Exhibit "N"** is a copy of this letter, without enclosures.

I. Minutes of Meetings of the Authority's Board of Directors

31. In the index to the Authority's Disclosure Brief (see **Exhibit "B"**), the Authority listed six minutes of the meetings of its Board of Directors at which (a) section 18.07 of the Lease or its subject matter, or (b) requests made and responses given with respect to concessions to be provided or given under section 18.07 of the Lease, were addressed, and over which privilege was claimed:

G. Authority Board Minutes

1. 23 Jun 16
2. 28 Jul 16
3. 24 Apr 20
4. 29 Jan 21
5. 25 Oct 21

Privileged: 20 Nov 20, 17 Dec 20, 30 Apr 21, 28 May 21, 8 Oct 21 and 19 Nov 21

32. The minutes of the meetings held April 30th, 2021, May 28th, 2021, October 8th, 2021 and November 28th, 2021, have not been produced, even in a redacted form, notwithstanding paragraph 19.f. of Justice Kimmel's June 16th, 2023 Endorsement:

- f. The court expects concerns about privilege being addressed through redactions, rather than the withholding of entire documents, on the basis that doing so would not be relied upon as a waiver of privilege, with challenges to the redactions to be brought forward together with any other privilege challenges in a focused manner for the court's consideration and direction.

II. Communications to and from Members of the Authority's Board of Directors

33. In this motion, PBDF seeks complete copies of any and all written communications, including but not limited to, letters, faxes, emails and text messages sent or received by the Authority's board members for the period January 2020 to December 2021, inclusive, relating to the Lease, section 18.07 of the Lease, rent abatement, rent relief, and/or any other similar form of relief for either the Canadian or American duty-free store tenants.

34. The Authority has refused to review and/or produce written communications sent and received by the members of the Board of Directors.

35. At the examination of Mr. Clutterbuck, PBDF requested an undertaking that for production of any text messages, emails, or other written communications between members of the Authority's Board of Directors themselves and between Board members and operational staff between January 2020 and December 2021, that relates to both the Canadian and American duty-free store tenancies (see pages 22-24 of the transcript of Mr. Clutterbuck's examination dated May 30th, 2023).

36. On or about June 7th, 2023, the Authority answered this undertaking by saying "this request goes beyond the disclosure order by Her Honour." (see **Exhibit "D"**, undertaking #4)

37. On June 23rd, 2023 the Authority provided additional answers to undertakings given at Mr. Clutterbuck's Rule 39.03 examination (see **Exhibit "K"**), the Authority advised that there were twelve (12) individuals who held office as directors during 2020 and 2021, two of whom are no longer serving as directors. The Authority raised issues of proportionality and explained that it only searched and disclosed the emails of two operational staff, which would obviously not capture communication passing between members of the Board of Directors or anyone else if the two staff members were not copied.

38. On June 30th, 2023 Blaney wrote to Gowlings, noting that the Authority had not yet provided the requested documentation and had also not disclosed any attempt to obtain those records (see **Exhibit "M"**, Page 24 answer).

39. On July 7th, 2023 Gowlings responded (see **Exhibit “N”**), “With respect to the e-mail between the Authority's director: (a) the directors are not given Authority-owned computers or phones and are not assigned Authority e-mail accounts; and (b) email and texts sent from or received into the directors’ personal accounts are not under the control of the Authority. We question how personal e-mail exchanges between directors can be relevant to corporate decisions made by the Authority. If you wish to obtain this information, you will need to bring a Motion seeking same on notice to the individual directors.”

III. US Duty Free Rent Relief Agreements

40. During Mr. Clutterbuck’s Rule 39.03 examination, the Authority’s counsel acknowledged the relevance of the lease and agreements as between the Authority and the American duty-free store to the matters in issue.

41. Discussions in Mr. Clutterbuck’s transcript about the rent relief agreement and lease with the Authority can be found at pages 43 to 45. For ease of reference, I have reproduced part of page 45 of the transcript, beginning at line 15, in which the Authority, through counsel, acknowledged the relevance of the American duty-free store agreements:

MR. STANEK: Okay, so the — the undertaking I gave you with respect to the — to the agreement, same thing with respect to the lease, I recognize the relevance of it, however there may be a restriction as to our ability to provide it. And I need to — we will need to investigate that, but I will also undertake to advise as to what can be — what details of these arrangements, the lease and the agreement can be produced if any, okay?

42. The Authority included a redacted version of Report No. 869/20 at Tab F.3 of the Authority’s Disclosure Brief, which enclosed an entirely redacted copy of the rent deferral

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agreement(s) between the Authority and American duty-free store. Attached as **Exhibit "O"** is a copy of Report No. 869/20 as produced by the Authority.

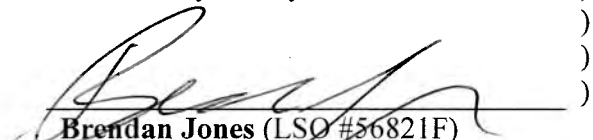
43. At Mr. Clutterbuck's examination, PBDF requested a copy of the unredacted rent deferral agreement at pages 53 and 54 of the transcripts.

44. In its June 23, 2023 letter (see **Exhibit "K"**), the Authority took the position that Report No. 869/20 dealt with approval of the rent deferral agreements entered into with PBDF and the operator of the American duty-free store.

45. As of the date of this affidavit, the Authority has refused to produce copies of the American duty-free store lease or rent relief agreement.

46. I make this affidavit in support of PBDF's request for production and for no other or improper purpose.

AFFIRMED BEFORE ME at the City)
of Toronto, in the Province of Ontario,)
this 19th day of July, 2023.)


Brendan Jones (LSO #56821F)
A commissioner for taking affidavits



Cristina Fulop

THIS IS **EXHIBIT "A"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Commissioner, etc.
Brendan Jones



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-21-00673084-00CL

DATE: 4 April 2023

NO. ON LIST: 3

TITLE OF PROCEEDING: RBC v. Peace Bridge Duty Free Inc.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
David Ullmann/ J. Wolf	For the Tenant Peace Bridge Duty Free	dullmann@blaney.com jwolf@blaney.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Patrick Shea	For the Landlord, the Peace Bridge Authority	patrick.shea@gowlingwlg.com
Leanne Williams	For msi Spergel Inc., the court appointed Monitor	williams@tgf.ca
Mukul Manchanda	Monitor's representative	mmanchanda@spergel.ca

ENDORSEMENT OF JUSTICE KIMMEL:

1. This case conference was scheduled pursuant to the court's January 19, 2023 endorsement, which specified the following agenda of matters to be considered and addressed, post-mediation:
 - a. A report from the parties about any aspects of their disputes that have been resolved.
 - b. The costs of the Landlord's stay motion (decided by the court's January 16, 2023 endorsement) and whether those costs should be decided now or deferred to be decided in connection with the Tenant's cross-motion.
 - c. Directions regarding the stay and restrictions contained in, and "normal rent" payable under, the Appointment Order, including with respect to: i) the lifting of the stay of proceedings in paragraph 9 of the Appointment Order and/or relieving the Landlord of the restrictions under paragraph 11, ii) vacating or terminating the Appointment Order, and/or iii) the amount of "normal rent" that the Tenant should be paying to the Landlord pursuant to paragraph 11 of the Appointment Order if it is to remain in place pending the decision of the court on the Tenant's cross-motion.
 - d. Directions regarding any proposed 39.03 examinations that are objected to in connection with the Tenant's cross-motion.
 - e. Directions regarding the timetabling of the cross examinations the exchange of expert reports (if any), the need for any viva voce evidence, the exchange of written submissions and the eventual hearing of the Tenant's cross-motion.
 - f. Directions regarding the timetabling of the receivership application and any other matters arising in connection with the receivership application and/or the continuing role of the Monitor.
2. The Landlord and Tenant each filed Aide Memoires in advance of this case conference which assisted framing the issues for the court's consideration. Each of these agenda items were addressed in the Aide Memoires, as well as some additional items. The court heard from counsel present and the provides herein a summary of the points addressed and the orders and directions arising therefrom.

Report on Mediation

3. It was reported in the Aide Memoires that no settlement was reached at the mediation, with respect to any issues. The Tenant has said that it intends to make a further proposal to the Landlord. The mediator is available to continue the mediation if the parties consider that it would be productive. That shall not interfere with the timetable now set for the Tenant's Cross-Motion, unless both the Landlord and Tenant request a consent adjournment of same.

Costs of the Landlord's Stay Motion

4. The Tenant wants the court to decide the issue of the costs of the Landlord's Stay Motion decided by endorsement dated January 16, 2023 (*Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2023 ONSC 327).
5. The Landlord suggests that the court's decision regarding the entitlement/quantum/scale of costs of that motion should be deferred and decided in conjunction with the costs of the Tenant's Cross-Motion. The Landlord's request is reasonable, in the circumstances, for the reasons outlined in its Aide Memoire.
6. The issue of the costs of the Landlord's Stay Motion shall be decided at the same time as the costs of the Tenant's Cross-Motion (now scheduled), or at such further and other time as the court may direct.

Further Directions With Respect to Paragraphs 9 and 11 of the Appointment Order

7. The Landlord continues to argue that it should not be required to effectively finance the Tenant pending the determination of the Tenant's Cross-Motion, by virtue of the stay of proceedings and other restrictions imposed when the Receiver was appointed, which prevent the Landlord from exercising its remedies in respect of the Tenant's failure to pay Base Rent under the Lease, and other alleged breaches of the Lease by the Tenant. The Landlord's concerns are exacerbated the longer the process takes to a decision on the interpretation of section 18.07 of the Lease.
8. The court has to balance the Landlord's position against the Tenant's assertion that it cannot afford to pay the prescribed Base Rent and its contention that it is paying "normal" rent, which is all that it is required to pay by virtue of section 18.07 of the Lease and the events that transpired from and after March of 2020. This issue is raised squarely by the Tenant's Cross-Motion.
9. To alleviate the Landlord's concerns, the court has now scheduled the earliest available date to hear the declaratory relief sought by the Tenant's Cross-Motion (Lease interpretation issues, contained in paragraphs 1-6 and paragraph 11 of the Tenant's Cross-Motion), for three days July 25, 26 and 27, 2023.
10. The Landlord remains concerned about unrecoverable rent arrears that continue to accumulate and interest on past arrears (the interest alone it calculates to be approximately \$170,000 per month. This concern is of course dependent upon the Landlord's interpretation of the Lease prevailing. The Landlord is not satisfied that the Tenant is paying enough on an interim without prejudice basis, even with the Tenant's latest projections (which only approximates the level of Base Rent that the Landlord claims for a couple of months in the summer).
11. The court's January 16, 2023 Stay Motion Endorsement and January 19, 2023 case conference endorsement left open the question of what amount of rent the Tenant should be paying to the Landlord if the stay is to remain in place pending the decision of the court on the Tenant's Cross-motion. The court has previously indicated that it has jurisdiction to set the amount of rent to be paid by the Tenant during the stay period. While the Landlord does not accept that the Tenant's ability to pay should dictate the amount that the court determines is appropriate, as a practical matter, the court considers that to be a relevant data point and had anticipated that there might be evidence available at this case conference about the Tenant's ability to pay.
12. The Tenant has offered to pay for the cost of the Monitor to independently review and verify the Tenant's confidential cash flows (that have not been shared with the Landlord) and verify whether the Tenant is able to pay the Base Rent that the Landlord is requesting be paid, or any amount beyond 20% of its gross sales (which is what it has been paying and proposes to continue to pay until its Cross-Motion has been decided).
13. The Monitor has agreed to undertake this exercise and will provide its report to counsel for the Tenant and counsel RBC on or before May 5, 2023. The Tenant will review and advise within a week whether it accepts the Monitor's review and analysis. However, the Tenant has agreed that it will abide by any direction from the court regarding any increased amount of rent to be paid pending the court's determination of the Lease interpretation point on its Cross-Motion, based on the Monitor's report.
14. The parties shall attend a 30-minute case conference on May 17, 2023 at 9:15 a.m. at which time the court will consider and provide any further directions arising out of the Monitor's report (including any issues associated with the disclosure of that report to the Landlord, if the parties have not been able to come to terms upon which the report will be shared with the Landlord before then).

Rule 39.03 Examinations

15. After some back and forth, it has been agreed that Mr. O'Hara will be examined by the Landlord. The Tenant will examine Ms. Costa and one other person to be designated from the Landlord's Board of Directors. Preferably, someone who was on the board at the time of the Lease negotiations in 2016 and during the March 2020 to December 2021 time frame. But if no such individual exists, or if the Tenant

prefers to examine the current Chairman of the Landlord it may do so, in lieu of this other board representative.

16. These Rule 39.03 examinations (3 in total) shall be completed by May 26, 2023. These should be scheduled as soon as possible to avoid conflicts for witnesses and counsel.

Timetabling Directions: Tenant's Cross-Motion

17. The Tenant requested an order for discovery-like production to be made by both sides. Given that this is a contract interpretation case in which context/factual matrix has some limited relevance but must be considered on an objective standard, the court has provided the following directions regarding limited-scope production to be made by the Landlord and the Tenant by May 5, 2023 (in advance of any examinations):
- a. Documents exchanged between the parties and between their respective counsel, unless exchanged on a without prejudice/settlement basis (to be produced to each other to the extent not already appended as exhibits to affidavits already filed on the Cross-Motion):
 - i. In the time frame in which the Lease was being negotiated (circa 2016) that relate to s. 18.07 of the Lease or its subject matter; and
 - ii. In the time frame in which the boarder restrictions came into effect and thereafter (March 2020-December 2021) with respect to the effect and implementation of s. 18.07 of the Lease.
 - b. Non-privileged internal documents of the Tenant and the Landlord relating to approval and authorization:
 - i. Regarding s. 18.07 of the Lease or its subject matter when the Lease was being negotiated and signed (circa 2016). On the Landlord's side, this will also include communications between the Landlord and its external fairness advisor in the Lease RFP process; and
 - ii. Regarding the requests made and responses given with respect to concessions to be provided/given under s. 18.07 of the Lease from and after the border restrictions came into effect (in the period from March 2020 to December 2021).
18. The court has not at this time made any ruling as to the admissibility or relevance of such documents, only that they shall be produced and available to be questioned upon. Redactions made be made on the face of any such produced documents for privilege.
19. The cross-examinations of all affiants shall be completed after the Rule 39.03 examinations (above) and on or before June 7, 2023. These should be scheduled as soon as possible to avoid conflicts for witnesses and counsel.
20. If the Tenant intends to deliver an expert report on issues relevant to the aspects of its Cross-Motion that are being adjudicated on July 25-27, 2023 (notice of Cross-Motion paragraphs 1-6 and 11, Lease interpretation issues) counsel shall agree by April 10, 2023 on a timetable for the exchange of expert reports that is completed by no later than May 30, 2023 so that the experts can be examined immediately after the completion of the other witness examinations.
21. The parties shall not refuse to answer questions on the cross-examinations or Rule 39.03 examinations on grounds of relevance. The objecting party may state the objection but the question shall be answered.
22. The parties shall attend a case conference on June 14, 2023 commencing at 9:00 a.m. (scheduled for no more than 45 minutes), which shall be primarily to address evidentiary considerations for the hearing of the Cross-Motion, including whether any party considers that it might be necessary for the court to hear *viva voce* evidence from any of the witnesses. The parties should come to this case conference prepared to discuss any other logistics for the hearing, including any sealing orders that might be requested.
23. Undertakings (and questions taken under advisement or refused that the objecting party is prepared to answer) shall be answered in writing by June 30, 2023.

24. The Tenant's factum (maximum 25 pages double spaced, including appendices) shall be delivered by July 7, 2023.
25. The Landlord's responding factum (maximum 30 pages double spaced, including appendices) shall be delivered by July 14, 2023.
26. The Tenant may deliver a reply factum (maximum 5 pages double spaced, including appendices) if there are matters of proper reply not anticipated and addressed in its initial factum, by July 21, 2023.
27. All materials is to be uploaded into the CaseLines bundle for this hearing by 4:30 p.m. on July 21, 2023. All materials must be hyperlinked (factums and indices to any records).

Timetabling Directions: Receivership Application

28. The Receivership application is now returnable on September 22, 2023. It may have to be adjourned if the court's decision on the Tenant's Cross-Motion has not yet been rendered. In the meantime, RBC's counsel does not intend to participate in the cross-examinations on the Tenant's Cross-Motion but RBC and the Tenant agree that the evidence from the Cross-Motion may be used on the Receivership application if and when it proceeds, to be supplemented by further evidence as either party may deem necessary, to be exchanged (and cross-examinations to be conducted) on a timetable to be agreed upon shortly after the Tenant's Cross-Motion has been heard so that the parties are ready to proceed with that application on September 22, 2023.
29. While the Landlord does not expect to directly participate in the Receivership application, it does have an interest in when it is heard, so counsel for the Landlord shall be kept apprised of any timetabling agreements regarding the Receivership application.

Conclusion

30. The parties shall abide by the above directions and orders and timetable. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.

A handwritten signature in dark ink, appearing to read 'Kimmel J.', with a stylized, cursive script.

KIMMEL J.

THIS IS **EXHIBIT "B"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Commissioner, etc.
Brendan Jones

Court File No. CV-21-00673084-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C.
1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.C. 1990, c.
C.43, AS AMENDED

**DISCLOSURE BRIEF
Volume 1 of 3**

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Lawyers for Buffalo and Fort Erie Public Bridge
Authority

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8. 29 Jan 21 Letter to PBDF re rent and CERS program
9. 19 Feb 21 Letter to PBDF re rent and CERS program
10. 25 Feb 21 Letter from PBDF
11. 26 Feb 21 Letter to PBDF
12. 25 Mar 21 Letter from PBDF re deferred rent and plan for repayment
13. 26 Mar 21 Letter to PBDF
14. 30 Mar 21 E-mail from K Costa analyzing PBDF plan
15. 1 Apr 21 Letter from PBDF
16. 1 Apr 21 Letter to PBDF

17. 13 Apr 21 Letter from Authority re willingness to have discussions
18. 28 Apr 21 E-mail from K Costa commenting on e-mail to J Pearce
19. 6 May 21 Letter from PBDF responding to requests for information re financials
20. 12 May 21 E-mail from K Costa re 6 May 21 letter from PBDF
21. 13/14 May 21 E-mail exchange re proposal
22. 12 May 21 E-mail from K Costa re PBDF response to 28 Apr 21 letter
23. 13/14 May 21 E-mail exchange re PBDF proposal
24. 26 May 21 E-mail from G O'Hara attaching
25. 15 Jul 21 E-mail attaching letter to PBDF
26. 1 Jun 21 E-mail attaching letter to PBDF
27. 29 Jul 21 Letter from PBDF
28. 29 Jul 21 E-mail attaching 29 Jul 21 letter
29. 30 Jul 21 E-mail from K Costa re engagement with PBDF
30. 20 Aug 21 Proposal from PBDF
31. 17 Sept 21 E-mail from G O'Hara to Gowling
32. 20 Sept 21 E-mail from J Pearce attaching letter to Gowling
33. 22 Sept 21 E-mail to PBDF attaching letter from Gowling
34. 23 Sept 21 E-mail from B Mills
35. 23 Sept 21 E-mail from B Mills attaching RBC demand
36. 24 Sept 21 E-mail from S Mitra (lawyer for RBC)
37. 28/29 Sept 21 E-mail exchange re CERS
38. 24 Sept 21 E-mail re Authority, RBC and PBDF conference call
39. 13 Oct 21 E-mail attaching letter to PBDF re rent
40. 15 Oct 21 E-mail attaching PBDF proposal
41. 15 Oct 21 E-mail attaching PBDF proposal
42. 26 Oct 21 Authority proposal
43. 10 Nov 21 Letter to G O'Hara requesting response to Authority proposal

44. 16 Nov 21 PBDF proposal
45. 17 Nov 21 E-mail from B Mills (lawyer for PBDF) attaching PBDF 16 Nov 21 proposal
46. 18 Nov 21 E-mail to Board re 16 Nov 21 PBDF proposal
47. 18 Nov 21 E-mail from K Costa analyzing PBDF 16 Nov 21 proposal
48. 26 Nov 21 E-mail from B Mills (lawyer for PBDF) attaching letter re termination of forbearance
49. 26 Nov 21 E-mail from B Mills (lawyer for PBDF)
50. 29 Nov 21 E-mail rejecting PBDF 16 Nov 21 proposal
51. 10/11 Dec 21 E-mail communications between Gowling and Blaney
52. 13 Dec 21 Letter from Blaney to Gowling

Volume 3

E. 2022

1. 13 Jan 22 E-mail from R Rienas re offer expected from PBDF
2. 1 Feb 22 Letter from Authority to PBDF
3. 10 Feb 22 Letter from FDFA to Authority
4. 24 Feb 22 E-mail from K Costa attaching 17 Feb 22 letter from Authority to FDFA
5. 24 Feb 22 E-mail to J Pearce re rent payments
6. 24 Feb 22 Letter from FDFA to the Authority
7. 25 Feb 22 Letter from Authority to FDFA
8. 25 Mar 22 E-mail to J Pearce re failure of PBDF to provide financial information
9. 28 Mar 22 E-mail from R Rienas attaching FDFA presentation
10. 30 Mar 22 E-mail from G O'Hara re PBDF financials
11. 6 Apr 22 E-mail from N Teal attaching THRP notices
12. 11 Apr 22 E-mail from R Rienas re PBDF payment
13. 6 Jul 22 E-mail from R Rienas re PBDF payment
14. 25 Oct 22 E-mail from R Rienas attaching 24 Oct 22 letter from FDFA to Authority

F. Board Reports

1. 554/16 (26 Feb 16)

2. 573/16 (23 Jun 16)

3. 869/20 (24 Apr 20)

Privileged: 933/21 (30 Apr 21), 938/21 (28 May 21) and 953/21 (2 Sept 21)

G. Authority Board Minutes

1. 23 Jun 16

2. 28 Jul 16

3. 24 Apr 20

4. 29 Jan 21

5. 25 Oct 21

Privileged: 20 Nov 20, 17 Dec 20, 30 Apr 21, 28 May 21, 8 Oct 21 and 19 Nov 21

H. Costa Meeting Notes (Undated)

I. Lease Ver 14

J. Printed from USB

1. 19 Nov 20 E-mail to Board re Rent Deferral

2. 11 Dec 20 E-mail from J Pearce

3. 31 Dec 20 E-mail to Board attaching PBDF 30 Dec 20 letter

4. 22 Jan 21 E-mail from J Pearce

THIS IS **EXHIBIT "C"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", is written over a horizontal line.

Commissioner, etc.
Brendan Jones

Ariyana BotejueTHIS IS EXHIBIT # 2
ON THE EXAMINATION OF:

From: Karen L. Costa
Sent: April 27, 2021 3:09 PM
To: Kristina Carroll; Nancy C. Teal
Cc: Karen L. Costa; Mark DeVreede
Subject: PBDF
Attachments: PBDF - Payments Received.xlsx; PBDF Deferred Rent Balances.xlsx; 20210413 140732.pdf; DFA 2020 rent due.xlsx; WDF Deferred Rent Balances.xlsx

KAREN COSTA INRRC

vs.

PEACE BRIDGE DUEY FILESHELD ON MAY 30 2023Larry Southwell
OFFICIAL EXAMINER
at St. Catharines, Ontario

Hi –

Can we meet to discuss PBDF tomorrow. Ron needs a report to the board for this week's meeting that I need to have completed by tomorrow end of day.

I need the attached filled out for both US and PBDF each month and every time we receive funds.

Please see the attached letter - as for the \$58,053.31 payment received from PBDF – We are drawing the \$50,000 letter of credit and need to apply that to the outstanding rent. Then \$50,000 of the amount just paid is to be recorded as replenishment of the security deposit and the remaining \$8,053.31 is to be applied to rent. I want the entries to reflect that is what we did.

Both entities are in default of the rent deferral agreements.

Thanks!

Karen

Karen L. Costa, CPA
 Chief Financial Officer
 Buffalo & Fort Erie Public Bridge Authority

100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213
klc@peacebridge.com | T 905-994-3679 | T 716-884-8638 | F 905-871-9940 | F 716-883-7246

For up to the hour traffic conditions, visit mobile.peacebridge.com

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**Peace Bridge Duty Free
2020 Payments**

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Notes</u>
2020-01-02	\$ 384,058.39	January 2020 Invoice
2020-02-03	385,895.22	February 2020 Invoice
2020-03-02	385,895.22	March 2020 Invoice
		April 2020 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
		May 2020 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
		June 2020 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
2020-06-01	31,075.66	2020 Legal Fees \$3,390.01
		July 2020 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
2020-07-02	9,228.55	August 2020 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
2020-08-04	9,228.55	September 2020 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
2020-09-01	9,228.55	October 2020 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
2020-10-01	9,228.55	November 2020 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
2020-11-02	9,228.55	April 2020 HST (Base Rent) \$43,333.35
		May 2020 HST (Base Rent) \$43,333.33
2020-11-23	260,000.00	June 2020 HST (Base Rent) \$43,333.33
		July 2020 HST (Base Rent) \$43,333.33
		August 2020 HST (Base Rent) \$43,333.33
		September 2020 HST (Base Rent) \$43,333.33
2020-12-01	9,228.55	December 2020 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
2020-12-23	43,441.54	CERS - Applied to April 2020 Base Rent

Amount Received in 2020

\$ 1,545,737.33

**Peace Bridge Duty Free
2021 Payments**

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Notes</u>
2021-01-04	\$ 9,228.55	January 2021 CAM/Operating (\$8,166.86 + \$1,061.69 HST = \$9,228.55)
2021-02-01	9,288.55	February 2021 CAM/Operating (\$9,050.16 + \$1,176.52 HST = \$10,226.68)
2021-02-01	998.13	February 2021 CAM/Operating + Additional \$60 (Applied to March 2021 CAM/Operating)
		October 2020 HST (Base Rent) \$43,333.34
2021-02-02	130,000.00	November 2020 HST (Base Rent) \$43,333.33
		December 2020 HST (Base Rent) \$43,333.33
2021-02-02	40,583.14	CERS - Applied to April 2020 Base Rent
2021-03-05	10,166.68	March 2021 CAM/Operating (\$9,050.16 + \$1,176.52 HST = \$10,226.68) - See 2/1 above
2021-03-10	18,750.00	CERS top up - Applied to April 2020 Base Rent
Amount Received in 2021	\$ 219,015.05	

Peace Bridge Authority
 Analysis of Revenue - Canadian Duty Free
 #####

	Calculated Rent					Paid	Outstanding Dec 31, 2020
	Base	Base rent HST	CAM (Operating)	CAM HST (Operating)	2020		
1/20	-	-	-	-	-	-	-
2/20	-	-	-	-	-	-	-
3/20	-	-	-	-	-	-	-
4/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	289,891.74
5/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	333,333.33
6/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	333,333.33
7/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	333,333.33
8/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	333,333.33
9/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	333,333.33
10/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	376,666.66
11/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	376,666.66
12/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	376,666.66
Totals	2,999,999.97	390,000.00	73,501.74	9,555.23	3,473,056.93	83,056.97	3,086,558.38

interest rate of 4% per
 annum computed as of
 Dec 31, 2020

\$67,283.42 Accrued Interest Income
3,153,841.80

LOAN AMORTIZATION SCHEDULE

ENTER VALUES

Loan amount	\$3,086,558.38
Annual interest rate	4.00%
Loan period in years	1
Number of payments per year	12
Start date of loan	2021-01-01

Optional extra payments

	\$0.00
--	--------

LOAN SUMMARY

Scheduled payment	\$262,820.15
Scheduled number of payments	12
Actual number of payments	12
Total early payments	\$0.00
Total interest	\$67,283.42

LENDER NAME	Peace Bridge Duty Free
-------------	------------------------

PMT NO	PAYMENT DATE	BEGINNING BALANCE	SCHEDULED PAYMENT	EXTRA PAYMENT	TOTAL PAYMENT	PRINCIPAL	INTEREST	ENDING BALANCE	CUMULATIVE INTEREST
1	2021-01-01	\$3,086,558.38	\$262,820.15	\$0.00	\$262,820.15	\$252,531.62	\$10,288.53	\$2,834,026.76	\$10,288.53
2	2021-02-01	\$2,834,026.76	\$262,820.15	\$0.00	\$262,820.15	\$253,373.39	\$9,446.76	\$2,580,653.36	\$19,735.28
3	2021-03-01	\$2,580,653.36	\$262,820.15	\$0.00	\$262,820.15	\$254,217.97	\$8,602.18	\$2,326,435.39	\$28,337.46
4	2021-04-01	\$2,326,435.39	\$262,820.15	\$0.00	\$262,820.15	\$255,065.37	\$7,754.78	\$2,071,370.02	\$36,092.25
5	2021-05-01	\$2,071,370.02	\$262,820.15	\$0.00	\$262,820.15	\$255,915.58	\$6,904.57	\$1,815,454.44	\$42,996.81
6	2021-06-01	\$1,815,454.44	\$262,820.15	\$0.00	\$262,820.15	\$256,768.64	\$6,051.51	\$1,558,685.81	\$49,048.33
7	2021-07-01	\$1,558,685.81	\$262,820.15	\$0.00	\$262,820.15	\$257,624.53	\$5,195.62	\$1,301,061.27	\$54,243.95
8	2021-08-01	\$1,301,061.27	\$262,820.15	\$0.00	\$262,820.15	\$258,483.28	\$4,336.87	\$1,042,577.99	\$58,580.82
9	2021-09-01	\$1,042,577.99	\$262,820.15	\$0.00	\$262,820.15	\$259,344.89	\$3,475.26	\$783,233.10	\$62,056.08
10	2021-10-01	\$783,233.10	\$262,820.15	\$0.00	\$262,820.15	\$260,209.37	\$2,610.78	\$523,023.73	\$64,666.86
11	2021-11-01	\$523,023.73	\$262,820.15	\$0.00	\$262,820.15	\$261,076.74	\$1,743.41	\$261,946.99	\$66,410.27
12	2021-12-01	\$261,946.99	\$262,820.15	\$0.00	\$261,946.99	\$261,073.84	\$873.16	\$0.00	\$67,283.42

Peace Bridge Authority
Analysis of Revenue - Canadian Duty Free
2021-01-31

	Calculated Rent				Paid	Outstanding Jan 31, 2021
	Base	Base rent HST	CAM (Operating)	CAM HST (Operating)		
1/20	-	-	-	-	-	-
2/20	-	-	-	-	-	-
3/20	-	-	-	-	-	-
4/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	289,891.74
5/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
6/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
7/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
8/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
9/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
10/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	376,666.66
11/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	376,666.66
12/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	376,666.66
1/21	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	376,666.66
Totals	3,333,333.30	433,333.33	81,668.60	10,616.92	92,285.52	3,463,225.04

interest rate of 4% per annum computed as of Jan 31, 2021

\$75,494.32

Accrued Interest Income

3,538,719.36

Peace Bridge Authority
Analysis of Revenue - Canadian Duty Free
2021-02-28

	Calculated Rent				Paid	Outstanding Feb 28, 2021
	Base	Base rent HST	CAM (Operating)	CAM HST (Operating)		
1/20	-	-	-	-	-	-
2/20	-	-	-	-	-	-
3/20	-	-	-	-	-	-
4/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	249,308.60
5/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
6/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
7/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
8/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
9/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
10/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.32
11/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
12/20	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	333,333.33
1/21	333,333.33	43,333.33	8,166.86	1,061.69	9,228.55	376,666.66
2/21	333,333.33	43,333.33	9,050.16	1,176.52	10,286.68	376,606.66
Totals	3,666,666.63	476,666.66	90,718.76	11,793.44	102,572.20	3,669,248.55

interest rate of 4% per annum computed as of Feb. 28, 2021

\$79,985.40
3,749,233.95

LOAN AMORTIZATION SCHEDULE

ENTER VALUES

Loan amount	\$3,669,248.55
Annual interest rate	4.00%
Loan period in years	1
Number of payments per year	12
Start date of loan	2021-03-01

Optional extra payments

	\$0.00
--	--------

LOAN SUMMARY

Scheduled payment	\$312,436.16
Scheduled number of payments	12
Actual number of payments	12
Total early payments	\$0.00
Total interest	\$79,985.40

LENDER NAME	Peace Bridge Duty Free
-------------	------------------------

PMT NO	PAYMENT DATE	BEGINNING BALANCE	SCHEDULED PAYMENT	EXTRA PAYMENT	TOTAL PAYMENT	PRINCIPAL	INTEREST	ENDING BALANCE	CUMULATIVE INTEREST
1	2021-03-01	\$3,669,248.55	\$312,436.16	\$0.00	\$312,436.16	\$300,205.33	\$12,230.83	\$3,369,043.22	\$12,230.83
2	2021-04-01	\$3,369,043.22	\$312,436.16	\$0.00	\$312,436.16	\$301,206.02	\$11,230.14	\$3,067,837.20	\$23,460.97
3	2021-05-01	\$3,067,837.20	\$312,436.16	\$0.00	\$312,436.16	\$302,210.04	\$10,226.12	\$2,765,627.16	\$33,687.10
4	2021-06-01	\$2,765,627.16	\$312,436.16	\$0.00	\$312,436.16	\$303,217.41	\$9,218.76	\$2,462,409.76	\$42,905.85
5	2021-07-01	\$2,462,409.76	\$312,436.16	\$0.00	\$312,436.16	\$304,228.13	\$8,208.03	\$2,158,181.63	\$51,113.89
6	2021-08-01	\$2,158,181.63	\$312,436.16	\$0.00	\$312,436.16	\$305,242.22	\$7,193.94	\$1,852,939.40	\$58,307.83
7	2021-09-01	\$1,852,939.40	\$312,436.16	\$0.00	\$312,436.16	\$306,259.70	\$6,176.46	\$1,546,679.70	\$64,484.29
8	2021-10-01	\$1,546,679.70	\$312,436.16	\$0.00	\$312,436.16	\$307,280.56	\$5,155.60	\$1,239,399.14	\$69,639.89
9	2021-11-01	\$1,239,399.14	\$312,436.16	\$0.00	\$312,436.16	\$308,304.83	\$4,131.33	\$931,094.31	\$73,771.22
10	2021-12-01	\$931,094.31	\$312,436.16	\$0.00	\$312,436.16	\$309,332.52	\$3,103.65	\$621,761.79	\$76,874.87
11	2022-01-01	\$621,761.79	\$312,436.16	\$0.00	\$312,436.16	\$310,363.62	\$2,072.54	\$311,398.17	\$78,947.41
12	2022-02-01	\$311,398.17	\$312,436.16	\$0.00	\$311,398.17	\$310,360.18	\$1,037.99	\$0.00	\$79,985.40

Peace Bridge Authority
Analysis of Revenue - Canadian Duty Free
#####

	Calculated Rent					Paid		Outstanding 2021-03-31
	Base	Base rent HST	CAM (Operating)	CAM HST (Operating)		CAM + CAM HST	HST	
1/20	-	-	-	-	-	-	-	-
2/20	-	-	-	-	-	-	-	-
3/20	-	-	-	-	-	-	-	-
4/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	230,558.60
5/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33
6/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33
7/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33
8/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33
9/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33
10/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.34	333,333.32
11/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33
12/20	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	333,333.33
1/21	333,333.33	43,333.33	8,166.86	1,061.69	385,895.21	9,228.55	43,333.33	376,666.66
2/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,226.68	43,333.33	376,666.66
3/21	333,333.33	43,333.33	9,050.16	1,176.52	386,893.34	10,226.68	43,333.33	376,666.66
Totals	3,999,999.96	519,999.99	99,768.92	12,969.96	4,632,738.83	112,738.88	#####	4,027,225.21

* source is CERS funding

interest rate of 4% per annum computed as of Mar. 31, 2021 \$87,788.88 Accrued Interest Income

4,115,014.09

LOAN AMORTIZATION SCHEDULE

ENTER VALUES

Loan amount	\$4,027,225.21
Annual interest rate	4.00%
Loan period in years	1
Number of payments per year	12
Start date of loan	2021-04-01

Optional extra payments

	\$0.00
--	--------

LOAN SUMMARY

Scheduled payment	\$342,917.84
Scheduled number of payments	12
Actual number of payments	12
Total early payments	\$0.00
Total interest	\$87,788.88

LENDER NAME	Peace Bridge Duty Free
-------------	------------------------

PMT NO	PAYMENT DATE	BEGINNING BALANCE	SCHEDULED PAYMENT	EXTRA PAYMENT	TOTAL PAYMENT	PRINCIPAL	INTEREST	ENDING BALANCE	CUMULATIVE INTEREST
1	2021-04-01	\$4,027,225.21	\$342,917.84	\$0.00	\$342,917.84	\$329,493.76	\$13,424.08	\$3,697,731.45	\$13,424.08
2	2021-05-01	\$3,697,731.45	\$342,917.84	\$0.00	\$342,917.84	\$330,592.07	\$12,325.77	\$3,367,139.38	\$25,749.86
3	2021-06-01	\$3,367,139.38	\$342,917.84	\$0.00	\$342,917.84	\$331,694.04	\$11,223.80	\$3,035,445.34	\$36,973.65
4	2021-07-01	\$3,035,445.34	\$342,917.84	\$0.00	\$342,917.84	\$332,799.69	\$10,118.15	\$2,702,645.65	\$47,091.80
5	2021-08-01	\$2,702,645.65	\$342,917.84	\$0.00	\$342,917.84	\$333,909.02	\$9,008.82	\$2,368,736.63	\$56,100.62
6	2021-09-01	\$2,368,736.63	\$342,917.84	\$0.00	\$342,917.84	\$335,022.05	\$7,895.79	\$2,033,714.58	\$63,996.41
7	2021-10-01	\$2,033,714.58	\$342,917.84	\$0.00	\$342,917.84	\$336,138.79	\$6,779.05	\$1,697,575.79	\$70,775.46
8	2021-11-01	\$1,697,575.79	\$342,917.84	\$0.00	\$342,917.84	\$337,259.25	\$5,658.59	\$1,360,316.53	\$76,434.05
9	2021-12-01	\$1,360,316.53	\$342,917.84	\$0.00	\$342,917.84	\$338,383.45	\$4,534.39	\$1,021,933.08	\$80,968.44
10	2022-01-01	\$1,021,933.08	\$342,917.84	\$0.00	\$342,917.84	\$339,511.40	\$3,406.44	\$682,421.68	\$84,374.88
11	2022-02-01	\$682,421.68	\$342,917.84	\$0.00	\$342,917.84	\$340,643.10	\$2,274.74	\$341,778.58	\$86,649.62
12	2022-03-01	\$341,778.58	\$342,917.84	\$0.00	\$341,778.58	\$340,639.32	\$1,139.26	\$0.00	\$87,788.88



April 13, 2021

Mr. Gregory O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free
P.O. Box 339
Peace Bridge Plaza
Fort Erie, ON L2A 5N1

Dear Mr. O'Hara:

RE: LEASE DATED JULY 28, 2016 (THE "LEASE") BETWEEN BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY, AS LANDLORD, AND PEACE BRIDGE DUTY FREE INC., AS TENANT

In response to your April 12, 2021 letter, the PBA continues to be prepared to have discussions with PBDF, when PBDF has provided its 2020 audited financial statements. You had previously indicated that we were to receive them "by the end of March at the latest". I would also draw your attention to my letter to you dated January 19, 2021 (attached) wherein I responded to your proposed business plan. In your letter of March 25, 2021 you resubmitted the same business plan without addressing any of the items in my January 19th letter.

Up until the end of March 2021, PBDF has only paid 5.1% of the base and additional rent required by the lease, including CERS remittances. Notwithstanding that the CERS program is currently processing claim period 7, our records indicate PBDF has chosen to only remit CERS funds to the PBA for claim periods 1 and 2 which ran from September 27 – November 2, 2020. Please provide the dates for each PBDF CERS application and approval.

PBA will be drawing all of the \$50,000 PBDF security deposit and applying it towards a portion of the unpaid rent as allowed for by Article 4.06. This letter constitutes the PBA's demand for immediate full replacement of the security deposit with either a Letter of Credit or cash.

As was established by other Duty Free store operators in Ontario, there was nothing preventing PBDF from remaining open during the pandemic and the various lockdowns. PBDF chose not to open nor did PBDF make any effort to provide on-line with curbside pick-up options as retail stores did that were actually required to be closed.

I look forward to receiving the 2020 audited financial statements and scheduling a meeting.

Yours truly,


Ron Rienas
General Manager

Ends.



BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
100 QUEEN STREET, FORT ERIE, ON L2A 3S6 ■ 1 PEACE BRIDGE PLAZA, BUFFALO, NY 14213-2495
PHONE (905) 871-1608/(716) 884-6744 ■ FAX (905) 871-9940/(716) 884-2089
www.peacebridge.com



January 19, 2021

Mr. Gregory O'Hara
President and Chief Executive Officer
Peace Bridge Duty Free
P.O. Box 339
Peace Bridge Plaza
Fort Erie, ON L2A 5N1

Dear Mr. O'Hara:

RE: LEASE DATED JULY 28, 2016 (THE "LEASE") BETWEEN BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY, AS LANDLORD, AND PEACE BRIDGE DUTY FREE INC., AS TENANT

In response to your letter of January 15, 2021, Peace Bridge Duty Free's (PBDF) proposed financial business plan of eliminating the base rent and moving to only % rent is unacceptable. It also ignores all the rent currently owed to the Peace Bridge Authority (PBA). Even in the rent deferral agreement that expired on July 31, 2020, PBDF agreed to pay deferred rent with interest over time. Your plan is also silent on accessing federal government relief programs like the Business Credit Availability Program (BCAP) and the Highly Affected Sectors Credit Availability Program (HASCAP).

In a competitive, public RFP process in 2016 for concession rights, PBDF submitted a proposal that stated: *"PBDF proposes a Minimum Base Rent of \$4,000,000"*.

Your rent proposal was the key element in PBDF winning the concession and was included unamended in the lease (Article 4.02) between PBDF and PBA. The PBA is not prepared to alter the basis upon which the concession was awarded. To do so would be unfair to the other bidders in the procurement process.

With PBDF continuing to employ staff on site, you know that the PBA has consistently taken the position that PBDF could have remained open in some fashion (curbside purchases, on-line with curbside pick-up, etc.) to service trucks and other essential travel. You state that 7% of PBDF's revenue comes from trucks. Together with other essential traffic it would not be unreasonable to suggest that PBDF lost over \$1 million in potential revenue in 2020 by choosing to remain closed. The lease requires PBDF to be open 24 hours a day seven days a week, 365 days a year (Article 9.02 (a)).

We understand that the pandemic has impacted many businesses and acknowledge the duty free industry has been particularly hard hit. We note, based on website information, that PBDF is not a member of the Frontier Duty Free Association (FDFA), the industry association for Canada's land border duty free shops. On December 2, 2020 the FDFA applauded the Canadian government's efforts to support the industry. <https://www.moodiedavittreport.com/frontier-duty-free-association-applauds-canadian-government-support-measures/>. That is not to say the federal government will not provide additional support. But if it does, I am certain it will not be specific to PBDF.

I reiterate what I said in my letter of December 29, 2020; that we would support any effort you undertake to lobby the Government of Canada. That includes meeting with Mr. Badawey. In your letter of December 30, 2020 you said you would arrange for that meeting and advise us as to his availability. We await the date and time.

Yours truly,

Bob Rienas
General Manager



BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
100 QUEEN STREET, FORT ERIE, ON L2A 3S6 ■ 1 PEACE BRIDGE PLAZA, BUFFALO, NY 14213-2495
PHONE (905) 871-1608/(716) 884-6744 ■ FAX (905) 871-9940/(716) 884-2089
www.peacebridge.com

Peace Bridge Authority
Analysis of Revenue - World Duty Free
12/31/2020 - REVISED (Karen)

	Calculated Rent				Sales			
	Base	Amount paid	2020 owing	2019 Certified Sales	2020 Gross Sales	Difference	%	2020 Budgeted Sales
1/20	100,382.88	109,714.52	210,097.40	459,453.54	508,857.00	49,403.46	10.7%	464,049
Jan. Rent Adj.					(109.20)	(109.20)		
Jan. Sales Adj.	100,382.88	109,714.52	210,097.40	583,170.90	600,740.00	17,569.10	2.9%	589,003
Feb. Sales Adj.	100,382.88	81,719.60	182,102.48	996,742.25	583,583.41	(413,158.84)	-40.8%	1,006,709
Mar. Sales Adj.	100,382.88	19,545.64	80,837.24	948,615.71	122,170.00	(826,445.71)	-87.1%	958,102
4/20	100,382.88	21,601.55	78,781.33	970,041.60	135,026.00	(835,015.60)	-86.1%	100,383
5/20	100,382.88	30,926.35	69,456.53	1,351,508.84	193,290.00	(1,158,218.84)	-85.7%	100,383
6/20	100,382.88	26,918.84	73,464.04	1,296,249.91	168,249.00	(1,128,000.91)	-87.0%	100,383
7/20	100,382.88	27,101.86	73,281.02	1,364,491.72	169,387.00	(1,195,104.72)	-87.6%	100,383
8/20	100,382.88	34,349.09	66,033.79	1,135,750.67	214,692.00	(921,058.67)	-81.1%	100,383
Mar. thru Aug. Sales Adj.	100,382.88	28,242.19	72,140.69	879,060.17	176,514.00	(702,546.17)	-79.9%	100,383
9/20	100,382.88	31,451.62	66,931.26	776,500.38	184,799.00	(591,701.38)	-76.2%	100,383
10/20	100,382.88	49,450.52	50,932.36	1,075,170.48	260,266.00	(814,904.48)	-75.8%	100,383
11/20	100,382.88				(0.89)	(0.89)		
Sept. thru Dec. Sales Adj.	100,382.88	570,736.30	1,236,155.54	11,836,766.17	3,323,059.81	(8,513,696.36)	-71.9%	3,820,927
Totals	1,204,594.56	1-12211	1-51031				-13.0%	
Total Rec.				570,736.30	1,236,155.54			
Per G/L				0.00	1,204,594.56			
Difference				570,736.30	-31,560.98			
Additional rent is based upon gross sales levels, less the base rent:				0.16 first \$3,000,000	\$ 480,000.00			
				0.19 next \$3,000,000	61,381.36			
				0.21 next \$2,000,000				
				0.24 next \$2,000,000				
				0.25 thereafter				
					\$ 541,381.36			
Crisis months Additional rent.				Apr = June sales	450,486.00			
					\$ 72,077.76			

Peace Bridge Authority
Analysis of Revenue - World Duty Free
12/31/2020 - REVISED

	Calculated Rent		
	Base	Rent Paid	Unpaid Rent
1/20	100,382.88	109,714.52	(9,331.64)
2/20	100,382.88	109,714.52	(9,331.64)
3/20	100,382.88	81,719.60	18,663.28
	Deferred rent agreement started for April 2020		
4/20	100,382.88	19,545.64	80,837.24
5/20	100,382.88	21,601.55	78,781.33
6/20	100,382.88	30,926.35	69,456.53
7/20	100,382.88	26,918.84	73,464.04
8/20	100,382.88	27,101.86	73,281.02
9/20	100,382.88	34,349.09	66,033.79
10/20	100,382.88	28,242.19	72,140.69
11/20	100,382.88	31,451.62	68,931.26
12/20	100,382.88	49,450.52	50,932.36
Totals	1,204,594.56	570,736.30	633,858.26

**Peace Bridge Authority
Analysis of Revenue - World Duty Free
12/31/2020 - REVISED**

Calculated Rent			
	Base	Rent Paid	Unpaid Rent
1/20			
2/20			
3/20			
4/20			80,837.24
5/20			78,781.33
6/20			69,456.53
7/20			73,464.04
8/20			73,281.02
9/20			66,033.79
10/20			72,140.69
11/20			68,931.26
12/20			50,932.35
Totals	903,445.92	269,587.67	633,858.25
Deferred rent agreement started for April 2020			
	100,382.88	19,545.64	
	100,382.88	21,601.55	
	100,382.88	30,926.35	
	100,382.88	26,918.84	
	100,382.88	27,101.86	
	100,382.88	34,349.09	
	100,382.88	28,242.19	
	100,382.88	31,451.62	
	100,382.88	49,450.53	
	633,858.25		

633,858.25

LOAN AMORTIZATION SCHEDULE

ENTER VALUES

Loan amount	\$633,858.25
Annual interest rate	4.00%
Loan period in years	1
Number of payments per year	12
Start date of loan	2021-01-01

Optional extra payments

	\$0.00
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LOAN SUMMARY

Scheduled payment	\$53,972.97
Scheduled number of payments	12
Actual number of payments	12
Total early payments	\$0.00
Total interest	\$13,817.38

LENDER NAME	Peace Bridge Duty Free
-------------	------------------------

PMT NO	PAYMENT DATE	BEGINNING BALANCE	SCHEDULED PAYMENT	EXTRA PAYMENT	TOTAL PAYMENT	PRINCIPAL	INTEREST	ENDING BALANCE	CUMULATIVE INTEREST
1	2021-01-01	\$633,858.25	\$53,972.97	\$0.00	\$53,972.97	\$51,860.11	\$2,112.86	\$581,998.14	\$2,112.86
2	2021-02-01	\$581,998.14	\$53,972.97	\$0.00	\$53,972.97	\$52,032.98	\$1,939.99	\$529,965.17	\$4,052.85
3	2021-03-01	\$529,965.17	\$53,972.97	\$0.00	\$53,972.97	\$52,206.42	\$1,766.55	\$477,758.75	\$5,819.41
4	2021-04-01	\$477,758.75	\$53,972.97	\$0.00	\$53,972.97	\$52,380.44	\$1,592.53	\$425,378.31	\$7,411.93
5	2021-05-01	\$425,378.31	\$53,972.97	\$0.00	\$53,972.97	\$52,555.04	\$1,417.93	\$372,823.27	\$8,829.86
6	2021-06-01	\$372,823.27	\$53,972.97	\$0.00	\$53,972.97	\$52,730.23	\$1,242.74	\$320,093.04	\$10,072.61
7	2021-07-01	\$320,093.04	\$53,972.97	\$0.00	\$53,972.97	\$52,905.99	\$1,066.98	\$267,187.05	\$11,139.58
8	2021-08-01	\$267,187.05	\$53,972.97	\$0.00	\$53,972.97	\$53,082.35	\$890.62	\$214,104.70	\$12,030.21
9	2021-09-01	\$214,104.70	\$53,972.97	\$0.00	\$53,972.97	\$53,259.29	\$713.68	\$160,845.42	\$12,743.89
10	2021-10-01	\$160,845.42	\$53,972.97	\$0.00	\$53,972.97	\$53,436.82	\$536.15	\$107,408.60	\$13,280.04
11	2021-11-01	\$107,408.60	\$53,972.97	\$0.00	\$53,972.97	\$53,614.94	\$358.03	\$53,793.66	\$13,638.07
12	2021-12-01	\$53,793.66	\$53,972.97	\$0.00	\$53,793.66	\$53,614.34	\$179.31	\$0.00	\$13,817.38

Peace Bridge Authority
Analysis of Revenue - World Duty Free
2020-01-31

Based on Estimated Sales

Calculated Rent			
	Base	Add'l Rent Paid	Unpaid Rent 31-Jan-2021
1/20			
2/20			
3/20			
4/20			
5/20			
6/20			
7/20			
8/20			
9/20			
10/20			
11/20			
12/20			
1/21			
Totals	1,003,828.80	296,052.47	707,776.33
Deferred rent agreement started for April 2020			
	100,382.88	19,545.64	80,837.24
	100,382.88	21,601.55	78,781.33
	100,382.88	30,926.35	69,456.53
	100,382.88	26,918.84	73,464.04
	100,382.88	27,101.86	73,281.02
	100,382.88	34,349.09	66,033.79
	100,382.88	28,242.19	72,140.69
	100,382.88	31,451.62	68,931.26
	100,382.88	49,450.53	50,932.35
	100,382.88	26,464.80	73,918.08
	1,003,828.80	296,052.47	707,776.33
interest rate of 4% per annum computed as of Jan 31, 2021			15,428.71
			Interest Income
			<u>723,205.04</u>

**Peace Bridge Authority
Analysis of Revenue - World Duty Free
2020-01-31**

Based on Estimated Sales

	Calculated Rent		Unpaid Rent 31-Jan-2021
	Base	Add'l Rent Paid	
1/20			
2/20			
3/20			
4/20			
5/20			
6/20			
7/20			
8/20			
9/20			
10/20			
11/20			
12/20			
1/21			
Totals	1,003,828.80	296,052.47	707,776.33
interest rate of 4% per annum computed as of Jan 31, 2021			
			15,428.71
			Interest Income
			<u>723,205.04</u>

LOAN AMORTIZATION SCHEDULE

ENTER VALUES

Loan amount	\$707,776.33
Annual interest rate	4.00%
Loan period in years	1
Number of payments per year	12
Start date of loan	2021-02-01

Optional extra payments

	\$0.00
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LOAN SUMMARY

Scheduled payment	\$60,267.09
Scheduled number of payments	12
Actual number of payments	12
Total early payments	\$0.00
Total interest	\$15,428.71

LENDER NAME	Peace Bridge Duty Free
-------------	------------------------

PMT NO	PAYMENT DATE	BEGINNING BALANCE	SCHEDULED PAYMENT	EXTRA PAYMENT	TOTAL PAYMENT	PRINCIPAL	INTEREST	ENDING BALANCE	CUMULATIVE INTEREST
1	2021-02-01	\$707,776.33	\$60,267.09	\$0.00	\$60,267.09	\$57,907.83	\$2,359.25	\$649,868.50	\$2,359.25
2	2021-03-01	\$649,868.50	\$60,267.09	\$0.00	\$60,267.09	\$58,100.86	\$2,166.23	\$591,767.64	\$4,525.48
3	2021-04-01	\$591,767.64	\$60,267.09	\$0.00	\$60,267.09	\$58,294.53	\$1,972.56	\$533,473.11	\$6,498.04
4	2021-05-01	\$533,473.11	\$60,267.09	\$0.00	\$60,267.09	\$58,488.84	\$1,778.24	\$474,984.27	\$8,276.29
5	2021-06-01	\$474,984.27	\$60,267.09	\$0.00	\$60,267.09	\$58,683.81	\$1,583.28	\$416,300.46	\$9,859.57
6	2021-07-01	\$416,300.46	\$60,267.09	\$0.00	\$60,267.09	\$58,879.42	\$1,387.67	\$357,421.04	\$11,247.23
7	2021-08-01	\$357,421.04	\$60,267.09	\$0.00	\$60,267.09	\$59,075.68	\$1,191.40	\$298,345.36	\$12,438.64
8	2021-09-01	\$298,345.36	\$60,267.09	\$0.00	\$60,267.09	\$59,272.60	\$994.48	\$239,072.76	\$13,433.12
9	2021-10-01	\$239,072.76	\$60,267.09	\$0.00	\$60,267.09	\$59,470.18	\$796.91	\$179,602.58	\$14,230.03
10	2021-11-01	\$179,602.58	\$60,267.09	\$0.00	\$60,267.09	\$59,668.41	\$598.68	\$119,934.17	\$14,828.71
11	2021-12-01	\$119,934.17	\$60,267.09	\$0.00	\$60,267.09	\$59,867.31	\$399.78	\$60,066.86	\$15,228.49
12	2022-01-01	\$60,066.86	\$60,267.09	\$0.00	\$60,066.86	\$59,866.64	\$200.22	\$0.00	\$15,428.71

THIS IS **EXHIBIT "D"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", is written over a horizontal line.

Commissioner, etc.
Brendan Jones



07 June 2023

Sent by E-Mail (BJones@blaney.com)

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

Brendan Jones
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Mr. Jones:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

Attached please find the responses to undertakings and refusals given by Tim Clutterbuck and Karen Costa at the Rule 39.03 examinations held on 30 May 2023.

Sincerely,

GOWLING WLG (CANADA) LLP

A handwritten signature in black ink, appearing to read "Shea", enclosed within a faint, irregular circular outline.

E. Patrick Shea, MStJ, LSM, CS
EPS:jm
Enclosure
cc. Christopher Stanek

57112356\1

Court File No. CV-21-00673084-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C.
1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.
C.43, AS AMENDED

TIM CLUTTERBUCK RESPONSE TO UNDERTAKING

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Christopher Stanek (LSO# 45127K)

Tel: 416-862-4369

Fax: 416-862-7661

E. Patrick Shea (LSO# 39655K)

Tel: 416-369-7399

Fax: 416-862-7661

Lawyers for Buffalo and Fort Erie Public Bridge
Authority

UNDERTAKINGS AND REFUSALS

Undertakings Requested		Page	Answers
1.	To direct as to where the bylaws of the Authority can be found and if not found to produce them;	10	This request goes beyond the disclosure order by Her Honour. Her Honour directed disclosure of all non-privileged internal documents regarding: (a) Art 18.07 or its subject matter; and (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07. However attached at Tab 1 is a copy of the Authority's By-laws.
2.	To advise whether the amount of unrestricted cash has gone up or down since 2021 and if so by how much;- UNDER ADVISEMENT	13	This goes beyond the disclosure order by Her Honour. However, the Authority's audited financial statements are available on the Authority's website.
3.	To advise what documents were in the first brief that are not in the second brief and advise why they were removed; - UNDER ADVISEMENT	16	Mr. Clutterbuck has no personal knowledge of the documents that were in the first brief and the second brief.
4.	To provide copies of any emails, text messages or other written communication between the board members and operational staff between January 2020 and December 2021 that relates to the Duty Free stores tenancies, both on the Canadian side and on the American side – UNDER ADVISEMENT	24	This request goes beyond the disclosure order by Her Honour.
5.	To provide the documents that have resolutions that relate to the two Duty Free store leases;	26	There is no "ledger" or stand alone list of resolutions. The Minutes regarding: (a) Art 18.07 or its subject matter; and (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07 have been provided except the Minutes for 20 November and 17 December 2020, which are attached as Tabs 2 and 3 , which are being

Undertakings Requested		Page	Answers
			provided on the express understanding that no privilege is being waived as a result.
	To if there were brackets provided to staff with respect to what would be acceptable for the RFP process in 2016; REFUSED	27	Mr. Clutterbuck was not on the Board in 2016
6.	To advise whether the board gave any guidance, other than the RFP, as to what an acceptable lease would be; UNDER ADVISEMENT	29	No.
7.	To provide any copies of draft resolutions that staff brought to the board in relation to the two leases; UNDER ADVISEMENT	32	This request goes beyond the disclosure order by Her Honour. However, to the best of Mr. Clutterbuck's recollection there were no resolutions brought to the Board by Authority staff regarding: (a) Art 18.07 or its subject matter; and (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07 that have not been produced, aside from the resolutions in the 20 November and 17 December 2020 Minutes, which are being produced subject to their being no waiver of privilege.
8.	To provide all reports and briefing notes that led to rent relief offers from the Authority to Duty Free; - UNDER ADVISEMENT	37	Assuming the undertaking does not relate to the First and Second Rent Deferrals, there are no Reports or formal briefing notes to the Board prior to January of 2022 that led to offers from the Authority. The only formal resolution by the Board approving a (counter-) proposal to PBDF during the relevant period was made on 25 October 2021 (attached as Tab 4). There was an e-mail sent to the Board on 15 October 2021 (attached as Tab 5) and another e-mail on 22 October 2021. Privilege is claimed over the 22 October 2021 e-mail because it includes legal

Undertakings Requested		Page	Answers
			<p>advice with respect to the (counter-) proposal. Ms Costa's Memo dated 13 May 2021 (attached as Tab 6) was also provided to the Board and may be said to have led to the Board's decision in terms of the (counter-) proposal that was made on 25 October 2021.</p> <p>Report 869/20 (attached as Tab 7) led to the First Rent Deferral. Report 869/20 is redacted to remove financial information re the US duty free. There were other Reports that could be said to have led to the First Rent Deferral and/or the Second Rent Deferral over which the Authority claims privilege on the basis that they include legal advice—933/21, 938/21 and 953/21. In addition, the following e-mails were sent to the Board in connection with the request by PBDF for rent relief and may be considered to have led to the First and/or Second Rent Deferral: (a) 3 April 2020 (attached as Tab 8); and (b) 19 November 2020 (attached as Tab 9).</p>
9.	To provide all the missing minutes and if redactions are in place advise as to what has been redacted and the basis for the redactions;	38	Without waiving any privilege that might exist, the Minutes from 20 November and 17 December 2020 are attached. The Authorities lawyers were present and provided advice to the Board at all other meetings at which (a) Art 18.07 or its subject matter; or (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07 were addressed.
10.	To provide all the unredacted board minutes for the regular and executive board meetings from January 2020 to December 2021;- UNDER ADVISEMENT	40	This request goes beyond the disclosure order by Her Honour.

Undertakings Requested		Page	Answers
11.	To provide copies of the lease and agreements with the American Duty Free store; - WILL ADVISE WHAT DETAILS CAN BE RELEASED, IF ANY	45	This request goes beyond the disclosure order by Her Honour.
12.	To provide an unredacted copy of the American Duty Free store's rent agreement, if unable to provide, to advise why it is redacted	54	This request goes beyond the disclosure order by Her Honour.
13.	If available, to provide the agenda for each board meeting from January 2020 to December 2021	55	This request goes beyond the disclosure order by Her Honour.
14.	To provide notes taken by the executive assistant, or whoever was taking notes, for the board meetings during which the Peace Bridge Duty Free lease was discussed from January 2020 to December 2021; - REFUSAL	58	This request goes beyond the disclosure order by Her Honour. However, audio recordings are made for the purpose of preparing Minutes, but the recordings are destroyed once the Minutes are approved.
15.	To investigate and see if there's copies of any letters sent to politicians and the Canadian Government regarding COVID relief/support, advise if there are and if they can be produced;	62	This request goes beyond the disclosure order by Her Honour. However, the Authority wrote Federal Ministers on 30 June 2020, 26 July 2021 and 16 November 2021 concerning financial assistance for the Authority (see attached Tab 10).
16.	To provide the unredacted version of the reports listed in the disclosure brief as privileged or advise what has been redacted and why, who authored the reports and who they were directed to; - UNDER ADVISEMENT	65	The Reports that were not disclosed were prepared by Mr. Rienas with the assistance of other Authority Officers. They were directed to the Board and relay to the Directors legal advice provided by the Authority's lawyers, including advice on the dispute between the Authority based on breach of the Lease by PBDF.

Undertakings Requested		Page	Answers
17.	To provide the unredacted version of the report at F2 and for the agenda date June 23rd, 2016;- REFUSAL, WILL ADVISE WHAT WAS REDACTED AND WHY	66	The redacted portions of the report at F2 (573/16): (a) identify the other parties that participated in the RFP; (b) the "scoring" of the various proposals; (c) the net present value of each proposal; and (d) a comparison of the annual financial benefit of the PBDF proposal as compared to the prior lease. None of the redacted information relates to: (a) Art 18.07 or its subject matter; or (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07.
18.	To advise as to when discussion happened with a third party potential tenant, with who, particulars of the discussion, and if there was written communication then provide a copy of whatever written communication there was;- WILL PROVIDE DATE, EVERYTHING ELSE UNDER ADVISEMENT	71	This request goes beyond the disclosure order by Her Honour. However, Mr. Clutterbuck is advised by Mr. Rienas that in or about August of 2021 a party was approached and asked whether it would be able to step in to operate the duty free if PBDF was ultimately evicted.
19.	To look at the November 20 th , 2020 board minutes to determine why the lease deferral agreement was revoked;	84	<p>There is nothing in the Minutes from 20 November 2020 or the e-mail provided to the Board in connection with that meeting that indicates the Second Lease Deferral was "revoked". The Second Rent Deferral had not previously been approved by the Board.</p> <p>On 18 November 2020, PBDF was advised that the Second Rent Deferral would be put to the Board for approval (see attached Tab 11). On 20 November 2020, PBDF was advised that the Second Rent Deferral had been conditionally approved (see attached Tab 12).</p>

Undertakings Requested		Page	Answers
20.	To provide copies of video board meetings held over the internet; - REFUSAL, UNLESS ALREADY AVAILABLE TO THE PUBLIC	87	This request goes beyond the disclosure order by Her Honour. However, audio recordings are made for the purpose of preparing Minutes, but the recordings are destroyed once the Minutes are approved.
21.	Advise if a lawyer representing the Authority was in attendance at the November 20 th and December 17 th , 2020 board meetings	87	The Minutes do not reflect that the Authority's lawyers were present on 20 November or 17 December 2020, although the resolutions passed at those Meetings as reflected in the Minutes were based on advice from the Authority's.
22.	The check meeting minutes and advise what led to the decision to revoke the rent deferral.	101	<p>There is nothing in the Minutes from 20 November 2020 or the e-mail provided to the Board in connection with that meeting that indicates the Second Lease Deferral was "revoked". The Second Rent Deferral had not previously been approved by the Board.</p> <p>On 18 November 2020, PBDF was advised that the Second Rent Deferral would be put to the Board for approval (see attached Tab 11). On 20 November 2020, PBDF was advised that the Second Rent Deferral had been conditionally approved (see attached Tab 12).</p> <p>To the best of Mr. Clutterbuck's recollection, on 20 November 2020, the Board directed that Mr. Rienas convey to PBDF that the any approval of the Second Rent Deferral was conditional on "getting greater assurances as to receiving unpaid rent". PBDF had committed in the First</p>

Undertakings Requested		Page	Answers
			<p>Rent Deferral to begin to repay deferred rent and had not done so.</p> <p>To the best of Mr. Clutterbuck's recollection, on 17 December 2020, the Board resolved that the Authority demand a \$1MM payment and directed that a rent repayment schedule and associated guarantees of full payment be developed with legal counsel based on the business decision that the Authority should not be financing PBDF.</p>

Tim Clutterbuck Response to Undertaking

1. Authority By-laws
2. Minutes from Board Meeting on 20 November 2020
3. Minutes from Board Meeting on 17 December 2020
4. 25 October 2021 Minutes
5. 15 October 2021 E-mail
6. Memo dated 13 May 2021
7. Report 869/20 (Redacted)
8. 3 April 2020 E-mail
9. 19 November 2020 E-mail
10. Correspondence to Ministers re COVID Relief for Authority
11. 18 November 2020 E-mail to PBDF re Second Rent Deferral
12. 20 November 2020 E-mail to PBDF re Second Rent Deferral

57095590\1

THIS IS **EXHIBIT "E"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written over a horizontal line.

Commissioner, etc.
Brendan Jones



SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-21-00673084-00CL

HEARING June 14 and 15 2023

DATE:

NO. ON LIST: 5

TITLE OF PROCEEDING: ROYAL BANK OF CANADA v. PEACE BRIDGE DUTY FREE
INC.

BEFORE JUSTICE: KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Sanjeev Mitra	Lawyer for RBC	smitra@airdberlis.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
David Ullmann	Lawyer for Peace Bridge Duty Free Inc./Tenant	dullmann@blaney.com
Brendan Jones		bjones@blaney.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Leanne M. Williams	Lawyer for msi Spergel Inc. in its capacity as Court-appointed Monitor of Peace Bridge Duty Free Inc.	lwilliams@tgf.ca
Mukul Manchanda	Monitor/Proposed Receiver	mmanchanda@spergel.ca
Christopher Stanek	Lawyer for Buffalo and Fort Erie Public Bridge Authority/Landlord	christopher.stanek@gowlingwlg.com
Patrick Shea		patrick.shea@gowlingwlg.com

ENDORSEMENT OF MADAM JUSTICE KIMMEL:

Issues Raised for Consideration

1. There is a three day hearing scheduled before me on July 25, 26 and 27, 2023 for the Tenant's cross-motion. I will not repeat in this endorsement the history of the proceedings that led the scheduling of that motion. Pre-hearing steps leading up to that motion were timetabled in my endorsement of April 4, 2023.
2. One of those steps was a case conference to be held on June 14, 2023, "which shall be primarily to address evidentiary considerations for the hearing of the Cross-Motion, including whether any party considers that it might be necessary for the court to hear *viva voce* evidence from any of the witnesses. The parties should come to this case conference prepared to discuss any other logistics for the hearing, including any sealing orders that might be requested."
3. Unfortunately, these hearing logistics could not be addressed because the parties reported to the court that various deadlines have been missed in the timetable, specifically:
 - a. The May 26, 2023 deadline for completing r. 39.03 examinations; and
 - b. The June 7, 2023 deadline for completing cross-examinations.
4. These deadlines were missed because of concerns that the Tenant has about the sufficiency of documentary disclosure by the Landlord and the scope of inquiry that the Landlord was prepared to permit on the r. 39.03 examinations of its representatives. These concerns led the Tenant to adjourn the r. 39.03 examinations that had commenced. That, in turn, led to the delay of the cross-examinations which, without leave of the court, cannot proceed until the r. 39.03 examinations have been completed. While the Landlord decided not to conduct any r. 39.03 examinations itself, the sequencing is still applicable to its cross-examinations because the Landlord had exercised its right to examine the Tenant's Rule 30.03 witnesses.
5. The Landlord disagrees with the Tenant's complaints about the sufficiency of its production and disclosure, and observes that there are deficiencies in the Tenant's disclosure as well.
6. Detailed Aide Memoire's were filed for this case conference outlining a multitude of production and disclosure disputes.
7. In general terms, the Tenant was seeking certain directions from the court, but at the same time contending that no substantive orders about production issues could be made without a formal motion. The Tenant suggested that its cross-motion be adjourned to the fall, that the receivership motion currently scheduled for September 22, 2023 be adjourned and that the court time in July be used for production and refusals motions.
8. In general terms, the Landlord was seeking directions on all issues today with a view to requiring the parties to make whatever further disclosure the court might order within a week and complete all examinations by June 30, 2023. It was suggested that, with a compressed revised timetable for answering undertakings and the exchange of factums thereafter, the hearing dates in July for the Tenant's cross-motion could still be preserved.

Interim Period: Without Prejudice Rent and the Monitor's Second Rent Affordability Report

9. The Landlord has been consistent in its concerns raised about delaying the adjudication of the Tenant's cross-motion while the Tenant continues to enjoy the protection of what was supposed to be a temporary stay of proceedings that was put in place in December 2021 when the Monitor was

appointed. Beyond the concerns about the overall delay, the Landlord's concerns about direct prejudice from the Tenant's failure to pay the rent that the Landlord claims to be entitled to during the stay period (which is the very subject of the Tenant's cross-motion) were alleviated on a temporary and without prejudice basis by my endorsement of May 17, 2023 which directed "that the Tenant shall pay monthly rent in arrears directly to the Landlord on an interim basis commencing on June 1, 2023 and continuing until September 1, 2023 (the "Interim Period") of the greater of: (i) 20% of the Tenant's gross sales, and (ii) the specified minimum Base Rent under the Lease of \$333,333 plus HST."

10. Counsel for the Tenant had obtained instructions just prior to this case conference that the Tenant would agree to extend the Interim Period over which it will pay this without prejudice rent until the cross-motion is heard, and offered to work with the Monitor to prepare the second rent affordability report extending out the projections to the end of 2023 on an expedited timeline so that the court (and RBC) can be satisfied that this arrangement is sustainable if the cross-motion and receivership motion are adjourned.
11. The Tenant shall provide the Monitor with the necessary information to prepare this second rent affordability report by June 30, 2023 and the Monitor shall endeavour to have that report prepared and available for the parties' and the court's consideration in connection with the July 25 and 26, 2023 hearing dates (which are being re-purposed, as detailed below).

Adjournment of Tenant's Cross Motion and the Receivership Application

12. Because this case conference did not end until 6 pm on June 14, 2023, it was not possible to determine the court's availability to adjourn these motions. Accordingly, the parties were directed to re-attend upon the court's request the next day.
13. As a practical matter, it does not appear that the Tenant's cross-motion can realistically proceed on July 25, 26 and 27, 2023 given the state of the examinations.
14. The court is concerned about continuing delays and has thus now arranged the earliest possible dates in the fall for the cross-motion to be adjourned to which are September 19, 21 and 22, 2023.
15. The July 25 and 26, 2023 dates are being reserved to address production and disclosure and timetabling issues, as detailed below.
16. The intention when these matters were originally scheduled was that the receivership application would be heard after the Tenant's cross motion had been decided. The court's availability in the fall could end up pushing out the receivership application later than the parties are comfortable with, particularly given that the Landlord has been asked to agree to allow the stay to continue, even if it is successful on the Tenant's cross motion, until the receivership application is decided. RBC also may have its own concerns about delaying the receivership application depending on the results of the Monitor's second rent affordability report.
17. It was decided that the determination of a new date for the receivership application will be made when the parties are next before the court on July 25 and 26, 2023, when it is anticipated that the Monitor's second rent affordability report will be available.

Disclosure Issues and Issues to be Determined on July 25 and 26, 2023

18. The Commercial Court does not schedule production and refusal motions. It deals with category based production and disclosure issues that require determinations on matters such as privilege and sealing and proportionality. Some of the concerns identified are about those types of issues. They will be determined by the court on July 25 and 26, 2023 if not resolved by the parties before then.
19. The following observations and expectations of the court are offered:

- a. Full documentary disclosure was not ordered.
- b. Some directions were provided in the court's April 4, 2023 endorsement about categories of expected disclosure, although that was not intended to be a closed list of all potentially relevant categories of production and disclosure.
- c. The court expects issues about missing documents within categories of produced documents to be identified and responded to in a timely manner before the examinations, and even if not satisfactorily resolved, to be explored by the parties during the examinations of witnesses familiar with the documents.
- d. The court expects parties to respond promptly to inquiries about documents that might no longer exist and the circumstances under which they ceased to exist, and to explore this during the examinations if considered relevant.
- e. The court expects documents in the identified categories that were withheld on grounds of privilege to be listed (as the parties appear now to agree upon).
- f. The court expects concerns about privilege being addressed through redactions, rather than the withholding of entire documents, on the basis that doing so would not be relied upon as a waiver of privilege, with challenges to the redactions to be brought forward together with any other privilege challenges in a focused manner for the court's consideration and direction.
- g. Subject to legitimate proportionality and privilege considerations, the court expects questions asked during the examinations to be answered (even if under reserve of objection as to relevance).
- h. The court expects concerns about confidentiality (*vis-à-vis* the Tenant and/or *vis-à-vis* the public court file, the latter of which might give rise to limited sealing order requests) to be brought forward in focused manner for the court's consideration and direction. In the case of requests for disclosure of third party confidential information, consideration may need to be given to the rights and interests of those third parties and whether, and if so when, they may need to be given on notice.
- i. The court expects the parties to co-operate in identifying the appropriate witnesses to answer questions, having regard to their scope of direct knowledge.
- j. The court expects the parties to conduct focused examinations of witnesses; these are not discoveries.

20. With this guidance in mind, the following directions are provided in connection with the July 25, and 26 and September 19, 21 and 22, 2023 hearing dates:

- a. Any disclosure and production that has been previously requested and that the responding party is prepared to provide shall be provided by June 23, 2023;
- b. The parties shall exchange lists of any remaining outstanding requests, deficiencies and/or production inquiries by June 30, 2023;
- c. If the Landlord has other issues with the Tenant's performance of its obligations under the Lease, aside from the payment of rent, those should be identified at the same time as the disclosure deficiencies;
- d. The parties shall attempt to narrow the issues by providing as much information in writing as they can, on the record, in response to the disclosure, production or performance sought;
- e. Based on the list of outstanding issues, the parties shall agree upon a timetable for the exchange of materials that detail the issues that the court will be asked to decide on July 25 and 26, 2023 that ensures that all material has been exchanged and uploaded onto CaseLines by no later than July 21, 2023;
- f. If proportionality is a ground for non-disclosure, some evidence will be required to support that;

- g. If the Tenant is seeking disclosure of documents and information about the US Tenant's contractual arrangements and dealings with the Landlord, the only issue that the court will be asked to decide on July 25 and 26, 2023 is the question of relevance of that requested disclosure. No order for production will be made without the US Tenant having been put on notice;
 - h. Time will be reserved on July 25 or 26, 2023 to address any concerns arising out of the Monitor's second rent affordability report. In the meantime, and unless and until the court orders otherwise, the Tenant shall continue to pay the without prejudice monthly rent agreed to at the May 17, 2023 case conference;
 - i. The maximum number of pages of submissions from any party on **all issues** to be considered at the July 25 and 26 hearing shall be 25 pages double-spaced;
 - j. In the meantime, the parties shall also revise the timetable for the Tenant's cross motion and re-schedule the r.39.03 examinations and cross examinations for some time in August, and reschedule the exchange of the remaining material thereafter, so that it has all been delivered and uploaded into CaseLines by no later than September 15, 2023.
21. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.

A handwritten signature in dark ink, appearing to read 'Kimmel J.', with a stylized, cursive script.

KIMMEL J.

June 16, 2023

THIS IS **EXHIBIT "F"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Commissioner, etc.
Brendan Jones

Brendan Jones
D: 416-593-2997 F: 416-594-3593
BJones@blaney.com

June 1st, 2023

Via Email

Patrick Shea and Christopher Stanek
Gowling WLG (Canada) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, ON, M5X 1G5

Dear Counsel:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

We are writing further to the examinations of Mr. Clutterbuck and Ms. Costa on Tuesday May 30th, 2023 and the Authority's Disclosure Brief delivered in hard copy on Friday May 26th, 2023.

The Authority has not to date complied with Justice Kimmel's April 4th, 2023 Endorsement regarding production of its internal documents.

Specifically, paragraph 17.b. of Justice Kimmel's Endorsement requires:

b. Non-privileged internal documents of the Tenant and the Landlord relating to approval and authorization:

i. Regarding s. 18.07 of the Lease or its subject matter when the Lease was being negotiated and signed (circa 2016). On the Landlord's side, this will also include communications between the Landlord and its external fairness advisor in the Lease RFP process; and

ii. Regarding the requests made and responses given with respect to concessions to be provided/given under s. 18.07 of the Lease from and after the border restrictions came into effect (in the period from March 2020 to December 2021).

Despite the evidence given by Mr. Clutterbuck that:

1. Any lease amendment or rent relief in the form of a deferral or abatement would require direction from the board of directors;
2. The board of directors would give direction to staff by way of resolution given at its meetings;

3. The board meetings are scheduled on a monthly basis;
4. The board of directors would rely on briefing notes, reports or summaries to give directions;
5. Resolutions would be recorded in the minutes of board meetings;
6. Agendas would be circulated before board meetings; and
7. Board meetings held virtually were recorded so far as he understood it.

The Authority produced one (redacted) report from the post-Covid period, which is dated April 24th, 2020 that relates to the first rent deferral agreement.

As an example of the Authority improperly withholding records, an email from Mr. Rienas to the board (Tab C25) indicated that the second rent deferral agreement would be discussed at the November 20th, 2020 meeting. Those minutes along with the report considered at the meeting have not been disclosed.

Similarly, the December 17th, 2020 meeting minutes and reports relied upon have not been produced despite a December 17th, 2020 email from Mr. Rienas (Exhibit 1 of Ms. Costa's examination) that indicates the deferred rent was discussed and direction was given to staff by way of resolution that was "subject to legal approval", which implies that the Authority's lawyers were not at the meeting.

The November 20th and December 17th, 2020 meetings are critical meetings because the Authority somehow went from receiving a recommendation to defer all rent payments until at least March 31st, 2021 to demanding immediate payment of \$1 million and refusing to defer any rent.

In any event, the Authority cannot withhold production of the entire meeting minutes or reports relied upon based on solicitor-client privilege without any explanation.

With respect to redactions made, for example in the reports at Tab F and elsewhere in the Disclosure Brief, it is apparent that information was redacted from documents that are otherwise relevant and go directly to issues raised in the notice of motion (including that the Authority gave preferential treatment to its other duty-free store tenant).

There were also a number of emails that were identified as being relevant and produced in the first disclosure brief, that were subsequently not included in the second disclosure brief (possibly because they are unhelpful to the Authority's position) without any explanation and without identifying what was removed.

Please provide a list of all documents (noting subject matter, date, to and from) for which privilege is claimed as well as the basis for privilege.

By failing to comply with Justice Kimmel's Endorsement, the Authority has prevented our client from being able to ask Ms. Costa and Mr. Clutterbuck about key records that have been withheld. You will recall that to streamline the litigation, Justice Kimmel's April 4th, 2023 Endorsement required production of documents *in advance* of the Rule 39.03 examinations.

Instead, the Authority caused a significant number of undertakings to produce documents that should have been available before the examinations; and which will likely result in a bifurcation of examinations.

As you are aware, under Rule 39.02(2), the Rule 39.03 examinations must be completed before the cross-examinations on affidavits.

The Authority must disclose all of its records prior to completion of the Rule 39.03 examinations. Once we receive full production of documents and information about claims of solicitor-client privilege, we will advise regarding scheduling the continuation of the examinations of Ms. Costa and Mr. Clutterbuck arising from the documents the Authority failed to produce.

We ask that you produce the Authority's documents as a supplementary brief of indexed documents with a schedule of privileged documents included as soon as possible.

Should you wish to discuss these matters, please contact us.

Yours very truly,

BLANEY MCMURTRY LLP

A handwritten signature in black ink, appearing to read "Brendan Jones", written over a horizontal line.

Brendan Jones

BJ/gf

cc: David T. Ullmann and John C. Wolf

THIS IS **EXHIBIT "G"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Commissioner, etc.
Brendan Jones



02 June 2023

Sent by E-Mail (BJones@blaney.com)

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

Brendan Jones
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Mr. Jones:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

Thank you for your letter of 1 June 2023.

We believe that we have complied with Her Honour's direction in terms of productions and we will address the undertakings given during the Rule 39.03 examinations of Mr. Clutterbuck and Ms. Costa.

Any issues, including whether witnesses are required to re-attend, can be addressed before Her Honour at the next attendance on 14 June 2023 and there is no basis for there to be any delay in completing the scheduled cross-examinations. Rule 39.02 contemplates that the Court may permit the continuation of your Rule 39.03 examinations of Mr. Clutterbuck and Ms. Costa notwithstanding that you have cross-examined Mr. Pearce. The cross-examination of Mr. Pearce may, in fact, assist you in determining whether there is actual substantive merit to the issues raised in your letter and a need to conduct further Rule 39.03 examinations of Mr. Clutterbuck and Ms. Costa.

Without engaging a debate or argument as to the merits of your assertions, we wish to clarify certain of the assertions made in your letter:

1. The Authority has produced two—not one—reports to the Board during the post-COVID period in which the arrangements with PBDF were referenced. The e-mail at J1 is the report that was produced for the purposes of the Board meeting on 20 November 2020.
2. With respect to the 17 December 2020 Board meeting, there was no report prepared for the purposes of that meeting.
3. The explanation for claiming privilege over Board-related materials is straight-forward—lawyers were in attendance at the meeting, legal advice was discussed at the meeting or the report prepared for the purposes of the meeting provides or summarizes legal advice. Provided you agree that by producing them no privilege is being waived, the Authority would be pleased to produce the Minutes from the 20 November 2020 and 17 December 2020 meetings today.



4. With respect to the Board's conditional approval of the Second Rent Deferral, you requested from Mr. Clutterbuck an undertaking to provide an explanation and one will be provided. We suspect that you will also cross-examine Mr. Rienas on that issue.
5. Can you please identify which e-mail(s)—the date, who the e-mail was from and to whom it was sent—that you assert were included in the first printed disclosure brief, but not in the second? You were provided with all of the documents in both briefs as well as a USB containing the documents that were not provided to us in "hard" copy. The only difference between the first and second in terms of what was included was to be the inclusion of a detailed index as requested by you and tabs. If there were documents that were left out of the second brief, it was unintentional—the fact that you purport to have identified that e-mails are missing from the second brief clearly means that there has been no prejudice.
6. We will not be providing you with a list of privileged documents. PBDF did not request, and Her Honour did not order, that Affidavits of Documents be produced and PBDF did not request, and Her Honour did not require, that either side deliver a list of privileged documents.

We would, of course, be pleased to discuss the foregoing in advance of your cross-examination of Mr. Pearce on 6 June 2023.

Sincerely,

GOWLING WLG (CANADA) LLP

A handwritten signature in black ink, appearing to read "E. Patrick Shea", enclosed within a faint, light-colored circular stamp or watermark.

E. Patrick Shea, MStJ, LSM, CS

EPS:jm

cc. Chris Stanek

57041683\1

THIS IS **EXHIBIT "H"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Commissioner, etc.
Brendan Jones

Brendan Jones
D: 416-593-2997 F: 416-594-3593
BJones@blaney.com

June 4th, 2023

Via Email

Patrick Shea and Christopher Stanek
Gowling WLG (Canada) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, ON, M5X 1G5

Dear Counsel:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

We are writing in response to Mr. Shea's letter dated June 2nd, 2023, which followed Blaney's letter following the commencement of Rule 39.03 examinations.

Continuation of Adjourned Rule 39.03 Examinations

The Rule 39.03 examinations are presently adjourned and incomplete as there are a large number of outstanding undertakings to produce undisclosed relevant documentation.

Without the receipt of proper responses to undertakings PBDF is unable to determine whether a continued examination of Mr. Clutterbuck and/or Ms. Costa is required; although it is PBDF's current belief that further examinations will be required.

We assume that in such an event Mr. Stanek will wish to continue his own Rule 39.03 examinations of the witnesses, meaning the Authorities examinations are also incomplete.

Cross Examinations Begin After Rule 39.03 Examinations Are Complete

Further, and perhaps more importantly, by reason of Rule 39.02(1) and (2) all Rule 39.03 examinations must be completed, including delivery of responses to undertakings, before cross-examinations on the affidavits can begin. The information and documents that are produced by way of undertakings in the Rule 39.03 examinations will thus be available for the cross-examinations. This cannot be resolved by the parties agreeing to continue the Rule 39.03 examinations after the cross-examinations are completed.

Had the Authority produced the records at first instance in accordance with Justice Kimmel's endorsement this situation would likely have been avoided.

It is inappropriate for PBDF to be deprived from having a complete record of documents and evidence of the Rule 39.03 witnesses available for the cross-examination of Mr. Rienas.

The examinations scheduled for June 5th to 7th, 2023 will need to be rescheduled until the Rule 39.03 production issues are rectified and those examinations are complete.

Other Relevant Factors Impacting Examinations and Cross Examinations

While we anticipate based upon past practice that the Authority's initial reaction may well be to object to a short postponement of the cross-examinations until the Rule 39.03 examinations are complete, please consider the following:

- The Authority's initial disclosure brief did not identify any individual documents. Instead it was a hard copy brief separated (mostly) by year and a USB key "email dump" of unindexed and unorganized emails. The absence of the courtesy of ordinary documentary organization, made examinations more difficult and time consuming.
- The Authority did not identify any documents that it was claiming privilege over in its initial disclosure brief. At the end of the day on Thursday May 24th, 2023, the Authority sent a three-volume disclosure brief in PDF by email. The index only identified four emails from the USB key. The index disclosed for the first time that the Authority was claiming wholesale privilege over certain meeting minutes and reports relied upon by the Authority in respect of its rent relief considerations under subsection 18.07 of the Lease.
- The following day, the Friday before the Tuesday Rule 39.03 examinations, the Authority delivered hard copies of the three volume disclosure brief. Again, the index only identified four emails from the USB key, the same as the PDF version.
- Contemporaneously the Authority sent an email attaching a word document index to only one of the PBDF's lawyers. The covering email did not advise the word document index was different than the PDF version or the hard copy version that were sent and it appeared to be the same index as provided in PDF and hard copy. *We have now learned that the word version contained ten additional pages of index listing the emails from the USB key, although we have not been able to confirm whether the word document list corresponds with the USB "email dump".*
- It was never disclosed to us, nor to date has it been explained why the USB emails were not included and produced in the second disclosure brief either in PDF form or hard copy or organized chronologically as the other emails were.
- Ordinary disclosure practice in litigation, would result in counsel believing the different manners of delivering documents (email/hardcopy/UBS) included *the same documents*- and not a "find the difference if you can" approach to identify the USB documents that were omitted from the word and hard copy documents provided. This is especially so when the Authority elected to not engage in the courtesy of noting to PBDF that a difference existed.
- Whether intentional or not, the Authority's actions caused PBDF to be misled about the Authority's productions.
- In its second disclosure productions, the Authority improperly asserted complete privilege over the entirety of various reports and meeting minutes. In effect the Authority has withheld any disclosure about who authored the reports and minutes, who received them, the purpose of the creation of any such documents. The Authority has not identified who was at the meetings for which it has claimed privileged over the minutes in their totality. Obviously, parts of each such document are not privileged and they should have been delivered in advance of Rule 39.03 examinations with redactions as necessary.
- With respect to item #1 in your June 2nd, 2023 letter, the email at tab J1 indicates that Ms. Costa was going to be discussing Report 909/20 with the Board in the context of "potential collectability issues" relating to PBDF's lease. At that meeting, the Board elected not to execute the second rent relief agreement despite Mr. Rienas' recommendation to do so.
- With respect to item #6 in your June 2nd, 2023 letter, the assertion that the Authority has no obligation to disclose what documents it elected to assert a claim of privilege over that would have otherwise been producible pursuant to Justice Kimmel's April 4th, 2023 Endorsement is extremely

problematic. Without disclosure, there is no way to test whether the privilege is appropriate or to even know that a privilege has been asserted.

Whether or not the Authority agrees with the position set out above, we trust that you understand that the examinations scheduled for June 5th to 7th, 2023 must be adjourned until the Rule 39.03 examinations are completed. While this is not ideal, and Blaney would have preferred to proceed as scheduled, the delay is entirely outside of Blaney's control.

We also note the Authority effectively is in control of the amount of delay by the timing of production of undertakings, and ideally its reconsidering of the demand to itemize privileged documents. We also note there is no prejudice to the Authority from any short delay as it is currently receiving full rent.

PBDF is hopeful that the parties can move past the current status quo in a co-operative manner such that a full and complete record is available. In this regard the PBDF is at a loss as to understand why the Authority has refused to date to make appropriate disclosure as to its documentations for which a claim of privilege is asserted.

If the Authority disagrees about the scope of production requested, we suggest a case conference be convened with Justice Kimmel to address these matters.

Yours very truly,

BLANEY MCMURTRY LLP

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Brendan Jones

BJ/gf

cc: David T. Ullmann and John C. Wolf

THIS IS **EXHIBIT "I"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written over a horizontal line.

Commissioner, etc.
Brendan Jones



At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
November 20, 2020

1. CALL TO ORDER

The Chairman called Executive Session to order at 9:02 AM.

2. ROLL CALL

Present

K. Manning, Chair
T. Clutterbuck
M.T. Dominguez
L. Holloway
T. Masiello
I. Meharry
J. Persico
P. Robson
M. Russo

Absent

D. Zimmerman (*with regrets*)

Staff Present

R. Rienas, General Manager
K. Costa, Chief Financial Officer
T. Boyle, Chief Operating Officer
K. Kaiser, Executive Assistant

Others Present

F. Cirillo – NYS Department of Transportation

3. CONFLICTS OF INTEREST

None

4. NEW BUSINESS

- a) Peace Bridge Duty Free Rent Deferral Agreement – Verbal
Moved by K. Manning
Seconded by T. Clutterbuck

"THAT the rent deferral agreement with Peace Bridge Duty Free be approved."

CARRIED

A discussion took place around the need to extend the deferral agreement executed in April due to the ongoing pandemic and continuing border restrictions.

5. RETURN TO REGULAR SESSION

Moved by P. Robson
Seconded by T. Masiello

"THAT the meeting return to regular session."

CARRIED

Ron Rienas,
General Manager



At the Regular Board Meeting
Executive Session
Via Zoom Video Conference
December 17, 2020

1. CALL TO ORDER

The Chairman called Executive Session to order at 8:59 AM.

2. ROLL CALL

Present

K. Manning, Chair
T. Clutterbuck
F. Cirillo
L. Holloway
T. Masiello
I. Meharry
J. Persico
P. Robson
M. Russo
D. Zimmerman

Staff Present

R. Rienas, General Manager
K. Costa, Chief Financial Officer
T. Boyle, Chief Operating Officer
K. Kaiser, Executive Assistant

3. CONFLICTS OF INTEREST

None

4. NEW BUSINESS

a) Adoption of Minutes

Moved by T. Masiello
Seconded by L. Holloway

"THAT the minutes of the Regular Board Meeting Executive Session held on November 20, 2020, be approved as presented."

CARRIED

b) Peace Bridge Duty Free

Moved by P. Robson
Seconded by I. Meharry

"THAT the Buffalo and Fort Erie Public Bridge Authority demand a partial rent payment from Peace Bridge Duty Free in the amount of \$1 million by December 31, 2020.

THAT a rent repayment schedule and associated guarantees of full payment be developed with legal counsel."

CARRIED

THIS IS **EXHIBIT "J"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", is written over a horizontal line.

Commissioner, etc.
Brendan Jones



08 June 2023

Sent by E-Mail (BJones@blaney.com)

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

Brendan Jones
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Mr. Jones:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

Thank you for your letters of 1 and 4 June 2023, copies of which are attached for ease of reference.

Authority's Disclosure. On 4 April 2023, Her Honour directed that, by 5 May 2023, the parties provide what was described as limited disclosure. Her Honour directed the parties to disclose non-privileged internal documents relating to approval and authorization: (a) regarding Art 18.07 or its subject matters from the period in 2016 during which the Lease was being negotiated; and (b) regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07 from March of 2020 to December of 2021.

In compliance with Her Honour's direction, the Authority's delivered its disclosure on 4 May 2023. That disclosure consisted of a "hard-copy" brief of documents and a USB containing e-mails. The transmission letter clearly identified what was on the USB and why it was being provided.

We heard nothing from you concerning the Authority's disclosure until your letter of 16 May 2023, a copy of which is attached for ease of reference.

At the attendance on 17 May 2023, Mr. Ullman described the issues raised in your letter of 16 May 2023 as "minor" in nature and did not indicate that those concerns would in any way impact the schedule set out in Her Honour's endorsement of 4 April 2023. Mr. Ullman did not raise any issue with the Authority's compliance with Her Honour's Endorsement of 4 April 2023 in terms of the Authority's disclosure.

On 19 May 2023, you requested an index of the disclosure that we had provided to you on 4 May 2023.

On 25 May 2023, we e-mailed you a PDF of the Authority's disclosure, which, because of the addition of a large number of tabs, had to be broken into three (3) volumes, with a detailed index. Hard copies of the three (3) volumes were sent to you by overnight courier.



We subsequently sent to you a Word copy of the index of the hard-copy brief and the USB to assist you. We expressly identified that the Word included an index/listing of the e-mails on the USB in the order they are listed on the USB. Given how e-mails are saved, that is the best way to address them without PDF-ing and (re)naming them. The USB itself has an index that lists all of the files that are on the USB. We note, in passing, that PBDF's disclosure was provided as a "data dump" of individual documents that we had to organize to correspondent to an index that was provided as a stand-alone document.

Examinations. Notwithstanding Her Honour's endorsement of 4 April 2023 that Rule 39.03 examinations be scheduled early, you did not even begin to schedule examinations until 16 May 2023 and did not schedule your Rule 39.03 examinations to take place until 30 May 2023, which was after the deadline established by Her Honour.

You refused to conduct your Rule 39.03 examinations via Zoom and insisted on conducting the examinations in-person.

On 26 May 2023, you indicate that you were unable to locate a court reporter in Fort Erie for 30 May 2023 and indicated that the examinations would have to be re-scheduled. It was then left to the Authority to reach out to court reporters in the area around Fort Erie to locate a court reporter and we ultimately located a court reporter in St Catharines who was available on 30 May 2023.

You conducted the Rule 39.03 examinations on 30 May 2023. On 2 June 2023, before waiting to receive the responses to their undertakings and refusals, you unilaterally determined to cancel the cross-examination of Mr. Mills that was scheduled to take place 5 May 2023, the cross-examination of Mr. Rienas that was scheduled to take place 6 June 2023, and the cross-examination of Mr. Pearce that was scheduled to take place on 7 June 2023 based on the assertion that our disclosure was not complete or in accordance with Her Honour's direction of 4 April 2023. You did not, however, seek an attendance before Her Honour to address your concerns.

We advised you that, in our view, your position that the scheduled cross-examinations could not take place until you had completed your Rule 39.03 examinations was not legally correct and we were entitled to proceed to collect evidence by way of cross-examination of Messrs Mills and Pearce even if you did not wish to cross-examine Mr. Rienas. You confirmed that, notwithstanding that we indicated our clear intention to proceed with the cross-examinations scheduled for 5 and 7 June 2023, PBDF was not going to produce and either Mr. Mills or Mr. Pearce to be cross-examined on their affidavits

We attended on 5 June 2023 to examine Mr. Mills and on 7 June 2023 to examine Mr. Pearce. Neither Mr. Mills nor Mr. Pearce attended to be examined and Certificates of Non-attendance were obtained—a first for me in the context of case-managed litigation on the Commercial List.

Refusing to conduct cross-examinations and not producing affiants for cross-examination is not, in our view, appropriate in the context of a process where limited disclosure was directed by a Commercial List Judge who is case managing a litigation.

With respect to your assertion that Rule 39.02(1) somehow prevented the Authority from cross-examining Messrs Mills and Pearce as scheduled, we would note: (a) the Authority elected to not conduct examinations under Rule 39.03(3) such that Rule 39.02(1) did not present a barrier to the cross-examination of Messrs Mills and Pearce; (b) Rule 39.02(1) does not apply to the Authority's exercise of rights under 39.03(2) on your Rule 39.03 examinations; and, if there are any issues, (c) Her Honour has jurisdiction under Rule 39.02(2) to permit any required Rule 39.03 examinations to be conducted.

Authority Disclosure. You have identified two (2) broad issues with the Authority's disclosure: (a) failure to provide copies of Report over which privilege is being claimed; and (b) failure to produce a list of privilege communications.

With respect to the Reports over which the Authority asserts privilege, that issue should not have resulted in PBDF cancelling the cross-examination of Mr. Rienas or failing to produce Messrs Mills and Pearce to be cross-examined. The fact that the Authority asserts privilege over certain Reports from 2021 did not prevent you from making inquiries as to what the Board considered in connection with requests made and responses given with respect to concessions to be provided or given under Art 18.07.

There are three (3) Reports over which the Authority asserts solicitor-client and/or litigation privilege: 933/21 (30 April 2021), 938/21 (28 May 2021) and 953/21 (2 September 2021).

The Reports in issue were prepared in the context of contemplated litigation with PBDF over the breach of the Lease by PBDF. All of the Reports are marked "Confidential" and were provided to the Directors to convey legal advice and factual information to permit them to provide instructions to the Authority's lawyers:

Report 933/21 refers to advice sought and received from Gowling with respect to the issues between the Authority and PBDF. An e-mail chain between Gowling to Mr. Rienas is attached to the Report in which legal advice is provided to the Authority.

Report 938/21 incorporates Report 933/21 by reference and attaches responses from Gowling to legal questions asked by the Board.

Report 953/21 incorporates and attaches Reports 933/21 and 938/21, and refers to legal advice provided by Gowling.

Unless there is agreement, the issue as to whether Reports 933/21, 938/21 and Report 953/21 must be disclosed, in whole or in part, will need to be determined by Her Honour. We propose to deliver the Reports to Her Honour only for the purposes of the attendance on 14 June 2023 so that Her Honour will be in a position to determine whether the documents should be disclosed. However, to resolve the matter, the Authority is prepared to produce Reports 933/21, 938/21 and 953/21 redacted to remove all references to legal advice, provided PBDF agrees that this does not

constitute a waiver of privilege. This will permit cross-examinations to be completed by 30 June 2023.

We addressed certain of the specific disclosure-related concerns raised in your letter of 1 June 2023 in our letter of 2 June 2023, a copy of which are attached for ease of reference. We note:

1. You have not identified any specific documents that are in the brief that was delivered on 4 May 2023, but not the indexed brief that was delivered on 25 May 2023.
2. With respect to the assertions that the Authority has not provided disclosure of all of the documents upon which the Board relied in making determinations with respect to the concessions to be provided to PBDF, you will note from the responses by Mr. Clutterbuck to the undertakings that he gave on 30 May 2023 that, with the exception of those Reports over which the Authority claims privilege, all of the reports and briefing notes that “led to” relief offers from the Authority have, in fact, been produced.

Any speculation on your part that there may have been undisclosed documents considered by the Board: (a) regarding Art 18.07 or its subject matters from the period in 2016 during which the Lease was being negotiated; or (b) regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07 from March of 2020 to December of 2021 appears, based on Mr. Clutterbuck’s evidence, to be without merit. While we appreciate that you may believe that there must have been other documents before the Board, the fact of the matter is that there were not and the Authority may make of that what you wish in argument at the hearing in July of 2023.

3. With respect to the e-mail on 19 November 2020 on 30 May 2023, you asked Ms Costa for an undertaking to produce Report 909/20 referred to in that e-mail. Report 909/20 is, in our view, outside of the scope of the disclosure directed by Her Honour. You will, however, find it attached to the responses to Ms Costa’s undertaking so you can see for yourself that it does not relate in any way to approvals or authorizations regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07. Report 909/20 relates only to internal Authority financial matters.
4. With respect to the Minutes from 20 November and 17 December 2023, the Authority claims privilege over those Minutes because the resolutions reflected in those Minutes were made based on legal advice, although the Authority’s lawyers were not present at those meetings. They have, however, now been provided in response to the undertakings given by Mr. Clutterbuck on the express understanding that in doing so no privilege is being waived. We note that Mr. Clutterbuck answer your questions and answered undertakings given in



connection with the issues that were the subject of the resolutions reflected in those Minutes.

5. With respect to the assertion that information redacted from Reports that have been produced is relevant to the issue of whether the Authority may have given “preferential treatment” to the US duty free, none of the information relating to the US duty free that you assert should have been disclosed relates to approvals and authorizations: (a) regarding Art 18.07 or its subject matters from the period in 2016 during which the Lease was being negotiated; or (b) regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07 from March of 2020 to December of 2021. We propose to deliver the unredacted Reports to Her Honour only for the purposes of the attendance on 14 June 2023 so that Her Honour will be in a position to determine whether the Reports should be disclosed unredacted.

With respect to specifically-identifying all of the Authority’s privileged documents, we appreciate that you were not in attendance before Her Honour, but this is not something that PBDF requested before Her Honour on 4 April 2023 or 17 May 2023 and it is not something that the Authority was, in the circumstances, prepared to do as a condition of PBDF producing Messrs Mills and Pearce to be cross-examined.

Should Her Honour direct that the parties produce such lists, your list will have to be corrected because it is unclear in a number of instances why privilege is being asserted over the document as there is no indication on your list that the communication is with a lawyer and not copied to any third party(ies) or the notes were prepared by a lawyer.

PBDF’s Disclosure. We have concerns with respect to whether PBDF’s own disclosure is complete. It seems strange, for example, that there are so few internal PBDF documents: (a) regarding Art 18.07 or its subject matters from the period in 2016 during which the Lease was being negotiated; and (b) regarding requests made and responses given with respect to concessions to be provided or given under Art 18.07 from March of 2020 to December of 2021. There appear to be only three (3) pieces of (relevant) internal correspondence disclosed and no PBDF board minutes or resolutions.

In our view the proper way to address those issues was to ask questions of Mr. Pearce with respect to the disclosure provided so that any issues could be addressed at the attendance before Her Honour on 14 June 2023 based the issues having been “flushed out”. PBDF’s refusal to produce Mr. Pearce for cross-examination has deprived the Authority with the opportunity to make inquiries to determine if there are additional documents that may not (yet) have been disclosed by PBDF.

Conclusion. In conclusion, we fail to see how your approach—demanding that the Authority prepare a list of privileged communications and produce Reports over which it has legitimate concerns with respect to privilege as conditions of conducting examinations and cross-



examinations in accordance with a scheduling order—is productive or co-operative. There is, in our view, no conceivable link between the cross-examination of Messrs Mills and Pearce on the Affidavits that they have sworn in these proceedings and the Reports prepared for the Authority's Board, and the cross-examination of Mr. Rienas may have provided some light on the disclosure-related issues that you raised.

Sincerely,

GOWLING WLG (CANADA) LLP

A handwritten signature in black ink, appearing to read "E. Patrick Shea", enclosed within a faint rectangular border.

E. Patrick Shea, MStJ, LSM, CS

EPS:jm

Enclosure

cc. Christopher Stanek

57063787\1

THIS IS **EXHIBIT "K"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", is written over a horizontal line.

Commissioner, etc.
Brendan Jones



23 June 2023

Sent by E-Mail (Dullmann@blaney.com
BJones@blaney.com)

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

David T. Ullmann
Brendan Jones
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Sirs:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

On 16 June 2023, Her Honour directed that the Authority provide any further productions and disclosures by 23 June 2023.

I. Refusals on Rule 39.03 Examinations

Karen Costa

The only refusal from the Rule 39.3 examination of Ms Costa was to produce a copy of the second-place response to the RFP. The Authority will not produce that document. It is the Authority's position that it is not relevant to the issues that are before the Court and that issue will be resolved at the hearing on 25 and 26 July 2023. The second-place proposal does not includes reference to any rent deferral(s) or abatement(s) in the event that there is a change in legislation has an impact on the duty free store. Indeed, PBDF's own proposal included no request that such a provision be included in any lease between PBDF and the Authority. That request was made by PBDF after it was selected.

Tim Clutterbuck

The following are additional answer to undertaking and refusals given by Mr. Clutterbuck:

Undertaking	Page	Answer
To provide copies of any emails, text messages or other written communication between the board members and operational staff between January 2020 and December 2021 that relates to the Duty Free stores tenancies, both on	24	<p>The Authority believes that this request raises issues of proportionality. During 2020 and 2021 there were 12 individuals who held office as Directors, two of who are no longer serving as Directors. The Authority currently has over 80 employees.</p> <p>The only employees with whom Directors would have communicated involving operational issues are Mr. Rienas and Ms. Costa. Mr. Rienas is the General Manager. Ms. Costa is the CFO.</p>

Undertaking	Page	Answer
the Canadian side and on the American side.		Ms Costa and Mr. Rienas undertook searches of their current and archived e-mails from 2020 and 2021. These searches would have captured any e-mails received from the Directors. Aside from a generalized searches for e-mails relating to PBDF, specific searches were conducted using the following terms: “abatement”, “deferral” and “18.07”. If you wish to have any other (reasonable) word-specific searches conducted by Ms Costa or Mr. Rienas of their e-mails, we would be please to consider such a request.
To advise if there were brackets provided to staff with respect to what would be acceptable for the RFP process in 2016.	27	<p>The Authority engaged a fairness monitor/consultant to provide professional advice on the operation of the RFP process and to assist in the evaluation of the proposals submitted in response to the RFP. The consultant would have advised the Authority on the fairness of the RFP process. The consultant was not involved in the negotiation of the Lease or the drafting of Art 18.07.</p> <p>In addition, PBDF raised a legal issue with the right of the Authority to conduct the RFP and argued that the Authority was required to negotiate a lease with PBDF and could not issue an RFP. The Authority sought and obtained legal advice on that issue.</p>
To provide all reports and briefing notes that led to rent relief offers from the Authority to Duty Free.	37	See below.
To provide all the unredacted board minutes for the regular and executive board meetings from January 2020 to December 2021.	40	There were 39 meetings of the Authority’s Board—22 regular meetings and 17 executive sessions—between January of 2020 and December of 2021. The Minutes of all meetings at which (a) Art 18.07 or its subject matter; or (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07 were addressed have been produced.
To provide the unredacted version of the reports listed in the disclosure brief as privileged or advise what has been redacted and why, who authored the reports and who they were directed to.	65	See below.
To provide copies of video board meetings held over the internet.	87	Mr. Clutterbuck was referring to two separate matters: (a) use of Zoom for meetings; and (b) audio recordings. Zoom was used for meetings, but there were no Zoom recordings taken. The only recordings were audio and they were dealt with as per the responses to undertakings.



II. Reports 554/16, 573/16 and 869/20

We understand that you are taking the position that your client is entitled to an unredacted version of Reports 573/16 and 869/20, which Report have been provided redacted.

Report 554/16

Report 554/16 relates to the process the led up to the RFP. The redacted portion of the Report relays legal advice provided by Gowling.

Report 573/16

Report 573/16 deals with the approval by the Authority of PBDF's proposal submitted in response to the RFP. It is relevant only insofar as it recommends the approval of a lease with PBDF. At the time the Report was prepared, Art 18.07 was not anticipated, at least by the Authority and there is no reference in the Report to Art 18.07 or the issue(s) addressed by Art 18.07.

The parts of the Report that are redacted detail and compare the various proposals submitted in response to the RFP. We believe that test applicable to sealing records as set out in *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII) can be satisfied in connection with this information. We note that PBDF itself recognized the confidential nature of the proposal-related information that the Authority has redacted. PBDF's own proposal included the following:

The attached bid includes confidential business and commercial information pertaining to Peace Bridge Duty Free Inc. Peace Bridge Duty Fee Inc. respectfully requests that the contents of the bid not be disclosed to anyone other than employees, officers, directors or evaluation committee members of the Buffalo and Fort Erie Public Bridge Authority.

We have no issue providing PBDF with the unredacted version of Report 573/16 on the basis that: (a) PBDF will sign an appropriate confidentiality/non-disclosure agreement; and (b) PBDF, including the officers, directors and shareholders, agree that they will not participate in a future RFP should the Lease be terminated.

Report 869/20

Report 869/20 deals with approval of the rent deferral agreements entered into with PBDF and the operator of the US duty free.

The redactions in the Report relate to: (a) the finances of the operator of the US duty free; and (b) the specific agreement that was entered into between the Authority and the operator of the US duty free. We believe that test applicable to sealing records as set out in *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII) can be satisfied in connection with this information. We note that the financial information that has been redacted is of the same type as the information concerning PBDF's finances that has been sealed.



We further note that the specific agreement between the US operator and the Authority is not relevant to the issue to be determined by the Court.

However, the foregoing notwithstanding, the Authority has no issue providing PBDF with an unredacted copy of Report 869/20 provided that it does not become part of the Court's file and no specific reference(s) to the economics of the US operator's business will be made in any materials filed by PBDF, but the terms of the rent deferral given to the US operator can be referenced.

III. Reports 933/21, 938/21 and 953/21

The Authority claims litigation and/or solicitor-and-client privilege over Reports 933/21, 938/21 and 953/21, but is, as previously indicated, is prepared to provide redacted copies of the Reports on the basis that in doing so no privilege is being waived.

The redactions in the attached Reports 933/21, 938/21 and 953/21 are:

Report 933/21

Page 1—Relays legal advice from Gowling.

Page 2—Relays steps taken by the Board based on legal advice from Gowling.

Page 3—Relays legal advice.

Attachment—E-mail from Gowling to Authority providing legal advice.

Report 938/21

Page 1—Relays legal advice from Gowling.

Attachment A—E-mail from Gowling to Authority providing legal advice.

Report 953/21

Page 2—Relays legal advice from Gowling.

Reports 933/21 and 938/21 are deleted for the sake of convenience, but they are otherwise provided in redacted form.



IV. Solicitor-and-client Communications

A list of e-mails from the relevant time periods that would have been disclosed were it not for the fact that the Authority is claiming solicitor-and-client privilege is attached.

Sincerely,

GOWLING WLG (CANADA) LLP

A handwritten signature in black ink, appearing to read "E. Patrick Shea", enclosed within a faint rectangular border.

E. Patrick Shea, MStJ, LSM, CS

EPS:jm

Encl.

cc. Christopher Stanek

57288767\1

THIS IS **EXHIBIT "L"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023



Commissioner, etc.
Brendan Jones



26 June 2023

Sent by E-Mail (Dullmann@blaney.com
BJones@blaney.com)

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

David T. Ullmann
Brendan Jones
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Sirs:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

On 16 June 2023, Her Honour directed any additional disclosures and productions be provided by 23 June 2023. The Authority has complied with Her Honour's direction. We received nothing from PBDF except your letter dated 23, June 2023, which is addressed below.

On 16 June 2023, Her Honour also directed that by 30 June 2023: (a) the parties exchange a list of any remaining outstanding requests, deficiencies and/or production inquiries; and (b) the Authority identify any issues with PBDF's performance of its obligations under the Lease.

Can you please by close of business tomorrow—27 June 2023—advise as to what, if any, issues PBDF asserts remain with the information and documents provided by the Authority and on what basis PBDF believes it is entitled to any specific information or documents that has not already been provided so we can attempt to narrow the issues as directed by Her Honour?

With respect to PBDF's disclosures and productions, we have, of course, been unable to properly explore any deficiencies because the cross-examinations of Messrs Pearce and Mills were cancelled. We did, however, note what appear to be issues with PBDF's disclosures in the Aide Memoire filed for the attendance on 14 June 2023.

There will not doubt be undertakings requested of Messrs Mills and Pearce when they are cross-examined, but we will, at the very least, request the following information/documents:

- (a) the amount each shareholder received from PBDF by way of dividend or other distribution:
 - (i) from 1986 to November of 2016; and (ii) from November of 2016 to January of 2022;
- (b) the amount each shareholder contributed to PBDF by way of equity injection or loan from March of 2020 to January of 2022;
- (c) copies of all drafts of PBDF's proposal delivered in response to the RFP;



- (d) the specific changes in Applicable Laws that PBDF asserts triggered Art 18.07 and details of how each of those changes in Applicable Laws caused a material adverse effect on the business and operations of PBDF at the Leased Premises;
- (e) copies of all communications from PBDF to the Authority identifying a change in Applicable Laws asserting that Art 18.07 was triggered and requesting concessions under Art 18.07;
- (f) copies of all internal financial projections, models and business plans prepared by PBDF during the period March 2020 to December 2021;
- (g) copies of communications between PBDF and its auditor with respect to PBDF's obligation to pay rent under the Lease in calendar 2020 and 2021; and
- (h) copies of all communications between Mr. Pearce and Mr. Mills upon which Mr. Mills relies in making the statements in para 15 of his Affidavit sworn 1 January 2023.

We expect that PBDF will produce the forgoing information/documents in advance of any cross-examination of Messrs Pearce and Mills. If PBDF will not, can you please identify what grounds PBDF has for not producing the information/documents?

With respect to issues with PBDF's performance under the Lease, the Authority asserts that the following on-going breaches exist:

Default	Art of Lease
Failure to operate the duty free consistent with the Proposal.	9.02(n) and Proposal (Lease Schedule D).
Failure to provide food services.	9.02(n) and Proposal (Lease Schedule D) Tab E.
Altering the interior of the duty free without the prior written approval of the Authority. Specifically, installing a wall without approval.	12.02(a).
Failure to keep the Leased Premises in a first class condition.	9.02 (n) and 12.01(b).
Failure to spend at least \$1.25MM in capital refurbishments in Year 6 of the Lease-2022.	9.02(n) and Proposal (Lease Schedule D) Tab H.
Failure to spend at least \$1MM per year on marketing and sales initiative.	9.02(n) and Proposal (Lease Schedule D) Tab G



In addition to the foregoing, there have been other miscellaneous breaches of the Lease. For example, PBDF failed to provide audited financial for 2022 by the date required by Art 16.03(b) and failed to obtain the Authority's consent to grant a security interest in the Lease to RBC as required by Art 14.01.

We are in receipt of your letter dated 23 June 2023 referencing, for the first time, that there may be additional disclosures coming from PBDF. You will appreciate that your letter raises concerns with the quality of PBDF's disclosures.

Can you please advise as to how PBDF intends to address the fact that there may be additional disclosures?

We note that there were a number of pre-2017 e-mails included in your disclosures. Why were the disclosed e-mails "recoverable", but the 6,800 e-mails referenced in the e-mail attached to your letter not?

We also note that the e-mail attached to your letter appears to be in response to another e-mail or e-mails. Can you please provide all of the e-mails in the chain?

Finally, we note that Mr. Jenkins appears to have been instructed to only extract e-mails that contained the "gohara@dutyfree.ca" address. Why was the search limited to this e-mail address?

Sincerely,

GOWLING WLG (CANADA) LLP

A handwritten signature in black ink, appearing to read "E. Patrick Shea".

E. Patrick Shea, MStJ, LSM, CS

EPS:jm

cc. Christopher Stanek

57349251\1

THIS IS **EXHIBIT "M"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Commissioner, etc.
Brendan Jones

Brendan Jones
D: 416-593-2997 F: 416-594-3593
BJones@blaney.com

June 30th, 2023

Via Email

Patrick Shea and Christopher Stanek
Gowling WLG (Canada) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West
Suite 1600
Toronto, ON, M5X 1G5

Dear Counsel:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

We are writing in response to your letters of June 23rd and 26th, 2023 and Justice Kimmel's June 16th, 2023 endorsement.

Response to additional answers to undertakings of Tim Clutterbuck

Page 24 answer

Regarding the question at page 24 of the transcript, the question relates to communications about the duty-free store tenancies on both the Canadian and the American side of the bridge. The Authority has not provided its documents that are responsive to the request in respect of the duty-free store on the American side of the Peace Bridge.

The question relates to communications between board members themselves and between Board members and Authority staff. The Authority has not provided any communications between Board members themselves regarding PBD's tenancy during the requested time period or disclosed any attempt to obtain those records. All texts, emails, and summaries of verbal communications between all Board members at the relevant time related to either of the tenancies should be produced.

Page 40 answer

Regarding the question at page 40 of the transcript, the Authority's response purports to limit disclosure to the direction given in Justice Kimmel's April 4th, 2023 endorsement, which she expressly indicated was not intended to be a closed list of potentially relevant categories of production and disclosure.

Although you have indicated that all meetings at which (a) Art. 18.07 or its subject matter; or (b) requests made and responses given with respect to concessions to be provided or given under Art. 18.07 were addressed have been produced, the Authority's Document Brief identified six sets of Board meeting minutes over which privileged was claimed. To date, only two have been produced. The four outstanding Board meeting minutes are: April 30th, 2021, May 28th, 2021, October 8th, 2021 and November 21st, 2021.

The minutes of the Board meetings during the Covid-19 pandemic are potentially relevant to the issues before the court. We understand from Mr. Clutterbuck's examination that the 22 regular session meetings were open to the public, so there should not be any confidentiality concerns in producing those minutes. With respect to the executive meeting minutes, to the extent there are confidentiality concerns, we are prepared to discuss a "counsel eyes only" arrangement so we can determine relevance.

Page 55 answer

Regarding the question at page 55, the Authority has not provided the agendas for the Board meetings. Mr. Clutterbuck gave evidence that there was an agenda for each Board meeting, but none have been produced. The Authority previously took the position that the basis for the refusal was that it was beyond the disclosure order of Her Honour. This is not a valid ground to refuse production as clarified by Justice Kimmel.

Page 58 answer

Regarding the question at page 58, the Authority has not responded regarding production of notes taken by the executive assistant that were turned into meeting minutes. The Authority previously took the position that the basis for the refusal was that it was beyond the disclosure order of Her Honour. This is not a valid ground to refuse production as clarified by Justice Kimmel.

Page 66 answer

Regarding the question at page 66, the Authority has not produced the agenda for the June 23rd, 2016 meeting. Please provide us with the agenda for that meeting and any other meetings in 2016 relating to approval of PBDF's RFP submission or the Lease.

Since the Authority refuses to disclose information about the "scoring" of the RFP, we trust that the Authority agrees that it will not seek to lead or rely on any evidence or take the position that the Base Rent in PBDF Lease was a determining factor, or a significant contributing factor, in the outcome of the RFP process.

Page 71 answer

Regarding the question at page 71, please provide us with all written communication, including emails, letters, texts, etc. between the Authority and IGL Duty Free, or any other potential operator that was contacted regarding potentially operating the Duty Free store if PBDF was eventually evicted.

Page 87 answer - recordings

Regarding the Authority's response to the question at page 87 regarding recordings of Board meetings, please provide us with the following information: Who took the recordings? When were the recordings deleted? On whose instructions were the recordings deleted? What steps have been taken to recover them? Will the Authority agree to make available the recording device(s) to forensic experts to retrieve information?

Page 87 answer - November 20th, 2020 and December 17th, 2020 Board meetings

Regarding the Authority's response to the question at page 87 regarding the November 20th, 2020 and December 17th, 2020 Board meetings, the Authority's response to the undertaking was that, although there were no lawyers present at the meetings, the Authority claimed privilege over the minutes because the resolutions as reflected in the minutes were based on advice from counsel. However, the Authority has not listed any privileged communication with counsel in the six months leading up to those meetings or the month afterward. Please confirm that there is no basis for the previously asserted claims of privilege over those meetings.

Page 101 answer

Regarding the response to the question at page 101, please provide us with all documents that Mr. Clutterbuck reviewed that led to his recollection in the response to undertaking that the Board's direction to Mr. Rienas was different than what is set out in the November 20th, 2020 meeting minutes.

US Duty Free Store Information and Report 869/20

The Authority has not disclosed the agreements with the US duty-free store operator and has elected to redact information relating to the US duty-free store in otherwise relevant documents. Although the Authority has taken the position the information is not relevant in your June 23rd, 2023 letter, during the Rule 39.03 examinations, Mr. Stanek advised that he recognized the relevance of these documents. As you are aware, PBDF has alleged that the Authority arbitrarily gave preferential treatment to the US duty-free store. Further, the impact of the Border Restrictions on the US duty-free store lease at the very same border crossing would certainly be relevant information to determine what the impact was on PBDF's lease.

Requests for concessions in exchange for disclosure

The Authority is seeking to destroy PBDF's business because of Covid-19 and the governments' response, including the Border Restrictions. It appears the Authority is now seeking to take advantage of the situation by seeking to extract concessions from PBDF, and its officers, directors and shareholders, who are non-parties to the Lease or this litigation, regarding participation in future RFPs, and possibly limiting the submissions that PBDF may make about the Authority's treatment of the US Duty Free store. PBDF is not going to agree to concessions that the Authority is now seeking to extract, nor is it appropriate for the Authority to attempt to extract concessions in exchange for records that should have been produced some time ago.

June 26th, 2023 Letter from Gowlings

You indicated that you noted issues in PBDF's disclosure in the Authority's Aide Memoire filed for the attendance on June 14th, 2023. In response to the issues raised by the Authority, there were no formal PBDF board meetings for years 2020, 2021 and 2022. Regarding the suggestion that PBDF's disclosure was an "IKEA" format "data dump" that the Authority had to organize itself, we disagree with that characterization. PBDF produced a detailed index organized in chronological along with PDF documents that were individually labelled by date "YYYY-MM-DD". To the extent any organizing was required by the Authority, it should have simply been to click a button to organize the PDF's by name, so they align with the detailed index that was provided.

Regarding the questions listed at paragraphs (a) through (h), these appear to be in the nature of premature cross-examination questions rather than the documentary disclosure directed by Justice Kimmel. Nonetheless, in the spirit of disclosure PBDF is able to provide the following information:

- (a) The Authority has every Audited Financial Statement since inception where all this information is detailed. With respect to November 2016 to January 22, this information was detailed in PBDF's proposal sent to the Authority in the fall of 2021. Since then, no dividends payments have been made.
- (b) Nil. The position taken by the Authority in these proceedings makes an injection of capital virtually impossible. In the event the Authority and PBDF are able to reach a reasonable resolution an injection of capital may be possible.
- (e) We believe these were produced already. If any additional documents become available, they will be provided.

To the extent PBDF can cooperate in providing appropriate responses to the remaining questions, it will attempt to do so before the cross-examinations, so long as the information requested is properly producible and not subject to litigation or solicitor-client privilege.

Possible additional disclosure

You raised questions in your letter about recently recovered emails. In the event PBDF determines there is additional relevant and producible disclosure that exists, PBDF will address existence of such disclosure at that time. The purpose of our letter was to provide a courtesy that PBDF just became aware of the possibility that further documentation may exist.

We trust the forgoing is satisfactory and we look forward to receiving responses to the issues raised in this letter.

Please let us know as soon as possible if the Authority intends to engage in a cooperative disclosure of the outstanding records or not so we can make arrangement regarding whether a disclosure motion is required on July 25-26, 2023.

Yours very truly,

BLANEY MCMURTRY LLP

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Brendan Jones

BJ/gf

cc: David T. Ullmann and John C. Wolf

THIS IS **EXHIBIT "N"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Commissioner, etc.
Brendan Jones



7 July 2023

Sent by E-Mail (BJones@blaney.com)

E. Patrick Shea, LSM, CS Prof Corp
Direct 416-369-7399
patrick.shea@gowlingwlg.com

Brendan Jones
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Mr. Jones:

Re: Royal Bank of Canada v. Peace Bridge Duty Free Inc. (CV-21-00673084-00CL)

Thank you for your letter of 30 June 2023. Your suggestion that the Authority is somehow not being co-operative is somewhat ironic insofar as you have not conceded on any of the issues you have raised and offered no practical solutions in terms of how to address the issues you have raised—you simply want the Authority to disclose everything you want to see.

Page 24 Answer

With respect to document relating to the US duty free, we believe that Her Honour has indicated that the relevance of this information/documentation will be determined at the up-coming attendance on 25-26 July 2023. We do not believe that the information/documentation is relevant and is properly redacted. We expect that you will file materials to establish the relevance of the information/documentation and serve the operator of the US duty free.

With respect to the e-mail between the Authority's director: (a) the directors are not given Authority-owned computers or phones and are not assigned Authority e-mail accounts; and (b) e-mail and texts sent from or received into the directors' personal accounts are not under the control of the Authority. We question how personal e-mail exchanges between directors can be relevant to corporate decisions made by the Authority. If you wish to obtain this information, you will need to bring a Motion seeking same on notice to the individual directors.

Page 40 Answer

We will, under separate cover, provide the Minutes from the "regular" meetings held between January of 2020 and December of 2021. You will note that they are, as we previously advised, of no relevance.

With respect to the executive sessions, we have produced all of the (non-privileged) Minutes from meetings at which the Lease and accommodations requested by or offered to PBDF under Art 18.07 were addressed.



It is our position that the Minutes for the other executive sessions deal with confidential financial and other matters involving third parties, and are not relevant to the issues that will be determined by Her Honour. If PBDF insists on disclosure of these Minutes, it will have to bring a Motion on 25-26 July 2023. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

Privilege is claimed over the identified Minutes for the following reasons:

30 Apr 2021—The Minutes approve legal questions to be put to Gowling based on Report 933/21. The legal questions and the answers are redacted from Report 938/21. There are no direct references to Art 18.07 in the Minutes. We will produce these Minutes if you will agree that by producing the Minutes the Authority is not waiving privilege over the questions posed to Gowling and the answers provided.

28 May, 8 Oct and 19 Nov 2021—The Authority's lawyers were present at the Meeting and the Minutes refer to the legal advice provided by Gowling.

If PBDF insists on disclosure of these Minutes it will have to bring a Motion on 25-26 July 2023. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

Page 55 Answer

We will, under separate cover, provide agendas for the "regular" meetings between January of 2020 and December of 2021, and agendas that were prepared for executive sessions for which Minutes have been provided. If PBDF insists on disclosure of the agendas from the other executive sessions, it will have to bring a Motion on 25-26 July 2023. As noted above, it is our position that the other executive sessions deal with confidential financial and other matters involving third parties, and are not relevant to the issues that will be determined by Her Honour. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

We note that "stand alone" Minutes from 2021 approving an amendment to a pension plan (20 January 2021) and a contract for work undertaken on the Peace Bridge (6 July 2021) are not included. These Minutes are not relevant to the issues to be determined by Her Honour and refer to sensitive information. If PBDF insists on disclosure of these Minutes, it will have to bring a Motion on 25-26 July 2023. For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.

Page 58 Answer

Any paper notes would have reflect only to who proposed and seconded motions. Any paper notes are destroyed once the Minutes for the meeting are approved.

Page 66 Answer

Attached are the agendas for the meetings held on 23 June 2016.

With respect to not leading or relying on evidence, we will rely on whatever evidence is in the Record, including the Affidavits sworn by Mr. Rienas. Your client is free to cross-examine Mr. Rienas on the factors considered by the Authority, whether the minimum rent offered by the potential tenants was a factor and, if so, how significant a factor it was in the Authority's decision to select PBDF. You could even ask him, should you wish, the delta between what PBDF offered in terms of minimum rent and the next-highest proposal. It is not necessary for the full economics of the other proposals made in response to the RFP to be produced for such questions to be asked. Nor are the full economics of the other proposal relevant to the interpretation of Art 18.07.

We note that we have proposed a solution that would allow your client to see the full economics of the various proposals as the "scoring" while ensuring the fairness of any future RFP. You have rejected that proposal, but not provided any alternative means of ensuring the fairness of any future RFP.

Page 71 Answer

There were no written communications. Mr. Rienas reached out to the IGL Duty Free via telephone once to see if there was interest in operating the duty free should the opportunity arise. There are no notes from that conversation. There was no further outreach to IGL Duty Free.

Page 87 Answer—Recordings

There is no recording device per se. The recordings were taken via a function available to record "to the cloud" audio only during on-line meetings.

There were no specific instructions given to delete the recordings. All recordings are deleted by Authority staff as a matter of practice after the Minutes of the meeting are approved. This policy ensures that there is only one official record of what was determined at a meeting—the approved Minutes for that meeting.

No steps have been taken to recover deleted recordings. It is the Authority's understanding that recordings were stored "in the cloud" and can no longer be recovered after 30 days of being deleted.

Page 87—Minutes

You have been provided the Minutes. Can you please explain what specifically you are now requesting and why? Should you wish to have a determination as to whether, in releasing the Minutes, the Authority has somehow waived privilege, you are free to seek such a determination on 25-26 July 2023.

Page 101 Answer

Mr. Clutterbuck reviewed no documents in responding to his undertaking other than those attached to his response to undertakings. As far Mr. Clutterbuck recalls, the 20 November 2020 communication from Mr. Rienas to PBDF attached to his response reflects the verbal instructions given to Mr. Rienas by the Board.

We assume that there is no dispute that, even assuming the Second Rent Deferral was enforceable against the Authority: (a) the agreement contemplated a deferral of rent and not an abatement; (b) PBDF had the *de facto* advantage of the deferral contemplated by the agreement; (c) the contemplated deferral period has expired; and (d) PBDF has not made any of the arrears payments contemplated by the agreement.

Report 869/20

As noted above, Her Honour has indicated that the relevance of this information would be determined at the up-coming attendance. We expect that you will file materials to establish the relevance of the information and serve the operator of the US duty free. We do not believe that the relevance of the information you are seeking has ever been “recognized”.

Conditions for Disclosure

Contrary to your assertion, we are not imposing conditions on disclosure. There are legitimate issues as to whether the confidential information your client is seeking is relevant and, if so, whether it should be sealed or disclosed based on conditions. We are attempting to work out an arrangement that would permit your client to see that information. You are clearly not interested in any sort of negotiated resolution and we will seek an order determining the relevance of the information and, if necessary, an order sealing the information and/or limiting disclosure to protect the integrity of any future RPF process.

Our Letters/Additional Disclosure

You don't seem to appreciate the irony of demanding disclosure of every document you want to see while, at the same time, expecting the Authority to take your client's word that it has produced everything that is relevant, particularly in the face of disclosure on the part of PBDF that appears at least to be deficient. The very fact that there are in excess of 6,800—the 6,800 e-mails referenced in your letter were recovered from only one e-mail account—e-mails that were not reviewed calls into question the quality of your client's disclosure.

We appreciate that the questions that we posed are “premature” cross-examination, but we had hoped PBDF would co-operate in order to make the cross-examination of Mr. Pearce more efficient. In reply to the specific matter addressed in your letter with respect to the distributions made to PBDF's shareholders, we had hoped that it would be more efficient to have your client



answer what should be a very simply question rather than force the Authority to put to Mr. Pearce multiple audited financial statements to have them introduced as exhibits and then refer to the distribution(s) to shareholders referenced in each. To the extent that Mr. Pearce is not aware of the total amount distributed to each of the shareholders during the identified period(s), can you please ensure that he informs himself of this information so that he is prepared to answer the question when he is cross-examined?

Sincerely,

GOWLING WLG (CANADA) LLP

A handwritten signature in black ink, appearing to read "E. Patrick Shea", written over a faint circular background.

E. Patrick Shea, MStJ, KC, LSM

EPS:jm

Encl.

cc. Christopher Stanek

57484500\1

THIS IS **EXHIBIT "O"** TO
THE AFFIDAVIT OF CRISTINA FULOP
SWORN BEFORE ME
THIS 19TH DAY OF JULY, 2023

A handwritten signature in black ink, appearing to read "Brendan Jones", written in a cursive style.

Commissioner, etc.
Brendan Jones

Peace Bridge Authority

CONFIDENTIAL
Report No. 869/20

Prepared for: Board of Directors
Agenda Date: April 24, 2020

SUBJECT Duty Free Rent Deferral Agreements due to Covid-19

RECOMMENDATION

That the rent deferral agreements negotiated with Peace Bridge Duty Free and Duty Free Americas be approved.

BACKGROUND

The Duty Free Stores are an important source of non-toll revenue to the Authority. Both stores are owned by the Authority but operated by concessionaires.

The Canadian store, Peace Bridge Duty Free (PBDF), has approximately 28,000 sq ft of retail space and expansive car and truck parking. In 2019 it had sales of \$19,581,696 (CAD). Rent paid to the Authority was \$4,000,000 (CAD).

The American store, Duty Free Americas (DFA), [REDACTED]
[REDACTED]
[REDACTED]

As Authority financials are in USD, the total Duty Free rent paid to the Authority in 2019 was \$5,482,5979 (USD). By comparison, toll revenue in 2019 was \$22,118,159 (USD).

Rent Analysis

As a result of Covid 19 and the restriction imposed allowing only essential cross-border traffic on March 20, 2020, both stores have seen dramatic revenue declines. PBDF closed on March 21, 2020. DFA has remained open. Both stores have sought rental relief.

The lease agreements are structured differently. PBDF has a high base (minimum) rent with a higher threshold for additional % rent based on sales. DFA has a lower base rent and a lower threshold for additional % rent based on sales.

Neither lease has a force majeure clause. The Authority's position was that the rent obligations needed to be fulfilled, but the Authority would be flexible and negotiate rent deferral agreements.

PBDF

The PBDF rent structure was arrived at as a result of a Request for Proposal (RFP) process in 2016. PBDF won this competitive process and the rent structure in the lease is as proposed by PBDF. Here is the rent structure:

4.02 Base Rent

The Tenant covenants and agrees to pay to the Landlord the annual Base Rent payable in twelve (12) equal monthly instalments on the first day of each month during the Term herein in advance together with all applicable taxes. For the first year of the Lease the Base Rent shall be \$4,000,000. The Base Rent for the second year and each succeeding year of the Lease shall be the greater of (i) \$4,000,000 or (ii) 75% of the aggregate of the Base Rent and the Percentage Rent payable by the Tenant to the Landlord for the immediately preceding Rental Year.

4.03 Percentage Rent

The Tenant covenants and agrees with the Landlord that the following Percentage Rent rates will apply for the initial Term of this Lease and for any Extension Term.

Annual Gross Sales	Percentage
\$0 - \$20,000,000	20%
\$20,000,000 - \$25,000,000	22%
>\$25,000,000	24%

In 2019, gross sales were slightly under \$20,000,000 so only the base rent of \$4,000,000 applied.

The negotiated rent deferral agreement (Appendix A) allows rent payments to be suspended and deferred to as late as July 31, 2020. That date could be May 31 or June 30 if the border restrictions are lifted during May or June. The unpaid rent will be repaid in 12 equal monthly installments with a 4% interest rate following reopening.

DFA

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

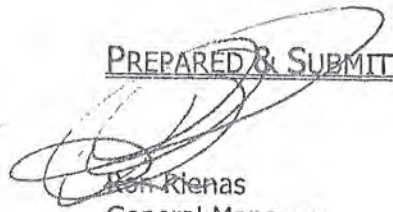
[REDACTED]

[REDACTED]

Summary

Both rent deferral agreements allow the Authority to receive the minimum rents required by the leases, albeit on a deferred basis.

PREPARED & SUBMITTED BY


Ron Rlenas
General Manager

APPENDIX A

RENT DEFERRAL AGREEMENT

THIS AGREEMENT made the ____ day of April, 2020.

BETWEEN:

BUFFALO AND FORT ERIE PUBLIC BRIDGE AUTHORITY
(the "Landlord")

AND

PEACE BRIDGE DUTY FREE INC.
(the "Tenant")

WHEREAS:

- A. By a lease made July 28, 2016 between the Landlord and the Tenant, the Tenant leased from the Landlord certain premises (the "Premises") municipally known 1 Peace Bridge, Fort Erie, Ontario, for a term commencing November 1, 2016 and expiring October 31, 2031; and
- B. Due to travel restrictions and economic hardships created across the world by the COVID-19 pandemic, the Tenant requests rent relief.

NOW THEREFORE THIS AGREEMENT WITNESSES in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, the parties agree as follows:

1. INTERPRETATION

- 1.1 Expressions in Lease: Unless expressly provided to the contrary in this Agreement, all terms defined in the Lease shall have the same meaning in this Agreement.

- 1.2 Definitions and Interpretation: The Lease is amended by adding the following definitions thereto:

"Amortization Period" means the one year period commencing on the Restart Date.

"Suspension Date" means April 1, 2020.

"Deferred Rent" means the Base Rent otherwise payable by the Tenant pursuant to the Lease during the Rent Deferral Period but for the terms of this Agreement.

"Rent Deferral Period" means the period commencing on the Rent Suspension Date to and including the earlier of:

- I. July 31, 2020; or

- ii. the last day of the month following the date that the Tenant has fully reopened the Duty Free Shop for business after the restrictions on non-essential travel between Canada and the United States are lifted (for greater clarity, a partial reopening to accommodate essential travel does not constitute a full reopening).

"Required Conditions" means:

- i. the Tenant pays all Additional Rent throughout the Rent Deferral Period, including without limitation, all Operating Costs and Property Taxes;
- ii. the Tenant does not seek benefit or protection of any statute for the benefit of bankrupt or insolvent debtors, including without limitation, a proposal, assignment or arrangement with its creditors or the repudiation or disclaimer of the Lease;
- iii. there has not been a Transfer (as defined in section 14.01 of this Lease); and
- iv. the Tenant strictly complies with all of the terms of the Lease and there is no Event of Default; and
- v. the Tenant strictly complies with all of the terms of this Agreement (including without limitation, the representations and warranties herein).

"Restart Date" means the day immediately following the last day of the Rent Deferral Period.

2. RENT DEFERRAL

2.1 Tenant's Representations and Warranties: The Tenant represents and warrants to the Landlord the following:

- (a) the Tenant temporarily closed its business at the Premises on or about March 21, 2020 and will fully re-open for business at the Premises as soon the restrictions on non-essential travel between Canada and the United States of America are lifted; and
- (b) the Tenant has and will continue to use its best efforts to take advantage of all government programs offering financial relief from the effects of the COVID-19 pandemic, including without limitation, any income tax deferral or reduction, rent assistance, employee wage and benefit subsidies and the like, with a view to ensuring that the Tenant is and remains a financially viable business, and shall keep the Landlord apprised of the Tenant's efforts in this regard.

2.2 Rent Suspension and Deferral: Provided the Required Conditions are met both throughout the Rent Deferral Period and the Amortization Period, then notwithstanding anything in this Lease to the contrary, the Tenant's obligation to pay the Deferred Rent during the Rent Deferral Period shall be suspended and deferred and shall not be payable until the Restart Date. The Tenant shall, however, be bound by all the other terms and conditions of this Lease during the Rent Suspension Period. For the purpose of clarity, it is understood and agreed that if any of the Required Conditions are not met, the Tenant's right to suspend and defer payment of Deferred Rent during the Rent Suspension Period shall be immediately forfeited and withdrawn retroactive to the Rent Suspension Date and the Deferred Rent that would otherwise have been payable during the Rent Suspension Period to the date of such forfeiture shall be immediately due and payable together with interest thereon at the rate set forth in the Lease for non-payment of Rent, calculated from the date each such installment of Deferred Rent would otherwise have been payable pursuant to Lease but for this Agreement. Except as expressly

suspended and deferred in accordance with this section, the Tenant shall continue to pay all Rent in accordance with the Lease.

- 2.3 **Repayment of the Deferred Rent:** Repayment of the Deferred Rent shall commence on the Restart Date. The aggregate amount of Deferred Rent together with interest thereon at the rate of 4% per annum shall be amortized over the Amortization Period and repaid by the Tenant in equal consecutive monthly instalments on the first day of each month from and including the Restart Date, without abatement or set-off, in the same manner as Rent. The Tenant covenants and agrees that if at any time, any of the Required Conditions are not met, the Landlord's agreement to amortize the repayment of the Deferred Rent shall be deemed to have been immediately withdrawn and the Tenant shall immediately pay to the Landlord the then outstanding unamortized balance of the Deferred Rent together with interest thereon at the rate of 4% per annum.

3. ACKNOWLEDGEMENT

- 3.1 **Acknowledgement:** The Tenant confirms that, as of the date hereof, (a) the Landlord is not in default under any obligation of the Landlord under the Lease and (b) there are no disputes or claims outstanding by the Tenant against the Landlord in respect of any past billings, rental recoveries or other matters pertaining to the Lease.

4. NO AGREEMENT

- 4.1 This Agreement shall be deemed not to have been executed and delivered by the Landlord until:
- i. this Agreement has been duly executed by all the other parties hereto and the Landlord has received at least one executed original hereof; and
 - ii. the Landlord has received payment of the sum of \$3,000 plus the applicable HST thereon, being the estimated legal fees incurred by the Landlord in relation to the request for rent-relief and the preparation of this Agreement.

Until the aforesaid deliverables have been received by the Landlord, the Landlord may, at its sole option, by written notice to the Tenant, withdraw any agreement in respect of rent-relief and this Agreement shall be null and void and of no further force or effect.

5. AGREEMENT PART OF LEASE

- 5.1 **Agreement Part of Lease:** This Agreement shall be read in conjunction with the Lease and shall form a part thereof and all provisions of the Lease insofar as applicable and except as amended by this Agreement shall continue in full force and effect and shall be binding upon and shall enure to the benefit of the parties, their successors and permitted assigns.
- 5.2 **Further Assurances:** Each party shall at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request to evidence, carry out and give full effect to the terms, conditions, intent and meaning of this Agreement.
- 5.3 **Counterparts:** This Agreement may be executed by the parties in separate counterparts each of which when so executed and delivered to all of the parties shall be deemed to be and shall be read as a single agreement among the parties.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect on the date first set out on the first page of this Agreement.

**BUFFALO AND FORT ERIE PUBLIC
BRIDGE AUTHORITY**

Per: _____
Name: ■
Title: ■

c/s

Per: _____
Name: ■
Title: ■

I/We have authority to bind the corporation

PEACE BRIDGE DUTY FREE INC.

Per: _____
Name: ■
Title: ■

c/s

Per: _____
Name: ■
Title: ■

I/We have authority to bind the corporation



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

TAB 3

Court File No. CV-21-00673084-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, as AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C. 43, AS AMENDED

REFUSALS AND UNDERTAKINGS CHART

REFUSALS					
Refusals to answer questions on the examination of Tim Clutterbuck, dated May 30 th , 2023.					
Issue & relationship to pleadings or affidavit (Group the questions by issues.)	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
1. Interpretation of the Lease and rent relief under 18.07 Paragraph 17.b.ii of Justice Kimmel's April 4 th , 2023 endorsement	67	22-24	U/A: To provide copies of any emails, text messages or other written communication between the board members and operational staff between January 2020 and December 2021 that relates to the Duty Free stores' tenancies, both on the Canadian side and on the American side.	June 7, 2023 Answer: This request goes beyond the disclosure order by Her Honour. June 23, 2023 Answer: The Authority believes that this request raises issues of proportionality. During 2020 and 2021 there were 12 individuals who held office as Directors, two of who are no longer serving as Directors. The Authority	

				<p>currently has over 80 employees.</p> <p>The only employees with whom Directors would have communicated involving operational issues are Mr. Rienas and Ms. Costa. Mr. Rienas is the General Manager. Ms. Costa is the CFO. Ms Costa and Mr. Rienas undertook searches of their current and archived e-mails from 2020 and 2021. These searches would have captured any e-mails received from the Directors. Aside from a generalized searches for e-mails relating to PBDF, specific searches were conducted using the following terms: "abatement", "deferral" and "18.07". If you wish to have any other (reasonable) word-specifics searches conducted by Ms Costa or Mr. Rienas of their e-mails, we would be please to consider such a request.</p> <p>July 7, 2023 Answer: With respect to the e-mail between the Authority's director: (a) the directors are not given Authority-owned computers or phones and are not assigned Authority e-mail accounts; and (b) email and texts sent from or received into the directors' personal accounts are not under the control of the Authority. We question how personal e-mail exchanges between directors can be relevant to corporate decisions made by the Authority. If you wish to obtain this information, you will need to bring a Motion seeking same on</p>	
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REFUSALS					
Refusals to answer questions on the examination of Tim Clutterbuck, dated May 30 th , 2023.					
Issue & relationship to pleadings or affidavit (Group the questions by issues.)	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
				notice to the individual directors.	
2. Interpretation of the Lease and rent relief under 18.07 Paragraph 17.b.ii of Justice Kimmel's April 4th, 2023 endorsement	93	40	U/A: to provide the unredacted board minutes for the regular and executive board meetings from January 2020 to December 2021.	<p>June 7, 2023 Answer: This request goes beyond the disclosure order by Her Honour.</p> <p>June 23, 2023 Answer: There were 39 meetings of the Authority's Board—22 regular meetings and 17 executive sessions—between January of 2020 and December of 2021. The Minutes of all meetings at which (a) Art 18.07 or its subject matter; or (b) requests made and responses given with respect to concessions to be provided or given under Art 18.07 were addressed have been produced.</p> <p>July 7, 2023 Answer: Privilege is claimed over the identified Minutes for the following reasons:</p> <p>30 Apr 2021—The Minutes approve legal questions to be put to Gowling based on Report</p> <p>933/21. The legal questions and the answers are redacted from Report 938/21. There are no direct references to Art 18.07 in the Minutes. We will</p>	

REFUSALS					
Refusals to answer questions on the examination of Tim Clutterbuck, dated May 30 th , 2023.					
Issue & relationship to pleadings or affidavit (Group the questions by issues.)	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
				<p>produce these Minutes if you will agree that by producing the Minutes the Authority is not waiving privilege over the questions posed to Gowling and the answers provided.</p> <p>28 May, 8 Oct and 19 Nov 2021—The Authority's lawyers were present at the Meeting and the Minutes refer to the legal advice provided by Gowling.</p> <p>If PBDF insists on disclosure of these Minutes it will have to bring a Motion on 25-26 July 2023.</p> <p>For the purposes of any such Motion, the Authority will provide copies of the Minutes to Her Honour.</p>	

UNDERTAKINGS					
Outstanding undertakings given on the examination of Tim Clutterbuck, dated May 30 th , 2023.					
Issue & relationship to pleadings or affidavit (<i>Group the undertakings by issues.</i>)	Question No.	Page No.	Specific undertaking	Date answered or precise reason for not doing so	Disposition by the Court
<p>1. Interpretation of the Lease and rent relief under 18.07</p> <p>The Authority's duty of honest performance and good faith in contract</p>	109	45	To provide copies of the lease and agreements with the American Duty Free store [will advise what details can be released, if any]	<p>June 7, 2023 Answer: This request goes beyond the disclosure order by Her Honour.</p> <p>July 7, 2023 Answer: With respect to document relating to the US duty free, we believe that Her Honour has indicated that the relevance of this information/documentation will be determined at the up-coming attendance on 25-26 July 2023. We do not believe that the information/documentation is relevant and is properly redacted. We expect that you will file materials to establish the relevance of the information/documentation and serve the operator of the US duty free.</p>	

UNDERTAKINGS					
Outstanding undertakings given on the examination of Tim Clutterbuck, dated May 30 th , 2023.					
Issue & relationship to pleadings or affidavit (<i>Group the undertakings by issues.</i>)	Question No.	Page No.	Specific undertaking	Date answered or precise reason for not doing so	Disposition by the Court
2. Interpretation of the Lease and rent relief under 18.07 The Authority's duty of honest performance and good faith in contract	130	54	To provide an unredacted copy of the American Duty Free store's rent deferral agreement, if unable to provide, to advise why it is redacted.	June 7, 2023 Answer: This request goes beyond the disclosure order by Her Honour. July 7, 2023 Answer: see above	

July 19th, 2023

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Lawyers for Buffalo and Fort Erie Public Bridge Authority

ROYAL BANK OF CANADA

Applicant

and

Court File No. CV-21-00673084-00CL

PEACE BRIDGE DUTY FREE INC.

Respondent

Email address of recipient: See Service List

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

MOTION RECORD OF THE RESPONDENT

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