

**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

**Supplemental Motion Record of Peace Bridge Duty Free Inc.**

<b>Date:</b> February 13, 2023	<b>BLANEY MCMURTRY LLP</b> Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5  <b>David T. Ullmann</b> (LSO #42357I) Tel: (416) 596-4289 Email: <a href="mailto:dullmann@blaney.com">dullmann@blaney.com</a>  <b>John Wolf</b> (LSO #30165B) Email: <a href="mailto:jwolf@blaney.com">jwolf@blaney.com</a>  <b>Brendan Jones</b> (LSO #56821F) Email: <a href="mailto:bjones@blaney.com">bjones@blaney.com</a>  Lawyers for the Respondent
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TAB 1

**ONTARIO  
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B E T W E E N:

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- and -

**PEACE BRIDGE DUTY FREE INC.**

Respondent

**SUPPLEMENTAL AFFIDAVIT OF JIM PEARCE**

I, **Jim Pearce**, of the Town of Fort Erie, in the Province of Ontario, **AFFIRM AND SAY  
THAT:**

1. I am the general manager as well as an officer holding the position of Secretary/Treasurer of Peace Bridge Duty Free Inc. ("**Duty Free**"). As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and belief, and, in all such cases, believe it to be true.

2. I swore affidavits in relation to this matter on December 12<sup>th</sup>, 2021, November 13<sup>th</sup>, 2022 and December 2<sup>nd</sup>, 2022.

3. Capitalized terms not defined in this affidavit have the same meaning ascribed to them in the Lease (as defined in the Notice of Motion and my affidavit sworn December 12<sup>th</sup>, 2021) and my December 12<sup>th</sup>, 2021, November 13<sup>th</sup>, 2022 and December 2<sup>nd</sup>, 2022 affidavits.

**Negotiation of subsection 18.07 of the Lease**

4. Since I swore my December 2<sup>nd</sup>, 2022 affidavit, I have located records from July 2016, when I, on behalf of Duty Free, was negotiating the Lease with the Authority.

5. At the time, Duty Free was concerned about outside events beyond its control interrupting Duty Free's business and preventing it from generating sufficient revenue to pay minimum Base Rent (since the Base Rent structure in the Lease was based entirely on the anticipated Gross Sales of the duty-free store without material interruption or change in products which could be lawfully sold).

6. Specifically, Duty Free was quite concerned about three types of regulatory changes that were entirely beyond Duty Free's control that could prevent it from being able to pay the Rent provided for in Article IV of the Lease, namely: (1) changes impacting the sale of tobacco; (2) changes impacting the sale of alcohol; and (3) changes impacting volume of traffic over the Peace Bridge. Duty Free was also concerned about a fourth risk being construction on or impacting the bridge which would impact the volume of traffic flow.

7. As Duty Free and the Authority were negotiating revisions to the Lease before it was executed, I had a meeting with Karen Costa from the Authority on July 18<sup>th</sup>, 2016. One of the issues we addressed at that meeting was Duty Free's concern conveyed to the Authority in writing that if something catastrophic occurred during the Term that was beyond Duty Free's control and

that materially impacted sales, Duty Free would need an abatement of Rent, and potentially other terms of the Lease to be addressed as well, otherwise there would be no way that Duty Free would be able to pay minimum Base Rent. During our meeting, I made it clear to the Authority that Duty Free's main concern was its ability to pay minimum Base Rent and if Duty Free's business was materially impacted by a significant event or change in circumstance outside its control, it would require a rent abatement that would be in proportion to what Duty Free could afford to pay during the affected period having regard to its Gross Sales. Attached as **Exhibit "A"** to this affidavit is a copy of the handout provided at the July 18<sup>th</sup>, 2016 meeting with certain of my contemporaneous hand-written notes. Attached as **Exhibit "B"** to this affidavit is a copy of my typed notes which I believe were prepared following the July 18<sup>th</sup>, 2016 meeting.

8. At the July 18<sup>th</sup>, 2016 meeting, Ms. Costa, on behalf of the Authority, conveyed to me that the Authority did not want the language of subsection 18.07 of the Lease to expressly refer to a formulaic rent abatement, or a right to a rent abatement because it was concerned that such an express contractual right might prejudice the ability to successfully make a business interruption claim in the event of an event that was covered by insurance, by reason of an insurer arguing that the contractual abatement right meant that no or a reduced loss existed in terms of any right to be compensated by insurance. As a result, the Authority objected to express language about abating rent for fear it would assist an insurer to attempt to reduce insurance proceeds otherwise payable. However, Ms. Costa made it very clear to me that the Landlord did not in fact object to the need for a rent abatement to address events including changes in regulatory rules that caused a material negative impact on Duty Free's business.

9. Ms. Costa made it crystal clear to me that the intention of the Authority was that when circumstances required it, and subsection 18.07 of the Lease was triggered, with no right to

business interruption insurance proceeds, that a rent abatement would be implemented. Given the lengthy landlord-tenant relationship to date, and our generally good relationship with the Authority over that period, I had no concerns about taking Ms. Costa at her word.

10. After the meeting, Ms. Costa emailed me on July 19<sup>th</sup>, 2016 with the revised version of the Lease. In her email, Ms. Costa confirmed that the changes in government regulations could materially impact Duty Free's business and she acknowledged that subsection 18.07 of the Lease was intended to address that concern (ability to pay minimum Base Rent and the need for a rent abatement) that I raised at our meeting. She also noted that the Authority agreed to the vast majority of Duty Free's requests for revisions to the Lease. Based on my meeting with Ms. Costa, and her subsequent confirming email, it was clear to me that the Authority and Duty Free were aligned on the need to abate minimum Base Rent if Duty Free's business was materially affected by regulatory changes.

11. I want to emphasize that it was expressed to me by the Authority that the only reason subsection 18.07 does not explicitly say minimum Base Rent will be abated is because the Authority was concerned about the language of subsection 18.07 of the Lease impacting receipt of insurance proceeds as noted above. Attached as **Exhibit "C"** to this affidavit is a copy of Ms. Costa's July 19<sup>th</sup>, 2016 email.

12. My understanding of subsection 18.07 of the Lease based on the language that was agreed to and the representations made to Duty Free by the Authority was that in the event subsection 18.07 was triggered:

- a. the Authority would agree to reduce minimum Base Rent during the time Duty Free's business was affected;



- b. minimum Base Rent would be reduced to a level that Duty Free could afford to pay taking into consideration the impact of changes of sales such that Duty Free would not be asked to operate at a loss due to the level of Base Rent being charged during the time Duty Free's business was affected (in other words at worst Duty Free would break even taking into consideration sales, and its operating expenses but my expectation was that Duty Free would be permitted to retain some earning for its owners); and
- c. The reduced Base Rent would be abated, not deferred, as the Authority already had a mechanism in the Lease for percentage rent recovery.

13. When the Lease was agreed to and executed, I understood that the Authority acknowledged the intent of subsection 18.07 of the Lease was, if and when triggered, to provide Duty Free with a minimum Base Rent abatement. The Authority's position when negotiating the Lease is entirely inconsistent with the position it is taking now that subsection 18.07 of the Lease does not create any obligation to abate minimum Base Rent during the period the government closed the border to non-essential travellers and during the period Duty Free's business continues to be materially affected by those changes in Applicable Laws. Based on my direct involvement in discussions with the Authority and the representations made by the Authority, including Ms. Costa, this is exactly what subsection 18.07 of the Lease was intended to do.

#### **Communication with the Authority following the outbreak of Covid-19**

14. Following the closure of the border to non-essential travellers and the Ontario government's order requiring non-essential businesses to close, Duty Free engaged with the Authority to discuss how the Lease would be impacted by the change in Applicable Laws. At that

time, it was anticipated by all that Covid-19's impact on the border crossing would be temporary, with projections changing with the passage of time. At that time, Duty Free (and likely the Authority as well) never expected that Covid-19 would continue to materially impact its business for three years.

15. Following a March 26<sup>th</sup>, 2020 telephone conversation about delaying Duty Free's April Rent payment until the parties could work out a way forward based on the application of subsection 18.07 of the Lease, Duty Free followed up with the Authority to provide its position.

16. Inexplicably, despite the Authority's prior assurances subsection 18.07 of the Lease would apply to adjust minimum Base Rent in the event of a change in government regulation that materially negatively impact Duty Free's business, the Authority responded by email that *"There is no provision for delay or abatement of rent so we require payment in accordance with the terms of the lease."*

17. Duty Free responded that the Authority's response was very disappointing. Duty Free noted that subsection 18.07 of the Lease was specifically included because both Duty Free and the Authority *"recognized that [Duty Free] is heavily dependent on the flow of traffic over the border and that such flow could be affected by changes in law."* Duty Free asked to discuss these matters to find a way forward and give effect to subsection 18.07. Attached as **Exhibit "D"** is a copy of the email exchange between Duty Free and the Authority from April 1<sup>st</sup>, 2020 to April 3<sup>rd</sup>, 2020.

18. On April 3<sup>rd</sup>, 2020, Ms. Costa sent a letter on behalf of the Authority to Duty Free saying rent is due on the first of the month and that the Authority had not received Duty Free's April rent payment. Notwithstanding subsection 18.07 of the Lease, the closure of the border to non-essential travellers and the closure of all non-essential businesses, the Authority took the position that *"You*

*are also aware that the Lease does not provide for any rent abatement due to a decline in sales.”*

Ms. Costa’s letter completely contradicted her representations to me during our July 18<sup>th</sup>, 2016 meeting and the acknowledgement in her July 19<sup>th</sup>, 2016 email (Exhibit “C”) that subsection 18.07 of the Lease would apply in the event of changes in governmental regulations that materially impact Duty Free’s business. Attached as **Exhibit “E”** is a copy of the Authority’s April 3<sup>rd</sup>, 2020 letter.

19. On April 3<sup>rd</sup>, 2020, Duty Free wrote to the Authority’s board of directors requesting that the Authority engage with Duty Free about how the Lease would be adjusted as a result of the changes to Applicable Laws to give effect to subsection 18.07 of the Lease. Attached as **Exhibit “F”** is a copy of Duty Free’s April 3<sup>rd</sup>, 2020 letter.

20. The Authority responded saying the Authority General Manager would contact Duty Free. Attached as **Exhibit “G”** is a copy of the Authority’s April 6<sup>th</sup>, 2020 letter.

21. Following discussions with the Authority, in early May 2020, Duty Free signed and returned the Authority’s April 27<sup>th</sup>, 2020 rent deferral agreement that was presented as a take it or leave it offer. Duty Free noted that the rent deferral agreement provided by the Authority was at best an arrangement to allow further discussions and consideration of how the parties can work together until things return to normal. Duty Free’s stated position was that the fundamentals of the business had changed because of Covid-19 and the associated regulatory changes and the Lease had to be assessed to determine if adjustments were necessary as a result. Mr. Rienas replied, *“I don’t disagree with you and recognize that we will in all likelihood have additional discussions as the full impact of the pandemic and post pandemic plays out.”* Attached as **Exhibit “H”** is a copy of the email exchange between Duty Free and the Authority dated May 6<sup>th</sup>, 2020.

**It is and was impossible for Duty Free or any duty-free store operator at this location to pay minimum Base Rent of \$4 million per year as a result of the changes in Applicable Laws due to Covid-19**

22. Attached as **Exhibit “I”** is a chart prepared by me setting out Duty Free’s expenses, sales and rent subsidies from November 2016 to January 2023.

23. From April 2020 to January 2023, Duty Free’s total Gross Sales were \$12,837,041.

24. During that time, Duty Free’s operating costs, excluding rent and net of wage subsidies, was approximately \$9,375,294.

25. Duty Free received a total of \$1,057,276 in government rental subsidies that were paid to the Authority. For clarity, the minimum paid to the authority each month was the amount of the rental subsidy received for that period. Duty Free remitted to the Authority any difference between monthly rental subsidies it received and the payments it made on account of Additional Rent and Base Rent, up to the point where Additional Rent and Base Rent payments exceeded the amount of the monthly rental subsidies received for a particular month. For simplicity, the government rental subsidy receipts and payments have been excluded from the chart at Exhibit “I”.

26. If full minimum Base Rent was payable during that period, Duty Free would have had to pay \$11,333,322 in minimum Base Rent.

27. Additional Rent paid is a further \$335,541 for this period.

28. In addition, Duty Free paid its secured creditor, RBC, \$1,911,896 during that period for financing related to leasehold improvements.

29. Effectively, if Duty Free were to pay the minimum Base Rent, plus costs of sale, plus payment to RBC, Duty Free would have incurred \$22,956,053 in costs and expenses to generate \$12,837,041 in Gross Sales from April 2020 to January 2023. In this calculation, the costs exceed the revenue by \$10,119,013 (excluding the impact of government rent subsidies).

30. Based on the formula of Base Rent being 20% of Gross Sales, which was the stated premise in the Lease behind how Base Rent was set in the Lease, Duty Free's Base Rent for the period from April 2020 to January 2023 would be \$2,567,408 (which sum has been paid in full). In this calculation, the costs still exceed revenue by \$1,353,099 (excluding the impact of government rent subsidies).

31. It must be emphasized that Duty Free must take into account its considerable prospective tax obligation that will result from the final change in its expenses resulting from adjusting the minimum Base Rent over this period to reflect the actual rent payable. If Base Rent is reduced by about 50% as proposed by the authority, it is estimated the tax liability to be accrued could be approximately \$1 million plus. Any funds on hand are set aside for this tax liability, as well as contingencies as payment of Normal Rent may result in a financial loss

32. Duty Free has paid Normal Rent based on Base Rent payments of 20% of Gross Sales. That is the very most that Duty Free has been able to pay since the outbreak of Covid-19 and the associated changes in Applicable Laws that have negatively affected Duty Free's business. Duty Free made these payments in good faith as the maximum it is reasonably able to pay. It is simply not possible for Duty Free to pay Base Rent of more than 20% of Gross Sales and survive as a going concern while it is impacted by the changes in Applicable Laws and in the absence of any meaningful government assistance.

33. Having said that, it must also be noted that as soon as Duty Free's indebtedness to its secured creditor RBC is retired in or about January 2027, and any income tax liability related to a resolution of the rent issue is paid current, it will result in a materially greater ability of Duty Free to meet its other obligations.

**SWORN (OR AFFIRMED)** remotely )  
 by way of video conference by Jim )  
 Pearce stated as being located in the )  
 Town of Fort Erie, in the Province of )  
 Ontario, before Brendan stated as being )  
 in the City of Toronto, in the Province of )  
 Ontario on this 13<sup>th</sup> day of February, )  
 2023, in accordance with O.Reg. 431/20, )  
 Administering the Oath or Declaration )  
 remotely. )



*A Commissioner for Taking Affidavits,*  
**Brendan Jones**

  
**JIM PEARCE**

This is Exhibit “A” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13<sup>th</sup> day of February 2023.

A handwritten signature in black ink, appearing to read "Brendan Jones".

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*Commissioner for Taking Affidavits (or as may be)*

**Brendan Jones**

Clarity items

2.01 (ss) Tenant's Gross Sales - as an example, hotel reservations for Erie PA are a great marketing draw and currently we don't process but may be a possibility

✓ - add Travel Services - "Ticket Sales and Travel Services"

✓ (iii) to clarify so not to include non-sales or service items such as investment income, etc

- add "all other receipts and receivables from sales or services (including interest, installment and finance charges) from business conducted in or from the Lease Premises..."

4.03 Percentage Rent

- for clarity, we just need wording to tie in the Monthly Payments to the Annual Reconciliation and the Example shown

✓ - suggested - "the calculation of Accumulated YTD Percentage Rent exceeds the Accumulated YTD Monthly Base rent for the same period, then the Tenant will pay...."

Art 5 Financial Information - the traffic counts are extremely important to our marketing and decision-making

✓ - add - continue to receive the daily bridge traffic counts

5.05 Audit

✓ - add "auditor chosen to be professional, independent and acting reasonably"

5.06 Confidentiality

✓ - add - "(other than the Landlord's directors, officers, employees or professional advisors who have a need to know such financial information, all of whom shall be obligated to keep such information confidential)"

yes  
o/c Schedule "B" - is this for a map of the Leased Premises ?

no  
o/c Schedule "D" - in addition to our proposal add a copy of the RFP ?

✓ Schedule "E" - would like deleted - will have a proper legal document sent to PBA asap and any future changes we acknowledge we will get consent and are obligated to report

- concern is this shouldn't be part of the lease as others (outside parties) may seek or need access to the lease and this may become more public that we desire

Typo's - 8.02 - no "Art 2.5"  
14.01 - "13.02" s/b "14.02"



Explanations

6.04 (f) - *include normal wages + costs*  
*support documentation of costs*

15.04 Roof Rights - add subject to the Tenant's right of quiet enjoyment

15.05 - Solar Panels - yes agree but delete second sentence

*15.03*  
*what's the plan*

*- something not covered*  
*- percentage but not > Done*

Business disruption due to bridge closure -

In the event there is a closure or shutdown of the bridge due to any cause that such bridge closure lasts longer than 24 hours, the rent payable by the tenant shall be abated. The rent abatement only applies to the extent that the loss caused by the bridge closure is not covered by the tenant's business interruption insurance. For the purpose of this provision the abatement in rent is to be calculated on the per diem rate of base rent payable during the period of closure (i.e. \$4,000,000 / 365 days).

Agree not part of the lease but would like to have a letter indicating we agree to discuss the following:

- possible sharing the subsidizing of the rents payable by the Food Concessions

- insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses

- in the event that during the Term and should it be necessary, that issues arise (something catastrophic) beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to discuss the lease (including but not limited to the rent terms, term, etc.).

This is Exhibit “B” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13<sup>th</sup> day of February 2023.



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*Commissioner for Taking Affidavits (or as may be)*

**Brendan Jones**

- 95% is for clarity - just to clean up the language
- may be a few other points that hopefully we can meet somewhere in the middle on -want to get this done - will double back today/tonight/tomorrow whatever is needed
- get the "final" notes to your lawyer and Greg is back mid-week to wrap-up

#### 2.01 (ss) Tenant's Gross Sales ADD TRAVEL SERVICES

- expand Ticket Sales to include other marketing initiatives, for example booking hotel reservations - working very well for capturing traffic

(iii) to clarify, and as discussed, so not to include items such as investment income, ... -

- add "all other receipts and receivables from sales or services (including interest, installment and finance charges) from business conducted in or from the Lease Premises..."

4.03 Percentage Rent - - for clarity, we just need wording to tie in the Monthly Payments to the Annual Reconciliation and the Example shown

- we did discuss using Accumulated YTD Sales in the calculation of the Monthly Amounts paid but it didn't find it's way into the draft lease

Art 5 Financial Information - - add - request we continue to receive the daily bridge traffic counts as they are extremely important to our decision-making.

5.05 Audit - some is our lawyer's notes & while shouldn't ever occur, would like some language concerning the appointed auditor

5.06 expand on directors - add "(other than the Landlord's directors, officers, employees or professional advisors who have a need to know such financial information, all of whom shall be obligated to keep such information confidential

Schedule "B" - is this for a map of the Leased Premises ?

Schedule "D" - in addition to our proposal, should we also add a copy of the RFP ?

Schedule "E" - the ownership of the holding companies is thought to be confidential to the corporation

- will get consent and report as in the lease - not getting away from that
- for outside parties who seek or need a copy of the lease, we want to be able to decide what "Corporate" info they receive

#### 6.04 (f)

fighting of

- while acknowledging we will receive an estimate for the next lease year, is there a schedule or estimate we could receive now
- we are assuming that except for items specified in the clause, there wouldn't be anything new except of course any direct third party costs to passed to us
- but for supervision, administration or management, would this be related to addressing issues that arise from the Lease and not normal Landlord salaries and costs ?

15.04 Roof Rights - what all is involved with this clause and what kinds of Roof-Top Equipment are thought of

- agree in concept but just not sure what we are agreeing to and if it's reasonable for us
- in the essence of time, should we agree to work on a separate agreement for this
- concerned about the affects whatever this equipment may be, on areas such as quiet enjoyment, frequency of access, impact on our signage, ...

- competing provisions that are basic to any lease - Tenant's right of quiet enjoyment and any Landlord request

15.05 -Solar Panels - delete second sentence - your lawyer seems to be giving us something here we don't need

Business Interruption clause - two things here - somewhat a feel good for us and really the whole lease & and we we exist is based on us having traffic

At the end of the year, the Annual Percentage Rent most likely would be the total amount paid. So if we were shut down for a couple of days but Annual Percentage Rent exceed Annual Base Rent, then this is a moot point ?

We would like the following added as some protection for us. To clarify, it would only apply to where our insurance doesn't cover and in reality would only apply if Annual Percentage Rent doesn't exceed Annual Base Rent.

This type of construction on the bridge is somewhat new to everyone

Areas agree to discuss - while not part of the lease, would like to have a letter indicating we agree to discuss the following -

- possible sharing the subsidizing of the rents payable by the Food Concessions
- Insurance clauses - have the PBA's and PBDF's insurers review and propose the most efficient way to address the insurance related clauses
- In the event that during the Term, there are issues that arise beyond the Tenant's control (including but not limited to vehicle traffic volume declines, bridge construction, changes in government regulations, etc.) that materially impact the Tenant's duty free sales, then the Landlord and the Tenant, both acting reasonably and in good faith, agree to discuss the lease (including but not limited to the rent terms, term, etc.).

This is Exhibit “C” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13<sup>th</sup> day of February 2023.



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*Commissioner for Taking Affidavits (or as may be)*

**Brendan Jones**



**From:** Karen L. Costa [klc@peacebridge.com] *Jim talk to Karen*  
**Sent:** Tuesday, July 19, 2016 11:47 AM *Ben " " Graham*  
**To:** JIM PEARCE:jimp9999@gmail.com  
**Cc:** Karen L. Costa;Ron Rienas  
**Subject:** PBDF Lease  
**Importance:** High  
**Attachments:** Duty Free Shop Building Lease-EDC\_LAW-1389402-v18B.PDF; Duty Free Shop Building Lease-EDC\_LAW-1389402-v18.pdf

Hi Jim –

Please find attached a redlined (18B) copy and a clean copy of the Lease (18).

We reviewed the additional requests from yesterday and have accommodated the majority of your requests. There are a few, upon advice from counsel, that we will not consider.

- 15.04 – Roof Rights and quiet enjoyment. There is a quiet enjoyment clause in the lease. That is sufficient.
- Schedule D – it is not appropriate to include the actual RFP as an attachment to the lease. Your Proposal is included as a reference to the lease as the representations made in the Proposal were the basis for your group being selected as the successful Proponent. Including your Proposal as a Schedule to the lease provides assurance that the representations will be carried out.
- Business disruption due to bridge closure – the lease requires you to insure for the risk of business interruption (Section XI). Your broker should ensure you have the proper coverage for this risk. We will not include any rent abatement for an insurable risk.

You have also requested we have further discussions on the following topics:

- ✓ 1. Possible sharing the subsidizing of the rents payable by the food concessions – their gross sales are to be included in the calculation of Tenant Gross Sales as defined in Section 2.01 (ss)
- ✓ 2. Insurance clauses – we have agreed to have our insurance broker meet with you insurance broker so that they can help determine the proper insurance is carried. All insurance coverages will comply to the lease Section XI as it is currently written.
- ✓ 3. Lease discussion in the event of a catastrophic event – we reviewed the examples listed as catastrophic. We agree that changes in governmental regulations could materially impact the business and have added section 18.07 to the lease. All other events listed were are routine events at a border crossing.

Jim, we very much would like to get this wrapped up in the next few days so that the motion to approve the lease can be brought to our July board meeting. This will ensure that we are complying with the 30 day negotiation period as defined in the RFP. The 30 day period ends this week. In your proposal your group clearly indicated that you accepted the form of lease in the RFP as is with no changes. This fact was considered in the scoring of your proposal. The PBA has acted in good faith in considering your requests and has agreed to the vast majority of them. We consider our negotiations complete and the attached lease to be the final version.

I hope that your group can agree to execute the lease so that we can move forward for another 20 years.

Thanks!  
Karen

Karen L. Costa, CPA  
Finance Manager  
Buffalo & Fort Erie Public Bridge Authority

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This communication is intended solely for the addressee(s) and contains information that is privileged, confidential, and subject to copyright. Any unauthorized use, copying, review or disclosure is prohibited. If received in error, please notify us immediately by return e-mail.

This is Exhibit “D” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13<sup>th</sup> day of February 2023.

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

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*Commissioner for Taking Affidavits (or as may be)*

**Brendan Jones**

## RE: Rent

Greg O'Hara

Fri 4/3/2020 11:46 AM

To: Ron Rienas &lt;rr@peacebridge.com&gt;;

Cc: Jim Pearce &lt;JimP@dutyfree.ca&gt;;

Ron,

Your response is very disappointing.

As you know, the government of Canada, the Province of Ontario, the US Government and the NY State government have introduced various regulations and decrees ranging from travel restrictions, border crossing restrictions and restrictions on our ability to operate as a non-essential business. These changes in applicable law have had and will continue to have "material adverse effect" on our operations.

Article 18.07 of the lease expressly provides that "in the event an anticipated introduction of or a change in Applicable Laws causes a material adverse effect on the business operations of the Tenant at the Leased Premises, the Landlord agrees to consult with the Tenant to discuss the impact of such introduction of or change in the Applicable Laws to the Lease".

Article 18.07 was included in the lease as we all recognized that the duty free shop is heavily dependent on the flow of traffic over the border and that such a flow could be affected by changes in law.

These are things that need to be discussed so that we can find a way forward. The store has no ability to generate revenue and that is expected to be the case for at least the coming two months and perhaps longer.

I look forward to discussing this issue with you.

Regards, Greg

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**From:** Jim Pearce <JimP@dutyfree.ca>**Sent:** April-03-20 11:15 AM**To:** Greg O'Hara <gohara@dutyfree.ca>**Subject:** Fw: Rent

Ron

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**From:** Ron Rienas <rr@peacebridge.com>**Sent:** Wednesday, April 1, 2020 3:13 PM**To:** Greg O'Hara**Cc:** Jim Pearce**Subject:** Re: Rent



Greg,

We have reviewed the lease with our lawyers. There is no provision for delay or abatement of rent so we require payment in accordance with the terms of the lease.

Please understand that we are in similar circumstances and are also required to fulfil our obligations.

Ron  
Sent from my iPhone

On Apr 1, 2020, at 1:19 PM, Greg O'Hara <[gohara@dutyfree.ca](mailto:gohara@dutyfree.ca)> wrote:

Hi Ron,

Further to our telephone conversation last Thursday, March 26<sup>th</sup>, have you made a decision regarding my request to delay our rent payment until our company and the Peace Bridge can work out a way forward? I was hoping to hear from you before the rent was due (today).

Regards, Greg

This is Exhibit “E” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13<sup>th</sup> day of February 2023.



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*Commissioner for Taking Affidavits (or as may be)*

**Brendan Jones**



April 3, 2020

Greg O'Hara  
1 Peace Bridge  
Fort Erie, ON L2A 5N

Re: Peace Bridge Duty Free Minimum Rent Due

Dear Greg:

As per Article IV of the Lease between the Buffalo and Fort Erie Public Bridge Authority and the Peace Bridge Duty Free, rent is due on the first of the month. As of this morning, we have not received your April rent payment.

You are also aware that the Lease does not provide for any rent abatement due to a decline in sales.

Your immediate attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Costa".

Karen L. Costa  
Chief Financial Officer  
Buffalo and Fort Erie Public Bridge Authority

This is Exhibit “F” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13<sup>th</sup> day of February 2023.

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

---

*Commissioner for Taking Affidavits (or as may be)*

**Brendan Jones**



April 3, 2020

Board of Directors

Buffalo & Fort Erie Public Bridge Authority

P.O. Box 339 Peace Bridge Plaza  
Fort Erie, Ontario L2A 5N1 Canada

P.O. Box 572  
Buffalo, New York USA 14213-0572

Telephone: (905) 871-5400  
Fax: (905) 871-6335

Dear Directors:

We are writing to formally request a telephone conference meeting regarding the situation that has developed as a result of COVID-19 and the government measures that have been implemented on both sides of the border to address the situation.

This meeting is being requested on the basis that our operations have been deeply affected by the closure of the boarder to non-essential crossings. The closure of the borders to non-essential crossings has undermined our ability to generate revenue from the duty-free shop.

As a result of these measures and consistent with Government of Canada and Government of Ontario guidance, we closed the shop, effective March 21, 2020, so as to avoid the spread of COVID-19. We continue to have a staff member onsite to ensure that the building remains secure.

We request a meeting to discuss interim arrangements that can be put in place to address this unprecedented situation. We kindly request that this meeting occur as soon as possible so that we can have clarity, at least in the short-term, as to how we may best be able to address the fact that we have no ability to generate revenue from a business that is dependent upon the free flow of traffic across the border.

We have raised this issue with the Bridge Authority Senior Management but they have not responded to our request to explore how we might be able to address this unprecedented situation.

We kindly look forward to a call being scheduled as soon as possible. Please note that we have not paid the rent that was otherwise due pursuant to the lease on April 1, 2020. Until we can have a discussion to explore whether an interim solution can be put in place, we respectfully request that you not declare this non-payment a default so as to allow for a discussion to take place.

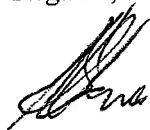
Also, we note that section 18.07 of the lease provides that where there is a change in Applicable Law that causes a material adverse effect on our business operations as the leased premises, the Bridge Authority is to consult with us to discuss the impact of such change to the lease. This provision was included in the lease because we all recognized that the lease and the viability of the duty free shop is entirely dependent on the manner in which the border is being regulated and



that any changes relating to crossings could have a material adverse effect on the duty free shop that may require adjustments to the lease.

Again, we look forward to hearing from you as soon as possible to schedule a telephone conference.

Regards,

A handwritten signature in black ink, appearing to read "G. O'Hara", written over a horizontal line.

Gregory G. O'Hara

President

This is Exhibit “G” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13<sup>th</sup> day of February 2023.

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

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*Commissioner for Taking Affidavits (or as may be)*

**Brendan Jones**



April 6, 2020

Mr. Gregory G. O'Hara  
President  
Peace Bridge Duty Free  
P.O. Box 339  
Peace Bridge Plaza  
Fort Erie, Ontario  
L2A 5N1

Dear Mr. O'Hara:

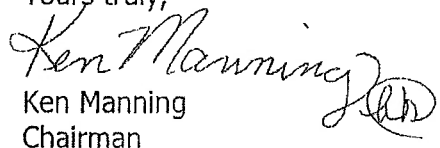
Thank you for your April 3, 2020 letter.

There is no question that the current Covid-19 crisis is impacting all businesses and landlord-tenant relationships. I understand your loss of revenue concerns as the Peace Bridge Authority is also experiencing significant revenue losses within the context of our continuing financial obligations.

I agree that you should have a discussion with Authority management related to how rent obligations can continue to be fulfilled while recognizing the present circumstances. The Board has been apprised. Individual members will not be engaging with you on this issue. The Authority General Manager will be contacting you to discuss this issue.

This letter is without prejudice or waiver of any rights of either the Peace Bridge Authority or PBDF under the lease.

Yours truly,

  
Ken Manning  
Chairman



This is Exhibit “H” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13<sup>th</sup> day of February 2023.

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

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*Commissioner for Taking Affidavits (or as may be)*

**Brendan Jones**

**Greg O'Hara**

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**From:** Ron Rienas <rr@peacebridge.com>  
**Sent:** May-06-20 12:47 PM  
**To:** Greg O'Hara  
**Subject:** RE: Peace Bridge - PBDF

Thanks Greg.

I don't disagree with you and recognize that we will in all likelihood have additional discussions as the full impact of the pandemic and post pandemic plays out.

Ron Rienas  
 General Manager  
 Buffalo & Fort Erie Public Bridge Authority

100 Queen Street, Fort Erie, ON L2A 3S6 | 1 Peace Bridge Plaza, Buffalo, NY 14213  
[rr@peacebridge.com](mailto:rr@peacebridge.com) T 905-994-3676 | T 716-884-8636 | F 905-871-9940 | F 716-884-2089 | C 905-651-2206

**From:** Greg O'Hara <gohara@dutyfree.ca>  
**Sent:** Wednesday, May 6, 2020 12:31 PM  
**To:** Ron Rienas <rr@peacebridge.com>  
**Subject:**

Ron,

Thanks for your email. Attached is a signed copy of rent deferral arrangement.

As you know, we do not believe that this arrangement will address the situation as it develops in the coming months and even after the border officially opens to non-essential traffic. In our view, this is, at best, an arrangement that will allow for further discussion and consideration of how we can work together until things return to some semblance of normal.

Also, we have been following information regarding available government supports. Overall, except for the Wage Subsidy, our business has fallen through the cracks with respect to these programs.

Our primary issue (and an issue that all duty free shops are facing) is one of revenue in light of official traffic restrictions/advisories and, once those are lifted, the expected extraordinary low volume of cross-border traffic. The fundamentals of the business have changed because of COV-19 and we are of the view that there are lease terms to be assessed to determine if adjustments are necessary as a result.

Regards, Greg

This is Exhibit “I” referred to in the Supplemental Affidavit of Jim Pearce sworn remotely this 13<sup>th</sup> day of February 2023.



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*Commissioner for Taking Affidavits (or as may be)*

**Brendan Jones**

## EXHIBIT I

	PBDF Sales	Cost of Sales Wages (net) Expenses	RBC Lease	Add'l Rent	Rent	Net
Jan2020	920,345	(435,666)	(68,282)	(6,541)	(333,333)	76,523
Feb2020	977,455	(468,306)	(68,282)	(8,167)	(333,333)	99,367
Mar2020	553,247	(234,029)	(68,282)	(8,167)	(333,333)	(90,564)
Jan-Mar2020	2,451,048	(1,138,001)	(204,846)	(22,875)	(999,999)	85,326
Apr2020.	0	(31,833)	0	(8,167)	0	(40,000)
May2020	0	(31,833)	0	(8,167)	0	(40,000)
Jun2020	0	(31,833)	0	(8,167)	0	(40,000)
Jul2020	0	(31,833)	0	(8,167)	0	(40,000)
Aug2020	0	(31,833)	0	(8,167)	0	(40,000)
Sep2020	0	(31,833)	0	(8,167)	0	(40,000)
Oct2020	0	(31,833)	(68,282)	(8,167)	0	(108,282)
Nov2020	0	(31,833)	(68,282)	(8,167)	0	(108,282)
Dec2020	0	(31,833)	(68,282)	(8,167)	0	(108,282)
Apr-Dec2020	-	(286,498)	(204,846)	(73,502)	-	(564,846)
Total 2020	2,451,048	(1,424,500)	(409,692)	(96,377)	(999,999)	(479,520)
Rent 20%						
Jan2021	0	(51,833)	(68,282)	(8,167)	-	(128,282)
Feb2021	0	(50,950)	(68,282)	(9,050)	-	(128,282)
Mar2021	0	(50,950)	(68,282)	(9,050)	-	(128,282)
Apr2021	0	(50,950)	(68,282)	(9,050)	-	(128,282)
May2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Jun2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Jul 2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Aug2021	0	(49,188)	(68,282)	(10,812)	-	(128,282)
Sep2021	97,691	(148,845)	(68,282)	(10,812)	(19,538)	(149,787)
Oct2021	309,754	(274,877)	(68,282)	(10,812)	(61,951)	(106,168)
Nov2021	545,927	(422,963)	(68,282)	(10,812)	(109,185)	(65,316)
Dec2021	571,208	(435,604)	(68,282)	(10,812)	(114,242)	(57,732)
	1,524,579	(1,683,723)	(819,384)	(121,816)	(304,916)	(1,405,260)
Jan2022	266,652	(258,326)	(68,282)	(10,812)	(53,330)	(124,099)
Feb2022	317,739	(273,870)	(68,282)	(10,812)	(63,548)	(98,773)
Mar2022	574,900	(409,863)	(68,282)	(10,812)	(114,980)	(29,037)
Apr2022	803,466	(540,664)	(68,282)	(10,812)	(160,693)	23,015
May2022	839,157	(557,795)	(68,282)	(10,775)	(167,831)	34,473
Jun2022	942,743	(612,517)	(68,282)	(10,775)	(188,549)	62,621
Jul2022	1,332,856	(789,771)	(68,282)	(10,775)	(266,571)	197,457
Aug2022	1,295,437	(771,810)	(68,282)	(10,775)	(259,087)	185,483
Sep2022	1,189,993	(739,297)	(68,282)	(10,775)	(237,999)	133,641
Oct2022	1,214,518	(750,824)	(68,282)	(10,775)	(242,904)	141,734
Nov2022	980,000	(635,600)	(68,282)	(10,775)	(196,000)	69,343
Dec2022	860,000	(579,374)	(68,282)	(10,775)	(172,000)	29,569
	10,617,461	(6,919,709)	(819,384)	(129,449)	(2,123,492)	625,427
Jan2023	695,000	(485,364)	(68,282)	(10,775)	(139,000)	(8,421)
Apr 2020 to Jan2023	12,837,041	(9,375,294)	(1,911,896)	(335,541)	(2,567,408)	(1,353,099)

## Total Apr2020 to Jan2023 Summary

	Base rent version		Percentage rent version
Sales	12,837,041	Sales	12,837,041
Costs&Expenses	(11,287,190)	Costs&Expenses	(11,287,190)
Add'l rent	(335,541)	Add'l rent	(335,541)
Base rent	(11,333,322)	Percentage Rent	(2,567,408)
Net loss	(10,119,013)	Net loss	(1,353,099)

Note: Net loss does not include deductions for professional expenses related to the process, additional funds posted as security to RBC as per court order and anticipated taxes.

Court File No. CV-21-00673084-00CL  
**PEACE BRIDGE DUTY FREE INC.**

**ROYAL BANK OF CANADA**

and

Applicant

Respondent

Email address of recipient: See Service List

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

Proceeding commenced at Toronto

**SUPPLEMENTAL AFFIDAVIT OF JIM PEARCE**

**BLANEY MCMURTRY LLP**

Barristers & Solicitors  
 2 Queen Street East, Suite 1500  
 Toronto, ON, M5C 3G5

**David T. Ullmann** (LSO #42357I)

Tel: (416) 596-4289

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Email: [bjones@blaney.com](mailto:bjones@blaney.com)

**Alexandra Teodorescu** (LSO #63889D)

Email: [ateodorescu@blaney.com](mailto:ateodorescu@blaney.com)

Lawyers for the Respondent

**ROYAL BANK OF CANADA**

Applicant

and

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

**PEACE BRIDGE DUTY FREE INC.**

Respondent

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

Proceeding commenced at Toronto

**Supplemental Motion Record of Peace Bridge Duty  
Free Inc.**

**BLANEY MCMURTRY LLP**

Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto, ON, M5C 3G5

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**Brendan Jones** (LSO #56821F)

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Lawyers for the Respondent