

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division

-----  
UNITED STATES OF AMERICA                     )  
   )  
v.   )  
   )  
KENNETH R. SPIRITO,                             )  
   )  
                  Defendant.                     )  
   )  
   )  
-----

CRIMINAL ACTION NO.  
4:19cr43

Charged: **24** Felonies  
Convicted: **23** Felonies (Count #21 Not Guilty)  
After Sentencing: **22** Felonies (Count #24 Dismissed)  
After Appeal: **21** Felonies (Count #19 Reversed)

# Definitions

FAA	Federal Aviation Administration
SEF	State Entitlement Funding
DOAV	Virginia Department of Aviation
VDOT	Virginia Department of Transportation
USDOT	United States Department of Transportation
PFC	Passenger Facility Charge
AIP	Airport Improvement Program
RAISE	Local Economic Development Group that Subsidizes Airlines
EDA	Economic Development Authority
PAC	Peninsula Airport Commission
PHF	Newport News/Williamsburg International Airport
SCASD	Small Community Air Service Development Grant
PEX	People Express
VAB	Virginia Aviation Board

## **The prosecution accused me of:**

- Not having authority to set up collateral accounts with the financial institution
- Using Virginia State Entitlements (SEF) to collateralize the loan without authority
- Using Passenger Facility Charges (PFC) to satisfy the debt obligation of the loan
- Using Airport Revenue improperly from the U.S. Department of Transportation (USDOT) Small Community Air Service Development grant (SCASD)
- Not reporting the use of funds to the public and the Virginia Department of Aviation (DOAV)
- Falsely reporting to the Federal Aviation Administration (FAA) when asked what funds were used to satisfy the debt obligation
- Lying to the Jury about what funds were used to satisfy the debt obligation, how the airport board made its decisions, and that the board did not adopt recommendations I made about the structure of the loan guarantee agreement

As you will see in this presentation, none of the accusations are factual.

(In violation of Title 18, United States Code, Sections 666(a)(1)(A) and 2.)

## Felony Counts #'s 1-11

Count	Date (on or about)	Amount	Description of Transaction	Actual Source of Funds
1	6/11/14	\$720,000.00	Transfer to SEF collateral account (account number ending 6589)	State Entitlement Funds
2	6/11/14	\$1,280,000.00	Transfer to SEF collateral account (account number ending 6589)	Airport Revenue
3	6/12/14	\$700,650.00	Transfer to RAISE collateral account (account number ending 6619)	RAISE Funds
4	6/18/14	\$565,000.00	Transfer to SCASD collateral account (account number ending 6597)	Airport Revenue
5	7/31/14	\$385,000.00	Transfer to RAISE collateral account (account number ending 6619)	Passenger Facility Charges
6	9/30/14	\$460,119.37	Transfer to SEF collateral account (account number ending 6589)	State Entitlement Funds
7	10/08/14	\$148,213.96	Transfer to SEF collateral account (account number ending 6589)	State Entitlement Funds
8	12/08/14	\$26,000.00	Transfer to SEF collateral account (account number ending 6589)	Passenger Facility Charges

9	12/29/14	\$666,666.66	Transfer to SEF collateral account (account number ending 6589)	State Entitlement Funds
10	1/20/15	\$13,000.00	Transfer to SEF collateral account (account number ending 6589)	Passenger Facility Charges
11	4/06/15	\$249,312.79	Transfer to SEF collateral account (account number ending 6589)	State Entitlement Funds

Allowable per DOAV Program Manual Section 3.1.1.3.2

**Not** airport revenue. SEFs were used as per DOAV Program Manual Section 3.1.1.3.2

City of Newport News transferred this as approved by the RAISE committee and the Newport News EDA board.

Approved by the PAC on 6/27/13 as part of the SCASD Grant

PFCs were **NOT** used per Kevin Willis of the FAA

Allowable per DOAV Program Manual Section 3.1.1.3.2

Allowable per DOAV Program Manual Section 3.1.1.3.2

PFCs were **NOT** used per Kevin Willis of the FAA

Allowable per DOAV Program Manual Section 3.1.1.3.2

PFCs were **NOT** used per Kevin Willis of the FAA

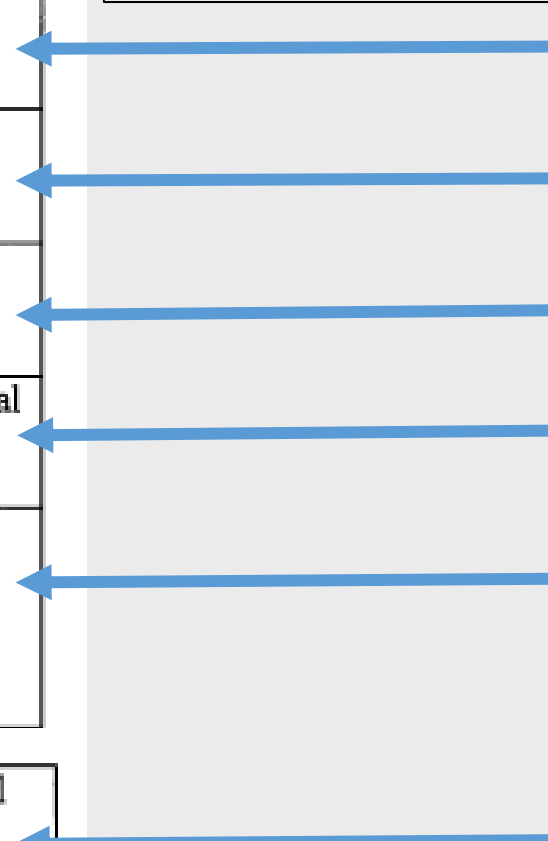
Allowable per DOAV Program Manual Section 3.1.1.3.2

(In violation of Title 18, United States Code, Sections 1957 and 2.)

## Felony Counts #'s 12-17

See email chains dated November 25, 2014,  
November 26, 2014 and December 1, 2014

Count	Date (on or about)	Financial Transaction
12	12/8/2014	SPIRITO made or caused to be made a \$13,993.06 monthly interest payment on the PEX loan from the SEF collateral account (account number ending 6589) at TowneBank.
13	12/17/2014	SPIRITO made or caused to be made a \$11,918.71 monthly interest payment on the PEX loan from the SEF collateral account (account ending 6589) at TowneBank.
14	1/20/2015	SPIRITO made or caused to be made a \$12,971.73 monthly interest payment on the PEX loan from the SEF collateral account (account ending 6589) at TowneBank.
15	2/18/2015	SPIRITO authorized or caused to be authorized a \$3,229,512.39 principal payment on the PEX loan from the SEF collateral account (account ending 6589) at TowneBank.
16	2/18/2015	SPIRITO authorized or caused to be authorized a \$299,512.56 principal payment on the PEX loan from the SCASD collateral account (account ending 6597) at TowneBank.
17	4/6/2015	SPIRITO authorized or caused to be authorized a \$250,022.84 principal payment on the PEX loan from the SEF collateral account (account ending 6589) at TowneBank.



## Statute Charged and Convicted Under

### 1009. INTENTIONAL MISAPPLICATION

The offense of intentional misapplication is not defined in § 666. Intentional misapplication, however, is not materially different from the offense of willful misapplication found in 18 U.S.C. § 665.

To prove a willful misapplication violation of 18 U.S.C. § 666(a)(1)(A) the United States must establish the general elements and the following specific elements:

1. that the defendant, with the intent to defraud, willfully converted or took for his/her own use or benefit or the use or benefit of another, property; and
2. that property was owned by or under the care, custody, or control of an organization or state or local government agency protected by the statute.

[cited in JM 9-46.100]

**Element #1 was never proven. The Judge was clear that no fraud was ever committed.**

## Department of Justice Legal Definition

### 1009. INTENTIONAL MISAPPLICATION

The offense of intentional misapplication is not defined in § 666. Intentional misapplication, however, is not materially different from the offense of willful misapplication found in 18 U.S.C. § 665.

To prove a willful misapplication violation of 18 U.S.C. § 666(a)(1)(A) the United States must establish the general elements and the following specific elements:

1. that the defendant, with the intent to defraud, willfully converted or took for his/her own use or benefit or the use or benefit of another, property; and
2. that property was owned by or under the care, custody, or control of an organization or state or local government agency protected by the statute.

[cited in JM 9-46.100]

< 1008. Knowing Conversion Without Authority

up

1010. Knowledge >

Updated January 21, 2020

1 Mr. Kelleter has correctly pointed out, in a number of these  
2 cases under this statute, the sentences have not been very  
3 long. I think Mr. Samuels pointed out that Congress passed  
4 this statute to deal with theft, fraud, bribery, and other  
5 matters dealing with federal funds, but as we look at this,  
6 there's no theft that went into your pocket.

7 Now, I think he referred to what went to People  
8 Express, but I think we have to look at that in context.  
9 There's no bribery involved here. The Court doesn't consider  
10 it fraud that you committed. It's the misapplication of

17 so this is noted that it's seen and objected to, assuming  
18 that Your Honor denies my motion for the zero, but otherwise,  
19 this is the proposed order.

20 THE COURT: All right. You may pass it up.

21 One thing I didn't clearly say, the one thing that  
22 has been bothering this Court from day one is the motive for  
23 this offense, and the Court does not find that this criminal  
24 conduct and misapplication of funds was motivated by any  
25 personal greed or desire to benefit.

# Defense Evidence For Counts #1, 6, 7, 9, 11 - SEFs

**3.1.1.1 State Entitlement Funds** From the CAF, state entitlement funds are allocated annually to sponsors of airports that have scheduled air carrier service in accordance with *Code of Virginia* §58.1-638.A3. This allocation is based on each airport's enplanements as a percentage of all air carrier airport enplanements within the state during the previous calendar year. Initial calculations will be made using the draft annual enplanement data published in FAA's Passenger Boarding and Air Cargo Data, which is extracted from the Air Carrier Activity Information System provided by the Research and Innovative Technology Administration of the Bureau of Transportation Statistics. The percentages will be revised when the final annual enplanement data is published. *Code of Virginia* §58.1-638.A3a specifies that no air carrier airport shall receive less than \$50,000 or more than \$2 million per fiscal year in state entitlement funds.

When an air carrier airport sponsor has unobligated state entitlement funds at the end of a fiscal year, the unobligated funds are added to the balance of state entitlement funds awarded to the sponsor for the following fiscal year.

Sponsors eligible for state entitlement funds must submit a *Commonwealth Airport Fund Entitlement Utilization Report* for VAB approval each year in order to qualify for state discretionary funding. These reports provide an annual accounting of the previous fiscal year's state entitlement fund expenditures. Utilization reports shall be filed within 30 calendar days

DOAV Airport Program Manual

3-1

effective November 2013

## 3.0 Funding for Airport Projects

after the close of the fiscal year. The DOAV form must be used for reporting by sponsors. Reporting submitted on other forms will be returned to sponsors.

DOAV reviews the reports and makes recommendations to the VAB. Following VAB action on the reports, DOAV will notify sponsors of the VAB's decisions regarding the utilization reports. **If a sponsor does not submit an entitlement utilization report and subsequently requests state discretionary funds, all prior unreported expenditures will be assumed to be outside of normal project expenditures and treated as described in 3.1.1.3.2 Projects Outside of Normal Expenditures.**

## Virginia State Entitlements (SEF) & Entitlement Utilization Report (EUR)

Note the beginning of the highlighted text **"If a sponsor does not submit an entitlement utilization report..."**.

EURs are NOT required to be submitted each year unless you are requesting discretionary funds. Technically, if an airport had no intention of requesting discretionary funds, the EURs did not have to be submitted (Virginia Inspector General – slide 13).



# Virginia State Entitlements (SEF) & Entitlement Utilization Report (EUR)

## Defense Evidence For Counts #1, 6, 7, 9, 11 - SEFs


**3.1.1.3 Air Carrier Utilization of State Entitlement and Discretionary Funds** It is the expressed intent of the VAB that an air carrier airport sponsor totally obligates its state entitlement funds prior to that sponsor receiving any state discretionary fund allocations. These funds include unexpended state entitlement funds from previous fiscal years, interest earned on state entitlement funds, and passenger facility charges used to reimburse state entitlement fund accounts.

DOAV encourages sponsors to use other available federal, state, and local funding options, such as passenger facility charges, before applying for state discretionary funds. **If a sponsor uses state entitlement funds for a project and later receives reimbursement for the project from passenger facility charges, the sponsor must credit its state entitlement balance with the reimbursement amount. The passenger facility charge reimbursement must be recorded on the annual Entitlement Utilization Report.**

If a sponsor of an air carrier airport needs state discretionary funds to meet capital needs, the sponsor must file a six-year Airport Capital Improvement Plan with DOAV, denoting how the state entitlement and discretionary funds will be used.

**The sponsor determines the expenditure of state entitlement funds; however, it is the VAB's intent that these funds be used as the state's share of costs for eligible federally funded projects. As the VAB approves state entitlement utilization reports each fiscal year, the VAB's actions regarding the expenditure and commitment of an airport's state entitlement funds will be used by DOAV as a basis for recommendations to approve or disapprove allocations of state discretionary funds for eligible projects.**

PFCs are allowed to be converted to SEFs. Once the PFCs are converted to SEFs, they are **NOT** PFCs. However, Assistant U.S. Attorney Brian Samuels thinks they are PFCs despite the FAA and the DOAV opining that they are **NOT**.



## Defense Evidence For Counts #1, 6, 7, 9, 11 - SEFs

3.1.1.3.2 **Projects Outside of Normal Expenditures** Certain projects not listed or generally described in this manual have been determined to be outside of normal project expenditures. If the sponsor of an air carrier airport uses state entitlement funds for such a project, the state's share of the project cost will be counted against new requests for state discretionary funding. DOAV will maintain an accounting of project activity outside of normal project expenditures. When a sponsor for an air carrier airport requests state discretionary spending, the balance in the accounting will be deducted from the state's share of the requested project. Projects will be retained in the accounting until they are deducted from a state discretionary project request or they have been on record for six fiscal years, at which time the projects will be removed from the accounting.

DOAV Airport Program Manual

3-3

effective November 2013

### 3.0 Funding for Airport Projects

Projects that are considered outside of normal project expenditures include, but are not limited to:

- aviation promotion projects
- air service development projects
- landside passenger shuttles
- recurring operational costs
- airport personnel salaries and benefits

3.1.1.3.2 clearly outline the penalty for using SEFs "Outside Normal Expenditures".

The penalty is **NOT** being criminally charged and convicted under 18USC 666 (a)(1)(A) or for misapplication and money laundering.

The section even shows that "air service development projects" fall under the section's guidance.

# Survey of Virginia Airports and EUR Submissions

(Source: 2-13-17 Email from an Airport Employee)

AIRPORT	EUR 2016	EUR 2015	EUR 2014	EUR 2013	EUR 2012	EUR 2011	EUR 2010	EUR 2009
PHF	10/13/2016	10/13/2016	7/28/2014	4/28/2014**	4/28/2014**	no date	no date	10/15/2009
IAD	9/9/2016	7/16/2015	7/17/2014	7/23/2013	7/10/2012	7/13/2011*	7/8/2010*	8/12/2009*
SHY	9/23/2016	7/29/2015	7/15/2014	7/25/2013	8/27/2012	8/9/2011	8/6/2010	8/12/2009
LYH	9/23/2016	9/11/2015	9/10/2014	9/12/2013	7/11/2012	7/13/2011	7/15/2010	10/15/2009
ORF	9/30/2016	no date	7/23/2014	5/9/2014	5/9/2014	11/1/2011	7/27/2010	7/16/2009
RIC	12/16/2016	11/2/2015	7/11/2014	7/19/2013	8/2/2012	7/28/2011	7/27/2010	7/15/2009
ROA	draft	11/5/2015	11/3/2014	4/28/2014**	8/10/2012	7/15/2011	7/16/2010	7/17/2009
CHO	none	none	10/1/2014	5/9/2014	8/6/2012	7/19/2011	7/8/2010	7/14/2009

Every airport has been late on submissions of EURs

51% of the submissions over the last 8 years were LATE

PHF not the only airport to submit an EUR in another FY year (ORF and CHO)

\*IAD did not report interest for funds carried over

\*\*revised 4/28/14 (counted as late but may have been originally submitted on time but not approved)

***As noted in the above chart, it was not uncommon to submit the EUR late or even not at all (ORF and CHO).***

Swain, J. Michael (DOAV)  
Thu, 11 May 2017 15:02:35 -0400  
To: Parks, Earl (VDOT)  
Cc: Kelly, David R. (VDOT)  
Re: \$1.280 M State Entitlement Swap

Earl,

The short answer is "No".

Due to DOAV's limited control over the use of state entitlement funding the Virginia Aviation Board technically approves only entitlement fund "expenditures" and only after a project is indicated as Completed under Section III of the Entitlement Utilization Report. The Board does not pre-approve entitlement funding for planned projects.

So there was no Concourse B project coordination with DOAV and we had no idea of the funding breakdown. DOAV's review and VAB approval of the use of state entitlement funds is currently restricted to project eligibility and state funding percentage after project completion.

Mike

Sent from my iPhone

On May 11, 2017, at 2:04 PM, Parks, Earl (VDOT) <[Earl.Parks@vdot.virginia.gov](mailto:Earl.Parks@vdot.virginia.gov)> wrote:

Mike,

I believe we have discussed this briefly earlier but, the PAC when setting up initial funding of their Guaranty Accounts did not have enough State Entitlement funding. They transferred other PAC funds totaling \$1,280,000 into the Concourse B project as a PAC contribution and then transferred out \$1,280,000 of State Entitlement funds which were then used as part of the loan guaranty. The PAC records for the Concourse B project reflect the \$1,280,000 transfer and the FY15 Entitlement Utilization Report properly reflects the \$1,280,000 transfer in the Air Service Development and Concourse B Renovations reported state funds expended.

Accordingly, the transfer appears questionable but I am not seeing where they have actually violated any policies and procedures I am aware of. Would the substitution of \$1,280,000 in PAC funds for \$1,280,000 in State Entitlement and then subsequent transfer of the \$1,280,000 to the loan guaranty violate any type of DOAV policy?

Thanks,

Earl Parks  
VDOT Assurance and Compliance Office

## Defense Evidence For Counts #1, 6, 7, 9, 11 - SEFs

Both the DOAV and VDOT audit team acknowledge that the SEF transfer of \$1,280,000 did **NOT** violate any law or policy **(The short answer is "no")**.

# Defense Evidence For Counts #1, 6, 7, 9, 11 - SEFs



## Virginia Aviation Board Meeting Minutes

The Virginia Aviation Board (VAB) held a meeting on Wednesday, April 10, 2013, at the Kirkely Hotel and Conference Center, 2900 Candler Mountain Road, Lynchburg, Virginia, 24502. The meeting was broadcast through video streaming, and the video is available through the website for the Virginia Department of Aviation (DOAV), [www.doav.virginia.gov](http://www.doav.virginia.gov).

### MEMBERS

John V. Mazza, Jr., Chairman	Present
Robert S. Dix, Region 1	Present
Robert H. Hahn, Jr., Region 2	Absent
Alex N. Vogel, Region 3	Absent
Thomas E. Inman, Region 4	Present
David L. Young, Region 5	Present
Richard C. Franklin, Jr., Region 6	Present
Cheryl P. McLeskey, Region 7	Present

### OTHER ATTENDEES

Lori L. Pound Office of the Attorney General

DOAV staff, state government representatives, city representatives, and other interested parties were also present.

1. Call to Order John V. Mazza, Jr.  
Chairman

The chairman called the meeting to order at 11:00 a.m.

2. Agenda approval John V. Mazza, Jr.  
Chairman

The agenda was approved with no changes.

3. Consultation with Counsel (If needed) John V. Mazza, Jr.  
Chairman

Mr. Mazza announced that consultation with counsel was not needed; therefore, the meeting would continue.

4. Lynchburg Regional Airport Presentation Mark F. Courtney  
LYH, Airport Director

Mark Courtney thanked the board for meeting to consider the issue facing the Lynchburg Regional Airport and the request to use state entitlement funds to operate the tower without the future loss of state discretionary funding.

Mr. Courtney opened his presentation with remarks on the unprecedented situation created by FAA's closure of contract air traffic control towers and concerns on the related loss of efficiency. He stressed the need for temporary compensation until a permanent federal funding solution is found. Mr. Courtney provided background information on the airport, noting that the airport serves an MSA population of 255,000 with US Airways Express operating 12 departures and arrivals daily. He shared results from 2012 passenger and

international business travel surveys and provided information comparing the Lynchburg Regional Airport with other airports in the contract tower program and neighboring airports in Virginia. Mr. Courtney outlined the airport's request to utilize the airport's state entitlement funds for tower operations without the three-year penalty. The request includes proposed conditions that the utilization of airport's entitlement funds would be on an emergency, temporary basis for a period of up to one year, the use of the airport's entitlement funds would cease upon the restoration of federal funding, and the airport's state entitlement funds would be utilized at the 80/20 percentage split according to the standard formula for entitlement only projects. It was noted that the airport had an available state entitlement fund balance of over \$600,000 and the estimated cost to operate the tower would be \$40,000 per month. Mr. Courtney shared information on the airport's use of state entitlement and discretionary since 1998, with discretionary funds only being sought three of those years, and the capital improvement plan for Fiscal Years 2014 to 2018. He highlighted major concerns over the tower closure, including the loss of efficiency; impacts on neighboring airports; loss of jobs, operating revenues, capital funds and Part 139 certification if the existing airline service was lost; and challenges to recruiting a second airline and attracting niche services. It was noted that the Virginia Airport System Economic Impact Study reported that the Lynchburg Regional Airport contributed \$101 million in annual economic activity to the area and the tower supports the airport's ability to offer a diverse array of aeronautical services.

### 6. VAB Action

John V. Mazza, Jr.,  
Chairman

Mr. Inman made a motion that the board not deviate from the policy stated in section 3.1.1.3.2 Projects Outside of Normal Expenditures of the *Airport Program Manual*. Mr. Dix seconded the motion. Several points of discussion followed.

Mr. Franklin asked for clarification that the request was for a one time waiver of this airport only and the process for applying the penalty according to policy. Mr. Courtney confirmed this was a one-time request for the Lynchburg Regional Airport. Mr. Swain, DOAV, explained that the three-year period begins at the end of the fiscal year in which state entitlement funds were spent on projects not matching program eligibility. The total of such entitlement funds spent by an airport and reported on the annual Entitlement Utilization Report are counted against any requests for state discretionary funds made by the airport for three years or until the amount is recovered, whichever happens first.

Before the vote was taken, Mr. Young made a request to abstain due to his roll with Liberty University's aviation program and Freedom Aviation.

At the request of the chair, Ms. Pound restated the motion that the board not grant an exemption to the Lynchburg Regional Airport from the policy stated in section 3.1.1.3.2 of the *Airport Program Manual* regarding projects outside of normal expenditures. Specifically, the use of state entitlement funds for projects other than those listed or generally described in the *Manual*, to include funding tower operations, will result in the state's share of the project cost being counted against any new requests for state discretionary funding by Lynchburg Regional Airport for a period of three fiscal years. The board unanimously approved the motion; Mr. Young abstained from the vote.

Lynchburg Airport requested to have the penalty of 3-yr (it was 3-yr during this time) waived. The intent was to use SEFs for an initiative that would have resulted in being penalized under Section 3.1.1.3.2.

This was not permitted as evidence for the jury to see and use for its deliberations.

## Defense Evidence For Counts #1, 6, 7, 9, 11 - SEFs

### Mike Swain (DOAV) Testimony

13 Q. Basically, the two basic categories you're dealing with,  
14 it's either eligible, or it's ineligible, right?

15 A. Yes, sir.

16 Q. There's no third category or special ineligible or  
17 anything like that, right?

18 A. No.

19 Q. So there are consequences if it's eligible, right, and  
20 there are consequences if it's ineligible, right?

21 A. Yes, sir.

22 Q. And again, there's no third category there. It's just  
23 one or the other, correct?

24 A. Yes.

25 Q. Correct?

1 A. That is correct. At that point in time, yes.

2 Eligibility changes over policy changes and whatnot, but at  
3 any point in time, it's either eligible or not eligible.

4 Q. Right. But if something is eligible or is not  
5 ineligible, there's one set of rules for eligible, and one  
6 set for ineligible, right?

7 A. Yes.

8 Q. The law -- or the policy that you're following doesn't  
9 change if it's ineligible but also unpopular or something  
10 like that?

11 A. Correct.

12 Q. It's the same -- right.

13 A. Right.

**There had NEVER been any other actions taken by the DOAV regarding the use of SEFs for “Projects Outside Normal Expenditures”. The DOAV program was solely based on the use of SEFs for “eligible” projects and “ineligible” projects. If the SEFs were used for “ineligible” projects, then they were considered as “Projects Outside Normal Expenditures” and a 6-year discretionary funding penalty would be applied to the airport.**

# Defense Evidence For Counts #1, 6, 7, 9, 11 - SEFs

## Mike Swain (DOAV) Testimony

**From:** [Melissa Cheaney](#)  
**To:** [Swain, J. Michael \(DOAV\)](#)  
**Cc:** [Harrington, Rusty N. \(DOAV\)](#); [Burnette, Cliff \(DOAV\)](#)  
**Subject:** RE: Consolidated Security Checkpoint Project  
**Date:** Friday, December 18, 2015 12:36:43 PM

Understood.

Hope you have a Merry Christmas!

Very respectfully,

-Missy

---

**From:** Swain, J. Michael (DOAV) [mailto:Michael.Swain@doav.virginia.gov]  
**Sent:** Thursday, December 17, 2015 3:40 PM  
**To:** Melissa Cheaney <MCheaney@flyphf.com>  
**Cc:** Harrington, Rusty N. (DOAV) <Rusty.Harrington@doav.virginia.gov>; Burnette, Cliff (DOAV) <Cliff.Burnette@doav.virginia.gov>  
**Subject:** Consolidated Security Checkpoint Project

Hi Missy,

FAA has mentioned that PHF intends to proceed with the CSC project and that there appears to be an indication of state funding for some of the ineligible space. As well the information below gleaned from the PHF website appears to indicate the proposed use of state funds in the amount of \$766,905 for "ineligible" space.

I just want to remind you that if it is determined that state entitlement funds are / were used for ineligible projects, or portions of projects, then that amount will have to be charged against any state discretionary funding request during a period of six years after the questionable funds are reported on an annual Entitlement Utilization Report.

Mike

**J. Michael (Mike) Swain, P.E.**  
Manager, Engineering Section  
Airport Services Division  
VIRGINIA DEPARTMENT OF AVIATION  
5702 GULFSTREAM RD, RICHMOND, VA 23250-2422  
P. 804.236.3640 M. 804.971.1853 | [WWW.DOAV.VIRGINIA.GOV](http://WWW.DOAV.VIRGINIA.GOV)

1 Q. And if you look at the highlighted part, he says that you  
2 just wanted -- you wanted to remind her that if it is  
3 determined that State Entitlement Funds are or were used for  
4 ineligible projects or portions of projects, then that amount  
5 will have to be charged against state discretionary funding  
6 requests during a period of six years after the questionable  
7 funds are reported on an annual EUR, correct?

8 A. Yes, that was the penalty.

9 Q. So that was the consequence that you told her would  
10 happen if the amount turned out to be ineligible, correct?

11 A. Yes.

12 Q. You didn't put in there "and we're going to bring it to  
13 the attention of the Secretary of Transportation," correct?

14 A. I did not.

15 Q. Okay. But as you've made clear, legally the consequences  
16 for either of these is the same; they're both ineligible,  
17 correct?

18 A. Legally --

19 Q. Well, take out the word "legally." You just testified  
20 that it's the same standard applied, that they're all  
21 ineligible, correct?

22 A. Correct.

## Defense Evidence For Counts #1, 6, 7, 9, 11 - SEFs

From: Swain, J. Michael [<mailto:Michael.Swain@doav.virginia.gov>]  
Sent: Thursday, August 03, 2006 10:50 AM  
To: PHF-Jim Smith (E-mail)  
Cc: PHF-Mark Falin (E-mail); Burnette, P. Cliff; Harrington, Rusty N.  
Subject: PHF-FY2007 ACIP

Jim,

Please be advised that DOAV's Airport Information Management System (AIMS) has produced a funding priority schedule that differs from the ACIP priority request that you submitted. As you are aware, the Virginia Aviation Board requires that state entitlement funds be applied toward highest priority projects.

The attached document indicates DOAV rating of your ACIP funding request and our proposed recommendation to the VAB.

On another note, DOAV has yet to receive the PHF Entitlement Utilization Report for FY2005. We cannot recommend any project funding to the VAB until we review the report.

Please e-mail or call if you should have any questions or comments.

Mike

Multiple examples to show that these issues had been discussed as far back as 2006. The DOAV and the State as well as the Federal Government **NEVER** saw the actions taken by airports in Virginia to be criminal.

**From:** [Swain, J. Michael](#)  
**To:** [Burnette, P. Cliff](#); [Burdette, Randall P.](#)  
**Subject:** FW: FY2006 Entitlement Utilization Report  
**Date:** Monday, October 02, 2006 3:53:36 PM

[Cliff/Randy](#),

FYI ... PHF's counsel, Herb Kelly, called to inquire as to DOAV's "right" to require explanations of state entitlement funded projects. We discussed the fact that the VAB requires entitlement utilization reports (EUR) of commercial service airports on the pretense that those airports may someday request state discretionary funds. I informed him that I had no further information to provide as I simply coordinate the review of EUR's and he may wish to take up the issue with "upper" management.

He implied that several of the commercial service airports may be looking to change this requirement but he did not elaborate as to how they may do that.

**From:** [Swain, J. Michael](#)  
**To:** ["PHF-Pat Vanderschelden \(E-mail\)"](#)  
**Cc:** [Burnette, P. Cliff](#)  
**Subject:** FY2006 Entitlement Utilization Report  
**Date:** Thursday, August 10, 2006 9:35:04 AM

Hi Pat,

DOAV has reviewed PHF's FY2006 Entitlement Utilization Report and has the following comments:

Under Completed Projects -

- 1) Parking Lot Shuttles are not eligible under VAB policy. Only vehicles use to transport passengers between or within terminal facilities are eligible for state funding.
- 2) New terminal building public-use furniture is eligible at 100 percent while replacement terminal building public-use furniture is eligible at 50 percent - is the furniture indicated new or replacement?
- 3) Passenger Loading Bridges are eligible at 100 percent.

While the VAB will only be approving completed projects, I want to comment on the incomplete projects to help avoid discrepancies in the future:

Under Incomplete Projects -

- 1) G.A. Road Overlay & G.A. Road - what is the difference in these two projects?
- 2) Terminal Concourse B (Design) - indicates \$116,036.65 at 80 percent while the FY2007 ACIP indicates \$500,000 at 80 percent
- 3) Terminal Concourse B (Construction) - indicates \$165,000 at 5 percent while the FY2007 ACIP indicates \$150,000 at 5 percent
- 4) No entry for Terminal Baggage Claim while the FY2007 ACIP indicates \$620,000 in state entitlements
- 5) Fuel Farm Expansion - PHF has reached the maximum \$125,000 in state funds allowed for fueling systems

Also, do you have any correspondence from DOAV stating that PHF's state entitlements could be used to retire 100 percent of your bond debt on the South Corporate Apron project?

Thanks.

Mike



OFFICE OF THE STATE INSPECTOR GENERAL

Virginia Department of Aviation  
Peninsula Airport Commission Oversight

May 22, 2017



Michael C. Westfall, CPA  
Acting State Inspector General  
Report No. 2017-PR-011

This audit was not allowed to be entered into evidence during the trial

As known by all Virginia Airports, EURs were **NOT** required if discretionary money was not being requested.

2017-PR-011-DOAV  
OFFICE OF THE STATE INSPECTOR GENERAL

development project. PAC had already guaranteed the loan at the time the FY14 Entitlement Utilization Report was issued.

Per the Director of Airport Services, airport sponsors often complete projects that were not originally planned due to unforeseen operational and maintenance requirements, federal, state and local requirements and funds.

DOAV does not have a process in place to ensure the proper use of state entitlement funds provided to airport sponsors in accordance with Code of Virginia § 5.1-2.16. The only oversight DOAV currently has for state entitlement funds are the annual Entitlement Utilization Reports, which airport sponsors are not required to submit. Per the Director of Airport Services, since July 2013, DOAV has sent letters to each airport sponsor notifying them of the July 15<sup>th</sup> and September 15<sup>th</sup> Entitlement Utilization Report submission requirements. When DOAV obtains Entitlement Utilization Reports from the airport sponsors, the information in those reports is not fully utilized as follows:

- DOAV does not monitor, review and track ongoing/future projects.
- DOAV does not require repayment by airport sponsors for improper use of entitlement funds when identified, due to lack of authority.

An Act to amend and reenact § 5.1-2.16 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 5.1-2.2:2 and 5.1-2.2:3, relating to Virginia Aviation Board; commercial air service plan and use of funds.

[S 1417]

Approved March 24, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 5.1-2.16 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 5.1-2.2:2 and 5.1-2.2:3 as follows:

§ 5.1-2.2:2. Commercial air service plan.

A. The Board shall develop and review every five years a commercial air service plan for commercial air service airports within the Commonwealth. In developing and reviewing such plan, the Board shall (i) analyze trends in commercial air service generally, (ii) analyze the current and projected future demographic and economic trends related to air travel needs in the Commonwealth, (iii) solicit input from other appropriate stakeholders, (iv) consider any other factors determined to be appropriate by the Board, and (v) establish reasonable goals for commercial air service based on clauses (i) through (iv).

B. In developing the plan pursuant to subsection A, the Board shall coordinate with each commercial air service airport.

C. Prior to the allocation of funds pursuant to subdivision A 3 of § 58.1-638, the Board shall ensure that any requested funds are not inconsistent with the Board's commercial air service plan and that no commercial service airport is penalized for not meeting goals set forth in such commercial air service plan.

§ 5.1-2.2:3. Transparency and accountability in the use of Commonwealth Airport Fund revenues.

A. By November 1 of each year, the Board shall report to the Governor and the General Assembly on the use of Commercial Airport Fund revenues the previous fiscal year. The report shall include at a minimum the following:

1. The use of entitlement funds allocated pursuant to subdivision A 3 a of § 58.1-638 by each air carrier airport, including the amount of funds that are unobligated;

2. The award and use of discretionary funds allocated for air carrier and reliever airports pursuant to subdivision A 3 b of § 58.1-638 by every such airport; and

3. The award and use of discretionary funds allocated for general aviation airports pursuant to subdivision A 3 c of § 58.1-638 by every such airport.

Such report shall also include the status of ongoing projects funded in whole or in part by the Commonwealth Airport Fund pursuant to subdivision A 3 of § 58.1-638.

B. Each year prior to the release of entitlement funds allocated pursuant to subdivision A 3 a of § 58.1-638, each air carrier airport shall submit a plan that outlines the planned use of such funds for the upcoming fiscal year to the Board for review and approval. The Board shall approve such plan provided that the use of funds is in accordance with Board policies. An airport may modify its plan during a fiscal year by submitting a revised plan to the Board for review.

C. The Board shall have the right to withhold entitlement funds allocated pursuant to subdivision A 3 a of § 58.1-638 in the event that the entitlement utilization plan is not approved by the Board or the airport uses the funds in a manner that is inconsistent with the approved plan.

§ 5.1-2.16. Grants or loans of public or private funds.

The Board is authorized to accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and expended by the Board upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the Board upon such terms and conditions as are prescribed by the Commonwealth. State moneys allocated pursuant to subdivision A 3 of § 58.1-638 shall not be used for (i) operating costs unless otherwise approved by the Board or (ii) purposes related to supporting the operation of an airline, either directly or indirectly, through grants, credit enhancements, or other related means.

In considering or evaluating the application for or award of any grant of moneys under this section, the Board shall take into account the capacities of all airports within the affected geographic region.

## Defense Evidence For Counts #1, 6, 7, 9, 11 - SEFs

### Virginia Legislative Action SB1417 Creating Law to Distribute and Prohibit Uses of State Entitlement Funds (SEFs)

- Virginia Secretary of Transportation Aubrey Layne outlines in his **January 27, 2017** letter the importance of passing SB1417. Signed into law on **March 24, 2017**.
- Law changes disbursement of SEFs
- Law prohibits uses of SEFs

## Mike Swain (DOAV) Testimony

13 A. There's a process that's unique to Virginia where if a  
14 commercial service airport receives passenger facility  
15 charges, which is typically an up to \$4.50 ticket tax that  
16 they're allowed to charge for enplaned passengers leaving the  
17 airport, they keep those funds as local funds.

18 And the FAA allows that if these airports in  
19 Virginia spend state entitlements on a project and the  
20 project was under an approved passenger facility charge  
21 application that the FAA approved, they could then reimburse  
22 the State Entitlement Funds with PFCs as they roll in, as  
23 that revenue comes in.

24 If they do that, they are then required to take  
25 those PFC funds that they were reimbursed from the State

1 Entitlement Funds and show on this report, in essence,  
2 they're converting the PFCs to state entitlements to be used  
3 over again.

PFCs were NOT USED!

## Defense Evidence For Counts #5, 8, 10 - PFCs

**3.1.1.3 Air Carrier Utilization of State Entitlement and Discretionary Funds** It is the expressed intent of the VAB that an air carrier airport sponsor totally obligates its state entitlement funds prior to that sponsor receiving any state discretionary fund allocations. These funds include unexpended state entitlement funds from previous fiscal years, interest earned on state entitlement funds, and passenger facility charges used to reimburse state entitlement fund accounts.

DOAV encourages sponsors to use other available federal, state, and local funding options, such as passenger facility charges, before applying for state discretionary funds. If a sponsor uses state entitlement funds for a project and later receives reimbursement for the project from passenger facility charges, the sponsor must credit its state entitlement balance with the reimbursement amount. The passenger facility charge reimbursement must be recorded on the annual Entitlement Utilization Report.

If a sponsor of an air carrier airport needs state discretionary funds to meet capital needs, the sponsor must file a six-year Airport Capital Improvement Plan with DOAV, denoting how the state entitlement and discretionary funds will be used.

The sponsor determines the expenditure of state entitlement funds; however, it is the VAB's intent that these funds be used as the state's share of costs for eligible federally funded projects. As the VAB approves state entitlement utilization reports each fiscal year, the VAB's actions regarding the expenditure and commitment of an airport's state entitlement funds will be used by DOAV as a basis for recommendations to approve or disapprove allocations of state discretionary funds for eligible projects.

When a Sponsor uses PFCs to reimburse to SEFs, that means the Sponsor has now converted the PFCs to SEFs. If the Sponsor uses those SEFs on another project, the SEFs are ***NOT PFCs per section 3.1.1.3 of the DOAV Program Manual***

**Virginia is the ONLY State in the United States permitted to do this – Per DOAV & FAA**

**COMMONWEALTH AIRPORT FUND  
ENTITLEMENT UTILIZATION REPORT  
JULY 1, 2014 - JUNE 30, 2015**

**Newport News-Williamsburg International**

AIRPORT NAME

**I. ENTITLEMENT FUNDS AVAILABLE FOR EXPENDITURE AND COMMITMENT:**

Unexpended entitlement funds available from the prior year	\$	1,461,034.42	
Entitlement funds received in FY2015	\$	1,512,856.70	
Interest earned in FY2015	\$	5,370.23	
<b>Subtotal Entitlement Resources Available</b>	\$	2,979,261.35	A

**II. PASSENGER FACILITY CHARGE (PFC) FUNDS USED TO REIMBURSE ENTITLEMENT FUNDS IN STATE FY2015**

Scope of Work	AIP Project No.	AIP Reimbursed (\$)	State Percentage (%)	State PFC's Collected (\$)
Runway 7/25 Rehab				13,000.00
<b>Subtotal PFC's Collected for Projects</b>				\$ 13,000.00
<b>Total Funds Available</b>				(A+B) \$ 2,992,261.35

**III. EXPENDITURES FOR COMPLETED PROJECTS IN FY2015**

Scope of Work	AIP Project No.	AIP Reimbursed (\$)	State Percentage (%)	State Funds Expended (\$)
Bond Debt South Corporate			100	170,296.56
Rules & Regulations			80	5,572.88
SWPP, SPCC, ODC			80	998.08
Federal Inspection Station			65	113,782.85
Concourse B Renovations			80	185,686.70
Taxiway A, B, C Rehab Construction	3-51-0035-046		4.7	196,657.89
MB3 Snow Broom			80	407,540.00
Air Service Development			80	3,621,099.25
Concourse B Renovations				-1,280,000.00
<b>Subtotal Expenditures for Completed Projects</b>				\$ 3,421,634.21
<b>Unexpended Funds Available for Commitment</b>				C-D \$ (429,372.86)

DOAV EUR  
**Clearly** shows PFC  
reimbursements as SEFs

**Once this is done, the  
SEFs are NOT PFCs.**

# Defense Evidence For Counts #5, 8, 10 - PFCs

Swain, J. Michael (DOAV)

Wed, 3 May 2017 13:51:43 -0400

To: Parks, Earl (VDOT)

RE: PHF FY2015 & FY2016 Entitlement Utilization Reports

Attachments: [100 DOAVAS 20160829 PHF Entitlement Utilization Report Letter FY2016.pdf](#) (84.1 KB), [300 DOAVAS 20160829 PHF EUR Blank FY2016.xlsx](#) (16.2 KB),

[100 DOAVAS 20160829 Entitlement Utilization Report Instructions FY2016.pdf](#) (87.2 KB), [300 DOAVAS 20160829 EUR Example FY2016.pdf](#) (15.6 KB)

Earl,

Per section 3.1.1.3 of the DOAV Airport Program Manual (this is Virginia Aviation Board policy) found at -

[http://www.doav.virginia.gov/Downloads/Airport\\_Grant\\_Program/Airport%20Program%20Manual/2016%20Airport%20Program%20Manual/500%20DOAVAS%2020160819%202016%20Airp](http://www.doav.virginia.gov/Downloads/Airport_Grant_Program/Airport%20Program%20Manual/2016%20Airport%20Program%20Manual/500%20DOAVAS%2020160819%202016%20Airp)

**3.1.1.3 Air Carrier Utilization of State Entitlement and Discretionary Funds** It is the expressed intent of the VAB that an air carrier airport sponsor totally obligates its state entitlement funds prior to that sponsor receiving any state discretionary fund allocations. These funds include unexpended state entitlement funds from previous fiscal years, interest earned on state entitlement funds, and passenger facility charges used to reimburse state entitlement fund accounts.

Per annual correspondence requesting Entitlement Utilization Reports to commercial service airports (see attachments; stated in Instructions document).

Once an airport sponsor indicates PFC's reimbursing state entitlement funds on the annual Entitlement Utilization Report they indicate a total of state entitlement funds which include those PFC's in the form of state entitlement funds.

However, there is no state law or regulation to back this up.

Mike

---

**From:** Parks, Earl (VDOT)

**Sent:** Wednesday, May 03, 2017 1:18 PM

**To:** Swain, J. Michael (DOAV)

**Subject:** RE: PHF FY2015 & FY2016 Entitlement Utilization Reports

Mike,

As discussed earlier, there seems to be an issue with PFCs being used to reimburse State Entitlement expenditures. While it appears to be common sense, is there a specific policy you can provide that spells out the process of applying PFCs to previously incurred State Entitlement expenditures? Specifically, that the reimbursement is still State Entitlement funds?

Again, it appears to be common sense but all I currently have is the Entitlement Utilization Report category which requires the listing of these type transactions. Also, you said you had discussed this verbally with Missy. Do you have any e-mails where this was discussed as well you can provide?

Thanks for all your assistance to date,

Earl Parks

VDOT Assurance and Compliance Office

Both the DOAV and VDOT audit team acknowledge that the conversion of PFCs to SEFs are allowable based on the DOAV policy.

Converting PFCs to SEFs did NOT violate any law or policy.

# Independent Legal Opinion and FAA Agreement

**ANDERSON  
KREIGER**

TIMOTHY J. ROSKELLEY  
troskelley@andersonkreiger.com  
T: 617.621.6539  
F: 617.621.6639

February 1, 2018

**BY FEDEX and Electronic Mail**

Kevin C. Willis, Director  
Office of Airport Compliance and Management Analysis  
Federal Aviation Administration  
U.S. Department of Transportation  
800 Independence Ave., SW  
Washington, DC 20591

**RE: Peninsula Airport Commission Response to FAA Letter Dated September 26, 2017**

Dear Mr. Willis,

The Peninsula Airport Commission ("PAC"), the operator of Newport News/Williamsburg International Airport (the "Airport"), has asked us to respond to your letter of September 26, 2017 ("FAA Letter"). The FAA Letter describes six concerns about possible illegal airport revenue diversion arising from the FAA's review of the Special Review Report, Peninsula Airport Commission (PAC), and Report Number 2017-165 dated June 2, 2017, prepared by the Assurance and Compliance Office, Department of Transportation, Commonwealth of Virginia ("VDOT") (the "VDOT Report") and the associated Chronology of Events (the "VDOT Chronology").

This letter responds to those six concerns stemming from (a) payments and expenditures made by PAC related to a line-of-credit guarantee for People Express Airlines, Inc. ("PEX"); (b) the failure of PEX to remit PFCs collected by PEX; and (c) the use of a PAC-issued credit card by PAC's former Executive Director for expenses unrelated to the capital and operating costs of the airport.

- FAA STAFF THOROUGHLY REVIEWED THE LETTER FROM THE PAC'S LAWYERS IN 2018 ADDRESSING REVENUE DIVERSION
- TOOK NO ISSUE WITH IT, INCLUDING THE FINDING THAT **NO PFC'S WERE USED**

*Excerpt from the letter  
to the FAA*

Second, with respect to PFCs, no PFCs were used for any expenses related to the line-of-credit guarantee or any other expense that was not an eligible and approved PFC use. PAC took appropriate steps to recover PFCs from PEX, including reporting to FAA PEX's failure to remit certain PFCs PEX had collected.



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Office of Airport Compliance  
and Management Analysis

800 Independence Ave., SW  
Washington, DC 20591

June 12, 2018

Mr. Timothy J. Roskelley  
Anderson & Kreiger LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, MA 02109

Re: Peninsula Airport Commission's Response to FAA Concerns

Dear Mr. Roskelley:

This letter is in reference to your letter dated February 1, 2018 regarding the concerns the Federal Aviation Administration (FAA) raised in our letter to you on September 26, 2017. The Peninsula Airport Commission ("PAC") is the operator of Newport News/Williamsburg International Airport (the "Airport"). The aforementioned letter described six concerns about possible illegal airport revenue diversion. The FAA has thoroughly reviewed your responses along with the twenty-one (21) exhibits attached. Upon completion of the review, the FAA is satisfied with the steps taken by PAC to address its concerns and correct the issues of revenue diversion with the exception of Exhibit 21.

We have thoroughly reviewed the general release and contribution agreement between PAC and Jones, Blechman, Woltz & Kelly, P.C. (JBWK), an agreement which addressed the line of credit to People Express that was guaranteed by PAC. The agreement stated that as of December 21, 2017, Townebank and JBWK agreed to and shall pay a consideration to the PAC in the amount of \$2,000,000. The consideration was agreed to be in the form of (i) a check for \$1,650,000.00 to be issued by McGuireWoods LLP and (ii) a reduction in interest payments for \$350,000.00 on a taxable bond with account number ending 0989, which was previously issued to PAC by Townebank.

The exhibits submitted does not include any documentation to show that the sum of \$1,650,000.00 has been credited to PAC. For example, the exhibits submitted do not include a copy of a canceled check or wire transfer receipt for the amount. In addition, the \$350,000.00 reduction in interest payments has not been documented. This documentation is necessary to complete our review.

Therefore, within 30 days, please provide this office with a copy of the check or wire transfer receipt, a record of the interest payment reduction, and any other related financial documentation that would supplement these two deficiencies.

We would appreciate your cooperation since we desire to resolve these issues in a timely manner. Do not hesitate to contact me if you have any questions at (202) 267-3085.

Sincerely,

Kevin C. Willis, Director  
Office of Airport Compliance  
and Management Analysis

## Defense Evidence For Counts #5, 8, 10 - PFCs

Letter From  
Previous Slide

### FAA Kevin Willis' Testimony

11 Q. Okay. And just looking at Page 2 of the letter that they  
12 sent to you with their analysis, does this refresh your  
13 memory that they noted that no PFCs were used for any of  
14 these expenses?  
15 A. That's correct.



**NO PFC'S WERE USED**



## Regional Air Service Enhancement Group (RAISE)

### ***Non-airport revenue sources.***

FAA does not allow airport sponsors to use airport revenue subject to the Revenue Use Policy for air carrier subsidies under any circumstances. However, sometimes the sponsor may have separate tax revenue not subject to the Revenue Use Policy that could possibly be used for direct air carrier subsidies. For example, some airport authorities benefit from special tax districts, similar to school tax districts, in which local property owners pay a tax surcharge dedicated to support of the airport. The taxes are based on property location and value, and have no relation to use of the airport. The taxing authority may be either the sponsor or a non-sponsor. Revenue that is derived from such a tax imposed for the benefit of the airport, but on property not owned by the airport, is not considered airport revenue subject to the Revenue Use Policy. Thus, revenues from a property tax for the benefit of the airport could be used for air carrier subsidies. In those cases, the airport sponsor must make this subsidy available to all similarly situated air carriers providing the same level of new service. (Whenever the airport has revenue not subject to the Revenue Use Policy that it intends to use for subsidies, the sponsor must ensure these funds are maintained in a separate account and are not comingled with other airport revenue.)

In addition, under certain circumstances, a local government or community organization (e.g., local chamber of commerce) not affiliated with the airport sponsor may offer a subsidy to one air carrier without making the same offer available to all similarly situated air carriers. In those cases, the sponsor must not be a party to the agreement and must not be involved in negotiating, implementing, or monitoring the program in any manner.

### ***EAS and SCASDP.***

The Air Carrier Incentive Program is NOT related to the Essential Air Service (EAS) or the Small Community Air Service Development Program (SCASDP), both of which are administered by the Office of the Secretary of Transportation. (For more information on these programs, visit [www.dot.gov](http://www.dot.gov))

## Defense Evidence For Count #3 - RAISE

ECONOMIC DEVELOPMENT AUTHORITY  
of the  
CITY of NEWPORT NEWS, VIRGINIA

June 12, 2014

TO: Finance/Treasurer's Office  
FROM: Financial Services Administrator  
SUBJECT: Wire Transfer Instructions  
Air Service Mating Funds for DOT Grant Payment

The Economic Development Authority of the City of Newport News, VA (EDA) along with the Regional Enhancement Committee (RAISE) have approved matching funds in the amount of \$700,650 for a \$950,000 grant to the Peninsula Airport Commission (PAC) from the Federal Department of Transportation (DOT) Small Community Air Service Fund. This payment is in accordance with the motions passed by RAISE and EDA to secure air service by PEOPLExpress, through VisionAir, to Newark and Boston. PAC has requested that a payment be made by wire transfer to the following:

Beneficiary Name: Towne Bank  
Beneficiary Address: 1 Old Oyster Point Road  
Beneficiary City: Newport News, Virginia 23602  
ABA #: 051408949  
Beneficiary Account#: 0243066619  
Re: Peninsula Airport Commission Raise Account  
Advise: Ann Benton Phone: (757) 249-7640

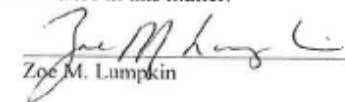
Please prepare a Payment Request Form (w/Wire Transfer Type Payment checked) in the amount of \$700,650.00. This payment is due on Thursday, June 12, 2014. Please complete the wire transfer before 2:00 pm on Thursday, June 12, 2014 and send a copy of the wire confirmation to Zoe Lumpkin.

Please charge the following accounts:

Air Service Fund - Contractual Services	
6450-750-39-3935-530100-000000-0000-00000	\$700,650.00

If you need any further information, please contact Zoe Lumpkin at 926-3802 or Stephanie Hancock at 926-3806. Thank you for your assistance in this matter.

Approved by:

  
Zoe M. Lumpkin

ZML:zml

# Defense Evidence For Count #4 – Revenue Diversion

Initial \$565K was presented to the PAC in detail on 6-27-13

## EXECUTIVE SUMMARY

### Subject:

Small Community Air Service Development Program Grant

### Background:

The DOT has granted the PAC up to \$950,000 to off-set costs for air service and marketing at PHF. In addition to the grant allowance, there is a matching share of \$700,000 that will come from RAISE. With the matching funds, the total amount of the funds available for air service development and marketing is \$1,650,000. The grant expires December 31, 2015.

### Discussion:

Enclosed is the agreement between the PAC and TEM Enterprises (PEOPLEExpress). Mr. Kelly has reviewed this and is in agreement in principle. Upon PAC agreement and verification of the deliverables (TEM obligations), we will grant an initial \$565,000 and the balance at a later date when RAISE has approved the matching funds. After PEOPLEExpress begins service, the eligible costs will be submitted to DOT for reimbursement of up to \$950,000.

### Budget Impact:

Initially, \$565,000, then ultimately \$950,000. Funds shall be reimbursed to PAC by DOT.

Recommendation: Approve Agreement

## PENINSULA AIRPORT COMMISSION

### MINUTES

June 27, 2013

PRESIDED: LaDonna Finch

The regularly scheduled meeting of the Peninsula Airport Commission was held on Thursday, June 27, 2013 at 8:00 a.m. in the Airport Commission Room at the Newport News/Williamsburg International Airport.

#### Commissioners present were:

Herbert H. Bateman, Jr., LaDonna Finch, Aubrey H. Fitzgerald, Steve Mallon, Ed Maroney and George Wallace.

#### Executive Director

Mr. Ken Spirito

#### Assistant Airport Director, Operations and Maintenance

Ms. Melissa Cheaney

#### Assistant Airport Director, Planning and Development

Mr. Ted Kitchens

#### Director, Marketing and Public Relations

Ms. Jessica Wharton

#### Director, Finance and Administration

Ms. Renee Ford

#### Legal Counsel

Mr. Herbert V. Kelly, Jr.  
Ms. Robyn Hansen

#### Executive Assistant

Ms. Rhonda Wissinger

#### Public in Attendance

Jay Talbert, Talbert & Bright  
Van Crosby, USI Insurance  
**Mike Moniz, People Express**

## **APPROVE AGREEMENT WITH TEM ENTERPRISES**

Mr. Spirito requests approval of the Agreement with TEM Enterprises. This agreement is between the PAC and TEM Enterprises (PEOPLEExpress). Mr. Kelly has reviewed this and is in agreement in principle. Upon PAC agreement and verification of the deliverables (TEM obligations), we will grant an initial \$565,000 and the balance at a later date when RAISE has approved the matching funds. After PEOPLEExpress begins service, the eligible costs will be submitted to DOT for reimbursement of up to \$950,000.

This reimbursement will be made by a Small Community Air Service Development Program Grant where the DOT has granted the PAC up to \$950,000 to offset costs for air service and marketing at PHF. In addition to the grant allowance, there is a matching share of \$700,000 that will come from RAISE. With the matching funds, the total amount of the funds available for air service development and marketing is \$1,650,000. The grant expires December 31, 2015.

**RESOLVED**, that the Peninsula Airport Commission approve the Agreement with TEM Enterprises.

Commissioner Ed Maroney made the motion to approve the Agreement with TEM Enterprises and Commissioner Aubrey Fitzgerald seconded the motion.

**Voting yes were:**

**Herbert H. Bateman, Jr., Aubrey Fitzgerald, LaDonna Finch, Steve Mallon, Ed Maroney and George Wallace.**

## Defense Evidence For Count #4 – Revenue Diversion

### Managing “Lawful” Diversion of Revenue

In addition, under certain circumstances, a local government or community organization (e.g., local chamber of commerce) not affiliated with the airport sponsor may offer a subsidy to one air carrier without making the same offer available to all similarly situated air carriers. In those cases, the sponsor must not be a party to the agreement and must not be involved in negotiating, implementing, or monitoring the program in any manner.

#### ***EAS and SCASDP.***

The Air Carrier Incentive Program is **NOT** related to the Essential Air Service (EAS) or the Small Community Air Service Development Program (SCASDP), both of which are administered by the Office of the Secretary of Transportation. *(For more information on these programs, visit [www.dot.gov](http://www.dot.gov))*

The FAA and USDOT via the SCASD grant program allow Airports to lawfully divert revenue. This is permitted because the SCASD grant program is a reimbursable grant.

The FAA defers to the USDOT when managing the diverted revenue.

## Defense Evidence For Count #4 – Revenue Diversion

### FAA Kevin Willis' Testimony

8 Q. Okay. So if funds were used within the SCASDP program,  
9 that's not something that you deal with.

10 A. That's correct.

11 Q. All right. And you're aware that some of the funds in  
12 this case were used under the SCASDP program.

13 A. No, I'm not aware of that.



The FAA did not know that PHF had a SCASD Grant. So, if the FAA would have known, they would have deferred to the USDOT and the use of airport revenue would be classified as “Lawful” Diversion up to \$950,000 of airport revenue. “Lawful” Diversion is permitted by the USDOT SCASD Grant Allowances and pg. 18 of the FAA Airline Incentive Guidance.

# Defense Evidence For Count #4 – Revenue Diversion

## USDOT SCASD Grant

### GRANT AWARD AND AGREEMENT BETWEEN THE U.S. DEPARTMENT OF TRANSPORTATION AND PENINSULA AIRPORT COMMISSION, ACTING FOR THE COMMUNITY OF NEWPORT NEWS, VIRGINIA, UNDER THE SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM

WHEREAS, the Peninsula Airport Commission (hereinafter referred to as the Sponsor), on behalf of the community of Newport News, Virginia, has applied for a Grant under the Small Community Air Service Development Program; now THEREFORE, the U.S. Department of Transportation (DOT), acting for the UNITED STATES, presents this Grant Award and Agreement (Grant Agreement) to the Sponsor for a grant of up to \$950,000 to assist in the Sponsor's efforts to address the air service needs of the community. Unless otherwise defined in this Grant Agreement, capitalized terms shall have the meanings assigned to such terms in Section E hereof.

#### 3. Funding

- a. Total Project Cash Costs: \$1,650,625  
Federal Share: \$950,000 In-Kind Contribution: \$125,000  
Local Share: \$700,625
- b. Payment by DOT shall not exceed \$950,000 for the Grant Project's Total Project Cash Costs, which are costs arising from revenue guarantees and associated marketing programs to (i) recruit, initiate, and support new nonstop air service from PHF to the New York City and/or Boston markets and/or to ORD and/or DFW; and (ii) increase capacity and/or frequencies on existing nonstop service from PHF to CLT.
- c. The community will provide the In-Kind Contributions as described in its Grant Application, or alternative In-Kind Contributions approved by DOT, toward implementation of the Grant Project.
- d. The Sponsor shall pay the costs associated with the Grant Project prior to seeking reimbursement from DOT. If the Sponsor is seeking private contributions to complete the Local Share, the Sponsor is responsible for ensuring that the full Local Share is provided.

Airport revenue  
**MUST** be used

Email with  
agreement sent  
7/7/14

\$565K and \$299K were not  
submitted to USDOT for  
reimbursement because the air  
carrier did not operate and  
ceased operations

Three bank accounts separating  
each of the collateral  
commitments were set up  
based on this requirement

- e. To seek reimbursement from DOT, the Sponsor shall submit documentary evidence of all expenditures associated with the Grant Project set forth in paragraph b. above, and included in the Total Project Cash Costs set forth in paragraph a. above (those to be covered by the local and/or state contribution, as well as those covered by the Federal contribution) on a monthly basis. DOT will reimburse the Sponsor on a monthly basis for 57.55 percent of all valid expenditures submitted (the specific Federal share of Total Project Cash Costs is set forth in Section C.3.a and C.3.b above), subject to paragraph c. above and paragraphs f. and g. below. All reimbursement requests to DOT shall be made in accordance with the provisions of such regulations and procedures as DOT may prescribe and shall include sufficient documentation to justify reimbursement of the Sponsor, including invoices and proof of payment of the invoice.
- f. Payment of the final 10 percent of the Federal funding for the Grant Project will be made after receipt by DOT of the final report set forth in Section C.4 below.
- g. No reimbursement by DOT will be made until the Sponsor has provided DOT with a copy of the revenue guarantee/subsidy/financial incentive agreement, including the cost and revenue bases for the compensation required.
- h. At the sole option of DOT, funding under this Grant Agreement may terminate twelve (12) months after the Execution of this Grant Agreement if the Sponsor is unable to execute an agreement with an Air Carrier to provide the air service described in Section C.2 above, unless otherwise agreed between the Sponsor and DOT.
- i. At the sole option of DOT, funding under this Grant Agreement may terminate within six (6) months after execution of an agreement with an Air Carrier to provide the air service described in Section C.2 above, if the marketing program to support the service has not been developed and implemented, unless otherwise agreed between the Sponsor and the DOT.
- j. At the sole option of DOT, funding under this Grant Agreement may terminate if no air service described in Section C.2 above has commenced within twelve (12) months after the Execution of this Grant Agreement, unless otherwise agreed between the Sponsor and DOT.
- k. If during the term of a revenue guarantee agreement, subsidy agreement, or other financial incentive agreement with the Community, the Air Carrier stops providing the agreed-upon service, DOT will only provide reimbursement to the Grant Recipient for the actual service provided by the Air Carrier under the relevant agreement.
- l. The Sponsor shall ensure that the funds provided by DOT are not misappropriated or misdirected to any other account, need, project, line-item, or the like.
- m. All requests for reimbursement must be made by the Grant Recipient within 60 calendar days after the date of expiration (see Section B.4) of this Grant Agreement.

## Defense Evidence For Count #4

Based on action taken by the PAC on 6/27/13, the initial payment of **\$565,000 was granted** to PEX/TEM. The action was reported to USDOT as required. PEX never got started and therefore did not fly. As per Section 3 (k) of the SCASD Grant Agreement, the \$565,000 **was not** submitted for reimbursement. However, the PAC was able to get the funds back on 6/18/14.

Newport News/Williamsburg International Airport (PHF)  
Small Community Air Service Grant  
Quarterly Report – July 15, 2013

- (i) PHF has entered into a revenue guarantee agreement with TEM Enterprises dba People Express. The agreement between PHF and the airline will guarantee flights between PHF, EWR and BOS. Service dates have not been announced as of yet; but should begin sometime in spring 2014. PHF will not seek reimbursement from DOT until flights have begun.
- (ii) PHF is in the process of hiring a consultant to assist with air service development.
- (iii) In-kind contributions will consist of waived fees for a period of one year. The fee waivers will begin when People Express commences from PHF.
- (iv) No marketing or promotional activities have taken place at this time.
- (v) PHF has executed an agreement with TEM enterprises dba People Express. The agreement allows for a revenue guarantee for flights to/from PHF, EWR and BOS. Flight schedules have not been released or start dates. PHF will not be seeking reimbursement from DOT until the flights begin. All documentation for DOT reimbursement will be provided at that time.
- (vi) No contract negotiations with third parties to implement the grant project have taken place at this time.

### Brooke Chapman (USDOT) Testimony

Q. Okay. So, in fact, it would have violated the terms of your program had they sought reimbursement for the 565,000 if, in fact, they hadn't gotten off the ground at that point, right?

A. Correct.

Q. Okay. So by not submitting reimbursement, they were complying, correct?

A. By not submitting reimbursement?

Q. Well, when they didn't seek reimbursement for 565, that was actually complying with your rules, right? You have to get off the ground before you can seek reimbursement.

A. They can only seek reimbursement for flights actually flown.

# Defense Evidence For Count #4 – Revenue Diversion

**From:** Ken Spirito  
**Sent:** Monday, July 07, 2014 10:03 AM  
**To:** albert.muldoon@dot.gov  
**Cc:** Renee Ford  
**Subject:** PHF Vision Agreement  
**Attachments:** Vision Air Service Agreement.pdf

AJ,

Attached is the air service agreement between the Peninsula Airport Commission (PAC) and Vision Airlines. I have copied Renee Ford (Director of Finance and Administration). Renee will be handling all the reimbursement and grant admin details.

Ken

Ken R. Spirito, A.A.E.  
Executive Director  
Newport News/Williamsburg Int'l Airport  
O) (757) 877-0221x224  
C) (757) 812-5797

July 7, 2014 Email to  
USDOT as Required by the  
USDOT Grant Agreement.

PAC/Vision agreement that  
outlines the loan and the  
intent of the PAC.

## 2. PAC's OBLIGATIONS

- A. **Revenue Guarantee.** PAC has received, and hereby commits to Vision, Nine Hundred Fifty Thousand Dollars (\$950,000.00) through a Small Community Air Service Development grant ("SCASD"), awarded to the PAC by the United States Department of Transportation (U.S. DOT). Additionally, both parties acknowledge that the total payment to Vision for committing to the Flights defined herein is One Million Six Hundred Fifty Thousand Six Hundred Fifty Dollars (\$1,650,650.00). In addition to the SCASD grant, the Regional Air Service Enhancement ("RAISE") committee has agreed to contribute matching funds of Seven Hundred Thousand Six Hundred Fifty Dollars (\$700,650.00). PAC's individual obligation under this agreement only includes (i) the \$950,000.00 from the SCASD grant, which is expressly subject to U.S. DOT's funding of the grant, and (ii) the RAISE funds, to the extent such funds are actually received by PAC.

2

## 3. PAYMENT OF GRANT FUNDS

Vision agrees to reimburse the PAC any unvested funds granted by ("SCASD") program in the event Vision fails to provide the Flights required under this Agreement (subject to the terms and conditions set forth herein including Section 7.G). PAC will pay Vision Six Hundred Fifty Thousand Dollars (\$650,000.00) ("Initial Payment") of the Small Community Air Service Development ("SCASD") funds upon execution of this Agreement. The Initial Payment also is contingent upon PAC's prior receipt of certain funds from People Express Airlines, Inc. in the amount of Five Hundred Sixty-Five Thousand Dollars (\$565,000.00). The Initial Payment will vest and become non-refundable upon Vision's completion of the first Flight to be performed on June 30, 2014. The remaining One Million Dollars (\$1,000,000.00), representing the remainder of the SCASD grant and the RAISE contribution, will be granted to Vision upon commencement of Flights, but will be retained in escrow by PAC until PAC's guaranty under that certain loan (represented by a Letter of Commitment issued to People Express Airlines, Inc. by TowneBank and dated June 6, 2014) (the "Guaranty") is released by TowneBank. Upon PAC's release from the Guaranty, the funds in the escrow account will be released to Vision within five (5) business days, and will vest and become non-refundable upon release. While in escrow and held by PAC, the escrowed funds shall be used for no other purposes.

## Defense Evidence For Count #4 – Revenue Diversion

18 Q. Ms. Chapman, this is the agreement that formed the basis  
19 for their revenue guaranty, correct?

20 A. Correct.

21 Q. Okay. And in this case -- but so the point is, this is  
22 the agreement that you understood to be the revenue guaranty  
23 that formed the basis for the SCASDP grant, correct?

24 A. If memory -- yes, it is. If memory serves me, I didn't  
25 become aware of the full terms of this until reimbursement

12 Q. And that in your program -- things can be labeled revenue  
13 guaranty, but in your program, you don't really make a  
14 distinction between a revenue guaranty and a subsidy, right?

15 A. If they're -- they're one and of the same.

5 Q. Oh, I understand, but the point is they submitted that to  
6 you, and then you ultimately reviewed -- you sought -- you  
7 reviewed it for reimbursement upon this submission, correct?

8 A. Correct.

9 Q. And it was for a revenue guaranty with Vision Airlines,  
10 correct?

11 A. Correct.

### Brooke Chapman (USDOT) Testimony



## Defense Evidence For Count #4 – Revenue Diversion

### Brooke Chapman (USDOT) Testimony

Q. And one reason for that is, again, you can't seek reimbursement if they've stopped flying, correct?

A. There's lots of reasons why grants don't reach the maximum allowable under the federal costing share, but not completing a full project is one of them.

Q. Right. So when People Express ultimately stopped flying in September, they weren't permitted to try to get any more reimbursements past that point, correct?

A. Under that air service, yes.

The \$299,512.56 SCASD amount was paid out against the loan due to no flight activity.

This amount would have been submitted for reimbursement if PEX had operated. Per SCASD Grant Section 3 (k), you cannot seek reimbursement if the airline is not operating.

USDOT through the grant agreement permits airports to divert revenue (lawfully) up to the grant amount. In PHF's case, the maximum allowable was \$950,000.

## Brooke Chapman (USDOT) Testimony

## Defense Evidence For Count #4 – Revenue Diversion

22 A. This is a -- the SCASDP program is a reimbursable grant  
23 program.

24 Q. And as you said, they have to put out their own money  
25 ahead of time?

1 A. Correct.

It is required by the USDOT that the airport must front the money and then seek reimbursement. Therefore, allowing for authorized revenue diversion.

16 Q. And so it's the nature of a reimbursement that sometimes  
17 certain conditions simply won't come to exist that allows  
18 them to get the reimbursement, right?

19 A. There's lots of things. Air carriers not flying is one  
20 of them.

*Next Line in Testimony*

The prosecution had presented to the jury that I purposely did not seek reimbursement to hide the collateral committed as escrow. It was not submitted to the USDOT for reimbursement because it would have violated the terms of the grant agreement. This was fully disclosed to the USDOT as noted in the previous slide.

10 Q. Right. But then if there comes a point, after spending  
11 the money, that the airline ceases to exist, unfortunately,  
12 then there's a certain amount of reimbursement that they  
13 can't get back, correct?

14 A. Once the carrier stops flying, if they're not able to  
15 procure another carrier, then yes.

16 Q. Exactly. So at that point, they may say that they spent  
17 that money within your program, but unfortunately, they  
18 didn't get reimbursed for it, right?

19 THE COURT: I think we've worked this chain of  
20 questions over pretty thoroughly.

The defense needed to explain this in more detail; however, the Judge cut the defense off. This led to the cross exam and the prosecution was given plenty of latitude in the exam.

# Felony Counts #'s 12-17 – Money Laundering

## Email Chain 11/26/14

From: Bourey, James M. [mailto:jbourey@nmsa.gov]  
Sent: Wednesday, November 26, 2014 11:07 AM  
To: Ken Spirito; Kelly Bert V. Jr.  
Cc: Cowan Debbie R.  
Subject: RE: PEX

If they default then we get nothing. This was discussed at length.

From: Ken Spirito [mailto:kspirito@fyphf.com]  
Sent: Wednesday, November 26, 2014 11:05 AM  
To: Kelly Bert V. Jr.; Bourey, James M.  
Cc: Cowan Debbie R.  
Subject: RE: PEX

I cannot feel comfortable paying the loan without a default being issued.

From: Kelly Bert V. Jr. [mailto:bkelly@bvk.com]  
Sent: Wednesday, November 26, 2014 11:04 AM  
To: Bourey, James M.; Ken Spirito  
Cc: Cowan Debbie R.  
Subject: RE: PEX

With this Ken has my approval to pay. Happy Thanksgiving!

From: Bourey, James M. [mailto:jbourey@nmsa.gov]  
Sent: Wednesday, November 26, 2014 11:01 AM  
To: Ken Spirito (kspirito@fyphf.com); Kelly Bert V. Jr.  
Subject: FW: PEX

PEI

From: PEOPLExpress [mailto:ericksonjh@fypex.com]  
Sent: Wednesday, November 26, 2014 10:28 AM  
To: Bourey, James M.  
Subject: Re: PEX

As discussed PEX does not at present have the funds to pay the Towne Bank payment. We have three opportunities for funds short term, from USBank, from Landmarks Insurance company, and from WMJordan. When received we would immediately get current with the bank. The

Sent from my iPhone

On Nov 25, 2014, at 5:42 PM, Bourey, James M. <jbourey@nmsa.gov> wrote:

Jeff:

PAC was notified today by TowneBank that the interest payment due for November is ten days past due. Under the terms of the guaranty, PAC has been asked to make the payment, presumably with

penalties/late charges. Before the request is acted upon, we ask that you confirm the payment is outstanding and PEOPLExpress will not be making this payment.

Thank you, Jim

Read Up From Here

Ken Spirito

From: Ken Spirito  
Sent: Wednesday, November 26, 2014 11:42 AM  
To: Kelly Bert V. Jr.; Bourey, James M.  
Cc: Cowan Debbie R.  
Subject: RE: PEX

Ok. I will have it done on Monday.

Can either you or Jim notify the PAC and let them know what has been done?

Ken

From: Kelly Bert V. Jr. [mailto:bkelly@bvk.com]  
Sent: Wednesday, November 26, 2014 11:32 AM  
To: Bourey, James M.; Ken Spirito  
Cc: Cowan Debbie R.  
Subject: RE: PEX

Not paying the interest payment forces TowneBank to accelerate the principle and demand from Px immediate payment in full, PAC as the backstop guarantor. I share your frustrations but we need to do this. As Executive Director you have authority to pay our obligations. No approval by the Commission is necessary. We can send a demand for reimbursement and declare another default if they fail to cure upon payment.

Bert

From: Bourey, James M. [mailto:jbourey@nmsa.gov]  
Sent: Wednesday, November 26, 2014 11:14 AM  
To: Ken Spirito; Kelly Bert V. Jr.  
Cc: Cowan Debbie R.  
Subject: RE: PEX

I thought that Bert had addressed this issue.

From: Ken Spirito [mailto:kspirito@fyphf.com]  
Sent: Wednesday, November 26, 2014 11:12 AM  
To: Bourey, James M.; Kelly Bert V. Jr.  
Cc: Cowan Debbie R.  
Subject: RE: PEX

I know, but I was never given authority by the board to make P&I payments on the loan. I only have authority to make the collateral payments.

# Felony Counts #'s 12-17 – Money Laundering

## Emails December 1, 2014

### PAC Board Members informed and responded to the interest payment being made

shirleyfitzgerald@cox.net

Mon, 1 Dec 2014 19:41:28 -0500

To: LaDonna Finch, Mayor George Wallace, Vice Mayor, Herbert Bateman, Jr., Kelly Bert V. Jr., CityManager, James Bourey, Vice Mayor Herbert Bateman, Jr., Stephen Mallon  
Cc: Cowan Debbie R., Hansen Robyn H., Ken Spirito  
Re: Peoples Express

Thanks. We have no choice. Aubrey

----- "Kelly Bert V. Jr." wrote:

> Jim and Ken asked that I inform you that Px's interest payment due for November has not been paid and TowneBank has issued a request for payment by the Commission. It continues to accrue daily but is currently in the \$14,000 range. Last Wednesday Jim asked Erickson to confirm the default and the answer was obvious, no money to satisfy their obligation. I have advised Ken to pay this. Otherwise, it would trigger a default and TowneBank would have no option other than to call the entire principal balance due.

>  
> Happy to respond to questions or comments.  
> Bert

**From:** Wallace, George  
**To:** 'Kelly Bert V. Jr.'; Aubrey Fitzgerald; City Manager, James Bourey; LaDonna Finch; Stephen Mallon; Vice Mayor Herbert Bateman, Jr.; Vice Mayor, Herbert Bateman, Jr.  
**CC:** Ken Spirito; Cowan Debbie R.; Hansen Robyn H.  
**Sent:** 12/1/2014 6:35:00 PM  
**Subject:** RE: Peoples Express

O k

**From:** Kelly Bert V. Jr. [mailto:Bkelly@jwvk.com]  
**Sent:** Monday, December 01, 2014 3:06 PM  
**To:** Aubrey Fitzgerald; City Manager, James Bourey; LaDonna Finch; Wallace, George; Stephen Mallon; Vice Mayor Herbert Bateman, Jr.; Vice Mayor, Herbert Bateman, Jr.  
**Cc:** Ken Spirito; Cowan Debbie R.; Hansen Robyn H.  
**Subject:** Peoples Express

Jim and Ken asked that I inform you that Px's interest payment due for November has not been paid and TowneBank has issued a request for payment by the Commission. It continues to accrue daily but is currently in the \$14,000 range. Last Wednesday Jim asked Erickson to confirm the default and the answer was obvious, no money to satisfy their obligation. I have advised Ken to pay this. Otherwise, it would trigger a default and TowneBank would have no option other than to call the entire principal balance due.

Happy to respond to questions or comments.

Bert

## Felony Counts #'s 12-17 – Money Laundering

Ken Spirito

Fri, 5 Dec 2014 16:33:51 +0000

To: Bourey, James M.

Re: PEX

Renee our dir finance is out today. The earliest will have to be Monday.

Sent from my iPhone

Ken 

On Dec 5, 2014, at 11:31 AM, "Bourey, James M." <[jbourey@nnva.gov](mailto:jbourey@nnva.gov)> wrote:

I assume you are going to tell her yes.

Sent from my iPad

On Dec 5, 2014, at 11:30 AM, "Ken Spirito" <[KSpirito@flyphf.com](mailto:KSpirito@flyphf.com)> wrote:

FYI.

Sent from my iPhone

Ken 

Begin forwarded message:

**From:** Sue Ivy <[Robin.Ivy@townebank.net](mailto:Robin.Ivy@townebank.net)>  
**Date:** December 5, 2014 at 11:21:45 AM EST  
**To:** Ken Spirito <[KSpirito@flyphf.com](mailto:KSpirito@flyphf.com)>  
**Cc:** "Kelly Bert V. Jr." <[Bkelly@jwvk.com](mailto:Bkelly@jwvk.com)>, Brian Skinner <[Brian.Skinner@townebank.net](mailto:Brian.Skinner@townebank.net)>  
**Subject:** PEX

Ken,

Are you going to make the interest payment today? The loan is now over 20 days past due and we need to bring it current right away.

I am out of the office today but am available by cell if you need me at 718-0008.

Thanks!

Interest payment was made with the full PAC knowledge and support.

I did not feel this was the right thing to do, as noted. However, others wanted it done.

# December 21, 2017 - Bert Kelly (PAC Legal Counsel) and Towne Bank \$2Million Settlement with the PAC

## GENERAL RELEASE AND CONTRIBUTION AGREEMENT

The PENINSULA AIRPORT COMMISSION (“the PAC”), TOWNEBANK, and JONES, BLECHMAN, WOLTZ & KELLY, P.C. (“JBWK”) (each individually, a “Party,” and collectively the “Parties”) hereby enter into this General Release and Contribution Agreement dated as of December 21, 2017 (“Agreement”) as a full and final compromise and settlement of all claims relating to the transaction entered into on June 18, 2014 in which TowneBank extended a \$5 million line of credit facility to People Express Airlines, Inc. that was guaranteed by the PAC including the provision by PAC of funds as collateral and/or payment for the guarantee (“the Transaction”). The Parties were aided in reaching the following Agreement by each acknowledging that at the time of the Transaction, all of the parties acted reasonably and in good faith. At the time of the Transaction, all involved believed the loan, the guarantee, and the actions leading up to its adoption by the PAC and decisions as to collateral were proper and for the benefit of the airport and the region. It is the hope of the Parties that this agreed resolution will clear the way for the PAC to focus on its true mission of providing the public with a viable airport and reliable, economic air service.



**I was targeted to be responsible for everything.**

The settlement clearly outlines all participants acted in good faith.

## 1. GENERAL RELEASE

Each Party, on behalf of itself and its past, present, and future agents, representatives, administrators, predecessors, and successors (individually a “Releasing Party” and collectively the “Releasing Parties”), hereby release and forever discharge each of the other Parties and each of their respective past, present, and future employees, stockholders, officers, directors, commissioners, partners, agents, brokers, contractors, servants, affiliates, subsidiaries, parents, departments, divisions, insurers, attorneys, predecessors, and successors (collectively, the “Released Parties”), and each of them, jointly and severally, from any and all claims or counterclaims, causes of action, remedies, damages (including but not limited to for attorney’s fees or costs), liabilities, debts, suits, demands, actions, costs, expenses, fees, controversies, set-offs, third party actions, or proceedings of whatever kind or nature, whether at law, equity, administrative, arbitration, or otherwise, whether known or unknown, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, which any of the Releasing Parties may now have

or have ever had against any and each of the Released Parties, or which any other individual or entity may purport or attempt to assert on behalf of a Releasing Party, without exception or limitation, arising directly or indirectly from or in any way relating to the Transaction (collectively the “Released Claims”). The Parties further warrants that no Party shall attempt to assign any Released Claims.

Closing –

The evidence you have viewed for counts 1-17 automatically reverse the other counts of perjury and providing false information during an investigation.

This entire case was manufactured on the foundation that Ken Spirito illegally used:

Passenger Facility Charges (PFCs)  
Virginia State Entitlements (SEFs) and  
Airport Revenue

**As you have seen, that was not factually correct.**