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

ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

ROYAL BANK OF CANADA

Applicant

- and -

PEACE BRIDGE DUTY FREE INC.

Respondent

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

AIDE MEMOIRE BRIEF OF THE TENANT, PEACE BRIDGE DUTY FREE INC.

(Case Conference returnable September 6th, 2023)

Date: September 1st, 2023	**BLANEY MCMURTRY LLP** Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5 **David T. Ullmann** (LSO #42357I) Tel: (416) 596-4289 Email: dullmann@blaney.com **John Wolf** (LSO #30165B) Email: jwolf@blaney.com **Brendan Jones** (LSO #56821F) Email: bjones@blaney.com Lawyers for the Respondent

INDEX

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INDEX

TAB 1

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ONTARIO
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AIDE MEMOIRE OF PEACE BRIDGE DUTY FREE INC.
(Case Conference Returnable September 6th, 2023)

Introduction

1. Capitalized terms are as defined in the Lease or in this Aide Memoire.

2. At the Case Conference to take place before Justice Kimmel on September 6th, 2023, Peace Bridge Duty Free Inc. (the "**Tenant**") seeking the following three items:

   a. That the Court agrees that the two expert reports, which have been commissioned by the Tenant (as further described herein), be included as part of the evidence to be considered at the hearing of the pending motion (the **"18.07 Motion**") in this matter;

   b. Direction on how the 18.07 Motion will proceeds with or without *viva voce* evidence; and,

   c. That the 18.07 Motion be adjourned to the first week of November 2023 or such earlier date after October 10, 2023 as the Court can provide.

Expert Reports

3. Following the Court's decision not to lift the stay and to proceed instead with the 18.07 Motion on the interpretation of subsection 18.07 of the Lease ("**Section 18.07**"), the Court set a schedule (the "**Schedule**") which was predicated upon a hearing to be held in July 2023. A copy of the schedule in the Endorsement of Justice Kimmel dated April 4, 2023 is attached hereto at Tab A.

4. Among the items in that Schedule was that certain productions were to be completed in May and that parties were to complete examinations by June 7th, 2023.

5. The Schedule also contemplated that Expert reports, if any, were to be exchanged by May 26th, 2023 so that the Experts could be examined, if necessary, following the completion of other examinations.

6. The Schedule was highly compressed because the parties were working towards a July 25th hearing date and the Tenant was, at that time, paying only percentage rent.

7. However, on June 16th, 2023, having been made aware of production issues and issues arising out of certain examinations under section 39.03, the Court adjourned the 18.07 Motion from July 25th to September 19th, 2023.

8. The court did not set a new schedule for the exchange of materials or Expert Reports, other than ordering on June 16, 2023 that examinations were to be completed by the end of August (which they have been) and that all materials were to be uploaded to CaseLines no later than September 15, 2023.

Expert Evidence Required

9. It was difficult to anticipate the need for expert evidence until the productions were completed. The productions issue required a hearing in late July to settle in order to address deficiencies in the Landlord's productions. Included in those productions were materials which were of consequence to the production of expert evidence.

10. It is submitted that by the Tenant that the Court would likely require expert evidence

on at least the following topics:

a. If the Landlord was required to act in a reasonable manner in connection with Section 18.07, what would constitute reasonable conduct by the Landlord by on an objective basis, and what would constitute a reasonable rent abatement or deferral; and,

b. What harm, if any, was the Landlord suffering as a result of its inability to terminate the Lease and lease the premises to a new party.

11. The tenant has sought expert evidence in respect of both of these topics. The Matson Driscoll & Damico Ltd. ("**MDD**") report dated August 16th, 2023 (the "**MDD Report**") deals principally with the first issue (at **Tab A**). The J.C. Williams Group ("**JCW**") report dated August 16th, 2023 (the "**JCW Report**") deals principally with the second issue (at **Tab B**). (collectively referred herein as the "**Expert Reports**").

12. Both MDD and JCW are well known expert consultants whose evidence is routinely excepted by the Courts.

13. The two reports were provided in final form to the Tenant on August 16th, 2023, and then served on the Landlord by the Tenant on August 20th, 2023 (*August 20th was a Sunday, it had been intended that they be sent out on Friday August 18th but inadvertently they were not sent out until August 20th).

14. The Expert Reports address the following issues:

Page of Report	JCWG Report
3	What is a range of the typical leasing rates in retail locations in the greater Niagara area?
3	Having regard to Frontier Duty Free Association and other public databases, what is a range of typical gross sales-to-rent ratios in the Canadian Duty Free sector?

4	Having regard to Frontier Duty Free Association and other public data bases, what is a range of typical minimum rent payable in duty free locations in Canada?
4	Duty Free reports that Capture Rates of traffic crossing international borders are lower than pre-pandemic levels. Please review the Capture Rate of PBDF and provide commentary on whether this trend is being realized at the PBDF.
5	Having regard to a review of historical gross sales and traffic volume trends, what is a reasonable range of expected outcomes for a replacement tenant secured through an RFP process? To the extent applicable, please consider tenant improvement allowance, fixturing period, free rent, key money, and minimum rent obligations and provide a range of Net Economic Return (NER) for the Landlord over the balance of the term of the remaining Lease.
5	Compare the Net Economic Return (NER) to the current Duty Free operator and a new operator acquired through Request for Proposal (RFP).
Page of Report	MDD Report
3	6. You have asked us to provide financial analysis of PDBF's Operations and its ability to pay rent during the following two periods: a) From 2020 to 2022 b) In 2023 and potentially onwards

15. The Landlord was provided with these two reports more than a month before the proposed hearing, and with ample time to either examine on the reports or to use them in preparing for the key examinations of Mr. Ron Rienas (which took place on August 23rd, 2023) and the examination of James Pearce (which took place on August 31st, 2023).

16. Upon receiving the Expert Reports, the Landlord immediately rejected them and advised that they could not be used in the 18.07 Motion because they did not comply with the original schedule.

17. Given that the Expert Reports were provided as soon as they could be completed,

and given that they were provided in advance of the material examinations, the Tenant does not understand why these Expert Reports cannot form part of the record, and is asking the Court's leave to allow them to be submitted.

18. As the record has developed, a key issue that has been identified to inform the appropriate amount of rent abatement pursuant to subsection 18.07 of the Lease is the changes in bridge traffic levels, and in particular the type of traffic (commercial truck, private vehicle or tour bus), and the impact of those changes on PBDF's business to date and moving forward

19. The Landlord specifically put this issue into contention in their affidavit material in support of their non-monetary default motion, which this court considered on July 26th, 2023. In particular, at paragraph 17 of the affidavit of Mr. Ron Rienas dated July 17th, 2023 (the "**Rienas Affidavit**") it stated:

> "Based on data collected by the Authority, vehicular traffic over the Peace Bridge has, as of June of 2023, rebounded to over 85% of pre-COVID levels, which the Authority considers "normal" given the steady decline in vehicular traffic that was being experienced during the years prior to COVID. PBDF's sales appear, however, to continue to lag and PBDF does not appear to have been able to grow per vehicle sales as contemplated by the Tenant Proposal. I believe that this may be because PBDF is not operating the duty free in the manner contemplated by the Tenant Proposal and Art 9.02(n) of the Lease."

20. It is also the case that in the examination of Mr. Pearce on August 31, 2023, counsel for the Landlord repeatedly implied throughout the questioning that the evidence of Mr. Pearce on issues like bridge traffic, future sales, or the future profitability of the business were unfounded because Mr. Pearce is not an expert in those fields and had not consulted any experts.

21. It would be highly unfair for the Landlord to make such arguments to the Court at the hearing of the motion, when the evidence on expressly those issues has been provided by the experts commissioned by the Tenant. We submit that the expert

reports will assist the court in determining the motion.

Viva Voce Evidence and Conduct of the Hearing

22. It is the position of the Tenant that this matter does not require viva voce evidence at trial, provided counsel has the opportunity to guide the court through the transcripts and productions.

23. However, it is suggested that the Court may want to consider how the evidence is to be presented (it is somewhat voluminous) and consider having facta submitted after the hearing of the evidence, as is commonly done in a trial, once the court has provided some comment on that evidence.

24. In particular, there have been eight (8) affidavits filed, five (5) sets of examination transcripts and two expert reports to consider, in addition to hundreds of documents, dozens of which were assembled into briefs and presented as exhibits at the examinations.

There is Insufficient Time to Deliver Facta before Sept 19

25. In its original schedule, the Court suggested that the Tenant's factum be produced eighteen (18) days before the hearing, and that the Landlord's factum be produced eleven (11) days before the hearing.

26. Were that same timing to be adopted at this point, the Tenant factum would have been due on September 1st, 2023 and the Landlord factum would be due on September 12th, 2023.

27. However, given that Mr. Pearce was only examined on August 31st and Mr. Rienas on August 23rd, and given that transcripts of both examinations have not yet been provided, and given the dispute about the expert reports, it was practically impossible to produce facta until after those dates.

28. The earliest the Tenant could possibly complete its factum, assuming the transcripts and undertakings are complete promptly, would be mid- September.

Adjournment

29. This motion was to be heard on July 25th. It was adjourned by the Court to the next available date, but the motion date was not marked as peremptory. The tenant is paying the so called "full rent" so the ongoing prejudice, if any, to the Landlord is muted.

30. The parties have acted in good faith, but the scheduling of examinations and productions proved difficult given summer schedules. As such, as noted above, the examinations were only just completed.

31. In addition to the fact that there are no transcripts to date, there are also material undertakings given which are unlikely to be completed on a schedule that supports the submission of all materials to CaseLines by September 15th. A list of outstanding undertakings will hopefully be available by September 6th.

32. In addition, due to inadvertence on the part of the Tenant, the 18.07 Motion was scheduled to be heard on September 19th without referencing the availability of my partner, Mr. John Wolf, who was not in attendance at the June 16th hearing.

33. It has been brought to our attention that Mr. Wolf will be in Europe from September 5th to September 29th. As such he cannot attend or assist with the 18.07 Motion. This is a material prejudice to our client as Mr. Wolf is lead counsel as it relates to issues of leasing and interpretation of the Lease.

34. We also are advised that one of the two lead counsel at Gowlings, Mr. Chris Stanek may also be unavailable to attend the 18.07 Motion due to a scheduling conflict involving a separate hearing where he is lead counsel.

35. According to the Court office, Your Honour Justice Kimmel had three consecutive days, being November 1, 2, and 3. Given that the examinations are now complete, there is greater certainty that the record will be complete by the first week of November.

36. The need for an accelerated schedule in this matter was driven principally by the

claims that the Landlord is suffering prejudice by not being able to get their space back and by the Landlord's complaints that they were not being paid rent. The Tenant does not accept that the Landlord is suffering any such prejudice.

37. We have sought the consent of counsel for the Landlord for this adjournment and they have refused.

ALL OF WHICH IS HEREBY SUBMITTED THIS 1st DAY OF SEPTEMBER 2023 BY:

David Ullmann

TAB 2

TAB A

SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

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

DATE: 4 April 2023

NO. ON LIST: 3

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

BEFORE JUSTICE: KIMMEL

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Name of Person Appearing	Name of Party	Contact Info
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Jeanne Williams	For msi Spergel Inc., the court appointed Monitor	williams@tgf.ca
Mukul Manchanda	Monitor's representative	mmanchanda@spergel.ca

ENDORSEMENT OF JUSTICE KIMMEL:

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

Report on Mediation

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

Costs of the Landlord's Stay Motion

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

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

7. The Landlord continues to argue that it should not be required to effectively finance the Tenant pending the determination of the Tenant's Cross-Motion, by virtue of the stay of proceedings and other restrictions imposed when the Receiver was appointed, which prevent the Landlord from exercising its remedies in respect of the Tenant's failure to pay Base Rent under the Lease, and other alleged breaches of the Lease by the Tenant. The Landlord's concerns are exacerbated the longer the process takes to a decision on the interpretation of section18.07 of the Lease.
8. The court has to balance the Landlord's position against the Tenant's assertion that it cannot afford to pay the prescribed Base Rent and its contention that it is paying "normal" rent, which is all that it is required to pay by virtue of section 18.07 of the Lease and the events that transpired from and after March of 2020. This is issue is raised squarely by the Tenant's Cross-Motion.
9. To alleviate the Landlord's concerns, the court has now scheduled the earliest available date to hear the declaratory relief sought by the Tenant's Cross-Motion (Lease interpretation issues, contained in paragraphs 1-6 and paragraph 11 of the Tenant's Cross-Motion), for three days July 25, 26 and 27, 2023.
10. The Landlord remains concerned about unrecoverable rent arrears that continue to accumulate and interest on past arrears (the interest alone it calculates to be approximately $170,000 per month. This concern is of course dependent upon the Landlord's interpretation of the Lease prevailing. The Landlord is not satisfied that the Tenant is paying enough on an interim without prejudice basis, even with the Tenant's latest projections (which only approximates the level of Base Rent that the Landlord claims for a couple of months in the summer).
11. The court's January 16, 2023 Stay Motion Endorsement and January 19, 2023 case conference endorsement left open the question of what amount of rent the Tenant should be paying to the Landlord if the stay is to remain in place pending the decision of the court on the Tenant's Cross-motion. The court has previously indicated that it has jurisdiction to set the amount of rent to be paid by the Tenant during the stay period. While the Landlord does not accept that the Tenant's ability to pay should dictate the amount that the court determines is appropriate, as a practical matter, the court considers that to be a relevant data point and had anticipated that there might be evidence available at this case conference about the Tenant's ability to pay.
12. The Tenant has offered to pay for the cost of the Monitor to independently review and verify the Tenant's confidential cash flows (that have not been shared with the Landlord) and verify whether the Tenant is able to pay the Base Rent that the Landlord is requesting be paid, or any amount beyond 20% of its gross sales (which is what it has been paying and proposes to continue to pay until its Cross-Motion has been decided).
13. The Monitor has agreed to undertake this exercise and will provide its report to counsel for the Tenant and counsel RBC <u>on or before May 5, 2023</u>. The Tenant will review and advise within a week whether it accepts the Monitor's review and analysis. However, the Tenant has agreed that it will abide by any direction from the court regarding any increased amount of rent to be paid pending the court's determination of the Lease interpretation point on its Cross-Motion, based on the Monitor's report.
14. The parties shall attend a <u>30-minute case conference on May 17, 2023 at 9:15 a.m</u>. at which time the court will consider and provide any further directions arising out of the Monitor's report (including any issues associated with the disclosure of that report to the Landlord, if the parties have not been able to come to terms upon which the report will be shared with the Landlord before then).

Rule 39.03 Examinations

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

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

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

Timetabling Directions: Tenant's Cross-Motion

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

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

Timetabling Directions: Receivership Application

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

Conclusion

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

Kimmel J.

KIMMEL J.

TAB B

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ ENDORSEMENT

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

HEARING DATE: June 14 and 15 2023

NO. ON LIST: 5

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

BEFORE JUSTICE: KIMMEL

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Patrick Shea		patrick.shea@gowlingwlg.com

ENDORSEMENT OF MADAM JUSTICE KIMMEL:

Issues Raised for Consideration

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

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

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

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

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

<u>Adjournment of Tenant's Cross Motion and the Receivership Application</u>

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

<u>Disclosure Issues and Issues to be Determined on July 25 and 26, 2023</u>

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

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

20. With this guidance in mind, <u>the following directions are provided in connection with the July 25, and 26 and September 19, 21 and 22, 2023 hearing dates</u>:
    a. Any disclosure and production that has been previously requested and that the responding party is prepared to provide shall be provided by June 23, 2023;
    b. The parties shall exchange lists of any remaining outstanding requests, deficiencies and/or production inquiries by June 30, 2023;
    c. If the Landlord has other issues with the Tenant's performance of its obligations under the Lease, aside from the payment of rent, those should be identified at the same time as the disclosure deficiencies;
    d. The parties shall attempt to narrow the issues by providing as much information in writing as they can, on the record, in response to the disclosure, production or performance sought;
    e. Based on the list of outstanding issues, the parties shall agree upon a timetable for the exchange of materials that detail the issues that the court will be asked to decide on July 25 and 26, 2023 that ensures that all material has been exchanged and uploaded onto CaseLines by no later than July 21, 2023;
    f. If proportionality is a ground for non-disclosure, some evidence will be required to support that;

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

21. This endorsement and the orders and directions contained in it shall have the immediate effect of a court order without the necessity of a formal order being taken out.

Kimmel J.

KIMMEL J.

June 16, 2023

TAB C

PEACE BRIDGE DUTY FREE INC.

ANALYSIS OF RENT

REPORT OF EPHRAIM STULBERG
DATED AUGUST 16, 2023

Table of Contents

FORENSIC ACCOUNTANTS

MATSON DRISCOLL & DAMICO LTD
4 King Street West, Suite 400 • Toronto, ON M5H 1B6
T 416.366.4968 F 416.366.4973 W mdd.com

August 16, 2023

Private and Confidential

Blaney McMurtry LLP
2 Queen Street East
Suite 1500
Toronto, ON M5C 3G5

Attn: Mr. John Wolf

RE: Royal Bank of Canada v. Peace Bridge Duty Free Inc.

Dear Sir:

You have asked us as independent professional accountants experienced in economic loss quantification matters to prepare an Expert Report[1] setting out our analysis of the ability of Peace Bridge Duty Free Inc. ("**PBDF**") to pay rent during: a) the period from March 2020 to December 2022, and b) in 2023, as a result of the decline in its revenues due to government-imposed restrictions on international travel following the outbreak of the COVID-19 pandemic.

We understand that you require our report in connection with a dispute between PBDF, its landlord (the Buffalo and Fort Erie Public Bridge Authority) and its bank (Royal Bank of Canada).

Please contact the undersigned with any questions concerning the contents of this report.

Sincerely,

Matson, Driscoll & Damico Ltd.

Ephraim Stulberg, CPA, CA, CBV, CFF
estulberg@mdd.com / 647-929-4968

[1] As defined by the Canadian Institute of Chartered Business Valuators (CICBV).

A. EXECUTIVE SUMMARY[2]

Background

1. PBDF is a corporation that has operated the duty-free store on the Canadian side of the Peace Bridge since 1986. The Peace Bridge traverses the international border between the United States and Canada, linking the cities of Buffalo, New York and Fort Erie, Ontario.

2. PBDF leases its premises from the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**"). Under the terms of the lease agreement commencing November 1, 2016 and expiring on October 31, 2031 (the "**Lease**"), PBDF was required to pay Base Rent equal to the greater of:

    a) $4M per year; and

    b) A percentage of annual sales, consisting of:

        i. 20% of the first $20M in the year;

        ii. 22% of all sales between $20M and $25M in the year; and,

        iii. 24% of all sales in excess of $25M in the year.

3. Section 18.07 of the Lease states that:

> **18.07 Regulatory Changes**
>
> In the event an unanticipated introduction of or a change in any 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 Applicable Laws to the Lease.

4. As a result of the COVID-19 pandemic, PBDF closed its store in March 2020 and did not reopen until September 2021. Traffic at the Peace Bridge border crossing has remained lower than normal; as of mid-2023, it was at around 70% to 80% of pre-pandemic levels.

5. We understand that PBDF and the Authority are in a dispute over how Section 18.07 of the Lease is to be applied, and how much rent PBDF should be paying under the Lease. We understand it is PBDF's position that absent an agreement between the Landlord and PBDF, the court will set the amount of base rent in a manner that is commercially reasonable for both parties.

[2] All currency amounts in this report are in Canadian dollars, unless otherwise indicated as being in US dollars (US$).

6. You have asked us to provide financial analysis of PBDF's operations and its ability to pay rent during the following two periods:

   a) From 2020 to 2022

   b) In 2023 (and potentially onwards).

MDD Conclusions

7. Our conclusions, as set out in more detail in Section D of this report, can be summarized as follows:

From 2020 to 2022

8. In the three full years of 2020, 2021 and 2022, PBDF earned combined pre-tax income of $1.8M before any base rent is deducted (see Schedule 1a). During this period, PBDF remitted $3.4M in base rent to the Authority, which represents 23% of sales during this period.

9. Therefore, PBDF has already suffered a loss of $1.6M based on the base rent it has already remitted during the period 2020 to 2022.

10. During this same timeframe, the Authority was less impacted by the COVID-19 pandemic. It earned aggregate net income of US$13.2M, even after reporting bad debts related to duty-free store rent of US$7.8M (see Schedule 8a).

From 2023 Onwards

11. Through the first half of 2023, PBDF's sales have been around 71% of pre-pandemic levels. We estimate that assuming sales for 2023 achieve 75% of pre-pandemic levels, PBDF will earn pre-tax profit before base rent of around $4M (Schedule 1b).

12. The industry-wide average for businesses in NAICS 4453 (Beer, wine and liquor stores) is a pre-tax return on assets of 11.6% and a net income percentage of 6.6%. This can be viewed as a reasonable level of profit given PBDF's level of capital invested in the business.

13. We estimate that PBDF can afford to pay **$2.7M to $3.0M** in annual base rent in 2023 (equal to 17% to 19% of sales) in order to achieve these industry-average returns.

B. INTRODUCTION

Author's Details and Compliance with Professional Standards

14. This report has been prepared under the direction and supervision of Ephraim Stulberg, CPA, CA, CBV, CFF, a partner in the Toronto office of Matson, Driscoll & Damico Ltd. ("**MDD**"). A copy of his CV is appended to this report.

15. MDD is a global professional services firm practicing in the areas of economic loss quantification, business valuation and forensic accounting. It has 11 offices in Canada and 45 offices worldwide.

16. This report has been prepared in compliance with the Canadian Institute of Chartered Business Valuators ("**CICBV**") standards for the preparation of Expert Reports (Practice Standards 310 to 330).

Disclosure of Interests

17. We are not aware of any actual or potential conflict of interest that we may have in providing this report.

Declaration of Independence

18. We have been engaged as independent professional accountants to provide an expert report. The terms of our engagement are to act in an independent and objective manner. Neither our firm nor its principals have any financial interest in these proceedings. Our fees are based solely on the time expended and are not contingent upon the ultimate results or conclusions reached.

19. The author of this report has prepared it acting in an independent and objective manner.

C. BACKGROUND AND MANDATE

The Parties

20. PBDF is a corporation that has operated the duty-free store (the "**Store**") on the Canadian side of the Peace Bridge since 1986. It also operates a small duty-free store at the Hamilton International Airport.[3] PBDF has a December 31st fiscal year-end.

21. The Peace Bridge traverses the international border between the United States and Canada, linking the cities of Buffalo, New York and Fort Erie, Ontario.

22. PBDF leases its premises from the Buffalo and Fort Erie Public Bridge Authority (the "**Authority**").

The Store

23. Prior to the COVID-19 pandemic, the Store was open 24 hours per day, 365 days per year.

24. The Store's sales consisted mainly of alcoholic beverage (around 50% of total revenue), tobacco (20% of revenue), perfume/cosmetics (10%), food/confections (10%) and other miscellaneous products. It employed over 100 employees.[4]

The Lease

25. We understand that until November 2016, PBDF's lease with the Authority required it to pay base rent equal to 12% of gross revenue, plus various fees.

26. In March 2016, the Authority initiated a request for proposals to operate the Store.[5] The RFP contained various requirements, one of which being that base rent was to be at least $2.5M per year.[6]

27. We understand there were six bidders, including PBDF. PBDF was the successful bidder, and signed the Lease commencing November 1, 2016. Under the Lease, PBDF was required to pay Base Rent equal to the greater of:

    a) $4M per year; and

    b) A percentage of annual sales, consisting of:

---

[3] The results of both stores are reported on the financial statements of PBDF.

[4] Based on discussions with Jim Pearce

[5] RFP dated March 1, 2016

[6] RFP, Section III, para. B8

i. 20% of the first $20M in the year;

ii. 22% of all sales between $20M and $25M in the year; and,

iii. 24% of all sales in excess of $25M in the year.

28. As a condition of its bid, PBDF was also required to perform capital improvements to the Store. PBDF spent approximately $7M on leasehold improvements in 2018 and 2019. These were financed in part by a $4.5M loan from Royal Bank of Canada.

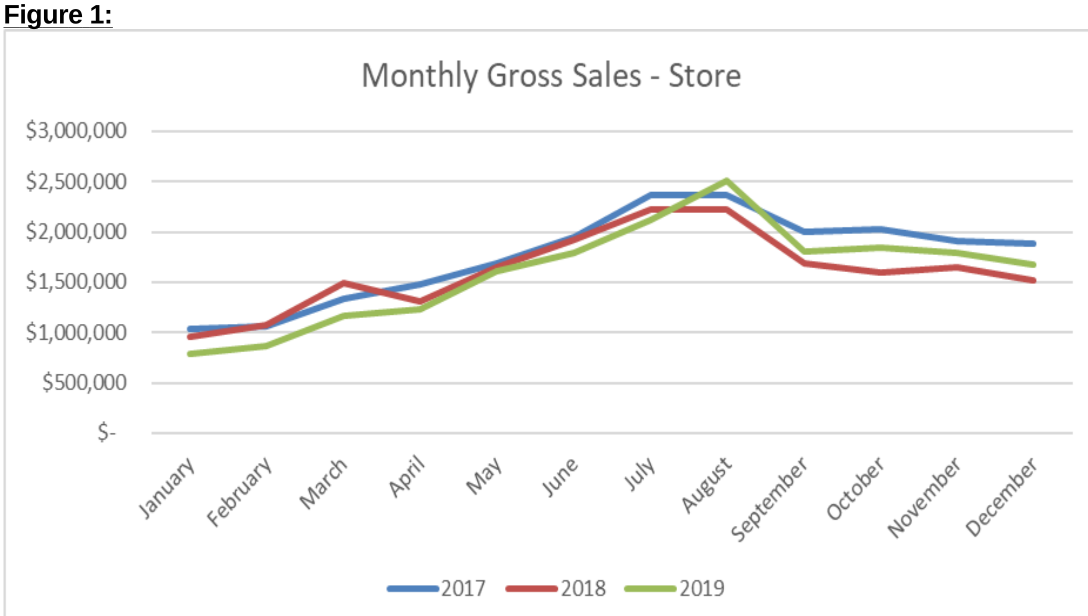
29. Section 18.07 of the Lease states that:

> **18.07 Regulatory Changes**
>
> In the event an unanticipated introduction of or a change in any 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 Applicable Laws to the Lease.

PBDF – Pre-Pandemic Results

30. We have been provided with monthly sales data for the Store going back to the beginning of 2017. Figure 1 presents monthly gross sales for the period 2017 to 2019:[7]

Figure 1:



[7] See data at Schedule 5

31. Sales totalled $21.1M in 2017, and were somewhat lower in 2018 and 2019, with both years in the range of $19.2M.

32. We understand that the reason for the decline was due to temporary disruptions to the Store while it underwent renovations in the second half of 2018 and the first half of 2019. Sales were expected to return to normal levels in 2020, absent the pandemic.

33. Sales are seasonal, with higher volumes in the summertime and lower volumes during the winter months of January to March. This pattern was consistent from year to year.

The Authority – Pre-Pandemic Financial Results

34. We have summarized the financial results and position of the Authority at Schedules 8a and 8b.[8]

35. In 2019, the Authority generated US$30.9M in operating revenues against US$16.9M in operating expenses, for an operating profit of approximately US$14.0M (Schedule 8a). The main source of revenue was toll revenue of US$22.1M, mainly from commercial trucks.[9]

36. At the end of that year, the Authority held total assets of US$362M, against liabilities of US$122M, for a net equity position of US$240M (Schedule 8b).

Pandemic Restrictions

37. Following the outbreak of the COVID-19 pandemic in early 2020, US and Canadian governments imposed a series of travel restrictions. These are set out in detail in the factum of PBDF dated December 12, 2022 (Schedule 1), and included the following:

a) March 17th, 2020: Ontario declares state of emergency under the ***Emergency Management and Civil Protection Act***;

b) March 21st, 2020: Agreement to close U.S.-Canada border to non-essential travel border for 30 days. This agreement was subsequently extended several times to July 21st, 2020.

c) July 26th, 2020: U.S.-Canada border closure for non-essential travel extended until August 20th, 2020; This was extended several times until November 21st, 2020

d) April 21st, 2021: US-Canada border closure to non-essential travel extended until May 21st, 2021;

[8] 2021 Annual Report, accessed at: https://www.peacebridge.com/docs/2021%20Annual%20Report.pdf

[9] Ibid, p. 16.

e) June 21st, 2021: Temporary travel restrictions to Canada for all U.S. travellers extended, unless their travel is for non-discretionary reasons.

f) September 7th, 2021 - Fully vaccinated foreign nationals eligible to enter Canada for non-essential reasons;

g) October 30th, 2021: Travellers in Canada were required to be fully vaccinated in order to board planes, trains and non-essential passenger vessels. Negative molecular tests within 72 hours were accepted as alternatives until November 29th, 2021;

h) November 8th, 2021: U.S. lifted restrictions at its land borders to permit travel for fully vaccinated travellers and a negative PCR test results within 72 hours;

i) December 2nd, 2021: Canada announced that Canadians travelling abroad for less than 72 hours will not have to show negative PCR COVID-19 test when re- entering Canada;

j) December 21st, 2021: Reinstated the requirement for a pre-arrival negative PCR test for all travellers arriving in Canada from a trip of any duration;

k) January 22nd, 2022: U.S. allowed non-U.S. individuals traveling via land ports or entry at US-Canada borders to be fully vaccinated and to show proof of vaccination for essential and non-essential reasons;

l) April 1st, 2022: Fully vaccinated travellers no longer required to provide a pre-entry COVID-19 test result to enter Canada by air, land or water, but ArriveCAN required;

m) October 1st, 2022: Canadian Covid-19 border measures ended including all requirements including vaccination and mandatory use of ArriveCAN.

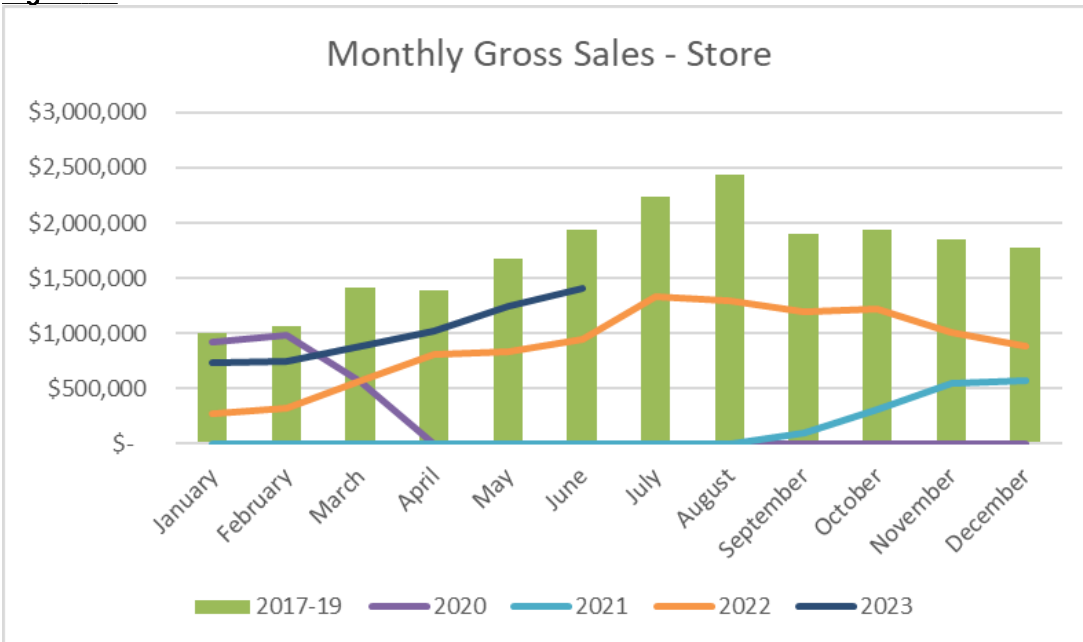
PBDF - Pandemic Results

38. The COVID-19 pandemic had a severe impact on PBDF's business. The Store closed in March 2020 following the declaration of a state of emergency, and did not reopen until September 2021.

39. Figure 2a on the following page presents a summary of PBDF's monthly revenues through June 2023. It shows that revenues in the first half of 2023 have continued to reach only 60% to 75% of their pre-pandemic levels:[10]

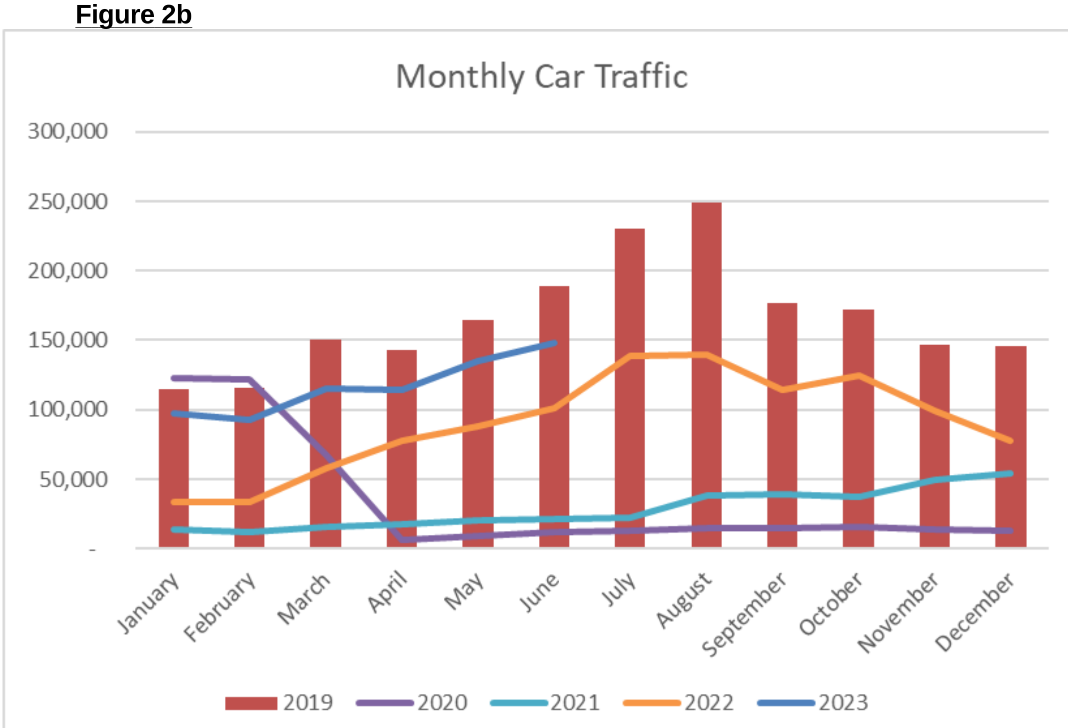
[10] See data at Schedule 5.

Figure 2a



40. Figure 2b presents a summary of eastbound car traffic data at the Peace Bridge, and shows a similar picture, with traffic volumes having returned to only 75% to 85% of pre-pandemic levels:

Figure 2b



41. As a result of the lower traffic and sales levels, PBDF reported net pre-tax losses totalling $10.2M over the three years from 2020 to 2022 (based on reported base rent of $4M per year).

42. In summary, PBDF's financial results were heavily impacted by the pandemic, and continue to be impacted (though to a lesser extent).

The Authority – Pandemic Results

43. In 2020 and 2021, the Authority reported a decrease in revenues, reporting US$24.5M in 2020 and US$26.3M in 2021 before rebounding to US$30M in 2022. Operating income was US$7.1M in 2020 and US$5.9M in 2021; it rose to US$10.9M in 2022 (Schedule 8a).

44. Thus, while the Authority has suffered a decline in income as a result of the pandemic, its revenues have continued to exceed its expenses each year. This is largely a function of the fact that its main source of income, tolls from commercial trucks, was relatively unimpacted by COVID-19 (as compared with passenger vehicle travel).

45. The above amounts are net of bad debts that the Authority has written off in respect of the PBDF lease and the duty-free store on the US side of the border: reported bad debts are US$2.5M in 2020, US$3.19M in 2021 and $2.1M in 2022.[11]

46. We understand that the US duty-free store has remained open during the pandemic and has been paying a percentage of its actual sales as rent.[12]

47. We note that other bridge authorities appear to have taken different approaches to the COVID-19 pandemic and their commercial tenants, decreasing lease rates by different levels. Thus, as set out at Schedule 9 to this report:

    a) The Niagara Falls Bridge Commission (which operates the Rainbow Bridge and the Queenston-Lewiston Bridge) reported a decline in rental income of 29% in fiscal 2020 and 18% in fiscal 2021. This decrease was sufficient to reduce annual net income from a pre-pandemic level of $3M to $5M into a loss of $3M in fiscal 2020 and $7M in fiscal 2021.

[11] Authority 2021 annual report, p. 11

[12] Authority 2021 annual report, p. 13

b) The Federal Bridge Corporation (which operates the Sault Ste Marie International Bridge, the Blue Water International Bridge, the Thousand Islands International Bridge and the Seaway International Bridge) reported a reduction in rental income of 71% in the fiscal year ended March 31, 2021, and a reduction of 60% in the fiscal year ended March 31, 2022.

The Dispute

48. We understand that PBDF and the Authority are in a dispute concerning the amount of rent that PBDF should pay for the period following the outbreak of COVID-19, as well as the amount of rent that PBDF can afford to pay going forward.

Mandate

49. You have asked us to provide financial analysis of PBDF's operations and its ability to pay rent during the following two periods:

a) From 2020 to 2022

b) In 2023 (and potentially onwards).

50. Our analysis is set out in Section D below.

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D. MDD DETAILED FINDINGS

Rent Level – 2020 to 2022

Overview of Financial Results

51. You have asked us to provide analysis of PBDF's ability to pay rent during the three-year period from 2020 to 2022.

52. We began by analysing the PBDF's financial results during that timeframe, prior to any payment of base rent.

53. As set out at Schedule 2a, PBDF reported a loss of $805,000 in 2020, a loss of $615,000 in 2021 and a profit of $3.2M in 2022, prior to any base rent being deducted. In aggregate, PBDF earned pre-base rent, pre-tax profit of $1.8M during this three-year period.

54. We have also been provided with a summary of rent paid by PBDF (see Schedule 3). During the three-year period 2020 to 2022, PBDF paid total base rent of $3.4M.

Financial Analysis

55. There is no standard or definitive metric that can be applied to determine what a reasonable level of rent would be for the period that was affected by COVID. Many businesses suffered losses as a result of COVID-19, although they were eligible for various government subsidies. We note that PBDF's eligibility for the CERS rent subsidies was limited, as the subsidy was capped at an amount far below PBDF's base rent level.[13]

56. The above notwithstanding, the following facts appear to us to be relevant:

    a) PBDF has already paid $3.4M in base rent for the period 2020 to 2022.

    b) PBDF's results were very negatively impacted by the pandemic. Based solely on the base rent PBDF has already paid, it will have suffered a pre-tax loss of $1.6M for the period 2020 to 2022, and the rent paid will already have been equal to 23% of revenue. This is higher than the 20% that PBDF used as its benchmark in submitting its bid in 2016.

57. We also note that at the end of 2019, PBDF had $5.5M in retained earnings. This represents the accumulated earnings of the business over time, which have been reinvested in various assets (e.g. inventory, leasehold improvements).

[13] https://www.bdo.ca/insights/government-introduces-the-new-canada-emergency-rent-subsidy-program

58. If it were determined that it would be appropriate for PBDF to suffer a loss of 50% of its retained earnings, then the total base rent PBDF would pay under that scenario would be $4.6M. Deducting the rent already paid, this would mean that PBDF would need to pay an additional $1.1M in base rent (Schedule 1a).

Analysis of Offers

59. You have provided us with two offers presented by the Authority and have asked us for our comments.

October 2021 Offer

60. The first offer was made in October 2021. It offered a 50% reduction in base rent up to that point, and then increasing levels of rent through October 2025.

61. We calculate that the offer would involve payment of $7.2M over the period January 2020 to December 2022 (Schedule 3).

62. If PBDF were to pay that amount of base rent, this would result in a pre-tax loss of $5.3M. This would wipe out almost all of the shareholders' equity of the business.

March 2023 Offer

63. The second offer was made in March 2023. It offered a 50% reduction in base rent up to October 2021, and then increasing levels of rent through October 2025.

64. We calculate that the offer would involve payment of $8.2M over the period January 2020 to December 2022 (Schedule 3).

65. If PBDF were to pay that amount of base rent, this would result in a pre-tax loss of $6.3M. This would wipe out all of the shareholders' equity of the business.

66. By comparison, the Authority has an excess of assets over liabilities of US$252M, even after recording bad debts of US$7.8M in respect of the duty-free leases from 2020 to 2022 (Schedule 8b).

Rent Level - 2023

67. We examined the industry-average **return on assets** and **net income margin** for other similar sized stores operating in PBDF's main business, which is the sale of alcohol.[14]

[14] We were not able to locate any aggregate industry data for duty-free stores, as we understand there are fewer than 40 of these in Canada and therefore aggregate data are not available. See: https://dutyfreecanada.com/#locations

68. We used these benchmarks in order to determine the amount of rent that PBDF is able to pay, based on its current level of sales and pre-tax profit (prior to paying rent).

Net Income Percentage

69. In 2018 and 2019, PBDF generated approximately $21M per year in annual sales. The minimum base rent of $4M represented approximately 19% of revenues.

70. While this is a relatively high level of rent relative to the overall industry (which averages rent closer to 3% of revenue), this is partly explained by the relatively high gross margins that PBDF is able to generate (in the range of 52%, as opposed to 29% for the industry as a whole).

71. According to data published by Statistics Canada, the average net income margin for NAICS 4453 (Beer, wine and liquor stores) was around **6.6%** in 2021.

Return on Assets

72. PBDF has approximately $11M in assets, consisting of cash, inventory, leasehold improvements and other assets.

73. According to data published by Statistics Canada, the average return on assets for NAICS 4453 (Beer, wine and liquor stores) was around **11.6%** in 2021.

Expected Results - 2023

74. In order to estimate a fair or appropriate lease rate for the period during which PBDF's business remains at below its pre-pandemic levels, it is first necessary to model the revenue and other expenses of PBDF's business.

75. At Schedule 2b, we have modeled a pro-forma profit and loss statement of PBDF based on the following:

    a) Assumed annual revenue equal to 75% of pre-pandemic levels

    - This is based on monthly sales levels during the first half of 2023, which were around 70% to 75% of pre-pandemic levels (see Schedule 2b).

    b) Gross margin of 52%

    - This is based on the gross margin of PBDF in 2022 (Schedule 7a).

    c) Payroll costs equal to 13% of revenue

    - This is based on the actual payroll cost in 2022.

d) All other costs equal to 2022 levels.

76. Based on the above, we calculate that PBDF will earn pre-tax, pre-rent income of approximately $4.0M (Schedule 2b). What this means is that if PBDF were to pay rent of $4.0M per year, it would break even, but would not earn any material level of profit.

77. We calculate that the amount of rent that would be payable in order to replicate either a) the net income margin or b) return on assets of the industry as a whole, as follows:

Table 1

Summary of Implied Rent Levels

	Industry Average	
	Return on Assets	**Net Income Percentage**
Target Metric	11.6%	6.6%
Total Assets	$ 11,217,817	$ 11,217,817
Projected Revenue	$ 15,988,385	$ 15,988,385
Pre-tax income (before rent)	$ 4,048,874	$ 4,048,874
Less: Rent	**2,747,607**	**2,993,640**
Net Income	$ 1,301,267	$ 1,055,233

78. As shown in Table 1 above, we estimate that with sales at 75% of pre-pandemic sales, PBDF can afford to pay **$2.7M to $3.0M** in annual base rent (equal to 17% to 19% of sales) in order to achieve industry-average returns and profitability.

79. Using the same approach, we also calculate that PBDF's sales would have to reach around $19.2M per year (while paying $4M in base rent) in order for it to achieve a net income margin of 6.6%; this would represent around 90% of pre-pandemic sales levels.

MDD

E. SCOPE, RESTRICTIONS AND ASSUMPTIONS

Scope of Review

80. In arriving at our findings, we have reviewed and considered the following documentation:

a) Motion Record of Landlord
b) Cross-Motion Record of PBDF
c) Endorsement and Order Appointing Monitor
d) Factum of PBDFI
e) Revised and Restated Factum of the Authority
f) Supplementary Motion Record of PBDF
g) Monthly Monitor Reports
h) Annual financial statements of PBDF
i) Buffalo and Fort Erie Public Bridge Authority - Annual Reports
j) Niagara Falls Bridge Commission - Annual Reports
k) Federal Bridge Corporation – Annual Reports
l) Monthly summaries of traffic and sales of PBDF
m) Summary of rent paid by PBDF
n) Offers presented by the Authority
o) Statistics Canada – SME Benchmarking Reports
p) Authority website

81. We have also had discussions and correspondence with Mr. Jim Pearce of PBDF.

Assumptions

82. The calculations in this report are based on assumptions listed throughout the report. Changes to any of these assumptions could impact the calculations contained herein. Our calculations assume that:

a) All financial information provided to us by PBDF is materially accurate.

Restrictions and Qualifications

83. This report, and our files related thereto, are not intended for general circulation or publication, and are not to be reproduced or shared for any purpose other than as outlined above (or as otherwise required by law or a relevant professional body). We will not assume any responsibility or liability for losses occasioned to you or any other party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions in this paragraph.

84. Nothing contained in this report is to be construed as a legal opinion or interpretation.

85. The comments and conclusions expressed herein must be read within the context of the entire report. Selecting specific comments or conclusions outside of their context is not appropriate and may be misleading.

86. We reserve the right, but will be under no obligation, to review all findings included or referred to in this report and, if we consider it necessary, to revise our conclusions in light of any material information which becomes known to us subsequent to the date of this report.

Index of Schedules

Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

SCHEDULE

Summary of Rent Scenarios - 2020 to 2022
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

	Sch	FYE December 31, 2020	2021	2022	Total	
1. Breakeven Analysis						
Pre-tax income/(loss) (before base rent)	2A	$ (805,401)	$ (615,906)	$ 3,228,719	$ 1,807,412	
Less: Base Rent to Pay					1,807,412	**A**
Pre-Tax Net Income/(Loss)					$ -	
Actual Base Rent Paid	4				$ 3,428,640	**B**
Unpaid Base Rent to Pay					**$ -**	**MAX(A-B,0)**
2. 20% of Revenue						
Pre-tax income/(loss) (before base rent)	2A	$ (805,401)	$ (615,906)	$ 3,228,719	$ 1,807,412	
Less: Base Rent to Pay - 20% of Revenue					2,928,039	**A**
Pre-Tax Net Income/(Loss)					$ (1,120,627)	
Actual Base Rent Paid	4				$ 3,428,640	**B**
Unpaid Base Rent to Pay					**$ -**	**MAX(A-B,0)**
3. Loss of 50% of Equity						
Pre-tax income/(loss) (before base rent)	2A	$ (805,401)	$ (615,906)	$ 3,228,719	$ 1,807,412	
Less: Base Rent to Pay to Result in Loss of 50% of Retained Earnings					4,560,289	**A**
Pre-Tax Net Income					(2,752,877)	
Actual Base Rent Paid	4				$ 3,428,640	**B**
Additional Rent to Pay					**$ 1,131,649**	**MAX(A-B,0)**

NOTES

Based on 20% of total sales for 2020 to 2022, as follows:	
Total sales (Sch 5)	$ 14,640,197
Base rent at 20%	$ 2,928,039
Based on half of book value of equity as of Dec 31/19, as follows:	
Book value of equity - Dec 31/19	**$ 5,505,753**
50% thereof	**$ 2,752,877**

Summary of Rents for 2023 - Based on Net Margin and Return on Assets

Peace Bridge Duty Free Inc. (PBDF)

Analysis of Rents

		Industry Average	
	Sch	Return on Assets	Net Income Percentage
Target Metric (Note 1)		11.6%	6.6%
Total Assets	7B	$ 11,217,817	$ 11,217,817
Projected Revenue	2B	$ 15,988,385	$ 15,988,385
Pre-tax income (before rent)	2B	$ 4,048,874	$ 4,048,874
Less: Base Rent		**2,747,607**	**2,993,640**
Pre-Tax Net Income		$ 1,301,267	$ 1,055,233

Note 1: Industry percentages are based on Statistics Canada - SME Benchmark Tool for NAICS 4453.

Summary of Actual Income of PBDF - 2020, 2021 and 2022 (Pre-Rent)
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	2020	2021	2022
	(Sch 7a)	(Sch 7a)	(Sch 7a)
Sales	$ 3,107,805	$ 1,897,214	$ 11,783,548
Cost of Sales	1,642,462	912,976	5,688,563
Gross Margin	1,465,343	984,238	6,094,985
Expenses			
Rent - Hamilton International Airport	56,084	20,027	59,864
Wages & Benefits	1,301,745	921,455	1,552,312
Insurance	292,868	186,103	194,703
Professional Fees	61,651	169,724	537,136
Commercial Taxes	50,268	68,715	68,437
Utilities	73,978	62,291	87,588
Marketing	54,117	53,670	55,675
Store Supplies	20,941	48,821	72,142
Maintenance	45,785	31,884	79,312
Automobile	4,835	3,905	8,450
Collection Fees	54,974	25,458	169,884
Computer Expense	24,405	20,673	42,392
Communications	17,175	17,249	27,434
Office	5,051	3,802	8,862
Travel and Promotion	14,827	1,784	13,905
Other Admin Expenses	37,640	37,871	67,657
Amortization	562,722	511,954	485,009
Total	2,679,066	2,185,386	3,530,762
Operating Income - Pre-rent	$ (1,213,723)	$ (1,201,148)	$ 2,564,223
Other Income			
Other Income	69,522	16,982	207,768
Government Subsidies	543,585	760,200	652,888
	613,107	777,182	860,656
Other Expenses			
Capital Lease & Lease Line of Credit Interes	204,785	191,940	196,160
	204,785	191,940	196,160
Net Income before tax	**$ (805,401)**	**$ (615,906)**	**$ 3,228,719**
	To Sch 1a	**To Sch 1a**	**To Sch 1a**

Estimated Income of PBDF - 2023
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	Amount	Notes
	(Sch 7a)	
Sales	$ 15,988,385	Note 1
Cost of Sales	7,854,823	Note 2
Gross Margin	8,133,562	
Expenses		
Rent - Hamilton International Airport	59,864	Note 4
Wages & Benefits	2,106,238	Note 3
Insurance	194,703	Note 4
Professional Fees	537,136	Note 4
Commercial Taxes	68,437	Note 4
Utilities	87,588	Note 4
Marketing	55,675	Note 4
Store Supplies	72,142	Note 4
Maintenance	79,312	Note 4
Automobile	8,450	Note 4
Collection Fees	169,884	Note 4
Computer Expense	42,392	Note 4
Communications	27,434	Note 4
Office	8,862	Note 4
Travel and Promotion	13,905	Note 4
Other Admin Expenses	67,657	Note 4
Amortization	485,009	Note 4
Total	4,084,688	
Operating Income - Pre-rent	$ 4,048,874	

Note 1:	Based on 60% of 2019 sales, as follows:		
	2019 Sales (Sch 7a)	$ 21,317,847	
	Multiplied by 75%	**$ 15,988,385**	
Note 2:	Cost of sales based on 2022		
Note 3:	Based on labour as % of sales in 2022, as follows:		
	2022 Sales (Sch 7a)	$ 11,783,548	**A**
	2022 Labour (Sch 7a)	$ 1,552,312	**B**
	Labour Percentage	13%	**B/A=C**
	Projected Sales	$ 15,988,385	**D**
	Projected Labour	**$ 2,106,238**	**CxD=E**
Note 4:	Based on actuals for 2022		

MDD FORENSIC ACCOUNTANTS

Analysis of Offers
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Date		Number of Months	Base Rent		Total Base Rent in Pd.
From	To		Annual	Monthly	
		A	B	B/12=C	AxC=D
1. Offer Dated October 2021					
01-Jan-20	31-Mar-20	3	$ 4,000,000	$ 333,333	$ 1,000,000
01-Apr-20	31-Oct-21	19	2,000,000	166,667	3,166,667
01-Nov-21	31-Oct-22	12	2,500,000	208,333	2,500,000
01-Nov-22	31-Dec-22	2	3,000,000	250,000	500,000
Total Proposed Rent - Jan/20 to Dec/22					**$ 7,166,667**
01-Jan-23	31-Oct-23	10	3,000,000	250,000	2,500,000
01-Nov-23	31-Oct-24	12	3,500,000	291,667	3,500,000
01-Nov-24	31-Oct-25	12	4,000,000	333,333	4,000,000
2. Offer Dated March 2023					
01-Jan-20	31-Mar-20	3	$ 4,000,000	$ 333,333	$ 1,000,000
01-Apr-20	31-Oct-21	19	3,000,000	250,000	4,750,000
01-Nov-21	31-Oct-22	12	2,000,000	166,667	2,000,000
01-Nov-22	31-Dec-22	2	2,500,000	208,333	416,667
Total Proposed Rent - Jan/20 to Dec/22					**$ 8,166,667**
01-Jan-23	31-Oct-23	10	2,500,000	208,333	2,083,333
01-Nov-23	31-Oct-24	12	3,000,000	250,000	3,000,000
01-Nov-24	31-Oct-25	12	3,500,000	291,667	3,500,000
01-Nov-25	31-Oct-26	12	4,000,000	333,333	4,000,000

Represents 50% of base rent
Represents 75% of base rent

Source: Offers presented by Authority

Summary of Rent Paid by PBDF

Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	Amount Paid	Rent	CAM	Gov't Subsidies
2020				
Rent - Jan 2020	$ 333,333	$ 333,333		
CAM Jan2020	6,541		6,541	
Rent 2020 - Feb	333,333	333,333		
CAM Feb2020	8,167		8,167	
Rent 2020 - Mar	333,333	333,333		
CAM Mar2020	8,167		8,167	
CAM April 2020	8,167		8,167	
CAM May 2020	8,167		8,167	
CAM June 2020	8,167		8,167	
CAM July 2020	8,167		8,167	
CAM Aug 2020	8,167		8,167	
CAM Sep 2020	8,167		8,167	
CAM Oct 2020	8,167		8,167	
CAM Nov 2020	8,167		8,167	
CAM Dec 2020	8,167		8,167	
CERS - Oct 24	43,442			43,442
2021				
CAM Jan 2021	8,167		8,167	
CAM Feb 2021	8,167		8,167	
CAM Feb 2021	883		883	
CERS-Period2-Nov 21	40,583			40,583
CAM Mar 2021	9,050		9,050	
CERS-Lockdown	18,750			18,750
CAM Apr 2021	9,050		9,050	
CERS-Period3-Dec20	58,053			58,053
CAM May 2021	10,812		10,812	
CAM Jun 2021	10,812		10,812	
CAM July 2021	10,812		10,812	
CAM Aug 2021	10,812		10,812	
CAM Sep 2021	10,812		10,812	
CERS-Per11 Jan2021	59,333			59,333
CERS-Per5/12 Feb 2021	58,450			58,450
CERS-Per6/13 Mar 2021	39,700			39,700
CERS Period 7/14 Apr 10/21	39,700			39,700
CERS-Period 8/15 May 8/21	37,938			37,938
CERS-Period 9/16 Jun 5/21	37,938			37,938
CERS-Period 10/17 July 3/21	37,938			37,938
CERS-Period 11/18 Jul 31/21	34,188			34,188
CERS-Period 12/19 Aug 28/21	19,188			19,188
CAM Oct 2021	10,812		10,812	
Rent - Sept	19,533	19,533		
CERS Period 13/20 Sep 25/21	19,188			19,188
CAM Nov 2021	10,812		10,812	

Summary of Rent Paid by PBDF
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	Amount Paid	Rent	CAM	Gov't Subsidies
CAM Dec 2021	10,812		10,812	
Rent - Oct	61,600	61,600		
CERS Period 14/21 Oct23/21	4,188			4,188
Rent - Nov	109,400	109,400		
Rent-Audit Report adjustment	587	587		
Rent - Dec 2021	113,600	113,600		
2022				
CAM Jan 2022	10,812		10,812	
CAM Feb 2022	10,812		10,812	
Rent-Jan2022	53,200	53,200		
CAM Mar2022	10,812		10,812	
Rent-Feb2022	63,400	63,400		
CAM Apr2022	10,812		10,812	
Rent-Mar2022	115,000	115,000		
THRP Rent PP25 Jan16-Feb12	16,412			16,412
CAM May2022	10,775		10,775	
Rent-April2022	160,400	160,400		
CAM Jun2022	10,775		10,775	
Rent-May2022	168,000	168,000		
CAM July2022	10,775		10,775	
Rent-Jun2022	188,400	188,400		
CAM Aug2022	10,775		10,775	
Rent-July2022	266,400	266,400		
CAM Sep2022	10,775		10,775	
Rent-Aug2022	259,000	259,000		
CAM Oct2022	10,775		10,775	
Rent-Sep2022	237,000	237,000		
CAM Nov2022	10,775		10,775	
Rent-Oct2022	243,000	243,000		
CAM Dec2022	10,775		10,775	
Rent-Nov2022	196,000	196,000		
Audit reconciliation	2,119	2,119		
Rent-Dec2022	172,000	172,000		
Total - 2020 to 2022		**$ 3,428,640**	$ 347,641	$ 564,986
		To Sch 1a		

Source: Summary of Rent Payments

Monthly Gross Sales - Peace Bridge Duty Free Store
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Month	2017	2018	2019	2020	2021	2022	2023
January	$ 1,039,046	$ 956,197	$ 786,454	$ 920,345	$ 147	$ 266,652	$ 731,846
February	1,063,573	1,072,855	865,987	977,455	87	317,739	746,452
March	1,336,602	1,490,462	1,170,012	553,247	102	574,900	889,019
April	1,476,219	1,311,689	1,225,273	-	63	803,466	1,016,288
May	1,692,693	1,646,796	1,609,629	-	117	839,157	1,249,446
June	1,952,544	1,928,287	1,787,096	-	138	942,743	1,401,866
July	2,363,915	2,222,873	2,112,130	-	117	1,332,856	
August	2,361,448	2,228,492	2,514,542	-	91	1,295,437	
September	2,003,123	1,688,790	1,808,864	-	97,691	1,189,993	
October	2,031,668	1,594,221	1,841,330	-	309,754	1,214,518	
November	1,906,906	1,650,001	1,789,858	186	545,927	1,004,773	
December	1,880,534	1,521,935	1,671,142	111	571,208	881,177	
Total	$ 21,108,271	$ 19,312,598	$ 19,182,317	$ 2,451,344	$ 1,525,442	$ 10,663,411	$ 6,034,916
As % of 2017-2019 (Excl. renovation period)							
January				99%	0%	27%	73%
February				98%	0%	30%	70%
March				42%	0%	41%	63%
April				0%	0%	58%	73%
May				0%	0%	50%	75%
June				0%	0%	49%	72%
July				0%	0%	60%	
August				0%	0%	53%	
September				0%	5%	62%	
October				0%	17%	63%	
November				0%	31%	54%	
December				0%	34%	50%	
Total	-	-	-	20%	7%	50%	71%

Period of renovations

Source: Exhibit FF to the Affidavit of Jim Pearce sworn Nov. 13/22
Summary of monthly sales and traffic count - Jan-Jun 2023

Monthly Car Traffic Statistics - Peace Bridge
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Month	2017	2018	2019	2020	2021	2022	2023
Volume							
January	127,857	131,293	114,306	123,186	13,393	33,958	97,569
February	123,090	125,661	115,595	121,355	12,148	33,448	92,331
March	143,223	166,680	150,707	67,111	15,766	57,787	115,598
April	150,020	142,730	143,282	6,545	17,422	77,616	114,718
May	160,985	172,250	164,405	8,718	20,674	88,446	135,379
June	184,617	196,380	188,736	11,559	21,332	101,401	148,245
July	244,254	244,804	230,244	12,742	22,522	138,852	
August	247,105	249,704	249,184	14,501	38,189	139,629	
September	190,180	179,114	176,774	14,777	39,614	114,411	
October	182,156	169,751	171,744	15,260	37,478	124,964	
November	158,464	147,854	147,129	13,431	49,587	99,166	
December	161,352	154,528	145,503	12,881	54,587	77,595	
Total	2,073,303	2,080,749	1,997,609	422,066	342,712	1,087,273	703,840
As % of 2017-2019							
January				99%	11%	27%	78%
February				100%	10%	28%	76%
March				44%	10%	38%	75%
April				5%	12%	53%	79%
May				5%	12%	53%	82%
June				6%	11%	53%	78%
July				5%	9%	58%	
August				6%	15%	56%	
September				8%	22%	63%	
October				9%	21%	72%	
November				9%	33%	66%	
December				8%	35%	50%	
Total	-	-	-	21%	17%	53%	78%

Source: Exhibit EE to the Affidavit of Jim Pearce sworn Nov. 13/22
Summary of monthly sales and traffic count - Jan-Jun 2023

Annual Income Statements - PBDF
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	Year Ended December 31, 2020	2021	2022
Sales	$ 3,107,805	$ 1,897,214	$ 11,783,548
Cost of Sales	1,642,462	912,976	5,688,563
Gross Margin	1,465,343	984,238	6,094,985
	47%	*52%*	*52%*
Expenses			
Rent - Buffalo and Fort Erie Public Bridge Auth.	4,000,000	4,000,000	4,000,000
Rent - Hamilton International Airport	56,084	20,027	59,864
Wages & Benefits	1,301,745	921,455	1,552,312
Insurance	292,868	186,103	194,703
Professional Fees	61,651	169,724	537,136
Commercial Taxes	50,268	68,715	68,437
Utilities	73,978	62,291	87,588
Marketing	54,117	53,670	55,675
Store Supplies	20,941	48,821	72,142
Maintenance	45,785	31,884	79,312
Automobile	4,835	3,905	8,450
Collection Fees	54,974	25,458	169,884
Computer Expense	24,405	20,673	42,392
Communications	17,175	17,249	27,434
Office	5,051	3,802	8,862
Travel and Promotion	14,827	1,784	13,905
Other Admin Expenses	37,640	37,871	67,657
Amortization	562,722	511,954	485,009
	6,679,066	6,185,386	7,530,761
Operating Income	(5,213,723)	(5,201,148)	(1,435,776)
	-167.8%	***-274.1%***	***-12.2%***
Other Income			
Other Income	69,522	16,982	207,768
Government Subsidies	543,585	760,200	652,888
	613,107	777,182	860,656
Other Expenses			
Capital Lease & Lease Line of Credit Interest	204,785	191,940	196,160
	204,785	191,940	196,160
Net Income before Income Taxes	(4,805,401)	(4,615,906)	(771,280)
Income Taxes (Recovery)			
Current	(1,136,291)	(865,474)	-
Future	(37,900)	(220,400)	(202,800)
	(1,174,191)	(1,085,874)	(202,800)
Net Income	$ (3,631,210)	$ (3,530,032)	$ (568,480)

Source: Income Statements for Peace Bridge Duty Free Inc.

Annual Balance Sheets - PBDF
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

Description	As at December 31, 2020	2021	2022
Current Assets			
Cash and Equivalents	$ 90,158	$ 1,770,372	$ 3,128,834
Misc. Receivables	734,128	270,396	515,266
Income Tax Receivable	1,262,120	865,474	-
Inventory	1,724,768	1,378,441	1,342,209
Prepaid Expenses	88,291	92,933	471,322
	3,899,465	4,377,616	5,457,631
Lease Security Deposit	50,000	50,000	50,000
Net Equipment and Leaseholds	6,248,270	5,736,316	5,294,386
Future Income Taxes	168,000	213,000	415,800
	$ 10,365,735	$ 10,376,932	**$ 11,217,817**
Current Liabilities			**To Sch 1b**
Bank Indebtedness	210,000	-	-
Accounts Payable	3,771,057	7,331,802	9,404,414
Income Taxes Payable	-	-	-
Lease Line of Credit	-	-	-
Current Portion of Capital Lease Obligation	4,473,735	3,839,619	3,176,372
Current Portion of Long-Term Debt	-	1,000,000	1,000,000
	8,454,792	12,171,421	13,580,786
Capital Lease Obligation	-	-	-
Future Income Taxes	175,400	-	-
	8,630,192	12,171,421	13,580,786
Shareholders' Equity			
Common Stock	21,000	21,000	21,000
Retained Earnings (Deficit) - Opening	**5,505,753**	1,714,543	(1,815,489)
Net Income	(3,631,210)	(3,530,032)	(568,480)
Dividends	(160,000)	-	-
Retained Earnings (Deficit) - Closing	1,714,543	(1,815,489)	(2,383,969)
	1,735,543	(1,794,489)	(2,362,969)
	$ 10,365,735	$ 10,376,932	$ 11,217,817
	To Sch 1a		

Includes accruals of unpaid rent

Source: Balance sheets for Peace Bridge Duty Free Inc.

Annual Income Statements - Buffalo and Fort Erie Public Bridge Authority
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

	FYE Dec 31			
	2019	2020	2021	2022
	(USD - thousands)			
Revenue				
Toll Revenues	$ 22,118	$ 16,910	$ 18,165	$ 23,133
Other Revenues (including rent)	8,813	7,662	8,123	6,517
	30,931	24,572	26,288	29,650
Operating Expenses				
Toll Collection and Traffic Control	2,211	1,643	1,386	1,531
Maintenance of Bridge, Buildings, Plazas and Equipment	4,694	3,761	3,918	3,817
Administration	3,117	3,437	3,509	4,085
Pension	673	283	(408)	(760)
Other Post-employment Benefits	(1,162)	(3,650)	(2,855)	(1,676)
Other Expenses	1,157	1,177	1,261	1,244
Bad Debt	-	2,500	3,192	2,068
Loss on Asset Disposals/Impairment	-	306	2,268	(26)
Depreciation	6,242	8,053	8,143	8,459
	16,932	17,510	20,414	18,742
Operating Income	13,999	7,062	5,874	10,908
Non-Operating Revenue/(Expenses)				
Net Increase (Decrease in Fair Value of Investments	3,216	1,450	(767)	(4,376)
Interest Income	109	84	34	3,406
Interest Expense	(3,570)	(3,476)	(3,381)	(3,281)
Grant Revenue	1,814	-	-	-
Currency Remeasurement	101	147	29	(558)
	1,670	(1,795)	(4,085)	(4,809)
Change in Net Position	$ 15,669	$ 5,267	$ 1,789	$ 6,099

Relates to rent receivable from duty-free stores
Source: Buffalo and Fort Erie Public Bridge Authority - Annual Reports

Annual Balance Sheets - Buffalo and Fort Erie Public Bridge Authority
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

	At December 31			
	2019	2020	2021	2022
	(USD - thousands)			
Assets				
Current Assets	$ 94,734	$ 79,607	$ 82,883	$ 86,588
Restricted Assets	19,678	19,374	17,104	17,408
Non-Current Lease Receivable	-	-	55,394	50,448
Net Pension Asset	3,582	7,390	9,405	10,804
Net OPEB Asset	-	-	604	2,771
Capital Assets (net)	239,199	249,913	244,755	239,698
Total Assets	357,193	356,284	410,145	407,717
Deferred Outflow of Resources	4,826	2,977	2,123	1,245
Total Assets and Deferred Outflow	$ 362,019	$ 359,261	$ 412,268	$ 408,962
Liabilities				
Current Liabilties	12,536	10,453	8,988	8,703
Noncurrent Liabilities	105,999	97,072	91,544	87,790
	118,535	107,525	100,532	96,493
Deferred Inflow of Resources	3,721	6,706	64,917	59,551
Net Position				
Net Investment in Capital Assets	131,766	147,659	148,000	146,659
Restricted	16,893	14,981	14,895	16,010
Unrestricted	91,104	82,390	83,924	90,250
	239,763	245,030	246,819	252,919
Total Liabilities, Deferred Inflows and Net Position	$ 362,019	$ 359,261	$ 412,268	$ 408,962

Source: Buffalo and Fort Erie Public Bridge Authority - Annual Reports

Other Bridge Authority - Rental Income
Peace Bridge Duty Free Inc. (PBDF)
Analysis of Rents

	FYE October 31					
	2017	**2018**	**2019**	**2020**	**2021**	**2022**
Niagara Falls Bridge Commission (Rainbow Bridge/Queenston-Lewiston Bridge)						
Rental Income	$10,792,171	$10,958,945	$11,042,799	$ 7,890,897	$ 9,049,150	$11,093,113
Other Income (Tolls, etc.)	22,068,557	24,923,986	25,259,802	22,400,122	16,464,187	23,303,494
Total	32,860,728	35,882,931	36,302,601	30,291,019	25,513,337	34,396,607
Total Expenses	29,264,717	31,092,183	33,366,204	32,916,036	32,523,847	31,443,620
Net income before tax	$ 3,596,011	$ 4,790,748	$ 2,936,397	$ (2,625,017)	$ (7,010,510)	$ 2,952,987
Westbound traffic - cars (Millions)	2.72	2.86	2.77	0.9	0.2	1.28
Reduction in rental income				29%	18%	0%
Reduction in net income				189%	339%	-1%
Reduction in auto traffic				68%	93%	54%

	FYE March 31					
	2017	**2018**	**2019**	**2020**	**2021**	**2022**
	(000s)	***(000s)***	***(000s)***	***(000s)***	***(000s)***	***(000s)***
Federal Bridge Corporation (Sault Ste Marie Intl. Bridge, Blue Water Intl. Bridge, Thousand Islands Intl. Bridge, Seaway Intl. Bridge)						
Rental Income	$ 4,370	$ 4,606	$ 4,910	$ 4,690	$ 1,378	$ 1,871
Other Income (Tolls, etc.)	39,535	38,025	37,873	38,416	25,862	29,756
Total	43,905	42,631	42,783	43,106	27,240	31,627
Total Expenses and other income	44,292	45,605	44,363	45,090	42,030	33,558
Net income before tax	$ (387)	$ (2,974)	$ (1,580)	$ (1,984)	$ (14,790)	$ (1,931)
Traffic						
Reduction in rental income					71%	60%
Reduction in net income					-645%	3%

Sources https://www.niagarafallsbridges.com/images/docs/2022_Annual_Review_-_low_res.pdf

MDD FORENSIC ACCOUNTANTS

Ephraim Stulberg

MBA, CPA, CA, CBV, CFF | Partner / Senior Vice President

Ephraim specializes in the areas of business valuation, economic loss quantification and investigative accounting. He has provided expert evidence in court and at arbitration. He has worked on matters across Canada, as well as the United States, Europe, South America, the Middle East and Asia.

Ephraim has prepared economic loss quantification reports involving intellectual property infringement, professional negligence, breach of contract, physical damage and personal injury. He has completed numerous assignments involving first-party and third-party insurance coverage.

Ephraim has provided business valuation reports in a variety of contexts, including contractual and shareholder disputes, post-acquisition disputes, expropriation, physical damage, matrimonial disputes, income tax reporting, corporate reorganizations, bankruptcy, as well as in the negotiated purchase and sale of companies or shares.

Ephraim has conducted financial investigations in the context of partnership and shareholder disputes, post-acquisition disputes, buyer-side due diligence and estate disputes, and has also investigated numerous employee thefts.

Ephraim has experience in a wide variety of industries, including oil and gas, mining, construction, power generation, computer software, franchising, manufacturing, real estate, media/communications, financial services, professional services and medical supplies/healthcare.

Ephraim is a frequent contributor to various financial and legal publications. He has published numerous pieces in ***Lawyers Weekly, Lawyer's Daily*** and ***Law Times***, and has authored or co-authored numerous articles in peer reviewed journals, including the CICBV's ***Journal of Business Valuation***, the American Bar Association's ***Franchise Law Journal***, and the ***Canadian Intellectual Property Review.*** He received an award from the Ontario Bar Association in 2014 for one of his publications. He is a past member of the CICBV's Publications and Research Committee. He was named the CICBV's "Communicator of the Year" in 2019.

Ephraim has delivered presentations for the Intellectual Property Institute of Canada, the Toronto Intellectual Property Group, the Ontario Bar Association, the Canadian Franchise Association, the Canadian Defence Lawyers, the Ontario Expropriation Association, the CBV Institute, the American Institute of Certified Public Accountants, as well as to various individual law firms and corporations in Ontario, Nova Scotia, Saskatchewan and British Columbia.

Professional Qualifications

Chartered Professional Accountant / Chartered Accountant (CA/CPA)
Chartered Business Valuator (CBV)
Certified in Financial Forensics (CFF)

Academic Qualifications

HBA (with Distinction), University of Toronto
MA, University of Toronto
MBA (with Distinction), Schulich School of Business (York University)

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Form 53
Courts of Justice Act

ROYAL BANK OF CANADA

AND

PEACE BRIDGE DUTY FREE INC.

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Ephraim Stulberg. I live in the city of Toronto, in the province of Ontario.

2. I have been engaged by or on behalf of Peace Bridge Duty Free Inc. to provide evidence in relation to the above-noted court proceeding.

3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

   (a) to provide opinion evidence that is fair, objective and non-partisan;
   (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
   (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Signature

August 16, 2023

Date

TAB D

J.C. WILLIAMS GROUP

Peace Bridge Duty Free Inc.
and
Buffalo and Fort Erie Public Bridge Authority
Lease Interpretation Dispute

Retail Expert Report

August 16, 2023
Prepared for: Blaney McMurtry LLP

J.C. Williams Group
1 Dundas Street W, Suite 2500
Toronto, ON M5G 1Z3
416.921.4181

August 16, 2023

Mr. John C. Wolf
Partner, Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5

Dear Mr. Wolf,

I am pleased to submit the following report in respect to the matter of the Peace Bridge Duty Free Inc. and Buffalo and Fort Erie Public Bridge Authority lease interpretation dispute.

Sincerely,

Lisa Hutcheson
Managing Partner, J.C. Williams Group

Cc: Brendan Jones, Partner, Blaney McMurtry LLP

Contents

1. Summary

Capitalized terms are as defined in this report or in the Lease.

Peace Bridge Duty Free Inc. (PBDF) is the Tenant located on the Ontario side of the Peace Bridge at the border between Fort Erie and Buffalo in accordance with a building lease agreement dated July 16, 2019 (Lease), with the Buffalo and Fort Erie Public Bridge Authority (the Landlord).

I have been asked to prepare a report with respect to an opinion relating to the Lease, including Base Rent issues. In addition, I have been asked to answer a specific set of questions. The following will provide a summary of answers further detailed in my report.

What is a range of the typical leasing rates in retail locations in the greater Niagara area?

- The base rent for retail properties in the Fort Erie trade area ranges from \$8-\$30 per square foot (ft^2).
    - Total rent including Taxes, Maintenance, and Insurance (TMI) is between \$12-\$42/ft^2.
- PBDF, by paying Base Rent, is paying:
    - \$153.85/ft^2 on the total space (26,000 ft^2)[1], or
    - Considering the Tim Hortons space is vacant, and associated adjacencies are unusable in their current layout/design, therefore the Base Rent per square foot could be an artificially lowered lease rate because of unusable or vacant space.

Having regard to Frontier Duty Free Association and other public databases, what is a range of typical gross sales-to-rent ratios in the Canadian Duty Free sector?

- A typical ratio for gross sales-to-rent ratio in the Canadian Duty Free sector is very difficult to quantify, as it is a small number of stores, their operations differ, and all land border duty frees in Canada are privately owned.
- The Sault Ste. Marie Duty Free operator currently pays 16% of total sales for their lease.
- Jim Pearce, General Manager and CFO of PBDF, who has ongoing discussions with other duty free operators, advised that in his understanding, the standard currently ranges from 10-16%.

[1] \$4,000,000 (Base Rent/26,000 ft^2).

    - Mr. Pearce's tenure in the industry spans over 30 years as an operator, and 15 years on the Frontier Duty Free Association board of directors.
- PBDF appears to be paying the highest gross sales-to-rent ratio in the Canadian Duty Free sector.
- The average Gross Sales-to-rent ratio in the Canadian retail sector ranges from 6-10%.
- The Lease provides for payment of rent in the range of 20-24% of gross sales and is more particularly set out in the Lease. This rental rate is more than double the current Canadian retail benchmark.
    - In 2022, PBDF (if it is still required to pay their Base Rent) will pay 36.96%[2] of Gross Sales. However, as they paid 20% of Gross Sales, their rent would effectively doubled if they paid Base Rent.
    - The gross margin on PBDF products average around 50%. Therefore, rent and the costs of goods sold would total 86.96% of revenue. In addition to rent and cost of goods sold, a retailer has other expenses including labour, benefits, cleaning and maintenance, insurance, marketing, debt service, etc. In my opinion, it would be impossible to operate a business even at break even under the condition of paying nearly 40% of gross sales in rent.

Having regard to Frontier Duty Free Association and other public data bases, what is a range of typical minimum rent payable in duty free locations in Canada?

- Ms. Barrett of the FDFA confirmed these metrics are not collected by the association. In my research, I located no statistical base rent available for comparison.

Duty Free reports that Capture Rates of traffic crossing international borders are lower than pre-pandemic levels. Please review the Capture Rate of PBDF and provide commentary on whether this trend is being realized at the PBDF.

- Capture Rate is the total number of motor vehicles visiting a duty free location, divided by the total number of motor vehicles crossing through the international border.
- There has been a drastic reduction both in traffic and the number of transactions since 2019, as well as a decrease in the Capture Rate:
    - The Capture Rate in 2019 was 10.12% and 7.65% in 2022. This is a total reduction of 24.36%.

[2] $4,000,000 (Base Rent)/$10,823,633 (2022 gross sales).

Having regard to a review of historical gross sales and traffic volume trends, what is a reasonable range of expected outcomes for a replacement tenant secured through an RFP process? To the extent applicable, please consider tenant improvement allowance, fixturing period, free rent, key money, and minimum rent obligations and provide a range of Net Economic Return (NER) for the Landlord over the balance of the term of the remaining Lease.

- Net Economic Return (NER) is an accounting/real estate term that describes how much an investor can expect to make on an investment over a specified period.
- Duty free stores in Canada, according to Ms. Barrett, rarely change operators. In many cases, the stores are in the possession of families who have operated the store for decades.
- Due to their high level of regulations, if an operator was to vacate their store, the decision for a new operator would need to go through a public tender process.
    - In conversation with Mr. Pearce, the RFP process in 2016 for the PBDF location took four months as an incumbent.
    - In my experience with public tenders, four to twelve months is reasonable.
- In my opinion, the cost to secure a new tenant for PBDF ranges from $2.33 million to $3.89 million.

Compare the Net Economic Return (NER) to the current Duty Free operator and a new operator acquired through Request for Proposal (RFP).

- I have been instructed to analyze the remaining Lease term from January 1, 2024 – October 31, 2031.
    - In this case, the NER is referring to how much profit the Landlord can expect to make through the leasing of PBDF for the remainder of its current Lease term (October 31, 2031).

- NER to the Landlord from a continuation of the current tenancy after January 1, 2024 over the remainder of the Lease term:
    - Gross Revenue: $32,951,353
    - Total Capital and Operating Cost range: $0
    - NER: $32,951,353

The Landlord can expect to generate approximately $32,951,353 in lease revenue over the remainder of the current Lease should they retain the current Tenant.

- NER to the Landlord from a replacement tenancy through Request for Proposal (RFP) from and after January 1, 2024 over the remainder of the Tenant's Lease term:
    - Gross Revenue range: $13,824,000 to $29,751,353
    - Total Capital and Operating Cost range: $5,330,000 to $8,560,000
    - NER range: $11,460,667 to $25,858,019

The Landlord can expect to generate rent of between $11,460,667 to $25,858,019 over the remainder of the current Lease should they need to source a new tenant through an RFP process.

Based on lease rates and costs incurred by the Landlord, replacing the current Tenant through the RFP process would generate rent of between $11,460,667 - $25,858,019 as compared to $32,951,353 with the current operator remaining at PBDF.

The current PBDF operator would generate between $7,093,333 - $21,460,686 (or 21.5% to 65.13%) more than if the Landlord were to replace the current operator.

Based on my analysis of the quantified NER, the Landlord is materially better off in terms of rent received retaining the current Tenant.

Qualifications

I, Lisa Hutcheson, am the Managing Partner at J.C. Williams Group (JCWG), a retail consulting firm based in Toronto founded in 1974.[3] I am a seasoned retail executive with a career spanning nearly 30 years. I have consulted on matters relating to developing retail strategy for retailers, shopping centres, and mixed-use property redevelopment, as well as retail market demand. I have testified as an Expert Witness and provided expert reports for numerous cases relating to retail operating practices.

I am a keynote speaker on retail best practices and am frequently quoted and sourced for media interviews regarding retail activity. I have co-authored two books published by the Retail Council of Canada. I am also an adjunct professor at Seneca College, teaching in the Fashion Business Management Program. In addition to my extensive retail background, I am an active member of the Canadian Research Group for the International Council of Shopping Centres (ICSC) and a founding board member of the Canadian Retail Educators Association (CREA).

For this report, I was supported by Graham Heuman, a JCWG research associate, to gather background information and references as directed and supervised by myself.[4]

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[3] See Appendix A for more information about JCWG.

[4] See Appendix B for Ms. Hutcheson and Mr, Heuman's full Curriculum Vitae.

2. Background

Peace Bridge Duty Free Inc. (PBDF) is the Tenant located on the Ontario side of the Peace Bridge at the border between Fort Erie and Buffalo in accordance with a building lease agreement dated July 16, 2019, with the Buffalo and Fort Erie Public Bridge Authority (the Landlord).

PBDF closed on March 21, 2020[5] in accordance with a government order. They were closed for 548 days and partially opened again on September 19, 2021[6]. The border, however, was closed for Americans entering Canada from March 21, 2020, until August 9th, 2021[7], (507 days) and for Canadians entering the US, was closed until November 8, 2021[8] (598 days). Upon reopening in 2021, the store began paying 20% of Gross Sales percentage rent to the Landlord, plus all additional rent. For clarity, the tenant continued to pay additional rent during the period of closure.

The Landlord is demanding payment of the shortfall of Base Rent and 20% of sales from the initial pandemic closure to present. I am advised by Blaney that the Landlord values its claim for arrears of Base Rent in the range of $10 million - $12 million. The Tenant and Landlord are engaged in litigation with a motion hearing currently scheduled for mid-September 2023.

3. Instructions and Factual Assumptions

I have been asked to prepare a report with respect to an opinion relating to the Lease, including Base Rent issues. In addition, I have been asked to answer the following questions.

- What is a range of the typical leasing rates in retail locations in the greater Niagara area?
- Having regard to Frontier Duty Free Association and other public databases, what is a range of typical gross sales-to-rent ratios in the Canadian Duty Free sector?
- Having regard to Frontier Duty Free Association and other public databases, what is a range of typical minimum rent payable in duty free locations in Canada?
- Duty Free reports that Capture Rates of traffic crossing international borders are lower than pre-pandemic levels. Please review the Capture Rate of PBDF and provide commentary on whether this trend is being realized at the PBDF.

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[5] 2021-12-12 – Jim Pearce Affidavit.
[6] Ibid.
[7] Ibid.
[8] Ibid.

- Having regard to a review of historical gross sales and traffic volume trends, what is a reasonable range of expected outcomes for a replacement tenant secured through an RFP process? To the extent applicable, please consider Tenant Improvement allowance, fixturing period, free rent, key money, and minimum rent obligations and provide a range of Net Economic Return (NER) for the Landlord over the balance of the term of the remaining Lease.
- Compare Net Economic Return (NER) to the current Duty Free operator and a new operator acquired through Request for Proposal (RFP).

3.1 Factual Assumptions

I assume the following facts to be true for the purposes of this report:

- Peace Bridge Duty Free (PBDF) has been operating a duty free shop at the Peace Bridge site and as the Tenant of the Buffalo and Fort Erie Public Bridge Authority (PBA) since November 1986.[9]
- On March 21, 2020, all non-essential travel across the Canada-United States border was suspended indefinitely.[10]
- International travel was reinstated at land borders (though only for travellers fully vaccinated for COVID-19) on November 8, 2021.[11]
- Canada-United States land borders were closed as a result of government legislation in response to the COVID-19 pandemic for 598 days.
- The Landlord is requiring a payment of Base Rent accrued post-pandemic.
- The Tenant, in reliance on Section 18.07 of the Lease, has paid to the Landlord, in lieu of Base Rent, 20% of gross sales.
    - Blaney has advised me that no party disputes that Section 18.07 of the Lease was triggered by the COVID-19 pandemic and resulting border closures.
- The Tenant and Landlord are engaged in litigation with the next motion hearing currently scheduled for mid-September 2023.

[9] Affidavit of Jim Pearce, December 2, 2022.
[10] https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00007-eng.htm.
[11] https://globalnews.ca/news/8346872/us-canada-border-reopens-rules/.

4. Documents Reviewed

I have reviewed the following documents as the basis for the findings and opinions in my report:

- PBDF Sales-Costs 2017 – January 2023, February 2023
- FDFA Presentation to PBA board, May 2022
- FDFA Presentation to PBA re: Land border duty free Peace Bridge, March 25, 2022
- PBDF – PBA Lease 2016, July 20, 2016
- Sault Ste. Marie Bridge Authority, May 13, 2021[12]
- Affidavit of Jim Pearce, December 12, 2021
- Affidavit of Jim Pearce, December 2, 2022
- Supplemental Affidavit of Jim Pearce, February 13, 2023
- Cross-Motion Record of PBDF, November 13, 2022
- Affidavit of Ben Mills, January 1, 2023
- Affidavit of Ron Rienas, September 7, 2022
- Exhibits to Ron Rienas Affidavit, September 7, 2022
- Responding Affidavit of Ron Rienas, November 26, 2022
- Affidavit of Ron Rienas, March 1, 2023

In addition to the documents reviewed:

- JCWG research associate Graham Heuman visited the Peace Bridge Duty Free store on May 19, 2023.
- I interviewed the Executive Director of the Frontier Duty Free Association (FDFA), Barbara Barrett on June 6, 2023.[13]
- I interviewed Greg O'Hara, President of Peace Bridge Duty Free Inc., on June 13, 2023.
- I interviewed Jim Pearce, General Manager and CFO of Peace Bridge Duty Free, on June 13, 2023, and June 23, 2023.
- Mr. Heuman conducted a random sampling of telephone calls to ten Duty Free operators for additional insights regarding overall sales and rent-to-sales ratios where available.

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[12] Sault Ste. Marie Bridge Authority, ***Draft*** Minutes, May 13, 2021.
[13] Appendix C – Meeting Minutes with Barbara Barrett, Executive Director of FDFA, June 6, 2023.

5. Discussion

5.1 About Duty Free Stores

Duty free shops at international airports have been in existence since the 1960s followed by the expansion to land border locations in 1986. The Canada Border Services Agency (CBSA) licenses duty free operators, which sell goods free of certain duties and taxes normally levied on goods sold in Canada to travellers who are about to leave Canada.[14]

The CBSA oversees the licensing of duty free shops, primarily to ensure duty free goods are properly accounted for and exported. The CBSA also monitors duty free shops to ensure they comply with government requirements and maintains related regulations and policies.

While passengers of commercial vehicles also shop at these stores, the primary customers are leisure travellers, travelling by car and bus tours.

These stores are privately owned and rarely turnover. In the case of PBDF, it has had the same operator since November 1986.

5.2 Impact of COVID-19 on Cross-Border Travel

The COVID-19 pandemic, and associated government legislation, drastically decreased the number of visitors travelling internationally. On March 21, 2020, all non-essential travel across the Canada-United States border was suspended indefinitely.[15] International travel was eventually reinstated at land borders (though only for travellers fully vaccinated for COVID-19) on August 9, 2021[16] (for Americans coming to Canada), and November 8, 2021[17] (for Canadians entering the US). As such, Canada-United States land borders were closed as a result of government legislation in response to the COVID-19 pandemic from 507 days (Americans coming to Canada) to 598 days (Canadians entering the US) (72-85 weeks). During the periods of reopening, there were still quarantine requirements for travellers entering Canada. This was a deterrent for those wanting to travel, regardless of if they were legally allowed to or not.

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[14] Canada Border Services Agency website: https://www.cbsa-asfc.gc.ca/import/dfs-bht-eng.html.
[15] https://www150.statcan.gc.ca/n1/pub/45-28-0001/2021001/article/00007-eng.htm.
[16] https://www.canada.ca/en/border-services-agency/news/2021/08/travel-advisory-reminder--on-august-9th-new-public-health-measures-will-come-into-force-affecting-travel-to-canada.html
[17] https://globalnews.ca/news/8346872/us-canada-border-reopens-rules/.

As of the 2023 Victoria Day long weekend[18], cross-border leisure traffic remains down from pre-pandemic levels. Canadians crossing to the United States at land borders is down approximately 46%[19] overall, with Ontario specifically faring better than the national average, however, still trending down approximately 15-20%[20] compared to the Victoria Day long weekend in 2019.

With duty free shops intended only for customers who are about to leave Canada and goods purchased must be immediately exported, the closure of the Canada-United States land borders dramatically impacted these stores.

Moreover, government requirements, related regulations, and policies made it impossible for these stores to pivot operations to online shopping (ordering and paying online), curbside pick-up or delivery, similar to other retail operations. The reason for this is that duty free shoppers must be crossing an international border to be able to make a purchase. When the border was closed, even though customers could browse products online, they were not able to make a purchase.

PBDF does have online pre-ordering available through their website. This allows customers to view the store's inventory, and reserve products upon their arrival. However, this is much different than online shopping since there are no payments processed, and there is no ability for the customer to perform curbside-pickup or have the products delivered.

This distinction is important as the main convenience benefits of online shopping (payment processing, delivery/curbside pickup) are not possible as a result of duty free regulations.

5.3 Commercial (Retail) Tenant and Landlord Dynamics in Response to COVID-19

Commercial tenant and landlord relationships were tested during the COVID-19 pandemic. As a result of government legislation in response to the COVID-19 pandemic, businesses were required to close for various lengths and periods of time. As such, revenue across industries, especially retail, dropped significantly. Tenants with no revenues were unable to honour lease obligations and payments became unattainable.

[18] May 20-23, 2023.
[19] Appendix C – Meeting Minutes with Barbara Barrett, Executive Director of FDFA, June 6, 2023.
[20] Discussion with Barbara Barrett and discussions with other duty free stores.

In response to government legislation, there were various financial incentives given to both landlords and tenants to support and keep the businesses afloat. Though this served as an aid to retailers, in many cases, these supports were not sufficient. Therefore, commercial tenants and landlords were required to be collaborative to benefit both parties.
In most cases, landlords first offered retail tenants rent deferrals. These were mutually beneficial as they:

- Provided rent relief to the retailer,
- Maintained landlord balance sheets, and
- Ensured that landlords would receive payment for the rent in the future, so there was no lost revenue in the long-term.

In most cases, these deferrals were given with no interest to allow retailers the best opportunity to pay them back.

If deferrals were not sufficient, landlords would offer periods of rent abatement. These abatements were offered typically to keep tenants from abandoning their lease and vacating the property.

In other instances, or in conjunction with deferrals/abatements, many tenants renegotiated with landlords to begin paying percentage rent rather than a base rent. Since the periods of lockdowns were difficult to judge, this allowed for more consistency and proportionality in expenses.

Deferrals, abatements, and conversions to percentage rent all varied in timeframes. In some instances, there was support only during periods of closure. However, it was more common to see renegotiations and assistance during periods of ramp up or reduced occupancy in retail environments, as this would give the tenant/retailer the best opportunity for survival.

Landlords considered the costs and benefits of abatements versus re-tenanting, and many concluded that finding and fitting out a new tenant would cost significantly more than abating rent for the periods that the store was closed. Overall, vacancy and the costs of re-tenanting (leasing downtime, fixturing periods, free rent, etc.) combined with the lower rent expectations of replacement tenants was seen as worse than abatements for periods of closure. In many instances, there were material abatements/deferrals for several months and/or free rent periods given.

5.4 Duty Free Store Performance as a Result of COVID-19

Travel restrictions, especially for non-essential travellers, had a drastic effect on all duty free stores, including PBDF. The following examines the traffic decrease since the onset of COVID-19 pandemic regulations and the associated decrease in overall revenue.

Prior to the COVID-19 pandemic, 94.7% (as shown in table 2) of total duty free sales were attributed to leisure travel (cars and buses). During periods of the land border closure, only essential traffic was able to cross (in most cases, this meant commercial transport trucks). As such, comparisons pre and post border closures are more relevant for cars and buses as opposed to trucks since they attribute to the vast majority of PBDF sales.

The below sections have been compiled to the best of my ability with data provided by Mr. Pearce of PBDF. The preferred and most accurate data to compare is a full calendar year. At the time of writing this report being the middle of 2023, year-over-year for the 2022 calendar year was compared. I have included the year-to-date data for 2023 in a separate section.

5.4.1 Overall Revenue Decrease

Overall revenue at all duty free stores as a result of government legislation in response to the COVID-19 pandemic has decreased. A survey conducted by the FDFA cited that the majority of duty free stores experienced sales decline of 80-90%.[21] PBDF similarly, realized a revenue decrease of -86.6% in 2020, -92.7% in 2021, and -47.4% in 2022.[22] Table 1 illustrates the pre-pandemic, during-pandemic, and post-pandemic revenue generated at PBDF.

Revenue	2017	2018	2019	2020	2021	2022
Cars	$19,146,089	$17,474,410	$17,511,028	$2,170,512	$1,362,004	$9,776,836
Buses	$1,469,256	$1,389,933	$1,230,691	$345,906	$2,137	$88,899
Trucks	$1,094,956	$1,095,804	$1,067,226	$26,501	$228,505	$957,898
Total	$21,710,301	$19,960,147	$19,808,945	$2,542,919	$1,592,646	$10,823,633
Percentage of Revenue						
Cars	88.19%	87.55%	88.40%	85.36%	85.52%	90.33%
Buses	6.77%	6.96%	6.21%	13.60%	0.13%	0.82%
Trucks	5.04%	5.49%	5.39%	1.04%	14.35%	8.85%

Table 1: PBDF Revenue, 2017-2022.

Table 2 highlights the change in distribution of revenue between cars, buses, and trucks, as well as total average decreases.

Metrics	Percentage of Car	Percentage of Bus	Percentage of Truck	Total Average (Car + Bus)
Average Percentage Change Pre to Post-Lockdown (2017 to 2019 – 2020 to 2022)	-1.11%	-27.00%	52.25%	-76.39%
Percentage Change 2020 over 2019	-3.44%	118.95%	-80.66%	-86.56%
Percentage Change 2021 over 2019	-3.26%	-97.84%	166.31%	-92.72%
Percentage Change 2022 over 2019	2.18%	-86.78%	64.27%	-47.36%

Table 2: PBDF Revenue Change, 2017-2022.

Overall revenue in 2022 remained down, realizing a -47.4% decline compared to 2019, the last full calendar year pre-pandemic lockdowns.

[21] PBA_presentation_March_2022_Distribution Mar 25, Page 7.
[22] Table 2 Total Average (car and bus).

5.4.2 Traffic Decrease

All vehicular traffic at PBDF decreased significantly because of government legislation in response to the COVID-19 pandemic. Table 3[23] illustrates the pre-pandemic, during-pandemic, and post-pandemic traffic at PBDF.

Traffic	2017	2018	2019	2020	2021	2022
Cars	2,073,303	2,080,749	1,997,609	361,674	342,712	1,100,634
Buses	11,791	10,690	10,350	1,910	413	3,315
Trucks	580,890	572,119	542,732	517,931	574,774	549,499
Total	2,665,984	2,663,558	2,550,691	881,515	917,899	1,653,448
Percentage of Traffic						
Cars	77.77%	78.12%	78.32%	41.03%	37.34%	66.57%
Buses	0.44%	0.40%	0.41%	0.22%	0.04%	0.20%
Trucks	21.79%	21.48%	21.28%	58.75%	62.62%	33.23%

Table 3: PBDF Traffic, 2017-2022.

Table 4 highlights the change in distribution of traffic between cars, buses, and trucks, as well as total average decreases for cars and buses.

Metrics	Percentage of Car	Percentage of Bus	Percentage of Truck	Total Average (Car + Bus)
Average Percentage Change Pre- to Post-Lockdown (2017 to 2019 – 2020 to 2022)	-91.81%	1623.97%	364.78%	-70.72%
Percentage Change 2020 over 2019	-47.61%	-46.60%	176.13%	-81.89%
Percentage Change 2021 over 2019	-52.33%	-88.91%	194.29%	-82.91%
Percentage Change 2022 over 2019	-15.00%	-50.59%	56.19%	-45.02%

Table 4: PBDF Traffic Change, 2017-2022.

Overall car and bus traffic had not recovered in 2022 and remained down -45.0% compared to 2019, the last full calendar year pre-pandemic lockdowns.

[23] I have relied on traffic data provided by Mr. Pearce. There are slight variances in traffic numbers between Mr. Pearce and the Peace Bridge Authority (PBA) website. These variances, according to Mr. Pearce, are likely a result of revisions from the PBA as PBDF uses the numbers as they are released. The difference does not change my opinion nor create any material difference in the traffic decreases.

5.4.3 Overall Transaction Decrease

Overall transactions at PBDF also decreased as a result of government legislation in response to the COVID-19 pandemic. Table 5 represents the pre-pandemic, during-pandemic, and post-pandemic traffic at PBDF. Both 2020 and 2021 were most significantly impacted, though 2022 is 50% below 2019 transactions.

Transactions	2017	2018	2019	2020	2021	2022
Cars	267,334	244,119	225,756	30,245	14,023	111,229
Buses	19,086	18,892	16,523	465	38	1,410
Trucks	24,802	21,139	15,823	3,824	2,596	13,919
Total	311,222	284,150	258,102	34,534	16,657	126,558
Percentage of Transactions						
Cars	85.90%	85.91%	87.47%	87.58%	84.19%	87.89%
Buses	6.13%	6.65%	6.40%	1.35%	0.23%	1.11%
Trucks	7.97%	7.44%	6.13%	11.07%	15.59%	11.00%

Table 5: PBDF Transactions, 2017-2022.

Table 6 shows the change in distribution of transactions between cars, buses, and trucks, as well as total average decreases. Trucks, as a percentage of sales had increased, while passenger vehicles are the primary customer.

Metrics	Percentage of Car	Percentage of Bus	Percentage of Truck	Total Average (Car + Bus)
Average Percentage Change Pre to Post-Lockdown (2017 to 2019 – 2020 to 2022)	0.15%	-85.98%	74.83%	-80.12%
Percentage Change 2020 over 2019	0.13%	-78.97%	80.62%	-87.32%
Percentage Change 2021 over 2019	-3.75%	-96.44%	154.22%	-94.20%
Percentage Change 2022 over 2019	0.48%	-82.60%	79.40%	-53.51%

Table 6: PBDF Transaction Change, 2017-2022.

Overall transactions in 2022 were down -53.5% compared to 2019, the last full calendar year pre-pandemic lockdowns. Tour buses realized the greatest impact also affecting total revenue.

5.4.4 2023 Year-to-Date (YTD) Traffic and Revenue Comparisons

As previously mentioned, year-over-year data is typically used as the metric of comparison. I have, however, obtained the 2023 YTD traffic and revenue and compared to revenue and traffic in 2019. Tables 7 and 8 show traffic and revenue by month for 2019 and 2023.

2023	Jan	Feb	Mar	Apr	May	Jun	Total
Traffic							
Cars	97,569	92,331	115,598	114,718	135,379	148,245	703,840
Buses	360	364	357	332	393	382	2,188
Trucks	44,379	41,550	47,655	43,279	48,096	46,543	271,502
Total	142,308	134,245	163,610	158,329	183,868	195,170	977,530
Revenue							
Total	$731,846	$746,452	$889,019	$1,016,288	$1,249,446	$1,401,866	$6,034,916

Table 7: PBDF Traffic and Revenue, YTD 2023.

2019	Jan	Feb	Mar	Apr	May	Jun	Total
Traffic							
Cars	114,306	115,595	150,707	143,282	164,405	188,736	877,031
Buses	611	610	723	659	752	826	4,181
Trucks	43,837	42,608	46,407	46,316	47,670	45,312	272,150
Total	158,754	158,813	197,837	190,257	212,827	234,874	1,153,362
Revenue							
Total	$821,602	$897,244	$1,213,657	$1,270,931	$1,668,230	$1,840,310	$7,711,974

Table 8: PBDF Traffic and Revenue, January – June 2019.

Table 9 (following page) highlights the change in traffic and revenue between cars, buses, and trucks, as well as total average decreases for cars and buses.

Metric	Percentage of Car	Percentage of Bus	Percentage of Truck	Total Average (Car + Bus)
Traffic Percent Change – January to June 2019 to January to June 2023	-19.75%	-47.67%	-0.24%	-19.88%

Table 9: PBDF Traffic Change, January to June 2019- January to June 2023.

Metric	Total Revenue Change
Revenue Percent Change – January to June 2019 to January to June 2023	-21.75%

Table 10: PBDF Revenue Change, January to June 2019- January to June 2023.

For the first half of 2023 (January – June 2023), revenue is down -21.8% YOY compared to 2019 (pre-pandemic). Total car and bus traffic, compared to 2019, is also down -19.9% YOY.

6. Questions Asked of Ms. Hutcheson

In my instructions for this assignment, I have been asked specifically to provide commentary and opinion to a set of questions. I will do so to the best of my ability given the sources and information available, as well as my understanding of the overall retail climate.

6.1 What is a range of the typical leasing rates in retail locations in the greater Niagara area?

In a review of current commercial leasing opportunities in Fort Erie conducted on June 22, 2023, the range for base rent in the immediate trade area is from $8-$30/ft². Total rent including Taxes, Maintenance, and Insurance (TMI) ranges between $12-$42/ft².[24]

PBDF, at 26,000 ft² is paying, as at June 2023, $153.85/ft² Base Rent.[25] Therefore, PBDF is paying at minimum 3.7 times to 12.8 times the leasing rate for commercial retail units in Fort Erie.

The rate of $153.85/ft² could also be an artificially lowered as a result of dormant space. PBDF has a large vacant space from the Tim Hortons departure, as well as an onsite warehouse and office space. Therefore, if we were to account for the actual retail space could be even higher.

6.2 Having regard to Frontier Duty Free Association and other public databases, what is a range of typical gross sales-to-rent ratios in the Canadian Duty Free sector?

Duty free stores are desirable for retail operators while there are very few opportunities with only 33 stores in Canada. The locations are limited by governments and have historically served as ideal shopping locations for customers crossing land borders. However, as duty free stores' operations were severely constrained during the COVID-19 pandemic because of government legislation, these operations became much less desirable. As with all other retail categories/stores, their value and desirability vary depending on their operating conditions.

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[24] See Appendix D for details of the trade area lease summary.

[25] Retail (14,000 ft²), Food Court (2,000 ft²), Warehouse (4,000 ft²), and Second Floor Office (6,000 ft²) = 26,000 ft² at $4,000,000 per year = $153.85/ft².

With that, many (if not all) of the leases of Canadian Duty Free stores were signed prior to the COVID-19 pandemic and therefore likely do not reflect the new realities of the sector, unless they have been renegotiated.

A typical ratio for gross sales-to-rent in the Canadian Duty Free sector is very difficult to quantify, as their operations differ. There are various factors to consider, such as:

- Who is the landlord?
    - Is the landlord a government or quasi-government body?
    - Does the operator own their land?
- When was the lease signed?
    - What were the economic/social/retail climates at the time of the lease signing?
- How long has the operator been in business?
    - Is this a second- or third-generation family business?
- Where is the store located?

Moreover, all of the Duty Free stores are privately owned companies with no requirement to share information related to their financial records with the public providing limited access to benchmarking. As such, and based on my discussion with Ms. Barrett, these metrics are not formally collected by the FDFA.

JCWG contacted ten Canadian Duty Free operators requesting such information. Though the operators were willing to speak with us and provide us with certain metrics related to overall tourism and traffic post-pandemic lockdowns, they were not willing to disclose their rent-to-sales ratios due to the highly proprietary nature of the metric requested.

In speaking with Jim Pearce General Manager and CFO of PBDF, these ratios vary greatly in their own industry. Mr. Pearce is well-versed within the Canadian Duty Free industry as an operator of 30 years and 15 years on the FDFA board of directors. The standard currently being achieved in Canada for gross sales-to-rent ratios, to his understanding, ranges from 10%-16%.[26]

The Sault Ste. Marie Bridge Authority publishes its annual reports and meeting minutes to the public and confirmed that the Canadian Duty Free operator at the site is currently paying 16% of total sales for their lease.

As per my discussions with Jim Pearce, and the absence of any statistical data to the contrary, PBDF appears to be paying the highest gross sales-to-rent ratio in the Canadian Duty Free sector.

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[26] JCWG interview with Jim Pearce, PBDF General Manager and CFO, June 13, 2023 and June 23, 2023.

When comparing to the average gross sales-to-rent ratio in the Canadian retail sector ranges from 6-10% the Base Rent obligations at PBDF of 157.3% in 2020[27], 251.2% in 2021[28], and 36.96%[29] in 2022 are 3.7x to 41.9x times higher as compared to the Canadian retail sector.

The Lease provides for payment of rent, before accounting for Base Rent, in the range of 20-24% of gross sales and is more particularly set out in the Lease. This rental rate more than double the current Canadian retail benchmark.

In 2022, PBDF (if required to pay Base Rent) owed 36.96%[30] of gross sales. However, they were paying 20% of sales in reliance of PBDF's interpretation of Section 18.07 of the Lease.[31]

At this rate of nearly 40%, it would be very difficult for any retail operator to make any profit/operate a business. Gross margins on PBDF products average around 50%. Therefore, just in rent and the costs of goods sold, would total 86.96% of revenue. In addition to rent and cost of goods sold, a retailer has other expenses including labour, benefits, cleaning and maintenance, insurance, marketing, debt service, etc. In my opinion, it would be impossible to operate a business even at break even under the condition of paying nearly 40% of gross sales in rent.

6.3 Having regard to Frontier Duty Free Association and other public databases, what is a range of typical minimum rent payable in duty free locations in Canada?

Duty free stores can be desirable for retail operators. As such, the base rents are higher than comparative lease rates in the surrounding trade areas. For this reason, in my opinion, it is most relevant to compare the Base Rent of the PBDF to other duty free stores in Canada as opposed to the local trade area, as it would be expected that Fort Erie, Ontario would have generally on average lower retail leasing rates as a ratio of gross sales compared to PBDF.

As with gross sales-to-rent ratios, these base rents vary significantly depending on the operating conditions of the store, as mentioned in Section 5.4.

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[27] $4,000,000/$2,542,919

[28] $4,000,000/$1,592,646

[29] $4,000,000/$10,823,633

[30] $4,000,000 (Base Rent)/$10,823,633 (2022 gross sales).

[31] Exhibit 1-PBDF Sales-Costs

Based on my discussion with Ms. Barrett, she confirmed these metrics are not collected by the FDFA. In my research, I located no statistical base rent available for comparison.

With the inability to compare the base rents of duty free locations, a secondary metric would be comparing to the trade area (Fort Erie, Ontario) as was performed above in section 6.1.

6.4 Duty Free reports that Capture Rates of traffic crossing international borders are lower than pre-pandemic levels. Please review the Capture Rate of PBDF and provide commentary on whether this trend is being realized at the PBDF.

Capture Rates are a universal conversion metric used across all retail industries. The metric is used to understand how many potential customers pass by a typical retailer would enter the store and make a purchase.

Capture Rate in the context of PBDF is the total number of motor vehicles visiting a duty free location, divided by the total number of motor vehicles crossing through the international border.

The Capture Rate at PBDF decreased in response to the COVID-19 pandemic lockdowns and government regulations. Table 7 shows the pre-pandemic, during-pandemic, and post-pandemic Capture Rate performance at PBDF.

Capture Rate	2017	2018	2019	2020	2021	2022
Cars	12.89%	11.73%	11.30%	8.36%	4.09%	10.11%
Buses	161.87%	176.73%	159.64%	24.35%	9.20%	42.53%
Trucks	4.27%	3.69%	2.92%	0.74%	0.45%	2.53%
Average	11.67%	10.67%	10.12%	3.92%	1.81%	7.65%

Table 7: PBDF Capture Rate, 2017-2022.

Capture Rate	
Percentage Change Pre- to Post-Lockdown	-58.76%
Percentage Change 2020 over 2019	-61.28%
Percentage Change 2021 over 2019	-82.07%
Percentage Change 2022 over 2019	-24.36%

Table 8: PBDF Capture Rate, 2017-2022.

As previously mentioned, there is limited benchmarking performed by Canadian Duty Free operators, especially those at land borders.

6.5 Having regard to a review of historical gross sales and traffic volume trends, what is a reasonable range of expected outcomes for a replacement tenant secured through an RFP process? To the extent applicable, please consider Tenant Improvement allowance, fixturing period, free rent, key money, and minimum rent obligations and provide a range of NER for the Landlord over the balance of the term of the remaining Lease.

The following section investigates the costs of re-tenanting commercial and retail units that are vacant. The standard costs to the Landlord for executing a new lease agreement include commission and leasing expenses, legal costs, costs of landlord work, Tenant Improvement allowances (TIs), a fixturing period, and a free rent period.

Further in this section, I explain the rental revenue that PBA can expect if they are to re-tenant the space, and with that, the Net Economic Return (NER) expectations that they would be likely to obtain should PBDF decide to vacate their duty free store location.

Frequency of Changes to Duty Free Store Operators

Duty free stores in Canada, according to my discussion with Ms. Barrett, rarely change operators. In many cases, the stores are in the possession of families who have operated the store for decades.

Due to their high level of regulations, if an operator were to vacate their store, the decision for a new operator would need to go through a public tender process. In the case of public tender for a duty free store, the facts are:

- Peace-Bridge Authority (PBA) controls the procurement process.
- There would be a need to attract a new and competent vendor as these stores are a unique undertaking.
  - o It is unlikely that the location would be tenanted by a non-Canadian operator as it is a federal contract and a non-Canadian operator winning the bid would produce negative consumer sentiment and not be positive optics for the bridge authority.
  - o There is likely a limited number of potential replacement operators. For examples, I was advised by Blaney that there were only 6 proponents that bid for the 2016 RFP. This would be exacerbated by the negative impact of COVID-19.
- Upon selection of an operator, there would then need to be a licensing process performed by CBSA to approve the operator to sell products export tax-free.

This process is lengthy and takes time. I understand that the previous RFP process with the current incumbent (PBDF) took four months. In my experience with public tenders, I would estimate the process would be at a minimum of four to six months up to a year. Then once a new operator is selected, there is the process of setting up a new store which can also takes several months.

PBDF Gross Sales Projections

According to Mr. Pearce, PBDF is projected to generate $18,000,000 in gross revenue in 2024 (the next full Lease year). In my opinion, a replacement operator could expect to generate anywhere from 80-100% of this 2024 projected revenue. The factors in this range include experience in the industry, the speed at which they can begin operating, and the terms of the Lease (which will be discussed throughout this section).

Tenant Improvement Allowance

Tenant Improvements (TIs) are a standard part of a commercial lease and include elements such as:

- Modifications or additions made to a property to make it suitable for the tenant's use.
    - This can include anything from minor changes like painting and carpeting to more significant and permanent modifications like moving walls, plumbing, or electrical systems.
- In my experience, the TI allowances can range anywhere between $10-$40/ft^2. The amount a tenant receives is based on multiple factors such as the market conditions, the newness of the space, the length of the lease, the type of space, and the tenant's financial capabilities.
- The landlord typically offers a period of base rent-free or at a discounted rate as TI. This, too, can offset some of the renovation expenses.

Note that the landlord's willingness to offer inducements may depend on factors such as their eagerness to fill the space, location and age, and the perceived value of the tenant.

These improvements are often paid by the landlord rather than the tenant to entice them to lease the space. For this duty free store, there would likely be a higher group of landlord expenses with car and bus traffic having not recovered as a result the COVID-19 pandemic.

In my opinion, a reasonable TI allowance for the PBDF location would range up to $40/ft^2. If the landlord can secure a replacement tenant that is satisfied with the current state of the PBDF store (including branding, fixtures, name, etc.), then there would be no TIs applicable to the lease. However, in order to entice a prospective tenant, the landlord may need to offer TIs as high as $40/ft^2 and or other incentives.

Fixturing Period

A fixturing period in a retail lease is the amount of time a business is designated to redesign and renovate the space to meet the needs of the new tenant. As is standard in the industry, a tenant would rarely pay rent during the fixturing period as they would not have commenced operations and therefore unable to generate any revenue during that time.

A standard fixturing period in a retail lease is in the range of 3-6 months. This incentivises the tenant to take the space without being worried about a loss of revenue while they renovate the space to fit their needs.

With standard fixturing, there are reviews of store design. The size of the store and the associated permitting requirements will inevitably extend the timeframe for fixturing (i.e., larger stores will take longer to build/renovate). Timing is also reliant on permit requirements and the speed at which they are processed and/or approved.

The current PBDF store is in a good state and condition with a recent renovation in 2018/2019. Typically, every ten years a retail store needs a refresh. As such, in my opinion, a reasonable fixturing period for a PBDF replacement tenant would be on the low end of the standard; around three months.

Key Money

Key Money is a fee paid to a manager, a landlord, or even a current tenant to secure a lease on a residential rental property. The term is sometimes used to refer to a security deposit. However, in some competitive rental markets, Key Money is simply a gratuity or a bribe.[32]

In my experience, Key Money is rarely added to commercial properties, as the perception of such payments is that they are unethical, and therefore even the mention of the possibility is frowned upon.

In instances where RFPs are issued by governmental or quasi-governmental bodies, the perception is worse as the scoring of proposals should not include what is essentially free money to the landlord.

In my opinion, Key Money would not be considered by both the Landlord and prospective tenant for the PBDF space. This would reflect poorly on the Landlord, and as such, would be unlikely to be included in an RFP for fear of perception of unethical business practices.

[32] https://www.investopedia.com/terms/k/keymoney.asp#:~:text=What%20Is%20Key%20Money%3F,a%20gratuity%20or%20a%20bribe

Free Rent Period
Landlords, in the interest of attracting tenants, will often offer free rent to tenants for a period of time while they are beginning the operation of the space. This is standard as it takes time for the retailer to get traction in the trade area and gain clientele.

Depending on the retail sector, these periods can range from multiple months to multiple years. This also depends on the desirability of the tenant through the landlord's eyes and the length of the lease.

In my opinion, it would be likely that a prospective duty free store tenant would be offered a free rent period while they got their operations in order upon opening the store. This period may be shorter, as the winner of the RFP would likely already have experience in the duty free sector.

As a new operator, it is expected to generate in the range of 80-100% of the current operators' 2024 projection. This equates to approximately $1,200,000 - $1,500,000 per month in gross sales. Therefore, in my opinion, a free rent period of three (3) months would be appropriate to entice the tenant and provide them with the best chance of success. This would ideally yield them the ability to generate $3,600,000 – $4,000,000 in revenue prior to paying their lease.

Rental Revenue Expectations
In my opinion, a new lease negotiation would certainly not yield the same Base Rent that the PBDF is paying currently. This is because:

- Traffic has drastically decreased at PBDF, especially non-truck traffic (leisure rather than commercial), with overall traffic decreasing:
  - 2020 over 2019: -65.44%
  - 2021 over 2019: -64.01%
  - 2022 over 2019: -35.18%
- COVID-19 shutdowns of non-essential land borders for 507-598 days[33] are still in recent memory (the fear of a lockdown for a new/same virus), and
- Canadian/American governments have proven that, if needed to contain the spread of disease, they will close land borders without any consideration of impact on duty free operations.
  - A new lease would likely contain a clause related to border closures. This clause would include an agreement on deferrals, reductions, abatements or conversion to percentage rent in the event of future closures.

[33] March 21, 2020 – August 9, 2021 (Americans able to enter Canada) and November 8, 2021 (Canadian able to enter US).

The rental revenue being generated by the PBDF Landlord is illustrated in Table 9.

	Total Revenue[34]	Base Rent	Percentage Rent	Total Rent Paid	Percentage of Total Revenue	Rental Rate Per Square Foot (ft^2)[35]
2017	$21,710,301	$4,000,000	$486,431	$4,486,431	20.66%	$172.56
2018	$19,960,147	$4,000,000	$0	$4,000,000	20.04%	$153.85
2019	$19,808,945	$4,000,000	$2,673	$4,002,673	20.21%	$153.95
2020	$2,542,919	$4,000,000	$0	$4,000,000	157.30%	$153.85
2021	$1,592,646	$4,000,000	$0	$4,000,000	251.15%	$153.85
2022	$10,823,633	$4,000,000	$0	$4,000,000	36.96%	$153.85

Table 9: Average rent payable by PBDF to Landlord.

On average, PBDF was paying $4,163,035 per year in rent prior to pandemic lockdowns, with $4,000,000/year being the Base Rent. When traffic was at normal levels, this would have been financially feasible (although very high). However, with the downturn in traffic as a result of the pandemic, this becomes impossible. As such, a logical decrease in Base Rent would be in line with the reduction in traffic, which as of 2022 was -35.2%. A reasonable base rent rate for PBDF would therefore be 64.8% of the pre-pandemic average: $4,000,000 x 64.8% = $2,592,800 per year average rental rate.

This rental rate is lower than previously, in accordance with the reduction in traffic. In the interest of satisfying both the Landlord and Tenant in this situation, this would likely be more heavily weighted towards percentage rent as opposed to base rent. Therefore, if the traffic increases in the future as people begin to travel more, the rent received by the Landlord would increase in accordance.

In my opinion, an annual base rent revenue for the Landlord of $2,592,800 (or $2,593,000 with rounding) would be more reflective of the current environment of PBDF as well as international travel but is still quite high. I believe that this would be in the middle of what the Landlord could realistically expect to generate: In my opinion, a realistic total lease generation for the PBDF Landlord would be:

[34] Not including revenues from foodservice.
[35] Total Rent Paid/26,000 ft^2.

- Low - $1,728,000 / year base rent
    - This lease rate would not only incentivise a new Tenant to take over the operations quickly but would be more in line with the lower end of duty free gross sales-to-rent ratios in Canada of 12%.
    - $14,400,000/year in revenue (80% of projected for 2024 by the current operator) x 12% of gross sales = $1,728,000.

- Medium - $2,592,000 / year base rent
    - This lease rate is feasible for an operator who is willing to go on the highest end of the average for Canadian Duty Free operators, 16% gross sales-to-rent ratio.
    - $16,200,000/year in revenue (90% of projected for 2024 by the current operator) x 16% of gross sales = $2,592,000.

- High - $3,600,000 / year base rent
    - This lease rate would be reflective of the current gross sales-to-rent ratio being achieved at PBDF prior to the pandemic. Traffic is expected to remain relatively consistent, though it is still down compared to pre-lockdowns. In my opinion, however, this would be a difficult rate to achieve since it is the highest of any other operator in the country.
    - $18,000,000/year in revenue (100% of projected for 2024 by the current operator) x 20% of gross sales = $3,600,000.

6.6 Compare Net Economic Return (NER) to the current Duty Free operator and a new operator acquired through Request for Proposal (RFP).

Net Economic Return (NER) is an accounting/real estate term that describes how much an investor can expect to make on an investment over a specified period of time. I have been instructed to analyze the remaining Lease term from January 1, 2024 – October 31, 2031.

In this case, the NER is referring to how much profit the Landlord can expect to make through the leasing of PBDF for the remainder of its current Lease term (October 31, 2031). Therefore, our calculation considers leasing revenue and costs of retaining a new tenant through RFP.

Table 10 illustrates a high-level break down of the NER that the PBA could expect if they were to seek a new operator for the PBDF, and that the operator could expect, for the remainder of the original Lease (October 31, 2031):

	Low	Medium	High	Retaining Current Tenant
Operator Sales Revenue	$128,049,639	$144,055,844	$160,062,049	$160,062,049
Base	$13,824,000	$20,736,000	$28,800,000	$32,000,000
Percentage Rent	$0	$684,974	$951,353	$951,353
Costs to Retain New Tenant (over remaining Lease)	-$2,333,333	-$2,876,667	-$3,893,333	$0
NER	$11,490,667	$18,544,307	$25,858,019	$32,951,353

Table 10: NER scenarios for Landlord and tenants through RFP process and current Tenant retention. A full breakdown can be found in Appendix E.

Based on rental rates and costs incurred by the Landlord, replacing the current Tenant through the RFP process would generate between $11,460,667 - $25,858,019 as compared to $32,951,353 through the current operator remaining at PBDF. The current PBDF operator would generate between $7,093,333 - $21,460,686 (or 21.5% to 65.13%) more than if the Landlord were to replace the current operator.

Based on my analysis of the quantified NER, the Landlord is materially better off in terms of rent received retaining the current Tenant.

APPENDIX

Appendix A – About J.C. Williams Group

J. C. Williams Group – 1 Dundas Street W, Suite 2500, Toronto, ON M5G 1Z3

J.C. Williams Group (JCWG) is a global retail consulting firm based in Toronto. Founded in 1974 by John Williams, the firm transitioned to new leadership in 2019 with Ms. Hutcheson assuming the role of Managing Partner.

JCWG is the exclusive Canadian member of The Ebeltoft Group, a global alliance of retail consulting companies with members in more than 20 mature and emerging retail markets.

JCWG and our Ebeltoft Group partners conduct annual global research and trend studies in retail by combining global best practices with in-depth observations from local retail markets. These studies provide partner members, including JCWG with the latest insights, best practices, tools, and global developments.

Appendix B – Curriculum Vitae

Lisa Hutcheson, Managing Partner

Lisa Hutcheson is a seasoned retail executive with a career spanning thirty years. Ms. Hutcheson's expertise includes developing retail strategy for retailers, shopping centres, and mixed-use properties.

Ms. Hutcheson began her retail career in 1984 as a store manager and quickly progressed to hold senior leadership positions for two of Canada's largest specialty retailers.

In 2003, Ms. Hutcheson launched her own boutique consulting practice. Shortly afterwards, she joined JCWG. Ms. Hutcheson and her partner Patrick Watt acquired JCWG in 2019 and she assumed the role of Managing Partner.

During her consulting career, Ms. Hutcheson has been involved in hundreds retail and retail-related projects. A large part of JCWG's consultancy work includes work for shopping centres and developers with research, strategy, and best practice.

In addition to her extensive retail background, Ms. Hutcheson is a Founding Board Member of the Canadian Retail Educators Association as well as a member of the Canadian Research Group for ICSC.

Ms. Hutcheson has co-authored two books in the Retail 4G series of digital books published by the Retail Council of Canada: Retail Marketing and People. Ms. Hutcheson is also a keynote speaker on retail best practice and innovation and is frequently quoted and sourced for media interviews. A recent sampling specifically regarding Shopping Centres and real estate includes:

- Global News May 2020 – The New Reality: Future of Shopping Malls
- Global News April 2020 – Coronavirus: Creating new ways to stay in business
- Toronto Star May 2020 – What will Toronto's malls look like when they reopen?
- ICSC Guest Panelist – International Council of Shopping Centres "Canadian Year-Ahead Projections" – February 2022
- RCC Panelist - Retail Council of Canada STORE Conference "The Future of Shopping Centre and Real Estate" – May 2023

Ms. Hutcheson has testified as an Expert Witness and provided expert reports for numerous cases relating to shopping centre operating practices, including the following:

- Hillcrest Mall (Montez Hillcrest Inc. and Hillcrest Holdings Inc.) v. Hudson's Bay Company
- Les Promenades de L'Outaouais (Montez L'Outaouais Inc.) v. Hudson's Bay Company
- Les Galeries de la Capitale Holdings Inc. v. Hudson's Bay Company
- Carrefour Richelieu Realty Ltd. v. Hudson's Bay Company

Professional Experience

J. C. Williams Group (2004-Present)
Managing Partner/Senior Consultant
Retail Strategy/Operations/Human Resources

Lisa Hutcheson Consulting (2003-2019)
Retail Strategy/Operations/Human Resources

Comark Services (1997-2003)
Director of Stores/Personnel and Project Manager
Reitman's Canada (1996-1997)
Director of Sales and Operations

Cotton Ginny Limited (1984-1996)
Regional Manager, Eastern Canada

Education

- Ryerson University – Retail Management
- University of Toronto, Rotman School of Business
- Cornell University – Certificate in Project Leadership
- Certified Human Resources Leader (CHRL)
- Seneca College – Certificate in Adult Education and Training
- Certified Coaches Federation – Certified Coach Practitioner

Other

- Seneca College, Adjunct Professor, Faculty of Fashion Business Management
- Member of the Canadian Research Group for ICSC
- CREA (Canadian Retail Educators Association) founding Board member focused on the development of retail curriculum for Canadian post-secondary schools
- Board member for Canadian Heart & Stroke Foundation Mission Critical Special Council

Memberships and Associations

- Retail Council of Canada
- International Council of Shopping Centres (ICSC)
- Human Resources Professionals Association (HRPA)

Graham Heuman, Research and Insights Associate

Graham Heuman is a retail professional specializing in research, operations, and experiential retail. Mr. Heuman started his career in retail as a part-time sales associate in fashion retail. He quickly moved into the premium technology industry as a trainer for a telecommunications and computer retailer. He later began assisting the visual merchandiser with stores for all of Ontario, while also handling sales accounts for small-medium businesses.

Mr. Heuman graduated with a Bachelor of Commerce in Retail Management from the Ted Rogers School of Management at Ryerson University. He participated in numerous competitions, including Canadian Retail Educators Association (CREA) Charettes. The projects ranged from developing a retail strategy for Union Station in Toronto to tweaking store operations to be the top retailer in a competitive market.

In 2019, Mr. Heuman assisted with innovations research in Italy with the Ted Rogers School of Management. The team explored Rome, Florence, and Milan to learn about new innovations taking place in the Italian luxury industry. The scope of the project was to take these learnings and develop a set of best practices that could be applied to the luxury industry in Canada.

The same year, Mr. Heuman moved to France to study Luxury Business Management at SKEMA Business School in Sophia Antipolis. During this time, he worked on numerous projects under the guidance of a leading European luxury store interior architect on developing pricing strategies and service standards for luxury retail environments.

In 2021, he joined the JCWG team. Since starting, Mr. Heuman has been included in numerous projects. He has assisted on projects such as:

- Retail strategy and category mix
- Expert witness cases surrounding the retail industry
- Master planning around community space and retail businesses
- Retail demand analyses
- Market research and consumer analyses

Education

- RYERSON UNIVERSITY – Ted Rogers School of Management
  Bachelor of Commerce Degree, Majoring in Retail Management

Professional Experience

Jump Plus Stores ULC (July 2016 – 2021)
Floor Lead and Apple Product Professional

Zumiez (June 2015 – January 2017)
Second Assistant Manager

Appendix C – Meeting Minutes with Barbara Barrett, Executive Director of FDFA, June 6, 2023.

Attendance:
Barbara Barrett, FDFA
Lisa Hutcheson, JCWG
Graham Heuman, JCWG

Date: June 6, 2023

Re: Frontier Duty Free Association (FDFA) Discussion Minutes

- Background on Barbara Barrett and the FDFA.
  - Executive Director, started in August 2018.
  - Background in Public Affairs, moved into government relations about 10 years ago.
  - Based in Ottawa, focused on Advocacy goals, need to be able to meet in person with decision-makers on the Hill.
  - Before the pandemic there were 33 stores, now there are 32.
  - All stores are individually owned (unlike airports).
  - Stores can only export, and consumers cannot bring products back to Canada.
  - Licenses are distributed through Canada Border Services Agency (CBSA), highly regulated and audited on a regular basis.
  - Staff cannot purchase product unless they are travelling to the US.
    - Staff need to exit through the US and come back across when they are done their shift.

- Background on the COVID-19 pandemic border closures and their effect on duty free stores.
  - Did not see it coming in 2020 that they would shut the border (first time since 9/11).
    - Closed March 2020 for 20 months.
    - If consumers cannot cross the border, they cannot shop at duty free.
      - If travel was essential, they are able to visit the store.
  - Not all borders have commercial traffic, rely solely on recreational traffic.
    - Some stores remained open because they had commercial traffic. As such, some opted to stay open to help the truck drivers (duty free is often a planned stop) but were losing money by doing so.
    - If there was no commercial traffic, they would close. Stores kept staff on through wage subsidies, but staff were not coming in.

- Duty free stores are not allowed to do any online sales/curbside.
    - Stores had inventory reaching best-before date and asked for a one-time domestic sale instead of wasting the inventory (confectionary, alcohol, etc.)
        - CBSA said no as the customs act does not allow for it.
        - Could not donate it without paying duties/taxes but could not afford it.

- Can you share which stores closed completely, and the timing for each?
    -

	Closed	Open
March 2020	25	7
July 2020	14	18
September 2021	5	27
February 2022	2	30

- Is there anything specific you can share with us in regard to the revenue drop of the stores?
    - At best, stores were 95% down (if they were closed, 100%).

- Typical gross sales-to-rent ratios for FDFA.
    - There is no formula, all rents/leases are different.
    - They do not share them with FDFA.
    - Some stores have CBSA as their landlord.
    - Depends on negotiations and whether they are willing to accept lower margins, etc.
    - Some of them own their land.

- Typical minimum rent payable for FDFA.
    - Not tracked and not shared with FDFA.

- Is “sales-per-vehicle” a conversion or a productivity metric for all DF stores? What is the average sales-per-vehicle for FDFA?
    - Not shared with FDFA.

- Can you provide a list of which FDFA members were open, and which were closed in March 2020, July 2020, September 2021, and February 2022?
    - Cannot share.

- Is there any data that speaks to the fact that customers were not in the stores that were open during periods of both non-essential and essential-only border crossing periods?
    - Essential (truck drivers) were the only travel allowed.
        - Most only purchased cigarettes and beer, if anything.

- In your experience, how long does it take to find a replacement tenant for a duty free location? Is there typically a lot of demand from other operators to take over a vacant location?
    - Stores rarely get turned over (in families for over 30 years in most cases).
    - When stores open would need to go out to tender, and then CBSA would need to approve a license to the operator that was chosen (long approval process)
        - Find/attract somebody, then lead proponent would have to be approved by CBSA.
    - Once in a while people reach out to ask FDFA that they want to own one. Typically, they have been in families since their inception, so not something people think of as an opportunity.

- Are people visiting? Are they still considering as they were before?
    - Surveyed FDFA members after Canadian long weekend and Memorial Day weekends (a key indicator of how the summer will look).
        - 46% down nationally compared to pre-pandemic.
        - It is clear that Ontario stores are recovering faster/better than other provinces. Ontario is 15-20% down compared to pre-pandemic.

- Do American operators have a lower barrier to entry compared to Canada for duty free stores?
    - Anecdotally, fewer regulations (special excise tax on tobacco, etc.), so possibly a lower barrier to entry.
        - The only exception is the Ambassador Bridge. It is owned by a private entity, and they own a store on both sides of the bridge.

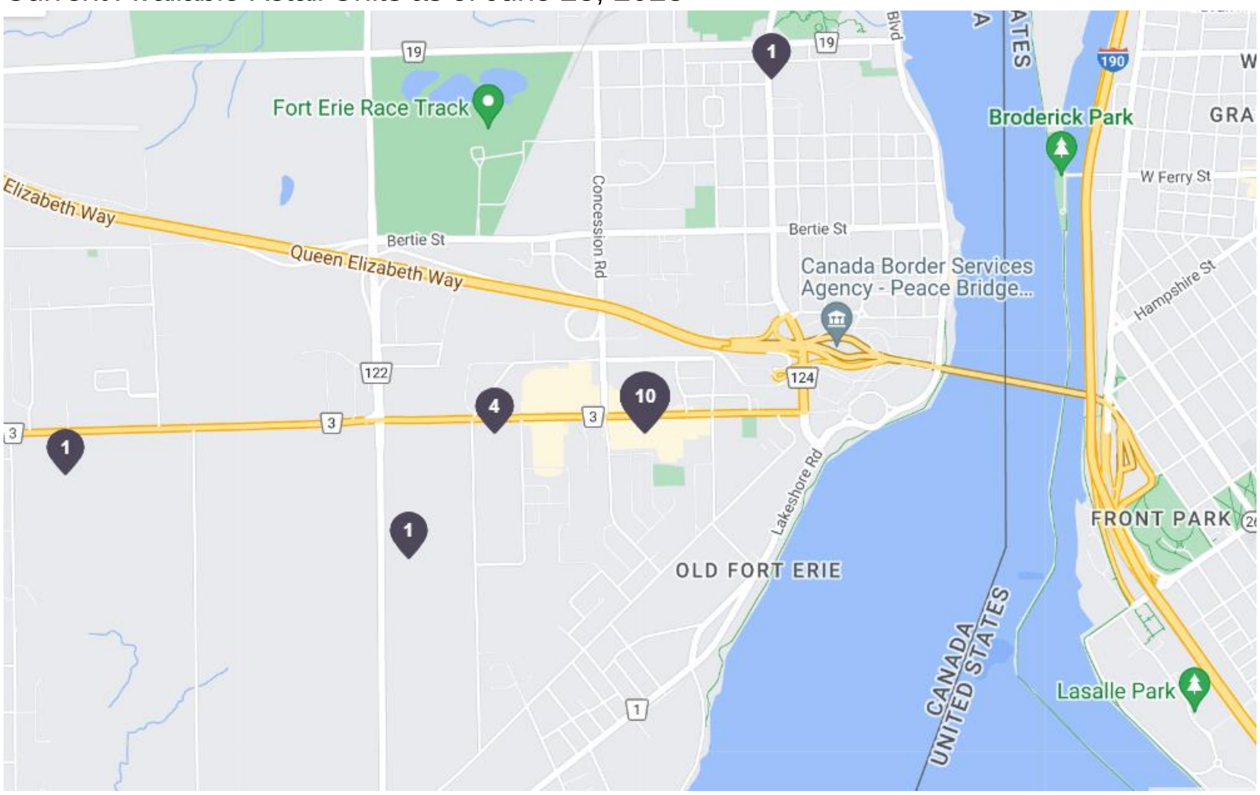
Appendix D – Current Market Conditions

JCWG conducted a trade area market sample to gain an understanding of the current leasing rates in Fort Erie.

The following image illustrates the current retail units for lease in the trade area. There are currently 17 retail units for lease.

The base lease rates range from $8-30/ft^2 and $12-42/ft^2 inclusive of taxes, maintenance and insurance (TMI). In some cases, the units have been on the market for a long time; one property has been listed 510 days.

Current Available Retail Units as of June 23, 2023



The following table provides further details regarding some of the properties reviewed.

	$12 /ft^2 2350 square feet 192 days on the market 224 GARRISON Road Unit# 3 Fort Erie, Ontario
	$8 /ft^2 $9.21/ft^2 TMI 2620 square feet 510 days on the market 450 GARRISON Road Unit# 140 Fort Erie, Ontario L2A1N2
	$23 /ft^2 $12/ft^2 (estimated TMI) 1330 square feet 6 days on the market 315 GARRISON RD Fort Erie, Ontario
	$26 /ft^2 $12 /ft^2 (estimated TMI) 1286 square feet 58 days on the market 315 GARRISON RD Fort Erie, Ontario
	$30 /ft^2 $12 /ft^2 (estimated TMI) 1282 square feet 93 days on the market 315 GARRISON RD Fort Erie, Ontario
	$4,500 Monthly $898 monthly taxes 100,0000 square feet 102 days on the market 1127 GARRISON RD S Niagara Falls, Ontario
	$16/ft^2 $8.71 /ft^2 18 days on the market 1215 square feet 1264 GARRISON RD Fort Erie

Appendix E – NER Breakdown

Potential Capital Costs and Other Expenses Associated with Re-tenanting	Low	Medium	High
Current Annual Rental Rate being Achieved	$4,000,000		
Tenant Inducements Allowance	$0	-$210,000	-$560,000
Fixturing Period	$0	-$333,333	-$1,000,000
Lost Revenue as a Result of Closure, and thereafter implementing RFP process	-$1,333,333	-$1,333,333	-$1,333,333
Free Rent Allowance	-$1,000,000	-$1,000,000	-$1,000,000
Total Capital Costs	-$2,333,333	-$2,876,667	-$3,893,333

Revenue	Low	Medium	High
Operator Sales Revenue	$14,400,000	$16,200,000	$18,000,000
Total Rent Revenue (Base + Percentage Rent)	$1,728,000	$2,592,000	$3,600,000

Low Scenario	2024	2025	2026	2027	2028	2029	2030	2031	Total
Operator Sales Revenue	$14,400,000	$14,832,000.00	$15,276,960.00	$15,735,268.80	$16,207,326.86	$16,693,546.67	$17,194,353.07	$17,710,183.66	$128,049,639
Minimum Basic Rent	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$1,728,000	$13,824,000
Percentage Rent	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0
Costs to Acquire New Tenant (over remaining lease)	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$259,259.3	-$2,333,333
Landlord Profit/Loss									**$11,490,667**

Medium Scenario	2024	2025	2026	2027	2028	2029	2030	2031	Total
Operator Sales Revenue	$16,200,000	$16,686,000.00	$17,186,580.00	$17,702,177.40	$18,233,242.72	$18,780,240.00	$19,343,647.20	$19,923,956.62	$144,055,844
Minimum Basic Rent	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$2,592,000	$20,736,000
Percentage Rent	$0.0	$0.0	$0.0	$0.0	$37,318.8	$124,838.4	$214,983.6	$307,833.1	$684,974
Costs to Retain New Tenant (over remaining lease)	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$319,629.6	-$2,876,667
Landlord Profit/Loss									**$18,544,307**

High Scenario	2024	2025	2026	2027	2028	2029	2030	2031	Total
Operator Sales Revenue	$18,000,000	$18,540,000.00	$19,096,200.00	$19,669,086.00	$20,259,158.58	$20,866,933.34	$21,492,941.34	$22,137,729.58	$160,062,049
Minimum Basic Rent	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$3,600,000	$28,800,000
Percentage Rent	$0.0	$0.0	$0.0	$0.0	$51,831.7	$173,386.7	$298,588.3	$427,545.9	$951,353
Costs to Retain New Tenant (over remaining lease)	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$432,592.6	-$3,893,333
Landlord Profit/Loss									**$25,858,019**

Retaining Current Tenant at More Reasonable Minimum Basic Rent Scenario	2024	2025	2026	2027	2028	2029	2030	2031	Total
Operator Sales Revenue	$18,000,000	$18,540,000.00	$19,096,200.00	$19,669,086.00	$20,259,158.58	$20,866,933.34	$21,492,941.34	$22,137,729.58	$160,062,049
Minimum Basic Rent	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$4,000,000	$32,000,000
Percentage Rent	$0.0	$0.0	$0.0	$0.0	$51,831.7	$173,386.7	$298,588.3	$427,545.9	$951,353
Costs to Retain New Tenant (over remaining lease)	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0.0	$0
Landlord Profit/Loss									**$32,951,353**

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

ROYAL BANK OF CANADA and **PEACE BRIDGE DUTY FREE INC.**

Applicant | Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AIDE MEMOIRE BRIEF OF THE TENANT, PEACE BRIDGE DUTY FREE INC.

(Case Conference returnable September 6th, 2023)

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