

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

THE HONOURABLE) THURSDAY, THE 12TH DAY
JUSTICE KOEHNEN) OF AUGUST, 2021

BETWEEN:



THE TORONTO-DOMINION BANK

Applicant

- and -

CERTUS AUTOMOTIVE INC. and KEEN POINT INTERNATIONAL INC.

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243 OF THE BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, RSO 1990, c 43, AS AMENDED

SALE PROCESS ORDER

THIS MOTION, made by Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as the court-appointed receiver and manager (the "**Receiver**") of Certus Automotive Inc. and Keen Point International Inc. (collectively, the "**Debtors**"), for an order,

- (a) abridging the time for service of the Notice of Motion dated August 6, 2021 and the Motion Record dated August 6, 2021 (the "**Motion Record**") herein and validating service thereof;

- (b) for an order approving the sale process, attached as **Schedule “A”** hereto (the “**Sale Process**”);
- (c) approving the first report of the Receiver dated August 6, 2021 (the “**First Report**”), and the activities of the Receiver as described therein;
- (d) approving the fees and disbursements of the Receiver as set out in the affidavit of Stefano Damiani sworn August 5, 2021 (the “**Receiver’s Fee Affidavit**”), and the fees and disbursements of the Receiver’s counsel, Dentons Canada LLP (“**Dentons**”), as set out in the affidavit of Robert Kennedy sworn August 6, 2021 (“**Dentons’ Fee Affidavit**”, and together with the Receiver’s Fee Affidavit, the “**Fee Affidavits**”);
- (e) approving the Receiver’s interim statement of receipts and disbursements for the period June 25, 2021 to August 3, 2021 (the “**Interim R&D**”); and
- (f) such further and other grounds as counsel may advise and this Honourable Court may permit;

was heard this day by video conference.

ON READING the Motion Record, the First Report, and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Amanda Campbell sworn August 6, 2021, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

SALE PROCESS

2. **THIS COURT ORDERS** that the Sale Process be and is hereby approved and that the Receiver is authorized and directed to implement the Sale Process for the purpose of soliciting interest in and opportunities for a sale of the Property (as defined in the Sale Process).

3. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to perform its obligations under the Sale Process, and to do all things reasonably necessary to do so.

4. **THIS COURT ORDERS** the Receiver and its respective affiliates, partners, employees and agents shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of the Sale Process, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct of the Receiver in performing its obligations under the Sale Process (as determined by this Court).

RECEIVER'S ACTIVITIES

5. **THIS COURT ORDERS** that the First Report and the activities of the Receiver, as described in the First Report, be and are hereby approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and Dentons, as set out in the First Report and in the Fee Affidavits, are hereby approved.

7. **THIS COURT ORDERS** that the Interim R&D is hereby approved.

GENERAL

8. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions on the discharge of its duties and powers hereunder.

A handwritten signature in blue ink, appearing to be 'R.A.J.', is written above a horizontal line.

Schedule "A"

Certus Automotive Group Sale Process

Purpose

1. The proposed sale process (the "**Sale Process**") for Certus Automotive Inc. and Keen Point International Inc. (collectively, the "**Debtors**", and together with its subsidiaries, the "**Certus Automotive Group**") for sale of the Debtor's machinery and equipment (collectively, the "**Property**") will be conducted by Deloitte Restructuring Inc., in its capacity as court-appointed receiver and manager of the Debtors (in such capacity, the "**Receiver**"), in accordance with the terms and timeline set out below.
2. Any contemplated sale shall be subject to approval by the Court.
3. Unless otherwise indicated herein, any event that occurs on a day that is not a business day shall be deemed to occur on the next business day.
4. Notwithstanding anything contained herein, the Receiver shall have the right to enter into an exclusive transaction for the sale of the Property, or any portion thereof, outside the Sale Process prior to the selection of a Successful Bidder (as defined herein).

Sale Process Procedures

5. The Receiver will compile a list of prospective purchasers (collectively with any other party expressing an interest in the Property, the "**Potential Purchasers**"). The Receiver will make reasonable efforts to canvass the interest (if any) in the Property, of all Potential Purchasers.
6. The sale of the Property will be on an "*as is, where is*" basis without representations or warranties of any kind, nature or description by the Receiver, or any of its directors, officers, partners, employees, agents, advisors or estates, except to the extent as may be set forth in a Successful Bid (as defined herein), and approved by the Court. By submitting a bid, each Prospective Bidder (as defined herein) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith, except as expressly stated in this Sale Process or as set forth in a Successful Bid and approved by the Court.

7. The Receiver will distribute to Potential Purchasers an interest solicitation letter (“**Teaser**”) which will provide an overview of this opportunity. A Confidentiality and Non-Disclosure Agreement (“**NDA**”) will also be distributed to the Potential Purchasers. Potential Purchasers will be required to sign the NDA in order to gain access to confidential information and to commence performing due diligence, if the Receiver determines that such Potential Purchaser has a *bona fide* interest in the purchase of the Property (hereinafter referred to as a “**Prospective Bidder**”). All NDAs shall enure to the benefit of any purchaser of the Property.
8. The Receiver will provide to each Prospective Bidder access to a secure electronic data room (the “**Data Room**”) established by the Receiver with information and documentation in the possession of the Receiver (which will include certain relevant and customary financial, operational and other information regarding the Property).
9. The Receiver will also facilitate, due diligence by Prospective Bidders, including arranging site visits, as the Receiver determines appropriate. The Receiver may also attend such site visits as it considers appropriate.
10. Notwithstanding paragraph 8 above, the Receiver shall have the right to deny or limit any Prospective Bidder's access to confidential information at any time, which may include denying access to confidential information, if in the Receiver’s reasonably held view such Prospective Bidder is not likely to be serious about submitting a bid for the Property.
11. The Receiver makes no representation or warranty as to the information to be provided through this due diligence process or otherwise.

Timeline

12. A chart summarizing the material deadlines for the Sale Process is set out below:

Timing	Activity
June 25, 2021 to July 20, 2021 (completed)	<ul style="list-style-type: none">• Identification of Potential Purchasers.• Preparation of the Teaser and form of NDA for circulation to Potential Purchasers.• Compile and review information that will be required by Potential Purchasers to assess their bid(s) for the assets.• Arrange third-party inspection of assets and preparation of

Timing	Activity
	<p>equipment listing for use by Potential Purchasers.</p> <ul style="list-style-type: none"> • Respond to in-bound calls and inquiries.
July 21, 2021 (completed)	<ul style="list-style-type: none"> • Launch the market outreach campaign with an email distribution of the Teaser and NDA to Potential Purchasers.
July 29, 2021 (completed)	<ul style="list-style-type: none"> • Establish and commence populating the Data Room with information for Potential Purchasers who executed an NDA to assess the equipment and acquisition opportunity.
July 22, 2021 to September 1, 2021 (partially completed)	<ul style="list-style-type: none"> • Continue outreach to Potential Purchasers, respond to inquiries, and execution of NDAs. • Ongoing compilation and review of information, updating the Data Room. • Coordinate site visits and review of assets by Prospective Bidders. • Place advertisement in an industry publication.
September 2, 2021	<ul style="list-style-type: none"> • Bid deadline for submission of bids, including conditions, supplemental bidder information about its operational background, experience, corporate disclosures, and financial capability (the “Bid Deadline”).
September 2, 2021 to September 10, 2021	<ul style="list-style-type: none"> • Review of bids (each, a “Bid”), selection of shortlisted Bids (each, a “Shortlisted Bid”), correspondence and clarifying questions with Shortlisted Bids, and consultations with stakeholders.
September 10, 2021	<ul style="list-style-type: none"> • Selection of the most advantageous Shortlisted Bid, conditional on Court approval.
September 10, 2021 to September 16, 2021	<ul style="list-style-type: none"> • Negotiation with the successful bidder and execution of a definitive agreement (a “Definitive Agreement”).
September 30, 2021	<ul style="list-style-type: none"> • Projected date to seek the Court’s approval of the successful purchaser and the corresponding Definitive Agreement (the “Sale Approval Hearing”).
October 1, 2021 to November 30, 2021	<ul style="list-style-type: none"> • Close the transaction set out in the Definitive Agreement.

Timing	Activity
	<ul style="list-style-type: none">• Implement the terms of the Definitive Agreement (if applicable).• Targeted date for removal of all Property and vacate the associated leased premises.

13. Subject to any Order of the Court, the dates set out in the Sale Process may be extended by the Receiver in its sole discretion acting reasonably, all with a view of maximizing the value of the Property.

Submission of Bids

14. The Receiver shall seek binding Bids and accompanying materials from Prospective Bidders (each, a “**Binding Bid**”) in accordance with the timeline set out above that provides for:
- (a) delivery of each Binding Bid by the Prospective Bidder on or before the Bid Deadline;
 - (b) the identity of each person or entity (including its shareholders) that is sponsoring or participating in the Binding Bid and the complete terms of such participation, evidence of corporate authority, and proof of such bidder's financial ability to perform the proposed transaction to the satisfaction of the Receiver, acting reasonably;
 - (c) a Binding Bid capable of acceptance and irrevocable 21 days after the Bid Deadline;
 - (d) all Binding Bids are to be accompanied by a deposit (the “**Deposit**”) in the form of a wire transfer (to a bank account specified by the Receiver), in an amount equal to at least 10% of the total consideration contained in the Binding Bid;
 - (e) includes an acknowledgement and representation that the Prospective Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Property prior to making its Binding Bid, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents, the Property and/or any other assets to be acquired and liabilities to be assumed in making its Binding Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the business and/or assets to be acquired

or liabilities to be assumed or the completeness of any information provided in connection therewith, except as expressly stated in any definitive documents;

- (f) no conditions based upon: (i) the outcome of any further due diligence, (ii) obtaining financing, or (iii) any other conditions to closing, except the usual limited conditions such as the issuance by the Court of an order approving the transaction set forth in the Definitive Agreement.
15. Each Bid submitted in accordance with paragraph 14 above shall be a “**Qualified Bid**” and each such Bidder a “**Qualified Bidder**”, as determined by the Receiver.
 16. The Receiver may determine whether to entertain Binding Bids for the Property that do not conform to one or more of the requirements specified herein and deem such Binding Bids to be a Qualified Bid.

Post-Bid Deadline Procedure

17. If one or more Qualified Bids are received the Receiver may:
 - (a) accept one (or more, if for distinct transactions) Qualified Bid(s) (the “**Successful Bid**”) and each Qualified Bidder making the Successful Bid(s) being a “**Successful Bidder**”) and take such steps as are necessary to finalize and complete a Definitive Agreement for the Successful Bid(s) with the Successful Bidder(s); or
 - (b) continue negotiations with a selected number of Qualified Bidders (collectively, “**Shortlisted Bidders**”) with a view to finalizing one or more Definitive Agreements with one or more Shortlisted Bidders.
18. The Receiver shall not be under any obligation to accept the highest or best (or any) Qualified Bid and any selection of the Successful Bid(s) and the Shortlisted Bidder(s) shall be entirely in the discretion of the Receiver. For greater certainty, the Receiver is hereby permitted to decline acceptance of any and all Binding Bids, including Qualified Bids.
19. A Binding Bid may not be withdrawn, modified or amended without the written consent of the Receiver prior to the Successful Bid being determined. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the Successful Bid being determined shall result in the forfeiture of such Prospective Bidder’s deposit as liquidated damages and not as a penalty.
20. No one, including any Potential Purchasers, Prospective Bidders, Qualified Bidders, Shortlisted Bidders or Successful Bidders, shall be entitled to nor permitted any break, termination or similar fee or reimbursement of any kind. For greater certainty, all such

persons shall be responsible for their own fees and costs of any kind, including those relating to any due diligence they may have performed, and any Binding Bid they each may make.

21. In the event a Qualified Bidder is not selected as a Successful Bidder, the Deposit shall be returned to the Qualified Bidder as soon as reasonably practicable.

Auctioneer Bids

22. Capitalized terms that are used but not otherwise defined in this section shall have the meaning given to them in the First Report of the Receiver dated August 5, 2021.
23. Strategic purchasers are only required to submit one Binding Bid.
24. Prospective Bidders that operate as an auctioneer (an “**Auctioneer**”) shall submit two Binding Bids required for all assets as follows, in addition to the terms set forth in paragraph 14 herein (an “**Auctioneer Bid**”):
 - (a) Cash Purchase Price – an offer to purchase and take title to all of the Property at the Mexico Plant. Such offers must ascribe bid values to permit the Receiver to allocate them between the Debtors and Certus Mexico, if required; and
 - (b) Guaranteed Minimum Plus – Auctioneer offers to pay a specified minimum amount for all the Property to be auctioned (a “**Net Minimum Guarantee**” or “**NMG**”), and the proceeds from auction above the NMG would be shared by allocation between the Qualified Bidder and the Receiver based upon a negotiated / proposed structure.
25. Each Auctioneer Bid shall, as part of its Binding Bid: (i) provide a brief description of its corporate background, including but not limited to prior experience for projects of this size/scope, and any prior experience in the automotive or manufacturing industry in Mexico; (ii) demonstrate an in-depth knowledge of the various asset classes available and clear insight on the appropriate channels to market these assets to maximize recovery; (iii) provide evidence of financial ability to close the proposed transaction (e.g. Proof of Funds letter) and appropriate insurance to conclude the transaction; and (iv) specify partners that would participate in the transaction.
26. Each Auctioneer as part of an Auctioneer Bid shall outline an opinion on the estimated value range of recovery/price per asset/unit on the asset listing to be included in the Data Room.

Other Terms

27. Qualified Bidders will be responsible for: (i) coordinating with the local management on-site appropriate documentation to facilitate sale and asset removal; (ii) coordinating removal of all assets using bonded and insured riggers and service providers; and (iii) leaving the Certus Mexico (as defined above) leased facility “broom clean” and for restoring any damages caused to the premises that occurs as a result of the asset removal.
28. If a Successful Bidder breaches its obligations under the terms of its Binding Bid, and if the Receiver chooses not to proceed with the Successful Bidder, any Deposit submitted in connection with the Successful Bid shall be forfeited to the Receiver as liquidated damages and not as a penalty.
29. The Receiver may: (a) determine which Qualified Bid, if any, is the highest or otherwise best bid, (b) reject at any time before the issuance and entry of an order approving a Successful Bid, any bid that is: (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Sale Process or any order of the Court, or (iii) contrary to the best interests of the receivership estate, and (c) may modify the Sale Process or impose additional terms and conditions on the sale of the Property, acting reasonably.
30. The Receiver shall not have any liability whatsoever to any person or party, including without limitation any Potential Purchasers, Prospective Bidders, Qualified Bidders, Shortlisted Bidders, Auctioneer, Successful Bidders, the Certus Automotive Group, or any creditor or other stakeholder, for any act or omission related to the Sale Process. By submitting a Binding Bid, each Prospective Bidder shall be deemed to have agreed that it has no claim against the Receiver for any reason whatsoever.
31. Following the selection of the Successful Bid(s), and subject to the timeline set out above, the Receiver shall bring a motion to the Court for an order, authorizing and approving a Definitive Agreement, together with the transaction contemplated therein (the “**Transaction**”), and authorizing the Receiver to take such further actions as may be necessary or appropriate, to give effect to the Successful Bid(s) (the “**Approval Order**”).
32. Following the granting of any Approval Order by the Court, the Receiver shall take all reasonable steps necessary to complete the Transaction in accordance with the timeline set out above.
33. Notwithstanding anything else contained herein, if it becomes evident to the Receiver that no Qualified Bids will be received, the Receiver, may terminate the Sale Process.
34. This Sale Process is solely for the benefit of the Receiver and nothing contained in the Sale Process Order or this Sale Process shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise).

THE TORONTO-DOMINION BANK

- and -

CERTUS AUTOMOTIVE INC. and KEEN POINT INTERNATIONAL INC.

Applicant

Respondents

**ONTARIO
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PROCEEDING COMMENCED AT TORONTO

SALE PROCESS ORDER

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