

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

CERTUS AUTOMOTIVE INC. and KEEN POINT INTERNATIONAL INC.

Respondents

SECOND REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS RECEIVER AND MANAGER
DATED JANUARY 18, 2022

TABLE OF CONTENTS

INTRODUCTION - 4 -

TERMS OF REFERENCE - 6 -

BACKGROUND - 6 -

RECEIVER’S ACTIVITIES - 8 -

UPDATE ON MTNA EXIT AGREEMENT AND BOYUAN NEGOTIATIONS - 10 -

UPDATE ON FGI NEGOTIATIONS - 11 -

THE M&E, CERTUS MEXICO AND THE MEXICO PLANT - 12 -

RECEIVER’S BORROWINGS..... - 18 -

STATEMENT OF RECEIPTS AND DISBURSEMENTS..... - 19 -

PROFESSIONAL FEES - 19 -

RECEIVER’S RECOMMENDATIONS..... - 20 -

APPENDICES

APPENDIX	DESCRIPTION
A	Appointment Order dated June 25, 2021
B	First Report of the Receiver dated August 6, 2021 (without appendices)
C	Sale Process Order and Endorsement of Justice Koehnen dated August 12, 2021
D	Statement of Receipts and Disbursements for the interim period August 4, 2021 to December 31, 2021 and cumulative period June 25, 2021 to December 31, 2021
E	Affidavit of Jordan Sleeth of Deloitte Restructuring Inc. sworn January 17, 2022
F	Affidavit of Robert Kennedy of Dentons Canada LLP sworn January 17, 2022

CONFIDENTIAL SUPPLEMENT

CONFIDENTIAL SCHEDULES	DESCRIPTION
A	Confidential Supplement to the Second Report of the Receiver
Schedule A	Summary of the Clawback Amounts and Fee Amounts claimed by FGI
Schedule B	Draft FGI Settlement Agreement
Schedule C	Summary of key terms of the Bids received on or prior to the Deadline

INTRODUCTION

1. On June 19, 2021, The Toronto-Dominion Bank (“**TD**”) made an application for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (the “**Receiver**”) without security, of all the assets, undertakings and properties of each of Certus Automotive Inc. (“**Certus Canada**”) and Keen Point International Inc. (“**KPI Canada**”) (collectively, the “**Debtors**”, and together with their subsidiaries, the “**Certus Automotive Group**”) acquired for, or used in relation to a business carried on by the Debtors (the “**Property**”).
2. On June 25, 2021 (the “**Receivership Date**”), the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Appointment Order**”) appointing Deloitte as the Receiver of the Property. A copy of the Appointment Order is attached hereto as **Appendix “A”**.
3. Certus Canada is an Ontario corporation which operated as a Tier II global automotive parts manufacturer and distributor. Certus Canada’s main products are chrome plated trim and injection molds for interior and exterior automotive parts. KPI Canada is an Ontario corporation which operated in the business of distributing automobile parts and injection molds internationally. The Debtors operated a global supply chain centrally managed in Toronto, Ontario and wound down operations in early 2021.
4. Certus Automotive, S. De R.L. De C.V. (“**Certus Mexico**”) is a Mexico-based subsidiary of Certus Canada, which was involved in the manufacturing of automobile parts. Certus Mexico operated out of a leased plating and molding facility located in Queretaro, Mexico (the “**Mexico Plant**”).
5. TD is a secured lender to the Debtors pursuant to credit and loan agreements (the “**TD Loan Agreements**”) granted by TD. TD was owed in excess of CA\$10.3 million and US\$7.4 million as at June 16, 2021 (the “**TD Indebtedness**”). Export Development Canada has provided a limited guarantee of the TD Indebtedness. Given the anticipated recoveries in this receivership, it is clear that TD is the only creditor with any economic interest in the Property of the Debtors.
6. The Certus Automotive Group also obtained financing from FGI Worldwide LLC (“**FGI**”). Pursuant to an intercreditor agreement between TD and FGI dated November 15, 2019 (the “**Intercreditor Agreement**”), TD agreed to subordinate its security interest against the Debtors’ assets and property to FGI, except as against certain machinery and equipment.
7. On August 6, 2021, the Receiver issued its first report to Court (the “**First Report**”) for the purpose of, among other things, seeking an order of the Court approving the sale process (the “**Sale**”).

Process”) proposed by the Receiver in respect of the Property, primarily consisting of Certus Canada’s machinery and equipment located at the Mexico Plant (the “**M&E**”), and authorizing and directing the Receiver to take all steps and actions reasonably necessary to implement, conduct, and carry-out the Sale Process. A copy of the First Report (without appendices) is attached hereto as **Appendix “B”**.

8. On August 12, 2021, the Court issued an Order (the “**Sale Process Order**”) approving, among other things, the Sale Process. A copy of the Sale Process Order and the accompanying endorsement of Justice Koehnen is attached hereto as **Appendix “C”**.
9. Copies of the Appointment Order, together with other Court documents and all reports with respect to this matter are available on the Receiver’s website at www.insolvencies.deloitte.ca/en-ca/certus.
10. The Appointment Order, among other things, authorized the Receiver to take possession and market any or all of the Property. Further, sections 3(k) of the Appointment Order authorized the Receiver to sell, convey, transfer, lease or assign the Property or parts of the Property out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding CA\$800,000, provided that the aggregate consideration for all such transactions does not exceed CA\$1,500,000.
11. The purpose of this second report of the Receiver (the “**Second Report**”) is to:
 - (a) provide the Court with additional information in respect of the Debtors and the Property;
 - (b) provide the Court with an evidentiary basis to make an Order:
 - (i) amending Section 3(k)(i) of the Appointment Order to increase the monetary sale thresholds contemplated therein;
 - (ii) approving and authorizing the FGI Settlement Agreement (as defined herein);
 - (iii) approving this Second Report and the activities of the Receiver, including steps taken in dealing with the Property, as described in this Second Report, the Confidential Supplement (as defined herein) and its corresponding schedules;
 - (iv) sealing the confidential supplement to this Second Report and its corresponding schedules (the “**Confidential Supplement**”) filed with this Court from the public record until further Order of this Court, as applicable;
 - (v) approving the professional fees and disbursements of the Receiver and the professional fees and disbursements of its independent legal counsel, Dentons

Canada LLP (“**Dentons**”), for the periods indicated in the Sleeth Affidavit and the Kennedy Affidavit (each as defined herein); and

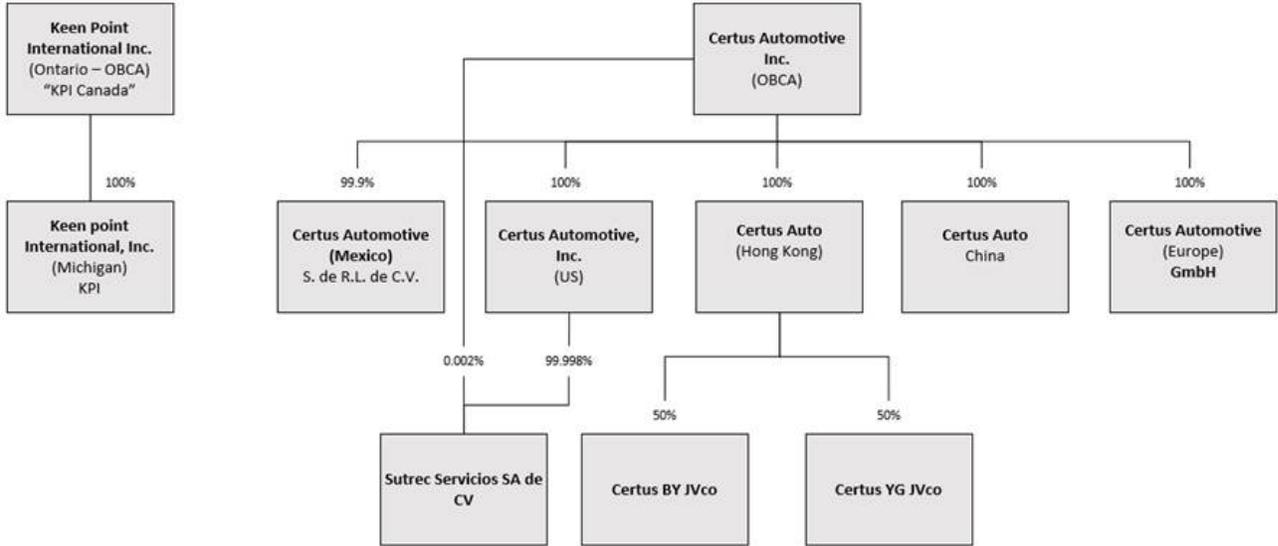
- (vi) approving the Receiver’s Statement of Receipts and Disbursements for the period June 25, 2021 to December 31, 2021.

TERMS OF REFERENCE

12. In preparing this Second Report, the Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the books and records of the Debtors, and discussions with management of the Certus Automotive Group (collectively, the “**Information**”). Except as described in this Second Report:
 - (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook, and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - (b) the Receiver has prepared this Second Report in its capacity as a Court-appointed Receiver in connection with the relief sought by the Receiver as described herein. Parties using the Second Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
13. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in U.S. dollars.
14. Unless otherwise provided, all other capitalized terms not otherwise defined in this Second Report are as defined in the First Report and the Appointment Order.

BACKGROUND

15. Paragraphs 15 to 26 of the First Report detailed the Certus Automotive Group’s international corporate structure, which is summarized below for ease of reference:



16. The Receiver understands that Certus Canada was incorporated in Ontario in 2012 as a replacement for KPI Canada and the manufacturer Xin Point Holdings Limited for all new business. Certus Canada sourced chrome plated automotive parts primarily through two joint ventures in China. These joint ventures would manufacture products and sell the parts to Certus, who would distribute the parts to global customers. In 2017, the Certus Automotive Group’s supply chain was supplemented with production from the Mexico Plant. The finance and head office functions for the Certus Automotive Group were based in Toronto, Canada. Moreover, Certus Canada had warehouse and logistics staff located in the Greater Toronto Area.
17. KPI Canada was incorporated in Ontario in 2006 and was engaged in the business of distributing automobile parts internationally.
18. The Debtors are jointly controlled by Rob Mollenhauer (“**Mollenhauer**”) and James Prokopetz (“**Prokopetz**”, and together with Mollenhauer, the “**Principals**”) who directly and indirectly own substantially all of the common shares of the Debtors.
19. Certus Automotive, Inc. (US) (“**Certus US**”) is a US-based subsidiary of Certus Canada based in Auburn Hills, Michigan whose operations included sales, engineering, and quality control.
20. As set out above, Certus Mexico is a Mexico-based subsidiary which was involved in the manufacturing of automobile parts. Certus Mexico is 99.9% owned by Certus Canada, and the remaining 0.01% is owned by a holding company controlled by Mollenhauer. Certus Mexico ceased operations in early 2021, prior to the Receivership Date, and terminated 388 of its 400 employees in April 2021. Certus Mexico has limited assets of value, has considerable outstanding

liabilities and is not subject to any insolvency or liquidation proceedings. Activity at Certus Mexico has been under the direction of the Principals since the Receivership Date.

21. Certus Automotive (Europe) GmbH (“**Certus Germany**”) is a Germany-based subsidiary located in Hamburg whose operations involved European sales, marketing, and distribution of automobile parts sourced from the Certus Automotive Group’s operations in China and Mexico. In May 2021, Certus Germany commenced an application for a voluntary insolvency proceeding in Germany. The Receiver understands that this application was subsequently rescinded and Certus Germany is pursuing a wind-down process driven by its management.
22. Certus Automotive, (HK) Limited (“**Certus HK**”) is a Hong Kong-based subsidiary and holding company with a 50% ownership in two joint ventures.
23. As of the Receivership Date, there were three remaining employees of the Debtors in Canada who worked on a very limited part-time basis. Certus Mexico’s remaining employees consist of care and maintenance staff and finance personnel.

RECEIVER’S ACTIVITIES

24. The Receiver has undertaken the following activities in accordance with the terms of the Appointment Order:
 - (a) continued communications with the Principals and local management of Certus Mexico with respect to prospective buyer site visits, weekly cash budgets, inventory, tax information, , security concerns and other matters;
 - (b) coordinated additional Receiver’s Borrowings to fund ongoing operational and protective disbursements at Certus Mexico and receivership obligations, as described in more detail below;
 - (c) administered the *Wage Earner Protection Program Act* (“**WEPPA**”), which included reviewing proofs of claim and correspondence with employees and Service Canada;
 - (d) continued correspondence with the three Canadian former employees of the Debtors who are temporarily retained by the Receiver to provide assistance with, among other things, banking, collection of accounts receivable, payroll, WEPPA, addressing stakeholder inquiries, negotiations with warehouses, compilation of financial information, and realization efforts;

- (e) ongoing discussions with the various warehouses of the Certus Automotive Group to obtain inventory details to facilitate discussions with customers and an OEM to assess the saleability of inventory;
- (f) successfully negotiated inventory sale and settlement agreements with certain customers and negotiated payments with warehouses to release inventory and coordinate logistics;
- (g) continued communications with the Landlord (as defined herein) of the Mexico Plant in respect of the Receiver's intended course of action and timeline for the sale of the M&E, and subsequent steps taken in Mexico;
- (h) negotiations and correspondence in connection with the MTNA Exit Agreement (as defined herein), as described in more detail below;
- (i) held additional discussions with FGI and its counsel in respect of, among other things, surplus funds held by FGI and accounts receivable, as described in more detail below;
- (j) issued demand letters in respect of outstanding accounts receivable, communications with customers, and other collection activities;
- (k) communicated with the incumbent insurance broker, obtained new coverage, and coordinated renewals of additional policies;
- (l) continued correspondence with Canada Revenue Agency with respect to payroll and HST filings, and audits of the pre-receivership accounts of the Debtors;
- (m) corresponded with creditors and other interested parties;
- (n) corresponded with Dentons on various legal matters relating to the receivership, which includes the involvement of Dentons Lopez Velarde ("**Dentons Mexico**"), as required;
- (o) implemented the Sale Process in accordance with the Sale Process Order as described in more detail below, including correspondence with Conway MacKenzie, LLC ("**Conway MacKenzie**" or the "**Sale Advisor**") and interested parties, reviewing bids, and negotiating the terms of an asset purchase agreement;
- (p) communicated with BancoMext (as defined herein), described in more detail below;
- (q) worked with the Principals to, among other things, review the available books and records, and discuss accounts receivable, inventory, matters relating to the M&E, all known bank accounts, funding of protective disbursements relating to the Mexico Plant, where Certus Canada's M&E is located, and addressing various stakeholder issues;

- (r) corresponded with the Principals concerning the status of the consulting agreements entered into with the Receiver (i.e., the consulting agreements entered into with the Principals that define their obligations to assist and support the Receiver and the related compensation for same), including the terms to extend such agreements and the performance of the Principals' obligations thereunder; and
- (s) addressed additional matters as they arose from time to time.

UPDATE ON MTNA EXIT AGREEMENT AND BOYUAN NEGOTIATIONS

- 25. As summarized at paragraph 32(1) of the First Report, the Receiver negotiated an exit agreement (the "**MTNA Exit Agreement**") between, among other parties, the Debtors, the Receiver, TD, FGI, Moriroku Technology North America and certain related entities ("**MTNA**") and Nantong Boyuan Automotive Parts Co., Ltd. ("**Boyuan**").
- 26. MTNA was a customer of the Certus Automotive Group. Boyuan was a supplier to Certus Canada pursuant to a supply agreement dated May 24, 2016 (the "**BY Supply Agreement**"). Certain subsidiaries of Certus Canada, including Certus Germany, placed purchase orders pursuant to the BY Supply Agreement and accrued an unpaid balance as at the Receivership Date. Boyuan was also party to a joint venture agreement with Certus Canada's subsidiary, Certus HK (the "**BY JV Agreement**"), in respect of a joint venture company under the laws of the People's Republic of China.
- 27. The MTNA Exit Agreement, which was substantially negotiated between MTNA and the Certus Automotive Group prior to the Receivership Date, was intended to wind up the supplier/customer relationships among the various parties thereto and settle all outstanding obligations between the parties.
- 28. Most of the parties signed the MTNA Exit Agreement in or about July 2021, however, Boyuan advised the Receiver that it was not prepared to execute the MTNA Exit Agreement until all matters relating to the BY Supply Agreement and the BY JV Agreement were resolved. Consequently, the MTNA Exit Agreement was put on hold, together with the delivery of all amounts due and payable by MTNA to the Receiver under the MTNA Exit Agreement.
- 29. In December 2021, following protracted negotiations, the Receiver, Boyuan, and certain other interested parties entered into a standalone agreement (the "**Equity Transfer and Release Agreement**"), which, among other things, (i) terminated the Supply Agreement, and (ii) facilitated a transfer of Certus HK's equity interest in the BY JV Agreement to Boyuan.

30. As a result of the completion of the Equity Transfer and Release Agreement, Boyuan consented to and executed the MTNA Exit Agreement. Accordingly, as at December 2021, the MTNA Exit Agreement was fully executed by all parties. On December 20, 2021, the Receiver received the total amounts due to the Certus Automotive Group payable under the MTNA Exit Agreement from MTNA, being the amount \$601,575.
31. As the proceeds payable by MTNA under the MTNA Exit Agreement are subject to FGI's and TD's security, the Receiver negotiated a separate agreement with FGI and TD in July 2021 to permit the Receiver to receive the proceeds resulting from the implementation of the MTNA Exit Agreement, but to hold such proceeds in trust pending resolution of the expense and fee claims and reserves asserted by FGI.

UPDATE ON FGI NEGOTIATIONS

32. As noted above, FGI was a secured creditor of the Certus Automotive Group. Paragraph 32(i) of the First Report set out that the Receiver "*initiated discussions with FGI and its counsel in respect of, among other things, amounts collected to date and a comprehensive reconciliation of potential surplus funds held by FGI (i.e., in excess of amounts advanced to the Certus Automotive Group) against which FGI is asserting certain reserves that may in total exceed the surplus*".
33. The Receiver, FGI and TD had several discussions regarding a reconciliation and negotiation over an allocation and release of certain surplus receivable proceeds collected by FGI prior to the Receivership Date pursuant to its loan agreements with the Debtors and the Intercreditor Agreement. In short, following the full repayment of the FGI indebtedness, FGI collected/received further proceeds due to the Debtors (the "**Surplus Proceeds**"), which form part of the receivership estate and part of TD's secured claim.
34. Notwithstanding the surplus position, FGI asserted various holdbacks based on third party contingent claims that may be asserted against FGI such that in the event such claims are payable, FGI would suffer a shortfall on the current full repayment (the "**Clawback Amounts**"). Additionally, FGI asserted various claims for fees and expenses due and payable by the Certus Automotive Group (the "**Fee Amounts**"). As a result of these holdbacks and claims, FGI would not release the Surplus Proceeds to the Receiver. The Receiver and TD disputed the validity of the claims asserted by FGI outlined above. Attached as **Schedule "A"** to the **Confidential Supplement** is a summary of the Clawback Amounts and Fee Amounts claimed by FGI.

35. Following numerous discussions between the Receiver, FGI and TD, the parties have now resolved the outstanding matters between them. The parties are working to execute a settlement agreement (the “**FGI Settlement Agreement**”) in respect of the payment of the Surplus Proceeds, the asserted Clawback Reserves, and the payment of the Fee Amounts. In summary, the FGI Settlement Agreement provides for the payment of a portion of the Surplus Proceeds in FGI’s possession to the Receiver along with the delivery of releases. Attached to **Schedule “B”** of the **Confidential Supplement** is a copy of the draft FGI Settlement Agreement. The draft FGI Settlement Agreement was provided to FGI’s counsel on January 12, 2022. The Receiver is working with FGI and TD to finalize the FGI Settlement Agreement and will provide the Court with an update on January 21, 2022.
36. The Receiver is of the view that the draft FGI Settlement Agreement is appropriate and reasonable in the circumstances.
37. The Receiver seeks approval of the draft FGI Settlement Agreement, substantially in the form attached to **Schedule “B”** of the **Confidential Supplement**. TD has reviewed the FGI Settlement Agreement and supports the form of Order appended to the FGI Settlement Agreement.

THE M&E, CERTUS MEXICO AND THE MEXICO PLANT

38. Based on the Receiver’s review of books and records of the Debtors, direct advice from the Principals, and values allocated to the M&E by Potential Purchasers (as defined below), the Receiver understands that the M&E located at the Mexico Plant represents substantially all of the Property of realizable value. As noted above, the Mexico Plant is leased to Certus Mexico.
39. Certus Canada owns 99.9% of Certus Mexico. While the Receiver is not in possession of Certus Mexico, it has worked closely with the Principals to ensure that asset preservation and realization activities in Mexico are undertaken to maximize the realizations in respect of the M&E. As Certus Mexico does not have its own financial resources, the Receiver has had to advance funds to Certus Mexico as a borrowing to fund the asset preservation and realization activities. To date, approximately \$589,585 has been advanced to Certus Mexico. The Receiver anticipates that any recovery of these advances will be minimal.
40. Moreover, Certus Mexico’s lack of resources, considerable liabilities and failure to initiate a restructuring or liquidation proceeding has resulted in several of its stakeholders initiating recovery actions through the court system in Mexico. As discussed further herein, these actions have frustrated the Receiver’s realization efforts. Accordingly, a significant portion of the Receiver’s

activities have been in respect of securing the M&E located in Queretaro at the Mexico Plant, preparing it for sale, addressing various matters between Certus Mexico and Certus Canada, and assessing the claims filed in Mexico.

UPDATE ON THE SALE PROCESS

Sale Process Implementation

41. As noted in paragraph 33 of the First Report, the Certus Automotive Group carried out a sale process in 2020, which did not result in a successful transaction (the “**Pre-Receivership Sale Process**”).
42. On August 12, 2021, the Court granted the Sale Process Order. Paragraphs 34 to 37 of the First Report summarized the Sale Process proposed by the Receiver, a copy of which is attached as **Appendix “C”** to this Second Report (refer to Schedule “A” to the Sale Process Order).
43. To assist in the implementation of the Sale Process, the Receiver retained an automotive industry turnaround specialist with Conway MacKenzie, who had previously advised the Certus Automotive Group in the 12-month period prior to the Receivership Date and also has extensive knowledge of the Debtors’ assets and operations, the Pre-Receivership Sale Process and the likely universe of potential purchasers.
44. In accordance with the Sale Process Order, the Receiver implemented the Sale Process which generated considerable interest in the M&E and resulted in the selection of a successful bidder.
45. A chronology of the key activities undertaken by the Receiver in respect of the Sale Process is as follows:

Timing	Activity
June 25, 2021 to July 20, 2021	<ul style="list-style-type: none">• Identified potential purchasers (each, a “Potential Purchaser”).• Prepared a marketing teaser (the “Teaser”) and form of non-disclosure agreement (“NDA”) for circulation to Potential Purchasers.• Compiled and reviewed information required by Potential Purchasers to assess the assets.• Arranged third-party inspection of assets and prepared an equipment listing for use by Potential Purchasers.• Responded to calls and inquiries from Potential Purchasers.
July 21, 2021	<ul style="list-style-type: none">• Distributed the Teaser and NDA to Potential Purchasers.

Timing	Activity
July 29, 2021	<ul style="list-style-type: none"> Established an electronic data room (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	<ul style="list-style-type: none"> Continued support to Potential Purchasers (e.g., responded to inquiries, negotiated NDA’s, arranged site visits). Placed an advertisement in Automotive News, an industry publication.
September 2, 2021	<ul style="list-style-type: none"> Deadline for submission of offers.
September 2, 2021 to September 16, 2021	<ul style="list-style-type: none"> Reviewed and clarified bids (each, a “Bid”), selected, shortlisted Bids (each a “Shortlisted Bid”) and consulted with stakeholders about the results of the Sale Process. Selection of the most advantageous Shortlisted Bid conditional on Court approval.
September 16, 2021 to September 21, 2021	<ul style="list-style-type: none"> Negotiated terms of an agreement of purchase and sale (“APA”) with the successful bidder (the “Successful Bidder”).
September 21, 2021	<ul style="list-style-type: none"> Notified the Successful Bidder that the Sale Process was required to be suspended due to the actions of certain Certus Mexico creditors in Mexico.

46. The Sale Process results are summarized in the table below:

Parties Contacted	Parties Contacted	NDAs Executed	Bids Submitted⁽¹⁾	Successful Bid
Auctioneers/Liquidators			5	1
Strategic bidders (industry participants)			1	0
Total	21	18	6	1

⁽¹⁾ Several auctioneers collaborated on their bids

47. A summary of the key terms of the six Bids received on or prior to the Deadline is attached to **Schedule “C” of the Confidential Supplement.**

48. The Successful Bidder’s offer contemplated a marketing and auction process of Certus Canada’s M&E, with a targeted exit of the Mexico Plant by December 31, 2021.

The Sale Process is Frustrated

49. In September 2021, following the determination of the Successful Bidder, the Receiver, the Successful Bidder, and their respective counsel, commenced negotiations in respect of an agreement of purchase sale. However, during the course of the negotiations, the Receiver became

aware of various issues in Mexico which served to frustrate the Receiver's ability to conclude an asset purchase agreement with the Successful Bidder in accordance with the Sale Process.

50. First, Banco Nacional de Comercio Exterior ("**BancoMext**"), which is a state-owned or affiliated bank in Mexico, obtained a \$6,000,000 judgment against Certus Mexico in connection with a loan agreement between Certus Mexico and BancoMext. The Receiver understands that Certus Automotive Group guaranteed Certus Mexico's obligations under the loan agreement. The Receiver understands that BancoMext's lawsuit was initiated in or around May 2021, but the Receiver did not learn of the lawsuit and judgment until September 2021.
51. The Receiver is advised by its Mexican legal counsel, Dentons Mexico, that BancoMext is a secured creditor of Certus Mexico, but its security is subordinate to TD's security and that BancoMext has not asserted a direct claim against Certus Canada. As such, the Receiver is advised that BancoMext's consent is not required in order to deal with the M&E. However, despite this, and due to the various steps taken by BancoMext in its action, including steps to appoint a local judicial administrator to monitor the assets located at the Mexico Plant and to seize or "attach" its claim to the M&E located at the Mexico Plant (regardless of the ownership of the M&E), the BancoMext action presented significant issues in completing a sale of the M&E. In particular, the Receiver was unable to deliver any sold M&E to a purchaser with the threat of the judicial administrator asserting a claim over the M&E that had to be litigated in court in Mexico. The delay and uncertainty as to the timing of and/or a potential ruling in favour of the judicial administrator prevented the Receiver from concluding a transaction pursuant to the Sale Process.
52. Second, in conjunction with the Receiver's efforts to negotiate with the Successful Bidder, the Receiver was also engaged in without prejudice discussions with the landlord of the Mexico Plant, Arquitectura Habitacional e Industrial, S.A. de C.V., Parques American Industries, S.A. de C.V., e Impulsora Quertana de Inmuebles and S.A. de C.V. (the "**Landlord**"), regarding an access agreement. Unfortunately, those discussions did not result in any agreement.
53. Prospective purchasers of the M&E require unfettered access to the Mexico Plant in order to take possession of and remove the purchased M&E from the Mexico Plant. Due to the unresolved rent and access issues with the Landlord, the Receiver has been unable to guarantee access to the Mexico Plant. Of note, the rent payable by Certus Mexico to the Landlord was approximately \$108,000 monthly and Certus Mexico has not paid rent since January 1, 2021.
54. To secure payment of the rental arrears and/or seek the return of the Mexico Plant, the Landlord filed a lawsuit in Mexico asserting a claim against Certus Mexico for rental arrears and damages

and initiated the required procedural steps to have Certus Mexico evicted from the Mexico Plant. The Receiver learned of such claim in September, 2021. In late November, 2021, in discussions with the Landlord, the Receiver was advised that an eviction order could be obtained in January, 2022 and an eviction could be effected within the 30-45 days following issuance of such order (the “**Mexico Eviction Process**”).

55. Third, the Receiver understands that any purchaser will require various customs forms and purchase/ownership documentation in respect of the purchased M&E, including *pedimentos* (i.e., customs forms) which are to be duly executed by the Principals on behalf of Certus Mexico; the Principals alone have authority to complete this task. To date, the Principals have not agreed to sign such forms, which has delayed the Receiver’s sale efforts. Without such executed documents, the Receiver is unable to sell the M&E. The Receiver is actively negotiating with the Principals to obtain their cooperation pursuant to the consulting agreements. As of the date of this Second Report, the Principals have not committed to support the Receiver to complete the necessary tasks to sell the M&E. The Receiver will update the Court on the status of these discussions on January 21, 2022.
56. Fourth, in addition to the BancoMext lawsuit noted above, the Receiver understands that there are an additional nine other outstanding lawsuits (with total aggregate claims of at least \$1,441,530) issued against Certus Mexico (and in some instances, the Debtors) which has created a tremendous amount of uncertainty regarding the M&E located at the Mexico Plant.
57. In response to the obstacles described above, the Receiver discussed various strategies with its Mexican counsel, Dentons Mexico, with a view to addressing the risks associated with, and the development of strategies for, the sale or removal of the M&E from the Mexican Plant without creating any civil or criminal liability against the Receiver, Certus Automotive Group, the Principals or any prospective purchaser of the M&E.
58. Counsel to the Receiver in Mexico has advised that while commencing a formal insolvency proceeding in Mexico would address the risks and uncertainties discussed above, it would procedurally involve an unjustifiable amount of time to attain a formal determination from the Mexican Courts, and more importantly, in the circumstances, would be cost prohibitive (on this point, the Receiver notes that any formal insolvency proceeding in Mexico would require additional borrowings under the Receivership Order to fund the costs with indeterminate results).

59. Save for the claims referenced above, the full breadth of claims in Mexico is unknown to the Receiver and given the current creditor and landlord issues in Mexico, the Receiver has determined that it would not be able to conclude any transaction pursuant to the terms of any Shortlisted Bid.
60. The Receiver notified the Successful Bidder of these developments and returned the deposit. Currently, the Receiver has suspended the Sale Process and continues to consider sale options in Mexico.

Discussions with Stakeholders and the Receiver's Revised Sale Efforts

61. While the Receiver has suspended the Sale Process, it has continued to engage in discussions with parties interested in the M&E with a view to determining if it can conclude alternate transactions within an expedited timeframe and in a commercially reasonable manner that would benefit the Debtors' stakeholders while it attempts to resolve the outstanding issues with BancoMext, the Landlord, the Principals and other stakeholders of the Debtors and Certus Mexico.
62. Following the Landlord's advice that it has initiated the Mexico Eviction Process, the Receiver reviewed the Bids received pursuant to the Sale Process and solicited fresh offers for a "quick sale" of the M&E (unlike the Successful Bid which entailed conducting an auction at the Mexico Plant). In this regard, the Receiver has identified two potential transactions (the "**Quick Sale Transactions**") whereby the purchaser would immediately acquire specific pieces of M&E and remove the M&E within a short timeframe. The Receiver is of the view that completion of Quick Sale Transactions may be achievable given the Landlord's desire to have the Mexico Plant cleared of all M&E in the immediate term and also because the Quick Sale Transactions do not involve an auction of the M&E such that access to the Mexico Plant for an extended period of time would not be required.
63. Accordingly, the Receiver is requesting an Order amending the monetary sale thresholds contained in section 3(k)(i) of the Appointment Order from CA\$800,000 and CA\$1,500,000 to CA\$1,500,000 and CA\$3,000,000, respectively. The Receiver is of the view that, given the nature and value of the M&E, individual transactions can be administered under a tight timeline and in a standardized manner without requiring additional Court attendances such that the proposed amendment to the sale thresholds will provide the Receiver the necessary authority to conclude appropriate transactions in short order. The Receiver notes that the only creditor with an economic interest in the proceeds from the Certus Canada estate is TD.

Target Assets

64. Certus Canada made significant capital investments in the chrome plating line (the “**Plating Line**”). The Plating Line is a highly specialized and physically large system which is not readily or economically transferable to another facility. The Receiver did not receive a commercially reasonable offer from a strategic buyer or going-concern purchaser with the intent to continue operations at the Mexico Plant. However, the Receiver understands there may be scrap value for the Plating Line upon completing a dismantle and removal.
65. Based on the Receiver’s review of offers for the M&E, negotiations with prospective purchasers, and discussions with the Principals, the most significant value is concentrated in approximately 13 injection molding machines (“**IMM**”) and ancillary equipment which consist of numerous lower value units important to end-user buyers of the IMM units, which the Receiver will seek to sell as part of the transactions.

RECEIVER’S BORROWINGS

66. Paragraph 21 of the Appointment Order authorizes the Receiver to borrow funds, as it considers necessary, to a maximum outstanding principal amount of CA\$2,000,000 without further Order of the Court, all of which is subject to the Receiver’s Borrowing Charge (as defined in the Appointment Order).
67. The Certus Automotive Group remains non-operational and there were surplus funds in connection with MTNA and FGI which were not immediately available to the receivership estate. Before the MTNA proceeds were collected in December 2021, substantially all cash inflow to the receivership estate to date was provided from the Receiver’s borrowings and recoveries from residual inventory sales and accounts receivable collections.
68. In order to fund immediate and ongoing protective disbursements from the Receivership date through to December 31, 2021, the Receiver has borrowed \$600,000 by way of two (2) Receiver’s Certificates, excluding interest, as follows: (i) \$250,000 (as reported in paragraph 39 of the First Report), plus (ii) \$350,000.
69. At this time, the Receiver is seeking to fund existing and ongoing obligations from future realizations on the sale of the M&E of Certus Canada and is not seeking an increase to the borrowing limit set out in the Appointment Order.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

70. Attached as **Appendix “D”** is a combined Statement of Receipts and Disbursements for the interim period August 4, 2021 to December 31, 2021 and cumulative period June 25, 2021 to December 31, 2021 (the “**R&D**”). As at December 31, 2021, the closing cash balance was: (i) US\$555,214 in the Receiver’s US dollar trust account and (ii) CA\$9,239 in the Receiver’s Canadian dollar trust account.

PROFESSIONAL FEES

71. The Receiver, and its legal counsel, Dentons, have maintained detailed records of their professional time and costs since the issuance of the Appointment Order. Pursuant to paragraphs 19 and 20 of the Appointment Order, the Receiver and its legal counsel were directed to pass their accounts from time to time before this Honourable Court and were granted a Receiver’s Charge over the Property.
72. The fees of the Receiver during the period July 24, 2021 to December 31, 2021 amount to CA \$515,981, and together with disbursements of CA\$30 plus HST in the amount of CA \$67,081, total CA \$583,092. The time spent by the Receiver is more particularly described in the Affidavit of Jordan Sleeth of Deloitte, sworn January 17, 2022 (the “**Sleeth Affidavit**”) in support hereof and is attached hereto as **Appendix “E”**.
73. The legal fees incurred by Dentons during the period August 1, 2021 to December 31, 2021 amount to CA \$460,590.89, and inclusive of with disbursements and HST. The time spent by Dentons personnel is more particularly described in the Affidavit of Robert Kennedy of Dentons, sworn January 17, 2022 (the “**Kennedy Affidavit**”) in support hereof and is attached hereto as **Appendix “F”**.
74. The Receiver respectfully submits that the fees and disbursements of the Receiver and its counsel, as set out in the Sleeth Affidavit and the Kennedy Affidavit (collectively, the “**Professional Fees**”) are reasonable in the circumstances of this case and have been validly incurred in accordance with the provisions of the Appointment Order. Accordingly, the Receiver requests the approval of the Professional Fees.

APPROVAL OF SEALING ORDER

75. The information contained in the **Confidential Supplement**, and its corresponding schedules, contain confidential and commercially sensitive information in relation to the FGI Settlement Agreement and Sale Process. If made public, this information would impair the Sale Process and

the Debtors' estate more generally, and negatively effect the businesses of the counterparties. The Receiver is of the view that providing a sealing order is fair and reasonable in the circumstances.

RECEIVER'S RECOMMENDATIONS

76. For the reasons set out above, the Receiver respectfully recommends that the Court make an Order:
- (a) if necessary, abridging the time for service of the Notice of Motion dated January 18, 2022 and the Motion Record dated January 18, 2022, and validating service thereof;
 - (b) amending Section 3(k)(i) of the Appointment Order to increase the monetary sale thresholds contemplated therein;
 - (c) approving and authorizing the FGI Settlement Agreement;
 - (d) approving this Second Report and the activities of the Receiver, including steps taken in dealing with the Property, as described in this Second Report, the Confidential Supplement and its corresponding schedules;
 - (e) sealing the Confidential Supplement to this Second Report and its corresponding schedules, filed with this Court from the public record until further Order of this Court;
 - (f) approving the Professional Fees;
 - (g) approving R&D; and
 - (h) such further and other grounds as counsel may advise and this Honourable Court may permit.

All of which is respectfully submitted at Toronto, Ontario this 18th day of January, 2022.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the
Court-appointed Receiver and Manager of
Certus Automotive Inc. and Keen Point
International Inc., and
without personal or corporate liability



Jorden Sleeth, CPA, CA, CIRP, LIT
Senior Vice-President



Stefano Damiani, CPA, CA, CIRP, LIT
Senior Vice-President

THE TORONTO-DOMINION BANK

-and-

CERTUS AUTOMOTIVE INC. and KEEN POINT INTERNATIONAL INC.

Applicant

Respondents

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

PROCEEDING COMMENCED AT
TORONTO

**SECOND REPORT OF THE RECEIVER AND MANAGER,
DELOITTE RESTRUCTURING INC.**

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