

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

THE HONOURABLE)

WEDNESDAY, THE 14th

JUSTICE KOEHNEN)

DAY OF APRIL, 2021

BETWEEN:

PILLAR CAPITAL CORP.

Applicant

-and-

TURUSS (CANADA) INDUSTRY CO., LTD.

Respondent

APPLICATION UNDER SECTION 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

**ORDER
(Stalking Horse Bidding Procedures)**

THIS MOTION, made by MNP Ltd., in its capacity as court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Turuss (Canada) Industry Co., Ltd. (“**Turuss**”) including the real property and buildings located at 60 Industrial Park Road, Chesley, Ontario (the “**Property**”) for an order:

- (a) abridging the time for service of the Motion Record of the Receiver dated April 13th, 2021 (the “**Motion Record**”) and validating service thereof;
- (b) approving the stalking horse bidding procedures, substantially in the form attached as Schedule “A” hereto (the “**Stalking Horse Bidding Procedures**”), and an extension of the offer deadline (the “**Deadline**”) contemplated and set forth in the sale process (the “**Sale Process**”) approved by the order of Justice Cavanagh dated October 29, 2020 from April 16, 2021 to April 30, 2021;

- (c) authorizing the Receiver to execute the Stalking Horse Bid (as defined herein);
- (d) approving a sealing order for the confidential supplement to the Fifth Report (as defined herein) (the “**Confidential Supplement**”);
- (e) approving the fifth report of the Receiver dated April 13th, 2021 to the Court (the “**Fifth Report**”), and the activities of the Receiver as described therein;
- (f) approving the fees and disbursements of the Receiver and its legal counsel, Dentons Canada LLP, as set out in the Fifth Report, the fee affidavit of Jerry Henechowicz sworn April 12, 2021 (the “**Henechowicz Affidavit**”), and the fee affidavit of Robert Kennedy sworn April 13, 2021 (the “**Kennedy Affidavit**”, and together with the Henechowicz Affidavit, the “**Fee Affidavits**”); and
- (g) such other matters considered relevant to the Receiver’s administration of this proceeding.

was heard this day judicial videoconference via Zoom due to the COVID-19 pandemic.

ON READING the Motion Record, the Receiver’s Fifth Report and Confidential Supplement, and on hearing the submissions of counsel for the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Amanda Campbell sworn April 13, 2021, filed:

SERVICE

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

STALKING HORSE BIDDING PROCEDURES

3. **THIS COURT ORDERS** that the Stalking Horse Bidding Procedures, in the form attached as **Schedule “A”** hereto (subject to any amendments that may be made in accordance therewith), is hereby approved.

4. **THIS COURT ORDERS** that the Deadline be and is hereby extended from April 16, 2021 to April 30, 2021.

5. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to carry out the Stalking Horse Bidding Procedures and to take such steps and execute such documentation as may be necessary or incidental to the Stalking Horse Bidding Procedures.

6. **THIS COURT ORDERS** that the Receiver and its respective affiliates, partners, directors, employees, agents or and controlling persons, shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Stalking Horse Bidding Procedures, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the Receiver in performing its obligation under the Stalking Horse Bidding Procedures.

STALKING HORSE BID

7. **THIS COURT ORDERS** that the Receiver is hereby authorized to execute the asset purchase agreement dated April 13th, 2021 among the Receiver and Westmount Park Investments Inc. (the “**Stalking Horse Bid**”), *nunc pro tunc*, provided that nothing herein approves the sale and the vesting of the Purchased Assets (as defined in the Stalking Horse Bid) to Westmount Park Investments Inc. pursuant to the Stalking Horse Bid and that the approval of the sale and vesting of such assets shall be considered by this Court on a subsequent motion made to this Court following completion of the sale process pursuant to the terms of the Stalking Horse Bidding Procedures, if the Stalking Horse Bid is the Successful Offer (as defined in the Stalking Horse Bidding Procedures).

SEALING ORDER

8. **THIS COURT ORDERS** that the Confidential Supplement shall be sealed and kept confidential and not form part of the public record, but shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title to these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

RECEIVER'S ACTIVITIES

9. **THIS COURT ORDERS** that the Fifth Report, and the activities of the Receiver as described therein, is hereby approved.

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

GENERAL

11. **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 'RBJ', is written above a horizontal line.

Schedule "A"
Stalking Horse Bid Procedures

**STALKING HORSE BIDDING PROCEDURES
IN THE MATTER OF THE COURT-SUPERVISED RECEIVERSHIP OF TURUSS
(CANADA) INDUSTRY CO., LTD.**

Stalking Horse Bidding Procedures

Capitalized terms not otherwise defined herein shall have meaning set forth in the Sale Process or Auction Procedures (each, as defined herein). The Sale will be completed by MNP Ltd. in its capacity as receiver of Turuss, appointed pursuant to a Receivership Order dated September 18, 2020 (the “**Receiver**”).

The Court has issued the following Orders in the receivership proceedings of Turuss (Canada) Industry Co., Ltd. (“**Turuss**”) in respect of a Court approved sale process (the “**Sale Process**”):

- (i) on October 29, 2020, the Court issued an Order (the “**Sale Process Order**”) authorizing the Sale Process in respect of the assets, undertaking and properties of Turuss including the real property and buildings located at 60 Industrial Park Road, Chesley, Ontario (the “**Property**”), with a bid deadline of January 11, 2021;
- (ii) on January 5, 2021, the Court issued an Order approving and authorizing an extension to the Deadline to February 26, 2021; and
- (iii) on March 26, 2021, the Court issued an Order (the “**Second Extension Order**”) approving and authorizing a further extension of the Deadline to April 16, 2021, and an auction procedures attached as Schedule “A” to the Second Extension Order (the “**Auction Procedures**”).

On April 14, 2021, the Court issued an order (the “**Stalking Horse Procedures Order**”) which, among other things:

- (i) supplemented and amended (where necessary and applicable) the existing Sale Process to accept, for the purpose of conducting a “stalking horse” solicitation process with respect to the Property (the “**Stalking Horse Process**”), an asset purchase agreement dated April 13th, 2021 (the “**Stalking Horse Bid**”) between the Receiver and Westmount Park Investments Inc. (the “**Stalking Horse Bidder**”);

- (ii) the payment of an inclusive break fee in the amount of \$100,000 (plus applicable HST) and an expense reimbursement in the amount of \$75,000 (plus applicable HST) (collectively, the “**Break Fee**”) by the Receiver to the Stalking Horse Bidder in accordance with the provisions of the Stalking Horse Bid;
- (iii) approving and authorizing the stalking horse bidding procedures (the “**Stalking Horse Bidding Procedures**”); and
- (iv) further extend the Deadline to April 30, 2021.

Set forth below is the Stalking Horse Bidding Procedures to be employed with respect to the sale (the “**Sale**”) of the Property.

Subject to Court availability, within ten (10) business days following an auction (the “**Auction**”), if applicable, the Receiver shall bring a motion (the “**Approval Motion**”) seeking the granting of an approval and vesting order (the “**AVO**”) by the Court authorizing the Receiver to proceed with authorizing and approving the Sale of the Property to the Qualified Bidder making the Successful Offer (being, the Successful Offeror).

This Stalking Horse Bidding Procedures shall supplement and modify (where necessary) the Sale Process. In the event there is any conflict between any provision in the Sale Process, Auction Procedures or the Stalking Horse Bidding Procedures, the terms of this Stalking Horse Bidding Procedures shall govern and prevail.

Assets to Be Sold en bloc

The Receiver is offering for Sale all of the Turuss’ right, title and interest in and to all of the Property en bloc and only a bid for all the Property, in whole and not in part, can be eligible to be a Qualified Offer (as defined herein). The Receiver will be responsible for conducting the Stalking Horse Bidding Procedures and Auction Procedures (if applicable).

The Bidding Process

The Stalking Horse Procedures Order authorizes the Receiver to continue to market and sell the Property pursuant to Sales Process, as supplemented and modified pursuant the Stalking Horse Bidding Procedures. The Receiver shall have the right to adopt, modify and implement

such further and other rules and procedures (including rules and procedures that may depart from those set forth herein) that, in its reasonable business judgment, will enhance and improve the goals of the Stalking Horse Bidding Procedures provided, however, any material modifications shall require a further Order of the Court.

Participation Requirements

For clarity, a “**Qualified Offeror**” is a Prospective Offeror who submits a Binding Offer (as defined herein) in substantially the same form as the Stalking Horse Bid submitted in the form of the template APS, for a purchase price of at least \$6,675,000 and satisfies the Bid Requirements (as defined herein), as determined by the Receiver in its sole discretion. Any bid meeting these criteria that is received by the Receiver before the Deadline is a qualified offer (a “**Qualified Offer**”).

Bid Deadline

A Prospective Offeror that desires to make a bid shall deliver written copies of its bid and the Bid Requirements to the Receiver not later than 5:00 p.m. (local Toronto time) on the Deadline.

Bid Requirements

All binding bids and accompanying materials (other than the Stalking Horse Bid) (“**Binding Offers**”, and individually a “**Binding Offer**”) submitted by a Prospective Offeror must provide for the following, in addition to the requirements set forth in the Sale Process, unless any such requirement is waived by the Receiver (collectively, the “**Bid Requirements**”):

- (v) a base cash purchase price or transaction value equal to or greater than \$6,675,000, being the Stalking Horse Bid (\$6,500,000) plus the Break Fee of \$175,000 (the “**Base Purchase Price**”);
- (vi) delivery of the Binding Offer by the Prospective Offeror to the Receiver on or before the Deadline;
- (vii) the identity of each person or entity (including its shareholders) that is sponsoring or participating in the Binding Offer 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;

- (viii) a provision stating that the Prospective Offeror's bid is irrevocably open for acceptance until the selection of the Successful Offeror;
- (ix) 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 Offer;
- (x) an acknowledgement and representation that the Prospective Offeror: (i) has had an opportunity to conduct any and all due diligence regarding the Property prior to making its 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 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;
- (xi) 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 and vesting title in and to the Prospective Offeror (as set out in the APS); and
- (xii) an executed copy of the APS and a blackline of the Prospective Offeror's proposed purchase agreement against the Stalking Horse Bid.

The Receiver reserves the right to determine the value of any Qualified Offer, and which Qualified Offer constitutes the best bid (the "**Lead Bid**"), for the purposes of the Auction (if applicable). Details of the Lead Bid will be provided by the Receiver to all Qualified Offerors after the Deadline and no later than 5:00p.m. (local Toronto Time) two (2) business days before the date scheduled for the Auction.

A Binding Offer may not be withdrawn, modified or amended without the written consent of the Receiver prior to the Successful Offer being determined. Any such withdrawal, modification or amendment made without the written consent of the Receiver prior to the Successful Offer being determined shall result in the forfeiture of such Prospective Offeror's deposit as liquidated damages and not as a penalty.

The Receiver may determine whether to entertain Binding Offers for the Property that do not conform to one or more of the requirements specified herein and deem such Binding Offer(s) to be a Qualified Offer.

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 Stalking Horse Bidding Procedures or Auction Procedures prior to the selection of a Successful Offeror.

Notwithstanding the Bid Requirements detailed above, the Stalking Horse Bid shall be deemed to be a Qualified Offer.

The Auction Process

If one or more Qualified Offers (other than that submitted by the Stalking Horse Bidder) have been received by the Receiver on or before the Deadline, the Receiver may implement the Auction. In the event the Receiver elects, in its discretion, to implement the Auction, the Receiver shall advise all Qualified Offerors of the Lead Bid and invite all Qualified Offerors (including the Stalking Horse Bidder) to attend the Auction to be conducted by the Receiver in accordance with the Auction Procedures (each invited Qualified Offeror being a "Selected Offeror", as defined in the Auction Procedures).

For greater certainty, the Auction shall be governed by the terms set out in the Auction Procedures.

If no Qualified Offer is submitted by the Deadline, then the Stalking Horse Bid shall be the Successful Offer, and the Stalking Horse Bidder shall be the Successful Offeror.

Highest versus Best Bid

In determining the Lead Bid or any Opening Bid, the highest and/or best bid during each round of bids, and the Successful Offer, the Receiver is not required to select the bid with the highest purchase price amount and may, exercising its reasonable business judgment, select another bidder on the basis that it is the best bid even though not the highest purchase price. Without limiting the foregoing, the Receiver may give such weight to the non-monetary considerations as it determines, exercising its reasonable business judgment, is appropriate and reasonable.

Break Fee and Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary in entering into the Stalking Horse Bid with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Receiver has agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Bid, the Break Fee, in each case payable by the Receiver to the Stalking Horse Bidder only in the event that a Successful Offer other than the Stalking Horse Bid is accepted by the Receiver, approved by the Court and the associated transaction is completed.

Acceptance of Qualified Bids

The sale of the Property to any Successful Offeror by the Receiver is expressly conditional upon the approval of the Successful Offer by the Court at the hearing of the Approval Motion. The presentation of the Successful Offer to the Court for approval does not obligate the Receiver to close the transaction contemplated by such Successful Offer unless and until the Court approves the Successful Offer. The Receiver will be deemed to have accepted a Successful Offer bid only when the Successful Offer has been approved by the Court at the hearing on the Approval Motion.

Approval Motion

The Approval Motion shall, subject to court availability, be made returnable as soon as reasonably possible following the selection of the Successful Offer. The Receiver, in the exercise of its business judgement, reserves its right to the extent consistent with the Stalking Horse Bid to

change the date of the hearing of the Approval Motion in order to achieve the maximum value for the Property.

Miscellaneous

The Stalking Horse Bidding Procedures and Auction Procedures are solely for the benefit of the Receiver and nothing contained in the Sale Process Order, the Sale Process, the Stalking Horse Bidding Procedures, or the Auction Procedures shall create any rights in any other person (including, without limitation, any Prospective Offeror or Qualified Offeror, and any rights as third party beneficiaries or otherwise). The bid protections incorporated in the Stalking Horse Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Notwithstanding anything else contained herein, if it becomes evident to the Receiver that no Qualified Offers will be received, the Receiver, may terminate the Stalking Horse Bidding Procedures.

The Receiver may reject at any time before the issuance and entry of an order approving a Successful Offer, any bid that is: (i) inadequate or insufficient, (ii) not in conformity with the Bid Requirements, or any order of the Court, or (iii) contrary to the best interests of the receivership estate. The Receiver shall have the right to modify the Stalking Horse Bidding Procedures, or impose additional terms and conditions on the sale of the Property, acting reasonably.

The Receiver shall not have any liability whatsoever to any person or party for any act or omission related to the Stalking Horse Bidding Procedures or Auction Procedures. By submitting a bid, each Prospective Offeror shall be deemed to have agreed that it has no claim against the Receiver for any reason whatsoever.

PILLAR CAPITAL CORP.
Applicant

- and -

TURUSS (CANADA) INDUSTRY CO., LTD.
Respondent

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Stalking Horse Agreement)**

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario M5K 0A1

Robert Kennedy (LSO #474070)
Tel: (416) 367-6756
Fax: (416) 863-4592
robert.kennedy@dentons.com

Daniel Loberto (LSO #79632Q)
Tel: (416) 863-4760
daniel.loberto@dentons.com

Lawyers for the Receiver