

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**LASALLE BUSINESS CREDIT, A DIVISION OF  
ABN AMRO BANK N.V., CANADA BRANCH**

Applicant

- and -

**GENFAST MANUFACTURING COMPANY**

Respondent

**TWELFTH REPORT TO THE COURT OF KPMG INC.  
IN ITS CAPACITY AS RECEIVER OF  
GENFAST MANUFACTURING COMPANY**

November 24, 2008

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- Schedule "B"** - The GM Settlement Agreement
- Schedule "C"** - Order of the Honourable Mr. Justice Campbell dated January 16, 2008
- Schedule "D"** - Order of the Honourable Mr. Justice Campbell dated June 27, 2008
- Schedule "E"** - The Bank-Utica Settlement Agreement
- Schedule "F"** - Receiver's Fifth Report (without appendices and schedules) to the Court dated October 29, 2007
- Schedule "G"** - Receiver's Eight Report (without appendices and schedules) to the Court dated January 11, 2008
- Schedule "H"** - Affidavit of Nicholas Brearton, sworn October 21, 2008
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- Schedule "J"** - R & D Statement for the Period May 1, 2008 to September 30, 2008
- Schedule "K"** - Summary of the Resulting Reserves After Elimination and Reduction

## ***1.0 Introduction and Purpose of Report***

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### **1.1 Purpose of this Report**

1.1.1 The purpose of this Twelfth Report is to supplement the Receiver's Eleventh Report dated July 17, 2008 (the "**Eleventh Report**") with respect to certain matters that were not yet finalized as at the date of the Eleventh Report. A copy of the Eleventh Report (without appendices and schedules) is attached as **Schedule "A"**.

1.1.2 All initially capitalized terms not otherwise defined herein shall have the meanings given to them in the Eleventh Report.

1.1.3 This Twelfth Report is in support of the Receiver's request for an Order on its motion scheduled for November 27, 2008, among other things:

- (i) approving the Eleventh Report (save and except for activities related to the landlord dispute) and this Twelfth Report and the activities of the Receiver described therein and herein;
- (ii) approving the GM Settlement Agreement (as defined below) and authorizing the Receiver to complete the GM Settlement Agreement and directing the Receiver to pay the funds received from GM in the amount of CDN\$215,000.00 to the Bank forthwith upon receipt as a permanent reduction of Genfast's indebtedness to the Bank;
- (iii) authorizing and directing the Receiver to, pursuant to the Bank-Utica Settlement Agreement (as defined below), pay to Utica the amount of CDN \$150,000.00 from the Lease Two Reserve (as defined below), net of expenses and interest, and to pay the balance of the Lease Two Reserve, if any, to the Bank, as a permanent reduction of Genfast's indebtedness to the Bank, thereby eliminating the Lease Two Reserve;
- (iv) authorizing and directing the Receiver to, pursuant to the Bank-Utica Settlement Agreement, pay the amount of CDN \$150,000.00 to Utica regarding the Utica Lease One Equipment, such amount being in addition to the CDN \$937,934.00 already distributed

by the Receiver to Utica pursuant to paragraph 12 of the July 27 Order (as defined below);

- (v) directing the Receiver and MNP, GFC and Utica to fully, finally, forever and mutually release and discharge each other, including their officers, directors, representatives, successors, assigns and affiliates from any and all claims, demands, actions, causes of action, disputes, law suits and liability, known or unknown, regarding the Lease One Reserve (as defined below) and the Lease Two Reserve, the assets which created those Reserves and the accounts receivable owing by MNP and GFC to Genfast, including those for any costs and expenses of the Receiver in connection with all matters concerning its Receivership and these Receivership proceedings;
- (vi) approving the fees and disbursements of the Receiver and its independent legal counsel for the period from May 1, 2008 to September 30, 2008, as described herein, and directing and authorizing the Receiver to pay the fees and the disbursements of the Receiver and its independent legal counsel forthwith;
- (vii) authorizing the elimination of the Disputed Pension Claims Reserve and the CCAA Payables Reserve and directing the Receiver to pay the funds associated with same, being CDN \$81,774.00 and CDN \$105,122.00 respectively, to the Bank as a permanent reduction of Genfast's indebtedness to the Bank;
- (viii) authorizing the reduction of the Contingency Reserve by \$100,000.00, to \$150,000.00, and directing the Receiver to distribute \$100,000.00 to the Bank as a permanent reduction of Genfast's indebtedness to the Bank; and
- (ix) authorizing the distribution of \$180,000.00 to the Bank, representing the Income Tax Refund (as defined below), as a permanent reduction of Genfast's indebtedness to the Bank.

## *2.0 Settlement Agreement with General Motors Corporation*

- 2.1.1 As described in previous Reports to this Court, the Receiver commenced litigation against General Motors and certain of its affiliates (the “GM Litigation”) in order to, among other things, recover certain accounts receivable from GM. After ongoing discussions between the Receiver, the Bank and GM, a letter agreement and mutual release have been entered into between the Receiver and GM (the “GM Settlement Agreement”), a copy of which is attached as **Schedule “B,”** to resolve all outstanding issues in the GM Litigation. The GM Settlement Agreement is conditional upon Court approval. The Bank has advised the Receiver that it supports the GM Settlement Agreement.
- 2.1.2 The Receiver recommends that the Court authorize it to complete the GM Settlement Agreement, as it believes that the payment of CDN \$215,000.00 by GM is a reasonable settlement of the GM Litigation after consideration of the costs and delays that the Receiver would otherwise incur if it pursued the GM Litigation. The Receiver further proposes to pay the amount of CDN \$215,000.00 to be received from GM to the Bank, forthwith upon receipt, as a permanent reduction of Genfast’s indebtedness to the Bank.

### **3.0 Settlement Agreement between the Bank, Utica, MNP and GFC**

3.1.1 Pursuant to paragraph 6 of the Order of the Honourable Mr. Justice Campbell dated January 16, 2008 (the “**January 16 Order**”), the Receiver was authorized and directed to reserve from the funds in its possession the amount of US \$1,263,278.00 with respect to the dispute between the Bank and Utica over the proceeds of the Utica Lease One Equipment (the “**Lease One Reserve**”) and the amount of US \$656,905.00 with respect to the dispute between the Bank and Utica over the proceeds of the Utica Lease Two assets (the “**Lease Two Reserve**”) together with any accrued or accruing interest. At that time, the Honourable Mr. Justice Campbell had heard a motion on October 30, 2007, with respect to the proceeds of the Utica Lease One equipment, but had not yet rendered a decision. No determination had been made or resolution reached with respect to the Utica Lease Two Equipment. A copy of the January 16 Order is attached as **Schedule “C”**.

3.1.2 Pursuant to the Order of the Honourable Mr. Justice Campbell dated June 27, 2008 (the “**June 27 Order**”), a copy of which is attached as **Schedule “D”**, this Court ordered that:

- i. the issue of liability between the Bank and Utica for costs allocated to the proceeds of the Utica Lease One Equipment be resolved by way of written submissions, unless the Court ordered or the parties agreed that oral submissions were necessary;
- ii. the costs of the motion heard October 30, 2007, be resolved by way of written submissions, unless the Court found or the parties agreed that oral submissions were necessary; and
- iii. the motions by the Bank and Utica with respect to priority over and distribution of the proceeds of the Utica Lease Two Equipment be adjourned to a date to be set by the Commercial List.

3.1.3 Further, as described in previous Reports, the Bank commenced litigation in the state of Michigan against both MNP and GFC, seeking, among other things, payment by MNP and GFC of the

outstanding receivables owing to Genfast pursuant to the terms of the subordination agreement entered into by MNP and GFC in favour of the Bank and damages arising from the usurpation of Genfast's business opportunities by certain related parties (the "**US Litigation**").

3.1.4 After ongoing settlement discussions, the Bank and Utica, MNP and GFC have reached a settlement agreement with respect to all outstanding issues in the US Litigation and with respect to the Utica Lease One Equipment and the Utica Lease Two Equipment. A copy of the settlement agreement executed by the parties is attached as **Schedule "E"** (the "**Bank-Utica Settlement Agreement**").

3.1.5 The Bank-Utica Settlement Agreement requires MNP to pay the amount of U.S.\$775,000.00 directly to the Bank. As this amount represents a settlement of accounts receivable which the Receiver would otherwise be entitled to pursue from MNP and GFC on behalf of Genfast's estate, the Receiver will not be pursuing the accounts receivable to which this settlement relates.

3.1.6 The Bank-Utica Settlement Agreement requires the Bank to request that the Receiver seek an order in these proceedings (defined in the Bank-Utica Settlement Agreement as the "**Direction Order**"), directing the Receiver to:

- i. pay to Utica CDN \$150,000.00 of the Lease Two Reserve, net of all expenses of the Receiver, the Bank, or otherwise, including any expenses the Receiver incurred regarding the sale of the assets that created the Lease Two Reserve and net of any interest that may have accrued on the Lease Two Reserve and to pay the balance of the Lease Two Reserve, net of the Receiver's expenses, if any, to the Bank;
- ii. pay to Utica CDN \$150,000.00 from the Lease One Reserve (such amount being in addition to the CDN \$937,934.00 already distributed to Utica pursuant to the June 27 Order), net of expenses and interest, and to pay the balance of the Lease One Reserve, net of the Receiver's expenses, if any, to the Bank; and

- iii. directing the Receiver and MNP, GFC and Utica to fully, finally, forever and mutually release and discharge each other, including their officers, directors, representatives, successors, assigns and affiliates from any and all claims, demands, actions, causes of action, disputes, lawsuits and liability, known or unknown, regarding the Lease One Reserve and the Lease Two Reserve, the assets which created those Reserves, and the accounts receivable owing by MNP and GFC to Genfast, including those for any costs and expenses of the Receiver in connection with all matters concerning these Receivership proceedings.

3.1.7 The Bank-Utica Settlement Agreement provides for payment in the amount of CDN \$150,000.00 to Utica, (with the balance to the Bank), out of the Lease One Reserve. However, the balance of funds in the Lease One Reserve after payment of CDN \$937,934.00 to Utica pursuant to paragraph 12 of the June 27 Order was allocated for costs incurred by the Receiver. Accordingly, the payments contemplated by the Bank-Utica Settlement Agreement with respect to the Lease One Reserve, if approved by this Court, will be paid from general funds held by the Receiver, which funds are subject to the Bank's security.

3.1.8 In light of the fact that the Bank will suffer a significant shortfall on its loans to Genfast, and the agreement and consent of the Bank, Utica, MNP and GFC to the relief being sought, the Receiver recommends that the relief sought with respect to the Bank-Utica Settlement Agreement be granted. In particular, the Receiver seeks an order directing and authorizing the Receiver to:

- (i) pay to Utica the amount of CDN\$150,000.00 from the Lease Two Reserve, net of expenses and interest, and to pay the balance of the Lease Two Reserve, if any, to the Bank as a permanent reduction of Genfast's indebtedness to the Bank;
- (ii) pay the amount of CDN\$150,000.00 to Utica with respect to the Utica Lease One Equipment, net of expenses and interest; and
- (iii) directing the Receiver and MNP, GFC and Utica to fully, finally and mutually release one another on the terms as set out in the Bank-Utica Settlement Agreement.

## ***4.0 Genfast Books and Records***

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- 4.1.1 Pursuant to the Order of the Honourable Mr. Justice Campbell dated November 5, 2007, this Court approved the Records Request Protocol (as defined and explained in the Receiver's Fifth Report to the Court dated October 29, 2007, a copy of which is attached without appendices and schedules as **Schedule "F"**), which provided for access to the books and records of Genfast. As described in the Receiver's Eighth Report to the Court dated January 11, 2008, a copy of which is attached (without appendices and schedules) as **Schedule "G"**, substantial records were moved offsite when the Receiver vacated the Premises while Genfast's proprietary MANMAN server is being maintained at the Premises pursuant to the month-to-month arrangement between the Receiver and the Landlord, which is subject to the Landlord's right to terminate without notice. Pursuant to the January 16 Order, this Court ordered the destruction of certain physical books and records of Genfast.
- 4.1.2 As part of the finalization of its administration of Genfast's estate, upon its motion for its discharge, the Receiver will be seeking this Court's authorization and direction to destroy all remaining corporate documents, books and records of Genfast in the Receiver's possession that the Trustee in Bankruptcy of Genfast is not required to maintain pursuant to the *Bankruptcy and Insolvency Act* (Canada) unless the former directors and officers or other stakeholders of Genfast request that the books and records be delivered to them at their own expense. The Receiver will also seek this Court's authorization to dispose of the MANMAN server.

## ***5.0 Receiver's Fees and Disbursements***

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- 5.1.1 The Receiver and its independent legal counsel Blake, Cassels & Graydon LLP (“Blakes”) have maintained detailed records of their professional time and costs in connection with the receivership.
- 5.1.2 The fees and disbursements of the Receiver for the period from May 1, 2008 to September 30, 2008 total CDN \$113,391.08 exclusive of GST, comprising fees in the amount of CDN \$113,345.00 and expenses and disbursements in the amount of CDN \$46.08. The time spent by KPMG personnel is more particularly described in the Affidavit of Nicholas Brearton of KPMG sworn October 21, 2008, a copy of which is attached as **Schedule “H”**, which includes copies of all accounts rendered by KPMG during this period.
- 5.1.3 The legal fees and disbursements incurred by the Receiver for the period from May 1, 2008 to September 30, 2008 for services provided by Blakes total CDN \$185,861.21 exclusive of GST, comprising CDN \$180,828.50 for fees, together with expenses and disbursements in the amount of CDN \$5,032.71. The time spent by Blakes personnel in these proceedings is more particularly described in the Affidavit of Milly Chow sworn October 22, 2008, a copy of which is attached as **Schedule “I”**, which includes copies of all accounts rendered by Blakes during this period.
- 5.1.4 It is the Receiver’s belief that the fees and disbursements of Blakes are fair, reasonable and justified in the circumstances and accurately reflect the work done and services provided in connection with these receivership proceedings.

## **6.0 Receiver's Interim Statement of Receipts and Disbursements**

- 6.1.1 Attached as **Schedule "J"** to this report is the R&D Statement for the period from May 1, 2008 to November 15, 2008.
- 6.1.2 The Receiver has generated i) auction proceeds from Genfast's fixed assets of approximately CDN \$14.73 million, including interest earned thereon; and ii) non-auction related proceeds from Genfast's assets of approximately CDN \$6.54 million and US \$3.49 million, including interest earned thereon, being primarily receipts from the collection of accounts receivable and the sale of inventory to customers. Since its last Report, the Receiver has generated additional receipts of approximately \$400,000.00 consisting primarily of an approximately \$184,000.00 corporate income tax refund (the "Income Tax Refund"), with the balance relating to GST refunds, interest income, and currency conversion gains.
- 6.1.3 The Receiver has incurred disbursements, prior to professional fees and payments to secured creditors, of approximately CDN \$4.26 million and US \$20,000.00, consisting primarily of CCAA related payments for payroll, vacation pay and supplier payments as well as rent, utilities, security and the payroll for employees engaged by the Receiver. Since its last Report, and pursuant to paragraphs 11 and 12 of the June 27 Order, the Receiver distributed CDN \$1,497,693.00 and CDN \$937,934.00 to the Bank and Utica respectively, bringing total distributions by the Receiver to secured creditors to approximately CDN \$2.44 million and US \$13.61 million.
- 6.1.4 Accordingly, the Receiver currently has approximately CDN \$400,000.00 and US \$2.04 million in net funds as at November 15, 2008, consisting of approximately CDN \$200,000.00 and US \$31,000.00 in current accounts and approximately CDN \$200,000.00 and US \$2.01 million in term deposits. The Receiver's net funds outlined above are before consideration of the Receiver's accrued and estimated liabilities and expenses in connection with the administration of

the receivership, including the fees and disbursements of the Receiver and those of its legal counsel, and before consideration of the various Reserves.

6.1.5 In light of the Disputed Pension Claims Settlement, the Receiver recommends that the Disputed Pension Claims Reserve and the CCAA Payables Reserve be eliminated with the funds associated with same, being CDN \$81,774.00 and CDN \$105,122.00, respectively, being distributed to the Bank as a permanent reduction of Genfast's indebtedness to the Bank. The Receiver also recommends that the Contingency Reserve be reduced by \$100,000.00, to \$150,000.00, with the \$100,000.00 being distributed to the Bank as a permanent reduction of Genfast's indebtedness to the Bank. Further, the Receiver recommends that it distribute to the Bank \$180,000.00 from the non-reserved funds, representing the Income Tax Refund, as a permanent reduction of Genfast's indebtedness to the Bank. A summary of the resulting reserves, including after consideration of the payments arising from the Bank-Utica Settlement Agreement, is attached as **Schedule "K"**.

## *7.0 Recommendations*

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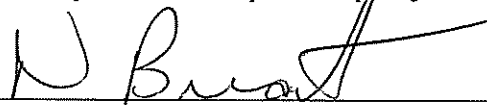
7.1.1 For the reasons set out in the Eleventh Report and this Twelfth Report, the Receiver respectfully requests that this Honourable Court grant an Order, among other things,

- (i) approving the Eleventh Report (save and except for activities related to the landlord dispute) and this Twelfth Report and the activities of the Receiver described therein and herein;
- (ii) approving the GM Settlement Agreement and authorizing the Receiver to complete the GM Settlement Agreement and directing the Receiver to pay the funds received from GM in the amount of CDN\$215,000.00 to the Bank forthwith upon receipt as a permanent reduction of Genfast's indebtedness to the Bank;
- (iii) authorizing and directing the Receiver to, pursuant to the Bank-Utica Settlement Agreement, pay to Utica the amount of CDN \$150,000.00 from the Lease Two Reserve, net of expenses and interest, and to pay the balance of the Lease Two Reserve, if any, to the Bank as a permanent reduction of Genfast's indebtedness to the Bank, thereby eliminating the Lease Two Reserve;
- (iv) authorizing and directing the Receiver to, pursuant to the Bank-Utica Settlement Agreement, pay the amount of CDN \$150,000.00 to Utica regarding the Utica Lease One Equipment, such amount being in addition to the CDN \$937,934.00 already distributed by the Receiver to Utica pursuant to paragraph 12 of the July 27 Order;
- (v) directing the Receiver and MNP, GFC and Utica to fully, finally, forever and mutually release and discharge each other, including their officers, directors, representatives, successors, assigns and affiliates from any and all claims, demands, actions, causes of action, disputes, law suits and liability, known or unknown, regarding the Lease One Reserve and the Lease Two Reserve, the assets which created those Reserves and the accounts receivable owing by MNP and GFC to Genfast, including those for any costs and expenses of the Receiver in connection with all matters concerning its Receivership and these Receivership proceedings;

- (vi) approving the fees and disbursements of the Receiver and its independent legal counsel for the period from May 1, 2008 to September 30, 2008, as described herein, and directing and authorizing the Receiver to pay the fees and the disbursements of the Receiver and its independent legal counsel forthwith;
- (vii) authorizing the elimination of the Disputed Pension Claims Reserve and the CCAA Payables Reserve and directing the Receiver to pay the funds associated with same, being CDN \$81,774.00 and CDN \$105,122.00 respectively, to the Bank as a permanent reduction of Genfast's indebtedness to the Bank;
- (viii) authorizing the reduction of the Contingency Reserve by \$100,000.00, to \$150,000.00, and directing the Receiver to distribute \$100,000.00 to the Bank as a permanent reduction of Genfast's indebtedness to the Bank; and
- (ix) authorizing the distribution of \$180,000.00 to the Bank, representing the Income Tax Refund (as defined below), as a permanent reduction of Genfast's indebtedness to the Bank.

All of which is respectfully submitted this 24th day of November, 2008.

KPMG Inc.,  
solely in its capacity as Court-Appointed Receiver  
of the assets, properties and undertakings of  
Genfast Manufacturing Company and not in its  
personal or corporate capacity



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Per: Nicholas Brearton  
Senior Vice-President

LaSalle Business Credit, and  
A Division of ABM AMRO Bank N.V.,  
Canada Branch

Genfast Manufacturing Company

Court File No: 07-CL-6926

and

Applicant

Respondent

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

Proceeding commenced at Toronto

**TWELFTH REPORT TO THE COURT DATE.  
NOVEMBER 24, 2008**

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