

**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

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

July 17, 2008

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1.0 Introduction and Purpose of Report

- 1.1.1 The purpose of this Eleventh Report is to supplement the Receiver's Ninth Report dated May 30, 2008 and the Receiver's Tenth Report dated June 26, 2008 (collectively, the "**Reports**"), in order to put information and evidence before this Court in support of the Receiver's motion for advice and direction with respect to its dispute with Maynards and Strathallen Capital Corp. (the "**Landlord**") regarding the Premises and the disposition of the Landlord Reserve. Copies of the Reports (without schedules) are attached as **Schedule "A"**.
- 1.1.2 All initially capitalized terms not otherwise defined herein shall have the meanings given to them in the Reports.
- 1.1.3 This Eleventh Report is in support of the Receiver's motion in which it seeks, among other things:
- (i) approval of this Eleventh Report and the activities of the Receiver described herein;
 - (ii) this Court's advice and direction with respect to the liability of the Receiver, if any, to the Landlord related to occupancy costs (including rent, utilities and security) (collectively, the "**Occupancy Costs**"), and any damages, repair and cleanup costs (collectively, the "**Damages**") and the landlord's legal fees in dealing with this matter (the "**Landlord's Legal Costs**");
 - (iii) this Court's advice and direction with respect to the liability of Maynards, if any, to the Receiver for Occupancy Costs, Damages, the Landlord's Legal Costs and professional and legal fees incurred by the Receiver related to Maynards' occupation and vacation of the Premises (the "**Receiver's Professional Fees**");
 - (iv) this Court's advice and direction with respect to the liability of the Landlord to the Receiver, if any, for utilities, insurance and security costs paid by the Receiver and related to the period after December 24, 2007 (ie. the date the Receiver asserts it vacated the Premises);

- (v) an accounting of the Lease Deposit (as defined herein) from the Landlord;
- (vi) approving the Disputed Pension Claims Settlement as described herein and as set out as Schedule "GG" to this Eleventh Report;
- (vii) declaring that the Disputed Pension Claims are dismissed;
- (viii) directing the Receiver to pay, from the Disputed Pension Claims Reserve, the amount of CDN \$87,500 to the Pension Plan Administrator with respect to the Disputed Pension Claims Settlement as described herein and Schedule "GG" to this Eleventh Report; and
- (ix) directing the Receiver to pay, from the Disputed Pension Claims Reserve, the amount of CDN \$79,229 with respect to the D&O Vacation Pay Claims to those former Genfast employees who are entitled to receive such payments.

2.0 Dispute with Maynards and Landlord

2.1 Overview

- 2.1.1 Pursuant to a lease agreement dated January 9, 1998 (the “**Lease**”), a copy of which is attached as **Schedule “B”**, Genfast leased the Premises for the period commencing February 1, 1998 and terminating on January 31, 2008 (the “**Lease Term**”). The Premises covers approximately 347,315 square feet with monthly rent obligations in the amount of \$185,396.75 plus GST, plus utilities. Pursuant to an Indemnification attached as Schedule “C” to the Lease, General Fasteners Company guaranteed Genfast’s obligations under the Lease.
- 2.1.2 As set out in the Receiver’s First Report to the Court dated April 20, 2007, a copy of which (without schedules) is attached as **Schedule “C”**, pursuant to the Appointment Order, the Receiver took possession of the Premises on April 5, 2007. The Receiver entered into an oral arrangement with the Landlord for the continued occupation of the Premises on a day-to-day basis, as needed, on the same terms as the Lease with payment up to the date of vacation of the Premises.
- 2.1.3 As described in the Receiver’s Fourth Report to the Court dated July 18, 2007, a copy of which (without schedules) is attached as **Schedule “D”**, the Receiver entered into an Auction Services Agreement with Maynards dated July 12, 2007 (the “**Auction Services Agreement**”). Pursuant to the Auction Services Agreement, Maynards was provided with free, unfettered and full access to the Premises for a period of 150 days commencing with the granting of the Order of the Honourable Mr. Justice Campbell dated July 25, 2007 approving the Auction Services Agreement, i.e., until 11:59 p.m. on Saturday, December 22, 2007 (the “**Deadline Date**”). A copy of the Auction Services Agreement is attached as **Schedule “E”**.
- 2.1.4 If Maynards sought to remain on the Premises after the Deadline Date, they were required to negotiate an arrangement directly with the Landlord. Accordingly, from and after the Deadline

Date, Maynards was responsible for all Occupancy Costs associated with the Premises in the event that Maynards failed to vacate the Premises. Further, the Auction Services Agreement provides that Maynards is required to, among other things, restore the Premises to its pre-Auction condition, including, leaving the Premises in a clean, broom-swept and safe condition. In particular, Sections 1(k) and 1(l) of the Auction Services Agreement state that Maynards is required to:

- (k) at its own expense prior to the Deadline Date, restore the Genfast Premises to its condition as at the commencement of the Auction, recognizing that the Assets will be removed from the Genfast Premises and subject to normal wear and tear, including, without limitation:
 - i. arranging for dumping and disposal bins required to leave the Genfast Premises in a clean, broom swept and safe condition and dumping and disposing of such bins, provided that the Receiver will arrange, prior to the Auction Date, for the removal of the contents of filing cabinets and the books and records of Genfast and, prior to the Deadline Date, removal of any raw materials and other Excluded Assets, both at the Receiver's expense; and
 - ii. having all electrical wires and/or air/water/other lines disconnected, removed and/or capped to the buss bar/nearest wall, all bolts "blown off," shearing all anchor bolts or fasteners flush to the floor, all oil and other lubricants and fluids being removed from the machines and subsequently disposed of, all pits created by the removal of Assets are cleaned of oil and other lubricants and fluids caused or created by the removal of the Assets (but, for greater certainty, shall have no obligation to remove oil that formed part of the manufacturing process of Genfast) and filled in with gravel (but, for greater certainty, not cemented over), and repair all holes in the floor or roof created by the removal of the Assets
- (l) further and without limiting the obligations under Section (1)(m) below, accept responsibility for and, at its own expense, repair any damage to the Genfast Premises (including the real property located thereon) caused by the Auctioneer, its employees and agents and/or a Purchaser during the Access Period, in connection with the removal of any Assets sold at the Auction or otherwise, except for any damages caused by any party other than the Auctioneer or a Purchaser or any of their respective employees, agents or representatives. For greater certainty, the Auctioneer shall not be responsible for any damage to the Genfast Premises resulting from oil and other lubricants or fluids, except as may have been caused by the Auctioneer, a Purchaser or other persons for whom the Auctioneer is responsible, and for any repair requested by the landlord requiring the removal or alteration of leasehold improvements or tenant installations. The Receiver and the Auctioneer, acting reasonably, agree to conduct periodic inspections of the Genfast Premises during the Access Period to identify any damage which may be the responsibility of the Auctioneer hereunder. The Receiver shall provide notice to the Auctioneer in accordance with Section 8 hereof of any claim against the Auctioneer for damage to the Genfast Premises under this provision or otherwise under the terms of this Agreement, as soon as practicable following the discovery of such claim and, where possible, prior to the Deadline Date.

2.1.5 Further, section 1(n) of the Auction Services Agreement states that Maynards is required to:

- (n) except as expressly provided below, indemnify and save harmless the Receiver in respect of any losses, damages, costs or expenses incurred by the Receiver as a result of the negligence or wilful misconduct of the Auctioneer, or any of its officers, agents, employees, invitees, bidders or Purchasers, or the breach of any provision hereof by the Auctioneer, including, without limitation, any damages caused to the Genfast Premises.

2.1.6 Further, pursuant to section 1(z) of the Auction Services Agreement, Maynards was required to:

- (z) ...safeguard and keep the Genfast Premises in good repair by exercising the degree of care and due diligence required of a party in possession of the Genfast Premises under the lease (provided that nothing herein shall be construed as obliging the Auctioneer to assume any of the obligations under such lease) and shall ensure that the activities of the Auctioneer and its agents, employees, and representatives (and shall use its best efforts to ensure that the activities of the Purchasers) during the Access Period, do not cause any damage to the Genfast Premises...

2.1.7 After a tour of the Premises on December 11, 2007, by letter dated December 11, 2007, a copy of which is attached as **Schedule "F"**, the Landlord advised the Receiver of numerous concerns and issues with respect to repairs and clean-up which the Landlord requested that the Receiver complete prior to the vacation of the Premises. This included damage caused during the removal of assets arising from the auction and the clean-up of oil and other lubricants. The Landlord also advised that it would hold the Receiver liable for any and all costs of clean-up and repair not completed and for any occupation costs for the period in which such clean-up and repairs were completed.

2.1.8 By letter dated December 17, 2007, a copy of which is attached as **Schedule "G"**, counsel for the Receiver reminded Maynards of its obligations pursuant to the Auction Services Agreement and requested that Maynards address all concerns outlined in the Landlord's letter. Further, Receiver's counsel also put Maynards on notice that, pursuant to Section 1(b) of the Auction Services Agreement, if Maynards did not vacate the Premises by the Deadline Date, Maynards would be responsible for all Occupancy Costs after the Deadline Date.

- 2.1.9 By letter dated December 19, 2007, a copy of which is attached as **Schedule “H”** the Receiver responded to the Landlord’s letter dated December 11, 2007, advising the Landlord that its letter had been forwarded to Maynards for review and action and that the Receiver was committed to working together with Maynards and the Landlord to ensure that all reasonable concerns and requests were addressed in a timely and efficient manner.
- 2.1.10 By email message dated December 20, 2007, a copy of which is attached as **Schedule “I”**, the Receiver confirmed with the Landlord and certain other parties arrangements it had made to remove certain equipment and other items after the Deadline Date, during which the Receiver would not be responsible for rent payments.
- 2.1.11 At the conclusion of a walkthrough inspection of the Premises with representatives of the Receiver (Brad Newton), Maynards (Mike McIntosh), and the Landlord (Alex McLellan) on December 21, 2007, Maynards advised the Receiver and the Landlord that it did not believe that it would be ready to vacate the Premises by the Deadline Date. Accordingly, on December 21, 2007, counsel for the Receiver sent a letter to Maynards and its counsel, a copy of which is attached as **Schedule “J”**, again putting Maynards on notice that, pursuant to the Auction Services Agreement, it was responsible for all Occupancy Costs after the Deadline Date and again requested that it address all concerns raised by the Landlord and take such other actions which were required to return the Premises to the condition required pursuant to the Auction Services Agreement.
- 2.1.12 By email message dated Saturday, December 22, 2007, a copy of which is attached as **Schedule “K”**, Maynards then advised the Receiver that it intended to vacate the Premises on Monday, December 24, 2007, and requested that the Receiver arrange a final inspection with the Landlord at that time. On December 22, 2007, the Receiver advised the Landlord of Maynards’ intention and requested that the Landlord make a representative available at the

final inspection. A copy of that email is attached as **Schedule “L”**. By email message dated December 23, 2007, a copy of which is attached as **Schedule “M”**, the Landlord advised the Receiver that it understood that the Premises would not be ready for turnover before the end of the year but that it would try to have a representative attend at the inspection on December 24, 2007.

2.1.13 On or about Sunday, December 23, 2007, the Receiver was advised by Doug Webster, a former Genfast employee retained by the Receiver to maintain the Premises, that a portion of the heating system at the Premises was not functioning. In order to prevent any Premises damage caused by freezing temperatures, the Receiver made arrangements for the heating system to be repaired at a cost of \$11,796.77. A copy of the related invoices and schedule of costs, paid by the Receiver, is attached as **Schedule “N”**. It is the Receiver’s position that Maynards is responsible for the costs of these repairs as the system stopped functioning because the power unit for a section of the heating system was removed while Maynards was in the process of vacating the Premises.

2.1.14 By email message dated December 24, 2007, at approximately 11:20 a.m., a copy of which is attached as **Schedule “O”**, counsel for the Receiver confirmed Maynards’ intended vacation of the Premises and advised the Landlord that the Receiver expected that when Maynards vacated the Premises that day, it would not have fully satisfied its obligations pursuant to the Auction Services Agreement, including, restoring the Premises to its pre-Auction condition and that the Receiver had no ability to compel Maynards to do so. Counsel further advised that while the Receiver continued to be prepared to discuss reasonable arrangements and a timetable to complete any reasonable repairs and cleanup, given the position that Maynards was taking and the quantum of the Occupancy Costs (particularly rent in the amount of approximately \$5,980.54 plus GST plus utility and other occupancy costs per day), it would have no choice but to surrender possession of the Premises and disclaim the Lease immediately following

Maynards' vacation of the Premises, upon which the Receiver would have no further obligations to the Landlord for any additional Occupancy Costs.

2.1.15 By reply email dated December 24, 2007, at approximately 2:23 p.m., a copy of which is attached as **Schedule "P"**, the Landlord advised that it did not agree to attend a walk-through of the Premises or deal with the surrender of the Premises that day. The Landlord further advised that the Receiver was aware that Andy Krausz of the Landlord's office was out of town as of December 17, 2007 throughout the holidays, that there was no one at the Landlord's office to deal with this matter until after the holidays and that its site office was closed as of December 21, 2007. The Landlord further advised that it would not accept possession of the Premises from the Receiver until it was properly cleaned and repaired and in any event, that it would not accept possession from the Receiver until the New Year.

2.1.16 By email message dated December 24, 2007, at approximately 2:55 p.m., a copy of which is attached as **Schedule "Q"**, counsel for Maynards advised that Maynards would be vacating the Premises that day, that it had fully complied with its obligations under the Auction Services Agreement and as such, it had no further obligations for Occupancy Costs or repairs. Counsel for Maynards further advised that:

"the Receiver is welcome to in (sic) inspect the premises right now as Maynards will be leaving soon. Maynards has no responsibility concerning the availability of the Receiver or the landlord."

2.1.17 At approximately 3:30 p.m. on December 24, 2007, a representative of the Receiver attended at the Premises and conducted a walkthrough with a representative of Maynards and determined that Maynards was still cleaning up the Premises. The representative of the Receiver subsequently re-attended at the Premises at approximately 6:00 p.m. to confirm that Maynards had vacated the Premises and to make a videotape of the condition of the Premises. The

Receiver also made videotapes of the condition of the Premises on December 21, 2007, and January 7, 2008.

2.1.18 At approximately 7:32 p.m. on December 24, 2007, the Receiver's counsel replied to the Landlord's email of 2:23 p.m. and advised the Landlord and its counsel by email, a copy of which is attached as **Schedule "R"**, that, as Maynards had indicated it would do, after an inspection of the Premises by representatives of the Receiver and Maynards, Maynards vacated the Premises earlier that day. Accordingly, counsel confirmed that the Receiver was immediately surrendering possession of the Premises to the Landlord and disclaiming the Lease. Counsel further advised that the Receiver was willing to discuss with the Landlord reasonable arrangements and a timetable for any reasonable repairs that were outstanding when Maynards vacated the Premises, but the Receiver would not be responsible for any additional Occupancy Costs after December 24, 2007. To accommodate the Landlord's schedule and to safeguard the Premises over the holiday period, the Receiver also agreed that it would maintain security and utilities on the Premises until 11:59 p.m. on January 2, 2008 (the first business day of the New Year) at the Landlord's expense (without prejudice to each of their positions that the other was responsible for such costs) and asked the Landlord to attend at a final inspection on January 2, 2008.

2.1.19 The Landlord's counsel responded by email dated December 24, 2007, at approximately 8:02 p.m., a copy of which is attached as **Schedule "S"**, confirming that the Landlord would not accept the surrender of the Premises until such time as all repairs and damages were addressed and took the position that the Receiver was responsible for all Occupancy Costs until the Landlord accepted surrender of the Premises. Counsel also confirmed that a representative of the Landlord was unable to attend a final inspection that day and would not have a representative available until January 7, 2008, two weeks later.

- 2.1.20 By reply email message dated December 24, 2007, at approximately 8:39 p.m., a copy of which is attached as **Schedule "T"**, counsel for the Receiver advised counsel for Maynards that the Receiver and a representative of Maynards had completed an inspection of the Premises earlier that day and that contrary to Maynards' position, this inspection revealed that Maynards had not complied with its obligations under the Auction Services Agreement to repair, clean and generally return the Premises to its pre-Auction condition. Counsel noted that, among other things, oil remained in the heat-treating oven, bolts were required to be blown off and the floors were not left in a clean and broom-swept condition. For greater certainty, the oven had been removed and the oil was located in the pit where the oven was previously located.
- 2.1.21 By email message dated December 26, 2007 at approximately 5:08 p.m., a copy of which is attached as **Schedule "U"**, counsel for the Landlord advised that the Landlord would continue to hold the Receiver liable for Occupation Costs, insurance and rent until the Landlord had agreed to accept a surrender of the Premises or the Court ordered that the Receiver was not liable to pay for same. Counsel also confirmed that the Landlord would not be available for an inspection of the Premises until January 7, 2008 when Mr. Krausz returned from a vacation.
- 2.1.22 The Receiver understood that there were two (2) employees of the Landlord who were on-call at all times, even during the Christmas holidays, to deal with issues at the Premises and the other buildings which form part of the same complex. In addition, the Receiver was aware that Mr. Krausz did not attend the December 21, 2007, inspection. Accordingly, by reply email message dated December 26, 2007 at approximately 6:04 p.m., a copy of which is attached as **Schedule "V"**, counsel for the Receiver advised that it was the Receiver's understanding that it was not necessary for Mr. Krausz to be personally in attendance for the inspection as he was not present for the inspection which took place on December 21, 2007, at which another representative of the Landlord attended.

- 2.1.23 By reply email message dated December 27, 2007 at approximately 7:42 a.m., a copy of which is attached as **Schedule "W"**, Mr. Krausz advised that he was fully aware of what took place on December 21, 2007 and that pictures were taken of the Premises by the on-site manager who conducted the inspection. Mr. Krausz confirmed that he insisted on being present at the inspection but would not be available until January 7, 2008.
- 2.1.24 Prior to the Deadline Date, the Landlord advised the Receiver that it was actively seeking a replacement tenant for the Premises. However, by the Deadline Date, no replacement tenant was secured by the Landlord, and the Receiver has confirmed that, as of in or about June 2008, the Premises were still vacant.
- 2.1.25 After substantial correspondence and discussions between and among the Receiver and its counsel and the Landlord and its counsel, the Receiver and the Landlord reached an arrangement for the Receiver to obtain access to the Premises. In particular, by email messages dated December 27, 2007, copies of which are attached as **Schedule "X"**, the Receiver and the Landlord agreed that the Receiver would arrange for repairs to the heating system and arrange for certain clean-up to be completed including, having the oil removed from one pit, oil sludge removed from two pits, bolts blown off, scrap bins and a tank removed, and the floor swept and cleaned. The Receiver was ultimately given access to the Premises and agreed to ensure that all services to the Premises, including utilities and security would be maintained until a final inspection of the Premises with representatives of the Receiver, Maynards and the Landlord could be conducted on January 7, 2008. All of this was done without prejudice to the Receiver's and the Landlord's respective positions regarding who is responsible for any Occupation Costs and Damages, which the parties would try to resolve as soon as possible thereafter, failing which the Receiver and/or the Landlord would seek the Court's advice and directions to resolve any outstanding disputes.

- 2.1.26 The Receiver subsequently contacted Maynards on December 27, 2007, to advise Maynards of the arrangement described above for the Receiver to access the Premises and requested that Maynards re-attend at the Premises to complete the work required to leave the Premises in the condition required under the Auction Service Agreement. Maynards subsequently attended at the Premises and completed certain of the required work.
- 2.1.27 Upon attending at the Premises on Friday, January 4, 2008, the Receiver discovered that Maynards had not removed all waste material from the Premises as required under the Auction Services Agreement. Accordingly, the Receiver made arrangements over this weekend to have this waste material removed on Saturday, January 5, 2008 at a cost of \$11,120.79 to the Receiver. Copies of these invoices and a schedule summarizing same are attached as **Schedule "Y"**.
- 2.1.28 The Receiver, Maynards, the Landlord and a representative from General Fasteners Company attended at the Premises on January 7, 2008 at 8:00 a.m. to conduct an inspection of the Premises. As a result of this inspection, the Landlord alleged certain deficiencies or damages with respect to the Premises, and as a result, continued to refuse to acknowledge surrender of the Premises by the Receiver and refused to accept a transfer back of responsibility for the security and utilities in respect of the Premises. As a result of the Landlord's refusal to accept a transfer of responsibility for security and utilities, in order to safeguard the Premises, the Receiver felt compelled to continue funding utilities, security and insurance for the Premises until the parties reached an agreement or the Receiver obtained the Court's direction that it was no longer responsible.
- 2.1.29 The Landlord provided a list of alleged deficiencies by email dated January 11, 2008, a copy of which is attached hereto as **Schedule "Z"**. The Landlord later agreed that Damages were capped in the amount of \$90,000, as described below.

2.1.30 As described in the Eighth Report, the parties were unable to reach a reasonable settlement of these outstanding issues. As such, so as not to delay distribution of proceeds to the Bank on a motion by the Receiver and the Bank returnable January 16, 2008, the Receiver and the Landlord agreed to cap the maximum amount of liability in dispute and the parties sought and were granted the following relief from this Court which is set out in the Order of the Honourable Mr. Justice Campbell dated January 16, 2008, a copy of which is attached as **Schedule “AA”**(the **“January 16 Order”**):

- (i) a declaration from the Court that the Receiver was in occupation of the Premises no later than January 15, 2008 and that the Receiver is no longer responsible for occupancy costs, including utilities and security after January 15, 2008, provided, however, that the issue of the Receiver's liability for occupancy costs, if any, including security and utilities, for the period between December 25, 2007 and January 15, 2008 is all without prejudice to the Landlord and the Receiver's positions with respect to liability for occupancy costs and damages for that period, which determination of liability is subject to further order of the Court or agreement between the Landlord and the Receiver;
- (ii) direction from the Court that the Receiver shall discontinue the security and utilities in respect of the Premises as at 11:59 p.m. on January 15, 2008, all without prejudice to the Receiver's right to claim a credit (against amounts which are determined to be owed by the Receiver to the Landlord for occupancy costs or for damages, repairs or clean up costs), reimbursement or refund of any costs of the security and utilities from the Landlord in respect of the Premises incurred by the Receiver for the period between December 25, 2007 and January 15, 2008 and the Landlord's position to dispute the same, which claims are subject to further order of the Court or agreement between the Landlord and the Receiver;
- (iii) a direction from the Court that the Receiver shall establish the Landlord Reserve in the maximum amount of CDN\$366,000 in respect of the maximum liability, if any, of the Receiver to the Landlord in connection with the Receiver's occupation of the Premises, including any occupancy costs, including utilities and security, and damages, repair and clean up costs, such Landlord Reserve to be broken down in the following sub-reserves: (a) the maximum liability, if any, for disputed occupancy costs for the period

from December 25, 2007, and January 15, 2008, shall be CDN\$266,000, (b) the maximum liability, if any, for alleged damages to the Premises shall be CDN\$90,000, and (c) the maximum liability, if any, for the Landlord's legal costs shall be CDN\$10,000; and

- (iv) the establishment and holding of the Landlord Reserve by the Receiver pending further Order of this Court is without prejudice to the Receiver's right to dispute that it has any liability to the Landlord.

2.1.31 As described in the Ninth Report and the attached **Schedule "BB"**, the Receiver proposed that the Landlord Reserve be reduced from CDN \$366,000 to CDN \$244,251 (which, after discussions with the Landlord, was subsequently increased to \$280,000, as described in the Tenth Report) to reflect the following adjustments: (i) deduction of all reserve amounts for security, hydro and gas, totalling \$143,000, as all payments for these costs had been made by the Receiver with respect to the period December 25, 2007 to January 15, 2008, (the actual costs paid by the Receiver, without GST, were comprised of security in the amount of \$18,180, hydro in the amount of \$13,312 and gas in the amount of \$22,069); and (ii) an increase of \$21,251 to the original rent estimate, representing rent for December 23 and 24, 2007, which the Receiver has not yet paid, and a correction for the amount of rent to be accrued for the period December 25, 2007 to January 16, 2008. While the Receiver was not provided with a detailed accounting by the Landlord to support its request for an increase in the Landlord Reserve to \$280,000, the Receiver understands that a portion of the increase relates to \$10,700 of roof repairs which occurred prior to the CCAA period and which had been added to the Landlord Reserve without prejudice to the Receiver's rights to argue that it is not properly part of the Landlord Reserve as it was not originally included as part of the Landlord Reserve and were completed prior to the CCAA period. The reduction of the Landlord Reserve was approved by the Honourable Mr. Justice Campbell on June 27, 2008. The Order from this motion is still pending.

2.1.32 Further, as set out in the schedule attached as **Schedule “CC”**, the Receiver has received numerous invoices from the Landlord, most of which the Receiver disputes, and all of which remain outstanding. As described in greater detail below and in these schedules, the Receiver acknowledges that it owes the Landlord, prior to consideration of amounts owing for the repair of certain deficiencies, the amount of \$15,283.91, comprised of rent for December 23 and December 24, 2007, (when it was still in possession of the Premises) and, other amounts for ongoing repair and maintenance when it was in possession of the Premises. The Receiver disputes the balance of the invoices in the amount of \$261,854.39 on the basis that it is the Receiver’s position that it was not in possession of the Premises after December 24, 2007, (and is therefore not responsible for rent, water and sewer charges as of December 25, 2007), and the outside date for the Receiver’s possession is January 15, 2008, pursuant to the January 16 Order. Further, the Receiver did not request the additional repairs to the heating system and make-up air units nor does it believe that these were necessary for the Receiver’s operations at the Premises.

2.1.33 The Receiver advised the Court in the Eighth Report that if the parties were unable to reach a resolution of the outstanding matters in dispute that the Receiver would seek the Court’s direction and advice with respect to such outstanding disputes.

2.1.34 As described in the Ninth Report, the Receiver has been unable to arrive at a reasonable settlement with Maynards with respect to Maynards’ liability to the Receiver related to Occupancy Costs, Damages, the Landlord’s Legal Costs and the Receiver’s Professional Fees. Given this and the multiple parties who have an interest in the resolution of the outstanding issues in dispute, the Receiver believes that the most appropriate mechanism is to resolve these outstanding issues by way of this motion for this Court’s advice and direction.

2.2 The Lease Deposit

2.2.1 On this motion, the Receiver also seeks an accounting from the Landlord of the lease deposit in the amount of \$210,000 (the “**Lease Deposit**”) still being held by the Landlord pursuant to Section 16.5 of the Lease which states as follows:

(a) Tenant has deposited, or will upon execution of this Lease deposit, with Landlord the sum described as Security Deposit in section 1.1 hereof (“**Security Deposit**”). The Security Deposit shall be held by Landlord without interest as security for the performance by tenant of all obligations of Tenant under this Lease during the Term and any renewals and any tenancy resulting from an overholding.

(b) If at any time any Rent shall be overdue Landlord may, at its option, apply all or any portion of the Security Deposit to the payment of the said Rent. Further, if Tenant defaults in the performance of any of its obligations under this Lease then Landlord, at its option, may apply all or any part of the Security Deposit on account of any losses or damages sustained by Landlord as a result of such default. If all or any part of the Security Deposit is applied by Landlord on account of Rent or losses or damages sustained by Landlord, then Tenant shall, within three (3) days after demand from Landlord, remit to Landlord a sufficient amount to restore the Security Deposit to the original sum deposited or required to be deposited herein set forth.

(c) If Tenant complies with all of its obligations under this Lease, the Security Deposit or the balance remaining thereof shall be returned to Tenant within thirty (30) days after the later of (i) the end of the Term or (ii) Tenant’s vacating the Premises.

(d) Landlord may deliver the Security Deposit, or such portion thereof remaining on hand, to any purchaser, mortgagee or assignee of Landlord’s interest in the Premises or the Project and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit.

2.3 The Receiver’s Position

Amounts Owed By the Receiver to the Landlord

2.3.1 As set out in the schedule attached as **Schedule “DD”**, it is the Receiver’s position that its outstanding obligations to the Landlord total \$19,783.91, which are comprised of the payment of: (i) rent for December 23 and December 24, 2007; (ii) certain amounts for ongoing repair and maintenance when it was still in possession of the Premises; and (iii) estimates for the repair of certain deficiencies that existed at the time the Receiver vacated the Premises, (which does not include the pre-CCAA roof repairs). The amount of \$19,783.91 does not include any amounts related to the Maynards’ Deficiencies (as defined below).

- 2.3.2 With respect to the deficiencies to be rectified by the Receiver, as set out in Schedule "DD", the estimate of \$2,000 for the portable office is based on a quote obtained by the Receiver for the destruction and removal of a similar office, and the \$2,500 with respect to the removal of oil remaining in the furnace pipes was an estimate provided by the Landlord to the Receiver. The Receiver understands that the Landlord incurred no cost with respect to the other deficiencies listed.
- 2.3.3 With respect to the deficiencies that existed at the time the Receiver vacated the Premises and which the Receiver believes Maynards is responsible for rectifying pursuant to the Auction Services Agreement, (the "**Maynards' Deficiencies**"), as set out in Schedule "DD", the Receiver understands that the Landlord has resolved these deficiencies, but the Receiver has not received confirmation of the costs related to resolving same.
- 2.3.4 As the Receiver was not in possession of the Premises after December 24, 2007, it is the Receiver's position that the Landlord is not entitled to any rent or other Occupancy Costs after this date, and certainly not beyond January 15, 2008, being the outside date pursuant to the January 16 Order. Further, it is the Receiver's position that it is not liable for any of the Landlord's Legal Fees in dealing with this matter.
- 2.3.5 Further, it is the Receiver's position that it is entitled to a full accounting of the Landlord's application of the Lease Deposit.
- 2.3.6 It is the Receiver's position that it is not liable for the Landlord's claim in the amount of \$10,700 for pre-CCAA roof repairs and that such amount does not properly form part of the Landlord Reserve as these were incurred prior to the CCAA and receivership periods.

Amounts Owning By Maynards to the Receiver

- 2.3.7 As set out at **Schedule “EE”**, it is the Receiver’s position that Maynards owes the Receiver the amount of \$140,872.44, being comprised of: (i) Occupancy Costs of \$17,576.92; (ii) Receiver’s Professional Fees of \$98,898.20; (iii) environmental clean-up costs of \$11,120.79 (see Schedule “Y”); (iv) fire system deactivation of \$1,479.76; and (v) heating system repairs of \$11,796.77 (see Schedule “J”). The above estimate does not include any amount for the Maynards’ Deficiencies.
- 2.3.8 As Maynards breached the Auction Services Agreement by not returning the Premises to its pre-Auction condition, and pursuant to the indemnity provisions under Section 1(n) of the Auction Services Agreement, to the extent that this Court finds that the Receiver is liable to the Landlord for any amounts in addition to those set out at Schedule “DD” in the amount of \$19,783.91 (such as some or all of the Maynards’ Deficiencies), the Receiver submits that any such amounts should be paid by Maynards.
- 2.3.9 With respect to the Maynards Deficiencies, as discussed above, these are items which the Receiver understands that the Landlord has resolved but for which the Receiver has not yet received any invoices.
- 2.3.10 As described above, the Receiver’s Professional Fees in dealing with the outstanding issues related to this dispute amount to \$98,898.20. This amount does not include the Receiver’s costs related to this motion. The Receiver submits that, given that its fees and disbursements were incurred as a direct result of Maynards’ breach of the Auction Services Agreement, the costs form part of the damages suffered by the Receiver as a result of this breach, for which Maynards indemnified the Receiver. Accordingly, the Receiver submits that the estate should be reimbursed by Maynards. The Receiver will also be seeking its costs of this motion from Maynards.

Amounts Owed By the Landlord to the Receiver

2.3.11 As set out in the schedule attached as **Schedule “FF”**, it is the Receiver’s position that the Landlord owes the Receiver \$57,738.53 with respect to hydro, gas, insurance and security amounts paid by the Receiver for the period December 25, 2007 to January 16, 2008, when the Receiver was not in possession of the Premises.

3.0 Settlement of Disputed Pension Claims

- 3.1.1 As described in the Ninth Report, the Pension Plan Administrator and FSCO were continuing to advance the appeals of the Disputed Pension Claims. After ongoing discussions, the Pension Plan Administrator and FSCO have agreed to discontinue the Disputed Pension Claims Appeals for payment in the amount of CDN \$87,500 (the “**Settlement Funds**”) by the Receiver, on terms as described in greater detail in the terms of settlement executed by the Pension Plan Administrator and FSCO dated June 26, 2008 (the “**Disputed Pension Claim Settlement**”), subject to Court approval, a copy of which is attached as **Schedule “GG”**. This settlement was negotiated between counsel for the Pension Administrator and the Bank. The parties have subsequently confirmed that the terms of the Disputed Pension Claim Settlement will not take effect until the Settlement Funds are paid by the Receiver to the Pension Plan Administrator pursuant to an Order of this Court.
- 3.1.2 While Genfast’s former directors and officers were not involved in these discussions, they will be served with notice of this motion, including the Receiver’s Motion Record. In the Receiver’s view, the former directors and officers are not prejudiced by this settlement as to the extent that releases granted under the Disputed Pension Claims Settlement do no release the former directors and officers from all claims (in particular, they are not being released from claims for breach of fiduciary duty, gross negligence and wilful misconduct as set out at paragraph 21 of the Initial CCAA Order), they are being released from all claims which the D&O Charge would have covered and for which the Disputed Pension Claims and terms of settlement relate.
- 3.1.3 In light of the costs which would be incurred by Genfast’s estate and other stakeholders with respect to the continued litigation of the Disputed Pension Claims, including continued

documentary discovery, examinations and preparation for the hearing of the appeal by the Pension Plan Administrator and FSCO, the Receiver believes that the Disputed Pension Claim Settlement is in the best interests of Genfast's estate, and as such, recommends the approval of the Disputed Pension Claims Settlement.

3.1.4 The Receiver proposes to pay the Settlement Funds out of the Disputed Pension Claims Reserve. Although the Settlement Funds arguably could have been paid out of the CCAA Payables Reserve, since the Disputed Pension Claims Reserve was established for the purpose of paying the Disputed Pension Claims if they were accepted by the Court as valid D&O Claims, the Receiver believes that it is more appropriate that the Settlement Funds be paid from the Disputed Pension Claims Reserve. In any event, the decision as to which reserve to use to pay out the Settlement Funds does not affect the allocation of costs described in the Ninth Report amongst Genfast's secured creditors as the basis of allocation of the Disputed Pension Claims Reserve and the CCAA Payables Reserve among the Bank and Utica is the same.

3.1.5 As described in the Ninth Report and certain previous reports, sufficient funds were reserved between the CCAA Payables Reserve and the Disputed Pension Claims Reserve to fund any outcome in which the Disputed Pension Claims and the outstanding D&O Vacation Pay claims (the "**D&O Vacation Pay Claims**") were to be paid. As described in the Ninth Report, the D&O Vacation Pay Claims have been accepted as a D&O Claim, but have not been considered by the Court as a CCAA Payable. In light of the resolution of the Disputed Pension Claims, the Receiver recommends that the unpaid portion of the D&O Vacation Pay Claims, which amounts to CDN \$79,229, (representing approximately 10 per cent of the accepted claim), be paid directly by the Receiver to Genfast's former employees who are entitled to receive such payments. With this payment, the D&O Vacation Pay Claims will be paid in full. The Receiver is proposing that this payment be funded out of the Disputed

Pension Claims Reserve. If the payment was funded from the CCAA Payables Reserve, instead of the Disputed Pension Claims Reserve, as described above, it would not affect the allocation of costs among the Bank and Utica.

- 3.1.6 As a result of the payment of the Settlement Funds and the D&O Vacation Pay Claims as described above, the CCAA Payables Reserve will be terminated and the Disputed Pension Claims Reserve will be reduced to CDN \$166,799.

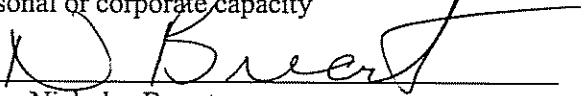
4.0 Recommendations

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

- (i) approving this Eleventh Report and the activities of the Receiver described herein;
- (ii) this Court's advice and direction with respect to the liability of the Receiver, if any, to the Landlord related to Occupancy Costs, Damages and the Landlord's Legal Costs;
- (iii) this Court's advice and direction with respect to the liability of Maynards, if any, to the Receiver for Occupancy Costs, Damages, the Landlord's Legal Costs and the Receiver's Professional Fees;
- (iv) this Court's advice and direction with respect to the liability of the Landlord to the Receiver, if any, for the payment for utilities, security and insurance paid by the Receiver and related to the period after December 24, 2007 (the date the Receiver asserts it vacated the Premises);
- (v) an accounting of the Lease Deposit (as defined herein) from the Landlord;
- (vi) approving the Disputed Pension Claims Settlement as described herein and as set out as Schedule "GG" to this Eleventh Report;
- (vii) declaring that the Disputed Pension Claims are dismissed;
- (viii) directing the Receiver to pay, from the Disputed Pension Claims Reserve, the amount of CDN \$87,500 to the Pension Plan Administrator with respect to the Disputed Pension Claims Settlement as described herein and Schedule "GG" to this Eleventh Report; and
- (ix) directing the Receiver to pay, from the Disputed Pension Claims Reserve, the amount of CDN \$79,229 with respect to the D&O Vacation Pay Claims to those former Genfast employees who are entitled to receive such payments.

All of which is respectfully submitted this 17th day of July, 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



Per: Nicholas Brearton
Senior Vice President

LaSalle Business Credit, A Division of ABM AMRO Bank N.V., Canada Branch v.
Genfast Manufacturing Company Respondent

Court File No: 07-CL-6926

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

Proceeding commenced at Toronto

**ELEVENTH REPORT TO THE COURT
DATED JULY 17, 2008**

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