

**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

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

**October 29, 2007**

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

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### **1.1 Appointment of Receiver**

1.1.1 Pursuant to the Order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) dated April 5, 2007 (the “**Appointment Order**”) a copy of which is attached as **Schedule “A”**. KPMG Inc. (“**KPMG**”) was appointed as receiver (the “**Receiver**”) without security, of all of Genfast Manufacturing Company’s (“**Genfast**” or the “**Company**”) current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), effective at 3:00 p.m. (EST) immediately after the Bankruptcy Order (as defined below) became effective against the Company and the proceedings initiated by the Company under the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) on March 8, 2007 (the “**CCAA Proceedings**”) were terminated.

1.1.2 The application for the appointment of the Receiver was made by LaSalle Business Credit, A Division of ABM AMRO Bank N.V., Canada Branch (the “**Applicant**” or the “**Bank**”).

### **1.2 Background**

1.2.1 Genfast is an unlimited liability corporation incorporated under the laws of the Province of Nova Scotia operating from leased facilities located in Brantford, Ontario (the “**Premises**”). The Company was in the business of manufacturing bolts, screws, rivets and other types of fasteners, primarily for the automotive industry.

1.2.2 Pursuant to the Order of the Honourable Mr. Justice Campbell dated March 8, 2007 (the “**Initial Order**”), a copy of which is attached as **Schedule “B”**, the Company was granted a stay of proceedings pursuant to the CCAA and Alvarez & Marsall Canada ULC was appointed as Monitor of the Company (the “**Monitor**”).

1.2.3 Prior to granting the Appointment Order, the Honourable Mr. Justice Campbell issued an Order adjudging the Company bankrupt effective as at 3:00 p.m. on April 5, 2007 (the “**Bankruptcy Order**”), a copy of which is attached as **Schedule “C”**. The Bankruptcy Order, among other things, appointed KPMG as Trustee of the Estate of Genfast (the “**Trustee**”). By separate Order dated April 5, 2007 of the Honourable Mr. Justice Campbell, the Court ordered that:

- (i) the CCAA Proceedings be terminated effective immediately upon the Bankruptcy Order becoming effective;
- (ii) the Monitor be discharged from any further obligations under the Initial Order (while retaining the discretion to oversee payment of certain amounts in respect of the supply of goods and services during the CCAA Proceedings); and
- (iii) the Directors’ Charge, the Administration Charge and the DIP Charge (all as defined in the Initial Order) continue to attach to the Property of the Company and continue to rank in priority to all other security interests, liens, charges and encumbrances affecting the Property, as set out in paragraph 39 of the Initial Order.

### 1.3 Previous Reports

1.3.1 The Receiver filed its First Report to the Court dated April 20, 2007 (the “**First Report**”), a copy of which is attached as **Schedule “D”**, in order to advise the Court of:

- (i) the initial activities of the Receiver, which included taking possession of, and securing, the Premises;
- (ii) potential claims against the Directors’ Charge (as defined in the First Report); and
- (iii) the proposed marketing process for the Company’s raw material inventory.

1.3.2 On April 24, 2007, the Honourable Mr. Justice Campbell granted an Order (the “**April 24 Order**”), a copy of which is attached as **Schedule “E”**, which, among other things:

- (i) approved the Receiver’s First Report and the Receiver’s activities described therein;

- (ii) directed the Receiver to make a cash distribution to each of the former employees of the Company in an amount equal to the sum of: (i) their unpaid Wages; and (ii) fifty percent of their Vacation Pay (each as defined in the April 24 Order);
- (iii) approved the claims process to identify claims against the Directors' Charge; and
- (iv) approved the marketing process for the Company's raw material inventory.

1.3.3 The Receiver filed its Second Report to the Court dated May 15, 2007 (the "**Second Report**"), a copy of which is attached as **Schedule "F"**, in order to advise the Court of:

- (i) the results of the review of security over the Company's assets by the Receiver's counsel; and
- (ii) the proposed marketing process for the Company's business and assets, which assets include the Company's machinery, equipment, and office furniture and equipment.

1.3.4 On May 22, 2007, the Honourable Mr. Justice Campbell granted an Order (the "**Marketing Process Order**") a copy of which is attached as **Schedule "G"**, which, among other things:

- (i) approved the Second Report and the Receiver's activities described therein;
- (ii) approved the marketing process as described in the Second Report, as amended to reflect that the Receiver would solicit expressions of interest pursuant to the Sale of Business Process and purchase/auction proposals pursuant to the Fixed Asset Sale/Auction Process which provide for both the inclusion and exclusion of the Utica Lease One Equipment (as such terms are defined in the Second Report and/or the Marketing Process Order) (the "**Marketing Process**"); and
- (iii) approved the timetable for the resolution of both the priority dispute between the Applicant and Utica Leaseco, LLC ("**Utica**") with respect to the Utica Lease One Equipment and whether the Utica Lease One Equipment should be included in any transaction the Receiver recommends to the Court pursuant to the Marketing Process.

1.3.5 The Receiver filed its Third Report to the Court dated June 25, 2007 (the "**Third Report**"), a copy of which is attached as **Schedule "H"**, in order to report to the Court on the results of the

Marketing Process and seek an Order, among other things, directing that the Utica Lease One Equipment be included in the Fixed Assets transaction involving the successful bidder in the Marketing Process as determined by the Receiver and as approved by the Court.

1.3.6 The Receiver filed its Fourth Report to the Court dated July 18, 2007 (the “**Fourth Report**”) a copy of which is attached as **Schedule “I”**, in order to update the Court on the results of the Marketing Process and the D&O Claims Process (as defined below) as set out in the April 24 Order.

1.3.7 On July 25, 2007, the Honourable Mr. Justice Campbell granted an Order (the “**July 25 Order**”), a copy of which is attached as Schedule “J”, which, among other things:

- (i) approved the Third Report and Fourth Report and the activities of the Receiver described therein;
- (ii) approved the auction services agreement between Maynards Industries Ltd. (“**Maynards**”), and the Receiver (the “**Auction Services Agreement**”) and the transactions contemplated therein (the “**Transactions**”);
- (iii) declared that all right, title and interest of Genfast in and to the Assets (as defined in the Auction Services Agreement), including, without limitation, the Utica Lease One Equipment, shall be sold in the Auction sale and/or by Private Sale (as defined in the Auction Services Agreement) by Maynards as contemplated by the Auction Services Agreement;
- (iv) directed that the proceeds of the Auction sale and/or Private Sale of the Assets received by the Receiver under the Auction Services Agreement, net of the Receiver’s fees and expenses, (the “**Sale Proceeds**”) shall stand in the place and stead of the Assets and shall stand charged with all the Encumbrances (as defined in the July 25 Order) as existed in respect of the Assets which were released, discharged or otherwise displaced by the Auction sale and/or Private Sale of the Assets by Maynards as contemplated by the Auction Services Agreement and such Encumbrances on the Sale Proceeds shall enjoy the same priorities as each such Encumbrance had in respect of the Assets as of the date

of the Order of the Court directing the same, as if the sale of the Assets had not occurred, but the holder of any such Encumbrance shall have no further right in or against, or recourse to, the Assets;

- (v) directed that **Schedules “L” to “U”** to the Fourth Report, and an unredacted version of the Auction Services Agreement be temporarily sealed until completion of the Auction sale and/or Private Sale of the Assets as contemplated by the Auction Services Agreement or until further Order of this Court;
- (vi) declared that the Non-Pension Appealed Claims (as defined in the Fourth Report), do not constitute D&O Claims as defined in the April 24 Order and that such claims be forever barred and released against the Directors’ Charge;
- (vii) directed and authorized the Receiver to establish the Disputed Pension Claims Reserve (as defined in the Fourth Report) until adjudication or resolution of such Disputed Pension Claims (as defined in the Fourth Report); and
- (viii) directed the Receiver to distribute from funds on hand, the balance of the Directors’ Charge after deducting the Disputed Pension Claims Reserve to: (i) former Genfast Employees so entitled, in partial payment of their remaining Vacation Pay claims (each as defined in the April 24 Order); and (ii) the Pension Administrator, in partial payment of the Deducted/Unremitted Pension Contribution Claim (as defined in the Fourth Report), all as more particularly set out in **Schedule “FF”** to the Fourth Report.

#### **1.4 Purpose of this Fifth Report**

1.4.1 The purpose of this Fifth Report is to update the Court regarding the Receiver’s activities to date, including its efforts to realize on Genfast’s inventory and collect the Company’s outstanding accounts receivable.

1.4.2 This Fifth Report is also in support of the Receiver’s request for an Order on this motion, among other things:

- (i) approving the Fifth Report and the activities of the Receiver described herein;

- (ii) authorizing the Receiver to enter into and complete the Sivaco Agreement (as defined below);
- (iii) approving the sale of approximately 636,000 pounds of the Remaining Raw Materials Inventory (as defined below) to MNP Corporation (“MNP”) at the purchase price of approximately US \$144,000, plus applicable taxes;
- (iv) approving the sale of approximately 139,000 pounds of the Remaining Raw Materials Inventory to B&D Thread Rolling Inc. (“B&D”) for a purchase price of approximately US \$28,000, plus applicable taxes;
- (v) approving the sale of approximately 183,000 pounds of the Remaining Raw Materials Inventory to Emerald Steel Processing, LLC (“Emerald”) for a purchase price of approximately US \$30,000, plus applicable taxes;
- (vi) authorizing the Receiver to sell for scrap value that portion of the Remaining Raw Materials Inventory not sold to MNP, B&D and Emerald;
- (vii) authorizing the Receiver to enter into and complete the CBC Agreement (as defined below);
- (viii) authorizing the Receiver to sell Genfast’s thread die inventory to MNP for a purchase price of approximately US \$45,000, plus applicable taxes;
- (ix) authorizing the Receiver to enter into and complete the GFC Settlement Agreement (as defined below);
- (x) authorizing the Receiver to sell the Unsaleable Inventory (as defined below) to K&K Recycling Services (“K&K”), for its scrap value, plus applicable taxes;
- (xi) approving the Ford Agreement (as defined below) and authorizing the Receiver to complete the Ford Agreement, including the sale of WIP and finished goods inventory to Ford Motor Company (“Ford”) and the sale of the Ford Steel Coil Inventory (as defined below) to MNP and Emerald as set out in the Ford Agreement;
- (xii) authorizing the Receiver to, if the sale of any inventory being sold pursuant to the Ford Agreement or any portion thereof is not completed, to sell such inventory for its scrap value;

- (xiii) authorizing the Receiver to enter into and complete the GM Agreement (as defined below), including the vesting of all right, title and interest in and to the GM Steel Coil Inventory (as defined below) in and to GM upon the filing of a Receiver's Certificate with the Court by the Receiver;
- (xiv) authorizing the Receiver to, if the sale of the GM Steel Coil Inventory is not completed, sell the GM Steel Coil Inventory and sell any of the Rejected GM Steel Coil Inventory (as defined below) for its scrap value; and
- (xv) approving the Records Request Protocol (as defined below).

## 2.0 *Accounts Receivable*

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### 2.1 **Third Party Canadian Customers**

2.1.1 According to the Company's receivable sub-ledger, as at the date of the Appointment Order, Genfast had approximately \$5.5 million in outstanding accounts receivable from Canadian customers (the "**Canadian AR**").

2.1.2 After reviewing the accounts and reconciling them with Genfast's customers, the Receiver discovered approximately \$600,000 in outstanding credit notes, legitimate set offs and errors in the Canadian AR, leaving an adjusted balance of approximately \$4.9 million (the "**Adjusted Canadian AR**").

2.1.3 As at October 4, 2007, the Receiver has collected approximately \$3.8 million of the Adjusted Canadian AR, leaving approximately \$1.1 million outstanding. The major accounts that remain outstanding are due from General Motors Corporation and certain of its affiliates ("**GM**") in the amount of approximately \$877,000; Magna Powertrain Inc. and certain of its divisions ("**Magna**") in the amount of approximately \$132,000; and Ford in the amount of approximately \$57,000. Attached hereto as **Schedule "K"**, is a summary of the Receiver's collections of the Adjusted Canadian AR up to October 4, 2007 and the remaining outstanding accounts as at October 4, 2007. The status of the Ford and GM receivables are discussed below in Sections 5.0 and 6.0, respectively.

2.1.4 The Receiver has commenced litigation in Ontario against Magna (the "**Magna Action**") for the collection of the outstanding receivables and for the value of certain steel coil, WIP and finished goods inventory that the Receiver asserts that Magna is required to purchase pursuant to the accommodation agreement which Magna entered into with the Bank and Genfast during the CCAA Proceedings. The aggregate amount of the Receiver's claim is approximately \$420,000.

## **2.2 Third Party U.S. Customers**

2.2.1 According to the Company's receivable sub-ledger as at the date of the Receiver's appointment, Genfast had approximately U.S. \$2.0 million in outstanding accounts receivable from U.S. customers (the "**U.S. AR**").

2.2.2 After reviewing the accounts and reconciling them with Genfast's customers, the Receiver discovered approximately U.S. \$122,000 in outstanding credit notes, legitimate set offs and errors in the U.S. AR leaving an adjusted balance of approximately U.S. \$1.9 million (the "**Adjusted US AR**").

2.2.3 As at October 4, 2007, the Receiver has collected approximately U.S. \$1.8 million of the Adjusted US AR, leaving approximately U.S. \$50,000 outstanding. The major accounts that remain outstanding are due from Dana Corporation ("**Dana**") in the amount of approximately U.S. \$23,000; and Industrius de Linamar SA de CV of Mexico in the amount of approximately U.S. \$16,000. Attached as **Schedule "L"**, is a summary of the Receiver's collections of the Adjusted US AR up to October 4, 2007 and the remaining outstanding accounts.

2.2.4 The Receiver has filed a motion in Dana's Chapter 11 proceedings seeking payment of the outstanding receivables and is currently in discussions with Dana regarding same.

## **2.3 Related Parties**

2.3.1 The Company's books and records reveal that MNP and General Fasteners Company Inc. ("**GFC**") had balances owing to Genfast as at the date of the Appointment Order in the approximate amounts of U.S. \$442,000 and U.S. \$1,840,000, respectively, which balances arose from the shipment of parts by Genfast to MNP and GFC. GFC has paid the Receiver approximately U.S. \$177,000 to date. GFC is claiming set-off against the remaining receivable balance for amounts owing to it by Genfast. MNP has also claimed set-off against the receivable

balance for amounts owing to it by Genfast for both loans made and parts supplied by MNP. The Receiver is currently reviewing both set-off claims. As reported in the Receiver's Fourth Report, the Bank has 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 its subordination agreement entered into by MNP and GFC in favour of the Bank (the "**Bank Litigation**").

### *3.0 Marketing of Steel Coil Inventory and Miscellaneous Inventories*

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#### **3.1 Steel Coil Inventory Located in Canada**

- 3.1.1 Genfast used steel rods in coil form as a raw material for making its products. The steel was of varying compositions and gage and was coated with different chemicals depending on the needs of the customer, the purpose of the fastener and the requirements of Genfast's machinery.
- 3.1.2 Although the steel coil inventory could be used to produce various types of fasteners, it is essentially only suited to the fastener industry, which in North America consists of a small number of companies.
- 3.1.3 At the time of the Receiver's appointment, Genfast had approximately 4.55 million pounds of steel coil inventory with an aggregate cost of approximately \$1.9 million. The steel coil inventory was stored at the Premises and at two of Genfast's steel processors: Mittal Canada Hamilton Inc., located in Hamilton, Ontario, and Sivaco Ontario, a Division of Sivaco Wire Group L.P. ("**Sivaco**") located in Ingersoll, Ontario.
- 3.1.4 Sivaco has asserted a claim under the *Repair and Storage Liens Act* (Ontario) for processing charges and storage costs against a certain amount of Genfast's steel located at Sivaco's facility. The Receiver and Sivaco have resolved the substantive business issues with respect to Sivaco's claim and are currently finalizing the terms of a settlement agreement, the details of which will be provided in a Supplementary Report to be filed with the Court prior to the return of this motion (the "**Sivaco Agreement**"). The Receiver will be seeking this Court's approval of the Sivaco Agreement on this motion, which the Receiver believes reflects a reasonable settlement of the issues in dispute between the parties.

- 3.1.5 In accordance with the sales process outlined in the First Report (the “**Raw Material Marketing Process**”), which was approved by this Court in the April 24 Order, the Receiver distributed an information package to fifteen (15) fastener manufacturers and steel suppliers/brokers requesting that they submit an offer for all or a portion of Genfast’s steel coil inventory.
- 3.1.6 The information package, which was approved as part of the First Report, was distributed on or about April 23, 2007, with the recipients being identified based on input from Genfast’s former management. The Receiver subsequently received three (3) offers by the deadline date of May 4, 2007. However, as all of the offers were at values substantially below Genfast’s cost, the Receiver did not immediately pursue any of them.
- 3.1.7 During the CCAA Proceedings, certain of Genfast’s major customers, including Ford, GM and Magna, entered into agreements with Genfast which, among other things, obligated them to purchase “useable and merchantable” raw materials used to manufacture their products at Genfast’s cost. The Receiver reviewed Genfast’s manufacturing records and identified that portion of Genfast’s steel coil inventory that was used to make products for these customers and thereafter requested that these customers purchase the inventory, pursuant to their agreements.
- 3.1.8 GM and Ford agreed to review the listings with their suppliers and thereafter provided a proposal to the Receiver for the purchase of certain steel coil inventory. After extensive discussions with Ford, the Receiver has reached an agreement with Ford whereby Ford’s replacement part suppliers will purchase certain of the steel coil inventory. The Receiver and GM have resolved the substantive business issues with respect to GM’s purchase of certain steel coil inventory and the parties are in the process of finalizing an agreement regarding same. Details of the Receiver’s discussions with Ford and GM are outlined in Sections 5.0 and 6.0 below, respectively.

- 3.1.9 Magna has refused to purchase certain of the steel coil inventory that the Receiver believes it is obligated to purchase pursuant to its accommodation agreement. Accordingly, as described above, the Receiver has commenced the Magna Action.
- 3.1.10 After deducting the steel coil inventory associated with the Ford Agreement, the GM Agreement and the Magna Action, there are approximately 1.19 million pounds of steel coil inventory remaining (the “**Remaining Raw Materials Inventory**”). The Receiver has received offers from MNP (approximately 636,000 pounds), B&D (approximately 140,000 pounds) and Emerald (approximately 183,000 pounds) to purchase a portion of the Remaining Raw Materials Inventory at purchase prices of approximately US\$144,000, US\$28,000 and US\$30,000 respectively, plus applicable taxes. The MNP offer was received as a result of the Raw Material Marketing Process while the B&D and Emerald offers were subsequently received. A listing of the specific steel coil to be sold is attached as **Schedule “M”** to this Report. The Receiver is seeking this Court’s approval to accept each of these offers and complete each of these sales as they represent the best offers that the Receiver has received and are substantially in excess of the steel’s scrap value.
- 3.1.11 Given that the Receiver has exhausted its efforts to sell the balance of the Remaining Raw Materials Inventory and in light of the costs of storing the balance of the Remaining Raw Materials Inventory past December 2007, when the Receiver expects to be able to vacate the Premises after the equipment sold by auction is removed, the Receiver also requests that the Court authorize it to sell the Remaining Raw Materials Inventory not being sold to MNP, B&D and Emerald, for its scrap value.

## **3.2 Steel Coil Inventory Located in the United States**

- 3.2.1 At the time of the Appointment Order, there was a shipment of approximately 520,000 pounds of steel coil in transit to Genfast from Tycoons Worldwide Group (Thailand) Public Co. Ltd. with an approximate value of \$265,000. The shipment was located in the US at the time of the

Appointment Order, the exact location being known only to the customs broker engaged by Genfast, CBC Customhouse Brokers, Inc. (“**CBC**”) which is withholding the shipment from the Receiver as it is claiming a lien against the steel coils for unpaid brokerage, delivery and storage fees in the amount of approximately US \$160,000. On June 12, 2007, the Receiver commenced litigation in the state of Michigan, against CBC for possession of the steel coils (the “**CBC Litigation**”). CBC and the Receiver have reached an agreement, subject to Court approval, to resolve the CBC Litigation (the “**CBC Agreement**”), a copy of which is attached as **Schedule “N”**. Accordingly, the Receiver seeks the Court’s approval and authorization to enter into and complete the CBC Agreement.

### **3.3 Miscellaneous Inventories**

3.3.1 On or about April 23, 2007, the Receiver issued tender packages to ten (10) parties in the fastener industry which were identified with the input of the Company’s former management, for the sale of Genfast’s carbide steel, thread die and tooling steel inventories. The Receiver subsequently completed sales of the carbide steel and tooling steel to PHST Tech Canada Ltd. and Ingersol Fasteners, respectively, which submitted the highest offers through the tender process, with the proceeds totalling approximately \$24,000 and \$17,000, respectively.

3.3.2 The Receiver is in the process of completing the sale of Genfast’s thread die inventory to MNP, which submitted the highest offer through the tender process, with the proceeds being approximately US \$45,000. Since certain of the thread dies are subject to a license agreement with MAThread Incorporated (“**MAThread**”), the Receiver has confirmed that MAThread has no objections to the proposed transaction. Accordingly, the Receiver requests the Court’s approval of the sale of this inventory to MNP.

## 4.0 *Work-In-Process (“WIP”) and Finished Goods Inventories*

### 4.1 Sale Process

- 4.1.1 All of the products which Genfast manufactured were specific to each individual customer and accordingly, have no value to any other party other than that specific customer.
- 4.1.2 Immediately after its appointment, the Receiver commenced a physical inventory count and began to contact all of Genfast’s customers, notifying each of them of the Receiver’s appointment and of the specifics of Genfast’s inventory of their products.
- 4.1.3 Prior to the Receiver’s appointment, Genfast had identified a substantial quantity of obsolete and slow moving finished goods inventory having, a sales value of approximately \$1.2 million (the “**Obsolete Inventory**”).
- 4.1.4 As described above, during the CCAA Proceedings, Genfast and certain of its customers (such as Ford, GM, Magna) entered into agreements providing for, among other things, the types of inventory (raw material, WIP and finished goods inventories) and the quantities which those customers would purchase from Genfast, and the purchase price. The purchase price for finished goods inventory was Genfast’s selling price; for WIP inventory was Genfast’s selling price multiplied by the stage of completion of the item and for raw materials was Genfast’s cost.
- 4.1.5 To date, the Receiver has been able to sell approximately \$675,000 in WIP and finished goods inventory to Genfast customers.
- 4.1.6 However, there were numerous customers who were not interested in purchasing Genfast’s inventory at any price as they had found new suppliers. In addition, several customers had substantial WIP and/or finished goods inventories, not all of which they were required to

purchase pursuant to their agreements with Genfast. A summary of the Receiver's sales of Genfast's WIP and finished goods inventories is attached as **Schedule "O"**.

4.1.7 The Receiver has reached an agreement with Ford, pursuant to the accommodation agreement it entered into with Genfast during the CCAA Proceedings, to purchase certain WIP and finished goods, which agreement is subject to Court approval. The terms of this agreement are discussed further in Section 5.0 of this Fifth Report.

#### **4.2 Litigation and Proposed Settlement with GFC and GFC Mexico**

4.2.1 The Receiver commenced litigation in Ontario against GFC and its Mexican affiliate ("**GFC Mexico**"), for their failure to purchase approximately US\$115,000 of WIP and/or finished goods inventories pursuant to the agreement they entered into with Genfast or, in the case of GFC Mexico, its failure to complete the bill of sale it signed with the Receiver (the "**GFC Litigation**").

4.2.2 The Receiver met with representatives of GFC on October 10, 2007, to review Genfast's inventory of GFC and GFC Mexico parts.

4.2.3 At the conclusion of the meeting, GFC proposed a settlement of the GFC Litigation whereby GFC would purchase certain of Genfast's parts for US \$74,058.70 plus applicable taxes and GFC Mexico would complete the Bill of Sale it signed with the Receiver in the amount of US \$20,777.16 plus applicable taxes. The Receiver and GFC Mexico have reached an agreement and are in the process of finalizing same. An executed copy of the GFC Settlement Agreement will be provided in a Supplemental Report to be filed with the Court before the return of this motion (the "**GFC Settlement Agreement**").

4.2.4 The proposed GFC Settlement Agreement would result in the Receiver being paid approximately US \$95,000 or 82.5% of the Receiver's total claim of approximately US \$115,000.

4.2.5 The Receiver recommends that the Court authorize it to enter into the GFC Settlement Agreement as it believes that the payment of approximately US \$95,000 is a reasonable settlement of GFC's obligation under the agreement it signed with Genfast in March 2007 and GFC Mexico's requirement under the Bill of Sale it signed with the Receiver after consideration of the costs and delays the Receiver would otherwise incur if it pursued the GFC Litigation.

### 4.3 **The Magna Litigation and Proposed GM Litigation**

4.3.1 As described above, the Receiver has commenced the Magna Action for, among other things, Magna's refusal to purchase WIP and finished goods inventory. In addition, as described in section 6.0 below, the Receiver's efforts to resolve the dispute with GM regarding its purchase of certain WIP and finished goods inventory have been unsuccessful and as such, the Receiver has reserved its rights to, and has determined that it has no alternative but to commence litigation against GM with respect to this and other unresolved issues with GM as discussed below (the "**GM Litigation**").

### 4.4 **Unsaleable Inventory**

4.4.1 Based on its extensive communications with Genfast's customers, the Receiver believes that it has exhausted all prospects for the sale to these customers of Genfast's remaining WIP and finished goods inventories other than those inventories relating to either the agreements reached with Ford and GFC/GFC Mexico or the Magna Action and the GM Litigation (the "**Saleable Inventory**"). Accordingly, the Receiver believes that the only realizable value of the WIP and finished goods remaining after excluding the Saleable Inventory (the "**Unsaleable Inventory**") is its scrap steel value. The aggregate sales price of the Unsaleable Inventory (i.e. valuing the finished goods inventory at its sales price and the WIP inventory at its sales price multiplied by its percentage of completion) is approximately \$1.9 million of which \$1.2 million relates to the Obsolete Inventory.

4.4.2 In September 2007, the Receiver arranged for four (4) scrap steel dealers to submit bids for the purchase of the Unsaleable Inventory. The highest offer was submitted by K&K at a purchase price of \$220 per ton. K&K is also responsible for removing the Unsaleable Inventory from its current location at the Premises. Given that most of the Unsaleable Inventory is Obsolete Inventory, the Receiver's inability to sell the Unsaleable Inventory to Genfast's former customers, and the fact that K&K's offer is the highest of the four (4) proposals submitted, the Receiver recommends that this Honourable Court approve the sale of the Unsaleable Inventory to K&K for its then scrap value which is currently estimated to be \$220 per ton.

## ***5.0 Agreement with Ford Motor Company***

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The Receiver and Ford have entered into Minutes of Settlement (the “**Ford Agreement**”), which are conditional upon Court approval, to resolve all outstanding issues involving Genfast, including the purchase of certain WIP and finished goods inventory by Ford and the purchase of certain steel coil inventory (the “**Ford Steel Coil Inventory**”) by Emerald and MNP. Details of the Ford Agreement will be provided in a Supplemental Report to be filed with the Court before the return of this motion. The Receiver will be seeking approval of the Ford Agreement on this motion.

5.1.1 If for any reason the sale of any inventory pursuant to the Ford Agreement is not completed, the Receiver requests that this Court authorize the Receiver to sell any portion of such inventory for its scrap value.

## ***6.0 Status of Discussions with General Motors Corporation***

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The Receiver and GM have resolved the substantive business issues with respect to GM's purchase of certain raw material inventory and are in the process of finalizing an agreement to reflect this settlement. Notwithstanding extensive discussions, the Receiver and GM have been unable to resolve the balance of the outstanding matters involving Genfast. The current status of all issues between the Receiver and GM are outlined below.

### **6.1 Accounts Receivable**

6.1.1 According to Genfast's books and records, the balance of GM's account receivable as at the date of this Report is \$876,617.06, all of which relates to shipments made by Genfast to GM prior to March 21, 2007. The Receiver believes that it has reconciled all of this balance to GM's records with the exception of \$23,656.85, which GM is still reviewing, and \$12,402 that GM claims has already been paid.

6.1.2 GM is asserting set-off claims against the entire Genfast receivable owing by GM to Genfast as follows:

- i) legal and professional fees totalling approximately \$165,000;
- ii) a \$400,000 payment to Local 4153 of the United Steelworkers' Union;
- iii) payments to Genfast's salaried employees totalling approximately \$75,000;
- iv) freight charges totalling approximately \$65,000;
- v) expedite costs totalling approximately \$110,000; and
- vi) Cost recovery charges of approximately \$42,000.

Therefore, it is GM's position that, due to these set-offs and the invoices it is disputing, it does not owe any outstanding amounts to Genfast.

6.1.3 Based on the advice of legal counsel, the Receiver believes that it has a reasonable legal basis on which to challenge the validity of the set-off claims being asserted by GM. The Receiver has had discussions with GM regarding its set-off claims in an attempt to reach a settlement which reflects the relative legal merits of each parties' position. These discussions have reached an impasse. Accordingly, the Receiver intends to commence litigation against GM in an effort to, among other things, recover GM's outstanding receivable balance.

## **6.2 WIP and Finished Goods Inventories**

6.2.1 The Receiver has been advised by the Applicant that on March 24, 2007, GM agreed to purchase from Genfast all "useable" and "merchantable" finished goods, WIP and related raw materials with useable and merchantable having the meaning ascribed to such terms in customary accommodation agreements (the "**GM Accommodation Agreement**"). The purchase price that GM agreed to pay was its purchase price for the finished goods, the pro-rated selling price for WIP (based on percentage of completion) and Genfast's cost for raw materials.

6.2.2 In an effort to determine what would be "useable" inventory under the GM Accommodation Agreement, the Receiver reviewed the purchase orders that GM issued to Genfast which were still outstanding and unfulfilled as at the date of the Appointment Order. Based on this review, the Receiver has concluded that GM is obligated under the GM Accommodation Agreement to purchase US \$204,414.68 of WIP inventory and US \$34,494.29 of finished goods inventory.

6.2.3 GM has refused to purchase any WIP or finished goods inventory. Accordingly, as described above, the Receiver will be commencing the GM Litigation.

## **6.3 Steel Coil Inventories**

6.3.1 In an effort to determine what would be "useable" inventory under the GM Accommodation Agreement, the Receiver reviewed GM's purchase orders and determined the type of steel coil

inventory that was used to produce GM products and created a list of steel coil that Genfast had on hand and which was associated with GM parts production (the “GM Steel Coil Inventory”). The listing was subsequently forwarded to GM with a request that they purchase said inventory.

6.3.2 The Receiver and GM are in the process of finalizing an agreement (the “GM Agreement”) for the purchase by GM of the GM Steel Coil Inventory, which will be conditional upon Court approval, and the details of which will be provided in a Supplementary Report to be filed with the Court before the return of this motion. The Receiver will be seeking approval of the GM Agreement on this motion.

6.3.3 If for any reason the sale of the GM Steel Coil Inventory is not completed, the Receiver requests that this Court authorize the Receiver to sell any portion of the GM Steel Coil Inventory, including the Rejected GM Steel Inventory, for its scrap value.

## ***7.0 D&O Second Interim Distribution***

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- 7.1.1 As described in the Fourth Report, there are two outstanding appeals of claims filed and denied in the D&O Claims Process (as defined in the Fourth Report): one from PricewaterhouseCoopers Inc., as administrator of the Bargaining Unit Pension Plan for Members of the United Steelworkers of America and Retirement Plan for Salaried Employees (the “**Pension Plan Administrator**”) and another from Her Majesty the Queen in the Right of Ontario as Represented by the Superintendent of Financial Services (“**FSCO**”). Each of these claims are for the same amount in respect of the same unpaid special and regular pension contributions to April 5, 2007, the date of the receivership/bankruptcy, but each claim is based on different theories of liability (collectively, the “**Disputed Pension Claims**”).
- 7.1.2 The Receiver has disallowed the Disputed Pension Claims except for a small amount (\$1,509.14) in respect of contributions deducted but not remitted by Genfast from employee wages prior to the Receiver’s appointment (the “**Deducted/Unremitted Pension Contribution Claim**”).
- 7.1.3 Pursuant to the July 25 Order, the Court authorized and directed the Receiver to establish a reserve in the amount of \$248,502.98 until adjudication or resolution of such Disputed Pension Claims (the “**Disputed Pension Claims Reserve**”). The July 25 Order also provided that the balance of the Directors’ Charge, after deducting the Disputed Pension Claims Reserve, being \$336,816.62, be distributed by the Receiver from funds on hand, to; (i) former Genfast Employees so entitled, on a pro rata basis in partial payment of the outstanding unpaid amounts in respect of Vacation Pay after deducting and distributing to CRA from such amount the applicable source deductions (the “**Second Vacation Pay Distribution**”); and (ii) the Pension Plan Administrator in partial payment of the Deducted/Unremitted Pension Contribution Claim. As with the initial interim distribution of Vacation Pay claims and applicable source deductions pursuant to the April 24 Order, the second interim distribution of additional Vacation Pay

amounts, applicable source deductions and the Deducted/Unremitted Pension Contribution Claim reduced the amount of the Directors' Charge by an equivalent amount.

7.1.4 During the week of September 7, 2007, the Receiver issued the Second Vacation Pay Distribution in accordance with the July 25 Order. The Receiver has also issued the payment on account of the Deducted/Unremitted Pension Contribution Claim to the Pension Plan Administrator to which it was entitled pursuant to the July 25 Order.

7.1.5 As a result of the two distributions it has made to date, the Receiver has paid out approximately 90.5% of the accepted Vacation Pay claims and the Deducted/Unremitted Pension Contribution Claim, leaving a remaining balance on the Director's Charge of \$248,502.98. In the event that the Disputed Pension Claims are successfully appealed, the remaining balance of the Director's Charge will be used to pay 90.5% of the Disputed Pension Claims. In the event that the disallowances of the Disputed Pension Claims are upheld, the balance of the accepted Vacation Pay claims and the Deducted/Unremitted Pension Contribution Claim (being 9.5% of such claims) will be paid from the remaining balance of the Director's Charge.

## ***8.0 Genfast Books and Records***

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### **8.1 Maintenance of Genfast's Books and Records**

8.1.1 Genfast's books and records are maintained in both a physical paper and computerized format.

8.1.2 Genfast's physical documents are located at the Premises and a third party storage facility located in Toronto. The Receiver intends to vacate the Premises as soon as possible after the equipment is removed pursuant to the terms of the Auction Services Agreement which must be no later than December 22, 2007. As such, it has been necessary for the Receiver to review all of Genfast's physical documents located at the Premises. Records that have been boxed up and will be removed to a third party storage site prior to the Premises being vacated in or about December 2007, consist of the following:

- Employee personnel files;
- GST and PST files for the last six (6) years;
- Corporate income tax files for the last six (6) years;
- Accounts payable listing as at the date of the Receivership and related invoice copies;
- Month end financial statements for the last two (2) years;
- Year end financial statements for the last six (6) years;
- Contents of the Controller's office;
- Contents of the Plant Manager's office;
- Year end payroll register for the last six (6) years;
- the manuals and documentation related to the MANMAN computer system;
- all documents with respect to related-party transactions; and
- Sales invoices and related delivery documents, purchase orders or contracts and certain customer release information related to accounts receivable in existence as at the date of Receivership which are still uncollected.

8.1.3 In an effort to free up space for the Maynards auction and reduce anticipated future storage costs, certain physical records of Genfast located at the Premises which the Receiver determined were no longer relevant to the administration of the estate, have been destroyed by the Receiver. These records include those related to: accounts payable which were not outstanding at the time of the Appointment; invoicing and shipping records regarding sales which were paid in full prior to the Appointment Order; month-end financial statements which are more than two (2) years old; weekly payroll records and detailed manufacturing records. However, certain of these physical records are duplicated on Genfast's computer records.

8.1.4 Genfast did not maintain a list of records stored at the off-site location, which the Receiver has been advised is comprised of approximately 2,565 boxes. The Receiver has also been advised by former Genfast employees that the records are very old, with most of them pre-dating the sale of the Company by Stelco in or about March 1998. The Receiver is in the process of arranging for the creation of a "high-level" inventory of the records stored off-site.

8.1.5 The Receiver is also in possession of Genfast's Shareholder Meeting Minute Book, Board of Director Meeting Minute Book, and incorporation documents.

8.1.6 The computerized records of Genfast are physically located at the Premises and consist of the following:

- Financial and manufacturing records which were created in a proprietary program, MANMAN, and stored on a segregated server (the "MANMAN Server");
- Specific files stored by Genfast employees under network share names, including Public, Shared, Users, Engineering, Plan Eng, HR, Quality and Sales which are located on another file server (the "User Server"); and
- Individual files that employees have saved on their personal computers.

8.1.7 Upon its appointment, the Receiver immediately restricted all access to the above computer records. The Receiver has subsequently had back-ups made of all of the above computer records, which are stored at the Receiver's offices.

8.1.8 The e-mail system used by Genfast was maintained by MNP, with the server located at MNP's premises in Utica, Michigan. While the Receiver has also backed up all of the data contained in Genfast's user accounts located on MNP's email server, it is not clear how complete these files are.

8.1.9 The Receiver has also been advised by Genfast's former information technology manager that most Genfast e-mail users were instructed to move their e-mail documents to user folders that were created specifically for each employee and which were stored on the User Server. It is unknown how rigorously these instructions were followed by the Genfast employees.

## **8.2 Records Request Protocol**

8.2.1 The Receiver is currently reviewing issues and potential solutions associated with maintaining ongoing access to Genfast's computer records including the possibility that records maintained on the MANMAN Server may not be available if this server has to be moved off-site when the Premises are vacated. In particular, the Receiver has been advised by Genfast's former Information Technology Manager that since the MANMAN Server is approximately ten (10) years old, and is therefore unstable and subject to frequent down time, it may be impossible to successfully re-locate it off-site. Further, the ability of the Receiver to transfer the computer data stored on the MANMAN server to an off-site third party data bureau will be dependent on whether or not the MANMAN operating system can be successfully transferred, which operating system is stored on tape and the integrity of which is unknown.

8.2.2 Numerous parties will require access to the books and records of Genfast for discovery purposes including the parties to the Grievance (as defined below) and the Bank Litigation. The Receiver has already received a request from the United Steelworkers Union (“USW”) to access certain records of Genfast to advance the Grievance.

8.2.3 The Receiver has, through discussions with the affected parties, developed the following protocol, which it proposes be approved by this Court and applied to any parties seeking to access Genfast’s books, records and documents within the meaning of Rule 30.01 of the Ontario *Rules of Civil Procedure* (the “Records”) but does not apply to the Disputed Pension Claims and the resolution of same:

- i) The Receiver has been advised by its counsel that as there are no longer any directors and officers of Genfast, the authority to assert privilege over any of the Records rests with Genfast’s shareholders, which the Receiver understands to be Genfast Manufacturing Inc., Genfast Holding Corporation and the Berman Family, LLC (collectively, the “Shareholders”). Accordingly, prior to any party being provided with access to the Records, the Shareholders will have until November 30, 2007 to review the Records in order to determine if they wish to assert privilege over any of the Records. The Shareholders will be responsible for all costs associated with the review of the Records for the assertion of privilege, including, but not limited to, all photocopying costs and the fees and disbursements related to the attendance of: counsel for the Shareholders to conduct the review; a representative of the Receiver; and the former Information Technology Manager from the Company (to the extent that the review includes computerized records). The Shareholders shall prepare a list of the Records over which privilege is being claimed, describing the Records with sufficient specificity to permit them to be identified and stating the basis for the claim to privilege. The Receiver shall then segregate the Records and any dispute over the obligation to produce such Records

shall be adjudicated in the proceeding to which the Records are said to be relevant, and the Receiver shall be entitled to produce the Records in accordance with a final Order made in such proceedings. Once privilege is claimed, subject to any disputes, privilege is deemed to be waived with respect to any remaining Records; and

- ii) any party who wishes to gain access to the Records shall make a request, in writing, to the Receiver, who shall coordinate access at a mutually agreeable time for which the requesting party shall pay all reasonable costs including, but not limited to, all photocopying costs and the reasonable fees and disbursements for the attendance of: the party's own counsel; a representative of the Receiver; and the former Information Technology Manager of the Company (to the extent that the review includes computerized records) (collectively the "**Records Request Protocol**").

## *9.0 United Steelworkers Grievance*

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- 9.1.1 On or about April 30, 2007, the USW commenced a grievance for all unpaid severance pay, termination pay, unpaid wages, unpaid vacation pay, pension contributions and all benefits owed to USW members who are former employees of Genfast (the “Grievance”). The Grievance, which was brought against Genfast, MNP, Utica, GFC and certain directors of Genfast, alleges that all of the respondents are jointly and severally liable for these outstanding obligations.
- 9.1.2 In order to advance the Grievance, the USW brought a motion seeking leave of this Court to lift the stays of proceedings imposed by the Appointment Order and the Bankruptcy Order. Upon reaching an agreement with the USW on the terms of a satisfactory Order, the Receiver and the Trustee consented to an Order providing, among other things, that the stays of proceedings be lifted to allow the Grievance to proceed against Genfast. A copy of the Order to which the USW, the Receiver and the Trustee consented to is attached as **Schedule “P”**.
- 9.1.3 Prior to the attendance of counsel for the USW, the Receiver and the Trustee to have the USW Order approved on consent, MNP, Utica and GFC advised that they would be opposing the granting of leave to lift the stays of proceedings in both the receivership and the bankruptcy. This motion will be heard by this Court on November 5, 2007.

## *10.0 Auction*

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- 10.1.1 Pursuant to the July 25 Order and the Auction Services Agreement, the auction of Genfast's fixed assets was conducted by Maynards at the Premises on October 17 and 18, 2007. Maynards is currently assembling the accounting and other related information from the auction which, pursuant to the Auction Services Agreement, they are obligated to provide to the Receiver within ten (10) days after the completion of the auction.
- 10.1.2 The Receiver will report to the Court in due course with the results of the Maynards auction once is has received and had the opportunity to review the accounting in respect of the auction with Maynards. However, the Receiver has been advised by Maynards that the proceeds of the auction, along with the anticipated realizations on certain machines that were not sold at the auction, are expected to be less than Maynards' net minimum guarantee of \$14,500,000.

## *11.0 Payables from CCAA Proceedings*

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11.1.1 At the request of the Monitor, which request was made pursuant to paragraph 8 of the Order made on April 5, 2007 during the CCAA Proceedings, the Receiver has reviewed Genfast's financial records related to the CCAA Proceedings and completed:

- (i) a summary of Genfast's receipts and disbursements during the period March 8 to April 5, 2007;
- (ii) a listing of liabilities that Genfast incurred during the CCAA Proceedings and which remain unpaid; and
- (iii) a comparison of liabilities incurred by Genfast during the period March 26 to April 8, 2007 and the payments made by Genfast against those liabilities.

All of this information has been provided to the Monitor and the Applicant. The Receiver has been advised that the Monitor and the Applicant are working to resolve what amounts, if any, will be paid in respect of liabilities incurred prior to the bankruptcy and the receivership.

## ***12.0 Wind-Up of Salaried and Union Pension Plans***

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12.1.1 On or about October 24 and 25, 2007, the Receiver received Notices of Proposal to make an Order pursuant to section 69 of the *Pension Benefits Act* (Ontario) (the “PBA”), copies of which are attached as **Schedule “Q”**, that the Genfast Manufacturing Company Retirement Plan for Salaried Employees and the Genfast Manufacturing Company Bargaining Unit Pension Plan for members of the USW, be wound up effective April 5, 2007. The Receiver does not intend to request a hearing before the Financial Services Tribunal to which it is entitled pursuant to section 89(6) of the PBA, nor does it intend to take any position on the proposed PBA Order.

### 13.0 Receiver's Interim Statement of Receipts and Disbursements

- 13.1.1 Attached, as **Schedule "R"**, to this report is the Receiver's Statement of Receipts and Disbursements for the period from the date of the Receiver's appointment, April 5, 2007, to October 4, 2007.
- 13.1.2 The Receiver has collected receipts of approximately \$9.97 million primarily from the collection of accounts receivable, sales of WIP and finished goods inventories, and the sale of natural gas. The Receiver is also holding in trust the deposit it received from Maynards pursuant to the Auction Services Agreement (the "**Auction Deposit**").
- 13.1.3 The Receiver has incurred disbursements of approximately \$2.96 million consisting primarily of rent payments for the Genfast facility, payments to the former employees for wages and vacation pay outstanding as at the Receiver's appointment pursuant to the April 24 Order and the July 25 Order, payroll for the Receiver's temporary employees and utilities for the Premises.
- 13.1.4 Accordingly, the Receiver currently has approximately \$7.01 million in net funds as at October 4, 2007 consisting of approximately \$345,000 in current accounts and approximately \$6.67 million in term deposits, before consideration of the Receiver's accrued liabilities including its fees and disbursements and those of its counsel to date. The Receiver is also holding the Auction Deposit in an interest bearing term deposit.

## *14.0 Recommendations*

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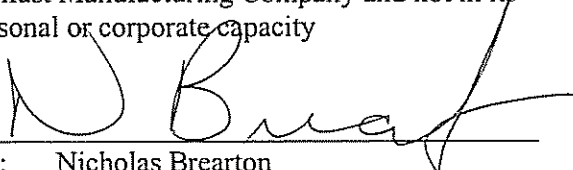
14.1.1 For the reasons set out above, the Receiver respectfully requests that this Honourable Court grant an Order, among other things,

- approving this Fifth Report and the activities of the Receiver described herein;
- authorizing the Receiver to enter into and complete the Sivaco Agreement;
- approving the sale of approximately 636,000 pounds of the Remaining Raw Materials Inventory to MNP at the purchase price of approximately US \$144,000, plus applicable taxes;
- approving the sale of approximately 139,000 pounds of the Remaining Raw Materials Inventory to B&D at a purchase price of approximately US \$28,000, plus applicable taxes;
- approving the sale of approximately 183,000 pounds of the Remaining Raw Materials Inventory to Emerald at a purchase price of approximately US \$30,000, plus applicable taxes;
- authorizing the Receiver to sell for scrap value that portion of the Remaining Raw Materials Inventory not sold to MNP, B&D and Emerald;
- authorizing the Receiver to enter into and complete the CBC Agreement;
- authorizing the Receiver to sell Genfast's thread die inventory to MNP for approximately US \$45,000, plus applicable taxes;

- authorizing the Receiver to enter into and complete the GFC Settlement Agreement;
- authorizing the Receiver to sell the Unsaleable Inventory to K&K for its scrap value, plus applicable taxes;
- authorizing the Receiver to complete the Ford Agreement, including the sale of the WIP and finished goods inventory to Ford and the sale of the Ford Steel Coil Inventory to MNP and Emerald;
- authorizing the Receiver to, if the sale of any inventory being sold pursuant to the Ford Agreement or any portion thereof is not completed, sell such inventory for its scrap value;
- authorizing the Receiver to enter into and complete the GM Agreement, including the vesting of all right, title and interest in the GM Steel Coil Inventory in and to GM upon the filing of a Receiver's Certificate with the Court by the Receiver;
- authorizing the Receiver to, if the sale of the GM Steel Coil Inventory is not completed, sell the GM Steel Coil Inventory and sell any of the Rejected GM Steel Coil Inventory for its scrap value; and
- approving the Records Request Protocol.

All of which is respectfully submitted this 29<sup>th</sup> day of October, 2007.

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, and Genfast Manufacturing Company  
A Division of ABM AMRO Bank N.V., Canada Branch  
Applicant Respondent

Court File No: 07-CL-6926

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

Proceeding commenced at Toronto

**FIFTH REPORT TO THE COURT DATED  
OCTOBER 29, 2007**

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