

**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

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

April 20, 2007

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- Appendix A - Order of the Ontario Superior Court of Justice (Commercial List) dated April 5, 2007
- Appendix B - Information Package for Marketing Process of Genfast Raw Materials Inventory

### **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"), KPMG Inc. 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 9, 2007 were terminated. The Appointment Order was made pursuant to Sections 101 of the *Courts of Justice Act* (Ontario).
- 1.1.2 A copy of the Appointment Order is attached hereto as **Appendix A**. 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 a limited liability corporation incorporated under the laws of the Province of Nova Scotia operating from leased facilities located in Brantford, Ontario. The Company was in the business of manufacturing bolts, screws, rivets and other types of fasteners, primarily for the automotive industry.
- 1.2.2 Prior to the Bankruptcy Order being effective, the Company employed approximately 185 hourly employees, all of whom are members of the United Steelworkers of America, Local 3567, and 50 salaried employees.
- 1.2.3 The Receiver understands that the Applicant is the operating lender of the Company pursuant to a credit agreement dated November 30, 2000 as amended by agreements dated April 18, 2001, June 21, 2002, October 1, 2003 and November 18, 2005 (collectively, the "Credit Agreement"). Pursuant to the terms of the Credit Agreement, the Bank extended a revolving loan facility and a term loan facility to the Company. As at April 3, 2007, the Receiver understands that the amount outstanding under the revolving loan was \$7,563,682.26 and the amount outstanding under the term loan was \$13,045,646.82. As security for its indebtedness to the Applicant, the Company executed and delivered to the Applicant, among other things, a general security agreement dated November 30, 2000 (the "GSA") and a general assignment of book debts dated November 30, 2000 (the "GABD"). The Applicant registered its security interests against the Company pursuant to the *Personal Property Security Act* (Ontario) on November 22, 2000 against all classes of collateral except "consumer goods".
- 1.2.4 Pursuant to the Order of Honourable Mr. Justice Campbell dated March 8, 2007 (the "Initial Order"), 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").

- 1.2.5 Pursuant to the terms of a forbearance agreement dated March 8, 2007 (the “Forbearance Agreement”), the Applicant agreed to provide debtor-in-possession financing (the “DIP Borrowings”) to the Company during the Company’s orderly wind down. On March 23, 2007, pursuant to the terms of the Forbearance Agreement, the Applicant provided notice to the Company that Forbearance Terminating Events had occurred under the terms of the Forbearance Agreement. By letter dated March 25, 2007, the Applicant terminated the Forbearance Agreement, including its obligations to provide DIP Borrowings (as defined in the Initial Order). The Applicant subsequently provided financing to the Company on a short term basis.
- 1.2.6 On April 5, 2007, the Applicant brought forth a motion for the Appointment Order.
- 1.2.7 In addition 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”). The Bankruptcy Order, among other things, appointed KPMG Inc. as Trustee of the Estate of Genfast (“Trustee”). A separate Order was also issued on April 5, 2007 which, among other things, ordered that:
- the Company’s CCAA proceedings shall be terminated effective immediately after the Bankruptcy Order became effective;
  - the Monitor be discharged from any further obligations under the Initial Order (the Monitor, however, may oversee payment of certain amounts in respect of the supply of goods and services during the CCAA proceedings); and
  - the Directors’ Charge, the Administration Charge and the DIP Charge (all as defined in the Initial Order) shall continue to attach to the Property of the Company and shall continue to rank in priority relative to all other security interests, liens, charges and encumbrances affecting the Property, as set out in paragraph 39 of the Initial Order.

### **1.3 Purpose of this Report**

- 1.3.1 The purpose of this First Report of the Receiver to the Court is to:
- Report on the activities of the Receiver to date and seek the Court’s approval of those activities as set out herein;
  - Report on potential claims against the Directors’ Charge (“Directors’ Charge Claims”); and
  - Outline the proposed marketing process for the Company’s raw material inventory.

## ***2.0 Receiver's Initial Activities***

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### **2.1 Premises**

- 2.1.1 The Company operated out of leased premises located at 225 Henry Street, Brantford, Ontario (the "Premises"). The Receiver took possession of the Premises on April 5, 2007 at approximately 3:30 pm. The Receiver has made the necessary arrangements to have the locks changed and overhead doors secured. In addition, the Receiver has engaged the services of a security firm to monitor the premises on a 24 hours a day basis.
- 2.1.2 The Receiver has recorded the machinery, equipment and interior of the Premises upon taking possession of the Premises using a video camera. The Receiver also recorded the exterior of the Premises on April 9, 2007 during daylight hours.

### **2.2 Banking**

- 2.2.1 The Receiver notified the Bank, immediately upon its appointment, to freeze the Company's bank accounts. Notice was also sent to the Bank of Nova Scotia ("BNS"), where the Company had a deposit on account.

### **2.3 Credit Cards**

- 2.3.1 The Receiver determined that the Company has been issued credit cards by American Express and Visa (through BNS). Immediately upon its appointment, the Receiver cancelled online all of the credit cards. On April 10, 2007, the Receiver issued letters to BNS and American Express to confirm the cancellation of all of the cards.

### **2.4 Insurance**

- 2.4.1 The Company's existing policies, which are provided through Zurich Insurance Company ("Zurich"), expires on May 1, 2007. The Receiver understands that Zurich is willing to renew the existing policy and is awaiting a premium quotation from Zurich. The Receiver has also requested a quotation from another insurance carrier.
- 2.4.2 The Company's insurance broker has been contacted and a request has been made by the Receiver that certain policy coverage be removed as at the date of the Receiver's appointment (specifically that the business interruption coverage be removed and the Equipment and Inventory limits be reduced to reflect the appraised and current values).

### **2.5 Inventory**

- 2.5.1 The Receiver is in the process of conducting an inventory of the machinery and equipment on the Premises. An inventory of finished goods, WIP and raw materials in existence as at the time of the Receiver's appointment is also being conducted by the Receiver.

## **2.6 Former Employees**

- 2.6.1 The employees of the Company were terminated as at 3:00 p.m. (EST) on April 5, 2007 as a result of the bankruptcy of Genfast, which termination was confirmed by paragraph 13 of the Appointment Order.
- 2.6.2 The Receiver has met separately with the Company's former salaried employees and certain of the union executive to discuss the receivership and various obligations owed by the Company to its former employees including outstanding wages and vacation pay, issuance of records of employment, termination of benefits, and outstanding severance and termination pay.

## **2.7 Term and Task Engagements**

- 2.7.1 The Receiver has retained, pursuant to a term and task letter, certain of the Company's former salaried employees to perform various duties, including safeguarding the Company's assets, closing off the Company's financial records, and assisting in the collection of accounts receivable and sale of inventory.

## **2.8 Environmental**

- 2.8.1 The Receiver has been advised by former Company management that they believe that the Company has always operated within Ministry of Environment ("MOE") guidelines and that there are no outstanding clean-up orders from the MOE. The Company does not, however, have a formal environmental review & procedure policy.
- 2.8.2 The Receiver has located in the Company's records copies of environmental reports which were completed in 1997 and 1998. The site inspection dated April 20, 1998 includes the following comments:

"The soil sampling covered all the areas which were suspected to be at risk for contamination, based on our site inspections and information provided by the tenant and owner. The chemical test results mentioned above exceed the applicable MOE criteria, which indicates that some clean up is required. Based on our assessment, we believe that some remediation is required for this site."

"Of the 13 samples taken, all but 4 samples were within MOE guideline criteria."

"We recommend that oil pooled in the catch basin in the scrap metal dock be pumped out and disposed of at a licensed facility. The condition of the interior of the concrete catch basin could then be assessed."

- 2.8.3 The Receiver has confirmed with former Company management that no measures were taken by the Company to investigate and address the potential environmental concerns raised in the report issued in 1998. The Receiver is in the process of obtaining a quote to remove any pooled oil contained in the catch basin at the time of its appointment. Once the oil has been removed, the Receiver will evaluate what further steps, if any, are required.

**2.9 Books and Records**

2.9.1 The Receiver has secured the Company's books and records that are located on the Premises.

**2.10 Information Systems**

2.10.1 The Receiver has met with the Company's former IT Supervisor to discuss IT security issues and controls. The Company's server is located on the Premises. The server is backed up every night, with the back-up being stored for up to 3 months. Back-up tapes, performed at 12:00 a.m. on April 5, 2007, were secured by the Receiver and are being stored offsite. Remote access was removed for all users except for the former IT Supervisor and the former Controller, who have been retained by the Receiver on a term and task basis to assist with the receivership.

2.10.2 Former Company management has also informed the Receiver that a disaster recovery program is currently in place and can be switched over to in a matter of 1 to 2 hours, if required.

### **3.0 Potential Claims, and Interim Distribution, Against the Directors' Charge**

#### **3.1 Introduction**

- 3.1.1 Pursuant to paragraph 22 of the Initial Order, the Directors' Charge in the aggregate amount of \$1,000,000 secures the indemnity provided to directors and officers of the Company under paragraph 21 of the Initial Order. Paragraph 21 of the Initial Order relates to failure of the Company to make payments of the nature referred to in subparagraph 6(a) (outstanding wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses), subparagraph 8(a) (statutory deemed trust amounts with respect to employee source deductions), subparagraph 8(b) (goods and services or other applicable sales taxes), and subparagraph 8(c) (other priority taxes) of the Initial Order.
- 3.1.2 The Receiver understands that the Applicant will be bringing a motion to this Honourable Court on April 24, 2007 for an Order which, among other things, directs the Receiver to make an interim 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 (the "Vacation Pay Distribution"). These amounts are sought to be distributed on account of such amounts being claims against the Directors' Charge. In the case of the proposed interim distribution associated with the Vacation Pay Distribution, the Applicant is seeking that the distribution be treated as an advance against the authorized amount available under the Directors' Charge but is not seeking similar treatment in respect of the unpaid wages interim distribution. We also understand that the Applicant's motion will seek an expedited 30 day claims process to identify Directors' Charge Claims, which claims will be barred in the event they are not filed by the claims bar date.
- 3.1.3 An interim distribution of the unpaid wages and the Vacation Pay Distribution will represent a significant amount of money for the former employees of Genfast (approximately \$632,000 among 235 employees or an average of \$2,700 per former employee subject to individual salary variations). These amounts have been outstanding since early April.
- 3.1.4 We caution that the information contained herein has been obtained from the books and records of the Company. The information of the Company has not been audited, reviewed or otherwise verified by the Receiver as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles. Accordingly, the Receiver does not express an opinion or any other form of assurance on the financial or other information presented herein.
- 3.1.5 In addition, the Receiver's legal counsel has also not conducted a review as to whether any of the potential liabilities outlined below properly constitute Directors' Charge Claims.

#### **3.2 Unpaid Wages**

- 3.2.1 According to the Company's books and records, as at the time immediately before the Receiver's appointment on April 5, 2007, the gross unpaid wages owing to the Company's former employees totaled \$285,790.89, being \$255,703.59 for the former hourly employees and \$30,087.30 for the former salaried employees, subject to the

comment below regarding outstanding salaried cheques. In addition, the employers' required contribution for pension and other contribution were \$20,348.81 and \$1,370.91, respectively. The salaried employee amount is the maximum amount and the actual amount may be lower as the Company issued manual cheques to its salaried employees on April 5, 2007 and the Receiver is still determining how many of these cheques actually cleared the Company's bank account (the Receiver understands that the dollar amount of the issued cheques was after deduction of income tax and other normal course employee withholdings).

- 3.2.2 The Receiver understands that the Order being sought by the Applicant would, if granted, result in the Receiver distributing: i) the net unpaid wages directly to employees; and ii) employee source deductions associated with the unpaid wages directly to Canada Revenue Agency ("CRA"). This would result in \$217,459.74 being distributed to the former hourly and salaried employees for unpaid wages as at April 5, 2007, and \$68,331.15 being distributed to CRA for related employee source deductions. It is the Receiver's understanding that the Applicant's proposed Order will not be requesting any interim distribution on account of outstanding employer contributions.

### **3.3 Unpaid Benefits**

- 3.3.1 The Receiver understands that The Great West Life Assurance Company ("GWL") administers the Company's self-funded medical benefits program. The Company's former Controller has advised the Receiver that, as at April 5, 2007, the unpaid funding requests from GWL totaled \$26,727.04. The Receiver has not yet had an opportunity to contact GWL or any of the former employees to determine if any additional amounts are owed relating to medical or other employee benefits.
- 3.3.2 The Receiver also understands that the Royal Bank of Canada ("RBC") and GWL provided life, accident and long-term disability insurance to the Company's employees, with RBC and GWL invoicing the Company monthly for the associated premiums. The unpaid premiums owing to RBC and GWL as at April 5, 2007 totaled approximately \$35,000. The Receiver understands that these premiums have been unpaid since February 1, 2007.

### **3.4 Unpaid Vacation Pay**

- 3.4.1 As at the time immediately before the Receiver's appointment, the unpaid vacation pay owing to the Company's former employees totaled \$829,360.80. A total of \$624,076.05 relates specifically to the former hourly employees while the remaining balance of \$205,284.75 relates to the former salaried employees.

### **3.5 GST**

- 3.5.1 The Receiver understands that GST returns are prepared and submitted by the Company on a monthly basis and are historically in a refund position. The GST returns are normally reviewed by a 3<sup>rd</sup> party consultant for accuracy prior to submission. CRA performed its most recent GST audit in 2001 and the Receiver has been advised by the Company's former Controller that no issues were noted.

3.5.2 As at April 5, 2007, the last GST return filed was for the period January 1 to 31, 2007. The GST returns for the pre-CCAA period February 1 to March 7, 2007, and the CCAA period March 8 to April 5, 2007 have not yet been completed.

3.5.3 The Receiver has arranged for an audit to be performed by CRA on April 24, 2007.

### **3.6 Employee Source Deductions**

3.6.1 The Receiver has confirmed that the Company used a third party processor, ADP, to handle both its hourly and salaried payroll. The Receiver also understands that ADP required the Company to fund the gross amount of a payroll, including the employer contributions, prior to it processing the payroll. Thereafter ADP remitted the source deductions and employer contributions to CRA. The Company's former Controller has advised the Receiver that he believes ADP has remitted to CRA all amounts it received from Genfast relating to source deductions and employer contributions.

3.6.2 The Receiver has arranged for an audit to be performed by CRA on April 24, 2007.

### **3.7 Pension Premium Obligations**

3.7.1 The Receiver understands that the Company's pension plan contribution for March 2007, being \$241,216.67 based on the most recent actuarial report obtained by the Company, has not been remitted, as it was not due until 30 days after month end. In addition, the pension plan contribution for the period April 1 to 4, 2007 inclusive, which the Receiver estimates to be \$32,162.22 based on a pro-rated month amount, is also outstanding. Thus, outstanding pension plan contributions total \$273,378.89 as at April 5, 2007.

### **3.8 Other**

3.8.1 The Company's former Controller has advised the Receiver that, as at April 5, 2007, Workplace Safety & Insurance Board was owed approximately \$25,000. In addition, the Company had accrued approximately \$1,000 for unpaid Employer Health Tax (this liability relates to employees receiving long-term disability payments through GWL).

3.8.2 The Receiver has inquired of the Company's former Controller, who has advised that he is not aware of any claims made against any of the Company's directors and officers as at April 5, 2007 or which could be made against any of the Company's directors and officers other than as set out in this Report, which may give rise to a claim against the Directors' Charge. The Receiver has not yet had an opportunity to review the books and records of the Company, or contact any of the Company's former directors and officers, to confirm any claims made against the Company's directors and officers as at April 5, 2007.

### **3.9 Interim Distribution**

3.9.1 As previously discussed in paragraph 3.1.1 of this Report, the Applicant is seeking an Order that, if granted, would result in the Receiver making an interim distribution to former employees, in respect of claims for unpaid wages and 50% of unpaid vacation pay, with the latter interim distribution for vacation pay being treated as an advance against the authorized amount available under the Directors' Charge. Based on the balances outlined in Section 3.4 above and the Order being sought by the Applicants, the

Receiver would make an interim distribution of \$414,680.40 to the Company's former employees on account of their vacation pay claims, thereby reducing the amount remaining under the Directors' Charge to \$585,319.60.

- 3.9.2 There is a theoretical possibility that the treatment of the Vacation Pay Distribution as an advance against the Directors' Charge could result in the recipients of these funds being preferred as against other claimants against the Directors' Charge. This would occur if the aggregate amount of the Directors' Charge Claims, including the entire unpaid vacation pay amounts owing, exceeds \$2 million. In that situation, the pro rata amount available to claimants under the Directors' Charge Claims (other than in respect of vacation pay) would be less than 50%. Based on the Company's books and records, and comments from former Company management, it would appear that Directors' Charge Claims are not likely to exceed \$2 million (the aggregate amount of the liabilities outlined above, ignoring unpaid wages, for which specific dollar amounts are provided total \$1,212,186.45). However, in the absence of a formal claims process, there is no assurance that total Directors' Charge Claims will not exceed \$2 million. However, the Receiver believes that it is appropriate to weigh this theoretical risk against the real and substantial benefit that former employees of Genfast would obtain from the proposed interim distributions (i.e. avoiding the potential financial hardship that may be experienced by some former employees if these payments are further delayed). The proposed claims bar process for other Directors' Charge Claims although expedited will be subject to usual delay risk due to the possibility of disputed claims, appeals and the resolution thereof. Although the Receiver is not currently holding adequate funds to make the interim distribution and does not anticipate having adequate funds in the near future without funding, it is the Receiver's understanding that the Applicant is prepared to fund the Receiver amounts sufficient for the Receiver to make the proposed interim distributions as soon as practicable after the proposed Order is made and all applicable appeal periods have expired. For these reasons, the Receiver is prepared to recommend distribution of the interim distributions being proposed by the Applicant in respect of unpaid wages and the Vacation Pay Distribution.

#### **4.0 Marketing Process for Genfast Raw Materials Inventory**

- 4.1.1 The Company's records indicated that, as at April 5, 2007, its raw materials inventory, in the form of green and processed steel rod in coil form, had a book value in excess of \$2.1 million. The bulk of the raw materials are located on the Premises, with the balance being located at two third party processors or in-transit from a Thailand supplier in respect of prepaid raw materials.
- 4.1.2 The Receiver has prepared an information package (the "RMIP") that seeks proposals for the purchase of Genfast's raw material inventory, other than the in-transit inventory which is described in Section 4.1.5 below. A copy of the RMIP is attached hereto as **Appendix B**.
- 4.1.3 The Receiver has, with the assistance of former Company management, identified 12 parties it intends to distribute the RMIP to, which parties are either brokers, manufacturers of fasteners or former Genfast customers who signed agreements with Genfast to purchase "useable" and "merchantable" raw material inventory associated with their product. Given the specialized nature of the inventory, the Receiver believes that the significant cost associated with advertising the raw materials inventory to a broader market will outweigh the additional benefit, if any, that may be obtained and therefore the Receiver does not recommend a more general advertising of the raw material inventory.
- 4.1.4 As outlined in the RMIP, the Receiver intends to invite proposals from interested parties for the purchase of certain raw materials of Genfast on the following terms and conditions:
- The sale will be on an "as is, where is" basis;
  - The highest or any proposal will not necessarily be accepted;
  - En bloc proposals for the purchase of all of the raw material will be given special consideration;
  - The Receiver reserves the right to enter into an agreement to sell any or all of the raw materials prior to the stated deadline for submission of proposals;
  - All proposals must be received in writing by the Receiver, no later than 12:00 p.m. (EST) on Friday, May 4, 2007;
  - Upon acceptance of an offer, if any, the Receiver will notify the successful bidder in writing. The successful bidder must provide an immediate non-refundable deposit to the Receiver, by certified cheque or wire transfer, in an amount equal to ten percent of the purchase price; and
  - Any purchase of Genfast's raw materials will be completed in accordance with the provisions of the Receivership Order.
- 4.1.5 The Receiver will be conducting a separate, abridged invitation for proposals for that portion of the remaining raw materials which is in-transit from a supplier in Thailand, as

this inventory is currently located in the U.S. and is subject to high storage costs. The process, and sales terms, will be identical to that associated with the RMIP other than the number of potential purchasers who will be approached will be much smaller. As the inventory is very specialized, the Receiver recommends that only US based parties be approached so as to minimize freight and brokerage costs and the time period necessary to complete a transaction.

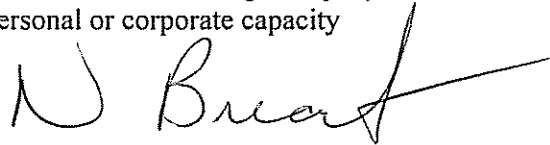
## 5.0 Summary and Recommendations

5.1.1 For the reasons outlined in this Report, the Receiver recommends that this Honourable Court:

- (i) approve this Report and the Receiver's activities and dealings with the Company's assets as described in this Report;
- (ii) approve the Receiver's proposed marketing process for the Company's raw material inventory as outlined herein, including the information package attached hereto as **Appendix B**; and
- (iii) approve the proposed interim distributions of unpaid wages and the Vacation Pay Distribution to the Company's former employees.

All of which is respectfully submitted this 20th day of April, 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

A Division of ABM AMRO Bank N.V., Canada Branch  
Applicant

and

Genfast Manufacturing Company

Respondent

Court File No: 07-CL-6926

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

Proceeding commenced at Toronto

**RECEIVER'S FIRST REPORT TO THE  
COURT DATED APRIL 20, 2007**

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