

SCHEDULE "G"

Court File No. 07-CL-6926

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) TUESDAY, THE 22<sup>nd</sup>  
 )  
MR. JUSTICE CAMPBELL ) DAY OF MAY, 2007

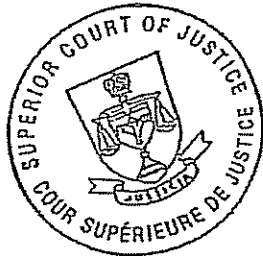
LASALLE BUSINESS CREDIT, A DIVISION OF  
ABN AMRO BANK N.V. CANADA BRANCH

Applicant

- and -

GENFAST MANUFACTURING COMPANY

Respondent



ORDER

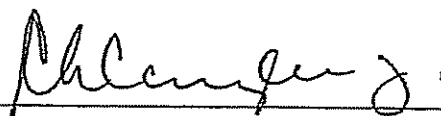
THIS APPLICATION, made by KPMG Inc. ("KPMG") in its capacity as receiver (the "Receiver") of all of the assets, undertakings and properties of Genfast Manufacturing Company ("Genfast") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Receiver's Second Report to the Court dated May 15, 2007 (the "Report"), filed, and on hearing the submissions of counsel for the Receiver; the Applicant; LaSalle Business Credit, a division of ABN Amro Bank N.V. Canada Branch ("LaSalle"); MNP Corporation ("MNP"); General Fasteners Corporation ("GFC") and Utica Leaseco, LLC ("Utica"),

1. THIS COURT ORDERS that the time for service of the Notice of Motion and Motion Record herein be and is hereby abridged such that this motion is properly returnable today and that all parties entitled to Notice of the motion have been duly served, that no other parties are affected by this Order and that any requirement for service of the Notice of Motion

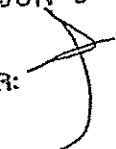
and Motion Record upon any party other than the parties served is unnecessary and hereby dispensed with and that the service of the Notice of Motion and Motion Record is hereby validated in all respects.

2. **THIS COURT ORDERS AND DECLARES** that all capitalized terms not otherwise defined herein shall have the same meaning as in the Report.
3. **THIS COURT ORDERS AND DECLARES** that the Report and the activities of KPMG as described in the Report, be and are hereby approved.
4. **THIS COURT ORDERS** that the marketing process, as described in the Report, and as amended to reflect that the Receiver will solicit expressions of interest for the Sale of Business Process and purchase/auction proposals for the Fixed Asset Sale/Auction Process which provide for both the inclusion and the exclusion of the Utica Lease One Equipment (the "Marketing Process"), and the corresponding amendments to the letters to prospective purchasers, the Sale of Business Information Package and the Fixed Asset Information Package, are hereby approved.
5. **THIS COURT ORDERS AND DIRECTS** that the Receiver and Genfast are hereby authorized and permitted to take any such steps and execute any such documentation as may be necessary or incidental to give effect to and implement the Marketing Process.
6. **THIS COURT ORDERS** that the timetable attached hereto as Schedule "A" for the resolution of the priority issue with respect to the Utica Lease One Equipment and the inclusion or exclusion of the Utica Lease One Equipment in or from the Marketing Process, be and is hereby approved.



ENTERED AT / INSCRIT À TORONTO  
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PER/PAR: 

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## SCHEDULE "A"

<b>Timetable</b>	
<b>Resolution of The Priority Issue With Respect to the Utica Lease One Equipment and the Inclusion Or Exclusion of the Utica Lease One Equipment in or from the Marketing Process</b>	
<b>June 4, 2007</b>	LaSalle serves responding materials
<b>June 11, 2007</b>	Utica serves reply materials, if any
<b>June 14, 2007</b>	Deadline for expressions of interest in the Sale of Business Process and proposals in the Fixed Asset/Sale Auction Process
<b>June 18, 2007</b>	Receiver provides copies of expressions of interest and proposals to LaSalle and Utica upon execution of confidentiality agreements
<b>Week of June 18, 2007</b>	Cross-examinations by LaSalle and Utica
<b>June 25, 2007</b>	Receiver serves Report regarding the Marketing Process
<b>June 29, 2007</b>	Utica serves reply materials regarding the Marketing Process, if any
<b>July 6, 2007</b>	Half-day motion for resolution of priority issue with respect to the Utica Lease One Equipment and if necessary, the inclusion or exclusion of the Utica Lease One Equipment in or from the Marketing Process

Court File No. 07-CL-6926

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GENFAST MANUFACTURING COMPANY

ONTARIO  
SUPERIOR COURT O  
(Commercial List)

Proceeding Commenced at TORONTO

**ORDER**  
Returnable May 22, 2007

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
Box 25, Commerce Court West  
Toronto, Ontario M5L 1A9

Milly Chow - LSUC #35411D  
Phone: (416) 863-2594

Michael McGray - LSUC #46679C  
Phone: (416) 863-4247  
Fax: (416) 863-2653

Solicitors for KPMG Inc. in its capacity as  
Receiver of the property, assets and undertaking of  
Genfast Manufacturing Company

**SCHEDULE "H"**

162

Court File No.: 07-CL-6926

**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

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

June 25, 2007

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  - Schedule "B" - Order of the Superior Court of Justice (Commercial List) dated March 8, 2007 (Initial Order)
  - Schedule "C" - Order of the Ontario Superior Court of Justice (Commercial List) dated April 5, 2007 (Bankruptcy Order)
  - Schedule "D" - Order of the Ontario Superior Court of Justice (Commercial List) dated April 5, 2007 (CCAA Termination Order)
  - Schedule "E" - First Report of the Receiver dated April 20, 2007 (without appendices or schedules)
  - Schedule "F" - Order of the Ontario Superior Court of Justice (Commercial List) dated April 24, 2007 (D&O Claims Process Order)
  - Schedule "G" - Second Report of the Receiver dated May 15, 2007 (without appendices or schedules)
  - Schedule "H" - Order of the Ontario Superior Court of Justice (Commercial List) dated May 22, 2007 (Marketing Process Order)
  - Schedule "I" - Information Package Included in Data Room
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  - Schedule "K" - Advertisements
  - Schedule "L" - Financial Information
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## *1.0 Introduction*

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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 hereto as Schedule "A", 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 8, 2007 were terminated. The Appointment Order was made pursuant to Sections 101 of the *Courts of Justice Act* (Ontario).
- 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 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 the Honourable Mr. Justice Campbell dated March 8, 2007 (the "Initial Order"), a copy of which is attached hereto 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").

1.2.5 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 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"), a copy of which is attached hereto as Schedule "C". The Bankruptcy Order, among other things, appointed KPMG Inc. as Trustee of the Estate of Genfast (the "Trustee"). By separate Order dated April 5, 2007 of the Honourable Mr. Justice Campbell, a copy of which is attached hereto as Schedule "D", the Court ordered that:

- the Company's CCAA proceedings 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) 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 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 hereto as Schedule "E", in order to advise the Court of:

- the initial activities of the Receiver, which included taking possession of, and securing, the premises;
- potential claims against the Directors' Charge (as defined in the First Report); and
- 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 hereto as Schedule "F" which, among other things:

- approved the Receiver's First Report and the Receiver's activities described therein;
- 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. In the case of the distribution for 50% of the vacation pay, the amount was to be treated as an advance against the Directors' Charge;
- approved the claims process to identify claims against the Directors' Charge; and
- approved the marketing process for the Company's raw material inventory.

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

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

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 hereto as Schedule "H", which, among other things:

- approved the Second Report and the Receiver's activities described therein;
- 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); and
- approved the timetable for the resolution of both the priority issue between the Applicant and 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.

#### 1.4 Purpose of this Report

1.4.1 The purpose of this Third Report of the Receiver to the Court is to report 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.

## 2.0 The Marketing Process

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### 2.1 Background

- 2.1.1 Pursuant to the Marketing Process Order, the Court approved the marketing process as set out in the Second Report with respect to Genfast's business and Genfast's machinery, equipment and office furniture and equipment (the "Fixed Assets"), as amended to provide for expressions of interest for the Genfast business (the "Expressions of Interest") and for purchase/auction proposals (the "Proposals") for Genfast's Fixed Assets to be submitted on the basis of both the inclusion and exclusion of the Utica Lease One Equipment. As set out in the Second Report, the Fixed Assets were to be divided into lots such that each lot corresponded to the equipment that a party either has, or is asserting an interest over. The Marketing Process Order also approved the form of information package, to be circulated to prospective purchasers/auctioneers (the "Information Package") including the substantive terms under which Genfast's business and Fixed Assets were being offered. A copy of the Information Package is attached hereto as Schedule "I".
- 2.1.2 As described in the Second Report and the Marketing Process Order, the Receiver conducted two separate marketing processes: one to solicit Expressions of Interest pursuant to the Sale of Business Process and the second to solicit Proposals to purchase/auction Genfast's Fixed Assets in the Fixed Asset Sale/Auction Process. The Receiver commenced the Sale of Business Process approximately one (1) week prior to the Fixed Asset Sale/Auction Process given the additional complexities associated with submitting Expressions of Interest to purchase the business so that the deadline for the submission of Expressions of Interest under the Sale of Business Process was the same as for the submission deadline for Proposals under the Fixed Asset Sale/Auction Process. The Receiver identified, either itself or based on input from former Company management and the Monitor, fourteen (14) auctioneers or other parties involved in the North American fastener industry to receive the Information Package associated with either the Sale of Business Process or the Fixed Asset Sale/Auction Process. The Receiver did not include parties who had expressed interest in only a few specific assets. In the Sale of Business Process, a "teaser" letter was initially distributed to prospective purchasers, a copy of which is attached hereto as Schedule "J", with the Information Package subsequently distributed to them once they had executed confidentiality agreements. In addition, the Receiver placed advertisements in The Globe and Mail on Thursday, May 17, 2007, to notify prospective purchasers of the Invitation for Proposals to Purchase the Business of Genfast, and in The Globe and Mail newspaper on Friday, May 25, 2007, to notify prospective purchasers/auctioneers of the Invitation for Proposals to Purchase/Auction Genfast's Fixed Assets. Copies of these advertisements are attached hereto as Schedule "K". As a result of these advertisements, during the period May 17 to June 13, 2007, the Receiver was contacted by an additional twenty-seven (27) parties.

- 2.1.3 A total of eight (8) parties received the Information Package pursuant to the Sale of Business Process, with four (4) of these parties subsequently visiting Genfast's Brantford premises to view the Fixed Assets and access a data room containing selected financial information, an outline of which is attached hereto as Schedule "L". With respect to the Fixed Asset Sale/Auction Process, thirty-two (32) parties received the Information Package, with ten (10) subsequently visiting Genfast's Brantford premises to view the Fixed Assets.
- 2.1.4 The Information Package for the Fixed Asset Sale/Auction Process contemplated that all Proposals must provide an allocation for each "Lot" of assets under the following scenarios: (i) an auction on a straight commission basis; (ii) an auction on a net minimum guarantee ("NMG") basis; and (iii) an outright or direct purchase of the Fixed Assets.
- 2.2 Results of the Marketing Process
- 2.2.1 The Marketing Process resulted in the submission of five (5) Proposals, all of which contemplated an outright purchase and/or auction of the Fixed Assets. There were no Expressions of Interest for the purchase of Genfast's business. Notwithstanding the instructions in the Information Package, none of the five (5) Proposals included a straight commission Proposal and two (2) of the Proposals did not contain an outright purchase Proposal (ie. the Receiver received five (5) NMG auction Proposals and three (3) outright purchase Proposals).
- 2.2.2 The Receiver has reviewed the Proposals and has contacted a number of the interested parties, including the highest bidder, to clarify certain terms in their Proposals and hopes to complete this process shortly. The Receiver anticipates returning to Court to seek approval of an auction services agreement with the successful bidder thereafter. At that time, the Receiver will provide a summary and analysis of the Proposals submitted and its recommendations with respect to the same.

### *3.0 Utica Lease One Equipment*

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- 3.1.1 As more particularly described in the Second Report, the Applicant and Utica Leaseco, LLC ("Utica") are both asserting priority in the Utica Lease One Equipment.
- 3.1.2 Utica has asserted that the Bank has subordinated or waived any interest it may have in the Utica Lease One Equipment by virtue of an email from the Applicant to Utica which Utica asserts is a subordination by the Applicant in favour of Utica in respect of the Utica Lease One Equipment.
- 3.1.3 The Applicant has denied that the subordination is effective against the Applicant and Utica and the Bank have filed materials with the Court in respect of their respective positions on the purported subordination in accordance with the Marketing Process Order. For the reasons indicated in the Second Report, the Receiver takes no position on the dispute between the parties related to the purported subordination by the Bank.
- 3.1.4 On May 22, 2007 the Receiver brought a motion seeking the Court's approval of the proposed marketing process as outlined in the Second Report, which proposed marketing process included the sale by the Receiver of the Utica Lease One Equipment.
- 3.1.5 Pursuant to the Marketing Process Order, which is attached to this Third Report as Schedule "H", the Court approved the marketing process as described in the Second Report, as amended to reflect that the Receiver would solicit Expressions of Interest for the Sale of Business Process and Proposals for the Fixed Asset Sale/Auction Process which provide for both the inclusion and exclusion of the Utica Lease One Equipment.
- 3.1.6 The Marketing Process Order also approved the timetable for the resolution of both the priority issue between the Applicant and 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. As indicated above, both Utica and the Bank have filed affidavit evidence with the Court supporting their respective positions on the purported subordination.
- 3.1.7 If the Receiver concludes an agreement with the highest bidder, it will result in there being equity available to the Genfast estate over and above the indebtedness owing to Utica under Utica Lease One. This constitutes clear evidence of value to the Genfast estate resulting from the Utica Lease One Equipment being sold pursuant to the Marketing Process. Accordingly, it is the Receiver's position that the Utica Lease One Equipment should be included in the Fixed Assets transaction involving the successful bidder, even if Utica is determined by the Court to have priority over the Utica Lease One Equipment as a result of the purported subordination by the Bank. The Receiver has advised Utica that there is equity in the Lease One Equipment.
- 3.1.8 Because the Marketing Process has demonstrated that the Utica Lease One Equipment is worth more than the what is purported to be owed to Utica under Utica Lease One, it is the Receiver's view that the creditors of Genfast will be prejudiced if Utica were to be permitted to repossess the Utica Lease One Equipment. For the reasons already set out in

the Second Report (as summarized below), it is the Receiver's view that the Utica Lease One is a financing lease. Therefore, any equity in the Utica Lease One Equipment is for benefit of Genfast's other creditors and not Utica.

- 3.1.9 As set out in the Second Report, based on the advice of the Receiver's counsel, the Receiver is of the view that Ontario law governs the determination of whether the Utica Leases, including Utica Lease One, is a true or financing lease (both as defined in the Second Report). A copy of the Utica Lease One is attached as Schedule "M" to this Third Report.
- 3.1.10 As further set out in the Second Report, the Receiver is of the view that the Utica Lease One is a financing lease and is not a true lease based on the following factors:
- Utica Lease One is a type of financing vehicle known as a sale and lease back transaction. The Utica Lease One Equipment was sold by Genfast to Utica. Utica then leased the equipment back to Genfast. The sale and lease back arrangement is evidenced by the Asset Purchase Agreement dated December 20, 2006 between Genfast, as seller, and Utica, as purchaser, which is appended to Utica Lease One, and is also confirmed by Utica's counsel.
  - Utica Lease One provides for a "Fixed Rent" component and a "Rent Factor" component. The two components taken together equal the "Total Leasehold Rent". The Fixed Rent for Utica Lease One is \$930,000. This is also the amount of the "Asset Purchase Price" paid by Utica to Genfast as set out in the Asset Purchase Agreement annexed to Utica Lease One. The Rent Factor set out in Utica Lease One is \$257,787.38. The Total Leasehold Rent for Utica Lease One is \$1,187,787.38.
  - In the Receiver's view, the Fixed Rent represents the principal amount of the loan and the Rent Factor represents the interest payable on the loan amount. Utica Lease One provides that the Rent Factor is to be paid in the following way: "Commencing as of December 20, 2006, 60 monthly installments of an amount equal to 2.5% plus the current prime interest rate, multiplied by the declining balance of the Fixed Rent, with the prime interest rate to be adjusted based upon movement in that prime rate as announced by Comerica Bank on the 1<sup>st</sup> day of January and the 1<sup>st</sup> day of July of each year (the "Rent Factor")" [emphasis added]. The amortization schedules setting out the "declining balance" is annexed to the Utica Lease One as "Exhibit B" thereto.
  - Genfast has an option to purchase the Utica Leased Equipment. The option to purchase in Utica Lease One can be exercised following payment of the Total Leasehold Rent plus \$46,500. Based on Genfast's books and records, the economic life of the Utica Leased Equipment would only be half exhausted at the end of the lease term. The purchase option at the end of Utica Lease One is equal to 5% of the total Fixed Rent amount as set out in the Utica Lease One (the total Fixed Rent amount being the purchase price for the Utica Lease One Equipment).

- In the event of a default, Utica Lease One provides for the automatic acceleration of all amounts owing by Genfast to Utica and there is provision for a "default rate" of interest on the "entire outstanding balance".
- 3.1.11 For the foregoing reasons, the Receiver advised the Court in its Second Report that in its view the Utica Lease One is a financing lease which is subject to the provisions of the PPSA.
- 3.1.12 Although Utica has indicated that it disagrees with the Receiver's view that the Utica Lease One as a financing lease, it has not to date filed any evidence challenging the Receiver's characterization of Utica Lease One as a financing lease.
- 3.1.13 The Marketing Process Order and timetable provided that a summary of the bids, along with copies of the actual Proposals, would be made available to the Bank and Utica upon execution by each of them of a confidentiality agreement (the "Confidentiality Agreement").
- 3.1.14 On or about June 11, 2007, as required under the Marketing Process Order, the Receiver's counsel circulated a draft of the Confidentiality Agreement required by the Receiver to be executed by the Bank and Utica before disclosure of the details of the Proposals. In accordance with a Confidentiality Agreement executed by the Bank, the Bank was provided copies of the Proposals and a preliminary summary and analysis thereof as prepared by the Receiver. The Receiver is prepared to provide Utica with the same information forthwith upon execution by Utica of a Confidentiality Agreement.
- 3.1.15 Utica has requested that MNP and General Fasteners also execute a similar form of Confidentiality Agreement in order to obtain disclosure as purported second and third ranking secured creditors and in order to allow Utica, MNP and General Fasteners to disclose the confidential information among themselves given that the companies are related and share common directors and officers. The Receiver has agreed with this request.
- 3.1.16 While there is substantial agreement on the form of Confidentiality Agreement to be executed by Utica, MNP and General Fasteners, one outstanding issue remains unresolved as at the date of this Third Report. This outstanding issue relates to concerns that MNP and General Fasteners have that the form of Confidentiality Agreement requested by the Receiver would preclude them from asserting an adequate defence to the litigation commenced by the Bank against them and others in Michigan. To address this issue, the Receiver had proposed that the parties be entitled to disclose confidential information obtained pursuant to the Confidentiality Agreement in such litigation as long as such disclosure was made on a sealed basis so that the confidential information remained confidential. However, it appears that the ability to seal this type of information is limited in Michigan and the Receiver has been advised by Utica that this is not a viable solution. Utica, in response, proposed that it, MNP and General Fasteners be entitled to disclose confidential information in their "sole discretion, in the defence or prosecution of litigation or other adversarial proceeding in which one or more of them are a party," including the existing litigation commenced by the Bank in Michigan.

However, this proposed provision is not acceptable to the Receiver as it would render the purpose of the Confidentiality Agreement moot. The Receiver understands that the respective US counsel involved in the Michigan litigation are attempting to come up with a solution that addresses the Receiver's objective of preserving confidentiality without prejudicing any party's ability to adequately defend itself in the Michigan litigation and the Receiver continues to work with Utica and the Bank towards finding a reasonable solution to the outstanding issue on the Confidentiality Agreement.

#### *4.0 Summary and Recommendations*

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- 4.1.1 Based on the results of the Marketing Process summarized above, the Receiver therefore respectfully requests that this Honourable Court grant 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.

All of which is respectfully submitted this 25<sup>th</sup> day of June, 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

THIRD REPORT TO THE COURT  
DATED JUNE 25, 2007

Blake, Cassels & Graydon LLP  
Barristers & Solicitors  
199 Bay St, Suite 2800  
Commerce Court West  
Toronto, ON M5L 1A9

Milly Chow LSUC#: 35411D  
Tel: 416-863-2594

Michael McGraw LSUC#: 46679C  
Tel: 416-863-4247

Fax: 416-863-2653

Solicitors for the Receiver