

SCHEDULE "I"

176

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

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

July 18, 2007

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1.0 Introduction

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 an unlimited 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 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.
- 1.2.3 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 "CCAA Termination Order"), 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 (each as defined in the April 24 Order). 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.

1.3.5 Pursuant to the Marketing Process Order, the Receiver prepared its Third Report to the Court dated June 25, 2007 (the "Third Report"), a copy of which is attached hereto as Schedule "I", 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.

1.4 Purpose of this Fourth Report

- 1.4.1 The purpose of this Fourth Report is to: (i) update the Court on the results of the Marketing Process; and (ii) update the Court regarding the D&O Claims Process (as defined below) as set out in the April 24 Order.
- 1.4.2 This Fourth Report is also in support of the Receiver's request for an Order, among other things:
- approving the Third Report and this Fourth Report and the activities of the Receiver described in both Reports;
 - approving the auction services agreement between Maynards Industries Ltd. (the "Successful Bidder"), and the Receiver (the "Auction Services Agreement") and the transactions contemplated therein (the "Transactions");
 - authorizing, empowering and directing the Receiver to perform the Auction Services Agreement and complete the Transactions in accordance with the terms and conditions of the Auction Services Agreement, including, taking such steps, actions and proceedings as are, in the opinion of the Receiver, necessary or incidental to perform its obligations under the Auction Services Agreement with such alterations, amendments, deletions and additions thereto of an immaterial nature as the parties thereto may agree to;

- declaring that the terms of the Auction Services Agreement and the consideration set out in the Auction Services Agreement are fair and commercially reasonable and were arrived at in a commercially reasonable manner;
- declaring 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 (as defined in the Second Report), shall be sold in the Auction (as defined in the Auction Services Agreement) sale and/or by Private Sale (as defined in the Auction Services Agreement) by the Successful Bidder as contemplated by the Auction Services Agreement free and clear of and from any and all security interests, mortgages, charges, hypothecs, estates, trusts or deemed trusts (whether contractual, statutory or otherwise), liens (whether contractual, statutory or otherwise), claims, charges, encumbrances or any other rights, rights of use, claims, disputes and debts of any person or entity of any kind whatsoever whether legal or equitable, of all persons or entities of any kind whatsoever (collectively, the "Encumbrances"), including, but not limited to, any Encumbrances held by or in favour of the parties or entities which are served or whose solicitors are served with the Notice of Motion to approve the Auction Services Agreement;
- directing 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 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 the Successful Bidder 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;
- declaring that all Assets sold pursuant to the Auction Services Agreement are exempted from the application of the *Bulk Sales Act*, R.S.O. 1990, c. B-14, as amended, and any other applicable bulk sales legislation in any jurisdiction in which the Assets are situated, and that any such legislation does not apply to the Assets, the Auction Services Agreement and the Transactions;
- directing that, notwithstanding the pendency of these proceedings, the Bankruptcy Order and the provisions of any federal or provincial statute, the Auction Services Agreement and the Transactions shall not be void or voidable and do not constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the BIA or any other applicable federal or provincial legislation and they do not constitute conduct meriting an oppression remedy;
- directing that Schedules "L" to "U" to this Fourth Report be temporarily sealed until the completion of the Auction (as defined below) sale and/or Private Sale of the

Assets as contemplated in the Auction Services Agreement or until further Order of this Court;

- directing that details of the Net Minimum Guarantee (as defined below) and other consideration set out in the Auction Services Agreement, including the allocations to the lots of Assets set out in Schedule "C" to the Auction Services Agreement (collectively, the "Consideration Information") be temporarily sealed until completion of the Auction sale and/or Private Sale of the Assets as contemplated in the Auction Services Agreement or until further Order of this Court. A copy of the Auction Services Agreement with the Consideration Information redacted is attached to this Fourth Report as Schedule "J", with an unredacted copy to be filed with the Court prior to the return of the Receiver's motion;
- declaring that the Non-Pension Appealed Claims (as defined below), 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; and
- directing and authorizing the Receiver to establish the Disputed Pension Claims Reserve (as defined below) until adjudication or resolution of such Disputed Pension Claims (as defined below) and 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 below), all as more particularly set out in Schedule "FF" to the Fourth Report
- directing and authorizing the Receiver to distribute from funds on hand, the Residual Unpaid Wages (as defined below) to former Genfast Employees so entitled.

2.0 Results of Marketing Process

2.1 Marketing Process

- 2.1.1 The Third Report outlined the preliminary results of the Marketing Process that was approved by the Marketing Process Order.
- 2.1.2 Pursuant to the Marketing Process, prospective purchasers/auctioneers were provided with an information package approved by the Marketing Process Order, which, among other things, set out the substantive terms under which Genfast's business and Fixed Assets were being offered under the Sale of the Business Process and under the Fixed Asset Sale/Auction Process (the "Terms and Conditions"). A copy of the Information Package in respect of the Fixed Assets Sale/Auction Process, including the related Terms and Conditions and teaser letter, is attached to this Fourth Report as Schedule "K" (the "Information Package").
- 2.1.3 Pursuant to the Marketing Process, the Receiver received no Expressions of Interest for the Genfast business and five (5) Proposals which contemplated an outright purchase and/or auction of Genfast's Fixed Assets.

2.2 Sale of Business Process

- 2.2.1 As disclosed in the Third Report, pursuant to the Marketing Process the Receiver received no Expressions of Interest for the Genfast business by the June 14th deadline.
- 2.2.2 Subsequent to the June 14th deadline, the Receiver was verbally contacted by two parties expressing an interest in the Genfast business ("Late Interested Party 1" and "Late Interested Party 2", collectively, the "Late Interested Parties"). The Late Interested Parties did not participate in the Marketing Process and had not therefore executed confidentiality agreements nor conducted any due diligence on the Genfast business.
- 2.2.3 Late Interested Party 1 contacted the Receiver on or about June 25, 2007, which was after the Receiver had accepted the Initial Superior Proposal for the Fixed Assets as discussed below. At that time, Late Interested Party 1 advised the Receiver that it was acting as an agent for an unnamed principal. During that discussion the Receiver learned that the principal had limited financial resources available to complete a transaction for the Genfast business, which financial resources were substantially less than the amount of the aggregate net minimum guarantee amounts set out in most of the Proposals received for the Fixed Assets. After being advised of this, Late Interested Party I indicated that there was no point in conducting any due diligence on the Genfast business.

2.2.4 On or about June 29, 2007, Late Interested Party 1 again contacted the Receiver to advise the Receiver that it was now the principal and that it had more financial resources available. That same day, Late Interested Party 2 also contacted the Receiver about whether the Genfast business was still available. The Receiver subsequently also received telephone inquiries from an investment banker and a representative of the Ministry of Economic Trade and Development following up on the interest of the Late Interested Parties.

2.2.5 The Receiver responded to the Late Interested Parties, the investment banker and the Ministry representative that it had accepted an offer for the Fixed Assets of Genfast and that those assets were therefore no longer available. The Receiver has had no further discussions with the Late Interested Parties or their representatives since that time.

2.3 Fixed Assets Sale/Auction Process

2.3.1 As summarized in the Third Report, pursuant to the Marketing Process five (5) Proposals were received in respect of the Fixed Assets by the June 14th deadline. Attached to this Fourth Report as Schedule "L" is a summary of the five (5) Proposals received by the Receiver under the Initial Marketing Process, together with copies of the actual Proposals as submitted. Schedule "L" is not included in the copy of this Report which is being served on the service list, but will be provided to the Court prior to the return of this motion, as the Receiver will be asking the Court to seal this Schedule until the auction of the Assets (the "Auction") or Private Sale as contemplated in the Auction Services Agreement has been completed or until further Order of this Court. The Receiver is requesting a sealing order for this Schedule, together with Schedules "M" to "U" to this Fourth Report, because the Receiver believes that the non-disclosure of the information contained in these Schedules is appropriate given the circumstances surrounding the Marketing Process and the Successful Bidder as described below and that disclosure of such information into the public domain at this time prior to completion of the Auction would impair realizations in the event that the Auction Services Agreement is not approved or the Transactions contemplated by the Auction Services Agreement do not proceed.

2.3.2 In reviewing the Proposals received from interested parties (the "Bidders"), the Receiver took into account the net minimum guarantee (the "Net Minimum Guarantee") and other factors that impact the amount of net proceeds that would be available to the Receiver from the Proposals, such as the amount of commission and fees requested by the Bidders, the sharing of proceeds above the Net Minimum Guarantee and the time requested by the Bidders to prepare for and conclude an auction of the Fixed Assets, which factors materially impact the amount of net proceeds that will be available for distribution to the Genfast creditors.

2.4 The Initial Superior Proposal

- 2.4.1 Upon review of the five (5) Proposals, the Receiver came to the conclusion that the Proposal (the "Initial Superior Proposal") submitted by the successful Bidder (the "Successful Bidder") as identified as such in Schedule "L" represented the best opportunity for Genfast's creditors to maximize recoveries from the Fixed Assets of Genfast.
- 2.4.2 Schedule "L" also includes a breakdown of the Net Minimum Guarantee allocations for the Utica Lease One Equipment and Utica Lease Two Equipment (as defined in the Second Report) for those Proposals where the Bidder was prepared to provide such information. The Initial Superior Proposal summarized on Schedule "L", reflects a correction by the Successful Bidder to the allocations between the Fixed Assets in Lots #1 (the Utica Lease One Equipment) and #3 set out in the original Proposal submitted by the Successful Bidder to reflect an increased allocation to the Fixed Assets in Lot #1 and a corresponding reduction in the original allocation given by the Successful Bidder to Lot#3.
- 2.4.3 Attached to this Fourth Report as Schedule "M" is a graph summarizing the estimated gross recoveries to Genfast's estate with respect to the various Proposals received from the Bidders including the Initial Superior Proposal. As indicated above, Schedule "M" is not included in the copy of this Report which is being served on the service list but will be provided to the Court prior to the return of this motion, as the Receiver will be asking that the Court seal this Schedule until the Auction sale and/or Private Sale of the Assets as contemplated in the Auction Services Agreement has been completed or until further Order of this Court.
- 2.4.4 Attached to this Fourth Report as Schedule "N" is a graph summarizing the estimated net recoveries to Genfast's estate with respect to the various Proposals received from the Bidders including the Initial Superior Proposal, which is calculated on the basis of the estimated gross recoveries set out in Schedule "M" less the occupancy costs that the estate would incur under each Proposal. As indicated above, Schedule "N" is not included in the copy of this Report which is being served on the service list but will be provided to the Court prior to the return of this motion, as the Receiver will be asking that the Court seal this Schedule until the Auction sale and/or Private Sale of the Assets as contemplated in the Auction Services Agreement has been completed or until further Order of this Court.
- 2.4.5 On or about June 20, 2007, the Receiver verbally confirmed its acceptance of the Initial Superior Proposal with the Successful Bidder and the following day verbally advised the remaining Bidders that they were not the successful bidder. In accordance with the Terms and Conditions, the Receiver then formally confirmed its verbal acceptance of the Initial Superior Proposal in writing on or about June 27, 2007.
- 2.4.6 The Receiver prepared a form of auction services agreement incorporating the terms of the Initial Superior Proposal and circulated the auction services agreement to the

Successful Bidder's legal counsel for review and comment on or about June 22, 2007, with a view to finalizing the auction services agreement as soon as possible.

- 2.4.7 On or about June 22, 2007, the Successful Bidder advised the Receiver that it had understood that certain inventory (i.e. certain Mathread tooling inventory) was part of the Fixed Asset Sale/Auction Process and therefore had included this inventory in its Initial Superior Proposal. The Receiver advised the Initial Successful Bidder that it was not prepared to accept an amendment to the Initial Superior Proposal because these additional assets were not listed on the schedules to the Information Package on which Bidders were asked to submit Proposals and therefore did not form part of the Fixed Asset Sale/Auction Process. In fact, these assets had comprised part of the Raw Materials Inventory Marketing Process that had been approved by the April 24 Order.
- 2.4.8 Between June 22 and June 26, 2007, the Receiver and the Receiver's counsel attempted to obtain feedback on the form of auction services agreement from the Successful Bidder and/or its legal counsel but received no comments. On June 26, 2007, the Successful Bidder contacted the Receiver and verbally advised that it was withdrawing the Initial Superior Proposal, which was then subsequently confirmed by letter from legal counsel to the Successful Bidder. This led to a dispute between the Receiver and the Successful Bidder about whether the Successful Bidder was bound by the Initial Superior Proposal.
- 2.4.9 Between June 27 and July 3, 2007, respective legal counsel for the Receiver and the Successful Bidder exchanged various correspondence regarding whether or not the Initial Superior Proposal was a binding agreement between the Receiver and the Successful Bidder. The Receiver took the position that the Successful Bidder was bound by the Initial Superior Proposal. The Successful Bidder disagreed and took the position that the Initial Superior Proposal had been withdrawn by the Successful Bidder.
- 2.4.10 On or about July 3, 2007, on a without prejudice basis, the Receiver received a proposal from the Successful Bidder (the "Subsequent Proposal"). A copy of the Subsequent Proposal is attached to this Fourth Report as Schedule "O". As indicated above, Schedule "O" is not included in the copy of this Report which is being served on the service list, but will be provided to the Court prior to the return of this motion as the Receiver will be asking that the Court seal this Schedule until the Auction sale and/or Private Sale of the Assets as contemplated in the Auction Services Agreement has been completed or until further Order of this Court.
- 2.4.11 Based on the Receiver's analysis of the Subsequent Proposal, the Receiver concluded that the Subsequent Proposal was materially superior to the Proposals of the other Bidders and that there was an opportunity for the Receiver to end up at or close to the same net consideration as it would have received under the Initial Superior Proposal. The Receiver believed that there was an opportunity to reach a deal with the Successful Bidder that would still maximize recoveries for the Genfast creditors while preserving any claims it may have against the Successful Bidder in respect of the Initial Superior Proposal.

2.4.12 Without prejudice to the Receiver's position that the Initial Superior Proposal constituted a binding agreement and while reserving all of its rights and remedies against the Successful Bidder for any losses and damages suffered by the Receiver and the Genfast estate resulting from what the Receiver considered to be a repudiation of the Initial Superior Proposal, the Receiver entered into discussions with the Successful Bidder with respect to the parameters of an acceptable proposal to the Receiver.

2.4.13 The Receiver required as a condition to any discussions with the Successful Bidder that the Successful Bidder and its financial partners execute a confidentiality agreement with respect to any discussions and/or correspondence respecting the terms of any proposal. The reason for this condition was that the Receiver was concerned that the level of information regarding the dispute between the Receiver and the Successful Bidder in respect of same that was circulating in the marketplace was threatening to compromise the integrity of the process.

2.5 The Subsequent Superior Proposal

2.5.1 Upon receipt of executed confidentiality agreements from the Successful Bidder and its financial partners, the Receiver and the Successful Bidder entered into without prejudice discussions with respect to the parameters of a proposal for the Fixed Assets. On or about July 5, 2007, the Successful Bidder submitted a proposal (as amended through subsequent negotiations, the "Subsequent Superior Proposal"), a copy of which is attached hereto as Schedule "P". The Subsequent Superior Proposal remained expressly subject to the execution of an auction services agreement. As indicated above, Schedule "P" is not included in the copy of this Report which is being served on the service list, but will be provided to the Court prior to the return of this motion as the Receiver will be asking that the Court seal this Schedule until the Auction sale and/or Private Sale of the Assets as contemplated in the Auction Services Agreement has been completed or until further Order of this Court.

2.5.2 The Receiver and the Successful Bidder continued to negotiate the terms and conditions of the auction services agreement and on or about July 13, 2007, the Receiver and the Successful Bidder executed the Auction Services Agreement, which was held in escrow pending receipt of the advance deposit of 15% of the Net Minimum Guarantee amount specified in the Auction Services Agreement (the "Advance") required under the terms of the Auction Services Agreement. The Receiver confirms receipt of the Advance and that the Auction Services Agreement has been released from escrow.

2.5.3 Under the Auction Services Agreement, the Receiver has reserved all of its rights and remedies against the Successful Bidder to claim for any damages and other losses arising as a result of the Successful Bidder's repudiation of the Initial Superior Proposal.

3.0 *The Auction Services Agreement*

3.1.1 The key terms of the Auction Services Agreement are as follows:

- the Successful Bidder will auction and/or sell by private treaty sale the Assets which are defined in the Auction Services Agreement as those Fixed Assets listed in Schedule "A" to the Auction Services Agreement and all machine and equipment tooling and dies (other than those listed in Schedule "B" to the Auction Services Agreement);
- from the net proceeds of the Auction sales and/or Private Sales (net of applicable taxes), the Receiver will be paid a Net Minimum Guarantee amount in respect of the three separate lots of assets listed in Schedule "C" to the Auction Services Agreement;
- the Successful Bidder is to provide to the Receiver an Advance on the Net Minimum Guarantee in an amount equal to 15% of the aggregate Net Minimum Guarantee amount payable to the Receiver under the Auction Services Agreement. As noted above, the Receiver confirms receipt of the Advance;
- the Auction will take place on a date to be selected by the Successful Bidder within 10 days of an order approving the Auction Services Agreement (the "Auction Order"), which date shall be no later than 150 days from the date of the Auction Order (the "Deadline Date");
- the Successful Bidder will be provided with free, unfettered and full access to the Genfast premises and to the Assets for a period beginning from the time the Auction Order is made to 11:59 p.m. on the Deadline Date;
- the Successful Bidder is required, at its own expense, to advertise the Auction in order to give adequate exposure to a global audience of purchasers, including, amongst other things, providing colour and e-brochures, targeting purchasers via direct mail and advertising the Auction on the Successful Bidder's website;
- the Successful Bidder is required to maintain public liability insurance with a recognized Canadian insurance company in the amount of no less than CDN\$5,000,000 for the Genfast premises for the duration of the Auction Services Agreement;
- the Successful Bidder is required to return the Genfast premises to its condition as at the commencement of the Auction and is responsible for repairs for any damages to the Genfast premises;
- the Successful Bidder will collect from purchasers of the Assets a buyers' premium in an amount not to exceed 12% of the sale price of each Auction Asset (the "Buyers' Premium") and, in the case of online sales, an additional 3% of the sale price of each Auction Asset sold online representing a commission paid to the third party service

provider conducting the online sale. The Buyers' Premium is to be split between the Receiver and the Successful Bidder;

- where the proceeds of sale are less than the Net Minimum Guarantee amount allocated for any lot of Assets, the Receiver is required to make up any deficiency from its portion of the Buyers' Premium up to a maximum aggregate amount of USD\$237,850.00. The Successful Bidder is required to make up any remaining deficiency between the proceeds of sale and the Net Minimum Guarantee amount for any lot from its own funds; and
- with regard to private treaty sales, the Successful Bidder is permitted to make contact with interested parties and professionals in the industry to explore the possibility of selling some or all of the Assets for proceeds greater than the Net Minimum Guarantee of such Assets, provided that the Successful Bidder obtains the approval of the Receiver for such private treaty sales.
- the Receiver and the Successful Bidder's obligations under the Auction Services Agreement are conditional upon (a) the whole of the Assets not being redeemed prior to the date of the Auction; (b) the Receiver obtaining the Auction Order; and (c) there being no order by any court of competent jurisdiction restraining the holding of the Auction. If the conditions are not satisfied, the Successful Bidder is entitled to reimbursement of its out of pocket expenses incurred pursuant to the Auction Services Agreement.

4.0 Analysis of Proposals Received

4.1.1 For the reasons summarized below, the Receiver believes that the Subsequent Superior Proposal is the highest and best bid for the Assets.

4.2 Summary of Subsequent Superior Proposal

4.2.1 Attached hereto as Schedule "Q" is a summary of the Subsequent Superior Proposal as compared to the Proposals of the other Bidders. Schedule "V" includes a breakdown of the Net Minimum Guarantee allocations for the Utica Lease One Equipment and the Utica Lease Two Equipment where the Bidder was prepared to provide such information.

4.2.2 Attached hereto as Schedule "R" is a graph summarizing the estimated gross recoveries to Genfast's estate with respect to the various Proposals received from the Bidders, as compared to the Subsequent Superior Proposal.

4.2.3 Attached hereto as Schedule "S" is a graph summarizing the estimated net recoveries to Genfast's estate with respect to the various Proposals from the Bidders as compared to the Subsequent Superior Proposal, which is calculated on the basis of the estimated gross recoveries set out in Schedule "R" less the occupancy costs that the estate would incur under each Proposal.

4.2.4 Attached hereto as Schedule "T" is a graph summarizing a comparison of the Initial Superior Proposal and Subsequent Superior Proposal.

4.2.5 As indicated above, Schedules "Q" to "S" are not included in the copy of the Report which is being served on the service list, but will be provided to the Court prior to the return of this motion as the Receiver will be asking that the Court seal this Schedule until the Auction sale and/or Private Sale of the Assets as contemplated by the Auction Services Agreement has been completed or until further Order of this Court.

4.3 Receiver's Recommendation

4.3.1 In reviewing the Proposals received, the Receiver took into account the Net Minimum Guarantee and other factors which impact the amount of net proceeds payable to the Receiver, such as the amount of commission and fees requested by the potential auctioneer, the sharing of proceeds above the Net Minimum Guarantee and the time requested by the potential auctioneer to prepare for and conclude an auction of the Assets, which factors materially impact the amount of net proceeds that will be available for the Genfast creditors.

4.3.2 It is the Receiver's view that the Subsequent Superior Proposal represents the best opportunity to maximize recoveries for the Assets. While the circumstances surrounding the Initial Superior Proposal were less than ideal, the Receiver, in consultation with its legal counsel and the Bank, considered and weighed various options in light of the dispute with the Successful Bidder in respect of the Initial Superior Proposal, including the option of pursuing a claim in respect of the Initial Superior Proposal while pursuing

the next highest Bidder. The Receiver carefully analyzed the Proposals submitted by the other Bidders and concluded that if the Receiver was able to preserve any claim in respect of the Initial Superior Proposal, it was still in the best interests of the creditors of Genfast to preserve a transaction with the Successful Bidder on different although still materially superior economic terms as compared to the other Bidders. In reaching this conclusion, which resulted in the Receiver not opening up the process to the other Bidders, the Receiver considered that the Subsequent Superior Proposal was materially superior to the other Proposals of the other Bidders in all material respects, i.e. aggregate Net Minimum Guarantee amount, sharing of Buyer's Premium, quantum of auctioneer's expenses and sharing of upside after the payment of the auctioneer's expenses. In the Receiver's view, pursuing the Subsequent Superior Proposal with the Successful Bidder, while expressly reserving the Receiver's right to pursue any claim against the Successful Bidder in connection with the Initial Superior Proposal to the extent that there was any difference in the net proceeds payable to the Receiver between the two proposals, was the best opportunity in the circumstances to maximize realization for the Assets.

- 4.3.3 The aggregate Net Minimum Guarantee amount under the Subsequent Superior Proposal is lower than the Net Minimum Guarantee Amount under the Initial Superior Proposal. If the gross proceeds of sale are less than the Net Minimum Guarantee amount under the Initial Superior Proposal, the Subsequent Superior Proposal will be inferior to the Initial Superior Proposal. However, if the gross proceeds of sale are equal to or higher than the original Net Minimum Guarantee amount under the Initial Superior Proposal, the Subsequent Superior Proposal would be superior to the Initial Superior Proposal. In either scenario, as discussed earlier, the aggregate Net Minimum Guarantee amount and other consideration parameters under the Subsequent Superior Proposal rendered the Subsequent Superior Proposal a materially superior proposal from the Proposals of the other Bidders.
- 4.3.4 The Net Minimum Guarantee allocation in respect of the Utica Lease One Equipment (Lot #1) is US\$250,000 less than the allocation given to it under the Initial Superior Proposal but is still superior to the allocations provided by the other Bidders. The Net Minimum Guarantee allocation in respect of the Utica Lease Two Equipment in the Subsequent Superior Proposal is US\$25,000 less than the allocation given to such equipment by one of the other Bidders. However, for the reasons articulated above the Subsequent Superior Proposal is a materially superior proposal from the Proposals of the other Bidders.
- 4.3.5 Based on the foregoing reasons, the Receiver is of the view that the Subsequent Superior Proposal is the best opportunity for Genfast's creditors to maximize recoveries from the Fixed Assets of Genfast. Accordingly, the Receiver and the Successful Bidder have executed the Auction Services Agreement which is attached hereto as Schedule "J", for which it seeks the approval by this Honourable Court. As described above, the Receiver will be seeking an Order that the Consideration Information be temporarily sealed until the completion of the Auction sale or Private Sale of the Assets as contemplated in the Auction Services Agreement or until further Order of this Court. An unredacted copy will be made available for the Court prior to the return of the Receiver's motion to approve the Auction Services Agreement.

4.3.6 Accordingly, the Receiver recommends the Court approve the Auction Services Agreement.

4.3.7 The Receiver understands the Bank supports the approval of the Auction Services Agreement.

5.0 Utica Lease One Equipment

5.1 The Priority Dispute

- 5.1.1 The Marketing Process Order 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 (as defined therein) should be included in any transaction the Receiver recommends to the Court pursuant to the Marketing Process. As indicated in the Third Report, both Utica and the Bank have filed affidavit evidence with the Court supporting their respective positions on the purported subordination.
- 5.1.2 Given the delay in the Marketing Process, Utica Leaseco, LLC ("Utica") and the Bank agreed to adjourn cross examinations as set out in the May 22 Order and the hearing of the priorities issue originally scheduled for July 6th until July 25th.
- 5.1.3 As indicated previously in this Fourth Report, the Net Minimum Guarantee amount allocated to the Utica Lease One Equipment under the Subsequent Superior Proposal is less than the allocation provided in the Initial Superior Proposal.
- 5.1.4 Based on the Receiver's calculations as set out below, there appears to be equity available to the Genfast estate over and above the indebtedness owing to Utica under Utica Lease One.

5.2 Equity Calculations in respect of Utica Lease One

- 5.2.1 As outlined in the Second Report, Utica had purchased the Utica Lease One Equipment from Genfast pursuant to a sale and leaseback financing arrangement on or about December 20, 2006 for a purchase price of US\$930,000. The Receiver notes that the Net Minimum Guarantee amount allocated to the Utica Lease One Equipment in the Auction Services Agreement materially exceeds the purchase price paid by Utica for the equipment.
- 5.2.2 Utica has provided the Receiver with its calculation of the indebtedness owing under Utica Lease One. The Receiver has requested, but has not yet received from Utica, a breakdown of Utica's calculation. Therefore, the Receiver reserves its right to dispute Utica's calculation of the amount of the indebtedness under Utica Lease One as provided to the Receiver, including the amount of legal costs being claimed by Utica. Assuming, however, that the amount of indebtedness provided by Utica is correct, based on the Net Minimum Guarantee amounts allocated to the Utica Lease One Equipment under the Auction Services Agreement, the Receiver has determined, based on the assumptions and calculations attached hereto as **Schedule "U"**, that there appears to be equity in the Utica Lease One Equipment. As summarized in **Schedule "U"**, on a gross sale proceeds basis at the Net Minimum Guarantee amount allocated to the Utica Lease One Equipment, there would be material equity available to the Genfast estate. On a net proceeds basis after deducting the anticipated Receiver's fees and expenses allocable to the Utica Lease One Equipment, there appears to be sufficient net proceeds to repay the Utica

indebtedness in full, with a small amount of equity remaining to Genfast. As described above, the Receiver will be seeking an Order that Schedule "U" be temporarily sealed until the completion of the Auction sale and/or Private Sale of the Assets as contemplated in the Auction Services Agreement or until further Order of this Court. A copy of Schedule "U" with certain information relating to the aggregate Net Minimum Guarantee Amount redacted has been provided to Utica.

- 5.2.3 In addition, the Receiver notes that it has reserved its ability to claim against the Successful Bidder in connection with the Initial Superior Proposal which, as set out in Schedule "L", contained a higher allocation of the Net Minimum Guarantee amount to the Utica Lease One Equipment than under the Subsequent Superior Proposal.
- 5.2.4 Based on the calculations set out in Schedule "U", the Receiver believes that there is value to the Genfast estate if the Utica Lease One Equipment is sold pursuant to the Auction Services Agreement. As stated above, on a gross sale proceeds basis, there would be material equity available to the Genfast estate. On a net proceeds basis, if the sale proceeds for the Utica Lease One Equipment under the Auction Services Agreement only reach the Net Minimum Guarantee amount allocated to such equipment, there would appear to be a small amount of equity available to Genfast in the Utica Lease One Equipment after deducting anticipated Receiver's fees and expenses. The amount of this equity will however increase if the sale proceeds for the Utica Lease One Equipment under the Auction Services Agreement exceeds the Net Minimum Guarantee amount. Accordingly, it is the Receiver's position that the Utica Lease One Equipment should be included in the Auction Services Agreement, 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. Based on the calculations set out in Schedule "U", the Utica Lease One Equipment appears to be worth at minimum at least what Utica is claiming it is owed pursuant to Utica Lease One and therefore the creditors of Genfast will be prejudiced if Utica were to be permitted to repossess the Utica Lease One Equipment since the creditors of Genfast will be denied the opportunity to receive any Genfast equity that may exist in such equipment.
- 5.2.5 For the reasons already set out in the Second Report and Third Report, 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 the benefit of Genfast's other creditors and not Utica.

5.3 The Proposed Utica/MNP/General Fasteners Confidentiality Agreement

- 5.3.1 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").
- 5.3.2 As the Receiver advised the Court in the Third Report, 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 has been provided with copies of the Proposals, the Initial Superior Proposal and the Subsequent Superior Proposal and a 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.

- 5.3.3 Utica had requested that MNP and General Fasteners also execute the 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 agreed with this request. A draft of the Confidentiality Agreement proposed by the Receiver is attached hereto as Schedule "V".
- 5.3.4 As reported in the Third Report, MNP and General Fasteners have not executed a Confidentiality Agreement because of its concerns 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, 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. Since the date of the Third Report, there has unfortunately been no progress on resolving this issue and therefore no Confidentiality Agreement has been executed by Utica, MNP or General Fasteners.

6.0 Remaining Assets of Genfast

- 6.1.1 In addition to the Assets, the following general categories of Genfast Property under the Receiver's control remain available for realization by the Receiver as at July 13, 2007:
- inventory, including raw materials, WIP and finished goods inventory (collectively, the "Inventory"), with an aggregate book value according to the Genfast's books (unaudited) at approximately Cdn\$3,853,000
 - accounts receivable (the "Receivables"), with an aggregate book value according to Genfast's books (unaudited) at approximately Cdn\$1.834 million and US\$2.338 million; and
 - miscellaneous machine and equipment tooling and dies as listed in Schedule "B" to the Auction Services Agreement.
- 6.1.2 The Receiver cautions that the book values listed above are not reliable indicators of the realizable value of the foregoing Property.
- 6.1.3 In addition to the foregoing Property, the Receiver is holding approximately Cdn.\$3.265 million and US\$1.229 million of cash on hand (including accrued interest to date) representing the proceeds of realizations to date, less the initial interim distributions made by the Receiver in respect of the Directors' Charge pursuant to the April 24 Order.
- 6.1.4 The Receiver is presently in negotiations with a number of parties with respect to the sale of certain of the Inventory pursuant to certain accommodation agreements that were entered into by the Company with former Genfast customers prior to the receivership and pursuant to the Raw Materials Inventory Marketing Process that was approved by the April 24 Order. The Receiver anticipates reporting to the Court separately on these efforts in due course.
- 6.1.5 The Receiver is presently in negotiations with a number of Genfast's former customers respecting payment of outstanding Receivables. A number of the Genfast former customers have asserted defences or set-offs. The Receiver is currently negotiating with these former customers for payment of these amounts. The Receiver anticipates that if satisfactory arrangements are not entered into, the Receiver may have to pursue legal action for collection of these Receivables. Some of these Receivables are connected to the aforesaid accommodation agreements. As the Receiver does not wish to prejudice these negotiations, the Receiver does not believe it appropriate at this time to disclose more detailed information about the status of these Receivables but intends to be reporting to the Court once these negotiations have been finalized or legal action for collection of these Receivables have commenced.

7.0 D&O Claims Process and Second Proposed Interim Distribution

7.1 The D&O Claims Process

- 7.1.1 Paragraph 22 of the Initial CCAA Order established a Directors' Charge in favour of the officers and directors of Genfast against the Property of Genfast in the amount of \$1,000,000.
- 7.1.2 Pursuant to the April 24 Order, this Court approved a process for the filing of D&O Claims against the Directors' Charge (the "D&O Claims Process").
- 7.1.3 In accordance with paragraph 15 of the April 24 Order, the Receiver caused the Newspaper Notice (as defined therein) to be published in the *Brantford Expositor* and *The Globe and Mail* (National Edition) on or about April 30, 2007. Attached as Schedule "W" to this Fourth Report is a copy of the Newspaper Notice published in each of such publications.
- 7.1.4 In accordance with paragraph 14 of the April 24 Order, on or about April 27, 2007, the Receiver sent to each former Genfast Employee (as defined in the April 24 Order) a blank form of the Proof of Claim and Instruction Letter, in the form approved by the April 24 Order, together with a statement setting out the Receiver's calculation of the amount owing to that former Genfast Employee in respect of unpaid Wages and Vacation Pay. In addition, the Receiver sent to each former Genfast Employee a letter advising the former Genfast Employees that their claims for unpaid Wages and Vacation Pay would be paid in accordance with the terms of the April 24 Order and explaining to the former Genfast Employees the D&O Process and that the Employees did not need to file Proofs of Claim under the D&O Process in respect of unpaid Wages and Vacation Pay if they were in agreement with the amounts calculated by the Receiver. Attached as Schedule "X" to this Fourth Report is a copy of the letter sent to each former Genfast Employee.

7.2 The Initial Interim Distribution of the Directors' Charge

- 7.2.1 In accordance with paragraph 4 and 6 of the April 24 Order, on or about May 29, 2007, the Receiver made a distribution from funds generated by the Receiver from asset realizations to each of the Employees (as defined therein) so entitled or as such former Genfast Employee may have directed, an amount equal to their unpaid Wages and 50% of each such former Genfast Employee's Vacation Pay (each as defined therein) as calculated by the Receiver. In addition, in accordance with paragraphs 5 and 7 of the April 24 Order, on or about June 1, 2007, the Receiver from funds generated by the Receiver from asset realizations made a distribution to Canada Revenue Agency ("CRA") in an amount equal to the applicable source deductions in respect of unpaid Wages and Vacation Pay that the Receiver was directed to distribute under the April 24 Order, as calculated by the Receiver. The aggregate amount distributed by the Receiver to both the former Genfast Employees and the CRA in respect of unpaid Wages and Vacation Pay, including applicable source deductions, was Cdn.\$251,964.81 and Cdn.\$414,680.45, respectively. Pursuant to paragraph 6 of the April 24 Order, distributions made by the Receiver on account of Vacation Pay, including applicable

source deductions, shall reduce the amount of the Directors' Charge in an equivalent amount.

7.3 Results of D&O Claims Process – Claims Received

7.3.1 As summarized in the attached Schedule "Y" to this Report, the Receiver has received a total 132 claims against the Directors' Charge by the Claims Bar Date set out in the April 24 Order. Many of these claims filed were in respect of claims by former Genfast Employees for unpaid Wages and Vacation Pay even though the Employees were not required to file a Proof of Claim under the April 24 Order if they agreed with the Receiver's calculation. Some of these Employees also asserted claims in respect of unpaid severance and termination pay amounts. In certain cases, as set out in the attached Schedule "Y", the amounts of the unpaid Wages and/or Vacation Pay claimed in the Proofs of Claim were slightly different than the amounts calculated by the Receiver based on the Company's books and records. However, given the costs of issuing Notices of Disallowances for de minimus amounts, the Receiver accepted the claimed amounts and is treating them as unpaid Wages since the bulk of the amounts related to same. The total of these amounts was approximately Cdn.\$94.18 (the "Residual Unpaid Wages"). The Receiver is proposing distribution of this amount from funds on hand. The Receiver has disallowed all claims for severance and termination pay for the reasons set out below.

7.3.2 The Receiver disallowed twenty-two (22) of these claims. Eight (8) of these claimants appealed their disallowances, six (6) of which are summarized and attached at Schedule "Z" to this Report and are in respect of claims by former Genfast Employees (the "Non-Pension Appellants") for severance and termination pay. These six (6) claims total Cdn.\$236,824 (collectively, the "Non-Pension Appealed Claims"). The remaining two (2) appeals are in respect of the Pension Claims and are discussed below.

7.3.3 In accordance with paragraph 13 of the April 24 Order, the Receiver has provided copies of each Proof of Claim and notices of appeal filed with the Receiver to counsel to the Bank and each of the Directors and Officers or their counsel as required under clauses (a) and (e) of paragraph 13 of the April 24 Order.

7.4 Non-Pension Appealed Claims

7.4.1 Subparagraph 3(g) of the April 24 Order defines a "D&O Claim" as:

"Any right or claim of any Person against any Officer or Director in its capacity as an Officer or Director which is indemnified by the Company pursuant to paragraph 21 of the Initial CCAA Order relating to the failure of the Company in respect of the period up to and including the Time of the Receivership to make any of the payments referred to subparagraphs 6(a), 8(a), 8(b), or 8(c) of the Initial CCAA Order, in respect of which the Director or Officer may be liable under any law in his or her capacity as a Officer or Director, except to the extent that, with respect to any Officer or Director, such Officer or Director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct."

7.4.2 It is the Receiver's position, based on advice from its legal counsel, that none of the Non-Pension Appealed Claims constitute a D&O Claim pursuant to the April 24 Order because severance and termination claims do not fall within the definition of D&O Claims for the following reasons:

- severance and termination pay does not constitute "wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses" payable in the ordinary course of business under paragraph 6(a) of the Initial CCAA Order and do not fall under any other payments under the other listed paragraphs for which the director or officer is indemnified under paragraph 21 of the Initial CCAA Order.
- the Non-Pension Appellants claim that the severance and termination amounts are owed to them by Genfast under contractual arrangements with Genfast or under statute and remain unpaid. No evidence has been submitted by the Non-Pension Appellants as to why the directors and/or officers of Genfast are liable for these amounts at law.
- directors and officers are not personally liable for severance and termination obligations unless their conduct amounted to the kind of misconduct specified by the quasi-criminal provisions of the applicable employment standards legislation. However, claims arising from such misconduct would not be indemnified by Genfast under paragraph 21 of the Initial CCAA Order which expressly contains an exception for breach of fiduciary duty, gross negligence and wilful misconduct.

7.4.3 The Non-Pension Appellants have been provided with notice of the Receiver's intention to dismiss the Non-Pension Appealed Claims and of the motion scheduled for July 25, 2007. A copy of the notice to the Non-Pension Appellants is attached as Schedule "AA" to this Fourth Report.

7.4.4 The Receiver seeks a declaration that none of the Non-Pension Appealed Claims constitute D&O Claims pursuant to the April 24 Order and that such Non-Pension Appealed Claims shall be forever barred and released against the Directors' Charge.

7.5 The Disputed Pension Claims

- 7.5.1 The remaining two appealed claims filed in the D&O Claims Process are 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 Administrator**") and 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**"). A copy of each of the claims filed by the Pension Administrator and FSCO are attached as Schedule "**BB**" and "**CC**" respectively to this Fourth Report.
- 7.5.2 The Receiver has disallowed the Disputed Pension Claims except for a small amount (Cdn.\$1509.14) in respect of contributions deducted by Genfast from Employee Wages prior to the Receiver's appointment but not remitted (the "**Deducted/Unremitted Pension Contribution Claim**"). The Receiver is proposing a partial distribution of the Deducted/Unremitted Pension Contribution Claim be made as part of the proposed second interim distribution of the Directors' Charge discussed below. Both the Pension Administrator and FSCO have filed appeals with the Receiver in accordance with subparagraph 13(d) of the April 24 Order. A copy of the Notices of Disallowance to the Pension Administrator and FSCO is attached to this Fourth Report as Schedule "**DD**" and "**EE**" respectively.
- 7.5.3 The Pension Administrator has also asserted a claim for the same amount pursuant to paragraph 8 of the CCAA Termination Order. In order to minimize time and cost and to avoid duplication of effort, the Receiver believes it is appropriate and cost efficient to deal with all the claims for the unpaid pension contributions at the same time. The Receiver is still in the process of reconciling the CCAA liabilities but hopes to complete this task shortly. In order to not delay any further distribution of the remaining Vacation Pay amounts to former Genfast Employees so entitled, the Receiver proposes that the Receiver be directed to distribute monies on account of the Directors' Charge claims for Vacation Pay from the balance of the Directors' Charge amount after reserving for the disallowed Disputed Pension Claims that are currently under appeal.

7.6 The Proposed Pensions Claims Reserve and Second Interim Distribution of the Directors' Charge

- 7.6.1 Therefore, the Receiver recommends that the Court authorize and direct the Receiver to establish a reserve in the amount of Cdn.\$248,502.98 in respect of the Disputed Pension Claims (the "**Disputed Pension Claims Reserve**") until adjudication or resolution of such Disputed Pension Claims and the balance of the Directors' Charge after deducting the Disputed Pension Claims Reserve, being Cdn.\$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, and (ii) the Pension 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 proposed second interim distribution of additional Vacation Pay amounts, applicable source deductions and the Deducted/Unremitted Pension Contribution Claim shall reduce the amount of the Directors' Charge in an equivalent amount. The Disputed Pension Claims Reserve is the amount asserted by each of the Plan Administrator and FSCO and not for the aggregate amount of such claims as the Pension Administrators and FSCO's claims are in respect of the same unpaid pension contributions.

- 7.6.2 The Receiver is proposing the establishment of the Disputed Pension Claims Reserve in order to facilitate earlier payment of the Vacation Pay claims to former Genfast Employees while adjudication or resolution of the Disputed Pension Claims remains outstanding. The purpose of the Disputed Pension Claims Reserve is to ensure that there will be sufficient funds to fund distribution of the Disputed Pension Claims if it is finally determined to be entitled to distribution by Court Order or settlement. The Disputed Pension Claims Reserve is not being held and shall not be deemed to be held in trust by the Receiver for the Disputed Pension Claims, the Pension Administrator or FSCO and will not be segregated by the Receiver.
- 7.6.3 Attached hereto as Schedule "FF" to this Fourth Report is a summary of the distributions made by the Receiver to date on account of the Directors' Charge and the proposed second interim distribution (i) to the former Genfast Employees so entitled, in partial payment of the remaining Vacation Pay claims, and (ii) to the Pension Administrator, in partial payment of the Deducted/Unremitted Pension Contribution Claim.
- 7.6.4 The Receiver understands that the Bank supports (i) the distribution of the Residual Unpaid Wages, (ii) the establishment of the Disputed Pension Claims Reserve, and (iii) the proposed second interim distribution of the Directors' Charge claims in respect of the outstanding Vacation Pay claims and Deducted/Unremitted Pension Contribution Claim, as set out in Schedule "FF" hereto.

8.0 Recommendations

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

- approving the Third Report and this Fourth Report and the activities of the Receiver described in both Reports;
- approving the Auction Services Agreement and the Transactions;
- authorizing, empowering and directing the Receiver to perform the Auction Services Agreement and complete the Transactions in accordance with the terms and conditions of the Auction Services Agreement, including, taking such steps, actions and proceedings as are, in the opinion of the Receiver, necessary or incidental to perform its obligations under the Auction Services Agreement with such alterations, amendments, deletions and additions thereto of an immaterial nature as the parties thereto may agree to;
- declaring that the terms of the Auction Services Agreement and the consideration set out in the Auction Services Agreement are fair and commercially reasonable and were arrived at in a commercially reasonable manner;
- declaring that all right, title and interest of Genfast in and to the Assets, including, without limitation, the Utica Lease One Equipment, shall be sold in the Auction sale and/or Private Sale by the Successful Bidder as contemplated by the Auction Services Agreement free and clear of and from any and all Encumbrances, including, but not limited to, any Encumbrances held by or in favour of the parties or entities which are served or whose solicitors are served with the Notice of Motion to approve the Auction Services Agreement;
- directing that the Sale Proceeds shall stand in the place and stead of the Assets and shall stand charged with all the Encumbrances 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 the Successful Bidder 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;

- declaring that all Assets sold pursuant to the Auction Services Agreement are exempted from the application of the *Bulk Sales Act*, R.S.O. 1990, c. B-14, as amended, and any other applicable bulk sales legislation in any jurisdiction in which the Assets are situated, and that any such legislation does not apply to the Assets, the Auction Services Agreement and the Transactions;
- directing that, notwithstanding the pendency of these proceedings, the Bankruptcy Order and the provisions of any federal or provincial statute, the Auction Services Agreement and the Transactions shall not be void or voidable and do not constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the BIA or any other applicable federal or provincial legislation and they do not constitute conduct meriting an oppression remedy;
- directing that Schedules "L" to "U" to this Fourth Report be temporarily sealed until the 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;
- directing that details of the Consideration Information 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;
- declaring that the Non-Pension Appealed Claims, 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; and
- directing and authorizing the Receiver to establish the Disputed Pension Claims Reserve until adjudication or resolution of the Disputed Pension Claims and to distribute from funds on hand the balance of the Director's Charge in the amount of Cdn.\$336,816.62 to: (i) former Genfast Employees so entitled, in partial payment of their Vacation Pay claims, and (ii) the Pension Administrator, in partial payment of the Deducted/Unremitted Pension Contribution Claim, all as more particularly set out in Schedule "FF" to this Fourth Report.
- directing and authorizing the Receiver to distribute from funds on hand, the Residual Unpaid Wages to the former Genfast Employees so entitled.

All of which is respectfully submitted this 18th day of July, 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.Y., Canada Branch Applicant Respondent

Court File No: 07-CL-6926

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FOURTH REPORT TO THE COURT
DATED JULY 18, 2007

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