

Schedule "U"

Court File No. 08-CL-7350

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

**KPMG INC., in its capacity as court-appointed
Receiver of Genfast Manufacturing Company, and not in its personal capacity**

Plaintiff

- and -

**GENERAL MOTORS CORPORATION,
GENERAL MOTORS OF CANADA LIMITED
GENERAL MOTORS DE MEXICO, S. de R. L. de C.V., SATURN CORPORATION,
SHANGHAI GENERAL MOTORS CO. LTD.
and GM DAEWOO AUTO & TECHNOLOGY CO.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

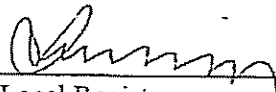
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING THE LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

DATE: January 14, 2008

Issued by



Local Registrar
Address of Court Office:
330 University Avenue, 7th Floor
Toronto, Ontario M5G 1R7

TO: GENERAL MOTORS CORPORATION
1209 Orange Street,
Wilmington, Delaware, 19801-1120

AND TO: GENERAL MOTORS OF CANADA LIMITED
1908 Colonel Sam Drive
Oshawa, Ontario, L1H 8P7

AND TO: GENERAL MOTORS DE MEXICO, S. de R. L. de C.V.
PO Box 9004
Warren, Michigan, 48090-9004

AND TO: SATURN CORPORATION
100 Saturn Parkway
Spring Hill, Tennessee , 37174-1500

AND TO: SHANGHAI GENERAL MOTORS CO. LTD.
1500 Shen Jiang Rd., Jin Qiao, Pu Dong
Shanghai, China
201206

AND TO: GM DAEWOO AUTO & TECHNOLOGY CO.
199-1 Cheongcheon-Dong, Bupyeong-Gu
Incheon 403-714
Korea

CLAIM

1. The plaintiff, KPMG Inc., in its capacity as court-appointed receiver (the "Receiver"), of Genfast Manufacturing Company ("Genfast"), claims from General Motors Corporation ("GM"), General Motors of Canada Limited ("GM Canada"), General Motors De Mexico S. de R.L. de C.V., ("GM Mexico"), Saturn Corporation ("Saturn"), Shanghai General Motors Co. Ltd. ("Shanghai") and GM Daewoo Auto & Technology Co. ("Daewoo", collectively with GM, GM Canada, GM Mexico, Saturn and Shanghai, the "Defendants") the amounts set out below:

- (a) from GM, the sum of \$267,362.94, plus an amount in Canadian currency sufficient to purchase US\$6,489.34 at a bank in Ontario listed in Schedule I to the *Bank Act* (Canada), at the close of business on the first day on which the bank quotes a Canadian dollar rate for purchase of such amount in US dollars before the day payment thereof is to be received by the Receiver, for amounts owing pursuant to the Purchase Orders (as defined below) in respect of Fasteners (as defined below) sold and delivered to GM;
- (b) from GM Canada, the sum of \$110,978.83 for amounts owing pursuant to the Purchase Orders in respect of Fasteners sold and delivered to GM Canada;
- (c) from GM Mexico, the sum of \$480,421.22 for amounts owing pursuant to the Purchase Orders in respect of Fasteners sold and delivered to GM Mexico;
- (d) from Saturn, the sum of \$2,773.25 for amounts owing pursuant to the Purchase Orders in respect of Fasteners sold and delivered to Saturn;
- (e) from GM Shanghai, the sum of \$2,156.76 for amounts owing pursuant to the Purchase Orders in respect of Fasteners sold and delivered to GM Shanghai;
- (f) from Daewoo, an amount in Canadian currency sufficient to purchase US\$ 1,504.31, at a bank in Ontario listed in Schedule I to the *Bank Act* (Canada), at the close of business on the first day on which the bank quotes a Canadian dollar rate for purchase of such amount in US dollars before the day payment thereof is to be

received by the Receiver, for amounts owing pursuant to the Purchase Orders in respect of Fasteners sold and delivered to Daiwoo;

- (g) from the Defendants, the sum of \$151,834.02, representing damages due to the breach by the Defendants of the terms and conditions of the Accommodation Agreement (as defined below) for failing to purchase the Finished Goods and WIP the Defendants are obligated to purchase thereunder, plus the Receiver's storage and insurance costs with respect to the WIP and Finished Goods (as both are defined below) as well as other professional, legal and other fees incurred by the Receiver;
- (h) pre-judgment and post-judgment interest calculated in accordance with the *Courts of Justice Act*;
- (i) its costs of the action on a substantial indemnity basis; and
- (j) such further and other relief as this Honourable Court may deem just.

Background

2. Pursuant to the order of the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) dated March 8, 2007 (the "**Initial Order**"), Genfast was granted protection from its creditors pursuant to the *Companies Creditors' Arrangement Act* (the "**CCAA Proceedings**").

3. Pursuant to the order of the Honourable Mr. Justice Campbell dated April 5, 2007, Genfast was adjudged bankrupt (the "**Bankruptcy Order**").

4. Prior to the Bankruptcy Order, Genfast carried on business from leased premises located in Brantford, Ontario (the "**Premises**") as a manufacturer of bolts, screws, rivets and other types of fasteners, primarily for the automotive industry.

5. The Receiver was appointed pursuant to the further order of the Honourable Mr. Justice Campbell dated April 5, 2007 (the "**Appointment Order**").

6. Pursuant to a separate order of the Honourable Mr. Justice Campbell dated April 5, 2007, effective immediately preceding the appointment of the Receiver, the CCAA Proceedings were terminated.

7. GM is a corporation incorporated pursuant to the laws of Delaware, with its head office located in Wilmington, which carries on business as an automobile manufacturer.

8. GM Canada is a corporation incorporated pursuant to the laws of Canada with its head office located in Oshawa, Ontario, which carries on business as an automobile manufacturer.

9. GM Mexico is a corporation incorporated pursuant to the laws of Mexico which carries on business as an automobile manufacturer.

10. Saturn is a corporation incorporated pursuant to the laws of the United States which carries on business as an automobile manufacturer.

11. GM Shanghai is a corporation incorporated pursuant to the laws of China which carries on business as an automobile manufacturer.

12. Daewoo is a corporation incorporated pursuant to the laws of Korea which carries on business as an automobile manufacturer.

Unpaid Accounts Receivable

13. Genfast and the Defendants had a business relationship whereby the Defendants purchased certain fasteners and other items manufactured by Genfast, including bolts, screws, rivets and other types of fasteners (the "Fasteners") for use in the manufacture of automobiles by the Defendants.

14. Genfast and the Defendants had an established course of conduct whereby the Defendants would issue purchase orders to Genfast containing blanket terms which governed the production and supply by Genfast of Fasteners for the Defendants. Each purchase order would be supplemented by electronic releases describing the type and quantity of Fasteners required by

the Defendants for the immediately following period specified in each release (each purchase order, including the applicable release, a "**Purchase Order**").

15. Over the course of the period specified in each release, the Defendants may periodically update the quantities of Fasteners required under each Purchase Order such that Genfast could provide just-in-time delivery to meet the Defendants' manufacturing requirements. Once Fasteners were produced by Genfast and shipped to the Defendants pursuant to Purchase Orders, Genfast would invoice the Defendants receiving the shipment for such Fasteners (the "**Invoices**").

16. From August 1, 1998 to October 25, 2006, the Defendants issued Purchase Orders to Genfast pursuant to which the Defendants ordered and agreed to purchase the Fasteners from Genfast.

17. From March 26, 2004 to March 27, 2007, Genfast rendered Canadian dollar invoices to GM and US dollar invoices to GM in respect of the Fasteners ordered by GM pursuant to Purchase Orders and manufactured for and shipped to GM by Genfast, of which CDN\$267,362.94 and US\$6,489.34 in total remains outstanding.

18. From September 20, 2004 to March 20, 2007, Genfast rendered invoices to GM Canada in respect of the Fasteners ordered by GM Canada pursuant to Purchase Orders and manufactured for and shipped to GM Canada by Genfast, of which \$110,978.83 in total remains outstanding.

19. From April 19, 2005 to March 20, 2007, Genfast rendered invoices to GM Mexico in respect of the Fasteners ordered by GM Mexico pursuant to Purchase Orders and manufactured for and shipped to GM Mexico by Genfast, of which \$480,421.22 in total remains outstanding.

20. From July 14, 2004 to April 12, 2007, Genfast rendered invoices to Saturn in respect of the Fasteners ordered by Saturn pursuant to Purchase Orders and manufactured for and shipped to Saturn by Genfast, of which \$2,773.25 in total remains outstanding.

21. From November 27, 2006 to March 5, 2007, Genfast rendered invoices to GM Shanghai in respect of the Fasteners ordered by GM Shanghai pursuant to Purchase Orders and manufactured for and shipped to GM Shanghai by Genfast, of which \$2.156.76 in total remains outstanding.

22. From January 19, 2007 to March 16, 2007, Genfast rendered invoices to Daewoo in respect of the Fasteners ordered by Daewoo pursuant to Purchase Orders and manufactured for and shipped to Daewoo by Genfast, of which US\$1,504.31 in total remains outstanding.

23. Each of the Invoices stipulated that payments from the applicable Defendant were due between 45 and 60 days from the date of shipment (the "**Payment Terms**").

24. Notwithstanding ongoing demands by Genfast and the Receiver, the Defendants have failed or refused to pay the amounts due and owing with respect to the Invoices, in breach of the Payment Terms.

The GM Accommodation Agreement

25. On or about March 24, 2007, the Defendants entered into an accommodation agreement with Genfast (the "**GM Accommodation Agreement**"), pursuant to which the Defendants agreed to:

- (a) purchase all 'useable' and 'merchantable' finished goods ("**Finished Goods**"), work-in-process ("**WIP**") and related raw materials (the "**Raw Materials**"), "with 'useable' and 'merchantable' having the meanings ascribed to such terms in customary Accommodation Agreements";
- (b) pay "PO price" for Finished Goods, "prorated selling price" for WIP (based on percentage of completion) and "cost" for Raw Materials; and
- (c) to pay the purchase price set out in subparagraph 21(b) without set-off or recoupment.

26. Immediately following the completion of the GM Accommodation Agreement, on or about March 25, 2007, the Defendants removed \$1.225 million worth of Finished Goods and WIP (the “**Removed Inventory**”) from the Premises. The Defendants made payment in full to the Receiver for the Removed Inventory on or about May 11, 2007 in accordance with the terms of the GM Accommodation Agreement.

27. By e-mail dated March 30, 2007, counsel to the Defendants advised counsel to LaSalle Business Credit, a division of ABN Amro Bank N.V., Canada Branch, the senior secured creditor of Genfast, that “GM reaffirms its commitment regarding the purchase of WIP, Raw Materials and Finished Goods” in the GM Accommodation Agreement (the “**Reaffirmation**”).

The Defendants’ Breach of the GM Accommodation Agreement

28. Following the removal of the Removed Inventory and the Reaffirmation, the Defendants advised the Receiver that they took the position that a significant portion of the Raw Materials were not useable and merchantable and insisted that, contrary to the Defendants’ obligations pursuant to the GM Accommodation Agreement, the correct price for the Raw Materials was the fair market value, and not the cost price, of such Raw Materials. The Receiver disputed each of these points. The Defendants did not raise any issue or contest its obligations to purchase the Finished Goods and WIP.

29. In or about late September, 2007, the Defendants advised the Receiver that they were now prepared to purchase the Raw Materials. At the same time, the Defendants advised that they now took issue and contested their obligation to purchase the Finished Goods and WIP on the grounds that such inventory was not useable and merchantable and/or that the Defendants had fulfilled their obligations to purchase such inventory under the Accommodation Agreement, which was and is disputed by the Receiver.

30. On or about May 22, 2007, MNP Corporation (“MNP”), the supplier to the Defendants who replaced Genfast, offered to buy the Finished Goods and WIP from the Receiver if certain conditions were fulfilled. The Finished Goods and WIP comprised unique parts only applicable to the manufacture of the Defendants’ automobiles. MNP later revoked its offer.

31. In order to facilitate the shipment of the Raw Materials and to facilitate the sale of certain of the Raw Materials that required recoating, the Receiver entered into negotiations with the Defendants to sell the Raw Materials. On or about November 6, 2007, the Receiver and GM Canada entered into an inventory purchase agreement (the "**Inventory Purchase Agreement**") pursuant to which GM Canada agreed to purchase, and the Receiver agreed to sell, all of Genfast's right, title and interest, if any, in and to the Raw Materials set out in Schedule "A" to the Inventory Purchase Agreement. Pursuant to an assignment agreement dated November 26, 2007, GM Canada assigned certain of its obligations under the Inventory Purchase Agreement to MNP.

Mitigation of Damages by the Receiver

32. On or about October 29, 2007, the Receiver filed its Fifth Report to the Court (the "**Fifth Report**"). The Receiver advised the Court that all prospects of sale with respect to the WIP and Finished Goods inventories had been exhausted and that the realizable value of the WIP and Finished Goods inventory was its scrap value. The Receiver further disclosed that the highest offer it had received from steel scrap dealers with respect to the WIP and Finished Goods is \$220 per ton. Following the receipt of the offer, the price for scrap steel declined.

33. The Fifth Report was served by the Receiver on all parties to the Genfast receivership, including the Defendants.

34. The Receiver also advised the Court that it had conducted a review whereby it concluded that the Defendants are obligated under the GM Accommodation Agreement to purchase US\$202,414.68 of WIP and US\$34,494.29 of Finished Goods (the "**WIP and Finished Goods Purchase Price Liability**").

35. On or about November 25, 2007, counsel for the Receiver wrote to counsel for the Defendants and advised, among other things that:

- (i) the Receiver intended to commence an action against the Defendants for, among other things, GM's refusal to purchase the WIP and Finished Goods;

- (ii) the WIP and Finished Goods are specific to the Defendants and, accordingly, they have no use other than in GM products and have no value to any party other than the Defendants or MNP, the supplier to the Defendants who replaced Genfast;
- (iii) MNP has no interest in purchasing the WIP and Finished Goods; and
- (iv) unless the Defendants or MNP purchases and removes the WIP and Finished Goods prior to December 5, 2007, the Receiver will make arrangements to sell the WIP and Finished Goods for its scrap value and thereafter will commence an action against the Defendants to recover the difference in value between the scrap value and the WIP and Finished Goods Purchase Price Liability.

36. The Receiver has not received a response from the Defendants to the letter dated November 25, 2007.

37. On or about December 6, 2007, the Receiver sold the WIP and the Finished Goods to a steel scrap dealer at the best price available at the time of sale, being \$197 per ton for WIP and \$189 per ton for Finished Goods (the "Scrap Sale"). Gross realizations from the Scrap Sale of WIP were \$19,636.96 and gross realizations from the sale of Finished Goods were \$5,302.02, exclusive of the Receiver's storage and insurance costs with respect to the WIP and Finished Goods as well as other professional, legal and other fees incurred by the Receiver.

38. Accordingly, as a result of the Defendants breach of its obligation to purchase the Finished Goods and WIP under the Accommodation Agreement, the Receiver suffered damages in the amount of \$151,804.32, plus the Receiver's storage and insurance costs with respect to the WIP and Finished Goods as well as other professional, legal and other fees incurred by the Receiver .

39. Accordingly, the Receiver states that the Defendants are liable for the amounts set out in paragraph 1 above.

40. This Statement of Claim is being served outside of Ontario pursuant to Rules 17.02(f) and 17.02(h) of the *Rules of Civil Procedure*, as the Purchase Orders and the GM Accommodation Agreement were made in Ontario, are governed by the laws of Ontario and

were breached by the Defendants in Ontario, and as the Receiver has sustained damages in Ontario.

41. The Receiver proposes that this action be tried at the City of Toronto.

Date: January 14, 2007

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Steven Weisz (LSUC# 32102C)
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Mike McGraw (LSUC# 46679C)
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Solicitors for the Plaintiff

Court File No.: 08-CL-7356

KPMG INC., in its capacity as court-appointed receiver of
GENFAST MANUFACTURING COMPANY and not in its personal capacity

Plaintiff

v.

GENERAL MOTORS CORPORATION et al.

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding Commenced at Toronto

STATEMENT OF CLAIM

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

Steven Weisz (LSUC#: 32102C)
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Solicitors for the Plaintiff

Schedule "V"

.Court File No. 08-CL-7350

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

KPMG, in its capacity a court-appointed
Receiver of Genfast Manufacturing Company, and not in its personal capacity

Plaintiff

and

GENERAL MOTORS CORPORATION,
GENERAL MOTORS OF CANADA LIMITED,
GENERAL MOTORS DE MEXICO, S. de R. L. de C. V., SATURN CORPORATION,
SHANGHAI GENERAL MOTORS CO. LTD.
and GM DAIWOO AUTO & TECHNOLOGY CO.

Defendants

STATEMENT OF DEFENCE

1. The defendants admit the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 (except that the defendants dispute the unpaid invoice balances claimed owing to the plaintiff in respect of goods sold and delivered by the plaintiff to the defendants as alleged in paragraphs 17 through 22, inclusive), 25 (except that the reference in subparagraph 25(c) should be to subparagraph 25(b)), 26 and 27 of the statement of claim.

2. The defendants deny all other allegations contained in the statement of claim and put the plaintiff to the strict proof thereof.

Claim on Alleged Unpaid Accounts Receivable

3. The defendants (sometimes hereinafter collectively called "GM") admit that they had a business relationship with Genfast Manufacturing Company ("Genfast") whereby GM purchased certain finished goods from Genfast on an ongoing basis for use in the manufacture of motor vehicles. GM was one of Genfast's largest customers.

4. Purchases by GM were made pursuant to purchase orders issued by GM to Genfast. Such purchase orders contained blanket terms and conditions governing the production and supply by Genfast of goods to GM, including the following:

SETOFF / RECOUPMENT:

In addition to any right of setoff or recoupment provided by law, all amounts due to Seller shall be considered net of indebtedness of Seller and its affiliates/subsidiaries to Buyer and its affiliates/subsidiaries; and Buyer shall have the right to setoff against or recoup from any amounts due to seller and its affiliates/subsidiaries from Buyer and its affiliates/subsidiaries. [paragraph 23]

INSOLVENCY:

Buyer may immediately terminate this contract without liability to Seller in any of the following or any other comparable events: (a) insolvency of Seller; Seller shall reimburse Buyer for all costs incurred by Buyer in connection with any of the foregoing, including, but not limited to, all attorney's or other professional fees. [paragraph 11]

5. On March 8, 2007, Genfast commenced an application pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA Application") and obtained an order (the "Initial Order") granting a stay of proceedings by its creditors.

6. In the CCAA Application, Genfast admitted that it was insolvent and that its business was unsustainable as a going concern. Genfast acknowledged further that its customers, such as GM, operate on a "just-in-time" manufacturing basis and that any disruption to supply of component parts could result in a shutdown of production lines and cause GM to suffer substantial damages.

7. Further, it was acknowledged by Genfast to be critical that its customers have an opportunity to source goods supplied by Genfast without interruption in supply. It was also anticipated that Genfast would enter into agreements with their employees to pay retention bonuses in order to complete the orderly wind down of its business.

8. Accordingly, the Initial Order was obtained by Genfast to facilitate an orderly wind down of its business operations for the benefit of all stakeholders, including its customers.

9. The declared intention of Genfast to wind down its business operations and not fulfill its agreement to continue to manufacture and supply goods to GM constituted an anticipatory breach of contract by Genfast.

10. Immediately following the granting of the Initial Order, Genfast encountered significant

difficulties with its labour force, resulting in decreased productivity and disruptions in the production and supply of goods to GM.

11. By mid-March 2007, the union representing the workers at the Genfast facility, United Steelworkers Local 4153 (the "Union"), advised Genfast and GM that its workers would no longer report to work or would not produce GM goods in a timely manner unless the workers were guaranteed payment of retention bonuses.

12. Because GM operates on a "just-in-time" basis, it did not have a sufficient inventory bank of goods produced by Genfast to offset the impact of such delays if the Union's threat was actually carried into effect.

13. Accordingly, in order to mitigate its damages, GM entered into an agreement with the Union dated March 24, 2007, whereby GM agreed that in consideration for the payment by GM to the Union of CAD\$400,000 as retention bonuses, the Union would provide to Genfast workers to continue the process of sorting, packaging and shipping goods, including finished goods, work in progress ("WIP") and raw materials to GM from Genfast.

14. GM also entered into separate agreements with salaried employees whereby GM agreed to pay such employees retention bonuses of CAD\$74,324.00 in the aggregate for the same purposes as set out in paragraph 12 above.

15. GM was also required to enter into the Accommodation Agreement as defined in the statement of claim in order to avoid a disruption in the supply of GM goods produced by Genfast and a possible shut down of GM assembly lines. Under the Accommodation Agreement, GM was compelled to purchase raw material inventory at prices in excess of their then current market value.

16. GM incurred substantial additional expenses relating to the transfer of GM business to another supplier, all due to Genfast's inability to fulfill its contractual obligation to manufacture and supply goods for GM or as a result of Genfast's insolvency. The expenses include, without limitation, transportation and expedited freight charges to keep GM assembly lines running, purchase of tooling for successor suppliers, wages, consultant and legal fees. Full particulars of these expenses will be provided prior to trial.

17. GM claims it is entitled to set off the retention bonuses paid and the expenses incurred and damages suffered by it as described above against any amounts outstanding under any unpaid invoices referred to in paragraphs 17 through 22 of the statement of claim, either under contract, at law or in equity.

Claim Regarding Accommodation Agreement

18. Following the granting of the Initial Order, Genfast's bank, Lasalle Business Credit, which held security over all of the assets and property of Genfast, would not permit the shipment of goods produced by Genfast on behalf of GM without the assurance of payment for such goods

and GM's execution of the Accommodation Agreement, which required GM to purchase all GM associated finished goods, WIP and raw materials at prices in excess of their then current fair market value.

19. Consequently, in order to avoid a disruption in the supply of goods and a possible shut down of assembly lines, GM was required, on short notice, to enter into the Accommodation Agreement in order to ensure a continued supply of goods.

20. The Accommodation Agreement required GM to purchase only "useable" and "merchantable" finished goods, WIP and raw materials.

21. In addition, it was a condition and warranty of the sale of finished goods, WIP and raw materials under the Accommodation Agreement that such goods were reasonably fit for the purpose for which it was intended and that the goods were of merchantable quality.

22. GM has purchased all useable and merchantable finished goods, WIP and raw materials from Genfast and as a result has complied with its obligations under the Accommodation Agreement.

23. Any finished goods, WIP and raw materials not purchased by GM either were not material covered by the Accommodation Agreement, were not useable or merchantable or were not reasonably fit for the purpose for which they were intended.

24. In any event, the WIP and finished goods which GM did not purchase and were sold by the plaintiff to a scrap dealer, was inventory that GM was not informed even existed at the time GM took possession of the inventory it agreed to purchase. GM was only made aware of its existence several weeks after GM had removed the inventory it agreed to purchase and transferred its business with Genfast to other suppliers. By this time, it was practically impossible to reintroduce such inventory into the production process due to quality tracking dynamics and protocols and therefore the inventory was neither useable, merchantable or fit for the purpose they were intended and was properly reject by GM.

25. The Defendants plead and rely on the provisions of the *Sale of Goods Act*, R.S.O. 1990. c. S.1.

26. The Defendants ask that this action be dismissed with costs payable to them on a substantial indemnity basis.

March 11, 2008

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Solicitors for the Defendants

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Solicitors for the Plaintiff

KPMG INC., in its capacity as court-appointed receiver of GENFAST MANUFACTURING COMPANY and not in its personal capacity
Plaintiff

V. GENERAL MOTORS CORPORATION et al.

Defendants

Court File No. 08-CL-7350

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceedings Commenced at Toronto

STATEMENT OF DEFENCE

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Solicitors for the Defendants



Schedule "W"

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Michael McGraw
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February 13, 2008

VIA FACSIMILE

Reference: 72396/2

Mr. Reg Pearson
Director of Labour Management Services
Ministry of Labour
400 University Avenue, 8th Floor
Toronto, ON M7A 1T7

Mr. Tim Parker
Ontario Labour Relations Board
505 University Avenue
2nd Floor
Toronto, ON M5G 2P1

Re: Genfast Manufacturing Company ("Genfast")
Re: Application by United Steelworkers ("USW") under section 1(4) of
the *Labour Relations Act* (the "Application")
Re: Collective Agreement Grievance by the USW (the "Grievance")

Dear Sirs:

We represent KPMG Inc. ("KMPG") in its capacity as Receiver (the "Receiver") and Trustee in Bankruptcy (the "Trustee") of Genfast.

We acknowledge receipt of the USW's request to appoint an Arbitrator in connection with the Grievance and the USW's Application materials in the above matter both dated February 4, 2008. We also acknowledge receipt of the Form B-16 from Mr. Parker confirming the filing of the Application. Further, Nicholas Brearton of KPMG and I have also spoken to a clerk at Mr. Pearson's office who advised us that all parties in this matter had until 5:00 p.m. EST yesterday to object to the appointment of an Arbitrator for the Grievance.

This letter will confirm that, at this time, as: i.) no relief is being sought against the Receiver or the Trustee and they are not parties to the Application and the Grievance; ii.) there are no funds in the bankrupt estate for the Trustee's participation in the Application and the Grievance; and iii.) LaSalle Business Credit, secured creditor of Genfast, has advised that it will not fund the participation of the Receiver in the Application and the Grievance, the Receiver will not be taking any position with respect to the Application and the Grievance, will not be participating in or filing any materials in either proceeding and as such, takes no position with respect to the appointment of an Arbitrator for the Grievance.

This position is consistent with the position taken by the Trustee and the Receiver on the motion by the USW to lift the stays of proceedings against Genfast in both the bankruptcy and receivership proceedings (the "Stays") which was heard on November 5, 2007 by the Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (the "Court"). Upon the return of that motion, the Trustee and the Receiver

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advised the Court that they took no position with respect to the Application and the Grievance, and consented to leave being granted to lift the Stays to permit the Application to proceed against Genfast on the terms set out in the Orders of the Honourable Mr. Justice Campbell dated November 16, 2007 directing that the Stays be lifted (the "Lift Stay Orders"). The Lift Stay Orders provide, *inter alia*, that the Receiver and the Trustee are not required to defend, respond to or to participate in any manner in the Application and the Grievance and that any parties who wish to obtain documents which are in the possession of the Receiver and Trustee are required to pay all reasonable costs related to the production of any such documents and any request for the production of such documents shall comply with the Records Request Protocol as set out in the Receiver's Fifth Report to the Court and approved by the Order of the Honourable Mr. Justice Campbell dated November 5, 2007.

Please also note that pursuant to section 215 of the *Bankruptcy and Insolvency Act*, the Lift Stay Orders, and paragraph 7 of the Order of the Honourable Mr. Justice Campbell dated April 5, 2007 appointing KPMG as Receiver, no proceedings in any court or tribunal shall be commenced or continued against the Receiver or the Trustee except with leave of the Court. If the participation of the Trustee or the Receiver is required in the Application and/or the Grievance, we hereby request that the undersigned be provided with reasonable notice.

Finally, the Receiver and the Trustee reserve all of their rights to, if necessary, defend, respond to or make any submissions in the Application or the Grievance or to seek the direction of the Court in the bankruptcy and receivership proceedings with respect to, among other things, its participation in the Application and the Grievance.

Should you have any questions or require additional information, do not hesitate to contact me. Any contact with the Trustee and the Receiver should be directed through the undersigned.

Yours very truly,



Michael McGraw

MQM:na

c: Attached Service List

SERVICE LIST

TO:

KPMG Inc.
Suite 3300
199 Bay Street
Commerce Court West
P.O. Box 31, Stn. Commerce Court
Toronto ON, M5L 1B2

Attention: Nicholas Brearton

Receiver of Genfast Manufacturing Company

AND TO:

Michael McGraw
Milly Chow
Blake Cassels & Graydon LLP
Suite 2800, Commerce Court West
199 Bay Street
Toronto, ON M5L 1A9

Counsel to KPMG Inc.

AND TO:

Jeff Gollob
Paul Macdonald
McMillan Binch Mendelsohn LLP
Suite 4400
Bay Wellington Tower, BCE Place
181 Bay Street
Toronto, ON M5J 2T3

Counsel to Genfast Manufacturing Company
Counsel to Genfast Manufacturing Company, in its capacity as
Pension Administrator

AND TO:

MNP Corporation
44225 Utica Road
Utica, MI 48317
U.S.A.

Attention: Lawrence Berman

AND TO:

Mail → **General Fasteners Company**
37584 Amrhein Rd. Ste 150
Livonia Michigan 48150-1012
U.S.A

AND TO:

Mail → **Utica Leaseco**
44225 Utica Road
Utica, MI 48318 U.S.A.

Attention: David K. Levy, President
AND TO:

Frank Spizziri
Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Counsel to MNP Corporation, General Fasteners Company and Utica Leaseco LLC

AND TO:

Mail → **Thomas R. Klein**
48367 Lake Valley
Utica, MI 48317 USA

AND TO:

A. Duncan Grace
Miller Thomson LLP
One London Place
225 Queens Avenue, Suite 2010
London, ON N6A 5R8

Counsel for **David H. Grossman**

AND TO:

Bernie Thiteca
44225 Utica Road
Utica, MI 48318 USA

AND TO:

Craig L. Stormer
1642 Stoney Creek Drive
Rochester, MI 48307 USA

AND TO:

Fred Myers
Susan Rowland
Goodmans LLP
Suite 2400, Box 24
250 Yonge Street
Toronto, ON M5B 2M6

Solicitors for Deposit Insurance Company of Ontario,
In its capacity as Liquidator of Genfast Credit Union Limited

AND TO:

Robert Thornton
Leanne M. Williams
Thornton Grout Finnigan LLP
Suite 3200, P.O. Box 329
Canadian Pacific Tower
Toronto-Dominion Centre
Toronto, ON M5K 1K7

Solicitors for LaSalle Business Credit,
A division of ABN AMRO Bank N.V. Canada Branch

AND TO:

James G. Knight
Filion Wakely Thorup Angeletti LLP
Box 32
2601-150 King St. W.
Toronto, ON, M5H 4B6

Counsel to MNP Corporation

Schedule "X"

**Financial Services
Commission
of Ontario**

Pension Plans Branch
5160 Yonge Street, 4th Floor
Box 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite
5160 rue Yonge, 4e étage
Boîte 85
Toronto ON M2N 6L9

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



Ontario

REGISTERED MAIL

March 3, 2008

Claire Mroz
Manager
PricewaterhouseCoopers Inc.
Mississauga Executive Centre
One Robert Speck Parkway, Suite 1100
Mississauga, ON L4Z 3M3

Wayne Stemmier, Controller
Genfast Manufacturing Company
225 Henry Street
Brantford, ON N3S 7R4

Brad Newton, Vice-President
KPMG Inc.
199 Bay Street, Suite 3300
Commerce Court West
Toronto, ON M5L 1B

Nicholas Brearton, Senior Vice-President
KPMG Inc.
199 Bay Street, Suite 3300
Commerce Court West
Toronto, ON M5L 1B2

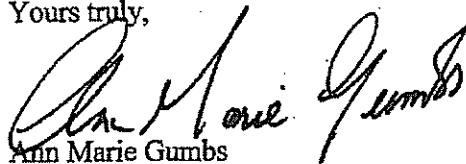
Rob Mason, National Representative
United Steelworkers of America Local Union 3767
1031 Barton Street East
Hamilton, ON L8L 3E3

Dear Sir/Madam:

**Re: Genfast Manufacturing Company Bargaining Unit Pension Plan for
Members of United Steelworkers of America Registration Number
697284**

Enclosed please find a Notice of Proposal to make a Declaration under section 83 of the *PBA*, respecting the Genfast Manufacturing Company Bargaining Unit Pension Plan for Members of United Steelworkers of America Registration Number 697284.

Yours truly,



Ann Marie Gumbs
Administrative Co-ordinator

Enclosure

c: Jai J. Persaud, FSCO, Pension Plans Branch

Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990,
c. P.8, as amended (the "*PBA*");

AND IN THE MATTER OF a Proposal of the Superintendent of
Financial Services to make a Declaration under section 83 of the
PBA, respecting the **Genfast Manufacturing Company
Bargaining Unit Pension Plan for Members of United
Steelworkers of America** Registration Number 697284

TO: Claire Mroz
Manager
PricewaterhouseCoopers Inc.
Mississauga Executive Centre
One Robert Speck Parkway, Suite 1100
Mississauga, ON L4Z 3M3

Administrator

AND TO: Wayne Stemmier, Controller
Genfast Manufacturing Company
225 Henry Street
Brantford, ON N3S 7R4

Employer

AND TO: Brad Newton, Vice-President
KPMG Inc.
199 Bay Street, Suite 3300
Commerce Court West
Toronto, ON M5L 1B2

Trustee in Bankruptcy

AND TO: Nicholas Brearton, Senior Vice-President
KPMG Inc.
199 Bay Street, Suite 3300
Commerce Court West
Toronto, ON M5L 1B2

Receiver

AND TO: Rob Mason, National Representative
United Steelworkers of America Local Union 3767
1031 Barton Street East
Hamilton, ON L8L 3E3

Union Representative

NOTICE OF PROPOSAL

I PROPOSE TO MAKE A DECLARATION under section 83 of the *PBA* that the Pension Benefits Guarantee Fund applies to the **Genfast Manufacturing Company Bargaining Unit Pension Plan for Members of United Steelworkers of America** (the "Plan"), Registration Number 697284.

REASONS:

1. The Plan is registered under the *PBA*, and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund by the *PBA* or the Regulations made thereunder, and
3. The plan was wound up effective **April 5, 2007**, and
4. There are reasonable and probable grounds that the funding requirements of the *PBA* and regulations cannot be satisfied. Based on the latest actuarial certification, there is an estimated claim against the Pension Benefits Guarantee Fund of **\$7,516,623** as at October 31, 2007. If funds become available from the estate of the employer, the administrator will be required to make an appropriate refund of any allocation amount received by the Plan from the Pension Benefits Guarantee Fund.
5. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the *PBA*. **To request a hearing, you must deliver to the Tribunal**

a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416-590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE PROPOSAL AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this *3rd* day of *March, 2008*



K. David Gordon
Deputy Superintendent, Pensions

¹

NOTE - Pursuant to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

Schedule "Y"

MAY-06-2008 11:44 FROM:

TO: 94168632653

P. 4/6

1

Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990,
c. P.8, as amended (the "*PBA*");

AND IN THE MATTER OF a Proposal of the Superintendent of
Financial Services to make a Declaration under section 83 of the
PBA, respecting the **Genfast Manufacturing Company Unit
Pension Plan for Members of United Steelworkers of America**
Registration Number 697284

TO: Claire Mroz
Manager
PricewaterhouseCoopers Inc.
Mississauga Executive Centre
One Robert Speck Parkway, Suite 1100
Mississauga, ON L4Z 3M3

Administrator

AND TO: Wayne Stemmier, Controller
Genfast Manufacturing Company
225 Henry Street
Brantford, ON N3S 7R4

Employer

AND TO: Brad Newton, Vice-President
KPMG Inc.
199 Bay Street, Suite 3300
Commerce Court West
Toronto, ON M5L 1B2

Trustee in Bankruptcy

AND TO: Nicholas Brcarton, Senior Vice-President
 KPMG Inc.
 199 Bay Street, Suite 3300
 Commerce Court West
 Toronto, ON M5L 1B2

Receiver

AND TO: Rob Mason, National Representative
 United Steelworkers of America Local Union 3767
 1031 Barton Street East
 Hamilton, ON L8L 3E3

Union Representative

DECLARATION

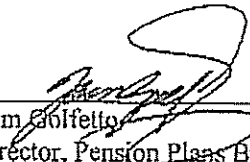
No request requiring a hearing was delivered to the Financial Services Tribunal within the time prescribed by subsection 89(6) of the *PBA* respecting a Notice of Proposal to make a Declaration that the Pension Benefits Guarantee Fund applies to **Genfast Manufacturing Company Bargaining Unit Pension Plan for Members of United Steelworkers of America** (the "Plan").

I DECLARE pursuant to sections 83 and 89 of the *PBA* that the Pension Benefits Guarantee Fund (Guarantee Fund) applies to the Plan for the following reasons:

REASONS:

1. The Plan is registered under the *PBA*, and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund by the *PBA* or the Regulations made thereunder, and
3. The Plan was wound up effective April 5, 2007, and
4. There are reasonable and probable grounds that the funding requirements of the *PBA* and regulations cannot be satisfied. Based on the latest actuarial certification, there is an estimated claim against the Guarantee Fund of **\$7,516,623** as at **October 31, 2007**. If funds become available from the estate of the employer, the administrator will be required to make an appropriate refund of any allocation amount received by the Plan from the Pension Benefits Guarantee Fund

DATED at Toronto, Ontario, this *18* day of *April 2008*



Tom Golffetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

-Financial Services
Commission
of Ontario

Commission des
services financiers
de l'Ontario



Pension Plans Branch
5160 Yonge Street, 4th Floor
Box 85
Toronto ON M2N 6L9

Direction des régimes de retraite
5160 rue Yonge, 4e étage
Boite 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777

Hand Delivered
5/1/08
[Signature]

REGISTERED MAIL

April 30, 2008

Tony Karkheck
Senior Vice President
PricewaterhouseCoopers Inc.
Mississauga Executive Centre
One Robert Speck Parkway, Suite 1100
Mississauga, ON L4Z 3M3

Wayne Stemmier, Controller
Genfast Manufacturing Company
225 Henry Street
Brantford, ON N3S 7R4

Brad Newton, Vice-President
KPMG Inc.
199 Bay Street, Suite 3300
Commerce Court West
Toronto, ON M5L 1B

Dear Sirs:

**Re: Genfast Manufacturing Company Retirement Plan for Salaried
Employees, Registration Number 697276**

Enclosed please find a Declaration under section 83 and 89 of the *PBA*, respecting the Genfast Manufacturing Company Retirement Plan for Salaried Employees, Registration Number 697276.

Yours truly,

[Signature: Anna Marie Gumbs]
Anna Marie Gumbs
Administrative Co-ordinator

Enclosure

c: Jai J. Persaud, FSCO, Pension Plans Branch

Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990,
c. P.8, as amended (the "*PBA*");

AND IN THE MATTER OF a Proposal of the Superintendent of
Financial Services to make an Order under section 83 and 89 of the
PBA, respecting the **Genfast Manufacturing Company
Retirement Plan for Salaried Employees**, Registration Number
697276

TO: Tony Karkheck
Senior Vice President
PricewaterhouseCoopers Inc.
One Robert Speck Parkway, Suite 1100
Mississauga Executive Centre
Mississauga, ON L4Z 3M3

Administrator

AND TO: Wayne Stemmier, Controller
Genfast Manufacturing Company
225 Henry Street
Brantford, ON N3S 7R4

Employer

AND TO: Brad Newton
KPMG Inc.
21 King Street West, Suite 510
Hamilton, ON L8P 4W7

Trustee in Bankruptcy and Receiver and Manager

DECLARATION

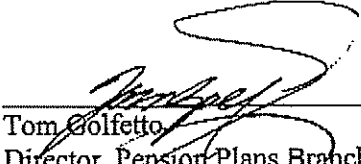
No request requiring a hearing was delivered to the Financial Services Tribunal within the time prescribed by subsection 89(6) of the *PBA* respecting a Notice of Proposal to make a Declaration that the Pension Benefits Guarantee Fund applies to **Genfast Manufacturing Company Retirement Plan for Salaried Employees** (the "Plan").

I DECLARE pursuant to sections 83 and 89 of the *PBA* that the Pension Benefits Guarantee Fund (Guarantee Fund) applies to the Plan for the following reasons:

REASONS:

1. The Plan is registered under the *PBA*, and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund by the *PBA* or the Regulations made thereunder, and
3. The Plan was wound up effective **April 5, 2007**, and
4. There are reasonable and probable grounds that the funding requirements of the *PBA* and regulations cannot be satisfied. Based on the latest actuarial certification, there is an estimated claim against the Guarantee Fund of **\$3,694,081** as at November 30, 2007. If funds become available from the estate of the employer, the administrator will be required to make an appropriate refund of any allocation amount received by the Plan from the Pension Benefits Guarantee Fund

DATED at Toronto, Ontario, this *30* day of *April 2008*



Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services