

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC.,  
3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS  
INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC,  
NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN  
LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU  
SP.Z OO and NAFA POLSKA SP. Z OO

(the "Applicants")

**MOTION RECORD OF THE APPLICANTS**

**(Re: Stay Extension, Increase of Administration Charge and  
Approval of Settlement – Returnable April 1, 2020)**

**Date:** March 25, 2020

**BLANEY MCMURTRY LLP**  
Barristers & Solicitors  
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Counsel for the Applicants

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO

(the "Applicants")

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(the “Applicants”)

**I N D E X**

<b>Tab</b>	<b>Document</b>
1	Notice of Motion dated March 25, 2020
2	Draft Order

**TAB 1**

Court File No. CV-19-00630241-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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SP.Z OO and NAFA POLSKA SP. Z OO

(the "Applicants")

**NOTICE OF MOTION**

**(Re: Stay Extension, Increase of Administration Charge and Approval of Settlement -  
Returnable April 1, 2020)**

The Applicants will make a motion for an Order seeking the relief set out herein to a Judge of the Ontario Superior Court of Justice (Commercial List), on Wednesday, April 1, 2020, at 10:00 a.m. or as soon after that time as the motion can be heard, by telephone conference or other electronic means at the courthouse located at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, substantially in the form attached at **Tab 2** hereto (the "Extension Order"):

- (a) if necessary, abridging the time for service of this Notice of Motion and the corresponding Motion Record and dispensing with service on any person other than those served;
  - (b) extending the stay of proceedings (“**Stay Period**”) from April 3, 2020 to and including May 4, 2020 (the “**Extension Period**”);
  - (c) authorizing the Applicants to complete a confidential settlement of the indebtedness owing to NAFA by Jason Mullen Mink Ranch Limited and Jason Leonard Mullen (collectively, “**Mullen Fur**”);
  - (d) increasing the amount of the Administration Charge from U.S.\$700,000 to U.S.\$1,500,000 with the priority set out in the draft Order; and
  - (e) sealing the Confidential Appendices “A” and “B” filed under seal with the Court in support of this motion; and
2. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THIS MOTION ARE:**

- (a) Capitalized terms not defined herein shall have the meanings ascribed to them in the Amended and Restated Initial Order of Justice McEwen dated October 31, 2019 (as amended and restated, the “**Initial Order**”);
- (b) The motion is proceeding on the consent of the Applicants and the Monitor;
- (c) All of the relief sought by the Applicants has been reviewed with the Agent and Business Development Bank of Canada (the “**BDC**”) prior to issuing this Notice of

Motion and the Applicants are hopeful that the relief will be able to proceed on consent or an unopposed basis;

- (d) The Applicants are, collectively, in the business of farming, financing, preparing, grading and auctioning fur products, such as pelts and skins, for use in the garment industry;
- (e) On October 31, 2019, the Applicants commenced proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to the Initial Order;
- (f) On November 28, 2019, (the "**November Motion**"), the Court granted the Applicants various orders including an Order extending the Applicants' Stay Period until January 31, 2020;
- (g) On January 31, 2020, the Applicants sought and were granted an Order extending the Stay Period in these proceedings to and until April 3, 2020;
- (h) Since the date of the Initial Order, the Applicants, in close consultation with the Monitor have focused on stabilizing their business and operations as part of these CCAA proceedings and proceeding to, among other things, collect pelt advances and other proceeds to repay the DIP Facility and indebtedness owing to the Agent;
- (i) The business of the Applicants is an international business, with its main product, being interests in farmed mink pelts, being grown, harvested, processed and sold at locations around the world, mainly in Europe and North America;



- (j) The Applicants had previously advised the Court that it would liquidate a material portion of its product this year through three venues:
- (i) an auction of wild fur product to be sold at a joint auction conducted by a Canadian wild fur auction house Fur Harvesters Auctions Inc. (“**FHA**”) and the Applicants from the Applicant’s premises in Toronto;
  - (ii) several auctions, traditionally held in March, June and September by Saga Furs Inc. (“**Saga**”) the second largest fur auction house in the world to be held in Helsinki, Finland, and
  - (iii) several auctions, traditionally held in February, May and July by Kopenhagen Fur a.m.b.a (“**KF**”), the largest fur auction house in the world, to be held in Kopenhagen, Denmark;
- (k) The business of the Applicants have been impacted by the worldwide pandemic related to the virus know as COVID-19;
- (l) Ontario is now operating in a declared state of emergency as a result of concerns related to COVID-19;
- (m) Among other issues, COVID-19 has resulted in severe travel restrictions and the total or partial closing of borders around the world, including in Canada and in the countries where pelts in which NAFA has an interest are to be auctioned;
- (n) As a result of the COVID-19 pandemic, the live auctions to be conducted by FHA has been cancelled and is tentatively rescheduled for May, the auction conducted

by KF in February has been postponed to April and the auction to be conducted by Saga in early March was postponed to this week and is now taking place in an unprecedented manner online to allow for some furs to be sold;

- (o) As a result of the cancellation and delay of these auctions and other economic disruption, including the direction now provided by the Province of Ontario to close all non-essential businesses and the mass isolation of a large part of the Canadian population, NAFA has not been able to meet the financial projections set out in the Third Report of the Monitor dated January 29, 2020 filed in support of the last extension of the Stay Period;
- (p) The COVID-19 Pandemic has also resulted in the closure of the Canadian Courts, except for urgent matters;
- (q) The Applicants have reviewed their economic situation with the Agent and BDC and have also developed and forecast, with the assistance of the Monitor, an “Emergency Liquidity Plan”, a copy is attached hereto as **Confidential Appendix “A”**;
- (r) Under this Emergency Liquidation Plan the Applicants have modeled their cash position in the event there are effectively no receipts of any kind for at least two months due to ongoing disruption. Even in this unlikely situation, with the Applicants taking significant cash conserving measures, the Applicants have sufficient liquidity to operate until at least May 15, 2020;

- (s) The Emergency Liquidity Plan anticipates substantial salary deferrals, the deferral of the payment of the KERP amounts, and the deferral of professional fees, all of which are now in place and expected to remain in place for a period of at least sixty days;
- (t) The Applicants have also voluntarily suspended finalizing and thereafter commencing its SISP program to avoid those costs until there is more stability in the market place and presumably more appetite in the market for the items which would be for sale under the SISP;
- (u) The Applicants have also made certain requests of the Agent and BDC regarding possible accommodations by these lenders to further ease liquidity.
- (v) The Applicants currently owe professional fees of approximately U.S.\$1.2 million, which are secured by the Administration Charge. This amount includes amounts owing to the counsel for the Applicants (including amounts owing for Applicants' counsel in Lithuania, Latvia and Poland), the Monitor and its counsel and the Agent's counsel and financial advisor;
- (w) The Administration Charge currently provides for a first ranking super priority charge in the amount of U.S.\$500,000 in priority to all other charges (now that the DIP is repaid), and a fourth ranking charge in the amount of U.S.\$200,000 behind the KERP Charge and the Syndicate Debt and the Syndicate Security;

- (x) The Applicants are seeking to increase the Administration Charge to U.S.\$1,500,000 with U.S.\$700,000 ranking in first priority and U.S.\$800,000 ranking in fourth priority;
- (y) By increasing the Administration Charge, certain pressure on its liquidity can be eased until receipts are received by the Applicants to pay these professional fees;
- (z) NAFA has also entered into a confidential negotiations with Mullen Fur, and subject to the approval of this Court and the Agent, and the completion of those negotiations, expect to enter into a settlement agreement substantially in accordance with the terms set out in **Confidential Appendix “B”**;
- (aa) The Mullen Fur settlement represents a material compromise on the indebtedness owing by Mullen Fur to NAFA, but it does represent the anticipated recovery (depending in part on the Applicants’ value derived from the 72,000 mink pelts to be delivered by Mullen Fur to NAFA) of nearly the entire 2019 kit loan amount advanced by NAFA to Mullen Fur and allows for immediate payment of a settlement amount to NAFA;
- (bb) The balance of the loan is secured against real estate and a go forward farming operation located in Nova Scotia which value has decreased given market trends over the past several years and a personal guarantee;
- (cc) The Monitor and NAFA have undertaken significant due diligence relating to the Mullen Fur settlement and are of the view it is the best resolution possible in the circumstances;

- (dd) The Monitor and NAFA have also noted that the Mullen's contributed a material amount of their own funds to enable the final development of the 2019 mink crop in late 2019, which they will not recover;
- (ee) The Order of this Court dated November 28, 2020 authorized the Applicants to settle indebtedness owing to the Applicants in each case to a maximum of U.S.\$1 million with the approval of the Monitor and the Agent. This settlement settles indebtedness in excess of U.S.\$1 million and therefore Court approval is required;
- (ff) The receipt of funds anticipated from the Mullen Fur settlement are not included in the Emergency Liquidity Plan and the use of such funds is subject to the consent of the Agent or further order of the Court. As such, the completion of this settlement at this time may provide additional liquidity to the Applicants. The Applicants, the Monitor and the Agent are discussing how these funds will be applied once received;
- (gg) In the circumstances, the Applicants and the Monitor recommends this settlement be approved by this Court;
- (hh) The Applicants have acted in good faith and with due diligence under the supervision of the Monitor through the Stay Period;
- (ii) Additional time is required to continue the Applicants' restructuring efforts, including with respect to the sale of their pelts, the collection of their accounts receivables in Europe and North America and the sale of their real estate holdings in Canada, the United States and Poland;

- (jj) The Applicants require the continued stability provided by the stay of proceedings in order to pursue the proposed path forward;
- (kk) The Applicants have sufficient liquidity to fund these proceedings during the Extension Period;
- (ll) The Monitor has confirmed it supports the Applicants' extension of the Stay Period to and including May 4, 2020;

### **Process in Light of COVID-19**

- (mm) As a result of the changes to the Commercial List operations in light of COVID-19, the following procedures will be applied with respect of the hearing for the Applicants' motion:
  - (i) Parties on the Service List who intend to oppose the Applicants' requested stay extension or other relief being sought on this motion shall provide written notice to counsel for the Applicants (dullmann@blaney.com), the Monitor (jsleeth@deloitte.ca; kmahar@millerthomson.com) and the Commercial List Office (Toronto.commercialist@jus.gov.on.ca) by no later than noon (Toronto time) on March 30, 2020 (an "**Objection Notice**");
  - (ii) If no party delivers an Objection Notice in accordance with the procedure and deadlines set out above, the Monitor shall advise the Court accordingly and request the motion be heard in writing on the materials filed;

- (iii) If a party delivers an Objection Notice, the Monitor shall advise the Court, and the Court will direct the parties with respect to the conduct of a hearing; and
- (iv) In the event the hearing cannot be heard on April 1, 2020 as a result of an Objection Notice, the Applicants will request that the Court issue a short stay extension to maintain the status quo pending a final determination of the Applicants' stay extension request;
- (nn) the Monitor and Applicants will take such other procedural steps as may be directed by the Court and as set out in the procedures suggested by the Commercial List Users Committee at < <https://commerciallist.com/pdf/changes-to-commercial-list-operations-in-light-of-covid-19.pdf>>;

### **Other Grounds**

- (oo) The provisions of the CCAA, including section 11 thereof, and the inherent and equitable jurisdiction of this Honourable Court;
- (pp) Rules 2.03, 3.02, 16, and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (qq) Section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
- (rr) Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Affidavit of Doug Lawson affirmed January 28, 2020 and the exhibits attached thereto (previously filed);
- (b) the Third Report of the Monitor, (previously filed);
- (c) Confidential Appendices A and B; and
- (d) such further and other evidence as counsel may advise and this Honourable Court may permit.

**Date:** March 25, 2020

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Counsel for the Applicants



**TAB B**

Court File No. CV-19-00630241-00CL

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

THE HONOURABLE	)	THURSDAY, THE 1st
	)	
MR. JUSTICE McEWEN	)	DAY OF APRIL, 2020

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC.,  
NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH  
AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC.,  
NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR  
AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA  
EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z  
OO and NAFA POLSKA SP. Z OO

(the “**Applicants**”)

**ORDER**

**(Re: Stay Extension, Increase of Administration Charge and Approval of Settlement)**

**THIS MOTION**, made by the Applicants for an Order for the relief set out in the Notice of Motion of the Applicants dated March 25, 2020, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicants and the related confidential appendices, and upon hearing the submissions of counsel for the Applicants, counsel to the Monitor, counsel to the Canadian Imperial Bank of Commerce, as agent (in such capacity, the “**Agent**”) for the lenders party to the Fourth and Restated Credit Agreement dated as of

September 27, 2019 (as may be amended or amended and restated, the “**Credit Agreement**”) from time to time (the “**Lenders**”), and counsel for Business Development Bank of Canada (“**BDC**”) no one appearing for any other person on the Service List, although properly served as appears on the Affidavit of Service of Ariyana Botejue, sworn March [insert], 2020, filed:

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that terms not otherwise defined in this Order shall have the meaning set out in the Initial Order of the Honourable Justice McEwen, dated October 31, 2019 (as amended and restated) (the “**Initial Order**”).

### **EXTENSION OF THE STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period is hereby extended from April 3, 2020 to and including May 4, 2020
4. **THIS COURT ORDERS** that the total amount of the Administration Charge is increased from USD \$700,000 to USD \$1,500,000 and the amounts of the Administration Charge referenced in Paragraph 44 of the Initial Order setting out the priority of the Charges are amended to the following:

Second – the Administration Charge to the maximum of USD \$700,000; and

Fourth – the Administration Charge to the maximum amount of USD \$800,000.

5. **THIS COURT ORDERS** that the Mullen Fur settlement, substantially on the terms described in Confidential Appendix “B” to the Notice of Motion, is hereby approved and the Applicants are hereby authorized to take such steps as are required to complete the settlement. The proceeds received in connection with such settlement shall not be used by NAFA without the prior written consent of the Agent or further order of the Court.

**SEALING OF CONFIDENTIAL EXHIBITS**

6. **THIS COURT ORDERS** that Confidential Appendices “A” and “B” to the Notice of Motion shall be and are hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

**INTERNATIONAL RECOGNITION**

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor and the Applicants and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, and the Applicants as may be necessary or desirable to give effect to this Order or to assist the Monitor and the Applicants and their agents in carrying out the terms of this Order.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFPRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO (the "Applicants")

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**INITIAL ORDER**

**(Re: Stay Extension, Increase of Administration Charge  
and Approval of Settlement)**

**BLANEY MCMURTRY LLP**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTH AMERICAN FUR PRODUCERS INC., NAFA PROPERTIES INC., 3306319 NOVA SCOTIA LIMITED, NORTH AMERICAN FUR AUCTIONS INC., NAFA PROPERTIES (US) INC., NAFA PROPERTIES STOUGHTON LLC, NORTH AMERICAN FUR AUCTIONS (US) INC., NAFFRO LLC (WISCONSIN LLC), NAFA EUROPE CO-OPERATIEF UA, NAFA EUROPE B.V., DAIKOKU SP.Z OO and NAFA POLSKA SP. Z OO (the "**Applicants**")

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
Proceeding commenced at Toronto

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**MOTION RECORD OF THE APPLICANTS**

**(Re: Stay Extension, Increase of Administration Charge  
and Approval of Settlement - Returnable April 1, 2020)**

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