

**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  
UNIQUE BROADBAND SYSTEMS, INC.

**MOTION RECORD  
(returnable 4 August 2011)**

Date: 2 August 2011

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# TAB 1

Court File No.: CV-11-9283-00CL

**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  
UNIQUE BROADBAND SYSTEMS, INC.

**NOTICE OF MOTION**

**UNIQUE BROADBAND SYSTEMS, INC. ("UBS")** will make a motion to the Court on Thursday, August 4, 2011, at 10:00 a.m., or as soon after that time as the motion can be heard, 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 attached form of the draft Order attached as Schedule "A"; and
2. Such further relief as may be required in the circumstances and this Honourable Court deems just and equitable.

**THE GROUNDS FOR THE MOTION ARE:**

3. The grounds set out in the Affidavit of Robert Ulicki sworn 11 July 2011; and
4. Such further and other grounds as counsel may advise and this Honourable Court may accept.

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

5. Affidavit of Robert Ulicki sworn 11 July 2011.
6. Such material as counsel may advise and this Honourable Court permit.

Date: 2 August 2011

**GOWLING LAFLEUR HENDERSON LLP**

Barristers and Solicitors

1 First Canadian Place

100 King Street West, Suite 1600

Toronto ON M5X 1G5

**E. Patrick Shea** (LSUC No.: 39655K)

Tel: (416) 369-7399

Fax: (416) 862-7661

Solicitors for the Applicant



# TAB A

**SCHEDULE "A"**  
Draft Order

TOR\_LAW\7701570\1

Court File No.: CV-11-9283-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE M**

)

**THURSDAY, THE 4<sup>TH</sup> DAY****JUSTICE [NAME]**

)

**OF AUGUST, 2011**

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 UNIQUE  
BROADBAND SYSTEMS, INC.

**FIRST EXTENSION**

**AND**

**CLAIMS BAR PROCEDURE ORDER**

**THIS MOTION**, made by Unique Broadband Systems, Inc. ("**UBS**") and UBS Wireless Services Inc. ("**UBSW**" and, together with UBS, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Robert Ulicki sworn 22 July 2011 and the Exhibits thereto and the First Report of RSM Richter Inc. (the "**Monitor**") in its capacity as Monitor of UBS and UBSW,

## **SERVICE**

- [1] **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **EXTENSION OF STAY**

- [2] **THIS COURT ORDERS AND DECLARES** that the Stay Period (as defined in the Initial Order dated 5 July 2011) be and is hereby extended to 31 October 2011.

## **DEFINITIONS**

- [3] **THIS COURT ORDERS** that the following terms in this Order shall, unless otherwise indicated, have the following meanings ascribed thereto:

- a) **"Business Day"** means a day, other than a Saturday, a Sunday, or a day when banks are not open for business in the Province of Ontario;
- b) **"CCAA Proceedings"** means the proceedings in respect of the UBS and UBSW before the Court commenced pursuant to the CCAA;
- c) **"Claim"** means any right or claim of any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever of any of the Applicants, owed to such Person and any interest accrued thereon or costs payable in respect thereof, whether reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, together with any other claims of any kind that, if unsecured, would have

been claims provable in bankruptcy had the Applicants become bankrupt on the Determination Date;

- d) **"Claims Bar Date"** means 19 September 2011 at 1700 Eastern Time;
- e) **"Claims Officer"** means the individual(s) appointed as claims officer(s) pursuant to paragraph [11] of this Order;
- f) **"Claims Package"** means the document package which shall include the Notice to Creditors, the Proof of Claim Form and the Creditors' Instructions;
- g) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- h) **"Creditor"** means any Person having a Claim and may, where the context requires, include the assignee of a Claim or a trustee, interim receiver, receiver, receiver and manager, or other Person acting on behalf of such Person.
- i) **"Creditors' Instructions"** means an instruction letter substantially in the form attached hereto as **Schedule "A"** regarding the completion of a Proof of Claim Form;
- j) **"Creditors' List"** means the list of Creditors prepared in accordance with s. 23(1) of the CCAA;
- k) **"Determination Date"** means 5 July 2011;
- l) **"Dispute Package"** means, with respect to any Claim, a copy of the related Proof of Claim Form, Notice of Revision or Disallowance and Notice of Dispute;
- m) **"Disputed Claim"** means a Claim in respect of which a Notice of Dispute has been delivered.

- n) **"Initial Order"** means the order of this Court made under the CCAA on 5 July 2011, as amended and/or restated from time to time thereafter;
- o) **"Known Creditor"** means the Creditors listed on the Creditors' List;
- p) **"Notice of Dispute"** means the notice that may be delivered by a Creditor who has received a Notice of Revision or Disallowance disputing such Notice of Revision or Disallowance, which notice shall be substantially in the form attached hereto as **Schedule "B"**;
- q) **"Notice of Revision or Disallowance"** means the notice advising a Creditor that the Monitor has revised or rejected all or part of such Creditor's Claim set out in its Proof of Claim Form and setting out the reasons for such revision or disallowance, which notice shall be substantially in the form attached hereto as **Schedule "C"**;
- r) **"Notice to Creditors"** means the notice substantially in the form attached hereto as **Schedule "D"**;
- s) **"Person"** means any individual, partnership, firm, joint venture, trust, entity, corporation, limited or unlimited liability company, body corporate, unincorporated association or organization, governmental body or agency, or similar entity, howsoever designated or constituted and any individual or other entity owned or controlled by or which is the agent of any of the foregoing;
- t) **"Plan"** means a plan of compromise or arrangement filed or to be filed by one or more of the Applicants pursuant to the CCAA, as such plan may be amended or supplemented from time to time;
- u) **"Proof of Claim Form"** means the form to be completed and filed by a Creditor setting forth its purported Claim, which Proof of Claim Form shall be substantially in the form attached hereto as **Schedule "E"**;

v) **"Proven Claim"** means the amount of any Claim of any Creditor as of the Determination Date, filed and determined in accordance with the provisions of the CCAA and this Order;

w) **"Publication Date"** means the date on which the publication of the Newspaper Notice in accordance with this Order has been completed.

#### NOTICE OF CLAIMS

- [4] **THIS COURT ORDERS** that the Monitor shall cause the Notice to Creditors to be placed in *The Globe & Mail* (National Edition) as soon as possible following the issuance of this Order, but in any event no later than 15 August 2011.
- [5] **ORDERS** that the Monitor shall send a copy of the Claims Package to each Known Creditor at the last known address for each Known Creditor by no later than 15 August 2011.
- [6] **THIS COURT ORDERS** that the Monitor shall cause a copy of the Claims Package to be sent to any Person requesting a Claims Package.
- [7] **THIS COURT ORDERS** that the publication of the Notice to Creditors, the posting of the Claims Package on the Monitor's website and the mailing of the Claims Package to the Known Creditors as well as to any other Person requesting such material in accordance with the requirements of this Order shall constitute good and sufficient service and delivery of notice of this Order and the Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert Claims and that no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

## **FILING OF PROOFS OF CLAIM**

[8] **THIS COURT ORDERS** that every Creditor asserting a Claim against the Applicants shall complete a Proof of Claim Form and deliver it to the Monitor so that it is actually received by the Monitor by no later than the Claims Bar Date.

[9] **THIS COURT ORDERS** that, unless otherwise authorized by this Court, any Creditor who does not file a Proof of Claim Form in respect of a Claim in accordance with this Order by the Claims Bar Date shall be forever barred from asserting such Claim against any of the Applicants and such Claim shall be forever extinguished and any holder of such Claim shall not be entitled to participate as a Creditor in the CCAA Proceedings or receive any further notice in respect of those proceedings and shall not be entitled to vote on any matter in those proceedings, including any Plan, or from advancing a Claim against the Applicants or from receiving a distribution under any Plan or otherwise from the Applicants, or the Monitor on behalf of the Applicants, in respect of such Claim.

## **REVIEW AND DETERMINATION OF CLAIMS**

[10] **THIS COURT ORDERS** that the following procedure shall apply where a Creditor delivers a Proof of Claim Form to the Monitor on or before the Claims Bar Date:

- a) the Monitor, together with the Applicants, shall review the Proof of Claim Form and the terms set out therein;
- b) where the Applicants advise the Monitor that they dispute a Claim or the quantum asserted as owing by a Creditor, the Monitor shall a Notice of Revision or Disallowance to that Creditor;
- c) a Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within twenty (20) Business Days of receipt by the Creditor of the Notice of Revision or Disallowance, send a Notice of Dispute to the Monitor setting out the basis for the dispute;



- d) unless otherwise authorized by this Court, if the Creditor does not provide a Notice of Dispute to the Monitor within the time period provided for above, such Creditor shall be deemed to have accepted the value of its Claim as set out in the Notice of Revision or Disallowance;
- e) within fifteen (15) Business Days of receipt of a Notice of Dispute, the Monitor shall, after consulting with the Applicants and the applicable Creditor as to whether the matters set out in the Notice of Revision or Disallowance and the Notice of Dispute are most appropriate for determination by a Claims Officer or a Judge of the Court, the Monitor shall:
- (i) if the Applicant and the Creditor agree that the Disputed Claim should be determined by a Claims Officer, bring a motion to have a Claims Officer appointed to determine the Disputed Claim;
  - (ii) if the Creditor and the Applicant agree that the Disputed Claim should be determined by a Judge of the Court, bring a motion seeking to have a Judge of the Court assigned to determine the Disputed Claim; or
  - (iii) if there is a dispute between the Creditor and the Applicant as to how the Disputed Claim should be determined, bring a motion to the Court to obtain advice and directions as to whether the Disputed Claim should be determined by a Claims Officer or a Judge of the Court;
- f) the Monitor shall deliver a Dispute Package to the Claims Officer or the Judge assigned to determine the Claim; and
- g) the Monitor shall not be required to send to any Creditor a confirmation of receipt by the Monitor of any document provided by a Creditor pursuant to this Order and each Creditor shall be responsible for obtaining proof of delivery, if they so require, through their choice of delivery method.

**CLAIMS OFFICER**

[11] **THIS COURT ORDERS** that the Court may appoint a person or persons to act as Claims Officers for the purpose of resolving any Disputed Claims.

[12] **THIS COURT ORDERS** that the Claims Officer shall incur no liability or obligation as a result of its appointment or the fulfilling of its duties in carrying out of the provisions of this Claims Order, save and except for any gross negligence or willful misconduct on its part. The Applicants shall indemnify and hold harmless the Claims Officer with respect to any liability or obligation as a result of its appointment or the fulfilling of its duties in carrying out the provisions of this Claims Order, save and except for any gross negligence or willful misconduct on its part. No action, application or other proceeding shall be commenced against the Claims Officer as a result of, or relating in any way to its appointment as the Claims Officer, the fulfillment of its duties as the Claims Officer or the carrying out of any Order of this Court except with leave of this Court being obtained, and notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the Claims Officer at least seven (7) days prior to the return date of any such motion for leave.

[13] **THIS COURT ORDERS** that, subject to further Order of the Court, the parties to the Disputed Claim may offer evidence in support of or in opposition to the Disputed Claim, and the Claims Officer shall, after consultation with the Applicants and the Creditor, determine the manner in which any such evidence may be brought before him by the parties, as well as any other procedural or evidentiary matter that may arise in respect of the hearing of a Disputed Claim, including, without limitation, the production of documents by any of the parties involved in the hearing of a Disputed Claim; provided, for greater certainty, that the hearing of the Disputed Claim and all such determinations made therein and in connection therewith, including procedural or evidentiary matter, shall be made in accordance with applicable common law in the Province of Ontario.

[14] **THIS COURT ORDERS** that the Claims Officer may, at any time, engage such advisors as it deems necessary or appropriate to inquire into and report on any question of fact, opinion or law relating to the hearing of a Disputed Claim.

- [15] **THIS COURT ORDERS** that the Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before the Claims Officer shall be paid.

#### **APPEAL OF CLAIMS OFFICER DETERMINATION**

- [16] **THIS COURT ORDERS** that the Applicants or the Creditor may, at his/her/its/their own expense, appeal the Claims Officer's determination of a Disputed Claim to this Court within twenty-one (21) calendar days of notification of the Claims Officer's determination of such Creditor's Claim by serving upon the Applicants or the Creditor, as applicable, and the Monitor and filing with this Court a notice of motion returnable on a date to be fixed by this Court as soon as practicable. If an appeal is not filed within such period in strict accordance with this Order, then the Claim Officer's determination shall, subject to further order of this Court, be final and binding in all respects, with no further right of appeal.
- [17] **THIS COURT ORDERS** that findings of fact made by a Claims Officer in respect of a Disputed Claim shall be final and binding and shall not be subject to review on appeal to this Court, unless the Court determines that said findings of fact made by the Claims Officer constitute a palpable and overriding error.

#### **NOTICES AND COMMUNICATIONS**

- [18] **THIS COURT ORDERS** that any notice or other communication to be given in connection with this Order by the Applicants or the Monitor to a Creditor, other than the Notice to Creditors to be published as provided by this Order, will be sufficiently given to a Creditor if given by prepaid ordinary mail, by courier, by delivery or by facsimile transmission or electronic mail to the Creditor to such address, facsimile number or e-mail address appearing in the books and records of the Applicants or in any Proof of Claim Form filed by the Creditor. Any such notice or other communication (a) if given by prepaid ordinary mail, shall be deemed received on the third (3rd) Business Day after mailing to a destination within Ontario, the fifth (5th) Business Day after mailing to a destination elsewhere within Canada or to the United States and the tenth (10th) Business

Day after mailing to any other destination; (b) if given by courier or delivery, shall be deemed received on the Business Day following dispatch; (c) if given by facsimile transmission or electronic mail before 1700. on a Business Day, shall be deemed received on such Business Day; and (d) if given by facsimile transmission or electronic mail after 1700 on a Business Day, shall be deemed received on the following Business Day.

[19] **THIS COURT ORDERS** that, in the event that the day on which any notice or communication required to be delivered pursuant to this Order is not a Business Day, then such notice or communication shall be required to be delivered on the next Business Day.

[20] **THIS COURT ORDERS** that, if during any period during which notices or other communication are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications then not received or deemed received shall not, absent further Order of this Court, be effective. Notices and other communications given hereunder during the course of any such postal strike or postal work stoppage of general application shall only be effective if given by electronic mail, courier, delivery or facsimile transmission in accordance with this Order.

#### **GENERAL PROVISIONS**

[21] **THIS COURT ORDERS** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination Date.

[22] **THIS COURT ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents.

[23] **THIS COURT OREDERS** that the Monitor may apply to this Court for directions regarding its obligations in respect of the claims process provided for in this Claims Order.

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## SCHEDULE "A"

INSTRUCTION LETTER  
FOR THE CLAIMS PROCEDURE FOR

UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES  
INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")

## CLAIMS PROCESS

By Order dated 4 August 2011 (as may be amended from time to time, the "Claims Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), RSM Richter Inc. in its capacity as Court-appointed Monitor of the Applicants, has been authorized to conduct a claims process (the "Claims Process"). A copy of the Claims Order can be obtained from the Monitor's website at [www.rsmrichter.com](http://www.rsmrichter.com)

This letter provides general instructions for completing the Proof of Claim form. As of the date of this instruction letter, there have been no proposed plans of arrangement or compromise pursuant to the CCAA. Capitalized terms not defined within this instruction letter shall have the meaning set out in the Claims Order. You should review the Claims Order carefully for all terms defined therein.

The Claims Process is intended for any Person with a Claim of any kind or nature whatsoever, against any or all of the Applicants arising on or prior to 5 July 2011, whether unliquidated, contingent or otherwise.

All notices and inquiries with respect to the Claims Process should be directed to the Monitor at the address below:

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

Attention: Lana Bezner  
Telephone: 416-932-6009  
Fax: 416-932-6200  
Email: [lbezner@rsmrichter.com](mailto:lbezner@rsmrichter.com)

**FOR CREDITORS SUBMITTING A PROOF OF CLAIM FORM**

If you believe that you have a Claim against any or all of the Applicants you must file a Proof of Claim form with the Monitor. All Proofs of Claim for Claims arising prior to 5 July 2011 must be received by the Monitor **before 5:00 pm (Eastern Standard Time) on 19 September 2011 (the "Claims Bar Date")**, unless the Monitor and the Applicants agree in writing or the Court orders that the Proof of Claim be accepted after that date. If your claim is not received by the Claims Bar Date, it will be forever barred and extinguished and you will not be entitled to participate in any Plan.

Additional Proof of Claim forms can be obtained from the Monitor's website at [www.rsmrichter.com](http://www.rsmrichter.com) or by contacting the Monitor at **416-932-6009** or [lbezner@rsmrichter.com](mailto:lbezner@rsmrichter.com) and by providing the particulars as to your name, address, facsimile number, email address and contact person. Once the Monitor has this information, you will receive, as soon as practicable, additional Proof of Claim forms.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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## SCHEDULE "B"

### NOTICE OF DISPUTE

**UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")**

Applicant(s) against which a Claim is asserted:

☐

USB

☐

USBW

#### 1. Particulars of Creditor

(a) Full Legal Name of Creditor (include trade name, if different):

(the "Creditor").

(b) Full Mailing Address of the Creditor:

(c) Other Contact Information of the Creditor:

Telephone Number:

Email Address:

Facsimile Number:

Attention (Contact Person):

#### 2. Particulars of original Creditor from whom you acquired the Claim, if applicable:

(a) Have you acquired this Claim by assignment? If yes, if not already provided, attach documents evidencing assignment.



**D**

☐ Yes

☐ No

(b) Full Legal Name of original creditor(s):

3. **Dispute of Revision or Disallowance of Claim for Voting and/or Distribution Purposes**

The Creditor hereby disagrees with the value of its Claim as set out in the Notice of Revision or Disallowance and asserts a Claim as follows:

**Secured Claim**

**Unsecured Claim**

**R**

**Amount Allowed by Monitor  
Amount Claimed by Creditor**

If you are Disputing a Claim against more than one of the Applicants, please complete a Dispute Notice for each disputed Claim.

**REASON(S) FOR THE DISPUTE (ATTACHED)**

*(You must include a list of reasons as to why you are disputing your Claim as set out in the Notice of Revision or Disallowance.)*

**SERVICE OF DISPUTE NOTICES**

If you intend to dispute the Notice of Revision or Disallowance, you must deliver to the Monitor this Dispute Notice by 5:00 p.m. (Eastern Standard Time) on the date that is **twenty (20) Business Days** after receipt of this Notice of Revision or Disallowance to the following address.

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

**Attention:** Lana Bezner  
**Telephone:** 416-932-6009  
**Fax:** 416-932-6200  
**Email:** lbezner@rsmrichter.com

**F**

**THE TIMING FOR THE DEEMED RECEIPT OF CORRESPONDENCE IS SET OUT IN THE CLAIMS ORDER.**

**[SEE NEXT PAGE FOR SIGNATURE]**

**T**

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

Name of Creditor:

\_\_\_\_\_  
(Name)

Witness

Per: Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
(please print)

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## SCHEDULE "C"

## NOTICE OF REVISION OR DISALLOWANCE

UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")

TO:

(Name of Creditor)

Capitalized terms not defined within this Notice of Revision or Disallowance shall have the meaning ascribed thereto in the order of the Ontario Superior Court of Justice (Commercial List) dated 4 August 2011 (the "Claims Order").

Pursuant to the Claims Order, RSM Richter Inc., in its capacity as Court-appointed Monitor of the Applicants, hereby gives you notice that the Applicants, with the assistance of the Monitor, has reviewed your Proof of Claim and has revised or disallowed your Claim. Subject to further dispute by you in accordance with the Claims Order, your Claim will be allowed or disallowed as follows:

(a) UBS

Amount Claimed by Creditor

Amount Allowed by Monitor

Secured Claim

Unsecured Claim

(b) UBSW

Amount Claimed by Creditor

Amount Allowed by Monitor

Secured Claim

Unsecured Claim

## REASON(S) FOR THE REVISION OR DISALLOWANCE

## SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must deliver to the Monitor a Dispute Notice (in the form enclosed) **by 5:00 p.m. (Eastern Standard Time) on the date that is twenty (20) Business Days after receipt of this Notice of Revision or Disallowance** to the following address.

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

**Attention:** Lana Bezner  
**Telephone:** 416-932-6009  
**Fax:** 416-932-6200  
**Email:** lbezner@rsmrichter.com

**THE TIMING FOR THE DEEMED RECEIPT OF CORRESPONDENCE IS SET OUT IN THE CLAIMS ORDER.**

**IF YOU FAIL TO FILE YOUR DISPUTE NOTICE BY 5:00 P.M. (EASTERN STANDARD TIME) ON THE DATE THAT IS TWENTY (20) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE OF REVISION OR DISALLOWANCE THE VALUE OF YOUR CLAIM WILL BE DEEMED TO BE ACCEPTED AS FINAL AND BINDING AS SET OUT IN THIS NOTICE OF REVISION OR DISALLOWANCE.**

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

## SCHEDULE "D"

## NOTICE TO CREDITORS AND OTHERS OF FILING CLAIMS AS AGAINST

UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")

## RE: NOTICE OF CLAIMS PROCESS AND CLAIMS BAR DATE

**PLEASE TAKE NOTICE** that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made 4 August 2011 (the "**Claims Order**"). The Court has ordered that the Court-appointed Monitor of the Applicants, RSM Richter Inc. (the "**Monitor**"), send Proof of Claim Document Packages to the Known Creditors of the CCAA Parties as part of the Court-approved claims process (the "**Claims Process**"). All capitalized terms shall have the meaning given to those terms in the Claims Order.

The Claims Order, the Proof of Claim Document Package, additional Proofs of Claim and related materials may be accessed from the Monitor's website at [www.rsmrichter.com](http://www.rsmrichter.com).

Please take notice that any person who believes that they have a Claim against Applicants that existed as at the date of the 5 July 2011 must send a Proof of Claim to the Monitor to be received **before 5:00 p.m. (Eastern Standard Time) on 19 September 2011 (the "Claims Bar Date")**.

**PROOFS OF CLAIM MUST BE RECEIVED BY THE MONITOR BY THE CLAIMS BAR DATE OR THE APPLICABLE CLAIM WILL BE FOREVER BARRED AND EXTINGUISHED.**

Reference should be made to the Claims Order for the complete definition of "Claim" to which the Claims Process applies.

The Monitor can be contacted at the following address to request a Proof of Claim Document Package for any other notices or enquiries with respect to the Claims Process:

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

**Attention:** Lana Bezner  
**Telephone:** 416-932-6009  
**Fax:** 416-932-6200  
**Email:** [lbezner@rsmrichter.com](mailto:lbezner@rsmrichter.com)

# D

## SCHEDULE "E"

### PROOF OF CLAIM

**FOR CREDITORS OF UNIQUE BROADBAND SYSTEMS, INC. ("UBS") AND UBS WIRELESS SERVICES INC. ("UBSW" AND, TOGETHER WITH UBS, THE "APPLICANTS")**

Please read carefully the enclosed Instruction Letter for completing this Proof of Claim form. Capitalized terms not defined within this Proof of Claim form shall have the meaning ascribed thereto in the Order of the Ontario Superior Court of Justice (Commercial List) dated 4 August 2011, as may be amended from time to time (the "**Claims Order**").

#### 4. PARTICULARS OF CREDITOR:

(a) Full Legal Name of Creditor (include trade name, if different):

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(the "**Creditor**"). The full legal name should be the name of the Creditor of the Applicant(s), notwithstanding whether an assignment of a Claim, or a portion thereof, has occurred prior to or following 5 July 2011.

(b) Full Mailing Address of the Creditor:

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The mailing address should be the mailing address of the Creditor and not any assignee.

(c) Other Contact Information of the Creditor:

Telephone Number:

Email Address:

Facsimile Number:

Attention (Contact Person):

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(d) Has the claim set out herein been sold, transferred or assigned by the Creditor to another party?

☐

Yes

☐

No

5. PARTICULARS OF ASSIGNEE(S) (IF APPLICABLE)

*If the Claim set out herein has been sold, transferred or assigned, complete the required information set out below. If there is more than one assignee, please attach a separate sheet that contains all of the required information set out below for each assignee.*

(a) Full Legal Name of Assignee:

\_\_\_\_\_  
\_\_\_\_\_

(b) Full Mailing Address of the Assignee:

\_\_\_\_\_  
\_\_\_\_\_

Other Contact Information of the Assignee:

Telephone Number:

Email Address:

Facsimile Number:

Attention (Contact Person):

6. PROOF OF CLAIM – CLAIM AGAINST THE APPLICANT(S)

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

(a) That I:

☐

am a Creditor of one or more of the Applicants; **OR**

☐

Am

\_\_\_\_\_  
(state position or title)

**D**

Of

\_\_\_\_\_  
(name of Creditor)

(b) That I have knowledge of all the circumstances connected with the Claim described and set out below;

(c) The Applicant(s) was and still is indebted to the Creditor as follows (include all Claims that you assert against the Applicant(s). Claims should be filed in the currency of the transactions, with reference to the contractual rate of interest, if any, and such currency should be indicated as provided below in respect of the following Claim(s):

(complete using original currency and amount)

	Amount of Claim	Currency	Secured	Unsecured
<input type="checkbox"/> USB			<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> USBW			<input type="checkbox"/>	<input type="checkbox"/>

7. **NATURE OF CLAIM – Complete ONLY if you are asserting a Secured Claim**

Applicant: \_\_\_\_\_

☐ Secured Claim of \$ \_\_\_\_\_  
(Original Currency and amount)

In respect of this debt, I hold security over the assets of the Applicant(s) valued at

\$ \_\_\_\_\_  
(Original Currency and amount)

the particulars of which security and value are attached to this Proof of Claim form.

(Give full particulars of the security, including the date on which the security was given, the value which you ascribe to the assets charged by your security, the basis for such valuation and attach a copy of the security documents evidencing the security.)

**T**



*(If you are asserting multiple secured claims, against one or more of the Applicants, please provide full details of your security against each of the Applicants)*

**8. PARTICULARS OF CLAIM**

Other than as already set out herein, the particulars of the undersigned's total Claim against the Applicant(s) are attached on a separate sheet.

*Provide all particulars of the Claim and supporting documentation that you feel will assist in the determination of your claim. at a minimum, you are required to provide (if applicable) the invoice date, invoice number, the amount of each outstanding invoice and the related purchase order number. Further particulars may include the following if applicable: a description of the transaction(s) or agreement(s) giving rise to the Claim; contractual rate of interest (if applicable); name of any guarantor which has guaranteed the Claim; details of all credits, discounts, etc. claimed; and description of the security if any, granted by the affected Applicant(s) to the Creditor and, the estimated value of such security and the basis for such valuation.*

**9. FILING OF CLAIM**

This Proof of Claim form must be received by the Monitor by no later than **5:00 p.m. (Eastern Standard Time) on 19 September 2011**, to the following address:

RSM Richter Inc.  
200 King Street West, Suite 1100  
Toronto ON M5H 3T4

**Attention:** Lana Bezner  
**Telephone:** 416-932-6009  
**Fax:** 416-932-6200  
**Email:** lbezner@rsmrichter.com

**THE TIMING FOR THE DEEMED DELIVERY OF CORRESPONDENCE IS SET OUT IN THE CLAIMS ORDER.**

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Name of Creditor: \_\_\_\_\_

(Name)

Per: \_\_\_\_\_

Name:

Title:

(please print)

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

AND IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF UNIQUE BROADBAND SYSTEMS INC.

(the "Applicant")

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

(PROCEEDING COMMENCED AT TORONTO)

**NOTICE OF MOTION**

**GOWLING LAFLEUR HENDERSON LLP**

Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**E. Patrick Shea**  
LSUC No.: 39655K  
Telephone: (416) 369-7399  
Facsimile: (416) 862-7661

SOLICITORS FOR THE APPLICANT

# TAB 2

Court File No.: CV-11-9283-00CL

**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  
UNIQUE BROADBAND SYSTEMS, INC.

**AFFIDAVIT OF ROBERT ULICKI  
(Sworn 11 July 2011)**

**I, ROBERT ULICKI** of the City of Toronto in the Province of Ontario **MAKE  
OATH AND SAY:**

1. I am a director of Unique Broadband Systems, Inc. ("**UBS**") and its wholly-owned subsidiary UBS Wireless Services Inc. ("**UBS Wireless**" and, together with UBS, the "**Applicants**").
2. I have personal knowledge of the matters herein deposed, save and except where I refer to matters based on information and belief, in which cases I identify the source(s) of that information and believe it to be true.
3. On 5 July 2011, the Court made an Order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 19085, c. C-36 (the "**CCAA**") in respect of UBS and UBS Wireless. A true copy of the Initial Order is attached as **Exhibit "A"**.
4. RSM Richter Inc. (the "**Monitor**") was appointed by the Initial Order to act as monitor of the Applicants.

5. The Stay Period, as defined in the Initial Order, currently expires on 5 August 2011.
6. I am swearing this affidavit in support of a motion being brought by the Applicants seeking an extension of the Stay Period, as defined in the Initial Order, and establishing a process to determine the claims against the Applicants.
7. Since the Initial Order was made the Applicants have continued to carry on business in the ordinary course. The Applicants have also: (a) met with the Monitor to discuss the Applicants' business and operations; (b) engaged in preliminary discussions with a major stakeholder with respect to the restructuring of the Applicants; and (c) developed a claims bar process.

**I. The Applicants**

8. UBS is a company incorporated pursuant to the *Business Corporation Act*, R.S.O. 1990, c. B.16 ("OBCA") whose shares are listed on the TSX Venture Exchange under the symbol "UBS". UBS's shares were ceased traded from 4 July 2011 until 6 July 2011 while the application to obtain the Initial Order was heard.
9. UBS owns all of the issued and outstanding shares of UBS Wireless. UBS Wireless is a company incorporated pursuant to the OBCA.
10. UBS was, until October of 2003, a designer, developer and manufacturer of high-speed mobile and fixed wireless solutions.
11. In October of 2003, UBS sold all of its engineering and manufacturing business and transformed itself into a holding company when, through UBS Wireless, it acquired a controlling interest in LOOK Communications Inc. ("LOOK"). UBS Wireless currently has had a non-controlling interest in LOOK.

12. UBS has two (2) full-time employees and retains two (2) people on a contract basis. UBS does not have any pension plans for its employees, and is current with respect to all required employee source deductions and other remittances. UBS Wireless has no employees and does not carry on any business that would require that it collect and remit taxes.

## **II. UBS Wireless's Creditors**

13. UBS Wireless has no secured creditors of which I am aware, except for UBS.
14. The claims bar process being proposed by the Applicants will, however, ensure that any contingent claims against UBS Wireless are identified and determined.

## **III. UBS's Creditors**

### **A. Secured Creditors -- \$0**

15. UBS has a corporate credit card with a \$50,000 limit. This credit card is secured with a \$50,000 cash deposit. The amount owing on the credit card fluctuates, but UBS typically pays the outstanding balance owing each month.
16. Aside from the issuer of the corporate credit card, UBS does not have any creditors with security over the company's assets and property of which it is aware, although a Personal Property Security Registry search conducted in respect of UBS indicates that a number of registrations have been made against UBS.

17. The claims bar process proposed by the Applicants will ensure that any secured claims against the company are determined and barred<sup>1</sup>.

**B. Unsecured Claims**

18. UBS's consolidated financial statements for the periods ending 28 February 2011 reflect liabilities of approximately \$6.5 million. There are issues with respect to the validity of certain of these obligations and there are also other claims against UBS that are not reflected in the consolidated financial statements.

**i. Former Landlord Claim – \$150,000**

19. In 2005, UBS agreed to settle an action initiated by its former landlord with respect to certain repairs to premises under a lease entered into between the parties in 1999. Under the terms of the settlement, in exchange for a full and final release, UBS agreed to pay the plaintiff damages of \$600,000 in two installments with \$450,000 payable immediately and \$150,000 payable on 15 January 2012.

**ii. UBS Restructuring Awards – \$3.9 million**

20. Effective 31 May 2009, UBS awarded "restructuring awards" (the "**UBS Restructuring Awards**") totaling \$5.71 million to all of the directors and the senior management of the company.
21. The UBS Restructuring Awards are reflected on UBS's financial statements as obligations owing by the company. They are, however, payable by UBS only when the company has sufficient liquidity and UBS has never had cash available to pay the UBS Restructuring Awards.
22. UBS has reached agreements with certain officers and directors to "reverse" certain of the UBS Restructuring Awards "awarded" in their favour. In August of

<sup>1</sup> I am advised by Gowling Lafleur Henderson LLP, and verily believe, the same objective could likely be obtained under the *Personal Property Security Act* (Ontario).

2010, a former director waived his claim to any UBS Restructuring Award. In January of 2011, UBS reached a settlement with the former CFO of UBS pursuant to which he agreed to the substantial reversal of his UBS Restructuring Award. In February of 2011 UBS reached a settlement with a former director of UBS that included the reversal of the UBS Restructuring Award granted to him.

23. UBS's obligation to pay the remaining UBS Restructuring Awards is in dispute and will have to be determined.

**iii. Litigation – \$16.1 million**

24. UBS is currently involved in litigation commenced by former directors and senior management of UBS, and companies related to those persons (the "**Litigation**"). The total amount claimed against UBS in the Litigation is \$16.1 million. UBS is defending the Litigation and believes it has a good defence on the merits.
25. As mentioned above, at a special meeting of shareholders requisitioned by a group of UBS shareholders on 5 July 2010, Mr. McCutcheon, Mr. Eaton and I were elected to the Board of Directors of UBS to replace the slate of three directors put forward by UBS.
26. Following the 5 July 2010 meeting, counsel to Jolian Investments Limited ("**Jolian**"), a company controlled by Mr. Gerald McGoey, the former CEO and one of the former directors of UBS that was not elected at the meeting, wrote UBS on or about 5 July 2010 enclosing notice from Mr. McGoey and Jolian that, in their view, a "company default" and "termination without cause" of an agreement with Jolian had occurred thereby requiring payment of \$8.6 million from UBS and payment of the UBS Restructuring Award.
27. Pursuant to a Statement of Claim dated 12 July 2010, Jolian commenced an action (the "**Jolian Action**") against UBS seeking \$8.6 million and payment of the UBS Restructuring Award. UBS has defended the Jolian Action.



28. After the conclusion of the special meeting of shareholders held on 5 July 2010, DOL Technologies Inc. ("**DOL**"), a company controlled by Mr. Alex Dolgonos, gave written notice to UBS that it was terminating an agreement with UBS for "good reason" as a result of an alleged change in control of UBS. The letter demanded payment of \$7.6 million from UBS and payment of the UBS Restructuring Award. Mr. Dolgonos is the former head of technology for UBS and indirectly holds 19.9% of the issued and outstanding common shares of UBS.
29. Pursuant to a Statement of Claim issued 12 July 2010, DOL commenced an action (the "**DOL Action**" and, together with the Jolian Action, the "**Litigation**") against UBS seeking to recover approximately \$7.6 million from UBS and payment of the UBS Restructuring Award. UBS has defended the DOL Action.
30. The claims made in the Litigation will have to be determined.

**iv. Oppression Action – > \$900,000**

31. Pursuant to a Statement of Claim issued on 22 December 2010, 2064818 Ontario Inc. ("**2064 Ontario**"), a company controlled by Mr. Dolgonos, commenced an action against UBS and its current directors (the "**Oppression Action**"). The Oppression Action seeks, *inter alia*, at least \$900,000 in damages against UBS and UBS's current directors. UBS and the other respondents have defended the Oppression Action
32. The claim made against UBS in the Oppression Action will have to be determined.

**v. Indemnification Claims – Unknown**

33. Pursuant to a decision dated 30 May 2011, Mr. Justice Marrocco ordered that UBS had an obligation to pay the past and future legal costs of the Plaintiffs as well as the legal expenses in the Litigation on an ongoing basis. Based on

information provided by counsel UBS estimates that, as of 27 April 2011, the legal expenses payable are not less than \$750,000, and are likely considerably more. On 30 June 2011, UBS served a Notice of Appeal seeking to appeal the 27 April 2011 Order.

34. UBS has, subject to certain conditions and limitations, certain contractual and by-law-related obligations to indemnify other current and former directors, including Mr. Peter Minaki. Mr. Minaki has requested indemnification in respect of approximately \$92,000 in professional fees and expenses. The current directors may have a claim against UBS for the costs incurred in defending claims that have been commenced against them.
35. The intention is that these creditors will file proofs of claim against UBS in respect of any claim for indemnification being made against UBS.

**vi. Employee Claims – Unknown**

36. In the event that UBS is forced to file for bankruptcy or ceases operation, certain claims will arise in favour of UBS's employees. For example, the employment agreement between Mr. McCutcheon and UBS provides that Mr. McCutcheon is entitled to receive a lump sum payment of \$150,000 in the event that he is terminated other than for cause. Mr. Fraser Elliot, the chief financial officer of UBS, has an employment contract pursuant to which he is entitled to six (6) months' pay in the event that his employment is terminated without cause. UBS engages the services of two (2) consultants whose agreement with UBS provides that they are entitled to receive, respectively, six (6) months' and three (3) months' pay in the event that their agreements are terminated without cause.
37. The intention is that these creditors will file proofs of claim against UBS in respect of their contingent claims against the company.

#### IV. Other Claims – Unknown

38. UBS ceased to carry on business in 2003. Prior to the commencement of these proceedings, UBS's management resolved a number of claims being made against the company. There may, however, be remaining contingent claims against UBS that have not yet been asserted.
39. The claims bar process being proposed by the Applicants will ensure that any remaining contingent claims against UBS are identified and determined.

#### V. Claims Bar Process

40. The claims bar process being proposed by the Applicants would provide creditors until specific date (the "**Bar Date**") to deliver proofs of claim in respect of their claims against the Applicants. The claims(s) of any creditor that does not file a proof of claim by the Bar Date will be barred against the Applicants for all purposes.
41. Creditors and potential creditors of the Applicants will be notified of the claims bar process and the Bar Date through: (a) direct mailing by the Monitor to all known creditors of the Applicants; (b) postings on the Monitor's website; and (c) advertisements in *The Globe & Mail* (National Edition) newspaper.
42. The initial review of the proofs of claim filed against the Applicants will be conducted by the Monitor, with the assistance of the Applicants.
43. If Applicants advised the Monitor that they dispute the validity or quantum of a claim, that claim will be disallowed or re-valued by the Monitor. Any creditor whose claim is disallowed or re-valued will have an opportunity to challenge that disallowance or re-valuation through a process that will involve either a claims officer or the Court.

44. No Claims Officer(s) is(are) being appointed at this time. The Applicants will return to the Court to seek the appointment of a Claims Officer or Claims Officers.
45. The Applicants will also work with any creditor whose claim(s) is(are) being disputed to determine the procedure for the determination of the disputed claim(s). The Applicants, through counsel, have agreed to meet with counsel to Jolian and DOL in August of 2011 to discuss the procedure that will be use to expedite the claims being asserted in the Litigation.

#### **VI. Extension of Stay Period**

46. An extension of the Stay Period is required in order to permit the Claims Bar Process to be implemented and permit the Applicants to further discussions with stakeholders to develop a plan of compromise or arrangement.

#### **VII. LOOK**

47. LOOK is a company incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 and its shares trade on the TSX Venture Exchange.
48. Until 2009, LOOK was a provider of information, communications and entertainment services, including high-speed and dial-up internet access, digital television distribution and customer services through its wireless spectrum.
49. On 5 May 2009, LOOK announced the sale of its key wireless spectrum asset for \$80 million to Inukshuk, a partnership of Bell Canada ("Bell") and Rogers Communications. As a condition of the sale transaction, LOOK paid Bell \$16 million of the \$80 million to settle outstanding litigation. LOOK also incurred

professional fees of approximately \$8 million. Accordingly, the net proceeds to LOOK from the sale of its key asset were \$56 million. Of this amount, LOOK paid approximately \$17.4 million – approximately 31% – to LOOK's senior management and directors as "restructuring awards".

50. Since May of 2009 LOOK has been seeking to: (a) preserve its capital; (b) maximize value on its remaining assets; and (c) assess available options for maximizing returns to shareholders. LOOK has also undertaken an investigation into the facts and circumstances surrounding the restructuring awards paid from the net amounts realized on the transaction with Inukshuk.
51. UBS plays a key role in the management of LOOK. Pursuant to an Agreement between UBS and LOOK dated 19 May 2004 and amended pursuant to an Amending Agreement dated 3 December 2010 (the "MSA"), UBS provides certain services to LOOK. Those services include providing a person to perform the duties typically performed by, and assume the responsibilities typically assumed by, a chief executive officer (the "CEO Services") – essentially LOOK's management is provided to the company by UBS. The MSA currently expires on 19 May 2012.
52. During the course of the CCAA proceedings, UBS intends to continue to perform its obligations under the MSA. The services provided by UBS to LOOK are important to LOOK's going-forward strategy and, given UBS Wireless's interest in LOOK, maximizing the value of LOOK's remaining assets is also vitally important to UBS and its stakeholders.
53. On Date, LOOK issued a statement of claim in respect of an action against certain persons to, *inter alia*, recover the LOOK Restructuring Awards. A true copy of the issued statement of claim is attached as **Exhibit "B"**.

**SWORN** before me at the City of Toronto  
in the Province of Ontario,  
this 11<sup>th</sup> day of July 2011

Commissioner for Taking Affidavits or Notary

*P. SHEA*

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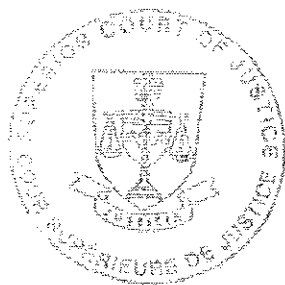


**ROBERT ULICKI**

# TAB A

**EXHIBIT "A"**





Court File No.: CV-11-9283-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE HONOURABLE MR  
JUSTICE WILTON-SIEGEL**

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)  
)

**TUESDAY, THE 5<sup>TH</sup> DAY  
OF JULY, 2011**

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  
UNIQUE BROADBAND SYSTEMS, INC.

**INITIAL ORDER**

**THIS APPLICATION**, made by the Unique Broadband Systems, Inc. ("UBS"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Robert Ulicki sworn 4 July 2011 and the Exhibits thereto, and on being advised that there are no secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, and on reading the consent of RSM Richter Inc. ("**Richter**" or, in its capacity as monitor, the "**Monitor**") to act as the monitor,

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

**APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that UBS and its wholly owned subsidiary UBS Wireless Services Inc. (together, the "**Applicant**") are companies to which the CCAA applies.

**PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

**POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.
6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
  - (b) payment for goods or services actually supplied to the Applicant following the date of this Order.
7. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
  - (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.
8. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.
9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

10. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.
11. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

12. **THIS COURT ORDERS** that until and including 4 August 2011, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

13. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

### CONTINUATION OF SERVICES

15. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

### NON-DEROGATION OF RIGHTS

16. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

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Court File Number  
08-10-9036-0001

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

## APPOINTMENT OF MONITOR

18. **THIS COURT ORDERS** that Richter is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
19. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicant's receipts and disbursements;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;



- (c) advise the Applicant in its preparation of the Applicant's cash flow statements;
  - (d) advise the Applicant in its development of the Plan and any amendments to the Plan;
  - (e) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
  - (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
  - (h) perform such other duties as are required by this Order or by this Court from time to time.
20. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.
21. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary

to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

22. **THIS COURT ORDERS** that that the Monitor shall provide any creditor [or shareholder] of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.
23. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
24. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each

case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a bi-weekly basis.

25. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 28.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

27. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge shall not be required, and that the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.
28. **THIS COURT ORDERS** that the Administration Charge shall constitute a charge on the Property and the Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

29. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant or cause to be granted any Encumbrances that rank in priority to, or *pari passu* with, the Administration Charge unless the Applicant also obtains the prior written consent of the Monitor, and the beneficiaries of the Administration Charge (the "**Chargees**"), or further Order of this Court.
30. **THIS COURT ORDERS** that the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees entitled to the benefit of the Administration Charge shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
- (a) neither the creation of the Administration Charge shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
  - (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Administration Charge; and
  - (c) the payments made by the Applicant pursuant to this Order, and the granting of the Administration Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive

conduct, or other challengeable or voidable transactions under any applicable law.

31. **THIS COURT ORDERS** that any Administration Charge created by this Order over leases of real property in Canada shall only be a Administration Charge in the Applicant's interest in such real property leases.

#### **SERVICE AND NOTICE**

32. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in *The Globe & Mail* a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (c) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.
33. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.
34. **THIS COURT ORDERS** that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email

addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at [www.rsmrichter.com](http://www.rsmrichter.com).

#### **GENERAL**

35. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
36. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.
37. **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 Applicant, the Monitor and their respective 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 Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.
38. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
39. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than

*(set aside,  
AMS)*

seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

40. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

*G. Hon. L.J.*

TOR\_LAW\7690019\5

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 05 2011

PER/PAR:

*(Signature)*

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF THE A PLAN OF COMPROMISE OR ARRANGEMENT OF UNIQUE BROADBAND SYSTEMS INC.

(the "Applicant")

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

(PROCEEDING COMMENCED AT TORONTO)

**ORDER**

**GOWLING LAFLEUR HENDERSON LLP**  
Barristers and Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**E. Patrick Shea**  
LSUC No.: 39655K  
Telephone: (416) 369-7399  
Facsimile: (416) 862-7661

SOLICITORS FOR THE APPLICANT



# TAB B

**EXHIBIT "B"**



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

Court File No.

CY-11-9291-00CL

BETWEEN:

LOOK COMMUNICATIONS INC.

Plaintiff

- and -

MICHAEL CYTRYNBAUM, FIRST FISCAL MANAGEMENT LTD.,  
GERALD MCGOEY, JOLIAN INVESTMENTS LIMITED,  
STUART SMITH, SCOTT COLBRAN, JASON REDMAN,  
ALEX DOLGONOS, DOL TECHNOLOGIES INC.

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 A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 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 \$400.00 for costs and have the costs assessed by the court.

Date July 6, 2011

Issued by



Local registrar  
**Patrick McKenzie**  
Registrar, Superior Court of Justice

Address of  
court office

TO: MICHAEL CYTRYNBAUM  
Suite 701 – 888 Bute Street  
Vancouver, BC V6E 1Y5

AND TO: FIRST FISCAL MANAGEMENT LTD.  
2900-550 Burrard Street  
Vancouver, BC V6C 0A3

AND TO: GERALD MCGOEY  
100 Rosedale Heights  
Toronto, ON M4T 1C6

AND TO: JOLIAN INVESTMENTS LIMITED  
TD Centre  
TD Bank Tower  
Suite 4700  
Toronto, ON M5K 1E6

AND TO: STUART SMITH  
80 Roxborough Street East  
Toronto, ON M4W 1V8

AND TO: SCOTT COLBRAN  
Pinecreek Farm  
6173, 17<sup>th</sup> Side Road, R.R. #4  
Acton, ON L7J 2M1

AND TO: JASON REDMAN  
5411 Lakeshore Road  
Stouffville, ON L4A 1R1

AND TO: ALEX DOLGONOS  
207 Arnold Avenue  
Thornhill, ON L4J 1C1

AND TO: DOL TECHNOLOGIES INC.  
207 Arnold Avenue  
Thornhill, ON L4J 1C1

## CLAIM

1. The plaintiff, Look Communications Inc. ("**Look**" or the "**Company**") claims the following:

- (a) damages for breach of fiduciary duty and the duties and standard of care prescribed by Section 122 of the *Canada Business Corporations Act* (the "**CBCA**") and relief from oppression pursuant to Section 241 of the CBCA from Michael Cytrynbaum ("**Cytrynbaum**"), Gerald McGoeys ("**McGoeys**"), Stuart Smith ("**Smith**"), Scott Colbran ("**Colbran**") and Jason Redman ("**Redman**") in an amount equivalent to the amounts paid to these defendants and others as "restructuring awards" in connection with the sale of Look's licensed broadcast spectrum in 2009 (the "**Sale**" and the "**Sale Awards**") estimated at \$20,000,000, less any severance amounts properly payable to Look's employees from such amounts;
- (b) additional damages in the amount of \$1,550,000 for breach of Section 124 of the CBCA from Cytrynbaum, McGoeys, Smith, Colbran and Redman for amounts paid by Look as advances to law firms for the payment of legal fees and expenses (the "**Indemnification Advances**") expected to be incurred by these defendants in responding to criticism for their roles in making and receiving the Sale Awards;
- (c) a declaration that the defendants are jointly and severally liable for any and all damages awarded pursuant to (a) and (b) above;

- (d) in the alternative to (a) above:
- (i) damages for unjust enrichment from McGoeey and Jolian Investments Limited ("**Jolian**") in the amount of \$5,565,696;
  - (ii) damages for unjust enrichment from Cytrynbaum and First Fiscal Management Ltd. ("**First Fiscal**") in the amount of \$4,146,014;
  - (iii) damages for unjust enrichment from Alex Dolgonos ("**Dolgonos**") and DOL Technologies Inc. ("**DOL**") in the amount of \$3,950,737;
  - (iv) damages for unjust enrichment from Smith in the amount of \$195,367;
  - (v) damages for unjust enrichment from Colbran in the amount of \$195,367; and
  - (vi) damages for unjust enrichment from Redman in the amount of \$1,500,000;
- (e) an order that the Sale Awards paid to the defendants are the Company's property and are subject to a constructive trust and an order for tracing of the Sale Awards;

- (f) an order that the defendants make available all necessary records to facilitate a tracing of the Sale Awards paid to them or to companies they own or control;
- (g) a declaration that the Sale Awards made to the defendants and others (other than amounts properly payable to Look's employees as severance) are invalid as transactions made in violation of the Sale Approval Order (defined below) granted in Ontario Court File No. 08-CL-7877 (the "**CBCA Proceedings**");
- (h) a declaration that the decisions of the Board of Directors made on June 16, 2009 to compensate the holders of options ("**Options**") granted pursuant to Look's Option Plan (the "**Option Plan**") and the holders of Share Appreciation Rights ("**SARs**") granted pursuant to Look's Share Appreciation Rights Plan (the "**SARs Plan**") using an assumed share price of \$0.40 per share violated the Option Plan and the SARs Plan and are invalid;
- (i) a declaration that the individual defendants did not act honestly and in good faith with a view to the Company's best interests when they caused the Company to make the Sale Awards;
- (j) a declaration that the individual defendants did not act honestly and in good faith with a view to the Company's best interests when they caused the Company to make the Indemnification Advances;
- (k) a declaration that the Sale Awards paid to Look's directors in 2009 were not directors' remuneration under Section 125 of the CBCA;



- (l) a declaration that Section 3.12 of Look's By-Law dealing with indemnification for officers and directors was *ultra vires* the Company's authority and is invalid;
- (m) a declaration that Look's indemnification agreements with each of its officers and directors were *ultra vires* the Company's authority and are invalid;
- (n) a declaration that the individual defendants are not entitled to indemnification for their legal fees and expenses incurred in answering regulatory, shareholder and other criticism for their actions in authorizing the Sale Awards and Indemnity Advances;
- (o) pre- and post-judgment interest pursuant to the *Courts of Justice Act*;
- (p) costs on a substantial indemnity scale; and
- (q) such further and other relief as counsel may advise and this court concludes to be appropriate and just.

## Overview

2. In 2009, Look completed a sale of substantially all of its assets in a Court supervised sales process pursuant to a CBCA plan of arrangement. Unbeknownst to Look's counsel for the CBCA proceedings, the Court and the monitor overseeing the sales process, at times before and after the Court's approval of the sale, the senior management and directors of Look took actions to cause approximately \$20,000,000 (or 30%) of the net sale proceeds to be paid to themselves in what they referred to as "restructuring charges" or "restructuring awards". These actions constituted a breach of their fiduciary and statutory duties to the Company and its shareholders,

were oppressive to the reasonable expectations of the Company and its shareholders, and were in violation of orders granted by the Court in connection with the sale.

## **The Parties**

### ***Look***

3. Look is a publicly traded company incorporated under the CBCA and listed on the TSX Venture Exchange ("TSX-V"). Look has two classes of shares, each of which trades on the TSX-V: subordinate voting shares (having one vote each) and multiple voting shares (having 150 votes each).

4. At the start of 2009, Look was a multi-media entertainment and information service provider in Ontario and Quebec. It delivered a range of communications services, including high-speed and dial-up internet access, web application and other services to residential and business customers. Its principal assets included a licensed spectrum in Ontario and Quebec, 30,000 subscribers, two network sites and accumulated tax losses of approximately \$300,000,000.

5. Between 2006 and 2009, Look failed to generate positive earnings. Look's losses increased each year while its subscriber base, from which most of its revenue was earned, declined. By December 2008, it was apparent that Look's business could not survive since the Company's efforts to raise capital or to find a strategic partner had failed. As such, Look was compelled to pursue a sale of its principal assets in 2009.

6. For most of 2009, Look's subordinate voting shares traded in a range between \$0.20 and \$0.25. The trading price of the multiple voting shares was in the same range.

7. Today, Look's subordinate voting and multiple voting shares trade in a range of \$0.10 to \$0.12. Look's shares are thinly traded as the Company has effectively not carried on any active business since its spectrum and broadcast license were sold on September 11, 2009 (as described below).

8. Approximately 40.7% of Look's subordinate voting shares and 37.6% of Look's multiple voting shares are owned by Unique Broadband Systems Inc. ("UBS"). UBS is incorporated under the Ontario *Business Corporations Act* (the "OBCA") and trades on the TSX-V.

9. Since 2004, UBS has provided management services to Look pursuant to a Management Services Agreement (the "UBS-Look MSA"). From 2004 to 2010, these management services included providing the services of UBS's Chairman and Chief Executive Officer ("CEO"), McGoey, to serve as Look's CEO and Vice Chairman.

***Cytrynbaum and First Fiscal***

10. Cytrynbaum is a resident of British Columbia. He served as Look's Interim CEO from May 2003 to September 2003, when he was appointed as President and CEO. On June 29, 2004, Cytrynbaum resigned from these positions and became Executive Chairman. He served as Executive Chairman of Look's Board of Directors and as a member of its Compensation and Human Resources Committee and its Audit and Governance Committee. He owed fiduciary duties and statutory and common law duties of care to Look until he resigned from his positions on July 21, 2010.

11. First Fiscal is a corporation owned and/or controlled by Cytrynbaum. It is incorporated pursuant to the British Columbia *Business Corporations Act*. It entered into a Management

Services Agreement (the "**First Fiscal MSA**") with Look pursuant to which it was paid \$15,000 per month (or \$180,000 per year) for management services to be provided by Cytrynbaum.

12. In 2009, Cytrynbaum was paid \$60,000 in directors' fees. In 2009, Look also provided Sale Awards to Cytrynbaum consisting of a cash bonus of \$2,400,000 and \$1,746,104 for the cancellation of his Options and SARs. These amounts were paid to First Fiscal and paid without any withholding tax being held back, thereby exposing Look to liability for taxes, penalties and interest owing to the Canada Revenue Agency ("**CRA**"). Neither Cytrynbaum nor First Fiscal were entitled to these Sale Awards.

***McGoey and Jolian***

13. McGoey served as the Chairman and CEO of UBS from 2002 until July 5, 2010. Pursuant to the UBS-Look MSA, McGoey served as Look's CEO and Vice Chairman beginning in 2004, and was also a member of the Compensation and Human Resources Committee of Look's Board of Directors. Accordingly, McGoey owed fiduciary duties and statutory and common law duties of care to Look until he resigned from those positions on July 21, 2010.

14. Jolian is a company owned and/or controlled by McGoey and incorporated pursuant to the OBCA. Jolian is party to a Management Services Agreement with UBS. Look had no relationship with Jolian.

15. Although neither McGoey nor Jolian were ever previously paid by Look, in 2009 Look paid McGoey Sale Awards consisting of a cash bonus of \$2,400,000 and \$3,165,696 for the cancellation of his Options and SARs. These amounts were paid to Jolian and paid without any

withholding tax being held back, thereby exposing Look to liability for taxes owing, penalties and interest levied by the CRA. Neither McGoeys or Jolian were entitled to these Sale Awards.

***Dolgonos and DOL***

16. Dolgonos is a resident of Ontario. He is a controlling shareholder of UBS, owning 19.9% of UBS's outstanding shares.

17. DOL is a company owned and/or controlled by Dolgonos and incorporated pursuant to the OBCA. DOL provided Dolgonos' services as Chief Technology Officer to UBS. Look had no relationship with DOL.

18. Dolgonos was paid \$60,000 per year beginning on February 1, 2005 as an employee of Look with the title Chief Technology Officer who reported to the CEO. Shortly after he began working for Look, Dolgonos received 7,384,461 SARs from Look representing approximately 20% of the total number of SARs issued by Look.

19. Although he was not a director of Look and maintains that he was not recognized as an "officer" of Look, Dolgonos effectively functioned as an officer of Look responsible for overseeing Look's technological initiatives, infrastructure and services. However his role is characterized, Dolgonos owed fiduciary duties and statutory and common law duties of care to Look.

20. In 2009, Look's Board of Directors awarded Dolgonos Sale Awards of \$3,950,732, that in total were surpassed only by McGoeys and Cytrynbaum's Sale Awards. Although Dolgonos did not participate in the meetings of Look's directors where these awards were made, he supported the efforts of Redman, McGoeys, Cytrynbaum and others to have these awards made to

himself and others. Similarly, Dolgonos supported the actions taken by Redman, McGoe, Cytrynbaum and Look's directors to advance funds to law firms who would represent them in answering regulatory, shareholder and other criticism concerning their roles in making the Sale Awards.

21. Dolgonos' Sale Awards consisted of a cash bonus of \$2,400,000 and \$1,550,732 for the cancellation of his SARs. These amounts were paid to DOL and paid without any withholding tax being held back, thereby exposing Look to liability for taxes, penalties and interest owing to CRA. Neither Dolgonos or DOL were entitled to these Sale Awards.

***Smith***

22. Smith is a resident of Ontario. Beginning in 2003, he served as a non-executive director of Look and was also Chairman of its Compensation and Human Resources Committee. Smith owed fiduciary duties and statutory and common law duties of care to Look until he resigned from his positions on July 21, 2010.

23. Smith was paid \$22,000 and granted 10,000 Options for his services as a director in 2009. He also was given Sale Awards in the form of \$195,367 for the cancellation of his Options. Smith was not entitled to the Sale Awards paid to him.

***Colbran***

24. Colbran is a resident of Ontario. Beginning in 1999, he served as a non-executive director of Look and was also a member of its Compensation and Human Resources Committee and of the Audit and Corporate Governance Committee. Colbran owed fiduciary duties and statutory

and common law duties of care to Look until he resigned from his positions with Look on July 21, 2010.

25. Colbran was paid \$22,000 and was granted 10,000 Options for his services as a director in 2009. He was also given Sale Awards in the form of \$195,362 for the cancellation of his Options. Colbran was not entitled to the Sale Awards paid to him.

***Redman***

26. Redman is a resident of Ontario. He served as Look's Senior Vice President and Chief Financial Officer from July 2006 and owed fiduciary duties and statutory and common law duties of care to Look until he resigned from his positions on July 21, 2010.

27. Redman was paid \$175,000 in 2009 for his services as CFO. He also received Sale Awards consisting of a cash bonus of \$1,107,000 and \$393,000 for the cancellation of his Options and SARs. Although Redman was not a director, he participated in developing the recommendations regarding the Sale Awards made in 2009. Redman was not entitled to the Sale Awards paid to him. Redman also participated in recommending and encouraging Look's directors to make the Indemnification Advances.

**The Background to and Rationale for the Sales Process**

28. Late in 2006, Look retained Greenhill & Co. ("Greenhill") to assist in a strategic review and maximization of shareholder value process. On April 24, 2007, Look announced that the review process had been discontinued because the business environment for a transaction was not favourable.

29. In the fall of 2008, Look again retained Greenhill to provide advice on the possible sale of Look or its licensed spectrum. Greenhill and Look approached a number of interested parties, but no one made an offer that Look's management considered worthwhile or that was sufficiently advanced to warrant public disclosure.

30. Each of the failed efforts with Greenhill had been undertaken because management understood that Look was failing to grow and failing to generate positive net earnings. Without additional capital, the prospects for the Company were deteriorating. That reality was reflected in the fact Look continued to accumulate losses and to lose its subscriber base. It was this reality that compelled Look to pursue a sales process for the sale of substantially all of its significant assets in 2009.

31. In response to the results of Greenhill's efforts and the continued deterioration of the Company's financial prospects, Look's Board of Directors met on November 28, 2008, with representatives from Thornton Grout Finnigan LLP ("**Thornton Grout**"), the Coreshell Group, Grant Thornton LLP ("**Grant Thornton**") and Stikeman Elliott LLP ("**Stikeman Elliott**"). At this meeting, the defendants received and considered advice from Thornton Grout and Grant Thornton concerning the possibility of conducting a public sale of Look's assets pursuant to a plan of arrangement under Section 192 of the CBCA. Thornton Grout and McGoeys were of the view that a CBCA plan of arrangement process would offer the best environment in which to encourage interested parties to submit competitive bids for Look's assets. According to Thornton Grout and McGoeys, a traditional sales effort would not be effective at maximizing shareholder value because a traditional sales process for selling all or substantially all of the company's assets would have required approval from Look's shareholders, which they believed might



“chill” prospective bidders who feared the uncertainty associated with a last-minute shareholder approval or a last minute bid from a competing party.

32. To address the perceived uncertainty of a traditional sales process, it was thought that a sales process effected through a CBCA plan of arrangement could be used to force bidders to make their best bid by a Court-ordered deadline. Sealed bids could be received by a Court appointed monitor and considered by the Board of Directors who would then select a bidder with whom to finalize a sale. The best bid would be presented to the Court for approval along with a recommendation from the monitor, but there would be no opportunity for new bids to be made after the bid deadline or for shareholders to refuse to approve the transaction at that time.

33. Under the plan of arrangement process, it was proposed that shareholders would vote only to approve the proposed sales process itself, and not the ultimate sale transaction. Once the general sale procedures or process had been approved by the shareholders, discretion over the conduct and result of the sales process would be left to the discretion and integrity of senior management, the Board of Directors, the monitor and the Court through their respective selection and approval of the ultimate sale transaction. Shareholders were repeatedly advised and encouraged to expect that this process would be managed and conducted in a fair and transparent manner under the supervision of the senior management, the Board of Directors, the monitor and the Court, and that the sales process would be run with a view to maximizing shareholder value.

34. The directors instructed management and Thornton Grout to prepare the materials to obtain shareholder and court approval to effect a sale of Look's assets pursuant to a CBCA plan of arrangement process. The directors confirmed that Thornton Grout would act as corporate counsel on the plan of arrangement and that Grant Thornton would act as the Court appointed

monitor with responsibility for overseeing the sales process and reporting to the Court on the sales process and any related matters.

35. On December 1, 2008, Look issued its application pursuant to Section 192 of the CBCA to begin the plan of arrangement process. Look filed a motion supported by an affidavit sworn by McGoey that explained why the plan of arrangement process would provide the greatest likelihood of maximizing shareholder value. Look's materials assured the Court and shareholders that the defendants were committed to acting honestly and in good faith and in the Company's best interests throughout the sales process so as to achieve the best possible result for the Company and its shareholders.

36. On December 1, 2008, the Court granted an Interim Order authorizing the Company to call a special meeting of shareholders on January 14, 2009, at which the shareholders would consider and vote on the proposed plan of arrangement sales process (the "**Shareholders' Meeting**").

37. The proxy materials for the Shareholders' Meeting, which were presented to the Court as part of the motion for the Interim Order, included a cover letter from Cytrynbaum addressed to shareholders that confirmed that the sales process would be supervised by the Court and the monitor and that this process would facilitate "the Board's objective to act in the best interest of Look and maximize shareholder value." Cytrynbaum's letter and the Court approved proxy materials were sent to shareholders to convene, and for purposes of, the Shareholders' Meeting.

38. After receiving the Court's Interim Order on December 1, 2008, Look issued a news release (the "**December 1, 2008 News Release**") announcing the Company's intention to obtain

shareholder approval for the use of the plan of arrangement process to sell Look's key assets, which included:

- (i) the spectrum;
- (ii) the broadcast license;
- (iii) 30,000 subscribers;
- (iv) two network operating entities; and
- (v) tax attributes estimated at over \$300 million.

39. The December 1, 2008 News Release quoted McGoey emphasizing the necessity for the Plan of Arrangement process as follows:

"The Corporation believes that the value of Look's key assets and its investment to date, given reasonable assumptions about the future and the path that mobile broadband technology is taking, is not reflected in the current price of its shares," said Gerald T. McGoey, Look's Vice Chairman and Chief Executive Officer.

"The Corporation has engaged in extensive efforts to maximize shareholder value, which has included, among other things, engaging partners and accessing financing from both traditional and non-traditional sources. The magnitude of capital required for Look to roll out a full offering of services using the latest mobile broadband technology is not – and likely will not be – available to the Corporation".

"An orderly and timely realization of any or all of Look's key assets, in whole or in part, should provide the Corporation and its shareholders with the maximum value," said Mr. McGoey".

### Look's Efforts to Obtain Shareholder Approval of the Plan of Arrangement Process

40. On December 3, 2008, McGoey and Redman reported on the plan of arrangement process at an analyst and investor presentation. McGoey again emphasized that the sales process was required because management's previous efforts to implement strategic initiatives to maximize shareholder value had failed. McGoey specifically emphasized that this process was designed to maximize shareholder value by being expeditious, efficient, transparent and fair. He said in part:

...because of the method we are using and the past attempts to maximize shareholder value, we thought it prudent to spend some time today explaining why we are proceeding as we are. To this end, we have established a special section on our website where all relevant documents have been and will continue to be posted and available for the downloading.

I suggest you read these documents carefully as they contain a lot of detail that time will not allow Jason and myself to discuss at this conference call.

We are in essence, after receiving approval from our shareholders, asking the court to supervise the sale of some or all, in whole or in part, of these key assets. We are doing this because we have had no success since mid-2004 in approaching interested parties to enter into joint venture arrangements, distribution of private labelling offerings, investments of capital into Look or the disposition of certain of these key assets.

...Look has been unable to assure potential purchasers that we can provide them with any certainty of their offer, any certainty that it would succeed. A sales process that is transparent, and approved and monitored by the court, provides greater certainty and is likely to encourage interested parties to participate without the concern of aggressive tactics being used by other participants.

We want to ensure that Look shareholders get the maximum value in an open and fairly conducted process during which there will be no action by one party that prevents other parties from putting forward their proposals. *This plan of arrangement, under the supervision of the court-appointed monitor, will ensure a sales process for Look's assets that is expeditious, efficient, transparent and fair.* [Emphasis Added]

41. These representations were repeated again by McGoeey at the Shareholders' Meeting. McGoeey again explained that while shareholders might be concerned that they would not be permitted an opportunity to vote on the ultimate sale, those concerns were overcome by the likelihood that the process would generate the best value for the assets and, more importantly, by the fact that Look's senior management and directors had fiduciary obligations to shareholders throughout the process. McGoeey also referenced the involvement of the Court and a Court appointed monitor as supervisors of the process.

42. McGoeey also emphasized that it was too early for Look's Board of Directors to commit to how the sale proceeds would be used. That decision, he said, had to wait until the process was concluded. McGoeey specifically said the following in assuring shareholders that their reliance on the defendants was reasonable:

The third question was why can't shareholders have the chance to approve any transaction or series of transactions that arise out of the process? I think we have addressed why we feel that coming back to shareholders would keep us in the inadequate position that we have seen over the last few years. *We believe that the POA is the best way to maximize value while at the same time offer shareholders the confidence that this would be a fair process.*

*That is done by having this process approved by the Court. While your Board of Directors has an ongoing fiduciary responsibility to you throughout this process, there is also a Court appointed Monitor working with both the Board and the Court.*

The fourth most common question was what would happen to the proceeds from any transaction or series of transactions? Unless and until any transaction closes, there is no point in speculating on what the Corporation would or could do with any proceeds from a non-existent transaction. This is particularly true when we don't even know what form the proceeds of such transactions may take. I can say this, though: any transaction should be reflected in the price of the Corporation's shares and you, as shareholders, can make your investment decisions based on that price, just as you do today. [Emphasis Added]

### The Sales Process and the Consideration of Bids

43. Look's shareholders approved the proposed plan of arrangement sales process at the Shareholders' Meeting held on January 14, 2009, as recommended by Look's senior management and Board of Directors.

44. One week later, on January 21, 2009, Look obtained an order from the Court authorizing the sales process, as approved by the shareholders, and formally appointing Grant Thornton as the monitor (the "**Monitor**") of the CBCA Proceedings (the "**Sales Process and Appointment Order**").

45. In its Sales Process and Appointment Order, the Court appointed the Monitor to manage and conduct the sales process and, in addition to its specific rights and duties under the sales process, directed the Monitor to report to the Court on matters relating to the sales process and such other matters as may be relevant to the proceedings. The Court also directed the Company and its officers and directors to report to the Monitor on any material actions taken by the Company in connection with the sales process. The Sales Process and Appointment Order provides that:

"2. THIS COURT ORDERS that Grant Thornton Limited be and is hereby appointed as the Monitor (the "**Monitor**") in these proceedings, an officer of the Court, to manage and conduct the Sales Process (as defined in paragraph 10 hereof) in consultation with LCI with the powers and duties set out in the Sale Process and that LCI and its officers and directors shall advise the Monitor of all material steps taken by LCI pursuant to this Order, and shall cooperate fully with the Monitor in the exercise of its powers and discharge of its duties.

3. THIS COURT ORDERS that the Monitor, in addition to its rights and duties as set forth in the Sales Process, is hereby directed and empowered to: (i) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the

*Sales Process and such other matters as may be relevant to the proceedings herein;* (ii) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under the Sales Process and under this Order and (iii) perform such other duties as are required by this Order or by this Court from time to time.

4. THIS COURT ORDERS that the Monitor is authorized to take such further and other ancillary steps, in consultation with LCI, as may be required to carry out and give effect to the Sales Process and the provisions of this Order." [Emphasis Added]

The Sales Process and Appointment Order set February 16, 2009 as the deadline for the receipt of the bids.

46. On February 16, 2009, the bidding closed in accordance with the Sales Process and Appointment Order. The bids received were not made public, but were opened and considered by the Monitor and Look's senior management. The sales process did not generate the interest in Look's assets that management had expected. Only four bids were submitted, and only one of them was for Look's key assets:

- (i) \$80,000,000 from Inukshuk Wireless Partnership ("Inukshuk"), a partnership of Rogers and Bell, for the licensed spectrum;
- (ii) \$2,985,148 from another entity for licenses in Sherbrooke, Toronto, Niagara-St. Catharines, Windsor/Leamington and Barrie;
- (iii) \$1,080,000 from another entity for dial-up and DSL Internet access and associated services; and

- (iv) \$75,000 from another entity for customer contracts, residential and business ADSL and dial-up, in Ontario, Quebec and Western Canada and additional machinery, equipment and goodwill.

47. Inukshuk's offer was to buy the spectrum and broadcast license for \$80,000,000 conditional on, among other things, settling litigation with Bell, one of the partners behind the offer, for \$16,000,000. The Inukshuk offer was substantially lower than what Look's senior management and Board of Directors expected. Nevertheless, Look's senior management and directors determined that they had no choice but to proceed with the only bid that had been submitted for the broadcast spectrum.

48. At a Board of Directors meeting on April 28, 2009 (the "**April 28, 2009 Meeting**"), Look's management reported to the Board on the state of the plan of arrangement and the proposed sale to Inukshuk and its consequences for shareholders and employees. Senior management made a powerpoint presentation (the "**April 28, 2009 Presentation**") that included slides summarizing the effect of the proposed sale to Inukshuk on shareholder value. This slide referenced "Shut Down Costs" of \$10,000,000 and estimated the residual value to shareholders at \$0.28 per share:



<b>Cash Flows</b>	<b>Asset Sale</b>
<b>Cash Inflows</b>	
Purchase & Sale Agreement	\$ 80,000,000
Building Sale	\$ 3,000,000
<b>Total Cash Inflows</b>	<b>\$ 83,000,000</b>
<b>Cash Outflows</b>	
Bell Canada	\$ 16,000,000
Other Payables	\$ 5,000,000
Shut Down Costs	\$ 10,000,000
<b>Total Cash Outflows</b>	<b>\$ 31,000,000</b>
<b>Net Cash Inflows</b>	<b>\$ 52,000,000</b>
<b>Shares of O/S Including Options Exercised</b>	<b>187M</b>
<b>Residual Price Per Share</b>	<b>\$ 0.28</b>

49. The April 28, 2009 Presentation also included slides that analyzed the impact of the proposed sale on Look's Options and SARs. Senior management expressed their concern that the sale of Look's assets could take place without Options vesting and without providing Option holders, including themselves, with an opportunity to realize on their Options. As a result, senior management recommended that all Options should vest immediately giving Option holders (including themselves) the immediate right to exercise their Options. They also recommended that Option holders be given a full year to exercise their Options.

50. The April 28, 2009 Presentation also considered the impact of the proposed Inukshuk sale on the SARs that had been granted to officers and employees. Senior management suggested that the sale, of the broadcast spectrum represented an event that "triggered" the obligation to pay out

SARs benefits, and that these benefits should be (i) assessed as of the date that the sale was to be approved by the Court and (ii) paid when Inukshuk made the second \$20,000,000 deposit. The benefits to be paid to SARs holders (including themselves) would be a cash payment equal to the difference between (a) the market price for Look's shares on the day before Court approval of the sale, and (b) the "strike price" for the SARs, being the market price for Look's shares on the date when the SARs were originally granted.

51. Senior management also provided the following estimate of the Company's liability for the SARs assuming Look's share price rose to \$0.30, \$0.40 or \$0.50 per share by the date that the proposed sale was to be approved by the Court:

<u>Share Price</u>	-	<u>Liability</u>
\$0.30	-	4,000,000
\$0.40	-	8,000,000
\$0.50	-	11,000,000

Each of these amounts would have been material to Look.

52. On May 4, 2009, Look's Board of Directors met (the "**May 4, 2009 Board Meeting**") and approved the agreement of purchase and sale with Inukshuk and instructed Thornton Grout to apply for an Order approving the sale.

53. After Thornton Grout and the Monitor had left the meeting, the Board of Directors passed resolutions (the "**May 4, 2009 Resolutions**") that amended the Option Plan to (i) vest all unvested Options as of the date of the First Closing (being the date of Court approval of the sale), and (ii) to provide all Option holders with a one-year period within which to exercise their Options. The Board of Directors also resolved to recognize that the amount of all SARs benefits

would be assessed as of the date of the Court's approval of the sale. The Board also directed management to report back with recommendations for settling the SARs payments. None of these events were in the Company's best interests or the interests of shareholders, and none of these events were reported to the Monitor, the Court or even the Company's counsel, Thornton Grout.

54. On May 5 and May 11, 2009, the Company issued news releases describing the proposed sale to Inukshuk. The May 11, 2009 news release advised that the \$80,000,000 Inukshuk sale represented a value of \$0.44 per share to shareholders, \$0.16 more than the \$0.28 estimate presented at the April 28, 2009 Board Meeting. This statement was misleading and inaccurate as it failed to disclose and account for, among other things, the amounts that the Board had resolved to pay in respect of the Options and SARs pursuant to the resolutions passed by Look's directors on May 4, 2009.

#### **The Sale Approval Order**

55. The Monitor's first report on the sales process was dated May 4, 2009 (the "**First Report**") and presented to the Court for purposes of the sale approval hearing held on May 14, 2009. The First Report and the Company's materials filed for the sale hearing each reviewed the bidding process and concluded that the proposed sale with Inukshuk should be approved. The Monitor's First Report and the materials filed by the Company contained no disclosure to the Court regarding the Sale Awards that the Company was planning to make in connection with the Sale.

56. After hearing submissions on behalf of the Monitor and the Company, the Court granted a Final Approval and Vesting Order dated May 14, 2009 (the "**Sale Approval Order**"). The Sale

Approval Order sealed the bid summary, approved the Agreement of Purchase and Sale with Inukshuk and ordered that the Company and its officers and directors shall advise the Monitor of all material steps taken in connection with the Sale, and that Look shall not engage in any transaction outside the ordinary course of business pending the Second Closing Date (defined as December 31, 2009):

17. THIS COURT ORDERS that the Vendor and its shareholders, officers and directors, *shall advise the Monitor of all material steps taken by the Vendor pursuant to this Order and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations set out herein and as set out in the Monitor Appointment Order.*

19. THIS COURT ORDERS until the earlier of the Second Closing Date and the time that the Sale Agreement is terminated in accordance with its terms, (i) *the Vendor shall use the proceeds of the First Deposit only to fund (A) the operations of the Vendor's Business in the ordinary course except to the extent that the Business or portions thereof may be wound down, (B) the Vendor's costs relating to the Arrangement Transaction, including the Vendor's portion of the Monitor's Fees (as defined below), and (C) the financial obligations of the Vendor under the Bell Litigation Settlement Agreement,* (ii) *the Vendor shall not engage in any transactions that are outside the ordinary course of business other than the orderly winding down of the Vendor's current business,* and (iii) the Vendor shall not make any distributions to its shareholders, whether by way of dividend or otherwise. [Emphasis Added]

#### **The Decision to Grant Revised Sales Awards**

57. Following the granting of the Sale Approval Order, Look's Board of Directors met on June 16, 2009 (the "**June 16, 2009 Board Meeting**") to review and consider, among other things, a plan presented by senior management that contained new compensation recommendations and that was described as a "Restructuring Plan". In fact, the "Restructuring Plan" was nothing more than a proposal by senior management to claim substantial additional benefits from the sale proceeds. These new recommendations involved (i) a new cash bonus

pool of \$11,000,000, and (ii) cash payments for the cancellation of Options and SARs based on an assumed share price of \$0.40 per share, all to the detriment of shareholders.

58. With respect to the Option Plan and the SARs Plan, these Plans existed to align the interests of employees, senior management and directors with the interests of shareholders. The Option Plan had been approved by shareholders and allowed the Board of Directors to grant Options to buy Look shares at the market price on the date the Options were granted. The right to exercise an Option then “vested” or arose at specified times in the future. This structure created an incentive for Option holders to cause the market price for Look’s shares to increase. It also incentivized them to remain with the Company until the right to exercise their Options arose. If the market price for Look’s shares was higher at the time of vesting than at the time the Options were granted, the Options could then be exercised so as to acquire a share for the exercise price that could then be sold by the Option holder in the market for a net gain, and with no cash expense to the Company, which would actually receive capital in consideration for the shares issued.

59. By using an assumed share price of \$0.40 per share (rather than the market price, which remained in the \$0.20 to \$0.25 per share range through May and June 2009) and by using the sale proceeds to make direct payments to Option holders for the “cancellation” of their Options (rather than requiring Option holders to realize their gains in the market place), the Board approved recommendations for Option-related “awards” or “cancellation payments” that were inconsistent with the terms and objectives of the Option Plan. These transactions unjustly and unfairly conferred substantial benefits on the Board and others, all at the expense of the Company and its shareholders.

60. Like the Option Plan, the SARs Plan was also intended to align the interests of employees and senior management with the interests of shareholders. It also created incentives for them to cause the market price for Look's shares to increase and to remain with the Company until the right to benefit from the SARs arose. Like the Options, the SARs were assigned a value equal to the closing market price of Look's shares on the date they were granted. The SARs Plan gave employees and senior management the right to claim upon the occurrence of specified events (like a key corporate merger, sale of business or sale of the Company's assets) the difference between the value of the SARs on the date of grant and the closing market price for Look's shares on the day before the defined corporate event occurred. By using an assumed share value of \$0.40 and not the market price the day before the Sale closed, senior management's recommendations and the Board's approvals were inconsistent with the terms and obligations of the SARs plan and again unjustly and unfairly conferred substantial benefits to these defendants at the expense of the Company and its shareholders.

61. As noted above, senior management's new recommendations also proposed an additional \$11,000,000 cash bonus pool to be allocated to senior management and others in connection with the Sale, and to pay limited severance obligations to the balance of Look's employees estimated as being less than \$1,500,000. No explanation was given or sought as to the appropriateness for creating this additional \$11,000,000 cash bonus pool out of the sale proceeds.

62. Senior management had a substantial interest in making these new recommendations because by the June 16, 2009 Board Meeting the market had not reacted favourably to the announced sale to Inukshuk and the share price had not risen to \$0.30 or more as had been suggested at the April 28, 2009 Board Meeting. As a result, senior management and the directors would not have realized significant benefits pursuant to the May 4, 2009 resolutions. In

stark contract to that outcome, under the new "Restructuring Plan", the defendants (who held over 60% of the Options and over 80% of the SARs) stood to realize significantly larger benefits than had been contemplated by senior management and the Board of Directors on April 28 and May 4, 2009. These increased amounts were material to Look.

63. At the June 16, 2009 Board Meeting, the Board of Directors accepted the new recommendations of senior management and passed resolutions (the "**June 16, 2009 Resolutions**") implementing the recommendations, in each case without considering that they:

- (a) were inconsistent with the resolutions passed on May 4, 2009;
- (b) were inconsistent with the terms and objectives of the Option Plan and SARs Plan which conferred benefits based on the market price of Look's shares;
- (c) were inconsistent with the disappointing results of the sales process;
- (d) advanced the self-interests of senior management and the directors;
- (e) conferred substantial monetary benefits to senior management and the directors at the expense of the Company's interests and the interests of shareholders;
- (f) were not in the interests of shareholders or the best interests of the Company;
- (g) had not been vetted or reviewed by an objective and independent compensation consultant; and
- (h) represented transactions not in the ordinary course of business that were in violation of the Sale Approval Order.

64. The following table summarizes the Sale Awards that the Board of Directors approved at the June 16, 2009 Board Meeting:

Name	Bonus Pool	SAR Pool	Option Pool	Total Awards
Senior Management & Director Total	9,175,613	6,805,452	1,242,574	17,223,830
Other Total	1,907,784	655,911	221,374	2,780,078
Combined Total to be Allocated	11,083,397	7,461,363	1,463,948	20,003,908

65. The Sale Awards approved on June 16, 2009 were not disclosed to Look's counsel for the CBCA proceedings, the Monitor or the Court, despite the fact that they were material and that they represented over 30% of the net sale proceeds of \$64 million (after settlement of the Bell litigation).

66. In passing these resolutions to support senior management's new recommendations, Look's Board of Directors breached their fiduciary duties, their statutory and common law duties of care and oppressed the interests and reasonable expectations of the Company and its shareholders. Their actions also violated the provisions of the Sale Approval Order.

67. By not advising Thornton Grout, the Monitor or the Court of these Sale Awards, senior management and the directors also failed to abide by the provisions of the Sale Approval Order that required them to cooperate with the Monitor and to keep the Monitor informed of all material actions taken by the Company in connection with the Sale. By failing to disclose the June 16, 2009 Resolutions generally, the senior management and the directors also failed in meeting their ongoing duties to ensure the Company made timely disclosure of material changes in accordance with the Ontario *Securities Act*.



68. On July 21, 2009, Look issued its Third Quarter 2009 Interim Financial Statements for the three and nine month periods ending May 31, 2009 (the “**Third Quarter 2009 Interim Financial Statements**”) and an accompanying news release. The Company’s news release and the Third Quarter 2009 Interim Financial Statements each reported that “Restructuring Charges” had been incurred that related to the sale. These charges were said to:

... include, among other things, site restoration charges, lease commitments, human resources restructuring and equity cancellation payments relating to the cancellation of all outstanding options and share appreciation rights as of May 31, 2009.

This characterisation of the Company’s actions and related liabilities was vague and misleading. Among other things, it did not properly disclose that the defendants intended to take over \$17,000,0000 from the sale proceeds for their own benefit and did not properly disclose that the proposed “equity cancellation payments” were not in accordance with the terms of the Company’s Option Plan and SARs Plan.

69. On August 25, 2009, the Board of Directors and the Compensation and Human Resources Committee met together (the “**August 25, 2009 Board Meeting**”). The purpose of this meeting was to allocate the \$11 million additional bonus pool that had been created at the June 16, 2009 Board Meeting.

70. The non-executive directors did not challenge senior management on the appropriateness of any of the allocations that were recommended at this meeting. Instead, the directors again simply accepted the recommendations of the senior management. The following table contrasts the estimated benefits associated with the awards contemplated by the May 4, 2009 Resolutions with the Sale Awards ultimately approved by the Board on June 16, 2009 and August 25, 2009,

and illustrates the substantial and extraordinary increase in benefits that the directors ultimately approved:

**LOOK 2009 Equity Cancellation and Bonus Pool**  
**May 14, 2009 – Versus – June 16 & August 25, 2009**

Officer / Director	Value of SARs at May 14, 2009 closing price of \$0.205 (May 4, 2009 Board Resolution)	Value of Options at May 14, 2009 closing price of \$0.205 (May 4, 2009 Resolution)	Combined Value of SARs and Options at May 14, 2009 closing price (May 4, 2009 Resolution)	June 16, 2009 Payment to Cancel SARs and Options Using Assumed \$0.40 valuation	August 25, 2009 Additional Cash Bonus Award	Total 2009 Cash Bonus Award and SARs and Options Cancellation Payments
Gerald McGoeey	\$221,534	\$11,761	\$233,295	\$3,165,696	\$2,400,000	\$5,565,696
Michael Cytrynbaum	\$110,767	\$66,568	\$177,335	\$1,746,104	\$2,400,00	\$4,146,104
Alex Dolgonos	\$110,767	NA	\$110,767	\$1,550,737	\$2,400,000	\$3,950,737
Jason Redman	\$52,500	\$52,500	\$105,000	\$393,000	\$1,107,000	\$1,500,000
Stuart Smith	NA	\$66,568	\$66,568	\$195,367	0	\$195,367
Scott Colbran	NA	\$66,568	\$66,568	\$195,367	0	\$195,367
Lou Mitrovitch	NA	\$66,568	\$66,568	\$195,367	0	\$195,367
<b>Totals</b>	<b>\$495,568</b>	<b>\$330,533</b>	<b>\$826,101</b>	<b>\$7,441,639</b> or \$6.6 million more than May 14 values	<b>\$8,307,000</b>	<b>\$15,748,639</b>

71. These new and extraordinary Sale Awards were approved without any objective review by the non-executive directors of the Company or by an external compensation consultant. They were not based on complete information, reflected the self-interests of senior management and the directors, were not in the best interests of the Company and constituted a violation of the provisions of the Court's Sale Approval Order which placed restrictions on the Company's use of the sale proceeds. It is noteworthy that none of the directors exercised their rights to object to the June 16, 2009 Resolutions or to the Sale Awards. It is also noteworthy that Look's

Compensation and Human Resources Committee was comprised entirely of Look's directors; that is, the five members of Look's Compensation and Human Resources Committee were the same five members of its Board of Directors. Each of the directors approved these decisions and disregarded their fiduciary and statutory duties.

72. On September 11, 2009, Look issued a news release (the "**September 11, 2009 News Release**") reporting that:

- (a) Look had received the remaining consideration of \$50,000,000 due to be paid by Inukshuk;
- (b) the conditions precedent to the sale had been satisfied on September 11, 2009 when Industry Canada provided regulatory approval of the sale;
- (c) Look had agreed to support an application by Inukshuk for a license under the Broadcast Act;
- (d) Look was proceeding with the orderly wind down of its operations; and
- (e) Look was continuing to pursue opportunities to maximize the value of its remaining assets which consisted of approximately \$300,000,000 of tax attributes, the Company's property in Milton, Ontario, and a network consisting of operating centres and broadcast sites.

The September 11, 2009 News Release made no reference to the decisions to allocate over \$20,000,000 of the sale proceeds to senior management, directors and employees.

73. Later in September 2009, the Company paid out the Sale Awards to all directors, officers and employees except Cytrynbaum, McGoey and Dolgonos who received their awards in October and November of 2009. These funds were unlawfully distributed and diverted from the Company to senior management and the directors and others. The gravity of these actions was compounded by the fact that substantial sums were paid to Jolian for McGoey's benefit and to DOL for Dolgonos' benefit without any objective consideration of whether the Company was required to withhold tax on these amounts. The fact the amounts were paid to Jolian and DOL without any deductions for tax exposed the Company and its directors to liability for taxes, penalties and interest. Each of these payments was made in violation of paragraph 19 of the Sale Approval Order, which placed restrictions on the Company's use of sale proceeds at any time prior to the Second Closing Date, which was defined as December 31, 2009.

74. On January 19, 2010, Look issued its Notice of Annual and Special Meeting of Shareholders to be held on February 23, 2010 (the "**February 23, 2010 Shareholders' Meeting**") and its Management Information Circular for the fiscal year 2009 (the "**2009 MIC**"). This circular made additional disclosure of the "restructuring charges" that had been reported in the Third Quarter 2009 Interim Financial Statements. The restructuring charges were now referred to in the 2009 MIC as "Contingent Restructuring Awards". The 2009 MIC explained that the Compensation and Human Resources Committee had deferred to and relied on the CEO in deciding to grant "special contingent restructuring awards during fiscal 2009" which were "extraordinary and non-recurring". This explanation read as an admission that the directors (each of whom sat on the Compensation and Human Resources Committee and the Board) had failed to provide an objective check on the self-interests of the CEO and other senior management.

75. The 2009 MIC also stated that the awards had been made after extensive consultation with legal counsel. In fact, however, the directors had received no advice on the appropriateness of the amount of the Sales Awards made to senior management and others or as to whether they were in accordance with the terms of the Option Plan and the SARs Plan or the Sale Approval Order.

76. At the February 23, 2010 Shareholders' Meeting, shareholders had the choice between voting in support of the re-election of Look's directors or withholding their votes. Look's directors were re-elected at this meeting; however, if the UBS shares of Look are excluded, 95% of the non-UBS Look shares voted at the meeting expressly withheld their votes on the re-election of Look's directors.

#### **The Indemnification Advances**

77. In early June 2010, Redman asked David McCarthy ("**McCarthy**") of Stikeman Elliott to attend a meeting of Look's Board to review indemnification issues relating to Look. McCarthy told Redman that he was not willing to provide advice on whether Look should indemnify its officers and directors for past and future legal expenses incurred in answering criticism and questions regarding the Sales Awards. When that criticism first arose, McCarthy had made it clear he would not advise on that issue and that Stikeman Elliott would not provide related litigation advice. He felt Stikeman Elliott could not provide that advice because McCarthy had advised the directors the year before in June 2009 on their ability to make special awards to management and themselves. Even though McCarthy had advised on the amounts awarded, he believed the Company needed to engage its own counsel to consider its obligations and best interests.

78. Redman said he understood the limited advice McCarthy would provide; but, said he believed McCarthy should attend the Board meeting. He said the meeting would be on June 16, 2010 and that McCarthy should participate and discuss the indemnification agreements and CBCA provisions that generally applied to Look.

79. As a result of McCarthy's position that his advice would be limited and would not address the central question of whether the Company should indemnify its officers and directors for legal fees relating to the Sale Awards, Redman approached Jeffrey Kramer of Kramer Henderson LLP ("**Kramer**") and asked that he advise the Company on these issues. Kramer considered Redman's request and then told Redman that he would not be able to recommend that Look should indemnify the officers and directors in the circumstances. He was not able to conclude that it was in the Company's best interests to advance funds to pay legal fees relating to the Sale Awards. Kramer said that if he attended the June 16, 2009 Board Meeting, he would tell the Board that this was his opinion.

80. On the morning of June 16, 2010, Redman spoke with Kramer and told him to stop doing any further work on the indemnification issues. Redman also told Kramer he would be cancelling the June 16, 2009 Board Meeting.

81. Despite Redman's advice to Kramer that he was cancelling the June 16, 2009 Board Meeting, the Board Meeting was convened (without Kramer) and the issue of whether the Company should advance legal fees for the officers and directors was addressed. McCarthy attended part of the meeting and advised generally on indemnification issues. He discussed the Company's by-laws, indemnification agreements and the CBCA indemnification provisions for

officers and directors, generally. However, he provided no advice on the issue of whether advances could or should be made in the particular circumstances.

82. Neither McCarthy or the Look directors were advised of Kramer's advice to Redman. Redman kept that information from them. No director suggested that the Company should obtain advice in respect of Look's interests. Just as importantly, no one articulated how the proposed Indemnification Advances were in the best interests of the Company. As a result, the directors proceeded to authorize payments of \$1,550,000 to various firms based on incomplete information and in their own self-interests over the interests of the Company. In doing so, they breached their fiduciary and statutory duties.

83. The purported ability of the defendants to claim indemnification or to seek advance payment of amounts for indemnification was derived from the Section 124 of CBCA, Section 3.12 of the Corporate By-law and indemnification agreements between the Company and its officers and directors. The Corporate By-law and the indemnification agreements were, however, *ultra vires* insofar as they mandated and created an obligation on the Company's part, without regard to the limitations on such payments prescribed by Section 124 of the CBCA, to advance funding for legal fees and expenses incurred by the directors and officers defending claims by the Company or by shareholders suing on behalf of the Company by way of derivative action. Consequently, the directors had no authority for causing the Company to make the Indemnification Advances. Alternatively, the defendants should not be entitled to the advances made to date or to future advances for indemnification because they acted in self-interest and did not act honestly and in good faith with a view to the best interests of the Company.

84. Look's senior management and directors resigned from their positions effective July 21, 2010. These resignations were precipitated by a shareholder proxy fight at UBS concerning other awards made by UBS to McGoey and other UBS directors supposedly in connection with the Look sale, which proxy fight led to the replacement of UBS' directors.

#### **Relevant Legislation**

85. Look pleads and relies upon the *Courts of Justice Act*, Sections 122, 124, 125 and 241 of the CBCA, and Section 75 of the *Ontario Securities Act*.

#### **Service Outside of Ontario**

86. Look may serve the Statement of Claim outside Ontario without leave of the Court in accordance with Rule 17.02 of the Rules of Civil Procedure because:

- (a) the claims relate to damages sustained in Ontario (Rule 17.03(h)); and
- (b) the claims are made against persons outside Ontario who are necessary as proper parties to a proceeding in Ontario (Rule 17.02(o)).

July 6, 2011

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Plaintiff      and      Defendants

Court File No:

CV-11-9291-00CL

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

Proceeding commenced at TORONTO

**STATEMENT OF CLAIM**

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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 THE A PLAN OF COMPROMISE OR ARRANGEMENT OF UNIQUE BROADBAND SYSTEMS INC.

(the "Applicant")

**ONTARIO**

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

(PROCEEDING COMMENCED AT TORONTO)

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SUPERIOR COURT OF JUSTICE  
(Commercial List)**

(PROCEEDING COMMENCED AT TORONTO)

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