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.

SUPPLEMENTAL AFFIDAVIT OF ROBERT ULICKI
(sworn 10 February 2012)

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. 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.

2. In paragraph 39 of my Affidavit sworn 7 February 2012, I say that DOL Technologies Inc. ("**DOL**") and Jolian Investments Inc. ("**Jolian**") had not responded to UBS's letter dated 2 February 2012. After my Affidavit was sworn, DOL and Jolian responded to UBS's letters of 2 February 2012. Copies of those responses, and UBS's replies, are attached as **Exhibit "A"**.

3. Attached as **Exhibit "B"** is a letter dated 9 February 2012 sent by Mr. Dolgonos's counsel to the Ontario Securities Commission in response to UBS's letter of 6 February 2012 attached as Exhibit M to my affidavit sworn 7 February 2012.

SWORN BEFORE ME at the City of Toronto in the Province of Ontario this 10th day of February 2012

A Commissioner, etc.

P SHEA

ROBERT ULICKI

THIS IS EXHIBIT "A" TO THE AFFIDAVIT OF ROBERT ULICKI, SWORN BEFORE ME ON FEBRUARY 10, 2012

A COMMISSIONER FOR TAKING OATHS

Bennett Jones

Bennett Jones LLP
3400 One First Canadian Place, PO Box 130
Toronto, Ontario, Canada M5X 1A4
Tel: 416.863.1200 Fax: 416.863.1716

Raj S. Sahni
Partner
Direct Line: 416.777.4804
e-mail: sahnir@bennettjones.com
Our File No.: 67878.3

Via Email

February 7, 2012

Gowling Lafleur Henderson LLP
1 First Canadian Place
Suite 1600
100 King Street West
Toronto ON M5X 1G5

Attention: Mr. Patrick Shea

Dear Mr. Shea:

Re: Unique Broadband Systems ("UBS") and Jolian Investments Limited ("Jolian")

We are writing in response to your letter of February 2, 2012, which surprised and confused us as it is inconsistent with and contradicts our telephone discussion with you, counsel for the Monitor and counsel for DOL Technologies/Alex Dolgonos on February 1, 2012. As we noted in that call, this case involves a complex series of interrelated claims, counter-claims and issues between UBS and Jolian and Mr. McGoey. It is simply not appropriate, fair nor feasible to have those claims determined on some piece-meal basis by summary judgment as you have suggested in your letter.

Moreover, as we noted in our telephone call that there are various issues that need to be addressed by UBS prior to determination of Jolian's claims, including, without limitation, UBS addressing the proof of claim filed by Mr. McGoey and the issues raised by Justice Simmons at the Court of Appeal relating to UBS' appeal of Justice Morrocco's indemnification decision in respect of Jolian and Mr. McGoey. During the call, you informed us that UBS was abandoning that appeal but subsequent correspondence delivered to Gavin Smyth by Joe Thorne of your office purports to simply seek to adjourn the date for hearing of the appeal and does not therefore address the issues noted on our call.

Jolian disagrees with the proposed course of action set out in your letter and we are prepared to meet with you and the Monitor to further discuss this matter. We propose that meeting take place at 2:00 p.m. on Thursday, February 9, 2012 at our offices. I have copied counsel for the Monitor, counsel

for DOL and Groia & Company as Jolian's litigation counsel and would ask that everyone please let me know of your availability for a meeting on Thursday afternoon.

Thank you.

Yours truly,

Raj S. Sahni

RJS/mv

cc: Groia & Company (J. Groia and G. Smyth)
Ray Eliott O'Connor LLP (P. Roy and S. Grayson)
Lax O'Sullivan Scott Lisus LLP (M. Gottlieb)

9 February, 2012

Via Facsimile

E. Patrick Shea
Direct (416) 369-7399
patrick.shea@gowlings.com

Bennett Jones
Suite 3400
One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Attention: Raj S. Sahni

Dear Mr. Sahni:

Re: Unique Broadband Systems Inc. ("UBS")
Court File No. CV-11-9283-00CL

Thank you for your letter dated 7 February 2012.

I am somewhat confused by your reference to our letter of 2 February 2012 being inconsistent with and contradicting our telephone conversation with the Monitor with respect to the determination of your client's claims.

As I recall, the telephone call was requested by you and, as per your e-mail of 1 February 2012:

> *"I don't think we need a long call but I want to get an understanding of what is being proposed in terms of process and timing to deal with Jolian's claim, given the concerns raised in my letter of January 23 re: to UBS not having dealt with the issues relating to the indemnity appeal and also given that we haven't received any notice of revision or disallowance relating to Mr. McGoey's indemnification claim."*

I specifically asked for an agenda of the matters to be discussed on the call (see my e-mails to you of 1800 on 31 January 2012 and 0800 on 1 February 2012) and you declined to provide one. As you know, I am not involved in the appeal of Marrocco J.'s Order with respect to interim indemnification of fees relating to the pre-filing litigation between our respective clients. You asked about the progress of the appeal on the call and I was clear that although I was not directly involved in the appeal, I understood that Mr. Groia's office had sent a letter to our office with respect to the matter and agreed to ensure that you were provided with a copy of our reply. I believe that, as per your request, a copy of our firm's letter to Mr. Groia's office was sent to you.

Subsequent to receiving your letter, I obtained a copy of the Endorsement of Simmons J.A. from 12 October 2011, a copy of which is attached for your information. I note from the attached Endorsement that the onus was on your clients (or Mr. Roy's clients) as respondents to take steps either in the CCAA proceedings or before the Court of Appeal to deal with the impact of the CCAA on the appeal **if** the claims filed in the CCAA were jeopardized because of uncertainty arising because of the appeal. As I understand, no steps were taken by your client (or Mr. Roy's clients). Can you please advise as to whether your client intends to take any steps in the CCAA or at the Court of Appeal and, if so, how you believe the CCAA claims are jeopardized because of the appeal? Your immediate response would be appreciated.

Our client believes strongly that the immediate concern should be putting in place a process to determine your client's monetary claims against UBS. We do not understand your position that the claim for a termination payment cannot be determined in a manner akin to a summary judgment motion. Rule 20 of the *Rules of Civil Procedure* clearly contemplates that a motion for summary judgment may be brought in respect of part of a claim. We believe that there are few, if any, material factual issues underlying the claim for the termination payment and that those issues can be addressed in a summary manner. The onus is on your client to establish that it is entitled to the termination payment and we would welcome you to set out the factual basis on which your client claims entitlement to the termination payment, to the extent that that basis is not already set out in your Notice of Dispute, so that we can determine what, if any, facts may be in dispute.

You appear to be taking the position that your client's indemnification claims must be disallowed (or allowed) at this point and determined along with the corporate claims for amounts that Jolian Investments Inc. ("**Jolian**") claims are owing by UBS.

As we understand, Mr. McGoey filed a personal claim for indemnification in respect of fees and expenses to be incurred in connection with responding to the counter-claim brought by UBS against him in an amount "to be determined". The proof of claim filed by Mr. McGoey specifically references the fact that it is intended to "preserve rights".

Marrocco J. ordered that Jolian and Mr. McGoey were entitled to receive interim payments in respect of costs incurred in connection with a litigation that is now stayed, subject to a final determination in the appropriate forum as to whether Jolian or Mr. McGoey are entitled to be indemnified based, *inter alia*, on the merits of Jolian's action against UBS and UBS's counterclaim. In the event it is determined that Jolian or Mr. McGoey are not entitled to be indemnified, any amounts actually paid by UBS would be repayable by Jolian or Mr. McGoey.

Jolian filed a proof of claim against UBS seeking payment of the entire quantum of the interim payments ordered by Marrocco J. It is UBS's position that Jolian's right to receive the payments ordered by Marrcocco J. is stayed, and Jolian's entitlement to be indemnified for costs incurred in connection with the action against UBS (and in pursuing its claim in the CCAA) will be determined in connection with the determination of the claim by Jolian in the CCAA proceeding. As noted above, Marrocco J. was not making a determination as to Jolian's ultimate right to be indemnified, but rather to Jolian's right to receive interim payments subject to Jolian having to return those payments to UBS in the event that it was ultimately determined that Jolian was not

entitled to be indemnified. The issue in the claims process is, in UBS's view, whether Jolian has an ultimate entitlement to be indemnified for the costs it has incurred, as opposed to whether UBS is obliged to make the interim payment ordered by Marrocco J.

Mr. McGoey did not file a claim for any specific amount and UBS understood Mr. McGoey's claim to a "place holder" intended to preserve rights rather than to establish a specific claim. Any personal right to indemnification that Mr. McGoey might have would relate to his defence of the counter-claim made by UBS. The counter-claim against Mr. McGoey personally has, however, not proceeded – the entire action is stayed – and it is not clear that it will ever proceed. Moreover, it is not clear that any claim that Mr. McGoey would have for indemnification in respect of the fees incurred to defend the counter-claim, assuming it ever proceeds, would be claims provable in the CCAA proceedings. In this regard, we note that Mr. McGoey's proof of claim specifically preserves the right to claim against UBS for fees incurred after the commencement of the CCAA proceedings.

If Mr. McGoey has a claim for a specific amount that he believes would be provable in the CCAA, please advise, in writing, as to the amounts that Mr. McGoey is claiming[1] and the basis for the claim. Once we have this information, UBS would be pleased to reconsider whether it should take a position as to whether it disputes Mr. McGoey's claim.

Sincerely,

GOWLING LAFLEUR HENDERSON LLP

E. Patrick Shea
EPS:fs

cc: client
Monitor

TOR_LAW\ 7842559\2

[1] The entire amount of the interim payment ordered by Marrocco J. was claimed by Jolian Investments Inc.

DATE: 20111012
DOCKET: M40594

COURT OF APPEAL FOR ONTARIO

Simmons J.A. (Chambers)

BETWEEN

DOL Technologies Inc.

Plaintiff (Respondent)

and

Unique Broadband Systems, Inc.

Defendant (Appellant

AND BETWEEN

Unique Broadband Systems, Inc

Plaintiff by Counterclaim

and

DOL Technologies Inc., Alex Dolgonos, Gerald McGoey, Louis Mitrovich and Douglas Reeson

Defendants by Counterclaim (Respondent)

and

Peter Minaki

Third Party

Peter L. Roy, DOL Technologies Inc.

Kelley McKinnon and Joe Thorne, for Unique Broadband Systems, Inc. defendant (plaintiff by counterclaim)

Joseph Groia for Julian/McGoey

Heard: October 12, 2011

ENDORSEMENT

[1] Appeal is adjourned to a date to be fixed by the Appeal Scheduling Unit in late March or early April 2012. I will case manage the appeal. Parties to report in writing on the status of the matter on or before November 30, 2011. Costs reserved to the next attendance.

Reasons

[2] Whether the appeal is stayed under para. 12 of the original CCAA order (as extended), it would seem to be a waste of resources of the parties and the court to deal with the appeal at this point. The concern of the respondents is that their claims within the CCAA may be jeopardized because of uncertainty arising from the pending appeal of the Marrocco J. order.

[3] However, it is not yet clear whether that will be the case. If that becomes clear, or if the CCAA proceeding is delayed, the respondents may apply, in the CCAA proceeding, for leave to have the appeal and the motion for security for costs proceeded with. Alternatively, they may apply to me to have the issue clarified as to whether the para. 12 stay applies to the appeal and/or the motion for security costs. Subject to the issue of leave, they may apply to me to have the security for costs issue determined.

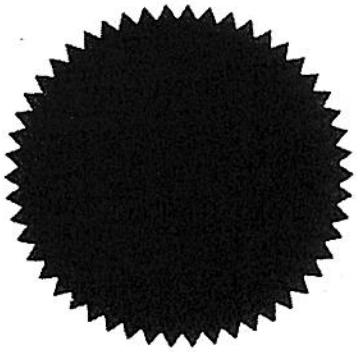
"Simmons J.A."

Court File No.: C53925/C53926
Docket: M40594

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE SIMMONS) Wednesday, October 12, 2011
)

BETWEEN:



DOL TECHNOLOGIES INC.

Plaintiff
(Respondent)

- and -

UNIQUE BROADBAND SYSTEMS, INC.

Defendant
(Appellant)

AND BETWEEN:

UNIQUE BROADBAND SYSTEMS, INC.

Plaintiff by Counterclaim
(Appellant)

- and -

DOL TECHNOLOGIES INC., ALEX DOLGONOS, GERALD MCGOEY, LOUIS MITROVICH AND DOUGLAS REESON

Defendants By Counterclaim
(Respondent)

- and -

PETER MINAKI

Third Party

ORDER

THIS MOTION, made by the appellant, Unique Broadband Systems, Inc. ("UBS") for an order adjourning the appeal *sine die* or staying the appeal, if necessary, pending completion of the UBS CCAA proceedings was heard on October 12, 2011 at 130 Queen Street West, Toronto, Ontario.

ON READING the notice of motion dated October 6, 2011, the affidavit of Joe Thorne, sworn October 7, 2011, with attached exhibits, and on hearing the submissions of counsel for UBS and for the respondents DOL Technologies Inc., Alex Dolgonos, Jolian Investments Limited and Gerald McGoey,

1. **THIS COURT ORDERS** that the appeal from the Order of the Honourable Justice Marrocco, dated April 27, 2011, Court File Numbers CV-11-9147-00CL and CV-11-9149-00CL (the "Appeal") is adjourned to a date to be agreed to by the parties and fixed by the Appeal Scheduling Unit in March or April 2012.

2. **THIS COURT FURTHER ORDERS** that the Appeal be case managed by the Honourable Justice Simmons.

3. **THIS COURT FURTHER ORDERS** that the parties shall report in writing to the Honourable Justice Simmons on the status of this matter on or before November 30, 2011.

4. **THIS COURT FURTHER ORDERS** that the costs of this motion are to be reserved to the next attendance.

Registrar Court of Appeal

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

OCT 27 2011

PER/PAR: SOS

DOL TECHNOLOGIES INC. - Plaintiff (Respondent) - **UNIQUE BROADBAND SYSTEMS, INC.** - Plaintiff by Counterclaim – **PETER MINAKI** - Third Party-	Court File No.: C53925/C53926 Docket: M40594 v. **UNIQUE BROADBAND SYSTEMS, INC.** – Defendant (Appellant)- v. **DOL TECHNOLOGIES INC. ALEX DOLGONOS, GERALD MCGOEY, LOUIS MITROVICH AND DOUGLAS REESON** Defendants by Counterclaim/(Respondent)-

COURT OF APPEAL FOR ONTARIO

(PROCEEDING COMMENCED AT TORONTO)

ORDER

GOWLING LAFLEUR HENDERSON LLP
Barristers and solicitors
1 First Canadian Place
100 King Street West, Suite 1600
TORONTO, Ontario
M5X 1G5

Kelley McKinnon (LSUC No. 33193C)
Joe Thorne (LSUC No. 58773W)

Telephone: (416) 862-7525
Facsimile: (416) 862-7661

LAWYERS FOR THE DEFENDANT (APPELANT), PLAINTIFF BY COUNTERCLAIM

10 February, 2012

E. Patrick Shea
Direct (416) 369-7399
patrick.shea@gowlings.com

Via Email (gsmyth@groiaco.com)

Groia & Company
Professional Corporation Lawyers
365 Bay Street, Suite 1100
Toronto, ON M5H 2V1

Attention: Gavin Smyth

Dear Mr. Smyth:

Re: Unique Broadband Systems Inc. ("UBS")
Court File no. CV-11-9283-00CL

In your e-mails of 9 February 2012 you asserted that UBS was failing to meet with your client to discuss the reorganization and move the matter forward. This appears to be a mis-understanding on your part, likely due to the fact that you have not been involved in the reorganization proceedings.

On 12 January 2012, UBS requested, in writing, a meeting with your client to discuss the reorganization. Counsel advised that, at that time, he had no instructions to agree to (or refuse) and meeting and indicated that he would get back to us with respect to whether your client would meet with UBS, but agreed to seek instructions. We heard nothing until 21 January 2012 when Bennett Jones LLP requested a call for that afternoon. When we attempted to raise the claims process on that call, we were advised that your client believed that it was premature to discuss the claims process. The next we heard from your client was on 7 February 2012, after Mr. Dolgonos launched his partial take-over bid and Bennett Jones LLP requested a meeting for 9 February 2012.

Our client is anxious to move forward with the process to determine your client's disputed claims. However, given the schedule for the hearing of our client's motion with respect to Mr. Dolgonos' partial take-over bid, a face-to-face meeting next week is simply not possible. Assuming, however, that your client wishes to move the matter forward, we would invite you to propose a process for the determination of the claims that would be acceptable to your client.

As set out in our correspondence to Bennett Jones LLP, we believe that the issue with respect to whether the termination payment is payable can be determined on what would amount to a motion by UBS for summary judgment. The factual basis upon which your client asserts the payment is owing is clear -- those facts are set out in your client's Notice of Dispute. The issues to be determined, as we see them are outlined in our letter of 2 February 2012, to which there has

been no substantive response. We would, of course, be pleased to consider any argument you might wish to make as to why a trial is required to consider the validity of the claim or what factual matters *vis-a-vis* the termination payment may be in dispute to see if we can reach a resolution. It is, of course, you client's burden to establish that the termination payment has been triggered.

There will, we appreciate, be factual issues that need to be determined with respect to your client's claims for payment in respect of the termination of the share appreciation rights plan and the unpaid bonus. If it is helpful, we can provide you with an outline of the factual assertions that our client will make *vis-a-vis* these claims and the evidence upon which our client will reply in opposing the claims. We would suggest that the appropriate process might be to narrow the disputed issues, if at all possible, and then have those issues resolved by way of a hybrid trial which would involve evidence being presented in written form with live cross-examinations.

We believe the issue as to whether UBS is required to indemnify your client will flow from the determination of the claims made by your client against UBS. The Judge hearing the claims should determine whether UBS is, based on His or Her findings with respect to the claims, required to indemnify your client in respect of the cost of pursuing the claims against UBS.

We look forward to your thoughts.

Sincerely,

GOWLING LAFLEUR HENDERSON LLP

E. Patrick Shea
EPS:fs

cc: client
Monitor

TOR_LAW\ 7844996\1

REO*Law*
Roy•Elliott•O'Connor LLP
Barristers

Peter L. Roy
Certified by the Law Society as a Specialist in Civil Litigation
Direct Line 416-350-2488
plr@reolaw.ca

February 7, 2012

Our File No. 10-0019

VIA FACSIMILE (416) 862-7661

Mr. Patrick Shea
Gowling Lafleur Henderson LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario
M5X 1G5

Dear Mr. Shea:

Re: Unique Broadband Systems Inc. ("UBS") and DOL Technologies Inc. ("DOL") and Alex Dolgonos

We are writing in response to your letter of February 2, 2012. We have also been copied with Mr. Sahni's letter of February 7, 2012.

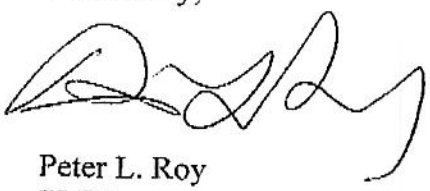
The claims made by and against DOL and Alex Dolgonos are at least as complex as those involving Mr. Sahni's clients. These claims do not lend themselves to a summary judgment application.

During our conversation on February 1, 2012, you advised that your firm would be delivering confirmation that UBS was abandoning the appeal on the indemnity issue. Instead we were copied on correspondence from your firm to Groia & Company requesting an adjournment of that appeal. Before this matter proceeds further, we need to know your client's position on Mr. Dolgonos' indemnity claim.

REO*Law*
Roy•Elliott•O'Connor LLP
Barristers

We are available to attend an afternoon meeting on Monday February 13, 2012 to discuss this matter further.

Yours truly,



Peter L. Roy
PLR/lc

cc: Matthew Gottlieb – Lax O'Sullivan Scott Lisus LLP
Raj Sahni - Bennett Jones LLP
Joseph Groia/Gavin Smyth – Groia & Company

E. Patrick Shea
Direct (416) 369-7399
patrick.shea@gowlings.com

9 February, 2012

Via Facsimile

Roy Elliott O'Connor LLP
Barristers
200 Front Street West, 23rd Floor
P.O. Box #45
Toronto, ON M5V 3K2

Attention: Peter L. Roy

Dear Mr. Roy:

Re: Unique Broadband Systems Inc. ("UBS")
Court File no. CV-11-9283-00CL

Thank you for your letter dated 7 February 2012 responding to our letter of 2 February 2012.

I am afraid that you are mistaken as to me advising that our client's appeal was being abandoned. I thought that I was clear on the call that I was not involved in the appeal and was aware that Mr. Groia's office had sent an inquiry and that a reply was being prepared by our office. My understanding is that you received that letter.

We do not understand your position that the claim for a termination payment cannot be determined in a manner akin to a summary judgment motion. Rule 20 of the *Rules of Civil Procedure* clearly contemplates that a motion for summary judgment may be brought in respect of part of a claim. We believe that there are few, if any, material factual issues underlying the claim for the termination payment and that those issues can be addressed in a summary manner. The onus is on your client to establish that it is entitled to the termination payment and we would welcome you to set out the factual basis on which your client claims entitlement to the termination payment, to the extent that that basis is not already set out in your Notice of Dispute, so that we can determine what, if any, facts may be in dispute.

gowlings

Sincerely,

GOWLING LAFLEUR HENDERSON LLP

E. Patrick Shea
EPS:fs

cc: client
Monitor

TOR_LAW\ 7842961\1

THIS IS EXHIBIT "B" TO THE AFFIDAVIT OF ROBERT ULICKI, SWORN BEFORE ME ON FEBRUARY 10, 2012

A COMMISSIONER FOR TAKING OATHS

WILDEBOER
wildlaw.ca
DELLELCE LLP

DIRECT LINE: 416 361-4763
e-mail: mwilson@wildlaw.ca

February 9, 2012

Via Email

Ontario Securities Commission
20 Queen Street West
Suite 1903
Toronto, Ontario, M5H 3S8

Dear Sirs/Mesdames:

Re: Take-over Bid by 2064818 Ontario Inc. for 10,000,000 Common Shares of Unique Broadband Systems, Inc.

We are counsel to 2064818 Ontario Inc. ("206") with respect to its take-over bid dated February 1, 2012 (the "Bid") for 10,000,000 common shares ("Shares") of Unique Broadband Systems, Inc. ("UBS"). We write this letter in response to the letter of February 6, 2012 (the "Gowlings Letter") sent by Mr. Bryce Kraeker of Gowling Lafleur Henderson LLP ("Gowlings") to the Ontario Securities Commission (the "OSC"). There are a number of items in the Gowlings Letter that we would dispute. In the interest of dealing with the true issues at hand in a productive way, we would address the basic complaints set out in the Gowlings Letter as follows.

Background

The following is a summary of certain background information that we believe is necessary to put the matters discussed herein in proper context:

- As stated in the circular for the Bid, 206 is a company owned and controlled by a trust of the family of Mr. Alex Dolgonos, the founder of UBS. As of the date hereof, 206 owns 14,398,255 Shares. Another corporation owned and controlled by trusts of the family of Mr. Dolgonos, 6138241 Canada Inc. ("613"), owns 8,500,000 Shares. Combined, 206 and 613 are the largest shareholder of UBS, holding approximately 22.28% of the outstanding Shares.

- At UBS's annual and special meeting on February 25, 2011, Mr. Dolgonos and other shareholders voted to remove the current board of UBS. The current board was re-elected. The ballot voting results for the meeting (i.e. the number of votes cast for each resolution) have never been disclosed.

- On June 3, 2011, we wrote to UBS (the "June 3 WD Letter") advising that a corporation (or corporations) controlled by Mr. Alex Dolgonos intended to make a partial take-over bid for shares of UBS, commencing on or about July 6, 2011 (the "Proposed July Bid"). The date for the Proposed July Bid was set for a clear purpose. As at that date, the Proposed July Bid would have been exempt of the valuation requirements for an insider bid under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions*. No terms of the Proposed July Bid, including the price per Share and number of Shares offered to be purchased, were provided to UBS at that time because they had not then been determined by 206.

- On June 6, 2011, UBS issued a press release disclosing that a corporation (or corporations) controlled by Mr. Dolgonos intended to make the Proposed July Bid.

- On July 5, 2011, one day before the Proposed July Bid was anticipated by UBS, UBS announced that it and its wholly-owned subsidiary UBS Wireless Systems Inc. had commenced proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA").[1]

- On November 11, 2011, we wrote to UBS, on behalf of 206 and 613, requesting that UBS take immediate steps to initiate a rights offering to raise between $1 million and $2 million. The rights offering would have resulted in funding for UBS, which by its own admission was insolvent. In that letter, we confirmed that 206 and 613 were prepared to subscribe for their proportionate entitlement to the rights offering (i.e. an investment of approximately $200,000 to $400,000).

- On November 16, 2011, Mr. Kraeker wrote that UBS had reviewed our client's request but determined that it should not proceed with a rights offering at that time.

- On November 21, 2011, 206 and 613 requisitioned a meeting (the "Meeting Requisition") of the shareholders of UBS pursuant to Section 105(1) of the *Business Corporations Act* (Ontario) (the "OBCA") in order to consider an ordinary resolution that UBS initiate and implement as soon as possible a rights offering to its shareholders.

- On December 12, 2011, Mr. Kraeker delivered a letter (the "December 12 Gowlings Letter") to the undersigned, advising that UBS had reviewed the Meeting Requisition and made the determination that it was under no obligation to call a meeting of shareholders because UBS considered the Meeting Requisition "to be for the purpose of redressing a

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[1] At a meeting held on June 18, 2011, the UBS board passed a resolution approving the commencement of proceedings under the CCAA by UBS bringing an application to the court seeking an initial order under the CCAA. Neither UBS's purported state of insolvency (a requirement to initiate a proceeding under the CCAA), nor its intention to make a filing under the CCAA, was publicly disclosed until July 5, 2011. We would submit that that the failure of UBS to promptly disclose the resolution passed at the June 18 board meeting was a breach of section 75(1) of the *Securities Act* (Ontario) (the "Act") and section 7.1 of National Instrument 51-102 – *Continuous Disclosure Obligations* ("NI 51-102").

personal grievance against the corporation" and "was of the view that the requisition does not relate in a significant way to the business or affairs of the corporation." From November 11 to December 12, there was no attempt by UBS to discuss with Mr. Dolgonos the concept of a rights offering for UBS (or any other alternative means of raising capital for the insolvent company).

- On December 20, 2011, 206 brought a motion (the "Removal Motion") before the Ontario Superior Court seeking an order pursuant to Sections 11.5(1) and (2) of the CCAA to remove Messrs. Grant McCutcheon and Henry Eaton as directors of UBS on the basis of conflicts of interest related to their positions as directors of both UBS and Look Communications Inc. ("Look") .[2]

- Beginning on December 23, 2011, 206 began making purchases of Shares (the "206 Purchases") in reliance upon section 100 of the Act (the "Normal Course Purchase Exemption").

- On January 18, 2012, we delivered a letter (the "January 18 WD Letter") to UBS and Gowlings, which requested lists of shareholders of UBS and notified UBS that a corporation (or corporations) associated with Mr. Dolgonos intended to make the Bid.

- On January 18, 2012, 206 issued a press release (the "January 18 Press Release") pursuant to Section 102.1(2) of the Act disclosing, among other things, (i) its intention to make the Bid; and (ii) the number of Shares it purchased between December 23, 2011 and January 18, 2012 pursuant to the Normal Course Purchase Exemption.

- On January 20, 2012, 206 filed an Early Warning Report pursuant to Section 102.1(2) of the Act disclosing, among other things, (i) its intention to make the Offer; and (ii) the number of Shares it purchased between December 23, 2011 and January 18, 2012.

- On January 25, 2012, the Ontario Superior Court dismissed the Removal Motion (the "Court Decision"). Paragraph 36 of the Court Decision said the following:

> "First removing and replacing directors of a corporation, even a debtor corporation subject to the CCAA, is an extreme form of judicial intervention in the business and affairs of the corporation. *The shareholders have elected the directors and remain entitled to bring their own action to remove or replace directors under the applicable corporate legislation.* At a minimum, in determining whether it should exercise its discretion, the court can take into consideration the absence of any such action by the other shareholders." (Emphasis added)

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[2] 2064818's motion to have Messrs. Eaton and McCutcheon removed as directors was served on UBS on September 20, 2012, but not disclosed by UBS until December 12, 2011. When the Removal Motion was finally disclosed, it was done so in a very brief manner that did not address the substance of the Motion Requisition. We would submit that the failure of UBS to promptly and fully disclose the Removal Motion was another breach of section 75(1) of the Act and NI 51-102 by UBS.

- On January 27, 2012, 206 issued a press release pursuant to Section 102.1(2) of the Act disclosing, among other things, that it had purchased 2,493,000 Shares between December 23, 2011 and January 27, 2012 pursuant to the Normal Course Purchase Exemption.

- On January 31, 2012, 206 filed an Early Warning Report pursuant to Section 102.1(2) of the Act disclosing, among other things, that it had purchased 2,493,000 Shares between December 23, 2011 and January 27, 2012 pursuant to the Normal Course Purchase Exemption.

- On February 1, 2012, 206 commenced the Bid by mailing its take-over bid circular to securityholders of UBS pursuant to Section 94.1(b) of the Act.

- On February 7, 2012, counsel for 206 was served with a notice of motion for: (i) a determination as to whether the Bid is stayed by the original order of the court for UBS's CCAA proceedings; (ii) if the Bid is not stopped by the initial order, an order temporarily staying the Bid; and (iii) an order temporarily staying the holding of a meeting of UBS's shareholders to replace the UBS board until such time as the claims asserted by DOL (as defined below) and Jolian Investments have been determined (the "Stay Motion"). An affidavit of Mr. Robert Ulicki, the Chairman of UBS, accompanied the Stay Motion (the "Ulicki Affidavit").

We have previously provided copies of the June 3 WD Letter, Meeting Requisition, December 12 Gowlings Letter, Removal Motion, January 18 WD Letter and Court Decision to the OSC.

We acknowledge that Mr. Dolgonos filed late insider reports with respect to some of the 206 Purchases. The appropriate fees have been paid.

Attempting to Link the Proposed July Bid and the Bid

The Gowlings Letter attempts to link the Proposed July Bid and the Bid in an effort to advance claims of breaches of sections 76 and 102 of the Act.

Specifically, at page 3 of the Gowlings Letter, based in part on *one* word (i.e. "delayed") in the circular prepared for the Bid, Gowlings makes the following assertion: "Based on the foregoing, it appears that Dolgonos decided to make the partial bid [i.e. the Bid] in June 2011 (if not earlier), although intervening events apparently delayed the initiation of the bid." At page 4 of the Gowlings Letter, in discussing the purchases of Shares between December 23 and January 18, Gowlings makes a similar assertion: "As these purchases were undertaken at a time when Dolgonos had an intention to make the Partial Bid [i.e. the Bid] – but when there was no disclosure in the market place of any such intention …" The Gowlings Letter fails, however, to identify any facts to substantiate the proposition that the Proposed July Bid and the Bid are, in fact, the same transaction.

The CCAA filing that occurred on July 5, 2011 had the commercial effect of stopping the Proposed July Bid, which was intended to be commenced on or after July 6, 2011. Since UBS's CCAA filing, Mr. Dolgonos has attempted to utilize and work within his rights under the CCAA, the OBCA and the Act to protect his significant investment in UBS:

- After UBS's filing under the CCAA, DOL Technologies Inc. ("DOL"), a corporation controlled by Mr. Dolgonos, one of UBS's primary creditors, has worked within the process under the CCAA. To date, the CCAA process has made insignificant progress.

- In November 2011, the Meeting Requisition was made to UBS to promote the company raising additional capital to address its purported insolvency position, and 206 and 613 committed to significantly participate in the rights offering. The Requisition was refused by UBS.

- In December, 2011, Mr. Dolgonos attempted to have two of UBS's directors removed because of perceived conflicts of interests of those directors between their responsibilities as directors of UBS and their responsibilities as directors of Look. The Court Decision was delivered on January 25, 2011.

At every turn, UBS has consciously acted against Mr. Dolgonos. As the Bid is a transaction with the shareholders of UBS, it became Mr. Dolgonos' only available means to protect his investment in UBS.

If UBS had agreed to the rights offering proposed by 206, funds could have gone to UBS, a company that the UBS board has repeatedly represented to the public is insolvent. If the Removal Motion had been successful, 206 would not have had to commit to spending $800,000 to purchase Shares under the Bid, plus the costs in making the Bid. To our knowledge, no other party involved in the CCAA process has been willing to expend any capital for the benefit of either UBS or its shareholders.

206 committed itself to the Bid on January 18, 2012, the day the January 18 WD Letter was sent to UBS and Gowlings and the day the January 18 Press Release was issued. Attempting to link the Proposed July Bid and the Bid as one formal take-over is simply an effort to deny 206 its right to purchase Shares under the Normal Course Purchase Exemption. That effort should be put in the context of our remarks below under the heading "National Policy 62-202".

Normal Course Purchase Exemption and the 206 Purchases

The "normal course purchase exemption" to the take-over bid rules is found at Section 100 of the Act:

> **100. Normal course purchase exemption** - A take-over bid is exempt from the *formal bid requirements* if all of the following conditions are satisfied:
>
> 1. The bid is for not more than 5 per cent of the outstanding securities of a class of securities of the offeree issuer.

> 2. The aggregate number of securities acquired in reliance on this exemption by the offeror and any person or company acting jointly or in concert with the offeror within any period of 12 months, when aggregated with acquisitions otherwise made by the offeror and any person or company acting jointly or in concert with the offeror within the same 12-month period, *other than under a formal bid*, does not exceed 5 per cent of the outstanding securities of that class at the beginning of the 12-month period.
>
> 3. There is a published market for the class of securities that are the subject of the bid.
>
> 4. The value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition as determined in accordance with the regulations, plus reasonable brokerage fees or commissions actually paid. (Emphasis added)

We confirm that in our view each of the 206 Purchases complied with the Normal Course Purchase Exemption. The broker for the 206 Purchases was Raymond James. We reviewed carefully with them the specific requirements with respect to "market price" pursuant to OSC Rule 62-504 – *Take-Over Bids and Issuer Bids*.[3]

The Gowlings Letter purports that the 206 Purchases between January 18 and January 27 were in breach of section 93.1(1) of the Act. Section 100 of the Act specifically provides that purchases made in compliance with the criteria identified in that section are exempt from the "formal bid requirements". Section 89(1) of the Act defines "formal bid requirements" to mean "sections 93 to 99.1 [of the Act]." As such, purchases under the Normal Course Purchase Exemption are outside of the bid integration rules, including the requirements of section 93.1(1). We would note that paragraph 2 of section 100 contemplates purchases occurring both under the Normal Course Purchase Exemption and under a take-over bid that is not exempt from the requirements of sections 93 to 99.1 of the Act.

National Policy 62-202

The Bid is permitted under the Act and applicable securities law. We include with this letter a letter sent by Gowlings to Roy Elliott O'Connor LLP, counsel to 206 on February 2, 2012, and would draw your attention to the first paragraph of that letter. Apparently on February 2, 2012 UBS's only concern was that the Bid is a partial take-over bid. Indeed, UBS did not object to the price for the Shares offered under the Bid.

The UBS board is now engaged in a pattern of behaviour that we submit is in contravention of National Policy 62-202. Even though UBS has since July 5, 2011 consistently declared to the public that it is insolvent, and as such should be afforded the protections provided under the CCAA, UBS is presently spending its capital resources to actively thwart a legitimate

[3] Section 1.3(3) of OSC Rule 62-504.

opportunity for shareholders of UBS to sell the shares of an insolvent company at a significant premium to market.

In its response to the Bid, UBS has stated that: "It is the preliminary view of the board of directors of UBS that the offer by Mr. Dolgonos is opportunistic and is likely being pursued to seek control, directly or indirectly, of the various claims being asserted against Messrs. Dolgonos and McGoey and their affiliates and to influence the CCAA proceedings for the purpose of resolving all such claims and proceedings in their favour."[4] However, the UBS board has failed to disclose any basis upon which to make these unsubstantiated comments, and seems to be making the serious insinuation that a new board of directors, elected by a vote of all of UBS's shareholders, would act in knowing contravention of its fiduciary responsibilities to UBS.

In the Ulicki Affidavit, grounds for the Stay Motion are articulated as follows:

> "The Dolgonos Partial Bid: (a) is an interference with UBS's business; (b) will force UBS to incur significant costs and delay the CCAA proceedings; and (c) will alter the *status quo* in the CCAA proceedings for the benefit of DOL and at the expense of the other UBS stakeholders.
>
> The Dolgonos Partial Bid, and the subsequent change in the UBS board contemplated by Mr. Dolgonos, is the latest in a long series of attempts by Mr. Dolgonos to replace the UBS board."[5]

According to a long and well known body of decisions of securities regulatory authorities with respect to the duties of target boards in take-over bid situations, these purported reasons to seek judicial intervention in the Bid are not a satisfactory basis to prevent UBS shareholders in tendering their Shares to the Bid.

We note that UBS does seem to be very interested in advocating for the interests of Look; however, this is a fundamental misreading by the UBS directors of their responsibilities under both the OBCA and applicable securities laws in the present circumstances. The references in the Gowlings Letter to the interests of Look are simply irrelevant to the Bid.

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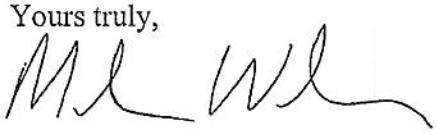
[4] UBS press release, February 3, 2012.
[5] Ulicki Affidavit, paragraphs 74 and 75.

We would close by submitting that given UBS's recent record of compliance with its own disclosure obligations, it is ironic that it is now complaining about the disclosure record of someone else. As of today, UBS has still not filed its interim financial statements and accompanying management's discussion and analysis for the first quarter of its fiscal year, which were due on January 31, 2012 (but it has filed press releases criticizing the Bid). In putting forward the Stay Motion, the UBS board is attempting to place UBS's shareholders in a position where they are prevented from selling shares of an insolvent company to the Bid and from exercising their voting rights.

Yours truly,



Mark Wilson

enclosure

cc. Mr. Perry Dellelce, *Wildeboer Dellelce LLP*
Mr. James Brown, *Wildeboer Dellelce LLP*
Mr. Peter Roy, *Roy, Elliott O'Connor LLP*
Mr. Bryce Kraeker, *Gowling Lafleur Henderson LLP*

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2 February, 2012

Via Facsimile

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Attention: Peter L. Roy and Sean Grayson

Dear Sirs:

Re: Unique Broadband Systems Inc. ("UBS")
Court File no. CV-11-9283-00CL

We understand that your client 2064818 Ontario ("**206 Ontario**"), a company controlled by your client Alex Dolgonos, has indicated its intention to make a partial take-over bid for up to 10 million UBS shares at $0.08 per share. UBS does not, in principal, object to a takeover bid or, to the price at which 206 Ontario is proposing to acquire UBS shares, but has concerns with the fact that it is proposing only a partial take-over. UBS is concerned that the stated purpose of the partial take-over is to effect a change of the UBS board and that this will result in the process to determine the (disputed) claim being asserted against UBS by DOL Technologies Inc. ("**DOL**"), another company controlled by Mr. Dolgonos, or the entire process under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), being terminated or conducted in a manner that does not reflect the issues that UBS believes exist with respect to that validity and quantum of DOL's claim. It is, in the view of UBS, imperative that the validity of the claim being asserted against UBS be determined and that the best way to have the matter determined is in the CCAA proceedings.

Can you please confirm that your client's partial takeover bid is not intended to ultimately result in a change of the UBS board with a view to either: (a) interrupting the claims process; or (b) terminating the CCAA proceedings or, put another way, that your client will ensure that any change in control of UBS will not result in any adverse impact on the process to determine DOL's claim against UBS on its merits. If the acquisition of UBS shares by 206 Ontario is intended to result in a change in the UBS board to interrupt or otherwise impact the claims process or the CCAA proceedings, we will be forced to bring a motion to the court seeking advice and directions with respect to the matter and to ensure that DOL's claim is determined on its merits notwithstanding any change of the control of UBS.

We understand that, in accordance with the terms of the Order dated 4 August 2011 (the "**Claims Order**"), a Notice of Revision or Disallowance was delivered and that DOL has delivered a Notice of Dispute. In accordance with the Claims Order, the Monitor has fifteen business days

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from the delivery of a Notice of Dispute to: (a) bring a motion to have the determination of DOL's claim determined by a Judge or a claims officer if we are able to reach agreement with respect to by whom the disputed claim should be determined; or, if we are unable to reach an agreement as to by whom the disputed claim should be determined; (b) a motion seeking advice and directions with respect to by whom the claim should be determined.

We are hopeful that we can expedite the timelines in the Claims Order. We would like to request that DOL agree that the determination of its (disputed) claim against UBS will be determined by a Judge. We further suggest that the parties sit down with the Monitor to reach an agreement with respect to the process for determining DOL's claim.

It appears that the validity of DOL's claim for the termination payment depends on your client satisfying the court that, based on the facts outline in your Notice of Dispute, there was a "change-in-control" and "good reason". Unless your client establishes that both of these criteria are satisfied, the disallowance of the claim for termination payment must be upheld. There appears to be no reason why these matters cannot be determined on a "summary judgment" basis with an agreed statement of facts. We understand that there is time available before His Honour on 1 and 2 March 2012 and we suggest that a motion to have these issues determined be scheduled for one of those days.

Can we please have your thoughts on the foregoing? We would be please to meet with you anytime this week to discuss an expedited process for determining DOL's claim against UBS in contemplation of a meeting with the Monitor the following week. We have approached the Commercial List Office to determine His Honour's availability in March of 2012.

Sincerely,

GOWLING LAFLEUR HENDERSON LLP

E. Patrick Shea
EPS:fs

cc: client
Monitor

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

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)

SUPPLEMENTAL AFFIDAVIT
OF ROBERT ULICKI
(SWORN 10 FEBRUARY 2012)

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