

COURT OF APPEAL FOR ONTARIO

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

MOTION RECORD

**(Appellant's motion to adjourn
the appeal and for directions)**

Date: March 1, 2012

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Lawyers for the defendants by counterclaim, Alex Dolgonos and DOL Technologies Inc.

AND TO: **GROIA & COMPANY**
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Tel. 416-369-6607

Lawyers for the third party, Peter Minaki

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TAB 1

Court File No.: C53925/C53926

COURT OF APPEAL FOR ONTARIO

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

NOTICE OF MOTION

(Appellant's motion to adjourn the appeal and for directions)

- 2 -

THE APPELLANT Unique Broadband Systems, Inc. ("UBS") will make a motion to the Honourable Madam Justice Simmons of the Court of Appeal on Thursday, March 8, 2012, at 9:30 a.m. or as soon after that time as the motion can be heard, at 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: Orally.

ESTIMATED LENGTH OF TIME FOR ORAL ARGUMENT: 15 minutes.

JURISDICTION OF A SINGLE JUDGE: Pursuant to Rule 61.16 of the *Rules of Civil Procedure* and section 7(2) of the *Courts of Justice Act*, a single judge of the Court of Appeal has the jurisdiction to hear a motion for an adjournment of an appeal and to make an order adjourning the appeal.

THE MOTION IS FOR an order:

1. adjourning UBS's appeal *sine die* pending completion of the UBS CCAA proceedings, and
2. such other directions as may be appropriate in light of the CCAA proceedings, described herein, including direction to the Respondents to bring such applications or motions affecting those proceedings to the judge seized of the CCAA proceeding.

THE GROUNDS FOR THE MOTION ARE:

1. Rule 61 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and section 7(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

2. **UBS's CCAA Proceeding is Ongoing**

UBS commenced an appeal from the orders of Justice Marrocco (the "Motion Judge") dated April 27, 2011 and May 30, 2011, wherein the Motion Judge ordered that UBS is obliged to pay Gerald McGoey ("McGoey"), his personal company Jolian Investments Limited ("Jolian"), Alex Dolgonos ("Dolgonos") and his personal company DOL Technologies Inc. ("DOL") (collectively, the "Respondents") for:

1. all legal expenses incurred by the Respondents in pursuing the claims by Jolian and DOL against UBS pursuant to their respective consulting agreements with UBS, and
2. all legal expenses incurred by the Respondents in respect of their defences to UBS's counterclaims in the above actions pursuant to their consulting agreements and various indemnification agreements.

3. Subsequently, UBS was granted an order by Justice Wilton-Siegel on July 5, 2011 (the "CCAA Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"). The CCAA Order includes this provision at paragraph 12:

...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.

4. The stay granted in the Original Order has been extended several times, including twice without opposition from the Respondents since the parties' last

appearance before the Honourable Madam Justice Simmons on October 12, 2011, described below.

5. **Prior Appearance Before Madam Justice Simmons**

On October 12, 2011, DOL brought a motion before the Honourable Madam Justice Simmons seeking security for its costs in responding to the UBS appeal, and UBS brought a cross-motion to adjourn or stay the appeal pending the outcome of the CCAA process.

6. The Honourable Madam Justice Simmons adjourned DOL's motion for security for costs to no fixed date. Her Honour also ordered that she would case manage the UBS appeal.

7. In Her Honour's endorsement in UBS's cross-motion, she held that:

- arguing the appeal at that time "would seem to be a waste of resources of the parties and the court",
- it was not clear that Jolian and DOL's concerns that their CCAA claims might be delayed or otherwise hindered by UBS were legitimate,
- if it became clear that Jolian and DOL's claims in the CCAA proceeding were being delayed, that "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 [CCAA Order] stay applies to the appeal." [Emphasis in original.]

8. At the request of counsel for Jolian and DOL, Her Honour declined to grant UBS's request for an adjournment of the appeal *sine die* and instead adjourned

the appeal to a date agreed to by the parties (April 26, 2012). Jolian and DOL requested a fixed date for the adjournment on the basis that their claims against UBS in the CCAA process may not have been processed and reviewed in a timely manner.

9. Since the appearance before the Honourable Madam Justice Simmons on October 12, 2011, the UBS CCAA process has proceeded without delay. Claims have been submitted by Jolian, DOL, McGoey and Dolgonos, among others, and those claims have been processed. The Jolian and DOL claims have been disallowed by the Monitor, and a process for dealing with Jolian and DOL's dispute of those disallowances is being determined by the parties and the Monitor.
10. In light of the CCAA Order and the ongoing claims process, it is not in the interests of any of the parties to expend the resources to argue the appeal. In the words of the Honourable Madam Justice Simmons, it is "a waste of resources of the parties and the court to deal with the appeal at this point".
11. Jolian and DOL have refused UBS's request to adjourn the appeal on consent, necessitating this motion for an adjournment.

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

- the affidavit of Joe Thorne, sworn March 1, 2012, with attached exhibits.

Date: March 1, 2012

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Lawyers for the defendants by counterclaim, Alex Dolgonos and DOL Technologies Inc.

- 7 -

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Lawyers for the defendant by counterclaim, Douglas Reeson

- 8 -

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Lawyers for the third party, Peter Minaki

DOL TECHNOLOGIES INC.
– Respondent –

V.

UNIQUE BROADBAND SYSTEMS, INC.
— Appellant —

COURT OF APPEAL FOR ONTARIO

(PROCEEDING COMMENCED AT
TORONTO)

NOTICE OF MOTION

GOWLING LAFLEUR HENDERSON LLP

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LAWYERS FOR THE APPELLANT

TAB 2

Court File No.: C53925/C53926

COURT OF APPEAL FOR ONTARIO

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

AFFIDAVIT OF JOE THORNE

I, **JOE THORNE**, of the City of Toronto, in the Province of Ontario, lawyer
for the appellant Unique Broadband Systems, Inc. ("UBS"), **MAKE OATH AND SAY:**

1. I am an associate with Gowling Lafleur Henderson LLP, counsel for UBS. As such, I have personal knowledge of the facts stated herein. I am making this affidavit in support of a motion by UBS to adjourn its appeal *sine die* pending the completion of its proceeding under the *Companies' Creditors Arrangement Act* and for directions.

Background

2. UBS has appealed from the orders of Justice Marrocco (the "Motion Judge") dated April 27, 2011 and May 30, 2011, respectively, wherein the Motion Judge ordered that UBS is obliged to pay Gerald McGoey ("McGoey"), his personal company Jolian Investments Limited ("Jolian"), Alex Dolgonos ("Dolgonos") and his personal company DOL Technologies Inc. ("DOL") (collectively, the "Respondents") for:

- (a) all legal expenses incurred by the Respondents in pursuing the claims by Jolian and DOL against UBS pursuant to their respective consulting agreements with UBS, and
- (b) all legal expenses incurred by the Respondents in respect of their defences to UBS's counterclaims in the above actions pursuant to their consulting agreements and various indemnification agreements.

3. Subsequently, UBS was granted an order by Justice Wilton-Siegel on July 5, 2011 (the "CCAA Order") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"). The CCAA Order includes this provision:

...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.

Prior Appearance Before the Honourable Madam Justice Simmons

4. On October 12, 2011, DOL brought a motion before the Honourable Madam Justice Simmons seeking security for its costs in responding to the UBS appeal, and UBS brought a cross-motion to adjourn or stay the appeal pending the outcome of the CCAA process.

5. The Honourable Madam Justice Simmons adjourned DOL's motion for security for costs to no fixed date. Attached hereto and marked as **Exhibit A** is a copy of Her Honour's order and endorsement in the DOL motion, dated October 12, 2011.

6. In Her Honour's endorsement in UBS's cross-motion to stay or adjourn the appeal, she stated:

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.

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

- 4 -

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. [Bold added. Underline in original.]

7. At the request of counsel for Jolian and DOL, Her Honour declined to grant UBS's request for an adjournment of the appeal *sine die* and instead adjourned the appeal to a date agreed to by the parties (April 26, 2012). As set out in Her Honour's endorsement, this request was granted only because of Jolian and DOL's stated concerns that their claims against UBS in the CCAA process may not have been processed and reviewed in a timely manner.

8. Her Honour also ordered that she would case manage the UBS appeal. Attached hereto and marked as **Exhibit B** is a copy of the order and endorsement of the Honourable Madam Justice Simmons in UBS's cross-motion, dated October 12, 2011.

9. On November 30, 2011, I wrote to the Honourable Madam Justice Simmons on behalf of the parties to update Her Honour on the status of the CCAA proceeding as per Her Honour's orders on October 12, 2011. At that time, Jolian and DOL had submitted their claims under the CCAA and a motion had been brought by DOL to replace two of UBS's three directors. Attached hereto and marked as **Exhibit C** is a copy of my reporting letter to the Honourable Madam Justice Simmons, copied to counsel for Jolian and DOL, dated November 30, 2011.

10. Since the appearance before the Honourable Madam Justice Simmons on October 12, 2011, and my report of November 30, 2011, the UBS CCAA process has proceeded without delay. Claims have been submitted by Jolian, DOL, McGoey and Dolgonos, among others, and those claims have been processed. The Jolian and DOL claims have been disallowed by the Monitor, and a process for dealing with Jolian and DOL's dispute of those disallowances is being determined by the parties and the Monitor.

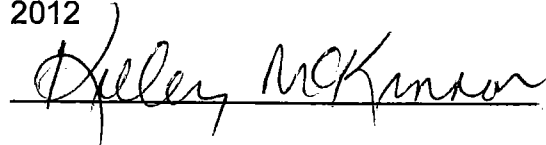
11. To date, counsel for Jolian and DOL had denied UBS's request for an adjournment of the appeal on consent. On February 29, 2012, I wrote to counsel for Jolian and DOL setting out UBS's position that proceeding with the appeal on April 26, 2012 at this point would be a waste of all parties' and the Court's time and resources. I reiterated my request that Jolian and DOL consent to adjourn the appeal pending the completion of the CCAA process. Attached hereto and marked as **Exhibit D** is a copy of my letter to counsel for Jolian and DOL, dated February 29, 2012.

12. I believe that in light of the ongoing CCAA claims process, it is not in the interests of any of the parties to expend the resources to argue the appeal at this time.

- 6 -

13. I make this affidavit in support of UBS's motion to adjourn its appeal *sine die* pending the completion of the CCAA proceeding and for directions, and for no other purpose.

SWORN before me at the City of Toronto,
in the Province of Ontario, on March 1,
2012

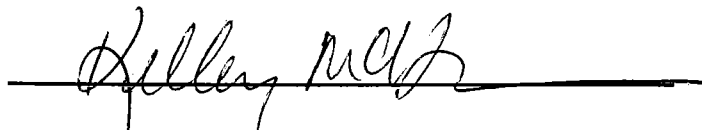


Commissioner for Taking Affidavits

) 
)
) **JOE THORNE**

TAB A

THIS IS EXHIBIT A TO THE AFFIDAVIT OF
JOE THORNE, SWORN BEFORE ME ON
MARCH 1, 2012

A handwritten signature in cursive script, appearing to read "Kelly McJ", is written over a solid horizontal line.

Commissioner for Taking Affidavits

Court File No.: C53925
Docket: M40546

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE)	WEDNESDAY, THE 12TH DAY
)	
JUSTICE SIMMONS)	OF OCTOBER, 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/Respondents

ORDER


THIS MOTION, made by the plaintiff/respondent, DOL Technologies Inc. and the defendant by counterclaim/respondent Alex Dolgonos (the "**Moving Parties**") for security for the costs of appeal was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the affidavit of Alexandra Carr, sworn September 30, 2011, filed, and the exhibits attached thereto, and on hearing the submissions of counsel for the Moving Parties and for the defendant/appellant Unique Broadband Systems, Inc. (the "Responding Party"), (J. Groia, P. Roy, K. McKinnon, J. Thorne)

1. **THIS COURT ORDERS** that the motion is adjourned to no fixed date, returnable before the Honourable Justice Simmons by appointment.
2. **THIS COURT 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.
3. **THIS COURT ORDERS** that the costs of this motion shall be reserved to the next attendance.

ENTERED AT / INSCRIPT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT 26 2011

PER / PAR: 


Registrar: Court of Appeal For Ontario

DOL TECHNOLOGIES INC.

Plaintiff/Defendant by Counterclaim/Respondent

- and -

UNIQUE BROADBAND SYSTEMS, INC.

Defendant/Plaintiff by Counterclaim/Appellant

Court File No.: C53295

COURT OF APPEAL FOR ONTARIO
Proceeding commenced at Toronto

ORDER

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Sean M. Grayson (LSUC No. 46887H)

Alexandra Carr (LSUC No. 57042L)

Tel: (416) 362-1989

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Counsel for DOL Technologies Inc.
and Alex Dolgonos

DATE: 20111012
DOCKET: M40546

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, Sean M. Grayson and Alexandra Carr, for the Plaintiffs 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

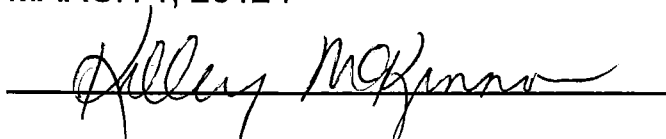
[1] Adjourned to no fixed date returnable before me by appointment. Parties to report in writing on the status of the matter on or before November 30, 2011.

[2] Costs reserved to next attendance.

“Simmons J.A.”

TAB B

THIS IS EXHIBIT B TO THE AFFIDAVIT OF
JOE THORNE, SWORN BEFORE ME ON
MARCH 1, 2012 .

A handwritten signature in cursive script, appearing to read "Kelley McKinnon", is written over a solid horizontal line.

Commissioner for Taking Affidavits

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

- 2 -

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, Julian 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.

- 3 -

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

<p>DOL TECHNOLOGIES INC. - Plaintiff (Respondent) -</p> <p>UNIQUE BROADBAND SYSTEMS, INC. - Plaintiff by Counterclaim -</p> <p>PETER MINAKI - Third Party -</p>		<p>Court File No.: C53925/C53926 Docket: M40594</p> <p>UNIQUE BROADBAND SYSTEMS, INC. - Defendant (Appellant) -</p> <p>v.</p> <p>v. DOL TECHNOLOGIES INC. ALEX DOLGONOS, GERALD MCGOEY, LOUIS MITROVICH AND DOUGLAS REESON Defendants by Counterclaim/(Respondent)-</p>	
		<p>COURT OF APPEAL FOR ONTARIO (PROCEEDING COMMENCED AT TORONTO)</p>	
		<p>ORDER</p>	
		<p>GOWLING LAFLEUR HENDERSON LLP Barristers and solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5</p> <p>Kelley McKinnon (LSUC No. 33193C) Joe Thorne (LSUC No. 58773W)</p> <p>Telephone: (416) 862-7525 Facsimile: (416) 862-7661</p>	
		<p>LAWYERS FOR THE DEFENDANT (APPELANT), PLAINTIFF BY COUNTERCLAIM</p>	

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.

Page: 3

“Simmons J.A.”

TAB C

THIS IS EXHIBIT C TO THE AFFIDAVIT OF
JOE THORNE, SWORN BEFORE ME ON
MARCH 1, 2012 .

A handwritten signature in black ink, appearing to read "Kelly M. J.", is written over a horizontal line.

Commissioner for Taking Affidavits



montréal • ottawa • toronto • hamilton • waterloo region • calgary • vancouver • beijing • moscow • london

November 30, 2011

VIA FACSIMILE

The Honourable Justice J.M. Simmons
Court of Appeal for Ontario
Osgoode Hall
130 Queen Street West
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Joe Thorne
Associate
Direct 416-369-7223
joe.thorne@gowlings.com
File No. T985176

Your Honour:

Re: DOL Technologies Inc. v. Unique Broadband Systems, Inc. - Court File No. C53295

We are writing to you to update you on the above noted proceeding as you ordered during our attendance before the Court of Appeal on October 12, 2011.

On October 12, 2011, counsel for Unique Broadband Systems, Inc. ("UBS"), DOL Technologies Inc. ("DOL") and Jolian Investments Limited ("Jolian") appeared before you in respect of a motion for security for costs in the UBS appeal brought by DOL, and in respect of a cross-motion brought by UBS for an adjournment or stay of the UBS appeal.

The DOL motion for security for costs was adjourned to no fixed date. The UBS appeal was adjourned to a mutually agreeable date (now booked for April 26, 2012). Your Honour also decided that the appeal shall be case managed by you.

Further, you ordered the parties to report to you in writing by November 30, 2011 as to the status of the *Companies' Creditors Arrangement Act* ("CCAA") proceedings affecting UBS because the timing regarding the claims process was unknown at our appearance.

The deadline to submit claims pursuant to UBS's Plan of Arrangement under the CCAA passed on September 19, 2011. DOL and Jolian have submitted their claims for review in the claims process. Justice Wilton-Siegel has extended the Stay Period (as defined under the initial order dated July 5, 2011) to January 16, 2012 under a second extension order, dated October 27, 2011. A further extension of the stay of proceedings will be sought by UBS to determine the claims submitted in the claims process.

To date, none of the claims submitted in the CCAA process have been reviewed. Counsel for DOL and Jolian objected to two of the three current UBS directors reviewing their claims. 2064818 Ontario Inc., a company controlled by Alex Dolgonos (principal of DOL), has brought a motion to remove those two directors and replace them with an alternate slate. That motion is returnable December 20, 2011.

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As the claims submitted under the CCAA process have yet to be reviewed, no timeline has been approved for completion of the process. The timeline for the claims process may be affected by the outcome of the December 20, 2011 motion.

In addition, we have been advised by counsel for DOL that they will seek to expedite the UBS appeal.

Counsel will be pleased to respond further if required.

Sincerely,

GOWLING LAFLEUR HENDERSON LLP



Joe Thorne
Associate

JT:fg


cc: Peter L. Roy/Sean Grayson
Roy Elliott O'Connor LLP
200 Front Street West, Suite 2300
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cc: Joseph Groia/Gavin Smyth
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Toronto, ON
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TOR_LAW 7792983\2

TAB D

THIS IS EXHIBIT D TO THE AFFIDAVIT OF
JOE THORNE, SWORN BEFORE ME ON
MARCH 1, 2012 .

A handwritten signature in cursive script, appearing to read "Kelley McGinnis", is written over a horizontal line.

Commissioner for Taking Affidavits



montréal • ottawa • toronto • hamilton • waterloo région • calgary • vancouver • moscow • london

February 29, 2012

VIA ELECTRONIC MAIL

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Mr. Smyth and Mr. Grayson:

Re: Jolian Investments Limited v. Unique Broadband Systems, Inc.
Court of Appeal File No. C53926

Thank you for your recent correspondence.

On October 12, 2011, we appeared before Madam Justice Simmons for DOL's motion for security for costs of UBS's appeal from the order of Justice Marrocco, dated April 27, 2011, as well as UBS's motion to adjourn or stay its appeal pending the determination of UBS's application under the *Companies' Creditors Arrangement Act*.

At our appearance before Madam Justice Simmons, UBS took the position that the appeal ought to be adjourned *sine die* pending the outcome of the CCAA process. It was only at the urging of Mr. Groia that a date was fixed for the hearing of the appeal in order to assuage Mr. Groia's and Mr. Roy's concern that their clients' CCAA claims may not have been processed and reviewed in a timely manner, or that UBS would otherwise delay the CCAA claims process. For that reason alone Madam Justice Simmons ordered the appeal to be adjourned to April 26, 2012.

Since our appearance before Madam Justice Simmons, the CCAA claims process has proceeded without delay. The stay provided for in Justice Wilton-Siegel's Initial Order, dated July 5, 2011, has been extended twice since our appearance, either on consent of your clients or not opposed by them. Jolian and DOL's proofs of claim have been accepted, reviewed and disallowed by the Monitor. The disallowances of those claims are now being disputed by your clients. The next step in the claims process is in the hands of the Monitor. Jolian and DOL have not yet responded to the Monitor's

request for details of the process your clients recommend for the determination of their claims. UBS has submitted its recommendations for that process to the Monitor, but there have been no responding submissions from Jolian and DOL to date.

As a result of the foregoing, UBS's position remains that, as reflected in paragraph 2 of Madam Justice Simmons' endorsement in our motion, the hearing of this appeal would be "a waste of resources of the parties and the Court" while the CCAA claims process is ongoing.

Contrary to Mr. Smyth's letter of January 20, 2012, there is no language in Madam Justice Simmons' endorsement requiring UBS to apply for leave to have the appeal heard.

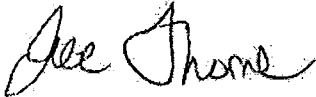
In Mr. Smyth's letter of February 3, 2012 and Mr. Grayson's letter of February 7, 2012, both Jolian and DOL refused to consent to an adjournment of the appeal. Given that refusal, notwithstanding the ongoing CCAA claims process, it would appear that an appearance before Madam Justice Simmons is necessary.

If you remain of the opinion that this appeal must be heard on April 26, 2012, I will arrange for an appearance before Madam Justice Simmons to seek directions on this issue and to seek a further adjournment *sine die* pending the outcome of the CCAA proceedings. I have been informed by the scheduling office that March 8 and 9 are available for an appearance before Her Honour. March 8 was agreeable for all counsel.

If you will not consent to adjourn the appeal, we will deliver our Motion Record, returnable March 8, 2012, for the adjournment shortly.

Sincerely,

GOWLING LAFLEUR HENDERSON LLP



Joe Thorne
Associate
JT:fg

cc: Joel Richler - Blake, Cassels & Graydon LLP
Sharon M. Addison - McLean & Kerr LLP
David A. Hausman - Fasken Martineau DuMoulin LLP
Raj Sahni - Bennett Jones

SHORT NAME OF PLAINTIFF

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v.

SHORT NAME OF DEFENDANT

COURT OF APPEAL FOR ONTARIO

(PROCEEDING COMMENCED AT TORONTO)

**AFFIDAVIT OF
JOE THORNE
(Dated March 1, 2012)**

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LAWYERS FOR THE APPELLANT

<p>DOL TECHNOLOGIES INC. – Respondent –</p>	<p>Court File No.: C53925/C53926</p> <p>v. UNIQUE BROADBAND SYSTEMS, INC. – Appellant –</p>	
	<p>COURT OF APPEAL FOR ONTARIO (PROCEEDING COMMENCED AT TORONTO)</p>	<p>MOTION RECORD</p> <p>GOWLING LAFLEUR HENDERSON LLP Barristers and solicitors 1 First Canadian Place 100 King Street West, Suite 1600 TORONTO, Ontario M5X 1G5</p> <p>Kelley McKinnon (LSUC No. 33193C) Joe Thorne (LSUC No.: 58773W)</p> <p>Telephone: (416) 862-7525 Facsimile: (416) 862-7661</p> <p>LAWYERS FOR THE APPELLANT</p>