

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

B E T W E E N :

**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.
and UBS WIRELESS SERVICES INC.**

**NOTICE OF MOTION
(CLAIMS HEARING PROCEDURE)**

Duff & Phelps Canada Restructuring Inc., in its capacity as court-appointed CCAA Monitor (the "Monitor") of Unique Broadband Systems Inc. and UBS Wireless Services Inc. (collectively, the "Company"), will make a motion to the Court on April 4, 2012 at 10:00 a.m., and thereafter as scheduled at 330 University Avenue, 8th Floor, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard

☐ in writing under subrule 37.12.1(1) because it is *(insert one of on consent, unopposed or made without notice)*;

☐ in writing as an opposed motion under subrule 37.12.1(4);

☒ orally.

THE MOTION IS FOR:

1. An Order establishing a procedure for the Court's determination of the claims against the Company filed by Jolian Investments Inc. ("Jolian") and DOL Technologies Inc. ("DOL") (the "Claims") in accordance with the claims order made by the Court on August 4, 2011 (the "Claims Order"), in accordance with the Draft Order attached to this Notice of Motion as Appendix "A".
2. An Order approving the Seventh Report of the Monitor dated March 27, 2012, and the conduct of the Monitor set out therein.
3. Such further and other relief as counsel may advise and this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

- (a) Pursuant to an order of this Court made on July 5, 2011, the Company was granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA");
- (b) Pursuant to subsequent orders of the Court, the Company's stay of proceedings is set to expire on March 30, 2012;
- (c) On August 4, 2011, the Court granted the Claims Order;
- (d) On September 19, 2011, the Claims were filed against the Company by Jolian (for an amount of approximately \$10,000,000) and DOL (for an amount of approximately \$8,000,000);
- (e) In total, 14 claims were filed in the Claims Process. The Claims are, by far, the largest claims filed against the Company;

- (f) On January 4, 2012, the Monitor issued Notices of Revision or Disallowance in respect of the Claims, among others;
- (g) On January 30, 2012, Jolian and DOL issued Notices of Dispute in respect of each of the Claims;
- (h) The Company, Jolian and DOL have agreed that, pursuant to the Claims Order, the Claims should be determined by a Judge of the Commercial List;
- (i) A procedure must be established for the determination of the Claims;
- (j) The Claims Order;
- (k) The CCAA; and
- (l) Such further and other grounds as counsel may advise and this Court may permit.

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

- (i) The Seventh Report of the Monitor dated March 27, 2012; and
- (ii) Such materials as counsel may advise and this Court may permit.

March 27, 2012

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 1920, 145 King Street West
Toronto, ON M5H 1J8

Matthew P. Gottlieb LSUC#: 32268B
Tel: (416) 644-5353
Fax: (416) 598-3730

Lawyers for the Monitor

TO: **ATTACHED SERVICE LIST**

Appendix “A”

The Proceeding

- Claims against the Applicants by Jolian Investments Limited (“Jolian”) and DOL Technologies Inc. (“DOL”) (collectively, the “Claimants”) shall be determined in one consolidated proceeding (the “Proceeding”)

Pleadings

- Each Claimant shall provide a Claim setting out each claim it intends to advance in the Proceeding and must specify the factual and legal basis for each such claim. The factual and legal basis for each Claim must be broken down on a claim by claim basis. April 12
- The Applicants shall provide a Response to each claim. The Responses shall provide a particular response to each claim advanced in the Claims, including the factual and legal basis for each response. April 18

Documentary Discovery

- The Claimants shall be given access to a mirror of the Applicants’ server which contains electronic documents of the Applicants up to and including July 2010. April 30
- The Claimants may make any other specific request for documents, including electronic documents from the Applicants, which request must include the basis of the relevance for such requested documents. April 30
- The Claimants shall produce to the Applicants copies of or access to all electronic and paper documents that are relevant to the Claims and/or Responses. In particular, the Claimants shall produce all correspondence, emails and notes of any kind regarding the affairs of the Applicants up to and including July 2010. April 30
- Each Claimant and the Applicants must disclose a witness list and a summary of anticipated evidence or witness statements, where those exist. April 30

Oral Discovery

- Each Claimant may examine one representative of the Applicants for a maximum of seven hours. May 22 - 25
- The Applicants may examine one representative of each of Jolian May 22 - 25

and DOL for a maximum of seven hours each.

- Motions for answers to refusals

Hearing Procedure

- Each party shall serve and file a detailed chronology of events proposed to be proven at trial with a document brief containing relevant documents to support chronology. 10 days prior to trial
- Each party shall serve and file a written argument setting forth that party's position on the issues to be determined at the hearing and the anticipated evidence regarding such issues. 10 days prior to trial
- Each party shall serve and file a summary of admitted facts. 10 days prior to trial

Case Conference

- To the extent the parties cannot agree, a case conference shall be held to determine procedure to be followed at the hearing of the claims. As soon as possible

Hearing

- 7 days of hearing shall be set aside. June 2012 (or as soon thereafter as the Court is available)

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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INC. and UBS WIRELESS SERVICES INC.

SERVICE LIST

TO: GOWLING LAFLEUR HENDERSON LLP
1 First Canadian Place
Suite 1600
Toronto, ON M5X 1G5

Patrick Shea
email: patrick.shea@gowlings.com
Benjamin Na
email: benjamin.na@gowlings.com
Kelley McKinnon
email: kelley.mckinnon@gowlings.com
Tel: 416.369.7399
Fax: 416.862.7661

Lawyers for the Applicants

AND TO: BENNETT JONES LLP
1 First Canadian Place
Suite 3400
Toronto, ON M5X 1A4

Derek Bell
email: belld@bennettjones.com
Raj Sahni
email: sahnir@bennettjones.com

Tel: 416.777.4804
Fax: 416.863.1716

Lawyers for Gerald T. McGoey and Jolian Investments Ltd.

AND TO: GOODMAN'S LLP
333 Bay Street, Suite 3400
Bay Adelaide Centre
Toronto, ON M5H 2S7

David Conkin
email: dconklin@goodmans.ca
Brendan O'Neill
email: boneill@goodmans.ca
Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for LOOK Communications Inc.

AND TO: ROY ELLIOTT O'CONNOR LLP
200 Front Street West
Suite 2300
Toronto, ON M5V 3K2

Peter Roy
email: plr@reolaw.ca
Tel: 416.362.1989
Fax: 416.362.6204

Lawyers for Alex Dolgonos and DOL Technologies Inc.

AND TO: WARDLE DALEY BERNSTEIN LLP
2104-401 Bay Street
P.O. Box 21
Toronto, ON M5H2Y4

Peter Wardle
email: pwardle@wdblaw.ca
Tel: 416.351.2771
Fax: 416.351.9196

Lawyers for the Directors

AND TO: GROIA & COMPANY
Professional Corporation – Lawyers
Wilcoer Dellelce Place
365 Bay Street, 11th Floor
Toronto, ON M5H 2V1

Joseph Groia
email: jgroia@groiaco.com
Tel: 416.203.4472
Gavin Smyth
email: gsmyth@groiaco.com
Tel: 416.203.4475
Fax: 416.203.9231

Lawyers for Jolian Investments Limited and Gerald McGoey

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF UNIQUE BROADBAND SYSTEMS, INC. et al.
Applicants

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

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

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(Claims Hearing Procedure)**

LAX O'SULLIVAN SCOTT LISUS LLP
Counsel
Suite 1920, 145 King Street West
Toronto, ON M5H 1J8

Matthew P. Gottlieb (LSUC #32268B)
Tel: (416) 644-5353
Fax: (416) 598-3730

Lawyers for the Monitor