

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 ALEX DOLGONOS
(Sworn April 24, 2012)**

I, **Alex Dolgonos**, of Thornhill, in the province of Ontario, MAKE OATH AND SAY:

1. I am one of the trustees of the trust that owns all of the common shares of 2064818 Ontario Inc. ("206 Ontario"), and through 206 Ontario and 6138241 Canada Inc. ("613 Canada"), a company owned by trusts of my family, I have an indirect interest in approximately 22,898,225 Shares of UBS representing approximately 22.28% of the issued and outstanding shares of Unique Broadband Systems Inc. ("UBS") and as such, I have personal knowledge of the matters to which I depose in this affidavit. To the extent that I do not have personal knowledge of the matters to which I depose below, and I have obtained and rely on information from others, I have identified the source of that information and verily believe that information to be true.
2. On January 18, 2012, 206 Ontario announced its intention to make a take-over bid (the "Offer") for up to 10 million common shares of Unique Broadband Systems, Inc. ("UBS"). 206 Ontario mailed the Offer and accompanying circular (the "Circular") to UBS's shareholders on February 1, 2012.

3. In its January 18, 2012 press release announcing the Offer and in the Circular, 206 Ontario disclosed its intention to requisition a special meeting of the shareholders of UBS to replace the current board of directors of UBS.
4. UBS's counsel, Gowling Lafleur Henderson LLP ("Gowlings"), attempted to stop the Offer through submissions to the Ontario Securities Commission (the "OSC") and the Ontario Superior Court of Justice. It has been the position of 206 Ontario that in taking these actions, UBS has been engaged in a pattern of behaviour to frustrate the Offer.
5. On February 24, 2012, UBS issued a directors' circular urging UBS's shareholders to reject the Offer. In that circular and on other occasions UBS has admitted that the Offer has given UBS's shareholders a choice of two very different visions for UBS's future.
6. The OSC has refused to stop the Offer. On March 5, 2012, Mr. Justice Wilton-Siegel denied UBS's motion to stay the Offer.
7. On March 8 2012, 206 Ontario issued a press release (the "Press Release") announcing (i) an extension of the Offer until May 11, 2012, and (ii) the requisitioning (the "Requisition"), along with 613 Canada, of a special meeting of the shareholders of UBS (the "Requisitioned Meeting") to replace the current board of directors and replace them with Messrs. Daniel Marks, Kenneth Taylor, Azim Fancy and Victor Wells. A true copy of the Press Release is attached as **Exhibit "A"** to this affidavit. A true copy of the Requisition is attached as **Exhibit "B"** to this affidavit. The Requisition is consistent with 206 Ontario's public disclosure of its intention with respect to the Offer since January, 18, 2012.
8. UBS did not respond to the Requisition until March 28, 2012 (I am advised by my counsel that March 29, 2012, was the last day permitted under the *Business Corporations Act* (Ontario) (the "OBCA") for UBS to have responded to the Requisition). A true copy of Gowling's response to 206 Ontario's counsel, Wildeboer Dellelce LLP, is attached and

marked as **Exhibit "C"** to this affidavit. Gowling's response does not identify any corporate or securities laws issues with the Requisition.

9. On March 28, 2012, UBS issued a press release (the "March 28 UBS Press Release") announcing that the Requisitioned Meeting (as an annual and special meeting) would be held on July 11, 2012, with a record date of May 24, 2012. Among other things, including urging UBS's shareholders to reject the Offer, the March 28 UBS Press Release states that "UBS, its board of directors and its chairman, reserve the right, in their sole discretion, to either adjourn the [Requisitioned Meeting] or seek an order of the court to postpone the [Requisitioned Meeting], including until such time as the claims process is completed." A true copy of the March 28 UBS press release is attached as **Exhibit "D"** to this affidavit.

10. UBS has responded to the Requisition, the validity of which it has not disputed, by purporting to call a shareholder meeting that it says it can postpone at any time. In the March 28 Press Release, UBS also stated the following:

"In order for UBS shareholders to have the necessary information to permit them to make an informed decision regarding these different visions, the board of directors continues to be of the view that of primary importance to all stakeholders is to ensure, prior to the [Requisitioned Meeting], that the determination of the validity and quantum of the over \$18 million in claims against UBS (the "Claims") of affiliates of Mr. Dolgonos and Mr. McGoe, the former CEO of UBS, is completed as quickly as possible through the CCAA proceedings which are currently underway. Specifically, a determination of the disallowance of the Claims under the CCAA claims process could hold substantial value for all shareholders and the board of directors believes that shareholders are entitled to know the amount of such value prior to making a decision in respect of a change in board of directors."

11. Following several court appearances and many email exchanges among counsel, the form of the Fourth Extension and Claims Determination Process was finally agreed upon on April 17, 2012. The agreed Order establishing that process is attached to this affidavit as **Exhibit "E"**.

12. Based upon the agreed schedule for resolution of the claims in the CCAA proceeding (the "Claims"), it will be many months before there is any final determination of the Claims. 206 Ontario has been advised by its counsel that the Claims will not be resolved by July 11, 2012, the announced date of the Requisitioned Meeting. As such, the March 28 Press Release has been overtaken by events and the UBS board should not be permitted to continue to link resolution of the Claims with the holding of the Requisitioned Meeting.
13. Due to the fact that the Offer is scheduled to expire on May 11, 2012, 206 instructed its counsel to seek assurance that UBS would not be seeking an adjournment of the Requisitioned Meeting that UBS has scheduled for July 11, 2012. Attached as **Exhibit "F"** to this affidavit is a copy of the letter of Roy Elliott O'Connor dated April 18, 2012 in which such assurance was sought.
14. By letter dated April 19, 2012 Patrick Shea, UBS's counsel in the CCAA proceedings, wrote Mr. Peter Roy and advised that UBS would not give the requested assurance. A copy of Mr Shea's letter is attached as **Exhibit "G"**.
15. 206 Ontario went to considerable effort to find the four highly reputable and completely independent individuals proposed to be elected directors of UBS at the Requisitioned Meeting. Summaries of their biographies are set forth in Exhibit A.
16. As I previously swore in my February 13, 2012 affidavit (upon which I rely in this application), I fully expect 206 Ontario and 613 Canada's proposed slate of directors to act honestly and in good faith and to carry out their duties with the required degree of skill, diligence and prudence under the OBCA. Neither I nor any claimant related to me expects to receive any special treatment from this proposed board in the CCAA process.

18. It is 206 Ontario's belief that UBS, consistent with its pattern of attempting to frustrate the Offer, has no intention of holding the Requisitioned Meeting on July 11, 2012. Mr. Shea's response to Mr. Roy confirms that belief.

19. If there is no assurance that the Requisitioned Meeting will proceed as scheduled on July 11, 2012, 206 Ontario may have to consider withdrawing the Offer.

at the City of Toronto
in the Province of Ontario
this 24rd day of April 2012

**SWORN before me
at the City of Toronto
in the Province of Ontario
this 24rd day of April 2012**

A Commissioner, etc.

ALEX DOLGONOS