

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**AFFIDAVIT OF ROBERT ULICKI  
(sworn 5 November 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. ("**UBS Wireless**" and, together with UBS, the "**Applicants**"). 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/them to be true. I have also reviewed relevant records, press releases and public filings as necessary, and rely on the information contained in those records, press releases, etc. and believe that information to be true.
2. I am also the portfolio manager and owner of Clareste Wealth Management Inc. ("**CWM**"). CWM is registered as an Exempt Market Dealer, Portfolio Manager and Investment Fund Manager. CWM manages the Clareste LP. I, and others, are investors in Clareste LP.
3. This Affidavit is filed in support of a Motion brought by UBS seeking to approve a process to be undertaken by Duff & Phelps Canada Restructuring Inc. (the "**Montor**") in

its capacity as monitor of the Applicants to market shares of LOOK Communications Inc. (“**LOOK**”) owned by UBS Wireless (the “**Sales Process**”) and, in particular, to address a number of issues raised by Gerald McGoey and Jolian Investments Inc. (together “**McGoey**”) with respect to the Sales Process.

## **I. UBS and LOOK**

4. UBS’s shares were listed on the TSX Venture Exchange. Effective 7 July 2011, the TSX Venture Exchange issued a bulletin reclassifying UBS to Tier 2 status and subsequently placed UBS on notice to transfer to NEX on 7 June 2012. UBS has not, to date, been transferred to the NEX.
5. UBS is a holding company that owns all of the issued and outstanding shares of UBS Wireless. UBS Wireless owns shares of LOOK. The Applicants’ realizable assets consist of cash, the shares of LOOK and some accumulated tax losses. UBS has approximately \$40 million in accumulated tax losses.
6. The UBS board consists of Mr. Victor Wells, Ambassador Kenneth Taylor and me. I am the Chair of the UBS board. Mr. Wells and Mr. Taylor were appointed to the UBS board in July of 2012 as a result of a settlement reached with Mr. Alex Dolgonos and certain companies affiliated with or related to Mr. Dolgonos (together “**Dolgonos**”). The settlement with Dolgonos is described in the Monitor’s Ninth Report dated 5 July 2012 and was approved by the Court on 5 July 2012.
7. Effective 25 November 2011, LOOK’s listing was transferred from the TSX Venture Exchange to the NEX.
8. LOOK does not carry on active business. LOOK’s assets consist of cash and an action that has been commenced against, *inter alia*, McGoey to recover funds that LOOK asserts were improperly paid to, *inter alia*, McGoey (the “**LOOK Action**”). I understand based on LOOK’s Management Discussion and Analysis dated 20 July 2012 that LOOK has \$163 million in accumulated tax losses.

9. Clareste LP owns 1.2 million shares of UBS (approximately 1 per cent of the issued shares), but no shares of LOOK. My daughters' RESP owns approximately 39,000 of LOOK's 140 million issued shares. All of these shares were purchased prior to July of 2010 and I have filed all required SEDI reports. I have not, directly or indirectly whether through Clareste LP or my daughter's RESP, purchased or sold any UBS or LOOK shares since July of 2010.

## **II. Interest in Acquiring LOOK Shares**

10. I, or a company with which I am affiliated, may submit an offer to purchase some or all of the LOOK shares owned by UBS as part of the Sales Process. I have disclosed this to the UBS board and the Monitor. The Monitor has disclosed this to the Court in its Eleventh Report dated 15 October 2012 (the "**Eleventh Report**"). I will not be participating in any board meetings with respect to the Sales Process or the sale of the LOOK shares and will not vote on any resolutions with respect to the sale of the LOOK shares. As set forth in the Eleventh Report as part of the Sales Process I will only have access to the same information that is made available to any other person(s) who wish to submit an offer to purchase UBS' LOOK shares.
11. I have not determined whether I will make an offer to acquire LOOK shares from UBS as part of the Sales Process, whether any offer submitted will be for all or only a portion of UBS' shares of LOOK or what price will be offered for the UBS' LOOK shares.
12. I am registered with the Ontario Securities Commission (the "**OSC**") and am the Chief Compliance Officer of CWM. I am aware of my duties and responsibilities under applicable securities laws. I have, complied with and will continue to comply with all required securities laws. I have retained Borden Ladner Gervais LLP to act in connection with any offer that I, or any company related to me, may make to acquire LOOK shares.

acquiring the LOOK shares<sup>1</sup>. I understand that the Monitor was concerned, based on the expressions of interest being received, that there was a *de facto* sale process underway and that some formality was required. The UBS board also believed that a formal process was required to determine what interest may exist in UBS' LOOK shares.

23. In May of 2012, I, in my capacity as a director of UBS, attended meetings with GMP Securities LP ("**GMP**"), Cormark Securities Inc. ("**Cormark**") and the Monitor to discuss the marketing of UBS' LOOK shares for sale.
24. GMP provided UBS with a draft form of engagement letter and a draft timeline describing the process in which they would engage to market the LOOK shares for sale. Cormark did not provide any written proposals to UBS, but the marketing process and fee structure proposed by Cormark was not substantially different from that proposed by GMP.
25. The UBS board considered the proposals put forward by GMP and Cormark and discussed the proposals with the Monitor. The board was concerned with the expense associated with engaging GMP or Cormark. The Monitor indicated its willingness to conduct a process to market UBS' LOOK shares for sale. The UBS board considered the matter and ultimately agreed that the Monitor should conduct any process to market the LOOK shares for sale, subject to the board – not including me – deciding whether, based on the offers submitted, it would sell UBS' LOOK shares. It was understood that any transaction with respect to the LOOK shares would be subject to compliance with any applicable securities laws.
26. In light of the settlement that UBS had negotiated with Dolgonos, which settlement contemplated a change to the UBS board to appoint Mr. Wells and Mr. Taylor as directors, the UBS board deferred any decision to seek approval from the Court to undertake a process to sell the LOOK shares until the new UBS board had an opportunity to consider the matter. On 4 September 2012, Mr. Wells and Mr. Taylor passed a

<sup>1</sup> UBS was aware that any sale of the LOOK shares would require Court approval and that a formal process would have to be engaged in order to obtain that required Court approval.

### **III. Involvement with LOOK**

13. From July 2010 to October of 2010, I was a director of LOOK. I resigned as a director of LOOK on 29 October 2010. I am not, and have never been, an officer of LOOK.
14. Subsequent to resigning from the LOOK board, I was invited to attend LOOK board meetings as an observer in my capacity as the Chair of the UBS board and based on UBS' status as a major shareholder of LOOK. I have attended meetings in early 2011 where the LOOK board and me, as a representative of the UBS board, were provided with updates as to the progress being made with respect to the commencement of the LOOK Action. I have not attended any meetings with the LOOK board since April of 2011. Since the commencement of the LOOK Action, have had general discussions with various people, including members of the UBS and LOOK boards, relating to the LOOK Action.
15. To the best of my knowledge, I have not seen or been privy to any material non-public or confidential information with respect to LOOK or any of its assets.
16. From time to time, in my capacity as Chair of the UBS board, I have expressed the views of UBS on matters relating to the LOOK Action to the Chair of the LOOK board. In my capacity as Chair of the UBS board, I provided LOOK with information with respect to certain accruals in respect of amounts owing to directors and officers of, and consultants to, UBS. The LOOK board has never sought my personal input on any matters and I have not been consulted on or privy to any discussions among the LOOK directors with respect to LOOK's business.

### **IV. Contact with Persons Interested in UBS's LOOK Shares**

17. UBS has received a number of unsolicited expressions of interest and offers to acquire its LOOK shares. UBS has also been approached by people interested in undertaking transactions with LOOK.

18. The board of UBS has not engaged in negotiations with any person who has submitted an expression of interest in acquiring its shares of LOOK. Any expressions of interest received by UBS have been provided to the Monitor. The CFO of UBS was instructed to advise all persons who sent expressions of interest or made inquiries of UBS that UBS was not in a position to sell its LOOK shares outside of a formal process and without approval from the Court.
19. I recall seeing six letters from persons interested in acquiring LOOK shares. Two of these letters were from a person seeking support from UBS for a partial take-over bid at the LOOK level. The other four were from persons looking to acquire UBS' shares of LOOK from UBS. No negotiations took place with these persons because UBS was not in a position to sell its shares of LOOK and had not determined to engage in a process to determine what transactions may be possible.
20. In or about December of 2010 or January of 2011, in my capacity as Chair of the UBS board, I had one meeting with a company who I understood was interested in a business combination with LOOK and who was looking for UBS to support that transaction. No transaction materialized. Similar conversations took place with two other companies in the summer of 2011, but no transactions materialized.
21. In April of 2012, in my capacity as Chair of the UBS board, I attended a meeting with a person who we thought might be interested in a transaction with LOOK. The person never put in an offer and, through an acquaintance, I learned that there was no interest whatsoever from this party in a transaction with LOOK.

**V. Monitor Conducting Sales Process**

22. As a result of the fact that UBS was receiving unsolicited expressions of interest to acquire the LOOK shares, the Monitor requested that UBS consider engaging in a formal process to market the LOOK shares for sale to determine what interest there might be in

resolution approving the Sales Process as outlined in the Eleventh Report. I disclosed the fact that I, or a company related to me, might participate in the Sales Process and did not participate in the vote with respect to the Sales Process.

27. The resources available to the Monitor are summarized in the Supplement to the Monitor's Eleventh Report dated 5 November 2012.

## **VI. Special Committee of the UBS Board**

28. I understand that the issue has been raised as to whether a special committee of the UBS board should be created to consider matters relating to the sale of UBS's shares of LOOK.
29. I, as set forth above, will not be participating in any UBS board meetings relating to the Sales Process or the sale of UBS's LOOK shares. All matters relating to the sale of the LOOK shares will be considered by Mr. Wells and Mr. Taylor only. The Sales Process will be conducted by the Monitor. The role of UBS' board will be to review and consider the Monitor's recommendations with respect to the offers, if any, submitted under the Sales Process.
30. The creation of a special committee of the UBS board would be largely form over substance. Effectively, Mr. Wells and Mr. Taylor will constitute a "special committee" of the UBS board for the purposes of the Sales Process. There is, however, no opposition to formally constituting Mr. Wells and Mr. Taylor as a special committee of the UBS board for the purposes of the Sales Process.
31. I understand that Mr. McGoey has suggested that he or his representative should sit on any special committee of the UBS board created to deal with the sale of the UBS' LOOK shares and the Sales Process.
32. McGoey is the defendant in the LOOK Action. I am concerned that McGoey will not be able to properly separate his position as a (contingent) creditor of UBS with his position



as a defendant in the LOOK Action and that, in considering any offers received for the LOOK shares, Mr. McGoey may be influenced by his interests as a defendant in the LOOK Action and, in particular, his interest in having control of LOOK transfer to a person (or persons) who may be willing to enter into a settlement of the LOOK Action that is favourable to his interests as a defendant in the LOOK Action. At the very least, there is an appearance of conflict. McGoey is also engaged in adversarial litigation with UBS with respect to disputed claims against the company and his ability to work co-operatively with the UBS board is an issue.

33. Mr. Wells and Mr. Taylor are well-qualified and arms' length directors with no actual or apparent conflicts. They will, with the assistance of UBS' legal advisors and the Monitor, be able to properly and fairly consider any offers received as part of the Sales Process. In the event that Mr. Wells and Mr. Taylor determine that it is appropriate for UBS to accept an expression of interest or offer for the LOOK shares, that offer will be subject to approval by the Court, at which time McGoey will have the opportunity to raise any concerns that he might have with the transaction.

## **VII. No Exemption from Securities Laws Required or Requested**

34. UBS is, in seeking the approval of the Sales Process, not seeking any exemption from the application of any securities law at this time nor do I believe any exemption(s) from securities laws are required to implement the Sales Process. UBS has taken advice on the matter and does not believe that any securities laws would be triggered by the approval and implementation of the Sales Process as proposed. Any securities law issues involved with the sale of the LOOK shares would arise only should UBS determine that it was prepared to accept an offer submitted for the LOOK shares and would depend on, *inter alia*: (a) the identity of the purchaser; (b) what percentage of UBS' LOOK shares the purchaser was proposing to acquire; and (c) the price to be paid by the purchaser for the LOOK shares.
35. The Sales Process provides a timeline that goes through to the closing of a transaction for the LOOK shares. I believe that it is implicit in the Sales Process that if UBS



contemplates the acceptance of an offer that would require compliance with applicable securities laws, the timing for the closing of the transaction would have to be adjusted and an attendance before the Court would be required before UBS could proceed with any offer that would require compliance with securities laws or an exemption from the application of any applicable securities laws. I understand that UBS is not able to proceed with any transaction for the sale of the LOOK shares without Court approval.

36. I believe that the Monitor, Mr. Wells and Mr. Taylor are all aware of the potential for securities law issues to arise in connection with a transaction with respect to the LOOK shares. UBS has retained Gowling Lafleur Henderson LLP ("**Gowlings**") to provide insolvency, securities and other advice. I understand from the Supplement to the Monitor's Eleventh Report dated 5 November 2012 that the Monitor has retained Davies Ward Phillips Vineberg LLP to provide it with securities and other advice in connection with the Sales Process.

#### **VIII. Contact with OSC Initiated by Dolgonos' Counsel**

37. I am advised by Mr. Patrick Shea of Gowlings, and verily believe, that on or about 2 November 2012 he was contacted by the OSC and advised that Mr. Mark Wilson of Wildeboer Dellece LLP, counsel to Dolgonos, contacted the OSC with respect to UBS's Motion seeking approval for the Sales Process to raise issues with respect to the need for compliance with securities laws. A copy-typed version of the message left with Mr. Shea is attached as **Exhibit "A"**.
38. I am further advised by Mr. Shea, and verily believe, that he contacted Alex Gorka of the OSC to advise them verbally as to what was happening *vis-à-vis* the Sales Process and provided Mr. Gorka with a pdf copy of the Motion Record seeking, *inter alia*, approval for the Sales Process.

SWORN before me at the City of Toronto  
in the Province of Ontario, this 5<sup>th</sup> day of  
November 2012

\_\_\_\_\_  
Commissioner for Taking Affidavits or Notary

*P. SHER*  
TOR\_LAW\ 8030673\1

*Robert Ulicki*  
\_\_\_\_\_  
**ROBERT ULICKI**

## VOICE MAIL MESSAGE

TO: Patrick Shea

FROM: Shannon O'Hearn

DATE: November 2, 2011

RE: UBS

FILE NO.: T989146

This is Exhibit A referred to in the  
affidavit of R. Ulicki  
sworn before me, this 5<sup>th</sup>  
day of NOVEMBER 2012



[Signature]  
A COMMISSIONER FOR TAKING AFFIDAVITS

Good morning Patrick, it's Shannon O'Hearn and I'm here with my colleagues, Erin O'Donovan and Alex Gorka, it's been a long time Anyhow, we were chatting earlier with Mark Wilson, and we understand that there is a possibility that there might be some securities law issues raised in connection with the next part of the UBS CCAA proceedings. And I understand through Mark that this is again second hand or third hand, that there are to be some motion materials filed to address the particular issues raised by Justice Wilton- Siegel. So curious to know, as to, whether we can get a copy of those materials and what position you are taking in connection with the application of the Securities Act in connection with what I understand is going to be a potential sale of interest of UBS and Look.

So I'm in a conference this afternoon, both Erin and I are out of the office in a conference, but I am ask our colleague, Alex Gorka to send you an email so that you have his contact information and to the extent that you have any update for us. That would be great. And his phone number is 416-593-2188. And like I said I would ask him to send you and email. Thanks Patrick.