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.

Responding Factum of Alex Dolgonos and DOL Technologies Inc.
Re: Proposed Plan of Arrangement

January 30, 2013

ROY ELLIOTT O'CONNOR LLP
Barristers & Solicitors
200 Front Street West
Suite 2300
Toronto, Ontario
M5V 3K2

Peter L. Roy (LSUC No. 16132O)
Sean M. Grayson (LSUC No. 46887H)

Tel: (416) 362-1989
Fax: (416) 362-6204

Lawyers for Alex Dolgonos and DOL Technologies Inc.

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

E. Patrick Shea/ Clifford Cole

Tel: (416) 369-7399
Fax: (416) 862-7661

Lawyers for the Applicant, Unique Broadband Systems, Inc.

AND TO: **LAX O'SULLIVAN SCOTT LISUS LLP**
145 King Street West
Suite 1920
Toronto, ON Canada M5H 1J8

Matthew Gottlieb (LSUC No. 32668B)

Tel: (416) 644-5353
Fax: (416) 598-3730

Lawyers for the Monitor

AND TO: **GOODMANS LLP**
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

David Conklin/Brendan O'Neill

Tel: (416) 849-6017/(416) 597-5164
Fax: (416) 979-1234

Solicitors for LOOK Communications Inc.

AND TO: **SOLMON ROTHBART GOODMAN LLP**
375 University Ave, Suite 701
Toronto, Ontario M5G 2J5

Melvyn L. Solmon/ Raffaele Sparano

Tel: (416) 947-1093
Fax: (416 947-0079

Solicitors for NWT Uranium Corp., and its wholly owned Subsidiary, Niketo Co. Ltd.

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

Joseph Groia/Gavin Smyth

Tel: (416) 203-4472/ (416) 203-4475

Solicitors for Jolian Investments Limited and Gerald McGoey.

AND TO: **MCLEAN & KERR LLP**
130 Adelaide Street West, Suite 2800
Toronto, Ontario M5H 3P5

S. Michael Citak

Tel: (416) 369-6619
Fax: (416) 366-8571

Solicitor for Douglas Reason.

PART I – THE FACTS

1. DOL Technologies Inc. (“DOL”), 2064818 Ontario Inc., 6138241 Canada Inc. and Alex Dolgonos (the “Dolgonos Parties”) entered into a settlement agreement with Unique Broadband Systems Inc. (“UBS”) dated July 5, 2012 (the “Settlement Agreement”), which was approved by Order of this Court. It was never put forward for shareholder or creditor approval.

2. As part of the consideration for the Settlement Agreement UBS admitted the Dolgonos Parties claims in the amount of $500,000.00.

3. UBS is now taking the position that the plan of arrangement that is being proposed by Niketo Co. Ltd. (the “Proposed POA”) is doomed to failure because the Settlement Agreement requires the Dolgonos Parties to vote against the Proposed POA.

4. The Plan of Arrangement is the only plan that is being put forward for UBS that would result in payment being made in full to creditors with admitted claims, and the only mechanism through with the Dolgonos Parties will receive their monetary consideration for the Settlement Agreement.

5. If this Honourable court exercises its discretion to put the Proposed POA to a creditor vote, that would be a decision of this Honourable Court not a decision of the Board of Directors of UBS.

6. If this Honourable Court sanctions a meeting of creditors in respect of the Proposed POA, the Dolgonos Parties intend to vote for approval of the Proposed POA, unless prohibited by order of this Court from doing so.

PART II – LAW AND ARGUMENT

7. It is a matter within the discretionary powers of this Court to determine whether the Proposed POA is presented to the creditors and/or shareholders for approval.

> *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-44, as amended (the "*CCAA*"), s. 4.

8. In the exercise of that discretion this Court is guided by the public policy objectives of the *CCAA*.

> *Century Services Inc. v. Canada (Attorney General),* [2010] S.C.J. No. 60.

9. The Settlement Agreement should not be interpreted in such a way to preclude the largest admitted creditor from freely voting on the Proposed POA. Similarly the Monitor should not be encouraging this Court to adopt such a interpretation and application.

10. The policy of the CCAA is to see UBS emerge from CCAA protection and emerge as a viable company avoiding liquidation.

11. In *Bankruptcy and Insolvency Law of Canada,* the authors discuss *Multidev Immobilia Inc. v. S.A. Just Invest* [1988] R.J.Q. 1928 (Que. S.C.) stating,

> If, under the plan, a secured creditor is to be paid in full, that creditor will not be allowed to object to the approval of the plan. The court can sanction the arrangement for the classes of creditors who have accepted the plan.
>
> Houlden L.W., *et al*., *Bankruptcy and Insolvency Law of Canada*, 4th ed. Vol. 4, pg. 11-64.

12. In the same vein where admitted creditors are being paid in full, those creditors should not be allowed to vote against the plan.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of January, 2013.

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Peter L. Roy

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Sean M. Grayson

Schedule "A": Authorities

Century Services Inc. v. Canada (Attorney General), [2010] S.C.J. No. 60.

Multidev Immobilia Inc. v. S.A. Just Invest [1988] R.J.Q. 1928.

Houlden L.W., *et al*., *Bankruptcy and Insolvency Law of Canada*, 4th ed. Vol. 4.

Schedule "B": Statutes

Companies Creditors Arrangement Act, R.S.C. 1985, c. C-44, as amended (the "*CCAA*"), s. 4.

4. Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

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Peter L. Roy (LSUC No. 16132O)
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