
**Twenty-third Report to Court of
Duff & Phelps Canada
Restructuring Inc. as CCAA
Monitor of Unique Broadband
Systems, Inc. and UBS Wireless
Services Inc.**

December 10, 2014

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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.**

**TWENTY-THIRD REPORT OF DUFF & PHELPS CANADA RESTRUCTURING INC.
AS CCAA MONITOR OF
UNIQUE BROADBAND SYSTEMS, INC.
AND UBS WIRELESS SERVICES INC.**

December 10, 2014

1.0 Introduction

1. Pursuant to an order (“Initial Order”) of the Ontario Superior Court of Justice (Commercial List) (“Court”) made on July 5, 2011, Unique Broadband Systems, Inc. (“UBS”) and UBS Wireless Services Inc. (“Wireless”) (UBS and Wireless are jointly referred to as the “Company”) were granted protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) and RSM Richter Inc. (“Richter”) was appointed as the monitor (“Monitor”).
2. On December 9, 2011, the assets used by Richter in its Toronto restructuring practice were acquired by Duff & Phelps Canada Restructuring Inc. (“D&P”). Pursuant to a Court order made on December 12, 2011 (the “Substitution Order”), D&P was substituted in place of Richter as Monitor. The licensed trustees/restructuring professionals overseeing this mandate prior to December 9, 2011 remain unchanged.
3. Pursuant to an order of the Court made on September 8, 2014, the Company’s stay of proceedings was extended until December 12, 2014.

1.1 Purposes of this Report

1. The purposes of this report (“Report”) are to:
 - a) Provide background information about the Company and these CCAA proceedings;
 - b) Provide an update on the process to determine claims against the Company pursuant to the claims process order made August 4, 2011 (“Claims Order”);
 - c) Report on the Company’s weekly cash flow projection for the period ending February 27, 2015 (“Cash Flow”);
 - d) Summarize the options being considered by the Company and its Board of Directors to exit these proceedings; and
 - e) Recommend that this Honourable Court make an order:
 - granting the Company’s request for an extension of the stay of proceedings from December 12, 2014, the date the current stay expires, to February 27, 2015;
 - approving the Timeline (as defined in Section 5);
 - Sealing confidential Appendix “1” until further order of this Court; and
 - approving the Monitor’s conduct and activities as described in this Report.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Monitor has relied upon unaudited financial information prepared by the Company’s representatives, the Company’s books and records and discussions with its representatives. The Monitor has not performed an audit or other verification of such information. An examination of the Company’s financial forecasts as outlined in the *Canadian Institute of Chartered Accountants Handbook* has not been performed. Future oriented financial information relied upon in this Report is based on the Company’s representative’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be

material. The Monitor has reviewed the assumptions underlying the Cash Flow provided in Appendix “A” and believes them to be reasonable.

2.0 Background

1. Background information concerning the Company is detailed in the affidavit of Robert Ulicki (the “Ulicki Affidavit”), a director of the Company, sworn July 4, 2011 and filed with the Company’s CCAA application materials. The Ulicki Affidavit details, *inter alia*, the Company’s history, financial position, litigation and interest in LOOK Communications Inc., now known as ONEnergy Inc. (“ONEnergy”), as a result of a transaction completed on July 9, 2013.
2. Additional information concerning the Company and these proceedings is provided in the proposed monitor’s report and the Monitor’s reports filed in these proceedings. Copies of these reports can be found on the Monitor’s website at:
<http://www.duffandphelps.com/intl/en-ca/Pages/RestructuringCases.aspx>

3.0 Claims Process

1. Claims admitted by the Company pursuant to the Claims Order total approximately \$710,000.
2. Other claims filed but not admitted by the Company include claims from¹:
 - a. Douglas Reeson - \$585,000. This claim is being disputed pursuant to a Notice of Revision or Disallowance issued by the Monitor dated January 13, 2012 and a Notice of Dispute issued by Mr. Reeson dated February 9, 2012. In the Company’s view, the facts supporting this claim are substantially similar to certain of the claims filed by Jolian (as defined below). The Company has demanded that Reeson repay advances of \$120,000 that he received from the Company. The Company and counsel to Mr. Reeson have met with Mr. Justice Wilton-Siegel to set a schedule to address this claim. A further meeting with Mr. Justice Wilton-Siegel is scheduled on December 12, 2014;
 - b. Peter Minaki - \$92,861 plus post-filing legal fees and expenses. The Company has not taken a position on this claim; it has been neither admitted nor disallowed; and
 - c. Louis Mitrovich - \$63,348 plus post-filing legal fees and expenses. This claim was filed after the Bar Date, as defined in the Claims Order. A motion on March 11, 2013 seeking an order to allow the claim to be filed and dealt with in accordance with the procedures set out in the Claims Order was adjourned and has not been rescheduled.

¹ The particulars of the claims are set out in the respective proofs of claim.

3.1 Jolian Claims

1. As previously reported, pursuant to the Claims Order, Jolian Investments Limited and its principal, Gerald McGoey (together, “Jolian”), filed claims totaling over \$10 million against the Company. Jolian’s claims represent the largest claims filed against the Company and relate to litigation commenced prior to these CCAA proceedings.
2. A trial was held from February 19, 2013 to March 1, 2013 to determine Jolian’s claims (“Jolian Trial”). During the Jolian Trial, Jolian reduced the amount of its claims to \$5.8 million.
3. On May 21, 2013, Justice Mesbur released her decision on the Jolian claims (“Decision”), finding that “Mr. McGoey breached his fiduciary duties to UBS in relation to setting the enhanced benefits for himself” and concluding that “UBS has no obligation to indemnify [him]”. She also decided that “Jolian/Mr. McGoey is entitled to the enhanced severance under the Jolian Management Services Agreement”.
4. Pursuant to paragraph 188(d) of the Decision, on June 20, 2013, Jolian filed a revised proof of claim for approximately \$4 million plus interest, taxes and an amount to be determined for reimbursement of further legal expenses.
5. The Company sought and received leave to appeal certain aspects of the Decision. Jolian sought leave to cross-appeal certain aspects of the Decision.
6. On June 17, 2014, the Court of Appeal heard the Company’s appeal and Jolian’s motion for leave to appeal.
7. The Court of Appeal released its decision on July 10, 2014 (“Appeal Decision”); it granted the Company’s appeal, dismissed Jolian’s cross-appeal and awarded the Company \$60,000 for costs of the appeal payable jointly and severally by Jolian and Mr. McGoey.
8. Paragraph 110 of the Appeal Decision states that: “On the issue of costs of the trial, the trial judge’s decision that there be no order as to costs was premised on her finding that both parties had achieved some measure of success at trial. Given my findings, the costs order cannot stand. As the successful party, UBS is entitled to costs of the trial. If the parties cannot agree on the scale and/or quantum of the costs, they may attend before the trial judge to fix the costs.”
9. The Company and Jolian did not agree on the costs payable to the Company related to the trial before Madame Justice Mesbur. Accordingly, each filed written submissions with Justice Mesbur. On December 8, 2014, Justice Mesbur released her decision awarding the Company \$1.3 million for costs, payable jointly and severally by Jolian and Mr. McGoey (“Cost Decision”). A copy of the Cost Decision is provided as Appendix “B”.

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10. The Company made demand on Jolian on August 5, 2014 for repayment of \$200,000 that was advanced to Jolian before Mr. McGoey's resignation as CEO in 2011.
 11. On August 8, 2014, the Company filed an application for a bankruptcy order against Mr. McGoey. Jolian has not responded to the Company's demands for payment or to the bankruptcy application. The Company is proceeding with enforcement steps. A return date for the bankruptcy application is to be scheduled.

4.0 Cash Flow

4.1 Receipts and Disbursements for the Period August 30, 2014 to November 28, 2014

1. A comparison of the Company's budget-to-actual results for the above period is provided in Appendix "C".
2. As at November 28, 2014, the Company had cash on hand of \$1.9 million, a positive variance of approximately \$360,000 versus the projected cash balance. The variance is largely a timing difference with respect to the payment of professional fees to Gowling Lafleur Henderson LLP ("Gowlings"), the Company's counsel.

4.2 Cash Flow for the Period ending February 27, 2015

1. The Cash Flow, together with Management's and the Monitor's reports on the cash flow statement, are attached in Appendix "A". The Monitor has reviewed the Cash Flow and believes it to be reasonable.
2. The Cash Flow continues to reflect that the Company has limited receipts and disbursements, with the main disbursements relating to payroll, regulatory reporting, director fees and professional fees.
3. The Company is projecting that it will have cash on hand of \$1.4 million as at February 27, 2015, before payment of the following:
 - a. accrued expenses, including professional fees (\$295,000)²;
 - b. admitted claims (\$710,000 plus interest, if applicable);
 - c. a claim by Grant McCutcheon, the Company's chief executive officer, resulting from a deemed termination in his employment agreement with the Company³ (\$200,000);

² Includes projected fees to Gowlings (\$125,000), the Monitor (\$110,000) and the Monitor's counsel (\$60,000).

³ This claim was triggered in January, 2012 when 2064818 Ontario Inc., a corporation controlled by Alex Dolgonos, increased its interest in the Company (together with Mr. Dolgonos) to over 20%.

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- d. claims that have not been admitted, as reflected in Section 3 above;
 - e. the costs associated with a shareholder vote, if applicable (discussed further in Section 5).
4. The actual cash position may vary depending on, *inter alia*, recoveries associated with the cost awards against Jolian and costs associated with the Company's direction in these proceedings, as discussed below.

5.0 Next Steps in these Proceedings

1. The Company is seeking an extension of the stay of proceedings to February 27, 2015. The Company's motion materials include an affidavit from Victor Wells, a director of the Company. In his affidavit, Mr. Wells summarizes three options ("Options") being considered by the Company and its Board of Directors. These are summarized below:
 - a. A proposal by Mr. Ulicki pursuant to which he would: i) acquire from treasury shares sufficient to give him up to a 49% ownership interest in UBS; ii) repay creditors in full (including the claims detailed in Section 3 above, however determined), iii) distribute the ONEnergy shares to the Company's shareholders; and iv) continue to pursue the contingent assets of the Company, namely the claims against Jolian and Reeson.

The Monitor understands that it is Mr. Ulicki's intention to acquire a business to be placed in the Company in order to, *inter alia*, utilize the tax losses.
 - b. Niketo Co. Ltd. ("Niketo"), a shareholder of the Company, has written to the Company's Board of Directors advising that it is its view that the Company should retain its interest in ONEnergy and utilize its "balance sheet as leverage to seek out acquisitions that would provide a steady income flow".
 - c. Wind-up the Company pursuant to a liquidation under the *Business Corporations Act* (Ontario) ("OBCA").
2. Each of the three Options set out above provides for payment, in full, of creditor claims. As noted below, the Company has requested that both Mr. Ulicki and Niketo provide further details of their plans so it can assess them.
3. The Company appears capable at this time, absent a major dispute, to have sufficient assets to pay its creditors in full; however, it is largely contingent on the value of the Company's interest in ONEnergy, which is uncertain. A summary of the Company's projected financial position as at February 27, 2015 is provided in confidential Appendix "1".

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4. The Company has set the following timeline (“Timeline”) to consider its Options.
 - By January 9, 2015, Mr. Ulicki and Niketo are to submit their detailed proposals, if any;
 - By January 20, 2015, the Company and the Board of Directors, in consultation with the Monitor, will review the Options and decide on the Company’s direction;
 - By January 30, 2015, the Company will advise the Court of its decision as to the chosen Option; and
 - By February 27, 2015, the Company will file its materials with the Court, i.e. a plan of compromise or arrangement, a wind-up under the OBCA or a different course of action.
 5. The Monitor respectfully recommends that the Court approve the Timeline as it provides sufficient time for: i) Mr. Ulicki and Niketo to detail their proposals to the Company; ii) the Company to decide how it should exit these proceedings; and iii) the Company to formulate its exit plan, including a plan of arrangement, if necessary.

5.1 Confidentiality

1. The Monitor respectfully recommends that confidential Appendix “1” be sealed as it contains potentially sensitive information regarding asset recoveries and the treatment of certain claims filed against the Company. In the Monitor’s view, no party will be prejudiced if the information is sealed at this time.

5.2 Advice and Directions

1. Prior to February 27, 2015, the Company intends to seek directions from the Court on the following issues:
 - a. Is it appropriate that the Company file a plan under the CCAA, the OBCA or both?
 - b. Given the Company’s current financial position, what is the most economic way to exit the CCAA proceedings?
 - c. How should disclosure be made to the shareholders and by whom should the required disclosure be made?
2. The Court’s directions may depend on the Option chosen by the Company.

6.0 Company's Request for an Extension

1. As reflected above, the Monitor supports the Company's request for an extension of the stay of proceedings to February 27, 2015 for the following reasons:
 - The Company is acting in good faith and with due diligence;
 - The proposed stay extension will provide the Company and its Board of Directors an opportunity to consider the Options and seek directions from the Court on next steps; and
 - It should not prejudice any employee or creditor, as the Company is projected to have sufficient funds to pay post-filing services and supplies in the amounts contemplated by the Cash Flow.

7.0 Overview of the Monitor's Activities

1. Since October 24, 2013, the date of the Monitor's Seventeenth Report to Court, the Monitor's activities have included, *inter alia*, the following:
 - a. Monitoring the Company's receipts and disbursements pursuant to the terms of the Initial Order;
 - b. Corresponding with representatives of Gowlings and Lax O'Sullivan Scott Lisus LLP, the Monitor's legal counsel;
 - c. Reviewing the Company's monthly bank statements;
 - d. Reviewing on a near-monthly basis the Company's budget-to-actual cash flow reports;
 - e. Reviewing the reasons of the Court of Appeal released on November 1, 2013 granting leave to appeal the Decision;
 - f. Corresponding with representatives of Gowlings regarding the Company's motion to appeal the Decision;
 - g. Reviewing motion materials in relation to the appeal, including facta filed by the Company and Jolian;
 - h. Reviewing the Appeal Decision;
 - i. Reviewing cost submissions filed by the Company and Jolian in relation to the Decision and the Appeal Decision;
 - j. Corresponding with the Company regarding its stay extension motions;
 - k. Reviewing ONEnergy's press releases;

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- l. Corresponding with representatives of the Company regarding its ownership interest in ONEnergy and the special resolutions proposed by ONEnergy (the “Resolutions”);
 - m. Speaking on April 23, 2014 with Mr. Ulicki regarding the Resolutions and the views of the Company’s board of directors (the “Board”) related to the Resolutions;
 - n. Speaking on April 25, 2014 with Mr. Wells regarding ONEnergy and the Board’s diligence in respect of the Resolutions;
 - o. Corresponding and meeting with representatives of the Company, its Board of Directors and Gowling regarding the Company’s next steps in the CCAA proceedings;
 - p. Responding to creditor and shareholder inquiries; and
 - q. Preparing the Eighteenth Report to Court dated November 28, 2013, the Nineteenth Report to Court dated March 11, 2014, the Twentieth Report to Court dated May 5, 2014, the Twenty-first Report to Court dated August 1, 2014, the Twenty-second Report to Court dated September 4, 2014 and this Report.

8.0 Conclusion and Recommendation

- 1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1 (e) of this Report.

* * *

All of which is respectfully submitted,

Duff + Phelps Canada Restructuring Inc.

**DUFF & PHELPS CANADA RESTRUCTURING INC.
IN ITS CAPACITY AS COURT APPOINTED CCAA MONITOR OF
UNIQUE BROADBAND SYSTEMS, INC.
AND UBS WIRELESS SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

Unique Broadband Systems, Inc. and UBS Wireless Services Inc.

Projected Statement of Cash Flows⁽¹⁾

For the Period November 29, 2014 to February 27, 2015

(\$; Unaudited)



| | WEEK ENDING | | | | | | | | | | | | | TOTAL |
|---|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| | 5-Dec | 12-Dec | 19-Dec | 26-Dec | 2-Jan | 9-Jan | 16-Jan | 23-Jan | 30-Jan | 6-Feb | 13-Feb | 20-Feb | 27-Feb | |
| Receipts: | | | | | | | | | | | | | | |
| HST recovery ⁽²⁾ | - | - | - | 3,321 | - | - | - | 6,432 | - | - | - | 5,265 | - | 15,019 |
| Miscellaneous cash receipts ⁽³⁾ | 1,875 | - | - | - | 1,680 | - | - | - | - | 1,615 | - | - | 1,473 | 6,642 |
| Total Receipts | 1,875 | - | - | 3,321 | 1,680 | - | - | 6,432 | - | 1,615 | - | 5,265 | 1,473 | 21,661 |
| Disbursements: | | | | | | | | | | | | | | |
| Payroll expenses ⁽⁴⁾ | - | 2,366 | 1,421 | 2,366 | - | 2,155 | 1,421 | 2,155 | - | 2,155 | - | 4,453 | - | 18,492 |
| Consulting ⁽⁵⁾ | - | - | 2,825 | - | 2,825 | - | 2,825 | - | 2,825 | - | 2,825 | - | 2,825 | 16,950 |
| Automobile expenses | - | - | - | - | - | - | 100 | - | - | - | 100 | - | - | 200 |
| Group insurance | - | 1,407 | - | - | - | 1,407 | - | - | - | 1,407 | - | - | - | 4,221 |
| Rent (storage) | - | 648 | - | - | - | - | 648 | - | - | - | 648 | - | - | 1,944 |
| Office and general | 250 | 411 | 250 | 411 | 250 | 405 | 250 | 405 | 250 | 405 | 250 | 405 | 250 | 4,192 |
| Postage and delivery | - | - | - | - | - | - | 100 | - | - | - | 100 | - | - | 200 |
| Telephone | - | 75 | - | - | - | - | 75 | - | - | - | 75 | - | - | 225 |
| Cellular | - | 325 | - | - | - | - | 325 | - | - | - | 325 | - | - | 975 |
| Bank charges | 100 | - | - | - | 100 | - | - | - | - | - | 100 | - | - | 300 |
| Equity Transfer/TSX (shareholder administration) | - | 850 | - | - | - | 1,400 | 850 | - | - | - | 850 | - | - | 3,950 |
| Audit fees / quarterly reporting ⁽⁶⁾ | - | 18,137 | - | - | - | - | - | - | 18,137 | - | - | - | 1,187 | 37,461 |
| Corporate tax return preparation / tax advice | - | 7,119 | - | - | - | - | - | 15,187 | - | - | - | - | - | 22,306 |
| Director fees ⁽⁷⁾ | - | - | 12,207 | - | - | - | - | - | - | - | - | - | 14,433 | 26,640 |
| Professional fees re restructuring proceedings ⁽⁸⁾ | - | 299,831 | - | - | - | - | - | 11,917 | - | - | - | 120,000 | - | 431,748 |
| Miscellaneous expenses | 50 | 254 | 50 | 254 | 50 | 257 | 50 | 257 | 50 | 257 | 50 | 257 | 50 | 1,886 |
| Total Disbursements | 400 | 331,423 | 16,753 | 3,031 | 3,225 | 5,624 | 6,644 | 29,921 | 21,262 | 4,224 | 5,323 | 125,115 | 18,745 | 571,689 |
| Opening cash balance ⁽⁹⁾ | 1,911,752 | 1,913,227 | 1,581,804 | 1,565,051 | 1,565,341 | 1,563,796 | 1,558,172 | 1,551,528 | 1,528,039 | 1,506,777 | 1,504,168 | 1,498,845 | 1,378,995 | 1,911,752 |
| Net cash flows | 1,475 | (331,423) | (16,753) | 290 | (1,545) | (5,624) | (6,644) | (23,489) | (21,262) | (2,609) | (5,323) | (119,850) | (17,272) | (550,029) |
| Cash Available for Disbursement | 1,913,227 | 1,581,804 | 1,565,051 | 1,565,341 | 1,563,796 | 1,558,172 | 1,551,528 | 1,528,039 | 1,506,777 | 1,504,168 | 1,498,845 | 1,378,995 | 1,361,723 | 1,361,723 |

Please note that this cash flow statement has been prepared on a cash basis and therefore includes costs and expenses, including professional fees, incurred outside of the cash flow period.

*Professional fees regarding restructuring proceedings include the actual accounts payable for Gowling Lafleur Henderson LLP up to September 30, 2014, for Duff & Phelps Canada Restructuring Inc. up to November 30, 2014, Lax O'Sullivan Scott Lisus LLP up to October 31, 2014, and estimates for these firms thereafter.

Details of professional fees are summarized as follows:

| | Professional fees payable | | | | | | Monthly Professional Fee Payments | | | Balance as at 27-Feb-15 |
|---|---------------------------|---------------|---------------|---------------|----------------|----------------|-----------------------------------|---------------|----------------|-------------------------|
| | Sep-14 | Oct-14 | Nov-14 | Dec-14 | Jan-15 | Feb-15 | Dec-14 | Jan-15 | Feb-15 | |
| Duff & Phelps Canada Restructuring Inc. | - | 1,354 | 6,917 | 20,000 | 50,000 | 60,000 | 1,354 | 6,917 | 20,000 | 110,000 |
| Gowling Lafleur Henderson LLP | 298,278 | 25,000 | 25,000 | 35,000 | 60,000 | 65,000 | 298,278 | - | 85,000 | 125,000 |
| Lax O'Sullivan Scott Lisus LLP | - | 199 | 5,000 | 15,000 | 30,000 | 30,000 | 199 | 5,000 | 15,000 | 60,000 |
| | 298,278 | 26,553 | 36,917 | 70,000 | 140,000 | 155,000 | 299,831 | 11,917 | 120,000 | 295,000 |

Unique Broadband Systems, Inc. and UBS Wireless Services Inc.

Notes to Projected Statement of Cash Flows

For the Period November 29, 2014 to February 27, 2015

(Unaudited)



Purpose and General Assumptions

1. The purpose of the projection is to present the forecast of the cash flow of Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. ("UBS Wireless") (UBS and UBS Wireless are jointly referred to as the "Company") for the period November 29, 2014 to February 27, 2015 ("Period") in respect of its proceedings pursuant to the *Companies' Creditors Arrangement Act*.

The projected cash flow statement has been prepared based on hypothetical and most probable assumptions developed and prepared by the Company.

Specific Assumptions

2. Relates to Harmonized Sales Tax refunds that the Company anticipates receiving from Canada Revenue Agency during the Period.
3. Includes interest income and sundry refunds. For the purposes of this projection it is assumed that during the Period the Company does not receive payments from Jolian Investments Limited or its principal, Gerald McGoey, related to cost awards and judgements against them in the Company's favour.
4. Includes gross salaries, benefits and government remittances for one employee.
5. Includes payments for a contract employee.
6. Payment to the Company's auditors for public company purposes.
7. Fees are paid once per quarter to the Company's three directors.
8. Professional fees relate to the restructuring proceedings, including the fees of the Monitor and its legal counsel, Lax O'Sullivan Scott Lisus LLP, and for the Company's legal counsel, Gowling Lafleur Henderson LLP ("Gowling"). Certain professional fees projected to be paid in the Period relate to a prior period. For example, fees payable to Gowling (\$298,000) relate to the year-to-date period ending September 30, 2014. Certain professional fees, which are incurred during the Period, will be paid subsequent to the Period.
9. The opening cash balance includes cash-on-hand and cash equivalents, as at November 29, 2014, and excludes a \$50,000 cash deposit held as security in respect of the Company's corporate credit card.

**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. AND
UBS WIRELESS SERVICES INC.**

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)

The management of Unique Broadband Systems, Inc. and UBS Wireless Services Inc. (jointly the "Company") has developed the assumptions and prepared the attached statement of projected cash flow as of the 9th day of December, 2014 for the period November 29, 2014 to February 27, 2015 ("Cash Flow").

The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in Note 1 to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Company and provide a reasonable basis for the Cash Flow. All such assumptions are disclosed in Notes 2 to 9.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in Note 1, using a set of hypothetical and probable assumptions set out in Notes 2 to 9. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 10th day of December, 2014.



Grant McCutcheon, Chief Executive Officer
Unique Broadband Systems, Inc. and UBS Wireless Services Inc.

**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.
AND UBS WIRELESS SERVICES INC.**

MONITORS' REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash-flow of Unique Broadband Systems Inc. and UBS Wireless Services Inc. (jointly "Company"), as of the 9th day of December, 2014, consisting of a weekly projected cash flow statement for the period November 29, 2014 to February 27, 2015 ("Cash Flow") has been prepared by the management of the Company for the purpose described in Note 1, using the probable and hypothetical assumptions set out in Notes 2 to 9.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied by the management and employees of the Company. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow. We have also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Company or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in Note 1 and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto this 10th day of December, 2014.

Duff + Phelps Canada Restructuring Inc.

**DUFF & PHELPS CANADA RESTRUCTURING INC.
IN ITS CAPACITY AS COURT-APPOINTED CCAA MONITOR OF
UNIQUE BROADBAND SERVICES, INC. AND UBS WIRELESS SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “B”

CITATION: Re UBS, 2014 ONSC 7104
COURT FILE NO.: CV-11-9283-00CL
DATE: 20141208

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

**IN THE MATTER OF *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.**

BEFORE: MESBUR J.

COUNSEL: Gerald McGoey in person, and with leave of the court, on behalf of Jolian Investments Limited

Clifford Cole, Benjamin Na and Joe Thorne for Unique Broadband Systems, Inc.

HEARD: in writing

SECOND DECISION ON COSTS

[1] The trial decision in this case was appealed to the Court of Appeal. As a result of the appeal decision, the issue of costs of the trial has been referred back to me.

[2] At trial, I decided there should be no order as to costs since I determined success had been divided. The Court of Appeal's decision resulted in overall success for UBS. The Court of Appeal determined UBS is entitled to its costs of the trial and ordered "the parties may attend before the Trial Judge to fix the costs if the parties cannot agree on the scale and/or quantum of the costs."¹.

[3] The parties have been unable to agree. Accordingly, I must decide both the scale and amount of costs, and how those costs should be apportioned between Mr. McGoey and Jolian Investments Limited, who were the unsuccessful parties.

¹ Paragraph 6 of the order of the Court of Appeal dated July 10, 2014

[4] After the trial and the release of my judgment, the parties made costs submissions. Both sets of lawyers delivered costs outlines, setting out their actual fees, as well as what they claimed on both partial and substantial indemnity bases. In my costs decision following the trial, I found:

Both sets of fees are extremely high. Given the range of fees each side submits, it seems to me neither can be particularly surprised by the magnitude of the other's. Thus, if either is deemed to be "unsuccessful", each could reasonably expect to pay costs in this range...²

[5] Notwithstanding Mr. McGoey's new lengthy submissions on the quantum of costs and his review and comments on UBS' counsel's dockets I am not prepared to revisit my earlier finding of reasonableness regarding the costs claimed. I recognize Mr. McGoey now represents himself. That does not entitle him, however, to attack my earlier findings.

[6] I therefore conclude that UBS is entitled to either partial indemnity costs or substantial indemnity costs in the ranges submitted in its original costs outline. I reject Mr. McGoey's suggestion that UBS' costs should be assessed. The Court of Appeal expressly directed me to fix the trial costs. I do not see that direction permitting me to refer the issue to assessment.

[7] I must now determine whether UBS is entitled to substantial indemnity costs, as it requests, or simply to partial indemnity costs.

[8] UBS suggests that given the findings of the Court of Appeal confirming Mr. McGoey had breached his fiduciary duty to UBS, and its further finding that this breach constituted "cause" under the Jolian Management Services Agreement, the scale of costs should be substantial indemnity.

[9] I agree. The Court of Appeal held this serious breach of Mr. McGoey's fiduciary duty would logically meet the definition of serious misconduct that was materially injurious to UBS. The Court of Appeal effectively determined Mr. McGoey's conduct was analogous to the enumerated grounds of fraud, theft and misappropriation set out as "cause" in the Jolian Management Services Agreement.

[10] There is ample case law to support the proposition that costs should be awarded on a substantial indemnity basis in cases involving a breach of fiduciary duty, breach of trust, conspiracy, misrepresentation and other forms of similar reprehensible conduct. ³ The Court of Appeal determined that kind of conduct was present in Mr. McGoey's behavior, and was sufficient to deprive him of his contractual right to a "golden parachute".

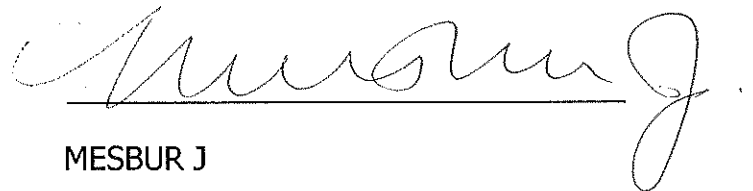
² Paragraph 9 of costs decision *Unique Broadband Systems, Inc. (Re)*, 2013 ONSC 5121

³ See, for example, *Beaver Lumber Co. v. 222044 Ontario Ltd.*, [1996] O.J. No.3294 (Gen Div).

[11] Since I have already decided UBS's bill of costs is reasonable, I find Mr. McGoey and Jolian Investments Limited are liable to pay UBS's bill of costs on a substantial indemnity basis. UBS' costs outline shows actual fees incurred of \$1,170,894.25. In my view, 85% of that amount would represent a fair substantial indemnity award of costs. Accordingly, I fix UBS' substantial indemnity costs at \$995,000 (rounded) for fees, plus HST on that amount of \$129,350, and disbursements inclusive of HST of \$199,667 (rounded) all for a total of \$1,324,017 inclusive of fees, taxes and disbursements.

[12] The Court of Appeal apportioned costs of the appeal on a joint and several basis between Mr. McGoey and Jolian. If that was the appropriate apportionment on the appeal, which dealt with all aspects of the trial, I assume it must also be appropriate for the trial itself.

[13] Accordingly, Mr. McGoey and Jolian Investments Limited are jointly and severally liable for these costs, on a substantial indemnity basis, fixed at \$1,324,017 all inclusive.


MESBUR J

Released: 20141208

Appendix “C”

Unique Broadband Systems, Inc. and UBS Wireless Services Inc.

Variance Analysis⁽¹⁾

August 30, 2014 - November 28, 2014

(\$; Unaudited)



| | CUMULATIVE | | | |
|---|------------------|------------------|----------------|--------------|
| | BUDGET | ACTUAL | VARIANCE (\$) | VARIANCE (%) |
| Receipts: | | | | |
| HST recovery ⁽²⁾ | 8,603 | 45,392 | 36,789 | 100% |
| Cash receipts ⁽³⁾ | 5,387 | 7,488 | 2,101 | 39% |
| Total Receipts | 13,990 | 52,880 | 38,890 | 278% |
| Disbursements: | | | | |
| Payroll expenses | 22,038 | 22,038 | - | 0% |
| Consulting | 16,950 | 16,950 | - | 0% |
| Group insurance | 4,461 | 4,461 | - | 0% |
| Rent (document storage costs) | 1,944 | 1,250 | 694 | 36% |
| Office and general | 4,377 | 5,182 | (805) | -18% |
| Telephone | 225 | 238 | (13) | -6% |
| Cellular | 975 | 908 | 67 | 7% |
| Bank charges | 300 | 367 | (67) | -22% |
| Equity Transfer/TSX (shareholder administration) | 2,550 | 1,627 | 923 | 36% |
| Audit / Quarterly fees | 13,052 | 7,255 | 5,797 | 44% |
| Corporate tax return preparation / tax advice ⁽⁴⁾ | 16,950 | - | 16,950 | 100% |
| Director fees | 26,640 | 26,640 | - | 0% |
| D&O Insurance | 77,810 | 77,598 | 212 | 0% |
| Professional fees re restructuring proceedings ⁽⁵⁾ | 312,500 | 14,808 | 297,692 | 95% |
| Miscellaneous expenses | 2,078 | 1,849 | 229 | 11% |
| Total Disbursements | 502,850 | 181,171 | 321,679 | 64% |
| Opening cash balance ⁽⁶⁾ | 2,040,043 | 2,040,043 | - | 0% |
| Net cash flows | (488,859) | (128,291) | 360,568 | -74% |
| Cash Available for Disbursement | 1,551,184 | 1,911,752 | 360,568 | 23% |

Notes to Cash Flow Variance

August 30, 2014 - November 28, 2014

(Unaudited)



Purpose and General Assumptions

1. The purpose of the report is to present a variance of the forecast of the cash flow of Unique Broadband Systems, Inc. ("UBS") and UBS Wireless Services Inc. ("UBS Wireless") (UBS and UBS Wireless are jointly referred to as the "Company") for the period August 30, 2014 to November 28, 2014 ("Period") in respect of its proceedings pursuant to the *Companies' Creditors Arrangement Act*.

The cash flow variance has been prepared by the Company.

Specific Assumptions

2. Relates to Harmonized Sales Tax refunds that the Company anticipated receiving from Canada Revenue Agency during the Period. The difference is due to timing.
3. Relates to interest and sundry payments.
4. Relates to the preparation of the Company's tax filings. The difference is due to timing.
5. Professional fees related to the restructuring proceedings, including the fees of the Monitor and its legal counsel, Lax O'Sullivan Scott Lisus LLP and the Company's legal counsel, Gowling Lafleur Henderson LLP. The variances are mainly due to timing differences.
6. The opening cash balance includes cash-on-hand and cash equivalents as at August 30, 2014, and excludes a \$50,000 cash deposit held as security in respect of the Company's corporate credit card.