

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DOL TECHNOLOGIES INC.

Plaintiff

- and -

UNIQUE BROADBAND SYSTEMS, INC.

Defendant

AND BETWEEN:

UNIQUE BROADBAND SYSTEMS, INC.

Plaintiff by Counterclaim

- and -

**DOL TECHNOLOGIES INC., ALEX DOLGONOS,
GERALD MCGOEY, LOUIS MITROVICH
AND DOUGLAS REESON**

Defendants By Counterclaim

STATEMENT OF DEFENCE AND COUNTERCLAIM

TO THE DEFENDANTS TO THE COUNTERCLAIM:

A LEGAL PROCEEDING has been commenced against you by way of a counterclaim in an action in this court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service in this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

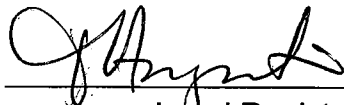
If you are not already a party to the main action, instead of serving and filing a defence to counterclaim, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE AMOUNT OF THE COUNTERCLAIM AGAINST YOU, and \$2,500 for costs, within the time for serving and filing your defence to counterclaim, you may move to have the counterclaim against you dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the counterclaim and \$400.00 for costs and have the costs assessed by the court.

Date: August 18, 2010

Issued by:



Local Registrar

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STATEMENT OF DEFENCE

1. The defendant, Unique Broadband Systems, Inc. ("**UBS**"), admits the allegations contained in paragraphs 2, 3, 4, 7 to 15, 19 and 25 to 27 of the Statement of Claim of DOL Technologies Inc. ("**DOL**").

2. UBS denies the allegations contained in paragraphs 1, 5, 6, 16 to 18, 20 to 24 and 28 to 30 of the Statement of Claim. As to paragraphs 5 to 14 which deal with the Technology Development and Strategic Marketing Agreement ("**DOL Agreement**"), UBS states that there is no legal entitlement to the money claimed by DOL under the DOL Agreement or otherwise.

A. THE PARTIES AND OTHER RELEVANT ENTITIES

(i) *Unique Broadband Systems, Inc.*

3. UBS is governed by the *Business Corporations Act (Ontario)* (the "**OBCA**"). UBS was once a designer, developer and manufacturer of high-speed mobile and fixed wireless solutions.

4. When Gerald McGoey ("**McGoey**"), Louis Mitrovich ("**Mitrovich**"), Douglas Reeson ("**Reeson**") and others took control of the UBS board of directors on March 18, 2002, UBS had over \$25 million in revenue, specialized technology and engineering. As McGoey put it at the time, UBS was "a company with a very strong platform... a very strong engineering capability, boasts an attractive balance sheet and is active in one of the most explosive industries in the world – wireless communications".

5. However, in October 2003, UBS sold all of its engineering and manufacturing business for \$2.0 million in promissory notes to a new company owned by a group of former UBS engineers. The accounting impact was a one-time loss to UBS of approximately \$4.0 million.

6. Since the sale in October 2003, UBS has not carried on an active business. UBS has incurred losses in each of the past five years. As detailed below, UBS is essentially a holding company that holds, through its wholly-owned subsidiary UBS Wireless Services Inc., an equity interest in Look Communications Inc. ("**LOOK**").

(ii) DOL Technologies Inc.

7. DOL is a private company controlled by Alex Dolgonos ("**Dolgonos**"). Through DOL, Dolgonos received from UBS compensation of \$475,000, discretionary payments to "recognize the performance" of DOL, expenses and other payments granted by the Board of Directors of UBS under a Technology Development and Strategic Marketing Agreement dated July 12, 2008 between DOL and UBS (the "**DOL Agreement**").

(iii) Alex Dolgonos

8. Dolgonos is the principal shareholder of UBS holding 19.9% of the issued and outstanding common shares.

9. Dolgonos was also the "Chief Technology Officer" of UBS from 2002 to July 5, 2010, at which time he terminated the DOL Agreement following the removal of the UBS Board by the shareholders at a special shareholders meeting. Until then, Dolgonos was an officer of UBS within the meaning of the OBCA.

10. Dolgonos was delegated the role of “Chief Technology Officer” of UBS after a shareholders’ meeting on March 18, 2002, when he and Gerald McGoey (“**McGoey**”) formed a dissident group of shareholders to replace the existing board of directors of UBS with his slate of directors consisting of McGoey, Mitrovich, Reeson, Peter Minaki and John MacDonald.

11. A key tenet of their platform to replace the existing Board in 2002 was that the Board’s interest was not aligned with shareholders’ interest as UBS’s share price had declined while fees paid to the UBS directors were excessive.

12. Once elected, however, the new Board made various decisions awarding excessive compensation. In particular, they approved a consulting agreement with Dolgonos to serve as “Chief Technology Officer” that, *inter alia*, paid him an annual fee of US\$300,000, bonuses, options and expenses. It also provided for a “Golden Parachute” provision (three times (3x) a prescribed annual payout) that could be triggered in the event there was an alteration in his business relationship with the UBS Board following a “change-in-control” of UBS as defined in the agreement.

13. UBS also entered into an employment agreement with McGoey to serve as Chairman and CEO of UBS that, *inter alia*, paid him an annual salary of US\$360,000, bonuses, options and expenses. McGoey’s employment agreement also had a “Golden Parachute” provision that could be triggered should McGoey’s position as Chair or CEO of UBS be altered following a “change-in-control” of UBS as defined in the agreement.

14. The Dolgonos and McGoey agreements were later replaced with the DOL Agreement (Dolgonos) on July 12, 2008 and a Management Services Agreement with

Jolian Investments Limited (McGoey) on May 3, 2006 (the "**Jolian MSA**"). These agreements provided even more generous compensation, bonuses and Golden Parachutes to Dolgonos and McGoey, notwithstanding all of UBS's business and engineering assets had been sold long before this time and there had been no expansion of business at UBS or LOOK.

15. In this period, Dolgonos was also a technology consultant to LOOK. Dolgonos's services were provided to LOOK by UBS under a Management Services Agreement dated May 18, 2004 (the "**UBS – LOOK Agreement**").

16. The total compensation, including "Restructuring Awards" paid to or claimed by Dolgonos are \$8,165,291 from UBS and \$3,950,737 from LOOK for a total proposed payment of \$12,116,028 to Dolgonos as described below.

(iv) Gerald McGoey

17. McGoey was the Chairman of the Board of Directors and Chief Executive Officer of UBS from 2002 to July 5, 2010, at which time the shareholders voted to remove him from the UBS Board of Directors. On July 5, 2010, Jolian terminated the Jolian MSA thereby also terminating McGoey's role as CEO.

18. McGoey was also a member of the UBS Nomination, Human Resources and Compensation Committee (the "**UBS Compensation Committee**"), which made recommendations to the Board regarding the setting of compensation.

19. In this period, McGoey was also the Vice-Chairman of the Board of Directors, President and Chief Executive Officer and a member of LOOK's Compensation and

Human Resources Committee until he resigned on July 21, 2010. McGoey's services were provided to LOOK by UBS under a Management Services Agreement dated May 18, 2004 (the "**UBS – LOOK Agreement**").

(v) Louis Mitrovich

20. Mitrovich was a director of UBS from March 18, 2002 to July 5, 2010, when he was removed by UBS shareholders. As noted above, he was part of the slate of directors proposed in 2002 by Dolgonos and supported by McGoey. He was also a director of LOOK until his resignation on July 21, 2010. Mitrovich was the Chair of the UBS Compensation Committee and a member of the LOOK Compensation Committee. He was paid, collectively by UBS and LOOK, \$753,000 in 2009, of which \$85,000 was director fees and \$668,000 was "Restructuring Awards" as described below.

(vi) Douglas Reeson

21. Reeson was a director of UBS from March 18, 2002 to July 5, 2010 when he was removed by UBS shareholders. He was a member of the UBS Compensation Committee and was paid \$533,000 in 2009, of which \$68,000 was director fees and \$465,000 was for "Restructuring Awards" as described below.

(vii) Other Former Directors

22. Peter Minaki was a director of UBS and a member of the UBS Compensation Committee. He resigned as a director of UBS on September 2, 2009 and has publicly stated that he does not seek to receive \$465,000 in "Restructuring Awards" that were

granted to him. The position on the Board vacated upon Minaki's resignation was left unfilled.

23. John MacDonald was a director of UBS for only a year following his election in March 2002, when he was asked by McGoey to resign from the UBS Board due to a conflict of interest. The position on the Board vacated by MacDonald's resignation was left unfilled.

(viii) LOOK / LOOK's Relationship With UBS

24. Under the UBS-LOOK Agreement dated May 18, 2004, LOOK paid UBS a base fee of \$2.4 million per year and UBS provided McGoey as CEO, Director and Vice-Chair of LOOK and Dolgonos as a technology consultant to LOOK. The UBS-LOOK Agreement also provides that LOOK has discretion to recognize the performance of UBS through such performance incentives as it deems appropriate, paid directly to UBS.

25. Up to 2009, LOOK was a provider of information, communications and entertainment services, including high-speed and dial-up internet access, digital television distribution and customer services through its wireless spectrum with 142,900 customers at the end of 2002. LOOK had revenues of \$47.8 million at December 31, 2003 and was marginally profitable. By fiscal year-end August 31, 2008, LOOK's reported revenues had fallen to \$20.3 million and its customer base to 40,471. Efforts by McGoey and Dolgonos to build out LOOK's network and create a viable business failed.

26. At a Special Meeting of LOOK shareholders on January 14, 2009, McGoey and his fellow LOOK directors urged shareholders to approve a court-authorized Plan of Arrangement to sell all of LOOK's assets and operations as the best means to maximize shareholder value (the "2009 POA"). No executive or director of LOOK disclosed any personal material interest or expected future benefit relating to the proposed asset sales under the 2009 POA.

27. On May 5, 2009, LOOK announced the sale, pursuant to the 2009 POA, of its key wireless spectrum asset for \$80 million to Inukshuk, a partnership of Bell and Rogers. In explaining the sale price of the wireless spectrum to shareholders at the ensuing Annual General Meeting in February 2010, McGoey stated "my point is not to celebrate the \$80 million we received..." He went on to say, "the price is not what we had expected" and "there was a very good chance that if we did not conclude a transaction, we may have needed to obtain CCAA protection".

28. As a condition of the sale transaction, LOOK paid Bell \$16 million of the \$80 million to settle outstanding litigation. LOOK also incurred professional fees of approximately \$8 million. Accordingly, the net proceeds to LOOK from the sale of its key asset were \$56 million.

29. Of the net proceeds of \$56 million, the extraordinary amount of \$22.7 million was granted to senior management and directors as "Restructuring Awards". These "Restructuring Awards" represented 40% of the net proceeds and were not disclosed at that time. The distribution of the Restructuring Awards to Dolgonos and others is set out below.

B. CONDUCT IN BREACH OF DUTY / CONFLICT OF INTEREST

30. McGoey, Mitrovich and Reeson have used their respective positions, authority and influence to unjustly enrich each other and others, including Dolgonos, to the detriment of UBS through awards of contracts, "Restructuring Awards" and other payments that were not lawful, nor supported by fact, nor were they in the best interests of UBS. They did so in breach of their statutory duties of loyalty and to act in good faith in the best interests of UBS. Their conduct also served to improperly entrench their respective positions and that of Dolgonos at UBS contrary to regulatory requirements and good governance and the interests of UBS. To the detriment of UBS, they made decisions in their own self-interest and for the interests of Dolgonos in disregard of their legal and fiduciary duties to UBS.

31. Under the tenure of McGoey, Mitrovich and Reeson from 2002 to 2010, the compensation they and others received, including Dolgonos, sky-rocketed from LOOK and UBS, while the share price of UBS plummeted:

UBS's	2001/2	2009/10	Value +/-
Closing share price	\$0.47 March 18, 2002	\$0.06 June 30, 2010	Minus 87%
Market Cap	\$48.8 million March 18, 2002	\$6.2 million June 30, 2010	Minus 87%
Cash compensation from LOOK and UBS to UBS Directors and Officers	\$1,512,931 2001 fiscal year	\$17,243,713 2009 fiscal year	Plus 1040%

32. In total disregard of UBS's performance and financial circumstances, the amount of compensation and awards granted by the UBS Board in 2009 was as follows:

Director/ Officer	Salary	Director Fees	Other Fees	Options	Restructuring Awards	TOTAL
McGoey	\$570,000	\$63,500	\$51,622	\$249,118	\$1,800,000	\$2,734,240
Dolgonos	\$475,000		\$26,761	\$118,530	\$1,530,000	\$2,150,291
Mitrovich		\$63,500		\$12,058	\$450,000	\$525,558
Reeson		\$68,500		\$12,058	\$465,000	\$545,558
Minaki		\$63,500		\$12,058	\$450,000	\$525,558
Other Senior Management	\$175,000		\$24,000	\$59,777	\$1,000,000	\$1,258,777

33. These UBS payments were made even though Dolgonos and McGoey were also paid \$3,950,737 and \$5,565,695, respectively, from LOOK as "Restructuring Awards" as detailed below.

34. In 2009, Dolgonos's total compensation collectively from UBS and LOOK was \$5,480,737 more than 1,200% of his \$475,000 base fee under the DOL Agreement. Dolgonos's 2009 compensation alone was equal to the market capitalization of UBS.

35. Dolgonos was also granted options to acquire 1,000,000 shares of UBS at an exercise price of \$0.15 over the next 5 years (the "Options") to replace unvested options that were previously granted.

36. Dolgonos now claims further payments against UBS for a further "Restructuring Award" from UBS, "Golden Parachute" (defined below), and Options. He claims such

payments were validly awarded notwithstanding his conflict of interest, the undue influence he exerted on the Board, the unconscionability of the Golden Parachute, the lack of justification for the Restructuring Award, and the fact that these decisions were not in the best interest of UBS.

(i) The Dolgonos Golden Parachute

37. The Dolgonos Golden Parachute executed in July 2008 substantially enhanced the economic terms in favour of Dolgonos and contrary to the interests of UBS despite the persistent decrease in UBS revenues and despite the lack of substantive business to be done.

38. The DOL Agreement also purported to grant a more generous "Golden Parachute" that could be triggered by DOL in the event that the business relationship between DOL and UBS is substantially altered by the Board following a "Change-in-Control". The DOL Agreement purports to permit DOL to claim a lump sum payment equal to 300% of the aggregate of a fee of \$470,000, "performance incentives" and expenses (the "**Dolgonos Golden Parachute**").

39. A similar Golden Parachute had been granted to McGoey in the Jolian MSA that could be triggered by Jolian in the event that McGoey is not elected to the UBS Board; or the Board does not appoint McGoey as the CEO; or the Board does not nominate McGoey as Executive Chairman of UBS, and claim a lump sum payment equal to 300% of the aggregate of a base fee of \$570,000 and various bonuses, benefits and expenses (the "**McGoey Golden Parachute**").

40. The agreements respecting Dolgonos and McGoey contain one-sided, unprecedented, unreasonable economic terms that are unconscionable and ought not to be enforced in the circumstances.

41. Dolgonos exerted undue influence on the Board in the formation of the Dolgonos Golden Parachute. McGoey, Mitrovich and Reeson breached their duties to UBS in entering into the agreement with such one-sided, unjustified terms for which UBS did not receive adequate consideration, nor did they obtain adequate independent advice.

42. Dolgonos, as an officer of UBS, acted in a gross conflict of interest and contrary to his duty of loyalty to UBS at all times, and all of his conduct must be scrutinized on that basis. The Directors carried out Dolgonos's self-enriching goals contrary to their statutory and fiduciary obligations. McGoey, Mitrovich and Reeson placed themselves in a material conflict of interest to the detriment of UBS to enrich Dolgonos and themselves for their own material financial benefit without any justification or adequate consideration.

(ii) The "Restructuring Awards" Arising from the Sale of LOOK Assets

43. The sale authorized by McGoey and the LOOK directors under the 2009 POA for a disappointing net \$56 million is outlined at paras. 28 to 29 above. In summary, from the disappointing net proceeds of the LOOK sale of \$56 million, McGoey and the LOOK directors awarded themselves and Dolgonos "Restructuring Awards" of \$17,223,683 and McGoey and the UBS directors also somehow purport to justify awarding themselves and Dolgonos an additional \$4,710,000 (relating to the sale by LOOK of LOOK assets – not UBS assets) without any additional consideration from them.

44. At the LOOK special shareholders meeting in January 2009, McGoey had represented that the sale of LOOK's wireless spectrum under a Plan of Arrangement was the best way to maximize share value for shareholders. To encourage approval of the shareholders, McGoey had presented the prices paid for wireless spectrum by Rogers, Bell and Telus, ranging from \$741 million to \$999 million for less total spectrum than LOOK had.

45. The net proceeds of \$56 million from the sale of LOOK's wireless spectrum was far less than the expected return McGoey had represented to shareholders. According to press coverage at the time, it was the lowest price ever paid for the type of wireless spectrum sold by LOOK on a Megahertz per Population basis since wireless spectrum was first auctioned by Industry Canada.

46. On July 21, 2009, LOOK announced generally "restructuring charges" of \$20.4 million in conjunction with the sale. The restructuring charges were described to include, *inter alia*, human resources restructuring and a \$9 million transaction relating to the cancellation of all outstanding options and share appreciation rights as of May 31, 2009. The particulars of the restructuring charges were not disclosed. It was also not disclosed that the decisions to set aside such monies had been made on June 17 and July 8, 2009.

47. LOOK disclosed for the first time in its annual audited financial statements for the fiscal year ended August 31, 2009 filed on December 4, 2009 that Restructuring Awards of \$17,223,683 were paid to LOOK's directors and officers. This included \$9,516,433 paid directly to Dolgonos and McGoey (as particularized below).

48. At the time of LOOK's July announcement, there was no disclosure that UBS Directors had also set aside (on the same dates: June 17 and July 8, 2009) "Restructuring Awards" identified as a "SAR Cancellation Payout Pool" of \$2.31 million and an "Interim Bonus Pool" of \$3.4 million to be paid to UBS directors and officers. The amount set aside to be paid to UBS directors and officers represented approximately 30% of UBS's market capitalization. This transaction was not approved by shareholders, contrary to statutory requirements, in that all directors had a conflict and benefited from this decision.

49. On December 4, 2009, UBS filed its annual audited financial statements for the fiscal year ended August 31, 2009 (the same day LOOK filed its audited statements). This was the first disclosure that Restructuring Awards of \$5.71 million were granted to Dolgonos, McGoey and the other Directors and management of UBS effective May 31, 2009. These awards to UBS officers and directors purportedly related somehow to the sale of the LOOK assets though UBS pleads that no justification for such UBS payments exists.

50. The UBS "Restructuring Awards" granted by McGoey, Mitrovich and Reeson to themselves and to Dolgonos were (the "**UBS Restructuring Awards**"):

McGoey	\$1,800,000
Dolgonos	\$1,530,000
Mitrovich	\$450,000
Reeson	\$465,000
Minaki	\$450,000

51. The purported basis for the Restructuring Awards was disclosed on January 19, 2010 in the management information circular issued by the Directors for the UBS Annual General Meeting held in February 2010. According to the management information circular, the "Restructuring Awards" were awarded because:

- (a) UBS may have needed to retain executive officers and senior management until May 2012 in order to maintain the LOOK spectrum in good standing pursuant to the conditional sale of these assets;
- (b) UBS does not have a pension plan nor any other deferred compensation plan in effect;
- (c) the executives and senior management did not receive any base salary increases in fiscal 2009;
- (d) the executives and senior management were required to wind-down and restructure LOOK;
- (e) the executives, directors and senior management were required to provide full and final releases for the relinquishment of all SAR units and stock options; and
- (f) the restructuring awards were contingent on LOOK receiving the full consideration of \$80 million due from the sale of its spectrum and UBS receiving adequate cash resources.

52. UBS pleads that the UBS Restructuring Awards as described in the management information circular were not “performance incentives” as contemplated in the DOL Agreement and that DOL cannot validly claim payment of these amounts as part of the formula for the Dolgonos Golden Parachute. Further, UBS pleads that there can be no justification to pay such awards to Dolgonos, McGoey, Mitrovich and Reeson.

(iii) The Breakdown of the UBS Restructuring Award

53. The Restructuring Award granted by UBS that Dolgonos claims as part of his Golden Parachute formula purports to have two major parts, neither of which is justified, discussed below:

- (a) a “Share Appreciation Rights Cancellation Payout” of \$330,000; and
- (b) a “Deferred Bonus Award” of \$1,200,000.

(a) The UBS SAR Cancellation Payout to Dolgonos and Others

54. The UBS Share Appreciation Rights (“SAR”) Plan was adopted by the UBS Board in October 2006 to promote a greater alignment of interests between directors, officers, employees, consultants and the shareholders of UBS by permitting them to benefit from increases in UBS share price. Payment under the SAR Plan was a function of the actual share price above fixed strike prices.

55. The material terms of the SAR Plan are as follows:

...

2. Definitions. In this Plan:

..

“Value of a Unit” shall mean, at any time, the average closing board lot sale price of a Share on the TSX Venture Exchange ...

...

4. Payment. – **Effective on the date the conditions attaching to an award of Units are met, the Company or the relevant Affiliate, or the case may be, shall become obligated to pay to each Participant holding such Units, an amount equal to the Value at that date, plus the Value at the date of award of such Units held by such Participant, plus all required deductions.**

...

15. Amendment and Termination. This Plan may be amended or terminated at discretion of the Company. Should this Plan be terminated, and if the conditions attached to an award of Units have not been met, the Board may elect in its sole discretion to waive such conditions. In such case, payments shall be made in accordance with section 4, and the reference in section 4, the Value of the Units at the date the conditions attaching to an award of Units are met, shall be read as a reference to the Value of a Unit at the date of plan termination. **[emphasis added]**

56. The conditions for payment on SAR Units generally arose only with merger, take-over, liquidation/wind-up type events affecting UBS or if the market capitalization exceeded \$125 million.

57. On June 17, 2009, the Directors cancelled all the SAR Units effective May 31, 2009. None of the conditions for payment referenced above had been met when the Directors cancelled all the SAR Units.

58. Notwithstanding the conditions for payment were not met, the Directors appear to have waived the conditions for payment without justification. However, they then also ignored and breached the payment terms of the SAR Plan. The Directors valued each SAR Unit based on a \$0.40 share price when the shares were only trading at \$0.18. They approved a SAR Cancellation Payout Pool of \$2.31 million on this basis when, by

the terms of the SAR Plan, the maximum true total “in-the-money” value was only \$372,000.

59. The Directors improperly and unjustly awarded Dolgonos and themselves the following payments:

SAR Holder	Number of SAR Units to be Cancelled	Inflated SAR Cancellation Payout
Jolian Investments Inc. (McGoey)	3,000,000	\$600,000
DOL Technologies Inc. (Dolgonos)	3,000,000	\$330,000
Louis Mitrovich	1,500,000	\$450,000
Douglas Reeson	1,650,000	\$465,000
Peter Minaki	1,650,000	\$465,000
John Fekete	500,000	-
Total	11,300,000	\$2,310,000

60. Even if it was appropriate to waive the conditions for payment, which is denied, Dolgonos’s SAR Units had no monetary value in accordance with the SAR Plan’s terms (based on a strike price of \$0.28 for 1,500,000 units and a strike price of \$0.30 for 1,500,000 units and a then share price of \$0.18). Notwithstanding this true value, as noted above, the Directors granted Dolgonos a SAR Cancellation Payout of \$330,000.

61. Similarly, the maximum value of the SAR Units held by McGoey and each of the other Directors was approximately \$120,000 to \$132,000 (based on the strike price of

their units) when the Directors awarded SAR Cancellation Payouts to themselves, as set out.

62. The Directors breached the terms of the SAR Plan to disguise large, unjustified payments of the proceeds of the LOOK sale to Dolgonos and themselves. This SAR Cancellation Payout by the Directors in breach of the SAR Plan's terms was an egregious grab of money which was in no way justifiable.

63. Further, Dolgonos and the Directors all had a material interest in the SAR Cancellation Payouts that was awarded. Contrary to their express statutory obligations, this transaction was not approved by UBS shareholders and therefore must be set aside.

(b) The "Deferred Bonus Award" to Dolgonos and Others

64. On July 8, 2009, as part of the "Restructuring Award", the UBS Directors purported to create a one-time interim Deferred Bonus Award ("DBA") pool of \$3.4 million to be paid to directors and management of UBS.

65. On August 28, 2009, the Directors granted a DBA of \$1.2 million to Dolgonos and a DBA of \$1.2 million to McGoey.

66. The DBA was "conditional" upon LOOK receiving the full consideration of \$80 million from the sale transaction of LOOK's wireless spectrum (received 13 days later) and UBS receiving adequate cash resources.

67. The DBA was not a “performance incentive” as contemplated in the DOL Agreement for which DOL can validly claim payment as part of the Dolgonos Golden Parachute.

(iv) Summary: The UBS Restructuring Awards Are Not Owing to Dolgonos

68. The Directors awarded the one-time DBA and SAR Cancellation Payouts, contrary to the governing agreements and their legal and fiduciary obligations. In their own self-interest, the Directors effectively abolished or altered UBS’s existing compensation plans and also created a new “bonus” plan for themselves. Using \$0.40 per share as a basis for the SAR Cancellation Payout was a material transaction that altered the SAR Plan without TSX or shareholder approval.

69. The UBS Restructuring Awards were unjust, unfair and unreasonable and were awarded by the Directors to further enrich Dolgonos and themselves to the detriment of UBS and in direct conflict with their duties of loyalty and to act solely in the best interests of the Company.

70. The Directors did not exercise any independent judgment and ignored the best interests of UBS in granting their UBS Restructuring Awards. The Directors awarded their UBS Restructuring Awards to themselves based on the recommendation of McGoey and/or Dolgonos and without the advice of an independent compensation consultant.

71. Dolgonos caused and exerted undue influence on the Directors to award him the \$1,530,000 UBS Restructuring Award without any factual or legal basis. The Directors

carried out Dolgonos's self-enriching scheme, at the same time approving awards to themselves. The UBS Restructuring Award unjustly enriched Dolgonos to the detriment of UBS without any juristic reason. Dolgonos and the Directors were in a material conflict of interest to the detriment of UBS and enriched Dolgonos and themselves for their financial benefit.

72. UBS pleads that the UBS Restructuring Awards granted by the Directors are void and unenforceable and denies that any amounts claimed as Restructuring Awards are owing.

C. SHAREHOLDERS EXERCISED THEIR RIGHT TO REMOVE THE DIRECTORS

73. At the July 5, 2010 special meeting of shareholders of UBS, the shareholders voted to remove McGoey, Mitrovich and Reeson from the Board. They then elected a new slate of directors.

74. Later that evening, Dolgonos delivered a notice of termination of the DOL Agreement alleging that there was "Good Reason" as a result of the "Change-in-Control" of UBS, and demanding payment of the Dolgonos Golden Parachute.

75. Good Reason is defined in the DOL Agreement as follows:

"Good Reason" means that the Consultant's business relationship with [UBS] has been substantially altered by the Board.

76. "Change-in-Control" is defined in the DOL Agreement as:

"Change-in-Control" means that control (control includes a Person or group of Persons acting in concert holding more

than 20% of the voting shares of [UBS]) of [UBS] has transferred to another Person or Persons acting in concert.

77. There was no "Good Reason" or "Change-in-Control" by UBS that triggered any payment under the DOL Agreement. There was no substantial alteration of the business relationship between UBS and Dolgonos by the new Board when the notice of termination was delivered. Further, there was no transfer of control of UBS when the new Board was elected. Dolgonos remains the principal shareholder of UBS.

78. Further, the election of directors is one of the primary statutory functions and rights of shareholders. The right to elect directors does not constitute a "Change-in-Control". Further, it is contrary to corporate governance principles and public policy and, it is unreasonable and unlawful to penalize shareholders by making them pay to replace a director.

D. NO LIABILITY UNDER THE DOL AGREEMENT

79. In summary, UBS pleads that there is no liability under the DOL Agreement because:

- (a) DOL unilaterally terminated the DOL Agreement in the absence of a "Good Reason" or "Change-in-Control" and therefore there is nothing owing;

- (b) in any event, no moneys can be owing in relation to the removal of the Directors and any such provisions in the DOL Agreement are void and ought to be set aside;
- (c) there was no "Good Reason" or "Change-in-Control" or other conduct by UBS which gives rise to any payments owing under the DOL Agreement;
- (d) In the alternative, if any moneys are payable to DOL, the "Dolgonos Golden Parachute" provisions are excessive, unsupported, unfair and unconscionable and were not in the best interests of UBS and were the result of Dolgonos's undue influence and such provisions ought therefore to be set aside; and
- (e) further, in the alternative, if any moneys are payable to DOL, no payments are properly or lawfully made in respect of the claimed "Restructuring Awards" because they are not "performance incentives" as contemplated by the DOL Agreement and they are unreasonable and unjustified in fact and law.

80. The Dolgonos Golden Parachute, the UBS Restructuring Awards, the Options and other payments in all the circumstances of this case represent abuses of powers and breaches of duties of the Directors. Further Dolgonos, as an officer of UBS, acted in blatant conflict of interest. The Directors were negligent or wilfully blind in permitting and facilitating these abuses. Their conduct demonstrates repeated breaches of their legal and fiduciary duties to UBS and a consistent disregard of the duties of care and loyalty they owed to UBS. Accordingly, the Dolgonos Golden Parachute, the UBS

Restructuring Awards and the Options claimed by the Plaintiff are void and unenforceable.

81. UBS requests that the Plaintiff's action be dismissed with costs on a substantial indemnity basis.

COUNTERCLAIM

82. The Defendant claims as against DOL and Dolgonos:

- (a) a declaration that the Dolgonos Golden Parachute is null and void and unenforceable;
- (b) an order setting aside the Dolgonos Golden Parachute or in the alternative, varying the Dolgonos Golden Parachute;
- (c) a declaration that the UBS Restructuring Award granted to Dolgonos is null and void and unenforceable;
- (d) a declaration that the Options granted in 2009 are null and void and unenforceable;
- (e) a declaration that, if any or all of the LOOK Restructuring Award was validly payable, the LOOK Restructuring paid to Dolgonos is payable to UBS;

- (f) an order that Dolgonos pay \$3950,737, the amount of the LOOK Restructuring Award, to UBS pursuant to the terms of the UBS-LOOK Agreement;
 - (g) in the alternative, damages for breach of statutory and fiduciary duty, unjust enrichment in the amount of:
 - (i) \$6,015,000 in relation to the Dolgonos Golden Parachute;
 - (ii) \$1,530,000 in relation to the UBS Restructuring Award granted to Dolgonos;
 - (iii) \$3,950,737 in relation to the LOOK Restructuring paid to Dolgonos should UBS be held liable for any payment thereunder.
83. The Defendant claims as against McGoey, Mitrovich and Reeson:
- (a) a declaration that:
 - (i) the conduct of McGoey, Mitrovich and Reeson has been oppressive and/or unfairly prejudicial to and/or unfairly disregards the interests of UBS;
 - (ii) the business and affairs of UBS have been carried on or conducted by McGoey, Mitrovich and Reeson in a manner that was oppressive and/or unfairly prejudicial to and/or unfairly disregarded the interests of UBS;

- (iii) the powers of McGoey, Mitrovich and Reeson have been exercised in a manner that was oppressive and/or unfairly prejudicial to and/or unfairly disregarded the interests of UBS;
 - (b) a declaration that the UBS Restructuring Awards granted to them are null and void and unenforceable;
 - (c) in the alternative, damages in the amount of \$3,180,000 for breach of statutory and fiduciary duty, oppression and unjust enrichment, in respect of the UBS Restructuring Awards granted to themselves;
 - (d) in the alternative, damages for breach of statutory and fiduciary duty, oppression and unjust enrichment in the amount of:
 - (i) \$6,015,000 in relation to the Dolgonos Golden Parachute;
 - (ii) \$1,530,000 in relation to the UBS Restructuring Award granted to Dolgonos;
 - (iii) \$3,950,737 in relation to the LOOK Restructuring paid to Dolgonos,should UBS be held liable for any payment thereunder.
84. The Defendant claims as against all of the Defendants by Counterclaim:
- (a) a declaration that Lawyer Funds, as defined below, taken from UBS were taken unlawfully, without authority and contrary to their respective Indemnity Agreements, UBS's By-laws and the OBCA;

- (b) an interim interlocutory order that Dolgonos, McGoey, Mitrovich and Reeson or their counsel on their behalf immediately return the Lawyer Funds to UBS;
- (c) in the alternative, damages in the amount of \$540,000 in respect of the Lawyers Funds advanced contrary to their respective Indemnity Agreements, UBS's By-laws and the OBCA
- (d) punitive damages in the amount of \$5,000,000;
- (e) a declaration that Dolgonos, McGoey, Mitrovich and Reeson are jointly and severally liable for all amounts awarded or ordered to be repaid to UBS;
- (f) pre-judgment and post-judgment interest on all amounts awarded pursuant to sections 127 to 130 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43;
- (g) costs on a substantial indemnity basis, plus H.S.T.; and
- (h) such further and other relief as this Honourable Court deems just.

85. UBS repeats and relies upon the allegations contained in its Statement of Defence.

A. UBS MONIES IMPROPERLY TAKEN FROM UBS FOR LEGAL FEES

86. Just prior to the Directors' removal from the Board by UBS shareholders, the Directors made the following payments to lawyers retained by Dolgonos, McGoey and the other Directors for legal expenses:

Director/Officer	Indemnity Advanced	Law Firm
McGoey	\$200,000	Groia & Company
Dolgonos	\$100,000	Roy Elliott O'Connor
Mitrovich	\$120,000	Blake Cassels Graydon
Reeson	\$120,000	McLean & Kerr

87. These UBS monies were purportedly advanced by the Directors pursuant to paragraph 2(b) of the respective Indemnity Agreements with UBS and pursuant to article 7 of UBS's By-laws.

88. Paragraph 2(b) of the respective Indemnity Agreements, however, provides:

(b) *Proceedings by or in the Right of the Corporation.*
The Corporation shall indemnify Indemnitee if Indemnitee was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding by or in the right of the Corporation...to procure a judgment in its favour by reason of:

(i) the fact that Indemnitee is or was a director, officer, employee, consultant or agent of the Corporation,...

(ii) any action or inaction on the part of the Indemnitee while an officer, director, employee, consultant or agent of the Corporation, or...

(iii) ...

against expenses (including legal fees) and, to the fullest extent permitted by law, amounts paid in settlement, in each case to the extent actually and reasonably incurred by Indemnitee in connection with the defense or settlement of such action or proceeding **if Indemnitee acted honestly and in good faith and with a view to the best interests of the Corporation,...and such indemnification is approved by a court of competent jurisdiction in accordance with applicable law.** [emphasis added]

89. Similarly, Article 7.01(b) of the By-laws provides:

The Corporation shall, subject to the approval of the Ontario Court (General Division), indemnify a person referred to in subsection 7.01(a) of this by-law in respect of an action by or on behalf of the Corporation or body corporate to procure a judgment in its favour, to which he is made a party by reason of being or having been a director or an officer of the Corporation or body corporate, against all costs, charges and expenses and reasonably incurred by him in connection with such action if he fulfils the conditions set out in clauses 7.01(a)(i) and 7.01(a)(ii) of this by-law. [emphasis added]

90. Subsection 136(4.1) of the OBCA also provides:

(4.1) A corporation may, with the approval of a court, indemnify an individual referred to in subsection (1), or advance moneys under subsection (2), in respect of an action by or on behalf of the corporation or other entity to obtain a judgment in its favour, to which the individual is made a party because of the individual's association with the corporation or other entity as described in subsection (1), against all costs, charges and expenses reasonably incurred by the individual in connection with such action, if the individual fulfils the conditions set out in subsection (3). [emphasis added]

91. No court approval was obtained by Dolgonos, McGoey, Mitrovich and Reeson before the monies were advanced to their lawyers as purported indemnification for claims made against them by UBS (the "**Lawyer Funds**"). The UBS money was advanced contrary to the Indemnity Agreements, UBS's By-laws and the OBCA and were also unreasonably forwarded in all of the circumstances.

B. DOLGONOS'S LOOK RESTRUCTURING AWARD

92. As outlined at paras. 32 to 34 above, in addition to his usual compensation, Dolgonos paid a Restructuring Award directly by LOOK of \$3,950,737.

93. At no time prior to 2009 did LOOK pay any cash compensation, bonus or otherwise, directly to Dolgonos. All payments by LOOK for services rendered by Dolgonos were to be paid directly to UBS in accordance with the UBS-LOOK Agreement. All services of Dolgonos to LOOK as a technology consultant are provided by UBS pursuant to the UBS-LOOK Agreement.

94. The UBS-LOOK Agreement provides that payment for services under the Agreement is to be made directly to UBS and that bonuses for services may be awarded to UBS.

95. Dolgonos caused or exerted undue influence on the UBS Directors to permit the LOOK Restructuring Award to be paid directly to him and not to UBS, contrary to the UBS-LOOK Agreement. The LOOK Restructuring Award paid to Dolgonos was designed to unjustly enrich Dolgonos personally to the detriment of UBS. This payment was improperly made and unjustly enriched Dolgonos without any juristic reason to

Dolgonos and, if that Restructuring Award is valid, it must be re-paid by Dolgonos to UBS.

C. SUMMARY OF DUTIES/CLAIMS

96. Dolgonos, as an officer of UBS, owes statutory and common law fiduciary duties and duties of care to UBS to, *inter alia*:

- (a) preserve and protect the assets of UBS from unnecessary and/or wasteful dissipation, for the benefit of UBS and its shareholders;
- (b) avoid conflicts of interest, such as causing UBS to enter into contracts with companies and entities directly or indirectly related to him on terms that are unjustified and contrary to UBS' interests; and
- (c) avoid conflicts of interest by putting his personal interests ahead of the UBS and to exercise objective independent judgment.

97. McGoey, Mitrovich and Reeson owe similar statutory and common law fiduciary duties and duties of care to UBS to, *inter alia*:

- (a) properly manage the business and affairs of UBS;
- (b) preserve and protect the assets of UBS from unnecessary and/or wasteful dissipation, for the benefit of UBS and its shareholders;
- (c) avoid conflicts of interest, such as causing UBS to enter into contracts with companies and entities directly or indirectly related to them on terms that are unjustified and contrary to UBS' interests; and

- (d) avoid conflicts of interest by putting their personal interests ahead of the UBS and to exercise objective independent judgment.

98. Based on the foregoing, UBS pleads that Dolgonos, McGoey, Mitrovich and Reeson breached their statutory duty of care to act honestly and in good faith with a view to the best interests of UBS and failed to exercise the care, diligence and skill that a reasonably prudent individual would exercise in the circumstances, as well as their common law and fiduciary duties. UBS pleads and relies upon sections 132, 134 and 136 of the OBCA.

99. The Dolgonos Golden Parachute, the UBS Restructuring Awards and Options were unjust, unfair, unreasonable, unconscionable and the result of undue influence, and ought to be set aside or varied. The monies received from the LOOK Restructuring Award (if valid), and the Lawyer Fund ought to be paid to UBS.

100. In addition, the actions of McGoey, Mitrovich and Reeson in agreeing to the Dolgonos Golden Parachute, granting the UBS Restructuring Awards and Options, permitting payment of the LOOK Restructuring Award to Dolgonos, and advancing the Lawyer Funds amount to conduct that is oppressive, unfairly prejudicial to, and in unfair disregard of the interests of UBS and its shareholders. UBS pleads and relies upon section 248 of the OBCA and the remedies thereunder, particularly s. 248 (3)(h) which permits the Court to vary or set aside a transaction or contract.

101. In authorizing, permitting or acquiescing to payment of the LOOK Restructuring Award to Dolgonos, each of McGoey, Mitrovich and Reeson acted contrary to the terms of the UBS – LOOK Management Services Agreement and the Dolgonos and contrary

to the interests of UBS. The LOOK Restructuring Award unjustly enriched Dolgonos and was paid without any juristic reason.

102. The UBS Restructuring Awards were granted without proper consideration in return and were for the improper and ulterior motive of unjustly enriching themselves and others to the detriment of UBS.

103. Further, the Dolgonos Golden Parachute specifically, and the DOL Agreement generally, were designed to not only enrich but to improperly entrench Dolgonos as an officer of UBS to the detriment of UBS and its shareholders and contrary to good governance principles and regulatory requirements. The Dolgonos Golden Parachute was further intended to achieve the improper purpose of securing and entrenching control of UBS with the result that UBS resources could be used improperly for personal gain.

104. UBS requests its costs of this counterclaim on a substantial indemnity basis.

105. UBS requests that this counterclaim be tried together with the main action.

Dated: August 18, 2010

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DOL TECHNOLOGIES INC.

- Plaintiff/Defendant by Counterclaim -

v.

UNIQUE BROADBAND SYSTEMS, INC.,

- Defendant/Plaintiff by Counterclaim -

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced At Toronto

**STATEMENT OF DEFENCE AND
COUNTERCLAIM**

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