

Nortel Networks – Allocation Trial – Summary of May 13, 2014

May 13th, 2014 marked the second day of the Nortel trial that is occurring concurrently in Toronto and Delaware. The day was spent completing all the parties' opening statements. Like yesterday, these opening statements are general roadmaps of the arguments that the parties will deal with in more depth throughout the trial.

The United States Debtors began their opening statements yesterday and completed introducing their case today. Counsel for the US Debtors focused today's remarks on how, during the Nortel's final years, the American subsidiary of Nortel (NNI) had the largest revenue of any of Nortel's markets.

Next, the Unsecured Creditors Committee (UCC), made up of bondholders in the United States, delivered their opening statements. The UCC agree with the US Debtors that the revenue approach is the correct allocation method for the court to adopt.

Counsel for the court appointed Monitor and Canadian Debtor introduced their case next. The Monitor's theory of allocation is based upon the ownership of patents. The Monitor argued that the Canadian parent company ("NNL") had ownership of the majority of Nortel intellectual property (IP) while Nortel subsidiaries only possessed licenses to the IP. The Monitor as a result argues that any sales proceeds attributable to the sale of the patents owned by NNL should go to the Canadian estate.

The Canadian Creditors Committee (CCC) spoke next on behalf of around 20,000 former employees, pensioners and pension interests in Canada. The CCC supports the Monitor's ownership allocation theory and echoed the position that since the vast majority of the IP created by Nortel was owned by the Canadian parent, the propensity of the sales proceeds should be allocated to NNL. As an alternative, the CCC argues that allocation should be done on a pro rata basis, allocating the funds proportionately to claims made against all of the estates. In closing, the CCC focused the courts' attention on where the sales proceeds would ultimately end up depending on which allocation theory is adopted. It was asserted that under the pro rata distribution theory creditors would receive approximately 72% of their claims. Under the ownership allocation theory, while the majority of sales proceeds would initially be allocated to NNL, those proceeds would thereafter be subject to inter-Estate claims and disbursed to the other estates. Creditors of those estates would thereafter be eligible to make their claims in their jurisdictions.

Finally, representatives of several trust indentures took to the floor to briefly introduce themselves and to support one of the allocation theories put forth by the parties. Wilmington Trust, representing a trust located in Canada, joined the ownership argument of the Canadian Debtor and Monitor and the CCC as well as the pro rata approach of the CCC. Other indenture trustees also argued joiners with the revenue theory argued by the US interests.

Tomorrow, examination of witnesses will begin. The nine Canadian witnesses will be questioned first followed by the US Debtors witnesses and the EMEA Debtors. The Canadian witnesses will include former Chief Financial Officers, Chief Legal Officers as well as the court appointed representative, Donald Sproule.