

## **Nortel Networks – Allocation Trial – Summary of May 20<sup>th</sup>, 2014**

The Nortel Allocation Trial resumed today, Tuesday May 20<sup>th</sup>, for the fifth day. First, the Canadian Claimants' final two witnesses, Gordon Davies and Paviter Binning, were examined. Next, the US interests first two witnesses, Walter Henderson and Christopher Ricaurte, were examined. Mr. Davies, Mr. Binning, and Mr. Henderson were questioned in Toronto and Mr. Ricaurte was questioned in Wilmington.

Mr. Davies had extensive experience with Nortel's legal department for over a decade. Mr. Davies served as Chief Legal Officer, Corporate Secretary, and General Counsel for Enterprise Solutions within EMEA. Mr. Davies' affidavit provided evidence regarding the global nature of the company and his observations during his time as General Counsel for a Line of Business in EMEA and as CLO. Mr. Davies was briefly cross-examined by the US Debtors about his level of involvement with the cost sharing or residual profit sharing agreements which have been key issues in this allocation trial.

Paviter Binning served as the Chief Financial Officer of Nortel from November 2007 to March 2010. Mr. Binning's affidavit provided insight about Nortel's organizational structure, financial position, cash management, and the months leading up to the bankruptcy filing and the post filing sale of lines of business (including options that were considered with respect to the sale of intellectual property). The US Debtors questioned Mr. Binning about his knowledge of ownership of IP and Mr. Binning explained that he had a limited understanding about legal intricacies of ownership but had understood that NNL owned the patents. As a result of his involvement in the post-filing sales, Mr. Binning was questioned at length about an abandoned plan to utilize Nortel's IP to pursue a patent licensing business. The plan was discarded in favour of the Rockstar sale. The EMEA Debtors questioned Mr. Binning briefly about the importance of existing customer contracts and relationships. Counsel for the UK Pension Claimants (UKPC) examined Mr. Binning about technical elements of bond prices and whether some Nortel bonds had different guarantees than others.

Mr. Henderson, the US Debtors' first witness, testified next. He is a lawyer who worked for Sutherland Ashbill & Brennan LLP, which did tax related work for Nortel, and briefly for Nortel Networks Inc. (one of the US Debtors). He provided an affidavit describing transfer pricing, the advanced pricing arrangement Nortel negotiated with the IRS and CRA as well as evidence regarding the cost sharing agreements and matters leading up to the MRDA. Mr. Henderson was examined by the US Debtors about his understanding that NNI held beneficial ownership of the Nortel IP. The EMEA Debtors questioned Mr. Henderson about how transfer pricing agreements are not just a tax mirage and have to reflect reality. The Canadian Debtors cross-examined Mr. Henderson extensively regarding his involvement in drafting advanced pricing agreements and cost sharing agreements. In addition, the Canadian Debtors cross-examined Mr. Henderson regarding his position that other entities besides the Canadian parent had beneficial ownership of Nortel's IP.

Christopher Ricaurte held various roles at Nortel including Vice President of Financial Planning and Analysis for Global Operations from 2007 to September 2011. He provided an affidavit describing the structure of Global Operations and the location of personnel. Mr. Ricaurte testified in Wilmington and was questioned by the UKPC regarding his role at Nortel Business Services, which was created to provide corporate support and other services for the lines of

business that were being sold post-filing. The Canadian Debtors cross-examined Mr. Ricaurte next regarding the role of Global Operations, the location of personnel in areas other than Global Operations as well as his involvement in the advanced pricing agreement negotiated with tax authorities.

Tomorrow the US witnesses will continue with Michael Orlando (Vice President of Tax) testifying in Toronto and John Ray (Principle Officer of NNI) testifying in Wilmington. In addition, the EMEA witnesses will start with Phillippe Albert-Lebrun (Financial Controller of the French subsidiary and EMEA) testifying in Toronto, and time permitting, Simon Brueckheimer testifying on behalf of EMEA and the UKPC in Toronto.