

1 THE CANADIAN COURT: I think now we  
2 need to deal -- Judge Gross, we need now to deal  
3 with the request by the Monitor.

4 THE US COURT: Yes. Is that what you  
5 were rising to address, Mr. Ruby?

6 MR. RUBY: Something else, but I can  
7 wait.

8 THE US COURT: All right.

9 THE CANADIAN COURT: The Monitor has  
10 requested in its memorandum of June 19, 2014 that  
11 two legal issues be determined.

12 The Monitor has referred to the claims  
13 on bonds where there is a guarantee and the Monitor  
14 refers to these as crossover bonds, and has  
15 requested that the courts now determine two legal  
16 issues.

17 Firstly, whether the holders of the  
18 crossover bonds claims are legally entitled in each  
19 jurisdiction to claim or receive any amounts under  
20 the relevant indentures, above and beyond the  
21 outstanding principle debt and prepetition  
22 interest; that is, namely, above and beyond \$4.092  
23 billion US; and secondly, if determined that the  
24 holders of the crossover bonds claims are so  
25 entitled, what additional amounts are such holders

1 entitled to so claim and receive.

2 The request by the Monitor is supported  
3 by Nortel Networks UK Pension Trust Limited, the  
4 Canadian Creditors Committee, and Wilmington Trust  
5 NA. The Monitor's request is opposed by the US  
6 Debtor, by the Unsecured Creditors Committee, by  
7 the Ad Hoc Bondholders, by Bank of New York Mellon,  
8 and by the Law Debenture Trust Company of New York.

9 I do not intend to deal with all of the  
10 arguments pro and con; rather, I will provide brief  
11 reasons for my decision, and Judge Gross and I have  
12 each agreed, have each come to the same conclusion,  
13 and that conclusion is that these two issues raised  
14 by the Monitor should now be dealt with.

15 The amount of postpetition interest  
16 claimed is of crucial significance. To the end of  
17 2013, it is \$1.6 billion, so it is growing beyond  
18 that now. That's to be put in context of the  
19 assets in the lockbox of \$7.3 billion that is  
20 apparently not earning much interest at all.

21 We are not in a position to know with  
22 any certainty what effect a decision on this claim  
23 will have on settlement discussions. We are not  
24 party to those discussions. It appears to me that  
25 knowing what the position is on the issue, one way

1 or the other, cannot hurt those discussions.

2 We are told that further settlement  
3 discussions can be held next week and that is all  
4 to the good.

5 However, what we propose to order will  
6 not affect the ability of the parties to negotiate  
7 further next week. Negotiations and compromises  
8 are the stuff of CCAA proceedings.

9 However, this issue has been known  
10 since the Rockstar transaction in 2011 and has not  
11 been settled. It is also the case that three  
12 mediations and discussions for a week, a few weeks  
13 ago, have all failed. It is not at all sure that  
14 further discussions will achieve a settlement while  
15 this issue remains outstanding.

16 I see no prejudice to anyone in having  
17 this issue now dealt with. The longer it festers,  
18 the higher the legal fees will undoubtedly be.  
19 Legal fees in this case are of huge concern to the  
20 courts and to the pensioners and other claimants,  
21 and they are hardly minor.

22 If there are going to be appeals, so be  
23 it. That likely would be the case in any event,  
24 and if so, the sooner the better.

25 The success or failure of the

1 bondholders' claim for interest will have an  
2 important and large effect on the Canadian Estate,  
3 and on the claims of the pensioners and of the  
4 disability claimants. The sooner that is decided,  
5 the better.

6 In their allocation pleadings, the US  
7 interests assert an allocation that will result in  
8 the US Estate being solvent and their expert  
9 evidence is to that effect. This, of course, is  
10 perhaps a US bankruptcy issue, but I would observe  
11 that while allocation issues have yet to be  
12 decided, one cannot, at this stage, say that the US  
13 Debtors' allocation position will not be accepted.

14 It is not unknown in Canada to have  
15 issues decided in CCAA proceedings on claims  
16 involving potential issues. In Re: Sino Forest  
17 Corporation, 2012 ONSC 4377, affirmed 2012 ONCA  
18 816, an issue was decided in a class action by  
19 shareholders as to whether those claims were equity  
20 claims, and whether the auditor's claims for  
21 indemnity, if they ultimately were liable, would be  
22 equity claims. It was contended, without success,  
23 that the motion was premature and the issue was  
24 decided.

25 It is also the case under the Ashmore

1 v. Corporation of Lloyd's principles that this  
2 issue can now, and in my view should now, be  
3 determined.

4 I would also add it is not at all clear  
5 to me why there needs to be any Plan of Compromise  
6 in Canada. The assets have been sold, there is no  
7 continuing business of any kind, and liquidating  
8 CCAA proceedings are now commonplace.

9 It appears to me to be a straight legal  
10 issue. It would be exceedingly surprising if this  
11 issue had not been thoroughly researched by now,  
12 and the memoranda that we have received gives some  
13 indication that that is so.

14 What we propose is the matter be  
15 scheduled for argument in July, at some point after  
16 the start of the claims portion of the trial. We  
17 propose July 8, I beg your pardon, July the 11th,  
18 it works for both courts.

19 If there is some other time in July  
20 acceptable to all the interested parties and there  
21 is an issue with July 11th, we will consider that  
22 request if it is received this week.

23 My conclusion and Order is that the two  
24 issues raised by the Monitor be scheduled for  
25 argument on July the 11th, unless otherwise ordered

1 for a different date in July, and that the briefs  
2 to be exchanged and filed should be done so no  
3 later than July the 8th. That concludes my  
4 remarks.

5 THE US COURT: Well, I join Justice  
6 Newbould in his ruling that we ought to hear the  
7 what I will call the interest issues at this time.

8 First let me dispel the concerns that I  
9 previously ruled on this issue and determined at  
10 that time that the issue was premature for  
11 determination and advisory in nature. As an  
12 elderly client used to tell me in her broken  
13 English, "What was ain't."

14 And I have now heard or will have  
15 heard -- I guess I have now heard really all of the  
16 evidence on allocation. A finding that the United  
17 States Estate is solvent is not assured, but I have  
18 to observe that the only parties pressing a  
19 methodology which would render the US Estate  
20 insolvent is really persuading the Court that it  
21 should proceed with this discrete legal issue at  
22 this time.

23 And while it is certainly true that  
24 there are other issues in the case, there is one  
25 issue that can be decided and should be decided at

1 this time as this case otherwise continues really  
2 without an end in sight. It is fair to say that  
3 the interest issues are ones which will require  
4 decision at some point, and this is as good a time  
5 as any.

6 So let me observe that my earlier  
7 decision not to hear the interest issue did not  
8 result in the parties being able to formulate a  
9 compromise. Maybe doing so now will have that  
10 beneficial result.

11 As for a concern about appeals and the  
12 impact of appeals on the progress of these cases, I  
13 really consider that possibility to be virtually  
14 nonexistent. Before anyone would take an appeal on  
15 less than all of the issues in this case, in  
16 effect, an interlocutory appeal, I would urge them  
17 to read the decisions of the Third Circuit. And I  
18 think that the Third Circuit made it clear that  
19 this case has to proceed to a conclusion and  
20 without interruption.

21 As far as whether this requires  
22 analysis as if there were a motion for reargument  
23 pending, I consider this really to be more of a  
24 matter of case management. And even if the  
25 reargument standard were applicable, I have heard

1 in the past few weeks nothing but new evidence,  
2 evidence which I had not considered and which was  
3 still in the process of being formulated when I  
4 previously ruled that I would not hear the interest  
5 issues.

6 The concern that this is not a matter  
7 subject to the joint jurisdiction of the Canadian  
8 and US Courts is similarly a nonstarter issue.  
9 Justice Newbould and I will decide the issues  
10 confronting us separately. But more importantly,  
11 while we will do so independently, we will also be  
12 acting in the spirit of Chapter 15 cases; that is,  
13 with cooperation in scheduling, fair and efficient  
14 administration, and for the protection and  
15 maximization of debtors' assets. And that language  
16 can be found in a number of cases, including the  
17 ABC Learning decision by the Third Circuit.

18 It is true, as the US Debtors posit,  
19 that there are other factual and legal issues in  
20 these cases. So why spotlight the interest issue?  
21 Because after five and a half years and a fortune  
22 in administrative costs, we can and we should. It  
23 may not help the parties, but it will not hurt, and  
24 it will bring some semblance of resolution.

25 And I will note that before we can



1 render our decision on these interest issues,  
2 perhaps the parties can use the \$1.6 billion spread  
3 between no interest and interest at the contract  
4 rate to come to some accommodation.

5 And with that, I would say that we are  
6 prepared to consider any scheduling requests which  
7 would have us hear you in July. But again, we have  
8 discussed the July 11 date.

9 Mr. Lowenthal.

10 THE CANADIAN COURT: July 11 date.

11 THE US COURT: Yes.

12 THE CANADIAN COURT: Yes. And I might  
13 just say on that score, Judge Gross, I know there  
14 is a telephone conference scheduled for Friday  
15 morning at 10:00 to deal with document issues in  
16 the Canadian claims case in July. What I can  
17 suggest to the parties is if there is a problem  
18 with that July 11 date, perhaps you can alert us  
19 and we can take it up at the conference call. We  
20 can have Judge Gross participate to the extent we  
21 are dealing with that date --

22 THE US COURT: Sure.

23 THE CANADIAN COURT: -- on Friday  
24 morning.

25 THE US COURT: I see Mr. Lowenthal here