

## Information Update for Nortel Disabled Employees

### 1. Representation Order

Koskie Minsky LLP (“KM Law”) was appointed as counsel to the disabled employees of Nortel (except those represented by the CAW) by Court Order dated July 30, 2009. Since that time, KM Law has been working with Susan Kennedy, the court-appointed representative (the “Representative”), and a group of other disabled employees of Nortel, all of whom are volunteering their time, to advance the claims of disabled employees in the *Companies’ Creditors Arrangement Act* (“CCAA”) process. The mandate of the Representative and of KM Law is to represent all individuals who are receiving or entitled to receive disability benefits from Nortel (the “LTD Beneficiaries”) in the CCAA proceedings, the *Bankruptcy and Insolvency Act (Canada)* or in any other proceeding brought before this Honourable Court. The scope of KM Law’s mandate is to act as counsel for the LTD Beneficiaries on any issues affecting them in the proceedings.

As part of the Representation Order, the Court ordered that all reasonable legal, actuarial and financial expert and advisory fees, and all other incidental fees and disbursements incurred by the Representative and KM Law, must be paid by Nortel. The Court and the court-appointed Monitor – Ernst and Young Inc. - oversee that process. Legal and other professional fees are subject to a “cap”.

Nortel does not instruct KM Law. They have been ordered by the Court to pay the legal expenses associated with representing LTD Beneficiaries, but have no say whatsoever in the actions that KM Law takes on behalf of LTD Beneficiaries. KM Law takes instructions from the court-appointed representative, Susan Kennedy.

As lawyers, KM Law have fiduciary obligations to their clients, which includes everyone who is a member of the group of LTD Beneficiaries as defined in the Representation Order who do not opt out. That means that KM Law is obligated, both ethically and legally, to act in the best interests of our clients. As you know, we also act for Nortel pensioners and other former employees. There is no inherent conflict in representing both groups. In the event that any conflict should arise, that will be addressed through conflict processes which ensure that each set of interests is appropriately represented.

Individuals who are part of the group of LTD Beneficiaries are entitled to opt out of the Representation Order and obtain and pay for their own counsel by filing an opt-out letter with the Monitor by September 25, 2009.

## **2. The CNELTD**

The Canadian Nortel Employees on Long Term Disability (or “CNELTD”) was formed shortly after Nortel filed for court protection in order to gather information about how the CCAA process would affect LTD Beneficiaries, and to obtain legal representation. Susan Kennedy, and others including Charles Black and Connie Walsh, were instrumental in putting the group together, and fighting for court-appointed lawyers. While only the current court-appointed Representative can officially provide instructions to KM Law, KM Law and the CNELTD recognize that there is a need for more involvement from members within your group at large. For this reason, a CNELTD steering committee is being established which will reflect the wide-ranging and unique circumstances that affect each individual in your group.

The steering committee will liaise between the group of LTD Beneficiaries and KM Law. The steering committee will provide information to the group, gather input and advice from the group, and meet regularly with KM Law to obtain information and provide feedback.<sup>1</sup> Once a procedure for establishing the steering committee has been finalized, KM Law will provide this information to you. Please check our website regularly for updates.

## **3. The Claims Process**

The regular claims process, which applies to all creditors except employees and former employees of Nortel, and their beneficiaries, has a filing deadline of September 30, 2009. This deadline is not applicable to LTD beneficiaries or former employees. Instead, KM Law, with the instructions and guidance of your representatives, is working with Nortel and the Monitor to establish an employment claims process which we expect will have at least the following elements:

- categories of claims will be determined and agreed upon;
- calculation of claims will be made;
- a claims bar date will be established by which all claims must be filed;
- individuals will not be required to file their own claims, and will be given the opportunity to review data before the claim is filed.

## **4. Health and Welfare Trust**

As you are aware, Nortel did not carry an insurance policy for long-term disability benefits. Rather, it chose to “self-insure” those benefits and partially funded them through a vehicle known as a “health and welfare trust”. The Nortel Health and Welfare Trust was the vehicle through which all

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<sup>1</sup> These functions have been performed to date informally among members of the CNELTD. The intention going forward is to formalize that structure, tasks and communications.

employee benefits were and are paid. LTD income benefits were provided through Sun Life, but Sun Life provides administrative services only – it does not insure those benefits.

The medical and dental benefits that current employees and retirees enjoy are also provided through the Trust, as are survivor income benefits and life insurance benefits. KM Law is working towards obtaining up to date information on the assets and liabilities of the Trust. One of the questions that we are currently addressing with Nortel and the Monitor is the appropriate allocation of the assets in the Health and Welfare Trust. The appropriate allocation of those assets will have to be approved and possibly also determined by the CCAA judge. We will provide more information as it becomes available as to the status of these discussions and the date for the court hearing.

## **5. The Availability of other Legal Actions by LTD Beneficiaries**

A number of you have raised the question of whether there is a legal action available to you against Nortel, the Board of Directors of Nortel, or Sun Life. We are reviewing the availability of such claims and will advise you as soon as we have an answer, however, we can confirm the following:

- No claims can be filed against Nortel as it is currently under court protection.
- Similarly, the Board of Directors of Nortel are protected by the stay of proceedings and no lawsuit can be filed against them.
- If there is a meritorious claim to be asserted on behalf of the LTD Beneficiaries, KM Law will recommend pursuing it, however frivolous claims will not be advanced as doing so will not be helpful to your credibility and integrity in this process.

## **6. Status of the CCAA process**

KM Law reports regularly on the status of the CCAA process through the KM Law website. KM Law is working together with the financial advisors (RSM Richter Partners) and actuarial advisors (Segal Company) who have been retained to assist the LTD Beneficiaries and the Former Employees in the CCAA process, to monitor and review the sales processes for each of the business divisions that are being sold, and the ultimate determination of the allocation of the assets of the company among the three jurisdictions – US, UK and Canada. KM Law is also working with the other advisors and other stakeholders to determine the future treatment of the pension plan.

Please link to the following URL to view the latest report.

<http://www.koskieminsky.com/Case-Central/Overview/News-Releases-And-Reports/?rid=107>