

# DISABLED EMPLOYEES PROGRESS REPORT

THIS REPORT HAS BEEN PREPARED BY KOSKIE MINSKY LLP IN THEIR CAPACITY AS REPRESENTATIVE COUNSEL TO THE NON-CAW DISABLED EMPLOYEES OF NORTEL AT THE REQUEST OF YOUR COURT-APPOINTED REPRESENTATIVE

JUNE 24, 2010

Please Note: A French translation of this document is in progress and will be sent when available.

## COURT OF APPEAL UPHOLDS THE SETTLEMENT AGREEMENT

The Court of Appeal for Ontario released its decision on June 3, 2010, dismissing an application for leave to appeal the decision of the Ontario Superior Court of Justice upholding the Settlement Agreement that was executed on March 30, 2010. The Settlement Agreement secures the continuation of your medical and life insurance benefits, and long-term disability income benefits, through 2010.

**Background:** On March 31, Mr. Justice Morawetz of the Ontario Superior Court of Justice approved the Agreement, which was the product of lengthy negotiations among Nortel, the Monitor, Representative counsel, court-appointed Representatives, and other creditors, and was subject to two hearings before Justice Morawetz. The first court hearing was held March 3 - 5, and the second was held on March 31, 2010. Reasons for Decision were released on April 8. We have reported to you before about the Settlement Agreement, and you can view an executed copy of it in the Forty-Second Report of the Monitor, which is located on the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel).

**Leave to Appeal:** A small group of individuals receiving long term disability benefits sought leave to appeal the March 31 decision and the Court of Appeal denied leave on June 3, 2010. This means that there will be no appeal before the Ontario Court of Appeal and the Settlement Agreement and its approval are effectively final. In its decision, the Court noted that the objecting group failed to demonstrate that they had been subjected to procedural or substantive unfairness. The Court concluded that the motions judge exercised his discretion to carefully balance the interests at stake, and made no demonstrable error in doing so. Previously, the Court of Appeal also dismissed a motion by the same group of objectors who sought to consolidate the leave application with the proposed appeal (leave for which has now been denied).

The full text of the March 26 (Ontario Superior Court of Justice), April 8 (Ontario Superior Court of Justice) and June 3 (Ontario Court of Appeal) decisions are available at [www.kmlaw.ca](http://www.kmlaw.ca).

Please note: As a result of the Settlement Agreement, LTD income benefits, health & dental benefits and life insurance will continue to be paid in full until December 31, 2010. The Settlement Agreement also requires the wind up and distribution of the assets of the Nortel Health and Welfare Trust (HWT) by December 31, 2010. Disabled employees will receive a portion of those assets. Further information about this process is set out below.

## NEXT AREAS OF FOCUS

Now that the Settlement Agreement has been approved, your Court-Appointed Representative and Representative Counsel, along with other parties, are focusing on the following important areas:

1. Finalization of a Compensation Claims Procedure;
2. Allocation and Distribution of Assets in the Health and Welfare Trust; and
3. Pension Plan issues.

### 1. COMPENSATION CLAIMS PROCEDURE

Discussions to finalize the Compensation Claims Procedure continue and the legal, actuarial and procedural details are the current focus. Your actuaries (Segal Company) and lawyers (Koskie Minsky) are advising the court-appointed Representative. All calculations and assumptions are subject to the approval of your actuaries. Koskie Minsky will also review and approve the actuarial approach, the determination of claims, and all of the related documentation and information. Although it was originally hoped that we would be before the court in June 2010 to obtain court approval of a Compensation Claims Procedure, there have been a number of unexpected events (including protracted proceedings about the Settlement Agreement) which have caused delays. We now anticipate being before the Court on this issue in September 2010.

**The anticipated process:** Before claims are finalized you will receive written notice of your individual claim amounts and will have an opportunity to review the data relevant to your claim, such as your date of employment, age and your salary prior to going on LTD. The package that you receive will explain the process, how your claim was calculated, and will detail each of your claims. You will not have to file your own claim - Koskie Minsky will do that for you. If something is missing from your claim, you will have an opportunity to provide information about it.

As a disabled employee, you will have a claim for all benefits to which you are entitled from Nortel and have lost (or will lose), including LTD income benefits, health, dental and life insurance benefits, future pension accruals, and severance pay. Depending on your circumstances, you may also have a claim for Transitional Retirement Benefits and Excess Pension Plan benefits. The contents of the notice, the calculation assumptions and methodologies, and the process will be subject to the court's approval before you receive your claims package.

Once all claims against the Canadian Nortel entities have been received, approved and tallied, and once the total assets available to the Canadian estate have been determined, there will be a distribution of assets. You will receive a percentage of your total entitlement on a pro rata basis with all other unsecured creditors of Nortel. All unsecured creditors will receive the same percentage recovery. The level of claims recovery from the Nortel estate is unknown at this time and no distribution is anticipated before 2011.

However, as we have explained in prior communications, as a beneficiary of the HWT, you will receive a portion of the assets of the HWT, and we expect that allocation to take place before the end of 2010. More information about that process can be found at Section 2 below. You should be aware, however, that there is significant litigation among Trust Beneficiaries regarding the allocation of the money in the HWT,

this might delay the allocation, as well as decrease the amount of money in the trust, as the costs of the litigation come out of the Trust Assets.

### **Who has a claim for the shortfall in the pension plan?**

Nortel's pension plans are underfunded and a "placeholder" claim has already been filed in the regular claims process by the pension plan administrator. Nortel, as the plan sponsor, is obligated under the applicable pension legislation to fully fund its pension plans if they are terminated, which is the basis for the claim. The claim will not be made by individuals because the deficit affects everyone in the plans, and individual losses depend entirely on the level of the deficit. Recoveries on this claim will be paid in to the pension plans.

The plans will eventually be terminated, but it is not yet known when, or what the value of the pension deficit claim is, and it may not be known for some time as the future of the pension plan is thus far uncertain. Your pension will not stop but may at some point be reduced. The deficit changes daily as it reflects the difference between the value of the liabilities (or total accrued benefit obligations) and the value of the assets at any given point in time. These amounts change with the markets and other factors.

## **2. UPDATE ON HEALTH AND WELFARE TRUST**

Discussions to determine the proper allocation and achieve a distribution of the assets in the HWT are ongoing with the Company and the Monitor. All historical documents are being gathered and analyzed, and an application will be brought before the Court as soon as possible, with the goal of achieving a distribution of the HWT before the end of December 2010. Directions will be sought from the Court on the allocation of HWT assets, which were approximately \$80 million at December 31, 2009. Your court-appointed Representative has requested and received access to historical documents and financial reports from the HWT (we are pressing for more public disclosure of them), and with actuarial and legal advice, is working towards a court-ordered distribution that protects disabled employees in accordance with the terms of the trust documents. The liabilities exceed the assets and accordingly, this distribution will replace only a portion of the lost future benefits that were historically paid from the HWT. (the present value of all future benefit obligations of Nortel under the HWT will be determined by mutual agreement of our actuaries and those retained by Nortel.) The balance of the present value of your lost future benefits that are not paid out of the HWT assets will form part of your claim against the Nortel Estate.

We hope to be before the Court on this issue by the end of September 2010. At a minimum, additional documentary disclosure about the HWT will be provided as part of any motion to determine its allocation and distribution, however we are pressing for earlier disclosure. All of the stakeholders are aware of the need to have this matter dealt with promptly so that there is a source of income for disabled employees after December 31, 2010.

### **Who has a claim for the shortfall in the Health and Welfare Trust?**

The Trustee of the HWT has filed a "placeholder" claim against Nortel for the shortfall in the HWT because Nortel is ultimately responsible under the Trust Agreement to fund the benefits on termination of the HWT. A claim will also be made on behalf of individual beneficiaries for the loss of their benefits that

were historically provided from the HWT. These two claims are duplicative and will not be paid twice, but have been filed this way in order to ensure that no part of the claim is lost.

**Are there ongoing discussions surrounding the possibility of medical coverage past December 31?**

Yes. As you know, Nortel will cease to pay your health and dental benefits on December 31, 2010. Your Representative and her Steering Committee, the Nortel Retiree and Former Employee Protection Committee (the "NRPC"), Representative Counsel and their advisors are looking into options to provide some form of ongoing medical coverage post-December 31, 2010, but no decisions have been made at this point. Many people with disabilities have high medical expenses and would be unable to qualify for private health insurance plans because they are already disabled. Our hope is to try and secure some level of benefits from future recoveries against Nortel if it is possible and can be done at a reasonable cost. There may also be an option to convert current group coverage to individual coverage with Sun Life. We are still seeking concrete information from Sun Life in this regard. At some stage, your Representative and/or the CNELTD Steering Committee will be collecting information from the CNELTD membership. More information about this issue will be provided as it becomes available.

**Are there ongoing discussions regarding the possibility of replacement life insurance and/or conversion of group life insurance after coverage ends on December 31?**

Yes, we are determining what options are available to convert your life insurance to an individual policy after December 31, 2010. However, it should be noted that this option could be cost-prohibitive for many, and may be too expensive to pursue. If there is no replacement life insurance established, or if conversion options are too expensive, individuals will still have a claim against the Nortel Estate for lost life insurance coverage and will receive a pro rata cash distribution through the claims process.

**3. UPDATE ON PENSION PLAN ISSUES**

In accordance with the Settlement Agreement, Nortel will continue the current service funding of its Defined Benefit pension plans until the end of September 2010, and pension accruals for disabled employees will continue until then.

Defined Contribution pension plan members will benefit from the continuation of pension accruals until at least the end of September 2010. Nortel's Defined Contribution plans will change as of September 30, 2010 and the Monitor and company are currently examining options for the Defined Contribution pension plan after September 30, 2010. We will advise as to whether and how your pensions will accrue during the period between October 1 and December 31, 2010 as soon as we have the information.

If you have questions about your individual pension and/or retirement please contact the following:

**Defined Benefit Plan Members**

Mercer -1.866.667.8358

**Defined Contribution Plan Members**

Sun Life - 1.866.733.8612

For Defined Benefit plan members, it may be possible to obtain information from Mercer concerning your eligibility for early retirement with an unreduced or reduced pension. Further, annual pension statements, which will identify your accrued pension to date, will be mailed out to all employees by Mercer shortly.

### **What will happen to the Defined Benefit pension plan on September 30?**

In accordance with the Settlement Agreement, Nortel will cease to administer its pension plans as of September 30, 2010. In the normal course, an administrator will be appointed by the Financial Services Commission of Ontario ("FSCO") on September 30, will become responsible for the administration of the Plans, and will determine and conduct the wind-up of the Plans.

However, you should be aware that the Representatives of the NRPC and their advisors are exploring alternatives to a conventional pension plan wind-up and are seeking support from the Government. In a normal wind-up scenario, the wind-up administrator takes over administration of the plan, determines whether reductions in pensions-in-pay to reflect the funded ratio are appropriate, sets a wind-up date, instructs the actuaries to prepare a wind-up report, makes an application for PBGF payments, and once the liabilities are all known, secures them through group annuity contracts obtained through a public RFP process. Pension-eligible members (including those eligible for reduced or unreduced early retirement) may start their pensions during wind-up with Regulator and administrator approval.

### **How long will a pension plan wind-up take?**

Pension plan wind-ups can take years, even when straightforward. Nortel's pension plan wind-up, when it occurs, will be complicated. This will be a lengthy process. We will continue to provide progress updates in the future.

### **What happens to my pension if there is a plan wind-up?**

Individuals who are retirement eligible will have the option to retire and to begin to collect a pension. Eligibility for retirement with a reduced or unreduced pension must be determined on an individual basis. If you wish to determine whether you are eligible to start receiving a pension under the Defined Benefit plan, please contact Mercer at 1.866.667.8358.

### **What happens if I am not yet pension eligible when there is a plan wind-up?**

LTDs who are not entitled to an immediate pension will choose between:

- Lump sum commuted value transfer (to be transferred into a locked-in retirement vehicle); or
  - Please note: amounts in excess of *Income Tax Act* (Canada) limits must be taken in cash and will be subject to income tax.
- Annuitized pension / annuitized deferred pension (depending on your age and eligibility for retirement).

## **Retirement: When Should the Process Be Initiated?**

In accordance with the Settlement Agreement, long-term disability income benefits will continue to be paid by Nortel until December 31, 2010. Provided you are still in receipt of long-term disability income benefits at the time of the valuation of your claim against Nortel, you will have a claim for the value of your future income benefits up until age 65 (among other claims). To ensure that you receive a distribution from the Health and Welfare Trust and from Nortel's estate for the future amounts to which you are entitled as a disabled employee, you may wish to consider waiting until after the valuation of your claim (the valuation date will be determined as part of the compensation claims process) and at the very least, until after December 31, 2010. If you reach age 65, you may have no choice but to take your pension because your disability payments are not payable after age 65. Others who are entitled to an unreduced pension should seek advice as to the optimum time to retire. We do not yet have information about the details concerning how to initiate the retirement process after December 31, 2010. You will be advised as more details become available.

## **How will the PBGF benefit me?**

Nortel's Defined Benefit plans are underfunded. The last actuarial calculation, as at December 31, 2008, indicated that the plans were funded at a level of approximately 69%. A new actuarial valuation, with funding levels as at December 31, 2009, currently is being prepared. This document must be filed by September 30, 2010.

If you worked in Ontario, Ontario's Pension Benefit Guarantee Fund (the "PBGF") will top up the first \$1,000 of monthly pension for service that accrued while employed in Ontario. For example, assume you are entitled to a monthly pension of \$2,000 but that at the date of wind-up, the pension plan is funded at 70%. The first \$1,000 of your pension will be topped up by the PBGF such that it will be paid in full (\$700 through the funds in the pension fund and \$300 by the PBGF). The remaining \$1,000 of your pension will be paid at the 70% value. Therefore, your total pension payment would be \$1,700 as opposed to the \$1,400 level you would receive if there was no PBGF, and the \$2,000 level you would receive if there was no funding deficiency on plan wind-up. If you did not work in Ontario for your entire career, only the portion of your pension which was accrued in Ontario will be subject to the PBGF.

**The key for the PBGF is in which province you accrued service.** In preparation for this stage, please check your records to confirm how long you worked in each province. Please do not forward this information to KM or the CNELTD, simply keep it for your records for now, and we will ask for it if we need it.

## **STATUS UPDATES**

### **HEALTH AND WELFARE TRUST CRA ADVANCE RULING SUBMISSIONS**

Tax counsel for various parties have been involved in discussions for several months, and are now in the final stages of preparing written submissions, concerning an advance ruling as to the taxability of funds to be distributed to you from the Health and Welfare Trust. The CRA's decision on this issue will affect individuals who are entitled to a distribution from the Health and Welfare Trust, particularly with respect to disability and survivor income benefits and retiree life insurance. We anticipate that the final written

submissions will be filed with the CRA before the end of June. We are uncertain how long it will take the CRA to make its decision on the taxability of the various amounts to be distributed, however, we will advise on the KM website and through written correspondence as developments occur.

## **CANADA REVENUE AGENCY TAX ISSUES**

Over the past several months, parties have been seeking to resolve a number of tax issues that have arisen during Nortel's CCAA proceedings, which has led to a dialogue with the Canada Revenue Agency (the "CRA"). The CRA has been provided with written submissions on the following three tax issues:

- Foreign Service Earnings issue, which concerns Nortel's historical practice of including foreign service earnings for the purpose of pension benefit calculations;
- Pension Adjustment Reversals ("PAR") which deals with restoring RRSP contribution room lost by terminated members who received a reduced CV transfer from Nortel's pension plans; and
- Tax on cash payments of the commuted value of registered pensions.

The CRA is now actively studying these issues and we expect a reply in the coming weeks. While the CRA continues to express a willingness to consider potential solutions, we cannot provide you with further information until such time as the CRA completes its analysis and provides us with its position. We will advise on these issues as soon as possible.

## **UPCOMING WEBCASTS**

There have been no new webcast dates confirmed at this time. Please watch the KM website's "Latest Development" section for announcements concerning future webcasts.

## **SUN LIFE ANNUITY DECISION**

On June 4, 2010 the Ontario Superior Court of Justice granted an order related to the Former Employee group, which requires Nortel to assign certain annuity contracts to retirees who are listed as annuitants on the documentation at issue. Subsequent to Nortel's CCAA filing, trust issues arose surrounding who was the legal owner/beneficiary of certain annuity contracts. These annuities were purchased by Nortel to benefit individuals at the date of their retirement with funds the individuals had accumulated towards various deferred compensation/retirement arrangements during their years of employment. A motion to address this issue was heard by the Honourable Mr. Justice Morawetz in November 2009. A decision in favour of the affected retirees was released on June 4, 2010 and we expect Reasons for Decision to be released shortly.

## **STAY OF PROCEEDINGS / HARDSHIP APPLICATION PROCESS**

The Court granted an extension of Nortel's stay of proceedings in Canada until July 22, 2010. The Court also extended the Employee Hardship Process until July 22, 2010. Payments under this process are simply an advance on claims payments. Please note that Disabled Employees are not eligible for the Hardship Application Process. In the future, we may look at options to create a hardship process that would apply to Nortel's disabled employees. We will keep you apprised of developments.

## ONGOING ASSET SALES / RESOLUTION OF INTELLECTUAL PROPERTY ISSUES

Many of the major asset sale transactions have been completed, however, there are still transactions to be effected in the future. Determination of intellectual property issues and valuation of patents are underway, however, this is a lengthy process and there has been no determination yet as to what form a recovery of the IP value will take, but maximization of the benefit to all creditors is the goal. KM and financial advisors, Richter, continue to represent the disabled employee constituency on these issues. The Monitor is aware of our interests and is negotiating, in consultation with our groups, to protect and promote the interests of all Canadian stakeholders. You will be advised of developments.

### CONTACT INFORMATION

If you have an inquiry, or wish to speak to your Representative Counsel, please contact KM by email at [nortel@kmlaw.ca](mailto:nortel@kmlaw.ca) or by calling our toll free hotline at 1.866.777.6344. For more information, please visit our website at <http://www.koskieminsky.com/Case-Central>.

Disabled Employees who have questions or wish to join the CNELTD group should send an email to [SteeringCommittee@cneltd.info](mailto:SteeringCommittee@cneltd.info).

For access to a variety of information pertaining to Nortel's CCAA proceedings, including public Court documents and all Monitor's Reports, please visit the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel).

This Update has been sent to all Nortel LTD recipients, including those represented by the CAW-Canada, which has reviewed this Update. If you are a CAW member, you should direct any questions regarding this Update to the legal representative for the CAW - Barry Wadsworth, Associate Counsel, at (416) 495-3776 or by e-mail to [michelle.bondy@kaw.ca](mailto:michelle.bondy@kaw.ca).