

## **Nortel Networks – Allocation Trial – Summary of May 29<sup>th</sup>, 2014**

Day 10 of the allocation trial continued with the testimony of Paul Huffard. In addition, Angela Anderson, a fact witness for the UK pension claimants (UKPC), testified from the UK and James Malackowski, a fact witness for the EMEA Debtors testified from Toronto.

Mr. Huffard's cross-examination continued with the US Debtors questioning him regarding his characterization of assets and the allocation of asset in the sale of the UMTS business to Alcatel. The US Debtors also cross-examined Mr. Huffard regarding the transfer pricing methodology and certain considerations that were taken into account in his report.

Angela Anderson, a fact witness of the UKPC appeared via video from the United Kingdom. Ms. Anderson had served as the head of intellectual property (IP) for Europe, the Middle East and Africa (EMEA) from 2000 to 2004. She provided an affidavit in reply to Clive Allen, Brian McFadden and Angela de Wilton. Ms. Anderson's provided evidence regarding Nortel's patent policies, budget and the significant contributions made by employees in the United Kingdom. In addition, Ms. Anderson testified regarding the license rights that were granted to NNUK under the Research and Development Cost-sharing Agreement. The Canadian Monitor cross-examined Ms. Anderson regarding the structure and management of the IP department as well as the license rights of NNUK. The US Interests' cross examination covered the exclusive licenses and the structure of the IP department.

James Malackowski, an expert witness of the EMEA Debtors, testified in Toronto. Mr. Malackowski's expert opinion focuses on the IP that was included in the business sales and the residual patent sale. Specifically, Mr. Malackowski examined: how much of the consideration paid in each business sale is attributable to IP that was sold; what allocation and valuation methodologies are appropriate; and, how much of the proceeds relating to IP (from either the business sales or residual patent sale) should be allocated to each of the Canadian, US and EMEA Debtors under the two approaches of the EMEA Debtors: the contribution and license approaches. Mr. Malackowski concludes that the contribution approach (sales proceeds are allocated in proportion to the various Nortel entities' contributions towards the creation of the IP) is the best way to determine contributions towards the creation of IP in this case. He further concludes that the two residual profit splitting methods used by Nortel prior to insolvency should not be used in applying the Contribution Approach but proposes a look back period that uses the earliest relevant IP asset through to the latest relevant IP asset. Accordingly, Mr. Malackowski testified that the value of the IP should be allocated as follows: NNL to receive 39%; NNI to receive 43%; NNUK to receive 8.6%; NNSA to receive 7.5% and NNIR to receive 1%. In the alternative, Mr. Malackowski provides that although it is not his preferred method of allocation, under the license-based approach (allocating the portion of the sale proceeds attributable to IP in accordance with their fair market value at the date of sale of the license rights held by each entity) the value of the IP should be divided as follows: 11.4% to NNL; 53.9% to NNI; 13.7% to NNUK; 12.7% to NNSA; and 8.3% to NNIR. Mr. Malackowski was cross-examined by the UKPC regarding the look back period that was used in his report as well as the correlation between research and development spending with the amount of contribution to the patent portfolio. The Monitor cross-examined Mr. Malackowski very briefly regarding the methodology used in the contribution approach.

Mr. Malackowski will continue his testimony tomorrow with the Canadian Monitor continuing its cross-examination followed by the US interests. In addition, Richard Cooper, an EMEA Debtor expert witness will testify in Wilmington.