

Nortel Networks – Allocation Trial – Summary of May 30th, 2014

On day 11 of the allocation trial, the cross-examination of James Malackowski, an expert witness for the EMEA Debtors continued in Toronto. In addition, Richard Cooper, an expert witness for the EMEA Debtors, testified in Wilmington.

Mr. Malackowski's expert report focused on the intellectual property (IP) that was included in the business sales and the residual patent sale and the allocation under the two approaches of the EMEA Debtors: the contribution and license approaches. The Canadian Monitor continued its cross-examination of Mr. Malackowski with an examination of the factors and assumptions that were considered in his report. Specifically, the Canadian Monitor cross-examined Mr. Malackowski regarding the period of time used to measure contribution to the creation of the residual patents and business sale IP (the "look back period"), as compared to what is set out in the Master Research and Development Agreement (MRDA). The CCC cross-examined Mr. Malackowski regarding the valuation of IP within the business sales. Mr. Malackowski was also cross-examined by the US Debtors regarding the factors and assumptions taken into account under the contribution and license approaches, including the residual profit amounts.

Richard Cooper, an expert witness for the EMEA Debtors testified next in Wilmington. Mr. Cooper's expert report focused on the consistency of the positions of the EMEA Debtors and the Canadian Debtors with respect to: established transfer pricing and arm's length principles; prior representations by Nortel to various tax authorities; and the business arrangements among the Nortel entities from 2001 forward as confirmed by the Residual Profit Split Method (RPSM) and the MRDA. Mr. Cooper concludes that the EMEA Debtors Contribution Approach (sales proceeds are allocated in proportion to the various Nortel entities' contributions towards the creation of the IP) is consistent with established transfer pricing and arm's length principles; prior representations made to the various tax authorities; and, business arrangements among the Nortel entities from 2001 forward.

On Monday, the trial will continue with the cross-examination of Mr. Cooper. In addition, two expert witnesses for the UK pension claimants are expected to testify with Steven Felgran appearing in Wilmington and Coleman Bazelon appearing in Toronto.

Due to the availability of the courts next week, the allocation trial will only proceed on Monday, Thursday and Friday. The courts are further unavailable the week of June 9th and the allocation trial will resume on June 16th for the last two weeks of the evidentiary portion of the trial.