

## **Nortel Networks – Allocation Trial – Summary of June 2<sup>nd</sup>, 2014**

On day 12 of the allocation trial, the cross-examination of Dr. Richard Cooper, an expert witness for the EMEA Debtors continued in Wilmington. In addition, two expert witnesses testified on behalf of the UK pension claimants (UKPC) with Dr. Steven Felgran testifying in Wilmington and Dr. Coleman Bazelon testifying in Toronto.

Dr. 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 onwards. Dr. Cooper was cross-examined by the UKPC regarding the arm's length principles and the operation of the MRDA. The Canadian Debtors cross-examined Dr. Cooper regarding the rights provided to parties operating under an RPSM and the representations that were made to the tax authorities. The US Debtors cross-examined Dr. Cooper regarding the rights provided to parties under the MRDA in comparison to the previous cost sharing agreements.

Steven Felgran testified on behalf of the UKPC in Wilmington. Dr. Felgran provided an expert report regarding transfer pricing and found that: restructuring costs incurred between 2001 and 2008 should be included in calculating residual profits in Nortel's transfer pricing models; that NNUK bore a disproportionately high share of Nortel's restructuring costs; that Nortel's transfer pricing models failed to capture the true pension costs (resulting in a detriment to NNUK of \$517 to \$810 USD million); and that NNUK forfeited interest income on loans to NNL of approximately \$20 million per year and has a loan balance of around \$170 USD million due from NNL. His rebuttal report addressed allocation issues by examining whether the residual profit splitting method (RPSM) was an appropriate method from 2001 to 2008 and whether the RPSM is appropriate method for the allocation of the post-filing sales proceeds. Dr. Felgran concluded that the RPSM was not an appropriate method as it did not address insolvency and assumed an ongoing concern. Dr. Felgran was cross examined by the EMEA Debtors regarding negotiations with tax authorities. The Canadian Debtors cross-examined Dr. Felgran regarding the purpose of transfer pricing and its application to the allocation trial. In addition, Dr. Felgran was questioned regarding his role in reviewing legal documents from an economic perspective and his interpretation of the MRDA. Dr. Felgran was cross-examined by the US Debtors regarding the decision to use the RPSM and his opinion regarding why Nortel made certain tax decisions.

Dr. Coleman Bazelon testified in Toronto also on behalf of the UKPC. Dr. Bazelon provided an expert report opining on, from an economic perspective, the best way to allocate the sales proceeds from the residual patents and the line of business sales. Dr. Bazelon concluded that the pro rata allocation method was the most appropriate in this case after considering the economic underlying Nortel business model and other factors such as the nature of the sale of lines of business and residual patents. Dr. Bazelon did not provide the legal mechanism for carrying out the pro rata allocation in his report, however, at trial Dr. Bazelon provided a demonstrative during his examination in chief showing the mechanics of a pro rata distribution that provided a payment of guarantees before a pro rata distribution of the remainder of sales proceeds. The EMEA Debtors cross-examined Dr. Bazelon regarding the business sales and the sale of EMEA assets. Dr. Bazelon was cross-examined by the Canadian Debtors regarding the valuation of intellectual property as compared to the valuation of goodwill and customer relationships. The

CCC cross-examined Dr. Bazelon regarding the type of claims being made against the Canadian Debtor and the results of a distribution on these claims, especially with respect to the recovery the creditors of the US Debtors would recover.

Due to the availability of the courts this week, the allocation trial will continue Thursday and Friday of this week. On Thursday, Dr. Bazelon will be cross-examined by the parties from the US Interests. In addition, Phil Green is expected to testify on behalf of the Canadian Debtors in Wilmington. The CCC expert, Thomas Britven, is testifying on Friday in Wilmington.

The courts are further unavailable during the week of June 9<sup>th</sup> and the allocation trial will resume on June 16<sup>th</sup> for the last two week of the evidentiary portion of the trial.