

Nortel Networks –Allocation Trial –Summary of June 17th, 2014

The Canadian expert witnesses continued on day 16 of the allocation trial, with Dr. Timothy Reichert providing evidence in Toronto.

Dr. Timothy Reichert was retained by the Canadian Debtors and Monitor to provide evidence regarding transfer pricing and specifically to review and analyze the intercompany transfer pricing structure adopted by Nortel. In his report and examination in chief, Dr. Reichert discussed key transfer pricing principles. With respect to the arm's length principle, he opined that it does not directly address the allocation questions before the Courts as it is limited to tax applications. In addition, Dr. Reichert addresses the tax context of "ownership" finding that it does not imply a particular legal relationship but reflects entitlement to a defined income stream. With respect to licensing, Dr. Reichert opined that licensing is a legal arrangement or transaction type that is well accepted by tax authorities and that the residual profit splitting method is a transfer pricing methodology designed to compensate parties to various business arrangements, particularly licensing arrangements. He concluded that Nortel's licensing arrangements reflected the economic substance of the relationship and fully accorded with transfer pricing principles and the arm's length standard. Dr. Reichert was cross-examined by the US Debtors regarding the underlying assumptions to his report including with respect to the legal arrangements between the Nortel entities. The EMEA Debtors cross-examined Dr. Reichert regarding the statements he made with respect to transfer pricing principles, including the arm's length principle, and his conclusion with respect to the appropriateness of the licensing arrangements at Nortel. The UK pension claimants also cross-examined Dr. Reichert regarding the motivation of Nortel's transfer pricing regime and the implications of the master research and development agreement.

The US interests will start with their experts tomorrow, with Jeffrey Kinrich appearing in Wilmington. Mr. Kinrich will be the first of seven more expert witnesses before the evidentiary portion of the trial ends. Following the end of the evidentiary portion of the allocation trial, the parties will be preparing final briefs in writing and returning for closing arguments sometime in the fall. The date(s) of the closing oral arguments have not yet been provided.