

Nortel Networks –Allocation Trial –Summary of June 23rd, 2014

On the 20th day of the allocation trial, the courts heard from Professor John McConnell, who appeared on behalf of the Official Committee of Unsecured Creditors to the US Debtor (UCC) in Toronto.

Professor McConnell did not provide an initial report and is the only expert retained by the UCC. He was retained to provide a rebuttal report to the expert report of co-authored by Thomas Westbrook and Leif Clark on behalf of the UK pension claimants (UKPC). Professor McConnell's expert report argues that Westbrook and Clark incorrectly contend that the expectations of Nortel's creditors were based on the global, integrated operations of Nortel and not on any individual entity or territory within Nortel. Professor McConnell argues that economic evidence establishes that Nortel's debt holder did not expect recoveries based on a single pool approach and provides examples such as the considerations credit rating agencies make, representations made in the prospectus for issuance of bonds, etc. He concludes that if the principles from Westbrook and Clarks' report were to be applied "the immediate impact would be far-reaching" and provides examples such as the effects on senior credits. Professor McConnell was cross-examined by the UKPC regarding the scope of his review and the sources he used for his opinion. The CCC cross-examined Professor McConnell regarding the expectations of the bondholders with respect to the guarantees pre-filing and post-filing, as well as the impact this and other factors had on trading, pricing and holding volume at different points of time pre-filing and post-filing.

The courts also expected to hear from Robert Kilimnik, the only expert witness of the Ad Hoc Group of Bondholders and also an expert witness of the US Debtors, however, the US Interests decided not to call Mr. Kilimnik shortly before he was expected to appear.

At the end of the day, there were brief oral submissions with respect to post-petition interest, which the courts raised last week and requested written submissions on. The post-petition issue relates to whether the holders of Crossover Bond Claims are legally entitled in each jurisdiction to claim or receive any amounts under the relevant indentures above and beyond the outstanding principal debt and pre-petition interest; and if it is determined that they are entitled, what additional amounts such holders are entitled to claim and receive. The US Interests are opposed to the issue being dealt with by the courts now. The Canadian Debtors/Monitor, CCC, UKPC and Wilmington Trust all made submissions in support of the post-petition interest being dealt with now along with the allocation issue. The courts advised that the parties will receive a decision regarding whether the courts will address the post-petition issue tomorrow.

The last day of the evidentiary portion of the allocation trial is tomorrow with Lorraine Eden appearing in Wilmington on behalf of the US Debtors.

The parties are also awaiting instructions with respect to final argument briefs in writing and the dates for closing oral arguments and will advise once these are provided.