

Nortel Networks – Allocation Trial – Summary of May 15th, 2014

Day 4 of the Nortel allocation trial saw the continued examination of the Canadian parties' witnesses. Michael McCorkle, Donald Sproule, and Sharon Hamilton each took the stand.

Michael McCorkle is the former Assistant Treasurer of Nortel and held various finance roles in Nortel US (‘NNI’), Nortel UK (‘NNUK’), and Nortel Canada (‘NNL’). Mr. McCorkle testified to his career with Nortel and how global cash flow functioned in practice. Mr. McCorkle had provided an affidavit setting out the financial organization of Nortel including vendor financing, intercompany loans and cash management, liquidity, cash forecasts and testimony regarding the UK pension plan. The US Debtors questioned Mr. McCorkle about the level of independence that the Nortel subsidiaries possessed and the importance of the revenue that NNI brought to Nortel. A representative for the Europe, Middle East, and Asia Debtors (‘EMEA’) questioned Mr. McCorkle about the practice of intercompany loans. Counsel for the United Kingdom Pension Claimants (UKPC) focused their cross-examination on how Nortel’s Treasury department dealt with the deficit to the UK pension plan. Mr. McCorkle is also expected to be a witness in July at the EMEA and UK pension plan claims trial.

Donald Sproule provided testimony thereafter. Mr. Sproule is one of the court-appointed representatives appointed on behalf of former employees of the Canadian Debtor. Mr. Sproule had provided an affidavit that discussed the compensation claims of former Canadian Nortel employees including claims for lost benefits under the Non-Registered Pension Plans of approximately \$268 million; claims for lost Non-Pension Benefits of approximately \$631 million; base severance claims of approximately \$164 million; and, patent award claims for approximately \$285,000. In addition Mr. Sproule provided testimony regarding the pension deficit of approximately \$2 billion and the pension reductions across Canada ranging from 25% to 43%. The Canadian parties led testimony as to Mr. Sproule’s history with Nortel and its predecessor Bell Northern Research. Mr. Sproule was also questioned regarding his knowledge of the claims of other creditors against the Canadian Debtors and what that meant for former employees. He testified that in addition to the \$3 billion claims of the former Canadian employees, there were claims from US estate of \$2 billion; bondholder claims of \$4 billion US (also guaranteed by NNI); and, EMEA and UK pension claims of \$800 million into Canada that together amounted to approximately \$10 billion. Mr. Sproule testified that as a result of these claims from other Nortel estates and creditors any recovery by the Canadian estate would result in recoveries for creditors of the US and EMEA estates also, including bondholders and potentially the UK pension fund. Mr. Sproule was briefly cross-examined by the US Debtors regarding his knowledge of the allocation issues.

Finally, Sharon Hamilton, a representative of the court-appointed Monitor, Ernst & Young, took the stand. Ms. Hamilton is an insolvency restructuring professional and oversaw much of the sale of Nortel’s assets. Ms. Hamilton provided an affidavit detailing the sales of the lines of businesses, the sale of the residual patents to Rockstar and the negotiations that took place with respect to these sales. Ms. Hamilton confirmed Mr. Sproule’s testimony regarding the claims against the Canadian Debtor and the position of the Monitor with respect to NNL’s ownership of the majority of patents in the Rockstar sale. Counsel for the US Debtors extensively cross-examined Ms. Hamilton about the ownership of IP, a previous Nortel plan to create a patent licensing business rather than selling the IP (a plan that was abandoned) and the duty of the Monitor to the court. Ms. Hamilton confirmed the Monitor’s position regarding ownership of

patents and provided the court with testimony regarding the Monitor's role in ensuring the best result for creditors was obtained in the sale of assets. Ms. Hamilton was asked by Judge Gross to identify the evidence on which the Monitor relied to support the position that all the intellectual property assets belonged to the Nortel Canadian parent company, NNL. She indicated that the key document was Nortel's Master Research and Development Agreement (MRDA), which gave NNL ownership of all Nortel Networks Technology including patents, and additionally that the patents themselves were registered in the name of NNL. Ms. Hamilton also acknowledged that given the \$2 billion Nortel US (NNI) claim against the Canadian estate and the \$4 billion cross-guaranteed bondholder claim, the US Nortel estate and its main creditors would obtain a significant recovery under the Monitor's allocation theory.

Due to some scheduling difficulties and Victoria Day, the allocation trial will resume on Tuesday May 20th with the examination of the last two witnesses of the Canadian group: Paviter Binning and Gordon Davies. In addition, Walter Henderson and Chris Ricaurte will be providing testimony on behalf of the US interests.