

Nortel Networks – Allocation Trial – Summary of May 21st, 2014

The allocation trial continued today for the sixth day with two witnesses being deposed on behalf of the US interests and one on behalf of the EMEA Debtors.

Michael Orlando testified first in Toronto. Mr. Orlando had been a senior tax associate and later the Vice President of Tax. Mr. Orlando's affidavit pertained to transfer pricing and advanced pricing agreement negotiations with the tax regulators; the transfer pricing policy implemented through the Master Research and Development Agreement (MRDA) and the ownership of patents. The EMEA Debtors questioned Mr. Orlando regarding transfer pricing adjustments and the allocation of proceeds from a pre-filing sale of one of Nortel's businesses. The UKPC cross-examined Mr. Orlando regarding the purpose of the transfer pricing mechanism embodied in the MRDA and whether it had been accepted by tax authorities. The Canadian Monitor questioned Mr. Orlando regarding his lack of involvement in developing the MRDA and the representations made to tax authorities during the negotiation of the advanced pricing agreements.

John Ray, testifying in Wilmington on behalf of the US interests testified next. Mr. Ray is the Principle Officer of the US subsidiary (NNI) and has been in this role since December 2009. His affidavit summarized post-filing events and spoke to the role of the US Debtors and their importance as a revenue generator. Mr. Ray also provided evidence regarding a patent licencing business (IPCo) which the parties considered, but which never materialized. The US Debtors introduced Mr. Ray with a brief in-chief regarding the options for the residual intellectual property that was sold separately from the lines of business, including through IPCo. The EMEA Debtors questioned Mr. Ray with respect to the consequences of the US position for EMEA Debtors. Mr. Ray was extensively cross-examined by the Canadian Monitor regarding his employment history and the fact that he started in his position after all the business sales had been completed save for two. It was put to him that his role primarily was in transitional services for the business sales. Mr. Ray was then cross-examined regarding the IPCo business and the decision by the parties to not pursue this business model but instead to sell the patents in a stalking horse bid. The Monitor also questioned Mr. Ray regarding the claims within the US and the \$2 billion USD claim into Canada by NNI and the \$4 billion USD claim by the Ad Hoc Bondholders. The CCC cross-examined Mr. Ray also regarding the claims the US interests had against the Canadian Debtors. Mr. Ray agreed that in the event that the Canadian ownership position was adopted by the courts, the US interests would receive a significant recovery.

Philippe Albert-Lebrun testified last as the first witness on behalf of the EMEA Debtors. Mr. Lebrun held various roles in Treasury including as Financial Controller of the French subsidiary and EMEA. Mr. Lebrun provided evidence regarding transfer pricing and the meaning of the MRDA to the French entity including that his belief that the French entity retained a form of entrepreneurial right to Nortel's IP. Mr. Lebrun was cross-examined on his involvement in drafting or applying the MRDA and the meaning of 'entrepreneurial right' by the Canadian Monitor.

The courts expect to hear from Simon Brueckheimer (testifying in Toronto) and Peter Newcombe (testifying in Wilmington) on behalf of the EMEA Debtors and the UKPC tomorrow. In addition, Andrew Jeffries is expected to testify in Wilmington on behalf of the UKPC.

Friday is reserved for the continuation of any fact witness that is not completed tomorrow and for any motions relating to confidentiality. Monday is a public holiday in the US and therefore the parties will be returning to court on Tuesday, May 27th.