

## **Nortel Networks – Allocation Trial – Summary of May 28<sup>th</sup>, 2014**

Two fact witnesses and one expert witness testified on day nine of the allocation trial. The fact witnesses included Mark Weisz (on behalf of the US interests) and Geoffrey Hall (on behalf of the UK pension claimants). In addition, Paul Huffard, the first expert witness testified on behalf of the EMEA Debtors.

Mark Weisz worked at Nortel in various positions in tax, including as Vice President of Tax, from 1997 to 2007. Mr. Weisz's affidavit described his understanding of the Master Research and Development Agreement (MRDA) and negotiations he participated in for an Advanced Pricing Agreement (APA) with the tax authorities. The EMEA Debtors cross-examined Mr. Weisz regarding the sale of the UMTS business and the allocation of the proceeds from this sale. The UK pension claimants (UKPC) cross-examined Mr. Weisz on the purpose of the MRDA and certain transfer pricing matters. The Canadian Monitor cross-examined Mr. Weisz regarding his understanding of the MRDA and specifically of "economic ownership". Mr. Weisz was also asked about the treatment of profits and losses and the allocation of proceeds of businesses sales pre-filing.

Geoffrey Hall testified next on behalf of the UKPC in Toronto. Mr. Hall served in a variety of research and development, management and engineering roles, primarily in Maidenhead, including as Chief Technology Officer for the EMEA region. Mr. Hall's affidavit described the global nature of Nortel's organization but highlighted the headcount and contributions of the UK and Europe to the patent portfolio and customer relationships. Mr. Hall was cross-examined by the Canadian Monitor regarding the involvement of research and development employees in customer relations. In addition, Mr. Hall was questioned regarding the residual patent portfolio.

The first expert witness testified today, with Paul Huffard appearing on behalf of the EMEA Debtors in Wilmington. Mr. Huffard provided an expert report regarding valuation. He evaluated the business sales and the residual patent sale based on three classes of assets: tangible assets (i.e. inventory, real estate, etc.); intellectual property; and, a residual category including customer-related assets and goodwill not otherwise attributable to intellectual property. With respect to the assets attributable to intellectual property, Mr. Huffard allocated the sales proceeds according to two approaches including the "Contribution Approach" (EMEA's position that the allocation of sales proceeds should be divided among the Selling Debtors in accordance with their relative contribution to research and development) and the "License Approach" (allocating according to the relative fair market value of the license rights to the intellectual property held by each of those entities as of the date of the asset sales). Mr. Huffard allocated tangible assets based on the value of the tangible asset in each business sale to the selling debtor and customer-related assets and goodwill were allocated according to the relative percentage of global historic revenue for the fiscal year ending December, 31, 2008. Under the Contribution Approach, Mr. Huffard provides that EMEA should receive 18.2% of the sales proceeds, the Canadian Debtors should receive 31.9%, and the US Debtors should receive 49.9%. Under the License Approach, the EMEA Debtors would receive 30.9% of the sales proceeds, the Canadian Debtors would receive 11.5% and the US Debtors would receive 57.7%. Mr. Huffard was examined in-chief by the EMEA Debtors and emphasized the importance of valuating the customer related assets and goodwill. The Canadian Debtors cross-examined Mr. Huffard regarding allocation of amounts between categories and the asset that were under the classes of assets. In addition, Mr. Huffard was cross-examined regarding the importance of intellectual property. The CCC cross-examined

Mr. Huffard regarding the allocation methodology used in the Alcatel transaction as opposed to the allocation methodology proposed by Mr. Huffard.

Mr. Huffard will continue his testimony tomorrow. In addition, James Malackowski, an expert witness for the EMEA Debtors, and Coleman Bazelon, an expert of the UKPC, are testifying in Toronto. Angela Andersen, a fact witness for the UKPC is also expected to testify via video from the United Kingdom.