

# PENSIONERS AND FORMER EMPLOYEES NEWS BULLETIN

THIS BULLETIN PROVIDES A WEEKLY SUMMARY  
OF NORTEL'S CCAA PROCEEDINGS

THIS NEWS UPDATE IS PREPARED BY KOSKIE MINSKY LLP (KM)  
IN THEIR CAPACITY AS REPRESENTATIVE COUNSEL  
TO ALL PENSIONERS AND FORMER EMPLOYEES OF NORTEL

## OVERVIEW

On January 14, 2009, Nortel Networks Corporation and several of its affiliated companies ("Nortel") were granted protection from their creditors under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an Order of the Honourable Justice Morawetz. Ernst & Young was appointed as Monitor of Nortel's CCAA proceedings.

On May 21, 2009, the Ontario Superior Court of Justice (Commercial List) appointed KM as Representative Counsel to all pensioners and former employees of Nortel, unless an individual is specifically excepted or chooses to opt out of representation by KM. The Court also appointed three representatives, Donald Sproule, David Archibald and Michael Campbell (the "Representatives"), to act as representatives for all Pensioners and Former Employees of Nortel.

## RECENT UPDATES

**June 18, 2009**

### **Court's Decision Released on Termination, Severance and Benefit Continuation Motion**

**Motion dismissed:** On June 18, 2009, the Court released an endorsement which dismissed the motions brought by KM and the CAW-Canada on April 21, 2009. In these motions, KM sought an order that Nortel make payment of amounts owing to Former Employees under the Ontario *Employment Standards Act, 2000* ("ESA") (and other similar provincial statutes) and that the company reinstate other termination and related payments owed to Former Employees that Nortel stopped paying January 14, 2009. Counsel for the CAW-Canada brought a similar motion for termination payments owed in accordance with the collective agreement existing between CAW-Canada and Nortel. In his decision, Justice Morawetz held that ordering Nortel to make payment of these amounts would frustrate the objectives of the CCAA and would be to the detriment of all stakeholders. The endorsement can be viewed on KM's website. It is under appeal by both KM and the CAW.

**Hardship cases:** While Justice Morawetz's decision of June 18 dismisses KM's motion for the reinstatement of certain payments, the Endorsement does recognize that Nortel's cessation of payment of its ESA and other benefit obligations has severely impacted a number of Former Employees. The judge suggests the establishment of a system that will allow retirees and terminated employees who have been severely impacted by Nortel's CCAA proceedings to receive a partial early distribution of the amounts they will be entitled to claim against Nortel.

KM is working with the Monitor to determine a protocol for analyzing hardship cases. Once the procedure has been finalized, KM will provide Former Employees with instructions for the application process.

**June 26, 2009**

**KM Seeks Leave to Appeal to the Court of Appeal for Ontario**

On June 26, KM served a Notice of Motion for Leave to Appeal to the Court of Appeal for Ontario. KM is seeking leave to appeal Justice Morawetz's decision dated June 18, 2009, which provides that Nortel is not required to make payment of its obligations under the ESA. The decision also provides that Nortel is not required to reinstate other payments owing to Pensioners and Former Employees. KM has sought leave to appeal both aspects of this decision. If leave is granted, KM will seek to have the appeal heard on an expedited basis. The CAW-Canada is also seeking leave to appeal the decision.

**June 29, 2009**

**Joint Hearing between Canadian CCAA Court and U.S. Bankruptcy Court**

**Interim Funding and Settlement Agreement (IFSA):** On June 29, the judges in both courts (Justice Morawetz in Toronto and Justice Gross in Delaware) approved an agreement that will ensure \$157M in new funding flows from Nortel's US subsidiary Nortel Networks Inc., to Nortel's Canadian parent company, Nortel Networks Limited. The funding will permit Canadian operations to continue through to the end of September, 2009. This arrangement replaces, for now and for CCAA purposes, the "transfer pricing system" (TPS) within Nortel. The TPS was designed to rebalance the internal disparity at Nortel between the Canadian company's expenditures, especially on R&D, which the whole company benefited from, and the US subsidiary's revenues. Those payments under the TPS were stopped when Nortel filed for court protection on January 14, 2009.

**Bid Process and Asset Sale Agreement with Nokia Siemens Network:** The Courts in both Canada and Delaware also approved the bid and sale process agreed to between Nortel and Nokia Siemens, with some adjustments which resulted from creditors' objections. Nokia Siemens and Nortel had agreed to a "stalking horse" process whereby Nokia Siemens' agreement to purchase the majority of the CDMA and LTE business from Nortel for \$650 million will be tested in an auction process. Other entities will be permitted to submit bids for the same business and Nortel will choose the winning bid, subject to certain parameters and court approval. New bids are due by July 21<sup>st</sup>, and the auction will be held in the US on July 24, 2009. A request from a bondholder group – Matlin Patterson, who contends that they will put together a bid which will resemble a restructuring plan – to delay the process for two weeks was rejected.

**June 30, 2009**

**Clarification of KM's Representation Order**

On June 30, KM attended at a Court appearance on behalf of Pensioners and Former Employees to discuss outstanding issues surrounding KM's Representation Order for Pensioners and Former Employees.

The official Representation Order has now been approved and signed by Judge Morawetz. It has been confirmed that KM represents all Pensioners and Former Employees of Nortel, with certain exceptions, including those individuals who opt out of this representation. KM will not be representing employees who are still working at Nortel.

**June 30, 2009**

**Representing Nortel Employees on Long-Term Disability**

A group of Nortel employees have formed a committee to protect the interests of Nortel employees who currently receive long-term disability benefit payments from Nortel. For more information, please contact Sue Kennedy, Group Leader of the Canadian Nortel Employees on Long-Term Disability (CNELTD), by email at [kennedy.robinson@rogers.com](mailto:kennedy.robinson@rogers.com).

Representative Counsel has not yet been appointed for Nortel employees on LTD. KM is working with counsel to the Monitor and Nortel on a consent Order to act as Representative Counsel for these individuals.

## **Motion for Representative Counsel for Active Employees to be heard July 9, 2009**

Representative Counsel has not been appointed for active employees of Nortel. Nelligan O'Brien Payne LLP and Shibley Righton LLP will bring a motion for these representation rights on July 9, 2009.

## **Plan and Member Information and Data**

As part of KM's Representation Order, Nortel is required to provide KM with contact information for all Pensioners and Former Employees who are represented by KM. This information will be used by KM only for the purposes of Nortel's CCAA proceedings. KM also is entitled to documents and data relating to the claims of all Pensioners and Former Employees, including various pension, benefit, transitional retirement allowance and severance and termination payments. KM has received volumes of information from Nortel and is in the process of reviewing and analyzing it.

While the transmission of Pensioner and Former Employee contact information has been delayed by confidentiality issues, we anticipate receiving aggregate pension plan member information in electronic format this week. This database will allow KM and the NRPC to reach out to Pensioners and Former Employees in electronic form.

## **KM to Meet with Nortel and the Monitor on July 6, 2009**

KM has scheduled a meeting with representatives from Nortel and the Monitor for July 6, 2009, to discuss a number of issues surrounding the funding of Pensioner, Former Employee and LTD Employee benefits. At this meeting, Nortel will be providing KM with long-awaited information surrounding:

- The structure and funding level of Nortel's Health and Welfare Trust;
- The types of benefits that are paid through Nortel's Health and Welfare Trust;
- The method by which Nortel funds its LTD benefit payments; and
- The structure and funding of other annuities and benefits that have been promised to Pensioners and Former Employees.

We are very pleased that the Monitor has facilitated KM's request to schedule a meeting to address these important issues. KM will provide an update to Pensioners and Former Employees after this meeting.

## **KM / NRPC to Meet with Financial Services Commission of Ontario (FSCO)**

We are pleased to announce that David Gordon, Deputy Superintendent of Pensions for FSCO, has agreed to hold a meeting with the NRPC to discuss the short-term issues that are facing Nortel's pension plans. At this meeting, the NRPC will commence a dialogue with FSCO as to how to best approach the issues that exist with Nortel's pension plans. The NRPC also seek to work with FSCO and the Government to create a solution for Nortel's pension plan issues. That meeting is tentatively scheduled for July 9, 2009.

## **RSM Richter – Pensioners and Former Employees' Business Advisors**

The Representatives and KM have retained RSM Richter Corporation ("Richter") as financial advisors to Pensioners and Former Employees in Nortel's CCAA Proceedings. Richter has extensive experience in corporate insolvencies and restructurings, and will provide KM, Pensioners and Former Employees with analysis on a number of business issues, including:

- The Commercial Reasonableness of Nortel's Proposed Asset Sales;
- All Proposed Funding Agreements and other Transactions involving Nortel;

- Status of Nortel's Cash Flow and Financial Projections; and
- Any other business aspects for which KM and Pensioner and Former Employees may require expert business advice.

A small group of the NRPC is working with Richter and KM on the financial considerations in Nortel's CCAA proceedings.

### **The Segal Company – Pensioners and Former Employees' Actuarial Advisors**

The Representatives and KM have retained Segal Company Limited ("Segal Company") to act as actuarial advisors to all Pensioners and Former Employees in Nortel's CCAA Proceedings. Segal will be analyzing a number of issues such as:

- Review of Nortel's Registered Pension Plans;
- Review of Nortel's Non-Registered Pension Plans and Severance Pay Obligations; and
- Review of Nortel's Retiree Life and Health Plans.

Segal Company is working with KM and the NRPC to discuss creative solutions for Nortel's pension plan issues. In the event that Nortel establishes a Claims Process, Segal Company will be involved in the analysis and determination of Pensioners and Former Employees' claims against Nortel's assets.

### **The Future Process for KM and for Pensioners and Former Employees**

While it is an uncertain and frustrating time, right now there is no positive action that is required to be taken by individual Pensioners and Former Employees. You need not provide KM with any personal documentation, as this will be obtained directly from Nortel and the Monitor. If you have a specific concern to be addressed, please do not hesitate to contact KM.

KM is working hard to advance the interests of the Pensioners and Former Employees. RSM Richter will be providing KM and the Representatives with their analysis of each proposed transaction announced by Nortel, and KM will attend at all scheduled motions to object and/or support the motions accordingly. KM and the Representatives are working with Segal Company to generate creative solutions for Pensioners and Former Employees' pension and health benefit issues. When the time is appropriate, KM will work with Segal Company to file your Proof of Claim in any Claims Process that may be established by Nortel. We will be in contact with you when this time arrives.

If you would like to join the NRPC's efforts to influence the Government's level of involvement in Nortel's pension solutions, or in their efforts to achieve legislative reform in favour of employees, former employees and pensioners, please contact the NRPC.

### **The CCAA Claims Process**

While it is still too early for creditors to file a claim against Nortel, it is never too early to be aware of the CCAA claims procedure that may occur in the future. It is not a certainty that Nortel will establish a claims procedure, however, companies typically do establish something called a Claims Process when they are involved in CCAA proceedings. It is during a Claims Process that individual creditors (including Pensioners and Former Employees) will be required to file a Proof of Claim with the Court in respect of amounts they are owed by Nortel. If Nortel chooses to establish a Claims Process, the company first will be required to obtain Court approval of a claims procedure, and a "Claims Bar Date" will be established. All creditors will be required to file their claim with Nortel before the Claims Bar Date.

When the time comes to file creditor claims with Nortel, KM will be responsible for filing claims on behalf of all Pensioners and Former Employees. Individual Pensioners and Former Employees do not need to

submit documentation to KM. KM will obtain all necessary information from the company and the Monitor, including each individual's entitlement to a basic pension, supplementary pension, health and medical benefits, transitional retirement allowance benefits (and equivalent payment owed to unionized employees), termination and severance pay and all other benefits and claims you may be owed. We will confirm amounts with you before submitting your claim.

The Segal Company has been retained as KM's actuarial advisor in Nortel's CCAA proceedings. The Segal Company will analyze all information provided to KM by Nortel and the Monitor, and will use this information to calculate a present day lump sum value for each Pensioner's or Former Employee's claim against Nortel. We will not submit your claim until you have confirmed with KM that the calculation is appropriate. You will have the opportunity to confirm with KM that the amounts included in your claim are correct. In the event the proper amounts have not been included, your claim will be adjusted.

Once all claims have been finalized and approved by each individual Pensioner or Former Employee, KM will submit an omnibus Proof of Claim to the Court on behalf of all Pensioner and Former Employees. Once KM has submitted its omnibus Proof of Claim, the calculations will be assessed by a number of parties and will be subject to Court approval. After all claims have been approved by the Court, Pensioners and Former Employees will receive a lump sum payment in respect of the value of the claim. This claim will likely be paid at some discounted rate, which is in proportion to payment received by all unsecured creditors of Nortel.

Establishing and administering a Claims Process is a lengthy procedure, which could take months or even years. For now, individuals are not required to submit any documents either to KM or the Court. When the time is appropriate, KM will file a claim on your behalf. We will be in contact with you at this point in time.

## **CONTACT INFORMATION**

For more information, please contact KM by email at [nortel@kmlaw.ca](mailto:nortel@kmlaw.ca) or by calling our toll free hotline at 1.866.777.6344. Please contact the NRPC by visiting their website at [www.nortelpensioners.ca](http://www.nortelpensioners.ca).

For access to all public Court documents, please visit the Monitor's website at: <http://documentcentre.eycan.com/Pages/Main.aspx?SID=89&Redirect=1>