

## **FREQUENTLY ASKED QUESTIONS – BENEFITS FUNDING SETTLEMENT AGREEMENT**

### **GENERAL**

#### **1. When will I receive the Notice Letter?**

Mailing to all individuals will be completed on or before February 16, 2009. If your last known address with the company is not current, you may not have received the mailing. In the event you have not received a Notice Letter, please contact the Monitor by telephone at (416) 943-4439 or 1-866-942-7177 or by fax at (416) 943-2808.

#### **2. How do I update my address so that I receive mailings in the future?**

All address and other changes (i.e. death notifications and power of attorneys), should be reported to two sources:

- (1) The Nortel HR Contact Center; and
- (2) Representative Counsel.

The Nortel HR Contact Center will update your address within the Nortel system and will notify other important services providers.

#### **Nortel HR Contact Center**

ESN: 355-9351, External: (919) 905-9351

Toll Free: 1-800-676-4636

Fax ESN: 355-9301/9302, External: (919) 905-9301/9302

Hours of Operation: Monday-Friday from 9:00 am to 5:00 pm ET

External Address:

Dept 7094

Mail Stop 570/02/0C2

PO Box 13010

4001 E. Chapel Hill-Nelson Hwy

Research Triangle Park, NC 27709-3010

#### **Representative Counsel**

Toll-Free Hotline: 1.866.777.6344

Email: nortel@kmlaw.ca.

#### **3. How can I get in contact with Representative Counsel for the CAW-Canada?**

You may contact Barry Wadsworth, at 1-800-268-5763 ext. 3776.

## CONTEXT

### **1. Is Nortel bankrupt?**

Nortel is insolvent, but it is not bankrupt. It is currently under the protection of the Court pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"). The CCAA is a federal statute which permits companies protection from their creditors while they try to rearrange or restructure their financial obligations. A company is not bankrupt until such an order has been made under the *Bankruptcy and Insolvency Act*. This has not occurred and may never occur for Nortel. However, it should be noted that Nortel is insolvent and winding up its affairs, even if it does not become bankrupt.

### **2. What does the CCAA allow Nortel to do?**

The CCAA is a broad and permissive statute which allows the Court in its discretion, within certain limits, to take such steps as are necessary to allow a company to restructure its financial obligations.

Nortel filed for protection under the CCAA on January 14, 2009. Paragraph 6 of the Initial Order (the first Court order providing creditor protection and establishing Nortel's authority to avoid its contractual obligations) permitted, but did not require Nortel to continue to make pension and benefits payments. Nortel made those payments through 2009 and, with this Settlement Agreement, will make them through 2010.

### **3. What is KM's role as Representative Counsel?**

The Representation Order issued by the Court establishes the role and mandate of KM as Representative Counsel. The Representation Orders are posted on KM's website at [www.kmlaw.ca](http://www.kmlaw.ca). KM provides legal advice and guidance to the four Court-appointed Representatives who provide instructions to counsel after seeking input from their constituencies. The Court Order gives the Representatives the authority to make decisions for the group they represent, including negotiating and signing agreements which bind their constituents, always subject to Court approval. Both the former employees' and the disabled employees' Representatives work through broadly representative committees.

### **4. Do the Representatives and Representative Counsel have a mandate to pursue claims against entities other than Nortel?**

The scope of the Representation Order includes all matters arising within the insolvency proceedings. If it were necessary and appropriate to bring a claim against a third party in order to best represent the interests of the constituency, we would.

### **5. What power does the judge have to override the objections of creditors?**

All major decisions within the insolvency proceedings are subject to Court approval. The CCAA Judge has discretion and authority to approve actions or agreements notwithstanding the objections of creditors, and make any order he considers appropriate in the circumstances.

## THE SETTLEMENT AGREEMENT

### 1. How does this settlement affect me?

The Settlement Agreement provides:

- for pensioners and their survivors, the continuation of medical, dental and life insurance benefits through December 31, 2010;
- for all defined benefit pension plan members, Nortel's continuation and current service funding of the pension plans until the end of September 2010;
- for eligible employees terminated prior to June 30, 2010 without severance pay, a lump sum payment of up to \$3000 as an advance against their claims under CCAA;
- for employees on long term disability, the continuation of disability income benefits and the continuation of medical, dental and life insurance benefits through December 31, 2010; and
- for those receiving survivor income and survivor transition benefits, the continuation of those payments through 2010.

The settlement provides that pension and Health and Welfare Trust (HWT) Claims will not enjoy priority status in the estate while under CCAA (see Question 11 of this FAQ regarding possible amendments to the *Bankruptcy and Insolvency Act*), provides for releases against certain parties (see Questions 15 and 17 of this FAQ) and provides that the Former Employees will withdraw their application for leave to appeal to the Supreme Court of Canada for the payment of statutory minimum termination and severance pay under the Ontario *Employment Standards Act* (or equivalent provincial legislation).

The terms of the Settlement Agreement and the Settlement Order, if approved by the Court on March 3, will apply to you.

### 2. What benefits are in this deal for the other parties to the Settlement Agreement?

An efficient and orderly ultimate distribution of Nortel's estate is in the interests of all stakeholders. Although the other creditors are not parties to the Settlement Agreement, it benefits them because it achieves the resolution of issues and avoids future litigation that would cause delays and create additional costs for all interested parties.

### 3. Is the Settlement Agreement the same thing as a Plan of Compromise or a Plan of Arrangement?

No. The Settlement Agreement is an interim funding arrangement which ensures that your health, dental, life insurance and income benefits will continue through 2010. The Settlement Agreement provides you with certainty and security of the continuation of your benefits through 2010.

A Plan of Compromise or Plan of Arrangement is a Plan put forward to the creditors of a company that is under CCAA protection. A Plan of Compromise or Plan of Arrangement is subject to a creditors' vote and then ultimately, to Court approval. The Settlement Agreement is not a Plan of Compromise or a Plan of Arrangement. There is no creditor vote on the Settlement Agreement – it is subject only to Court approval. An approval of the Settlement Agreement on March 3 does not preclude your constituency from voting on any Plan of Compromise or Plan of Arrangement that may be presented by Nortel in the future. Approval of the Settlement Agreement does not hinder the progression of other issues and negotiations pertaining to Nortel's CCAA proceedings. In fact, one purpose of the Settlement Agreement is to provide some breathing room and time for negotiations surrounding the future of your pensions, benefits and your claims against Nortel's estate. After the March 3 court hearing, KM and the court-

appointed Representatives will work to finalize the Compensation Claims Process and the allocation of the assets in Nortel's Health and Welfare Trust.

**4. Is this settlement fair?**

It is the view of the Representatives and Representative Counsel that this Settlement Agreement represents a fair and reasonable short-term solution for the provision of benefits to a large group of individuals who, for the most part, do not have any other source of income or ready ability to replace those benefits that they received from Nortel. Although the cessation of benefits and transfer of the Pension Plans is inevitable given that Nortel is insolvent and winding up its business, the terms of the Settlement Agreement will provide this group of people with certainty as to the time frame in which it will happen and advance notice of the transition. It also provides an advance priority payment on claims for the terminated group.

**5. What happens if there are changes to the Settlement Agreement and/or Settlement Order?**

At the March 3 hearing the Court may approve the Settlement Agreement and Order in their current form, or with amendments. The parties to the Settlement Agreement, which include the court-appointed Representatives and Representative Counsel, must agree to the amendments for the agreement to be modified. If there are amendments they will be posted on the Monitor's website. Amendments, if any, will bind you unless the Court orders otherwise.

**6. How was the \$57 million charge for benefits determined?**

It is an estimate of the cost of providing the benefits in the Settlement Agreement from January 1, 2010 through December 31, 2010. Nortel in its Press Release identified the value of the benefit payments as \$100 million, which included payments through 2009.

**7. What are the details of the employee incentive program (KEIP/KERP) announced on February 11, 2010?**

Please see the 37<sup>th</sup> Report of the Monitor, which outlines the details of the KERP /KEIP for 2010. This report can be accessed from the Nortel Documentation Repository at the Ernst & Young Inc. website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel).

**8. Why did we give up our right to object to the KERP / KEIP in the Settlement Agreement?**

The Canadian creditors' input on the KERP / KEIP payments is through the Monitor, who is involved in the review and assessment of the appropriateness of the payments. The Settlement Agreement provides that we will not object to the KERP / KEIP provided the Monitor is of the view that the payments are reasonable. We rely on the Monitor as a court-appointed officer to ensure that all incentive payments are reasonable and necessary. Please note that other creditors who also have significant economic interests in this process have not objected to such payments in the past, indicating a recognition that they are fair and reasonable in the circumstances.

Although certain news items recently have implied that the money for the bonus payments should be used instead to fund income for disabled employees, that is simply not an option. The majority of the monies to be paid in bonuses will come from the purchasers of Nortel's businesses and is not available for any other use.

**9. What does it mean that pensioners, former employees and disabled employees cannot be placed in a different "classification" than other creditors?**

If the company presents a Plan of Arrangement or Plan of Compromise, all unsecured creditors will be classified in the same group. You will still be entitled to vote on the Plan. It simply means that employees will not be placed in

a separate group for the purposes of the voting of the Plan and any ultimate distribution, and cannot be treated differentially from other creditors.

**10. What is the significance of the HWT and Pension Claims being unsecured claims/not being priority claims?**

They will receive the same proportionate distribution (no more, no less) as other unsecured claims in a Plan of Arrangement and in the ultimate distribution of Nortel's assets.

**11. If there is an amendment to bankruptcy legislation, will new amendments apply?**

Section H of the Settlement Agreement deals with the CCAA Plan or subsequent bankruptcy. Clause H.2 provides the following:

Notwithstanding anything else in this Settlement Agreement, including for greater certainty of paragraph G.2 hereof, in the event of a bankruptcy of Nortel, if there is an amendment to any provision of the *Bankruptcy and Insolvency Act* that changes the current, relative priorities of the claims against Nortel, no party is precluded by this Settlement Agreement from arguing the applicability or non-applicability of any such amendments in relation to any such claim.

This means that if the *Bankruptcy and Insolvency Act* is amended in a way that is beneficial to the pensioners, former employees or disabled constituents, nothing in the Settlement Agreement will preclude the Representatives or Representative Counsel from arguing that those new provisions will apply to Nortel's insolvency proceedings.

**12. It appears that clause H.2 is in conflict with other provisions of the Settlement Agreement. Which provision will prevail?**

Clause H.2 prevails. The statement “**notwithstanding anything else in the Settlement Agreement**” effectively gives clause H.2 priority over any other conflicting clauses.

**13. Is it possible that there will never be a bankruptcy?**

Yes. Nothing is certain. A CCAA proceeding can be concluded with a Plan. It is possible that there could be a small company remaining once all major assets have been sold, which would deal with outstanding matters.

**14. If Nortel remains in any form, will it be obligated to fund the pension plans?**

No. Nortel is going to relinquish control over the pension plans effective September 30, 2010 and even if a transitional Nortel entity remains for the purposes of dealing with outstanding matters, it will not be obligated to fund the pension plans.

**15. Why is the Supreme Court case being withdrawn?**

As part of the settlement the application for leave to appeal to the Supreme Court of Canada will be withdrawn. The settlement avoids uncertain and costly litigation at the Supreme Court in favour of a payout out of funds that is certain and payable in a reasonable time frame.

**16. Does the Settlement Agreement release fraud/misrepresentation claims?**

No. In accordance with the Settlement Agreement, any director of Nortel is not released from any matter referred to in subsection 5.1(2) of the CCAA. Subsection 5.1(2) of the CCAA provides:

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Further, the Settlement Agreement releases no one from claims for fraud.

**17. Is a fraud/misrepresentation claim going to be pursued?**

Claims for fraud or misrepresentation involve personal misconduct of a specific individual. A claim for fraud or misrepresentation will only be pursued if a valid claim against an individual exists, and this claim must be backed by evidence of personal misconduct. Representative Counsel will not pursue baseless litigation. If individuals are of the view that they have a valid fraud or misrepresentation claim, they should advise Representative Counsel immediately of the basis for such claim. Any individual is entitled to pursue a claim that they believe is worthwhile as an independent party at their own expense.

**18. When will the pension plans be wound up? What actuarial valuation will be used?**

If the proposed settlement is approved, Nortel would continue to administer the pension plans until September 30, 2010, after which time the administration of the plans would be transitioned to a new administrator appointed by the regulator. It will be up to the new administrator to determine when the plans will be wound up. An actuarial valuation will be prepared "as at" the wind up date. If you are receiving a pension, including a survivor pension, or start to receive one before September, you will receive your monthly pension payments in accordance with the pension plan until at least September 30, 2010, when Nortel stops administering the plans.

At some point in the future, your pension may be adjusted to reflect the funded status of the plan from which you receive your pension.

## QUESTIONS SPECIFIC TO FORMER EMPLOYEES WITH TERMINATION/SEVERANCE CLAIMS

### 1. How does this settlement affect me?

The Settlement Agreement establishes a termination fund from which you may receive a lump sum payment in advance of your claim (see Questions 2 and 4 for details). If you are a member of the defined benefit pension plan there may be other impacts arising from the provisions for transfer of the plan to an administrator on October 1, 2010.

SPECIFIC QUESTIONS REGARDING ANY DEFINED CONTRIBUTION OR DEFINED BENEFIT PENSION SHOULD BE DIRECTED TO MERCER AT 1-866-667-8358.

### 2. Will I get some of the termination fund?

You may be entitled to a termination payment if you fit within the eligibility requirements. If you are a former employee who, among other things, was terminated on or prior to June 30, 2010, you may be entitled to receive an initial lump sum payment of up to \$3000.

In accordance with paragraph B.3 of the Settlement Agreement, you are not eligible for a termination payment if:

1. You have been offered employment with a purchaser of Nortel's assets;
2. You have received or are entitled to receive any of the following payments:
  - a) Gross cumulative Annual Incentive Plan payments from and after October 1, 2009 of \$3,000 or more;
  - b) A Key Employee Incentive Plan or Key Employee Retention Plan payment in 2009; or
  - c) Payment from any Court approved equivalent 2010 plan.

We are actively pursuing the possibility of rolling any eligible amounts directly to RRSPs for tax effective treatment. The amounts are otherwise taxable.

Please note that if you are terminated after June 30, 2010 the payment will depend on whether any funds remain.

### 3. If I am eligible, how much will I receive? Does the amount differ based on individual circumstances?

The amount you will receive will be a set amount not related to individual circumstances but to the number of eligible former employees. That amount depends on the number of eligible individuals. The number of eligible individuals cannot likely be determined before June 30, 2010. The maximum permitted for each individual will be calculated once the total eligible group is known.

### 4. When will I get my termination payment from the \$4.2M termination fund?

Payment will not be made until the number of eligible individuals has been determined, which will not happen until after June 30, 2010. Only eligible employees will be entitled to a termination payment. In accordance with paragraph B.3 of the Settlement Agreement, you are not eligible for a termination payment if:

1. You have been offered employment with a purchaser of Nortel's assets;
2. You have received or are entitled to receive any of the following payments:

- a) Gross cumulative Annual Incentive Plan payments from and after October 1, 2009 of \$3,000 or more;
- b) A Key Employee Incentive Plan or Key Employee Retention Plan payment in 2009; or
- c) Payment from any Court approved equivalent 2010 plan.

It is most likely that the payment would be made to the account where your pay cheque was directed to when you were an active employee of Nortel. If your information has changed, please contact Nortel at the following number:

ESN: 355-9351, External: (919) 905-9351

Toll Free: 1-800-676-4636

Fax ESN: 355-9301/9302, External: (919) 905-9301/9302

Hours of Operation: Monday-Friday from 9:00 am to 5:00 pm ET

Or, you can mail your changes to Nortel at:

External Address:

Dept 7094

Mail Stop 570/02/0C2

PO Box 13010

4001 E. Chapel Hill-Nelson Hwy

Research Triangle Park, NC 27709-3010

**5. If I receive money from the \$4.2 million termination fund, how will it affect my claim?**

If you receive money from the \$4.2 million termination fund, your termination pay claim will be reduced by the amount you receive. For example, if Nortel owes you \$25,000 in termination pay, and you receive \$3,000 from the termination fund, your claim against Nortel in the claims process will be \$22,000. The \$3000 payment is a priority payment of part of your claim.

**6. Can I still apply for the Hardship Program?**

Yes – however, any termination payment will be considered family income when received and could affect your eligibility for the hardship program.



## **PENSIONERS**

### **1. How does the Settlement Agreement affect me?**

Rather than ending on March 31, 2010, your medical, dental and life benefits will continue through 2010. Your medical and dental claims must be submitted by February 28, 2011. Also, Nortel has agreed to continue contributing and administering its pension plans until September 30, 2010. The status of the plan and the effect on benefits after that date is not known.

### **2. Why will the pension plan be wound up in September if the company is still operating?**

The Company is winding up its operations and cannot continue to administer the pension plans indefinitely. An orderly transfer of the responsibility to operate the plans will occur on September 30, 2010. One of the factors dictating the timing is the triennial valuation of the plans which must be filed with the Regulator by September 30, 2010. It will require significantly greater deficit funding payments which Nortel does not have the ability to pay.

### **3. Will the company continue to make its contributions into the pension plan?**

The company will continue to make current service contributions into the pension plans until September 30, 2010. Payment of these contributions is supported by a charge against Nortel's assets. Special payments, which are payments that fund the deficit in the pension plan, will stop being paid as of March 31, 2010.

### **4. Will my pension be reduced? When?**

Nortel will stop contributing and administering its pension plans on September 30, 2010. The status of the plan after that date is not known. It is possible that benefits will be reduced after that date.

### **5. If I am receiving a survivor pension, does the Settlement Agreement state that my survivor pension will stop on December 31, 2010?**

No. It is important to understand the difference between a survivor pension vs. a survivor income benefit and/or a survivor transition benefit.

A survivor pension is a payment that you are entitled to under the terms of the pension plans, as the spouse of a deceased pensioner. Payment is made from the pension fund. Survivor pensions will continue in the same way as normal pensions, and you will continue to receive these amounts at 100% until September 30, 2010. Nortel will stop administering its pension plans on September 30, 2010. The status of the plans after that date is not known. It is possible that your survivor pension benefits will be reduced after that date.

"Survivor income benefits" and "survivor transition benefits" are not benefits paid under the pension plans and are not paid from the pension fund. Rather, they are benefits that are paid either by Nortel directly, or through the Health and Welfare Trust. These benefits will be paid in full by Nortel until December 31, 2010. After that date, you will stop receiving these payments. You will be entitled to a distribution from the Health and Welfare Trust and will have a claim against Nortel for the value of your future benefits. Your Representative Counsel will file these claims on your behalf.

**6. I am currently receiving my pension. Will I be able to take out the commuted value of my pension?**

SPECIFIC QUESTIONS REGARDING COMMUTED VALUE OF ANY PENSION SHOULD BE DIRECTED TO MERCER AT 1-866- 667-8358.

**7. Will I get the remainder of my commuted value? When?**

That will depend on the ultimate resolution of the pension plan obligations.

**8. How do I know if I have a claim against the Health and Welfare Trust?**

There has been no claims process established yet for employment-based claims. However, the HWT will be dealt with outside the claims process. Representative Counsel is involved in developing and implementing a claims process, which we expect to be completed in the coming months. If you currently receive income benefits from the HWT, or are a pensioner with life insurance benefits, then you will have a claim on the assets of the trust. We are currently in discussions about the appropriate allocation of the HWT assets, and as soon as there is a proposal to be put before the Court for approval, you will be notified.

**9. Is KM, the Monitor or anyone else looking into options for replacement medical benefits for the period past December 31, 2010?**

The Representatives, Representative Counsel and their advisors are exploring options to provide medical benefits in the future. We are at the beginning stages of this process and have not yet determined the process through which we will evaluate individual input.

The court-appointed Representatives and Representative Counsel must take into account the collective interests of many individuals, and must balance these interests as best as is possible. The aim is to design a plan that is (a) affordable for as many individuals as possible; (b) feasible, given the amount of funds available to fund a replacement plan; and (c) as beneficial to the affected individuals as is possible.

Before any replacement benefit plan is decided upon and ultimately finalized, it will be necessary to seek and obtain court approval. Individuals entitled to participate in the replacement plan will be given ample notice of all important stages in this process.

**10. What life insurance coverage do we have? Is it insured?**

Life insurance coverage and benefits remain unchanged until December 31, 2010. Please contact Sun Life with specific inquiries about your life insurance.

## **OPPOSITION**

### **1. Do I need counsel if I want to oppose the settlement? What information will be available to them? Why do I have to pay them?**

If you wish to oppose the Settlement Agreement, you can obtain the requisite Notice of Appearance from the Monitor's website. Completed Notice of Appearance forms must be received by the Monitor and Monitor's counsel by March 1, 2010 at 10:30 a.m.. The Monitor will report your opposition to the Court if it has not been withdrawn before the hearing on March 3. Court-appointed Representative Counsel offers efficiency into the process and provides all individuals, some of whom would be otherwise unable to retain counsel, with fair representation in these proceedings. For this reason, Representative Counsel is paid from the estate. If you wish to pursue your interests on your own, you must pay your own legal fees.

Opposition to the Settlement Agreement will not entitle you to "opt out" of the Agreement. The judge will hear objections and then make a decision to approve the Agreement or not. If the Agreement is approved, it will be binding on everyone.

### **2. How will my opposition be heard?**

Before your opposition to the Settlement Agreement is heard, the Monitor / Representative Counsel / the Monitor's Counsel may contact you to discuss your Notice of Appearance. The Monitor is obliged to report your opposition, if not withdrawn, to the Service List and Settlement parties. Should you wish to pursue an opposition and appear in Court, you may file a Notice, court materials and make oral submissions.

### **3. How can I get information to help me understand this Settlement?**

You can obtain a package containing further details on the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel).

The Representatives and Representative Counsel will hold a webcast information session on February 23, 2010 to explain the agreement and its impact. A dial-in audio-only option will be available to individuals who do not have internet access. You can register for this service by leaving a voice message on our hotline with your name and telephone number.