

## FEBRUARY 14, 2013 WEBINAR QUESTIONS

Based on the questions that were received by the NRPC and Koskie Minsky before and during the webinar on February 14<sup>th</sup>, 2013, the following document has been created for the benefit of all who may have similar questions.

### **A. Allocation of Assets**

- 1. What was the position taken on behalf of former employees and disabled employees and what was the position of the other parties in the mediation?**

*The mediation was a confidential negotiation among the stakeholders and we are therefore not able to discuss the details of the positions of the different parties.*

- 2. Why was the offer at the mediation not accepted? Is it possible the offer at the mediation was better than what the result may be through litigation?**

*All discussions and proposal tabled in the mediation are confidential and therefore details are not available, but we can state that there was no proposal that all parties agreed to.*

- 3. Why couldn't the parties be forced to accept the offers at the mediation?**

*Mediation is a form of alternative dispute resolution by which parties through the guidance of a third party (the mediator) attempt to negotiate a settlement. While mediators use different techniques to reach an agreement, a party cannot be forced to accept a proposal*

- 4. Why couldn't the former and disabled employees vote on the proposals put forward during the mediation?**

*Mediations are meant to be confidential, efficient and cost saving methods by which parties attempt to come to a compromise. Disclosure of the mediation proposals would have violated the required confidentiality of the mediation.*

- 5. Why did the mediator organize the all party meeting of Jan14-18 if afterwards we find out that some parties (retirees and bondholders) were still that far apart? How could that meeting be successful?**

*During April to October 2012, Chief Justice Winkler met with the parties and requested that proposals resolving the allocation dispute be submitted. After reviewing the submissions, Chief Justice Winkler scheduled the mediation sessions and requested all parties to attend.*

*The mediation that started January 14th was extended twice because Chief Justice Winkler believed that progress was being made. We are not able to provide any further information about the mediation because of its confidential process other than to speculate that Chief Justice Winkler would not have held the*

*mediation nor extended it twice if he didn't think the parties were able to make progress. In the end, unfortunately, no agreement was reached and the mediation was ended on January 24th.*

**6. Does the registered pension plan fall in with the other Nortel assets to be distributed amongst all the creditors?**

*No. The registered pension plans are not part of the assets that are part of the allocation dispute. Registered pension funds do not become assets of the company during an insolvency to be distributed to the creditors but are funds that are only for the benefit of those individuals entitled to receive pension benefits from them.*

**7. Have all the assets of Nortel now been sold?**

*No, there are a few more assets to be sold, however, the sale of these assets will not significantly change the amount of assets being distributed to the creditors.*

**8. Will the Canadian Estate receive the proceeds from the sale of IP?**

*This is one of the issues being dealt with in the allocation dispute.*

**9. Are the sales proceeds from the sale of business units and other assets earning interest?**

*Yes, however, because interest rates are currently low, the interest amounts are not significant.*

**10. How much money in the Canadian Estate?**

*The Canadian Estate has the least amount of cash on hand of all the Estates, with approximately half a billion U.S. dollars.*

*For a breakdown of the amounts held by each Debtor, please see paragraph 14 of the Monitor's Report dated January 25, 2013, which is found on the Monitor's website at:*

*[http://documentcentre.eycan.com/eycm\\_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf](http://documentcentre.eycan.com/eycm_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf)*

**11. How much money is left in the Nortel estate?**

*The Monitor's Report dated January 25th, 2013, states that the consolidated cash balance globally was \$10.1 billion, including \$2.8 billion of total treasury cash, as of January 12, 2013. Please see paragraph 14 for a breakdown of this information.*

*At this time, it is estimated that there is approximately \$9 billion for the creditors once the costs of winding down Nortel are taken into consideration.*

*The Ninety-First Report of the Monitor is available at the following link:  
[http://documentcentre.eycan.com/eycm\\_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf](http://documentcentre.eycan.com/eycm_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf)*

**12. What is the total amount of the claims?**

*Please see the Monitor's Report dated January 25th, 2013, which is posted on the Monitor's website. This information is available in Appendix C to the Report.*

*The Ninety-First Report of the Monitor is available at the following link:  
[http://documentcentre.eycan.com/eycm\\_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf](http://documentcentre.eycan.com/eycm_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf)*

**13. What claims have been filed against Nortel?**

*Appendix E of the most recent Monitor's Report (the Ninety-First Report of the Monitor, dated January 25, 2013) provides a breakdown of the claims filed against each Debtor. The Ninety-First Report is available at the following link on the Monitor's website:*

*[http://documentcentre.eycan.com/eycm\\_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf](http://documentcentre.eycan.com/eycm_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf)*

**14. What are the total claims against the Canadian estate by claimant category?**

*Please see Appendix C of the Monitor's Report dated January 25, 2013, which is found on the Monitor's website at:*

*[http://documentcentre.eycan.com/eycm\\_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf](http://documentcentre.eycan.com/eycm_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf)*

**15. Are there preferred claims and what are they? If yes, what are the rankings of the different claimants?**

*All creditors are unsecured in this action; there is no "preferred class".*

*As a result of the global nature of Nortel's business, all of which are subject to different insolvency legislation, and as a result of the location of certain assets and liabilities at the time of the insolvency, the validity of certain claims and the resulting priorities/guarantees of the various claims are some of the issues the various claimants will be litigating once a forum is determined.*

**16. If the rankings are clear for everyone why persist in costly and timely mediations that end up going nowhere?**

*The issues involved in the allocation of Nortel's global assets among the jurisdictions in which Nortel has creditors are complex. There is no one court or legal forum that has the jurisdiction to decide. Mediation was the best hope for a*

*consensual solution, which would have obviated the need for costly and difficult litigation.*

**17. Why do the junk bonds get a priority 100% of their claims paid?**

*They do not have a priority, however, the contracts under which the funds were loaned to Nortel were guaranteed by both Nortel Canada and Nortel U.S. This means that they can apply to be paid out of both estates, and are able to potentially recover up to 100% of their claim.*

**18. What is the total value of the Canadian severance and pension claims?**

*Paragraph 46 of the Ninety-First Report of the Monitor, dated January 25, 2013 provides that the non-registered pension benefits claims represent a claim amount of approximately \$1 billion Canadian.*

*The total value of the registered pension claim has not yet been finalized.*

*The Monitor's Report dated January 25, 2013 is found on the Monitor's website at the following link:*

*[http://documentcentre.eycan.com/eycm\\_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf](http://documentcentre.eycan.com/eycm_library/Project%20Copperhead/English/Monitor's%20Reports/Ninety-First%20Report%20of%20the%20Monitor.pdf)*

**19. Why can't the \$9 billion in assets be split amongst the former employees of Nortel who created those assets?**

*Insolvency proceedings are complicated matters involving different categories of creditors which former employees are just one. There are laws that govern priority in bankruptcies and insolvencies among creditors.*

*In Canada, such debts as severance and termination pay, disability income and other payments owed to former employees don't have statutory priority and therefore the \$9 billion cannot be allocated to paying off all the claims of former employees first.*

**20. Can work be done to change the priority of former employees in an insolvency that will improve the situation of former employees in the Nortel matter?**

*The NRPC and their advisors are working to change the bankruptcy and insolvency laws in Canada. There is currently a letter-writing campaign that is being launched by the NRPC similar to the one that was done last year.*

*However, one should not expect that any changes that are made will automatically be applied retroactively.*

*Everyone is encouraged to participate actively in the upcoming letter-writing campaign.*

**21. What is the next step in the allocation dispute process now that the mediation with Justice Winkler has failed?**

*On January 31, 2013, Justice Morawetz of the Ontario Superior Court of Justice ordered all parties to the bankruptcy proceedings of Nortel Network Corporation to submit a list of what they considered to be current, outstanding issues. Judge Gross of the U.S. Bankruptcy Court released a similar order requesting additionally that parties provide a proposal for scheduling, including discovery deadlines and hearing dates.*

*Submissions were due to Justice Morawetz by Friday February 8, 2013 and a report on behalf of the former employees and disabled employees was filed that day by the court appointed representatives and their advisors, working together with the CAW, the wind-up administrator of the Nortel Pension Plans, Morneau Shepell and the Financial Services Commission of Ontario, and Representatives of Nortel active and transferred employees (a group known as the “Canadian Creditors Committee” or “CCC”).*

*On February 13, 2013 Justice Morawetz and Judge Gross both ordered a joint rehearing of the submissions of the June 2011 motion. The joint hearing is scheduled for March 7, 2013 and will deal with the issue of whether the allocation of proceeds from the sale of business units and other assets should be determined by the Canadian and U.S. courts together, or by an arbitrator.*

*We will update our website and hotline as further information becomes available.*

**22. How will this process ever come to a close if major creditors refuse to participate?**

*The allocation dispute and other claims issues are now being litigated through the courts and can be enforced on the parties by the forum that will be determined by the two judges. It is fair to point out that this can be appealed, potentially adding to the timeframes involved.*

**23. Does KM believe the benefit from a judgment to divide up the assets vs an arbitrated settlement will be larger than the extra expense of lawyer fees?**

*Either way, there will have to be a determination of the asset allocation among the jurisdictions and the cost of litigation be it in court or at an arbitration will be a necessary cost to get a decision which binds all parties.*

*Since the end of the mediation, Koskie Minsky and the court appointed representatives support the endorsement of Justice Morawetz dated January 31, 2013 ordering that professional fees be strictly controlled.*

**24. When will I be paid the amount provided in my Compensation Claims package and how much of it will I receive?**

*This information is not available at this time as it depends on the resolution of the allocation dispute. You will be advised as soon as there is a resolution to the allocation dispute as to when payments will be made and what amount of your claim amount will be paid.*

**25. Where does the Canadian Supreme Court figure into a cessation of this debacle?**

*The matter is currently before the Superior Court of Justice Commercial List. Until there is a decision of the Superior Court that is appealed to the Court of Appeal and then appealed to the Supreme Court of Canada (SCC), there is no involvement of the SCC. Even if a decision is appealed to the SCC, there is a chance that it would not be heard by the SCC, as leave must be granted by the SCC.*

**B. Pension Windup and Member Profiles**

**26. How do I file a claim for the shortfall in my registered pension benefits?**

*You do not need to file a claim for your shortfall in the registered pension plan. A claim has been filed on your behalf for the total shortfall by the administrator of the registered pension plans, Morneau Shepell.*

*Any attempts to file a claim with the Monitor through the Compensation Claims Process will be disallowed as the process is for only non-registered pension claims.*

**27. Will there be Pension Adjustment Reversals issued for lost pension amounts when the plan is wound up? If there are, could we be notified as soon as possible as it would allow those who still have employment income increase their RRSP contributions and make up for some of the shortfall in tax refunds?**

*This approach is being worked on by the NRPC Executive team with the appropriate federal agencies.*

*The Koskie Minsky and NRPC website will be updated as information becomes available.*

**28. Will the windup of the registered pension plans depend on the resolution of the allocation dispute?**

*No. While the resolution of the allocation dispute would allow the administrator to file only one wind up report, if the allocation dispute is not resolved until after*

*the windup, a supplemental windup report will be filed once a resolution is reached.*

**29. Will pension levels be adjusted if Morneau Shepell is able to recover a portion of the shortfall?**

*We don't know when recovery on the CCAA claim will occur, but it now appears likely that it will occur after the wind-up reports are approved and lump-sums are transferred and annuities are purchased by Morneau.*

*In the event that the wind up reports are filed prior to settlement of our claim against the Nortel estate, Morneau will determine the funded ratios of the Plans assuming no recovery.*

*When the Plans receive recovery from the estate, Morneau will need to determine how much of that recovery, if any, is owing to each beneficiary. Morneau will recalculate the funded ratios of the Plans based on the estate recovery and, for those members who are entitled and had taken a lump-sum transferred, Morneau will make a supplementary lump-sum payment will be made.*

*For those members who had annuities purchased for them and are owed additional amounts, Morneau will purchase a supplemental annuity to top-up those payments, and the amount will take into account the fact that pensions should be increased back to the wind up date of October 1st, 2010.*

*Where members have died, the payments will be made to their spouses, designated beneficiaries or estates depending upon circumstances.*

*Note that not all Plan members are likely to share in the CCAA proceeds. For example, Ontario members whose pension is fully covered by the PBGF (i.e. they are receiving 100% of their entitlement, albeit non-indexed) will not share in the recovery and will not have their pension increased to over 100%.*

**30. Will pension benefits be reduced further?**

*The current funded ratios are based on an estimate, so it is possible they could be reduced. Morneau does not have any plans to do so at this time.*

**31. Will an annuity payment be significantly lower than what a pensioner receives monthly?**

*The pension amount for Ontario members will be fixed based on the funded ratio determined in the wind up report (ignoring for the moment any increase in the funded ratio that might occur as a result of recovery on the CCAA claim). Any gains or losses after that are the responsibility of the PBGF, so Morneau knows exactly what pension they'll be buying for members. If, for example, the windup report discloses that the funded ratio is 70% and an Ontario member has a full pension entitlement of \$2,000 per month, Morneau will purchase an annuity that*

*provides the member with a monthly payment of \$1,700 per month (the first \$1,000 fully PBGF covered and the 2nd \$1,000 paid at the 70% funded ratio) irrespective of the cost of that annuity. If the annuity costs more than expected, the PBGF picks the difference. If the annuity costs less than expected, this reduces the amount that the PBGF pays to cover the guaranteed amounts.*

*Outside Ontario, where there is no PBGF to pick up any gains or losses, the funded ratio is dependent on the cost of annuities, so the final funded ratio will only be known when the annuities are purchased. When the purchase is made, an adjustment to the annuities occurs to ensure that those members whose chose a lump-sum transfer are paid at the same funded ratio as for those who elect an annuity purchase in any province.*

**32. When will you be able to announce the chosen provider of the GLIF option?**

*As soon as this information is confirmed it will be released.*

**33. Will proceeding with the GLIF depend on a minimum number of individuals having to choose the GLIF option?**

*At this time, a minimum number of individuals to establish the GLIF has not been set. If the number of individuals electing to choose the GLIF is significantly lower than expected, this may need to be reviewed.*

**34. Will transfers to the GLIF be taxed?**

*The amount allowed to be transferred to an LIRA, RIF or GLIF is set in the Income Tax Act. While we expect that a majority of individuals will not be taxed on transfer, it is possible that some individuals will exceed that limit.*

**35. What is the currently anticipated timeframe for providing specifics of the GLIF plan investment options/restrictions?**

*This information is not yet available but will be provided as soon as possible.*

**36. If a spouse is a named beneficiary, will she be subject to the same percentage of the GLIF owner's income as currently specified in the existing Nortel pension?**

*Yes.*

**37. Will each individual be advised of the capital value of the funds that would be deposited to their GLIF Account under this option?**

*The intention is to replicate in the GLIF a similar form of pension as held by an individual.*



*In Ontario, the recent Nortel Pension Plans Regulation, Ontario Regulation 10/13 provides at section 7(1) provides that the requirements that apply to a LIF governed under Schedule 1.1 to the General Regulation must be satisfied. Section 7(1) of Schedule 1.1 of the General Regulation under the Pension Benefits Act then provides that: “the owner of a life income fund that is governed by this Schedule may transfer any or all of the assets in it either to another life income fund that is governed by this Schedule or to purchase an immediate life annuity that meets the requirements of section 22 of this Regulation” (Emphasis added).*

**38. If a member decides to take a LIF will they still be entitled to benefit from the PBGF?**

*Only in the case that the member has Ontario service. The calculation of the lump-sum transfer is a commuted value of the reduced pension to which you would otherwise have been entitled, and the pension amount includes any PBGF eligibility to which you were entitled.*

**39. For someone who has a few years before they are eligible to retire, can you guarantee that the government will continue to provide the PBGF top-up?**

*The PBGF is created by statute and, like any other statute, could be changed by the provincial legislature, so there is no absolute guarantee that the Fund will continue in existence indefinitely, but bear in mind that the Pension Plans have already received an allocation of \$383 million which was the estimated total amount needed to satisfy PBGF guaranteed benefits. This was an estimate only, which if too high would result in a refund to the PBGF or if too low would result in a supplemental claim.*

**40. How will annuity providers be selected?**

*Morneau Shepell has a list of annuity providers that they regularly use and there will be a competitive bidding process.*

**41. How will pensioner Ontario Service supplement be affected by the recently passed regulation?**

*We assume by Ontario Service supplement you mean the PBGF top-up for Ontario service. The recent regulation does not change your entitlement to the PBGF top-up, since the commuted value of your pension is based on your pension amount, which includes any PBGF top-up.*

**42. I was terminated after Nortel filed for CCAA protection and haven't received my pension information package yet. When will I receive this information and be able to elect whether to take a lump sum or stay in the pension plan?**

*You should be receiving a Member Information Profile shortly.*

*If you are currently pension eligible and wish to commence your pension immediately (whether you are eligible for only a reduced pension or not), you should contact Morneau Shepell to request a pension quote.*

*If you are not currently eligible to commence your pension or do not want to start pension payments, you will receive an option package after the wind up reports are approved outlining how your pension entitlement may be settled (i.e. depending upon province usually by either a lump-sum transfer or by an immediate or deferred annuity purchase). The options that are available to you depend on the province in which you were employed when you terminated employment. For most provinces, pensioners must take an annuity, but Ontario and Quebec now permit lump-sum transfers for pensioners. For most provinces members who have not yet started their pensions have a choice of taking either a lump-sum transfer or having a deferred annuity purchased for them, but Quebec requires most non-pensioners to take the lump-sum transfer.*

### **C. Health and Welfare Trust**

- 43. Some time ago we each received a payout from the Health and Welfare Trust and were advised that there may be a further smaller payout. When will this occur?**

*The Monitor is currently working to finalize the accounting and financial reporting in order to facilitate a final distribution from and windup of the HWT. At this point, we expect that amounts to be distributed will be small compared to the other distributions. At this point the date of the payout is not yet known.*

### **D. Other**

- 44. Why is the Nortel repeatedly applying for stay extensions and why is the court allowing them?**

*Under the CCAA, stay extensions are initially provided for no more than 30 days and then subsequent extensions are provided for “a period that the court considers necessary”. In the Nortel matter, the company attempted to restructure at first but has since been working on a number of different outstanding issues in winding down the business which are regularly reported to the court by the Monitor. The court considers the progress and hears from any opposing parties before it decides whether or not to provide the stay. In the Nortel matter, as a result of the different jurisdictions and the size of the matter, there are a number of steps that need to be taken in winding down the business and therefore the company reports regularly to the court about its progress.*

- 45. The company is asking for another bankruptcy extension. Can KM now influence the judge that this is the last extension the court will grant? There is the common view that lawyers want to drag this on to increase their fees. Bond holders want to drag this on because the ROI is better than in the market**

- (i) **Is the Monitor prepared to call a timeout: at least say no more interest payments from now on?**
- (ii) **What would prevent the Monitor from calling a timeout?**
- (iii) **Is the Monitor the one to call a timeout? Or is that a court decision?**

*The stay extension is requested by the Debtor, with the court receiving a report from the Monitor, in the role of a neutral party appointed by the court.*

*While the allocation mediation was unsuccessful, there are many things that are being done as the company is being wound down. For example, during the last stay extension motion, the Monitor reported regarding the status of the compensation claims process, the Health and Welfare Tax Appeal, the Hardship Fund, etc.*

*It is not in the interest of any stakeholder for the stay extension to be disallowed. The purpose of a stay extension is to protect the company from its creditors while it restructures or winds down. In the case of Nortel, failure to extend the stay would distract the company and the Monitor from the wind down with various outstanding litigation matters that have been stayed and are being resolved in the CCAA proceedings.*

**46. Last year, the NRPC mounted a drive to try and persuade the Federal Government to rewrite legislation to prevent the payout of interest on top of the full face value of bonds held by Vulture Funds. Many of us wrote letters to Minister Paradis, cc: Flaherty, and received relatively encouraging responses. What has happened to this initiative?**

*There is an upcoming letter-writing campaign requesting an immediate hearing in the House of Commons Industry and Finance Committee to discuss the post filing interest issue.*

*Please stay tuned to the NRPC website for more information in the next few weeks.*

**47. I have more questions. Where can I send them?**

*Please send any further questions to one of the following depending on the type of questions you have:*

*Koskie Minsky (Representative Counsel): [nortel@kmlaw.ca](mailto:nortel@kmlaw.ca)*

*Morneau Shepell (Administrator of Registered Pension Plans):  
[nortelwindup@morneaushepell.com](mailto:nortelwindup@morneaushepell.com)*

*Ernst & Young (Monitor): [nortel.monitor@ca.ey.com](mailto:nortel.monitor@ca.ey.com)*