Nortel Networks – Allocation Trial – Summary of September 22, 2014

September 22nd, 2014 marked the first day of closing submissions in the Nortel trial, which is being heard concurrently in Toronto and Delaware. The Courts had the opportunity to hear from many of the parties today and will hear from the remainder tomorrow.

The court appointed Monitor was first to speak. The Monitor focused on their argument on the ownership rights of the Canadian parent company (NNL) to the intellectual property as compared to the subsidiaries. The Monitor argued that NNL had ownership of the majority of Nortel IP and that Nortel subsidiaries only possessed licenses. The Monitor also refuted various alternative theories on allocation by focusing on a close reading of the MRDA and an examination of legal authorities addressing the nature of beneficial and legal title.

The Canadian Creditors Committee ("CCC") spoke next. The CCC represents around 20,000 former employees, pensioners and pension interests in Canada. In support of the ownership allocation theory that they shared with the Monitor, the CCC spoke of the importance of avoiding extreme results in allocation and of looking at the uncontroverted facts that had arisen from the evidence. According to the CCC, these facts demonstrate that Nortel was a matrix organization in which the Canadian Debtors undertook burdens on behalf of the rest of Nortel globally. As an alternative to the ownership theory, the CCC argued that allocation should be done on a pro rata basis, allocating the funds proportionately to claims made against all of the Estates. The CCC emphasized that other theories of allocation would lead to extreme results, and that the Ownership allocation theory, or the Pro Rata theory, was ground in law and equity, commercially sound and fair to all parties.

Next, Wilmington Trust spoke and stated that it adopted the proposed findings of fact and conclusions of the Monitor. Wilmington Trust emphasized that the MRDA was at the core of the dispute as the only agreement governing the rights and obligations of the parties. Counsel then offered argument on how this agreement should be interpreted in light of its commercial context to arrive at the conclusions offered by the Monitor. If the Courts find that they cannot allocate based on the Ownership theory, however, Wilmington Trust argued that the CCC's Pro Rata theory should be implemented.

The European, Middle East, and Asia Debtors ("EMEA") made their submissions next. Counsel focused on their "contribution allocation theory" suggesting that the sale proceeds from the IP should be divided in proportion to how much each party contributed to the research and development which created the property. EMEA urged the Courts to look both at the language in the MRDA, and also outside the MDRA, to determine that the agreement between the parent and the subsidiaries constituted an arrangement of joint ownership. EMEA also argued that the Courts should use contribution amounts from the 20 years prior to the filing date instead of the 5 year period provided in the MRDA. They argued that among other reasons, a five year lookback would not take into account contributions made to high interest patents.

Finally, the United Kingdom Pension Claimants (the "UKPC") began their submissions on their "pro rata allocation" theory, which has the effect of permitting a distribution within each Estate to all unsecured creditors on a pro rata, pari passu basis, relative to the amount of their unsecured claim, irrespective of the entity against which they may have a claim. Counsel reviewed

fundamental legal principles, particularly in bankruptcy law, which it claimed supported this position.

Closing submissions resume at 8:30 on September 23, 2013.