

## **Nortel Networks – Allocation Trial – Summary of September 24, 2014**

On the third and final day of closing submissions, the Courts heard closing submissions from two indenture trustees followed by reply arguments from all the parties.

The Bank of New York Mellon provided brief closing submissions regarding the consequences a pure pro rata distribution would have on their guarantees.

The Law Debenture Trustee, as a Core Party to the allocation litigation and member of the Official Committee of Unsecured Creditors of the U.S. Debtors, also provided submissions arguing for the U.S. Debtor's fair market value theory to be accepted.

The Canadian Debtor and Monitor provided the first reply, responding first to the closing submissions of the EMEA Debtors and then the US Interests. In addition to clarifying arguments made with respect to the ownership theory under the MRDA, the Canadian Debtor and Monitor argued that adopting the EMEA Debtors' position would require the Courts to make changes to the company's past practices. In reply to the U.S. revenue /fair market value theory, the Canadian Debtors argued that the theory does not recognize the costs that were incurred by the Canadian Debtors and doesn't actually value any of the assets sold.

The CCC replied next, responding to comments from the U.S. Debtors wherein the CCC clarified the nature of the claims of Canadian pensioners, disabled employees and other former employees and pension interests. The CCC also reminded the Courts of the sources of information used for the CCC's expert witnesses chart, also in response to criticism from the U.S. Debtors in their closing submissions. In reply, the CCC also articulated the distinctions between the CCC's expert and the EMEA Debtors' expert arguing that the two positions were very different. In addition, the CCC reminded the Courts of their jurisdiction to implement the pro rata theory as an alternative to their Ownership theory, and the terms of implementing such an allocation.

The EMEA Debtors provided a brief reply to the Canadian Debtors and Monitor with respect to their interpretation of the rights of the Canadian Debtor to intellectual property, arguing that legal title was not synonymous with beneficial ownership.

The UKPC provided a reply to the arguments by the US Interests regarding the implementation of pro rata and evidence regarding creditor expectations. In addition, the UKPC argued that the Revenue theory of the U.S. Interests is flawed because it does not recognize revenues in China and uses revenues from a period that is arbitrary and advantageous to the U.S. Interests.

The U.S. Interests replied last with the U.S. Debtors replying on their behalf. The U.S. Debtor focused on the interpretation of the MRDA by the Canadian Debtors and Monitor arguing that extrinsic evidence should be taken into consideration. In addition, the U.S. Debtor argued that the pro rata theory could not be implemented and questioned the jurisdiction of the Courts to implement the theory.

The allocation litigation trial has now been completed. The parties do not have information as to when the decisions are expected to be released. As provided by the litigation protocol in this matter, the Courts will communicate with each other for the purposes of determining whether consistent rulings can be made by both Courts, coordinating the terms of the Court's respective

rulings, and addressing other administrative and procedural rulings. Despite these provisions in the litigation protocol, the Courts will exercise their independent jurisdiction in making their decisions.

Please continue to check Koskie Minsky's Nortel website for updates at the following link:  
<http://www.kmlaw.ca/Case-Central/Overview/?rid=107>