

Settlement Status and General Update – May 2016

Canadian Courts deny US and Bondholder appeals

On 5 May, 2016, the Canadian Supreme Court declined to hear an appeal from bondholders who were seeking the right to receive 'post petition interest' in addition to the US\$ 4.1Bn loaned to Nortel. Reasons for this judgment were not given. See further comments under 'Trustee assurances' below.

On 3 May 2016, the Ontario Court of Appeal refused permission for parties in the US to challenge the May 2015 court rulings ('Allocation Decision') on how the proceeds of the sale of Nortel's assets (US\$ 7.3Bn - the 'Lockbox') should be divided between the creditors of the US, Canada and Europe (EMEA). The Allocation Decision closely followed our own 'pro-rata' based approach which meant that pensioners in the UK and Canada were able to obtain a fair share of the Lockbox.

In a rare, 42 page long judgment, the Court of Appeal said it saw "*no merit*" in the arguments made by the US parties. It explained that:

"The trial judge considered the evidence before him in considerable detail and worked with the facts presented to him. Based on those facts, he concluded that a pro rata order constituted the answer to the allocation issue. The fact that the answer is also fair should not detract from the force of his conclusion."

In their judgment, The Court of Appeal also noted our submission that "*.. Nortel's assets were jointly created, ... the Nortel group of companies operated on a fully-integrated global basis and ... Nortel did not operate separate businesses in separate countries.*"

The Court of Appeal also expressed concern at the on-going delay in bringing this matter to a consensual conclusion, noting that some 6800 pensioners had died since Nortel had filed for insolvency in 2009.

Recent press reports on settlement issues

We are aware that a number of articles have appeared in the press in the last few months which have referred to mediation and settlement activities designed to bring this long running case to a conclusion.

These articles have included some statements that are inaccurate but we cannot correct the record since we are bound by obligations of confidentiality not to refer to the content of such discussions.

We remain fully engaged in the mediation/settlement process with all other parties. However, we are concerned that misleading reports in the press about the actual effect and result of the Allocation Decision as well as the settlement discussions are not only giving an incorrect message to the public at large, they may actually damage the prospects of a successful resolution to this long running and obscenely expensive process.

Trustee assurances

With these considerations in mind we wish to assure all our members of the following:

- At all times, we have responded constructively and in good faith to the mediation process and been clear in our willingness to work toward a fair and prompt settlement. We are hopeful that a resolution may soon be found.
- Some press articles that have suggested that we would receive more from the Allocation Decision than was argued for at trial are simply not correct. We argued for a **pure** pro rata outcome which would have given us more than the Allocation Decision. Our pro rata argument was in fact supported at trial by certain other parties.

- The Allocation Decision (by both the Canadian and US courts) was an equitable result against what were extremely polarised contentions by both the US and Canadian Debtors—the US demanding 73% of the Nortel sale assets and Canada 82%. Any suggestion that the pensioners (in either the UK or Canada) have had a windfall is untrue and unfair.
- The bondholders not only demanded a 100% repayment of the US\$ 4.1Bn loaned to Nortel but also claimed they were entitled to up to US\$ 1.6Bn of interest on top of this sum. Under the Allocation Decision, they will still do better than almost all creditors and substantially better than pensioners in either the UK or Canada.
- The overall amount of fees reported in the press as having been incurred by professionals in these proceedings is abhorrent to the Trustee. We wish to make it clear that we are **NOT** associated with those fees and have had to fund our own legal and financial activities. The Allocation Decision vindicates our decision to engage fully with the global insolvency process.

The way forward

We are mindful of the many thousands of former Nortel employees worldwide who dedicated their working lives to the creation of Nortel's assets which now sit in the Lockbox awaiting distribution. Many of these employees are future and current pensioners, including our remaining 33,000 members.

We know that all the former employees want is their fair share of the money to be distributed before it is too late for them to benefit – they are not speculators seeking to profit from this process but involuntary creditors who invested their lives in Nortel.

Accordingly, we wish to reassure you all that we are working hard to achieve a speedy resolution of this matter.