

Workers on Disability Fight Nortel Deal

By Joan Delaney
Epoch Times Staff

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Mike Zafirovski, former President and CEO of Nortel, sought a \$12 million claim for pension, bonus, and severance payments from the insolvent company after he resigned in August 2009. (Indranil Mukherjee/AFP/Getty Images)

Peter Burns once fought cancer and won. Now he's waging another battle—to get a fair deal from Nortel Networks, where he worked for seven years in computer performance, using his skills as an astrophysicist and mechanical engineer.

Burns, who currently suffers from a spinal cord injury, is one of a group of Nortel employees on long-term disability (LTD) leave who are unhappy with a deal reached between the failing company, themselves, and Nortel pensioners.

Court is scheduled for March 3, and Burns and some other LTD employees plan to go to Toronto to oppose approval of the agreement.

The LTD employees are taking issue with the proposed deal, announced on Feb. 8, because it offers protection only until the

end of this year. It also stipulates that employees and former employees relinquish their right to sue the company or oppose the \$93 million in bonuses that Nortel has requested.

Nortel says the big bonuses are necessary in order to keep its remaining employees who work for two units in the company.

“Nortel says it hasn't got the money to pay its obligations, but it can find \$93 million for retention bonuses,” says Burns.

That amount of money, he adds, would go a long way toward “addressing our issues” with the disabled workers' Health and Welfare Trust.

Burns says when he bought his long-term disability plan through the Health and Welfare Trust he wasn't aware that it was a form of “self-insurance” paid by Nortel itself rather than an outside company.

“So when Nortel goes bankrupt the first shock we find is that our pensions have been rejected, and

second is that the long-term disability insurance is not really insurance; it's self-insurance, and when Nortel goes bankrupt so does our insurance."

Those who paid into the trust were supposed to be covered until age 65.

Nortel filed for bankruptcy protection in the United States, Canada, and the United Kingdom, last January. In June, the company announced it would discontinue operations and since then, most of the company has been sold.

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..... Anne Clark-Stewart, a Nortel pensioner who was formerly on LTD, says that while she was aware that her LTD benefits were self-funded, many other employees were not.

“In recent years, Nortel had been quite clear in all of its benefits documents that the LTD benefits were self-insured, but many people were under the mistaken notion that it was a fully funded insurance as they paid a premium to have it topped up from 50 percent to 70 percent of base pay.”

” Clark-Stewart, a spokesperson with Nortel Retirees and Former Employees Protection Canada, says Nortel set up the health and welfare trust according to the legislation in place at the time and provided

coverage as legally required.

“Their moral responsibility is what is in question, but unfortunately, the law is silent when it comes to the morality of providing disability benefits,” she says.

According to Clark-Stewart, of major concern to all groups is a “loan” for US\$37M that Nortel made from the trust. They want that paid back in full, not at a discounted rate once the assets are distributed.

The 12,600 pensioners involved are on the whole satisfied with the deal, as are most of the disabled employees, according to Sue Kennedy, the court-appointed representative for the approximately 400 Nortel employees on LTD.

Kennedy said in a statement that the group that opposes the settlement does not represent the wishes of the vast majority of LTD employees.

She said that if the agreement is not approved in court on March 3, there will be several negative consequences, including losing the \$12 million allocated to disabled employees in the settlement.

In addition, she said, the group's health benefits “would likely be terminated on March 31, 2010, which doesn't allow disabled members much time to figure out how to deal with their extensive medical costs.”

“The litigation will also delay the payment of our claims considerably, making it likely that we might end up without any form of income at some point during the litigation period,” she added.

However, financial analyst Diane Urquhart, a member of the smaller LTD group's legal team, thinks there's a good chance of success, particularly since the shortfall in the Health and Welfare Trust is estimated to be as high as 19 percent.

"This idea that they waive their right to access that difference of what's not in the fund is a serious matter," she says, adding that it's "absurd" that the LTD employees are being asked to settle for a mere 8 percent of what is owed.

"I think that there is too little benefit offered in the February 8 agreement relative to the high cost of legal rights given up at this time."

Clark-Stewart says her group has been requesting the government change the Bankruptcy and Insolvency Act.

"Unless employee-related claims are given preferred status in bankruptcy situations, justice will not prevail."

Fighting for a better settlement from Nortel is not only a matter of survival but also of bringing about change, says Burns.

"We have two concerns. One is our own survival, but the second, and I'd say equal to the first, is we don't want this to happen to anybody else. I don't want to see this happening to my children. I see it as a big problem. It will be nice to see some kind of justice and not let it happen again."