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Employees on long-term disability the big losers in Nortel bankruptcy

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A group of former Nortel Networks employees – who were on long-term disability with a variety of illnesses – are the big losers in the bankruptcy workout of the former telecom giant. Wayne Cuddington/Postmedia News files

In what is a zero sum game, a group of former Nortel Networks employees – who were on long-term disability with a variety of illnesses – are the big losers in the bankruptcy workout of the former telecom giant.

The group, which numbers about 350 former employees plus 120 dependent children, have had their disability insurance cut off with nominal financial settlements. The group, which received an up-front lump settlement in 2011 equal to 35% of what they would have received had the insurance plan been in operation until its members reached 65, is one of the three that make up Nortel's health and welfare trust. Those three have launched a class action lawsuit against the trustees Northern Trust and Royal Trust, which has not yet been certified.

The 35% payout is what remained in that trust after monies were removed to allow Nortel to fund its day-to-day expenses. In addition the trust also made loans to Nortel. Those loans have now been written off. In all $60-million was involved.

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Meanwhile, a group of lawyers and accountants, all members of the Insolvency Institute of Canada, have received more than $250-million in fees from the court-approved process. That group presumably hasn't had any fee cut. The IIC is a membership-only entity.

Potential members apply (after being sponsored and after completing an application review process) and are invited to join by IIC's board of directors. IIC's annual conference is also invitation only with a session devoted to a judicial forum "for invited judicial guests only."

One of the key allegations in the class action – and in other previous claims to the court – on behalf of the disabled group, was that information about the financial status of the trust was denied to the health and welfare trust beneficiaries. In a Nov. 2, 2009 letter, the group wrote that it wanted "to examine for ourselves the legal documents relevant to our long-term disability benefit since our benefit brochures indicate that if there is a difference between the benefit brochure and the legal documents for the LTD plan, the plan legal documents will prevail."

The letter detailed four specific pieces of information it wanted, noting that "the public disclosure of the requested information is key to our personal and group decisions about creditor claims, full examination of our legal rights for remedy of our situation in an expeditious manner and simply planning for our future in terms of living arrangements and the funding of our drug and other medical needs."

That information was denied by the monitor and not by the court. Instead the group was told "the monitor exercises its discretion on issues of disclosure in light of a number of competing considerations." The group was also told "the monitor remains of the view that the disclosure of certain of the requested information should remain subject to the non-disclosure agreement, given a number of matters currently in progress in the restructuring."
Because that information was denied, the members were not in a position to make an informed decision on what to do at that time. Instead they were given the information after the settlement agreement.

In its class action filing, made after the group was denied an opportunity to appeal the decision of the "bankruptcy" court, this was said: "The factual foundation on which the initial order was obtained appears to have been incorrect, or at a minimum, unclear or misleading."

Topics: **FP Street**, **Nortel Networks Corporation**