

#DATE: September 7, 2010

##TO: File, CNELTD Committee

#FROM: Koskie Minsky LLP

#FILE NO: 09/1329

#SUBJECT: Teleconference with CNELTD – August 18, 2009  
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A conference call was hosted by Koskie Minsky LLP ("KM") on August 18, 2009 to discuss a variety of issues with the CNELTD and various other disabled employees who chose to participate. An agenda was prepared prior to the teleconference, a copy of which is attached to this memo.

## **1. KM as Representative Counsel**

Susan Kennedy introduced herself as the court-appointed Representative and provided some background about her contact to date with KM as Representative Counsel. Susan indicated that she has spoken to many of the participants on the teleconference in the past prior to being appointed as Representative. The May 27, 2009 disabled employees' Representation Order was discussed and it was outlined that individuals who are members of the CAW-Canada do not fall within the scope of the Representation Order. These individuals are in fact represented by counsel to the CAW-Canada. If individuals are CAW members, they should contact Barry Wadsworth at the CAW-Canada. Individuals who are not members of the CAW do fall within the scope of the Representation Order, provided they do not opt out of the Representation Order. These individuals will be represented by legal counsel Koskie Minsky LLP with respect to issues that arise in Nortel's proceedings under the *Companies' Creditors Arrangement Act* ("CCAA"). The Representation Order also extends to proceedings Nortel may enter under the *Bankruptcy and Insolvency Act* ("BIA"). However, at this time we believe the possibility of BIA proceedings is remote.

The Representation Order has a broad scope. KM as your legal counsel and Susan Kennedy as your Representative will work on your behalf to advance your interests and to ensure your rights are protected. More generally, we will aim to maximize value for the Canadian estate, to protect the benefits and interests of the LTD group and to ensure that the Health and Welfare Trust ("HWT") benefits are dealt with appropriately.

## **2. KM's Actions to Date / What Will be Done**

KM is your legal counsel. KM has retained actuaries, The Segal Company ("Segal"), to work

on your behalf. Ernst & Young Inc. is the court-appointed Monitor and their counsel is Goodmans LLP. Currently, Mercer is the actuary of Nortel's pension plans.

KM will engage in meetings with counsel for Nortel and Monitor to ensure that your interests are advanced and protected. The Monitor will have a broad role in Nortel's CCAA proceedings, and essentially will take over the management of the Canadian company. The Monitor will have broad obligations to the Court and to various stakeholders in Nortel's CCAA proceedings.

As Representative Counsel, Koskie Minsky has signed a non-disclosure agreement and has been given access to a wide range of information, including various binders and documents that pertain to your benefits. We cannot disclose these documents publicly as they are subject to a confidentiality agreement. You can ask KM questions about these documents and we will do our best to provide you with an appropriate response. During the next several months, we will be engaging in a review of the relevant documents, and in particular, we will review the documents surrounding the Health and Welfare Trust. At this time, we are uncertain about many issues pertaining to the HWT, including how benefits are funded. It appears that some benefits are funded on a flow through pay-as-you go basis, while other benefits may have had funds earmarked for that specific purpose. We will be looking at how the fund worked historically. As we receive more information and become more familiar with the documents and facts, we will disseminate this information to you. We are uncertain whether funds for LTD income benefit payments were held separately from those funds used for health benefits and life insurance. We are also uncertain whether monies used for life insurance premiums are co-mingled with other amounts in the fund.

The Committee raised a question about the applicability of CRA bulletin IT-85R2. KM has too little information to comment on the applicability of IT-85R2 at this time. A question was also raised about the Pension Benefit Guarantee Fund ("PBGF"). KM explained that the PBGF works through the operation of Ontario's *Pension Benefits Act* ("PBA"). KM further explained that there is no statutory obligation on the Government to protect Nortel retirees' (and future retirees') pensions through the PBGF fund. There are insufficient funds in the PBGF fund to cover the potential payout and therefore the Government must agree to honour the fund's application to Nortel's retirees. KM and your court-appointed Representative, and also the court appointed Representatives for Nortel's pensioners and former employees, will lobby to ensure that the PBGF applies to Nortel's pension plans in the event that there is a wind up in their deficient state.

### **3. Structure of CNELTD**

Susan Kennedy is the court-appointed Representative and will provide KM with instructions. Going forward, a method of communication will be determined. It was discussed whether Susan Kennedy could be sued for activities as a court-appointed Representative. KM confirmed that in accordance with the Representation Order, this cannot occur. In terms of communication, the Steering Committee will be using LinkedIn, and through this method will gather membership and articulate positions. It is Sue Kennedy who legally speaks on behalf of the disabled employee group in these proceedings. Susan will work with the CNELTD group to form positions and to provide KM with instructions.

### **4. Contact with Politicians and Government Agencies**

To date, the pensioner and former employee constituency (through the Nortel Retiree and Former Employee and Protection Canada or NRPC) has had success with the media. It was

discussed that for major issues and demonstrations, it may be helpful to work in a joint effort with the NRPC. The NRPC in Eastern Ontario and Western Quebec works with Tony Marsh on media issues. We can put the CNELTD in contact with Tony Marsh if they wish.

## **5. Contact with Disabled Employees**

From KM's perspective, our major communication tool is the KM website. We have a communications department which will address telephone calls and emails from the disabled employee constituency. Legal issues will be dealt with by KM's lawyers. KM will send written communications to the disabled employee group, including a letter to the entire group with information about the Representation Order and KM's appointment as Representative Counsel.

In accordance with the Representation Order, KM will receive a list of all disabled employees that we represent. It is this list that will allow us to communicate with your group. In the event we become aware of changes to your group's benefits, whether they be health & dental, disability income benefits or other benefits, we will post information on our website and/or through written correspondence as soon as possible.

It was then briefly discussed that many benefits were self-insured by Nortel and therefore, these benefits will likely be subject to change in the future.

## **6. Claims Process**

KM is working with other parties, including Nortel and the Monitor, to set up a specific employee related claims process. Our actuary, Segal, will be granted access to the data necessary at some point in the future. Your actuaries will work with Mercer, Nortel's current actuary, to ensure that the valuation of your future lost benefits is appropriate. There will be underlying assumptions and data that the actuaries will discuss and hopefully come to an agreement upon. We hope to be in a position to send out a description of the assumptions and calculation of your claim during the compensation claims process. Much of this information will be subject to a confidentiality agreement before it is publicly disclosed. Therefore, you will not have access to this information unless you have been granted access through the execution of a non-disclosure agreement.

At this point, an individual participating in the call inquired about the obligations on Nortel's directors to ensure that disability income benefits are paid. KM indicated that we have conducted preliminary director liability research on this issue. Based on our research to date, we do not believe that Nortel's directors have an obligation to ensure that your income benefits continue. An individual inquired about Sun Life's liability for these benefits. KM indicated that from what we understand, the contract that exists with Sun Life is an administrative services only agreement, meaning that it is a third party contract through which Sun Life is not obligated insure your income benefits. An individual on the teleconference inquired whether the Government could be held liable for allowing Nortel to self-insure its disability benefit program. KM responded that the Government is not liable. Finally, an individual inquired whether Northern Trust could be held liable for misrepresentation. KM indicated that we do not believe this is the case. KM will investigate whether there are parties that may be liable, however, noted that there are legal tests that must be met in order for such claims to be made out successfully. We will investigate whether there are valid claims that exist. It is expected that the claims of the disabled group are unsecured and will be paid at the same rate that is paid to other unsecured creditors in Nortel's CCAA proceedings.

## **7. Discontinued Benefits?**

KM has been informed that for now, disability income benefits will continue to be paid. We will request that to be provided with notice before there are any changes to your benefits. We do anticipate that your payments will end and/or be cut at some point, but we are not sure by how much or when. We will request that any payments made to you in respect of your losses are made in a tax effective manner. This may require seeking Canada Revenue Agency ("CRA") approval for relief and/or an advance tax ruling on distributions. Our goal is to get you the funds that you are entitled to in the most tax effective way. We also want to keep your benefits paid for as long as possible. We will be discussing this with the Monitor in the future and will communicate information to you when it is appropriate and when we are able to do so.

One of the overall goals in these proceedings is to obtain as much money for the Canadian estate as possible. The Monitor shares this goal, as do other Canadian creditors. As Nortel's assets are sold through various sales processes, funds will be placed into a "lockbox" until such time as the allocation between the various estates (UK, US, Canada, etc.) has been determined. In terms of a claims bar date for compensation claims, we are still uncertain at this point in time. Within Canada, there will be a claims process for regular creditors, which is already underway, and also a separate claims process for employment related claims. The judge has asked for a report on the compensation related process by the end of September 2009, so we may have more information to report at that time.

## **8. Miscellaneous**

An individual on the call inquired about whether there is a basis to the appeal the Ericsson transaction that recently was announced. KM does not believe that there is. An individual inquired whether disabled employees or retirees located in the US or UK are more protected in terms of their pensions or benefits. KM indicated that we do not have full information so cannot address this question.

KM will post an FAQ on the KM website which disabled employees will be able to access.