

Nortel US seeks to hide some fees amid cash battle

By Peg Brickley, Dow Jones Daily Bankruptcy Review

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Liquidating vendor's long-running bankruptcy case under fire for the toll it has taken on disabled employees.

Nortel Networks Corp.'s U.S. lawyers and advisers are going to need lawyers and advisers of their own for a looming \$7.3 billion cash fight, but who's getting paid, how much and for what is information the liquidating telecommunications company would rather not see come to light.

Amid questions over mounting legal fees in the four-year-old bankruptcy, Nortel's U.S. unit is seeking an exemption from a new bankruptcy rule that would require Nortel-paid professionals to disclose details of what they're paying other professionals out of the company's cash. If it succeeds, the move could allow Nortel U.S. to hide millions of dollars worth of billings in a case that has begun to draw fire from members of the public concerned about the toll Nortel's bankruptcy has taken on its most vulnerable creditors, disabled workers.

Around the world, lawyers and advisers have made \$837 million out of the collapse of the one-time telecommunications icon, according to a tally by Diane Urquhart, a Canadian financial analyst and advocate for a small band of chronically ill Canadian former employees. Arguing they were treated unfairly in the Canadian proceeding, Nortel's Canadian disabled have asked bankruptcy officials in the U.S., the U.K. and Canada to investigate the fees being charged to the defunct company.

Ms. Urquhart said last week she is "hopeful" the Office of the United States Trustee, the arm of the Justice Department that monitors the bankruptcy courts, will take action to rein in spending in response to the group's protests.

Unlike members of the public, bankruptcy insiders have little incentive to take issue with over-billing by other members of the Chapter 11 club, according to Steven J. Harper, a former Kirkland & Ellis partner who teaches at Northwestern University School of Law and who writes the "Belly of the Beast" blog about the legal profession.

"I'd expect that, in a systematic analysis in typical bankruptcy fee petitions, you would find not much in the way of objections from lawyers, because they all benefit," Mr. Harper said. "Once a \$700-an-hour charge for an associate is deemed reasonable, it's advantageous to no one to rock that boat."

A review of the record in the Nortel U.S. Chapter 11 proceeding reveals scant evidence anyone has been keeping an eye on how much of the company's cash has been going into the pockets of lawyers and advisers. There is, however, a \$710-an-hour associate, and \$800- to \$1,040-per-hour partners billing for long days and hiring cars to get them to and from work, while Nortel's bankruptcy remains stalled in an international dispute over the money raised in the sale of the company's businesses.

Nortel U.S.'s bid for permission to start keeping secret the details of some of the fees in its case comes as the American unit prepares for open court clashes against Nortel's Canadian and European units, with the \$7.3 billion sale proceeds as the prize. If the move succeeds, it will make it difficult for the public to follow Nortel U.S.'s money, or at least that portion of it that the lawyers decide to spend on each other.

Nortel U.S.'s lawyers say they should be able to hire other lawyers and advisers in confidence, so as not to tip their hands in litigation. A Delaware court rule that is just weeks old requires professionals who hire other professionals to file detailed billings. Nortel U.S., which already has at least 29 firms on its payroll, wants a blanket exemption from the disclosure requirement, according to papers recently filed by Nortel U.S.'s law firm, Cleary Gottlieb Steen & Hamilton.

Cleary's lead lawyer on Nortel U.S.'s case, James Bromley, did not respond to a request to discuss the fees in the case. As of the end of December, his firm had billed more than \$181 million to Nortel, a figure that does not include expenses.

Unlike other big bankruptcy cases, such as those of Tribune Co. and Lehman Brothers Holdings Inc., Nortel U.S.'s Chapter 11 proceeding has been a mostly objection-free zone when it comes to fees. There's no outside fee auditor in the massive case, the U.S. trustee has raised no objections to fees and the official committee of unsecured creditors, which did conduct some review of other professionals' fees, spent little

time at the job and focused on a few discrete issues, court records show. With Nortel itself down to about 10 employees, what remains of the one-time Canadian technology star is a big pile of money and a large crowd of bankruptcy professionals.

Judge Kevin Gross, who is the ultimate check on fees, in 2012 signed off on six months' worth of billing without bothering to hold a hearing, due to the lack of objections. Judge Gross approved the other six months' worth of fees in 2012 within minutes of the start of court hearings, noting only that there were no comments on the bills from others in Nortel U.S.'s case.

With a single exception, dozens of law firms and professionals have been collecting whatever they said Nortel U.S. owed them, no questions asked, for years.

The sole exception was the law firm working for Nortel U.S.'s long-term disabled workers, Elliott Greenleaf. Nortel U.S. and the unsecured creditors committee took Elliott Greenleaf to task for requesting an increase in the cap that was put on its fees. The company and the committee said it was costing too much to fight Nortel's U.S. disabled workers, who were battling an effort to shut off their pay and benefits. Elliott Greenleaf countered that the company was trying to, in essence, starve the disabled worker committee into submission.

Unless there's a litigation advantage in sight, fee objections from other Chapter 11 professionals are a rarity. If the public has only a limited view into the bills, as it would if Nortel U.S. wins its exemption, there's little chance of a serious challenge to heavy spending by bankruptcy professionals. The bigger the bills, the better the market for everyone selling bankruptcy services, said Mr. Harper.

Bankruptcy lawyers take refuge in the argument that their fees must be justified or companies in distress wouldn't agree to pay them and judges wouldn't endorse them, he said.

"The defense would be, 'Well, that's just the market.' But the question that's worth asking is, 'Is there really a free market functioning here?'" Mr. Harper said.



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