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## Nortel OK'd For \$14.2M Payout Amid 'Pandora's Box' Warnings

By **Jeff Montgomery**

Law360, Wilmington (June 6, 2016, 7:47 PM ET) -- Nortel Networks Inc. won Delaware bankruptcy court clearance Monday to pay \$14.2 million in uncontested claims from its long-unresolved Chapter 11, with a company attorney saying the limited agreement avoided opening a Pandora's box of demands from other increasingly restless creditors.

Nortel's negotiations with Liquidity Solutions Inc. had prompted fresh complaints over lack of progress in distributing funds to creditors from the seven-year-old bankruptcy's \$7.3 billion in asset sales, despite professional fee payouts in the case that now total more than \$1.9 billion in the U.S., Canada and the U.K. since January 2009.

Nortel had warned that a "thorny mess" could result, U.S. Bankruptcy Judge Kevin Gross said, if a broader payout led to demands for compensation from unsecured creditors before the court approves a final Chapter 11 plan to guide global distributions.

"The resolution I have today resolves that mess," Judge Gross said.

LSI, a company that buys up bankruptcy claims, sought a court order in March that would have directed Nortel to pay \$173 million in allowed administrative and priority claims and \$321 million on unsecured claims from its available cash. The company also sought \$1.9 billion from \$7.3 billion amassed from Nortel's sale of businesses and patents.

Nortel and LSI agreed to limit payments to administrative, priority and secured claims against Nortel that are either scheduled as undisputed, noncontingent, fully liquidated or affirmatively allowed by court order.

"It would be an unfortunate result if creditors view this as an effective strategy going forward," with creditors tempted to file motions to "pay my claim, pick me off, otherwise I'll file a motion to convert the case" to a Chapter 7 liquidation and distribution, said Nortel attorney Lisa M. Schweitzer of Cleary Gottlieb Steen & Hamilton LLP.

LSI attorney Jeremy B. Reckmeyer of Andrews Kurth LLP said the company doesn't doubt the efforts put forth by Nortel and its attorneys to recover value for LSI. But Reckmeyer said it was "truly unfortunate" that the process has taken seven years for the benefits to extend beyond payment of professional fees.

Independent Canadian financial analyst Diane Urquhart told Law360 on Monday that courts have paid at least \$1.89 billion in fees in the U.S., Canada and U.K. since Jan. 14, 2009. The total includes 35 percent, or \$671 million, paid in the U.S. through April 30, \$712 million paid in the U.K., the Middle East and Africa over the same period, and \$507 million paid in Canada through Feb. 27.

By comparison, the massive Energy Future Holdings Corp. Chapter 11 generated some \$300 million in fees through mid-February, albeit in just two years rather than seven. Total costs exceed the \$620 million attributed to the Worldcom case and the \$487 million paid for the Adelphia bankruptcy.

Urquhart, who serves as pro bono adviser to Nortel's Canadian long-term disabled former employees, compiled the fee totals from court records.

Reckmeyer said the deal approved Monday resolved the company's current disputes, but he added that LSI rejected any conclusion that final resolution could be years away and said that the company reserves the right to pursue other claims.

Judge Gross approved the LSI payment after setting aside an objection from software company SNMP Research International Inc. that wanted equal treatment for \$8 million to \$200 million or more in claims for alleged intellectual property damages.

SNMP attorney G. David Dean of Cole Schotz PC said that Nortel's final agreement differed materially from those in circulation earlier last week. He said the company appeared willing to pay administrative expense claims without providing assurance or commitments for future claims, despite continued payouts for professional expenses.

"The debtor I don't think, can have it both ways," Dean said, noting that Nortel's position could make SNMP wait many years while the allocation dispute works through the Third Circuit and possibly the U.S. Supreme Court.

Judge Gross said SNMP's claims are in dispute, while those up for a decision Monday were settled.

"I find the resolution to be fair and equitable, and that it does not affect the rights of others to any great extent," Judge Gross said.

Nortel sought protection from creditors in the U.S., Canada and the U.K. in 2009 and eventually sold all its major assets, with about \$7.3 million of the \$9 billion raised held in an escrow account in New York pending agreement on allocations. But the parties failed to resolve their differences in previous court action and mediation, with U.S. District Judge Leonard P. Stark sending the fight to the Third Circuit in May.

Immediately after Monday's ruling, Schweitzer told Judge Gross that it also had taken part last week in a new round of mediated talks on global distributions.

Nortel's U.S. units are represented by James L. Bromley and Lisa M. Schweitzer of Cleary Gottlieb Steen & Hamilton LLP and Derek C. Abbott, Andrew R. Remming and Tamara K. Minott of Morris Nichols Arsht & Tunnell LLP.

LSI is represented by Paul N. Silverstein and Jeremy B. Reckmeyer of Andrews Kurth LLP.

SNMP is represented by Norman L. Pernick, Nicholas J. Brannick and G. David Dean of Cole Schotz PC, Richard S. Busch of King & Ballou Law Offices and John L. Wood of Egerton McAfee Armistead & Davis PC.

The case is In re: Nortel Networks Inc. et al., case number 1:09-bk-10138, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Matt Chiappardi, Jody Godoy and Kurt Orzeck. Editing by Brian Baresch.