

Nortel Creditors Clash in Latest Round

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Comment



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WILMINGTON, Del.—There is no sign of a quick end to the long-running fight over how to divide the remnants of Nortel Networks Corp., a legal battle that has kept the defunct telecommunication company's investors and former employees waiting for years to be paid.

Nortel's U.S. unit, bondholders, Canadian creditors and British pensioners argued before a federal judge in Delaware today, continuing a contest over \$7.3 billion raised in the liquidation of the defunct global telecommunications giant.

Nortel filed for bankruptcy around the world in 2009 and sold its businesses and patents. Then the fight for the money began, with the Canadian parent and European Nortel units battling Nortel U.S. over shares.

Judge Stark heard arguments on multiple appeals and cross-appeals of a ruling from U.S. Bankruptcy Judge Kevin Gross, and said he would take the matter under consideration. Judge Gross's 2015 decision on how to divide the cash dashed hopes of big profits for investors in Nortel's debt.

Bondholders were counting on Nortel's U.S. division to win the international cash clash. A victory for Nortel's U.S. division would have meant payment in full on \$4 billion in bonds, plus another \$1 billion in interest.

Instead, Nortel U.S. lost, and bondholders are looking at payment of less than par on Nortel's debt.

Creditors still awaiting payment include disabled workers left with a fraction of their former incomes, struggling pensioners and thousands of former employees.

Meanwhile, the Canadian courts have yet to say whether appeals can go forward in Nortel's corporate homeland. Justice Frank Newbould of the Ontario Superior Court of Justice ruled the same way as Judge Gross, on the same day, and at the same time in May 2015.

Until there is a final order in both courts, or a settlement, the key to the lockbox that contains Nortel's \$7.3 billion won't turn, and nobody but the lawyers will be paid.

"Unless I happen to come up with the same decision as the Canadian court all of this is going to be for naught because nobody's going to see a dime," Judge Stark commented at Tuesday's hearing in the U.S. District Court in Wilmington, Del.

The judge also asked whether he should weigh in the cost of the fighting. "You all are spending a lot of time and money fighting and maybe we need to keep an eye on the practical realities here," Judge Stark said.

A running tally of professional fees kept by Canadian financial analyst Diane Urquhart puts the total at nearly \$1.9 billion as of the turn of the year. That amounts to some 18% of the cash in Nortel's bankruptcy coffers at their fullest. Costs climbed after March 2011, when Nortel, out of business, was a tarnished name, a pile of cash and a lot of bankruptcy lawyers.

At base, Nortel's international insolvency has become a test of the ability of the legal system to dismantle a global business without letting the value drain away in court fights. In the view of the Canadian judge, the system is flunking the test.

"In this case, insolvency practitioners, academics, international bodies, and others have watched as Nortel's early success in maximizing the value of its global assets through cooperation has disintegrated into value-erosive adversarial and territorial litigation described by many as scorched earth litigation," Justice Newbould wrote last May.

Both he and his U.S. counterpart, Judge Gross, made rulings that would result in substantial payments to creditors of the Canadian parent company and to Nortel's British pensioners.

Nortel's wealth should be distributed the same way it was accumulated, with various national factions of the global operation sharing the cash according to the debts they carried, the judges said.

Bondholders and Nortel U.S. say the "pro rata" decision is outside the rules, and the judges should have followed the outlines of the theories spelled out in a lengthy trial held jointly in the U.S. and Canada.

"They spent the whole morning attacking a U.S. bankruptcy judge, saying he got everything wrong," said Jacob Pultman, lawyer for administrators of Nortel Canada. The Canadian bankruptcy authorities argued in defense of the verdict.

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