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Nortel's legal mess pits bondholders against retirees

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- * Creditors seeking \$20 bln square off over \$9 bln in cash
- * No agreement on which laws to apply
- * Bondholders cite legal rights, pensioners cite hardship

By Tom Hals

Jan 11 (Reuters) - Nortel Networks was once the largest telecommunication equipment company in North America, but since it filed for bankruptcy in 2009 it has earned a new label: one of the world's most complicated legal proceedings.

Bondholders, suppliers, governments and former employees from around the globe hold \$20 billion in claims based on different insolvency laws and are competing for Nortel's last remaining asset - \$9 billion in cash.

On Monday, Ontario Chief Justice Warren Winkler, who has spent the past few months analyzing proposals, begins a week of talks in a Toronto hotel intended to find common ground.

Winkler has called the case "one of the most complex transnational legal proceedings in history." Failure of the mediation would mean years of litigation, with the possibility that parallel legal fights in different countries could reach inconsistent outcomes, according to Winkler, who was appointed to mediate by the U.S. and Canadian courts.

John Penn, a bankruptcy attorney who is not involved in the case, said the mediation is comparable to a football playoff between the New England Patriots, the Hamilton (Ontario) Tiger-Cats, Manchester United and Australia's Sydney Swans.

"Each calls it 'football' but they all do something that's quite different," said Penn, of Haynes and Boone in Fort Worth, Texas. "Before you get to the actual games, there will have to be a lot of negotiation and agreement."

The complex disputes stem from Nortel's former might as a global telecom empire with a web of intercompany finances and a workforce that once stood at 93,000.

Since seeking protection from creditors in courts in the United States, Canada and across Europe, its assets, including a \$4.5 billion patent portfolio, were sold as whole global businesses, generating the \$9 billion. How to divide that value among the various Nortel insolvency and bankruptcy proceedings was never resolved.

COURT CONCEDES RETIREES ARE 'PAWNS'

Another problem is who gets paid first.

In the United States, hedge funds that hold \$4 billion in bonds issued by Nortel will be a major force in next week's talks. They can block any U.S. bankruptcy plan that would determine how to distribute cash allocated to Nortel's U.S. estate.

Those funds, including Centerbridge Partners and George Soros' Quantum Partners, specialize in buying debt of bankrupt companies at bargain prices and then signing up top lawyers to fight for full repayment. In this case the bondholders are also seeking to collect an additional \$1 billion of interest that has accrued on their bonds during Nortel's drawn-out bankruptcy.

A spokesman for bondholders declined to comment ahead of next week's talks.

Taking aim at that \$1 billion of accrued interest on the bonds are Nortel's retirees and former employees in Canada, who have asked the Minister of Industry for a declaration that the country's insolvency law does not entitle bondholders to that interest. The group is still waiting for a reply.

While the hedge funds point to their legal rights in the bond agreements that entitle them to the interest, the retirees and former employees have emphasized fairness. They have suggested distributing Nortel's cash equally among all claims.

"That's to me what would be the morally right thing to do," said Anne Stewart-Clark, a spokeswoman for the retirees and former employees.

She said many pensioners have lost up to half of their retirement benefits. Some retirees have told her they are being forced to sell homes or seek public housing.

"These are people who worked 35 to 40 years for the company, and it's a shame they are being forced onto public welfare."

Nortel's failure has also pitted retirees against former colleagues in other countries.

One of Stewart-Clark's big fears is that the company's receiver in Britain will be able to successfully press its claim for as much as \$3 billion for underfunded British pensions.

The British receiver has argued that by not fully funding the pensions of up to 40,000 British retirees, Nortel entities in other countries benefited. Therefore, the British pensioners deserve a claim on the cash ahead of those other creditors.

The retirees have received some sympathetic words from courts, even as the courts have ruled against them.

The U.S. Court of Appeals for the Third Circuit wrote that attorneys squabbling over "technical differences" were not considering their impact on pensioners. The appeals court said retirees "are the pawns in the moves being made by the knights and rooks."

Still, the federal appeals court upheld lower court rulings against British retirees' claims on the U.S. estate.

Some claims that were outstanding when Winkler started his talks in April have been resolved. Last month, a dispute over a U.S. employee deferred-compensation fund was settled, and Nortel's U.S. retirees accepted \$67 million to terminate medical plans.

In addition, hearings over a plan to end U.S. employees' long-term disability benefits have been postponed - often an indication of a deal in the works. A lawyer for the disabled employees, Rafael Zahraiddin, declined to comment on the possibility.

The proposal to end those benefits has been cast as a life-and-death battle against greedy bondholders. A letter by a disabled employee to Judge Kevin Gross, who is overseeing the bankruptcy in the United States, does not suggest much room for compromise.

The letter described scores of very sick former employees who would lose money for medicine without the benefits, including one woman with terminal cancer. "If she loses her life insurance (her family) will not even have enough money to bury her," the letter said.

An administrator for Nortel's estate in Canada and the Cleary Gottlieb Steen & Hamilton law firm, which represents Nortel in the United States, declined to comment ahead of next week's meeting.

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