

Nortel Creditors Clash in Latest Round of \$7.3 Billion Cash Fight

Creditors are vying for a share of money raised from liquidation of defunct telecommunications giant



ENLARGE

A sign is pictured outside Nortel Networks' Ottawa campus in this 2009 file photo. A U.S. bankruptcy said the "tragic" collapse of Nortel took its toll on thousands of people who participated in the company's growth. *PHOTO: REUTERS*

By

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The long-running fight over how to divide the remnants of Nortel Networks Corp. continues Tuesday in a U.S. federal court, with creditors in Canada, the U.K. and the U.S. vying for a share of the \$7.3 billion raised from the liquidation of the defunct global telecommunications giant.

Nortel's U.S. unit is appealing a ruling of U.S. Bankruptcy Judge Kevin Gross, whose 2015 decision dashed hopes of big profits for investors in Nortel's bonds. Bondholders were counting on Nortel's U.S. division to win, a victory that would have meant payment in full on \$4 billion in bonds, plus another \$1 billion in interest.

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

Tuesday's arguments before Chief Judge Leonard Stark in federal court in Delaware involve complex issues of tax policy, intellectual property, the reach of international contracts and other matters.

The "tragic, almost unimaginable collapse" of Nortel, as the U.S. bankruptcy judge said, took its toll on thousands of people who participated in the company's growth. In its heyday in 2000, Nortel had a market capitalization of about \$260 billion. Creditors still awaiting payment include disabled workers left with a fraction of their former incomes, struggling pensioners and thousands of former employees.

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.

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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. Multiple efforts at mediating a deal have failed and, in the view of the Canadian judge, the system's 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 handing most of the money 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.

"This was not one corporation and one set of employees inventing IP that led to patents," wrote Justice Newbould. "Nortel was a highly integrated multinational enterprise."

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

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