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Lehman, Nortel Lose British Court Challenge on \$3.6 Billion Pension Debt

By Lindsay Fortado and James Lumley - Dec 10, 2010

[Lehman Brothers Holdings Inc.](#)'s European unit and [Nortel Networks Corp.](#) lost their challenge of a regulator's order for the bankrupt companies to prop up their U.K. pension funds with payments totaling about 2.25 billion pounds (\$3.6 billion.)

The High Court in London ruled in favor of the U.K. Pensions Regulator today, saying its claims have priority ahead of most creditors. The companies' administrators argued at a hearing last month the regulator doesn't have the power to issue so called financial-support directions against companies that are in administration or liquidation.

The regulator in September told Lehman's unit to cover a deficit of 148 million pounds and in July sought 2.1 billion pounds from Nortel to address the underfunding of its plan.

"Parliament has legislated to create financial obligations applicable to and payable by a company in an insolvency process," Judge [Michael Briggs](#) said in his judgment today. That could be "an impediment to the achievement of the objectives of the rescue culture."

Briggs said that he was bound in his decision by earlier court rulings, and said an appeals court "may find a way" to overturn today's ruling because it is "potentially unfair to the target's creditors."

[Vicky Conybeer](#), a spokeswoman for the Nortel administrators at Ernst & Young, declined to comment beyond noting that Briggs had granted the right to appeal.

[Stephanie Howel](#), a spokeswoman for the Lehman administrators at PwC, declined to immediately comment.

'Seriously Underfunded'

The Lehman and Nortel pension programs are "seriously underfunded" and have more than 43,000 members, the Pensions Regulator said in an e-mailed statement.

Today's ruling "confirms an FSD is valid if issued after an insolvency event," the regulator said,

referring to financial-support directions. "Where schemes are left with inadequate financial support, the regulator engages with all who might have a responsibility to support the scheme to ensure, where possible and reasonable, that the interests of scheme members are protected."

The ruling "means that banks now have less certainty when lending to businesses in which there are final salary pension schemes as to whether they will be repaid," said Nick Moser, the head of the restructuring practice at the law firm Taylor Wessing LLP in London. "Administrators will be discouraged from implementing rescues of businesses because super-priority for pension schemes could wipe-out any return for any other creditor."

Largest Bankruptcy

Lehman Brothers filed the largest bankruptcy in U.S. history in September 2008, and the U.K. unit is being liquidated in London. Nortel and affiliates filed for bankruptcy in the U.S. and Canada in January 2009 while its U.K. operations were placed in administration.

"The continued uncertainty as a result of this decision and the judge's comments is unhelpful to the wider economy, as the recovery remains fragile, and certainty -- through immediate legislation or an appeal straight to the Supreme Court -- is required urgently," Moser said.

The Nortel case is: In the Matter of Nortel Networks NV, case no. 271/10, High Court of Justice, Chancery Division (London).

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