

Canadian judge demands a reckoning of Nortel cash fight costs

By Peg Brickley, Dow Jones Daily Bankruptcy Review

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Canadian, U.S. judges to preside jointly over the trial, which will determine who gets the money from sale of Nortel

A Canadian judge Tuesday demanded an accounting of costs from the army of lawyers preparing for a massive trial next year over the \$7.3 billion raised in the liquidation of Nortel Networks Corp.

"The court here is in the dark, and I do not want to be in the dark any longer," said Justice Geoffrey Morawetz of the Ontario Superior Court of Justice. "The time has come, please, to let me know how much this is costing."

The judge was referring to the court contest over Nortel's cash, a battle that pits Canadian and European creditors, chiefly representatives of retirees, against hedge funds that invested in debt issued by Nortel's U.S. arm. Its businesses long sold off, Nortel is a corporate shell stuffed with cash, ringed by bankruptcy lawyers and advisers.

Justice Morawetz's order for a reckoning of the litigation costs came at a joint session with the U.S. court overseeing Nortel's Chapter 11 proceeding. Attorneys for Nortel in the U.S. and Canada asked for the hearing to seek more time to prepare for the trial, which until Tuesday was scheduled to start April 1, 2014.

The trial date was pushed off until May 1, after the judges heard that lawyers who have been flying to Europe and back in teams to depose witnesses will not be ready for trial.

"I think it is quite clear that the trial, if it is to start on April 1, would be chaotic. That is not desirable," Justice Morawetz said.

"The cost is obviously of great concern to us," added Judge Kevin Gross of the U.S. Bankruptcy Court in Wilmington, Del.

The Canadian and U.S. judges are to preside jointly over the trial, which will determine who gets the money from the sale of Nortel's businesses and patents.

Estimates are that Nortel's 2009 collapse has put nearly \$1 billion into the pockets of law firms and other professionals, already, with costs rising as the trial nears.

The spending has touched a nerve in Canada, where the demise of Nortel, once the pride of the nation's technology industry, left thousands of retirees and disabled workers with sharply curtailed benefits, or no benefits at all.

Tuesday, Justice Morawetz ordered the firms working on the case to render an accounting of their spending since May, when trial preparation began in earnest.

U.S. bankruptcy court records provide a view into most of the spending by professionals tasked with representing the defunct company and the official committees working on the case. Canadian procedures make it more difficult to keep tabs on the bills being submitted to Nortel for payment.

A few participants, such as those looking out for Canadian and British pension interests, are paying their own legal bills. They, too, have been told to report their spending to the Canadian court.

Justice Morawetz's order to tally up the professional fees triggered admissions that the trial will be expensive.

"The costs are way too large. There is no question," said Cleary Gottlieb Steen & Hamilton LLP's James Bromley. Mr. Bromley's firm has billed nearly \$216 million for its work representing Nortel U.S. from the start of the bankruptcy in 2009 through the end of September. Cleary is one of dozens of firms working on Nortel's U.S. Chapter 11 case.

Nearly \$22 million of the Cleary Gottlieb fees and costs were billed in the period from May through September, court records show.

Between April 14 and Oct. 12, Nortel Canada shelled out nearly \$44 million in total to 17 legal and financial advisory firms, according to a report from the court-appointed monitors running the insolvency proceeding. That figure includes \$11.4 million for the ad hoc committee that has been looking out for the interests of bondholders.

"The costs of this proceeding are astronomical," said Milbank Tweed Hadley & McCloy LLP's Andrew LeBlanc. The Milbank firm has been leading the effort on behalf of bondholders.

Canadian monitors estimate they will spend another \$35.2 million from Oct. 13 through Feb. 1, 2014, getting ready for trial. Additionally, the monitors project they will spend \$11.3 million on support services for the allocation dispute.

A maker of telecommunications equipment, Nortel filed for insolvency protection in the U.S., Canada, Britain, France and elsewhere in 2009 and sold off its assets.