

Nortel Disabled Bulldozed into Accepting Poverty for Life and Bonuses for Executives Financial Analysis of the Feb. 8th Agreement

Prepared By: Diane A. Urquhart

Date: February 16, 2010

SUMMARY TABLE: Estimated Impact of No to Feb. 8th Agreement

\$ Cdn Millions	Pensioners		LTD Employees	
	15% Worst	50% Best	15% Worst	50% Best
Bankruptcy Estate Cash Settlement				
Change In				
Feb. 8th Agreement 2010 Estimated Cash Flow %	-1%	-1%	-2%	-2%
Estimated Pension Fund/H & WT Funding % (1)	0%	0%	-4%	-4%
Estimated Bankruptcy Estate Funding % (2)	0%	0%	1%	3%
Estimated Liquidation Settlement %	-1%	0%	-5%	-3%
Lost Agreement Benefits \$ M	-\$24	-\$14	-\$11	-\$7
Gained Legal Rights \$ M	\$0	\$0	\$169	\$99

Legal Release for Parties Involved, Excluding S. 5.1 (2) and Fraud	Pension Fund	H & WT
Litigation Prospects for Success	No evidence of Misconduct	Evidence of Misconduct
Separate Class for CCAA Plan	Limited prospects for success	Prospects for success
Fairness Hearing Request for Above Equal Cash Settlement in CCAA	Limited prospects for success	Prospects for success

Source: Diane A. Urquhart

15/02/2010

<http://ismymoneysafe.org/pdf/TABLES-LTDEmployeesandPensionersInterestsFeb8thAgreement.pdf>

The bottom line is that the Feb. 8th agreement amongst Nortel, the Legal Steering Committee of the Former Employees, the Legal Steering Committee of the Long Term Disabled Employees, Koskie Minsky LP, CAW Canada Legal Counsel and Ernst & Young Canada Court Monitor **is offering life to the long term disabled in the short term of 2010, provided they agree to live in poverty for the rest of their lives and agree to not oppose the Nortel executives and key employees getting the additional incentive payments that were announced on Feb. 8, 2010.** John Doolittle, Corporate Leader of Nortel, is providing scraps off the table for the LTD employees, while protecting his own \$1.7 million compensation for each year of 2010 and 2011. The 410 LTD employees are having their lives and quality of life sacrificed for the benefit of the 17,749 Nortel Canadian pensioners, the Nortel executives and key current employees, the U.S. junk bond owners and other large unsecured creditors.

Feb. 8th Agreement Gives Very Little and Concedes Too Much for the LTD Employees

The Feb. 8th agreement to pay the LTD employees wage loss replacement income, health care benefits and life insurance in 2010 from Nortel operations provides estimated incremental value of 3% to 5% of the estimated total amount owed the LTD employees, or \$7 million to \$11 million.

The Feb. 8th agreement is not a settlement of the full amounts owing to the LTD employees from Nortel's Health and Welfare Trust (H & WT) and the Nortel bankruptcy estate.

In addition to this Feb. 8th agreement, there will be a further settlement at an unknown time and of an unknown amount made to the LTD employees from the Nortel Canada H & WT. There will be a further settlement at an unknown time and of an unknown amount made to the LTD employees from the Nortel Canada bankruptcy estate. There is considerable evidence that the U.S. Unsecured Creditor Committee and U.S. Ad Hoc Bond Holders Committee have hoarded cash in the U.S. for a better bankruptcy cash settlement ratio in the U.S. than what the Canada Estate unsecured creditors will get (the Canada Estate cash settlement ratio could be as low as \$0.15 per dollar of unsecured creditor claim compared to \$0.70 in the U.S. Estate and an average of \$0.50 for the Nortel global estate.) My financial analysis estimates that the H & WT cash funding ratio for LTD income and related benefits is 15% and that the Nortel Canada bankruptcy estate cash settlement ratio will be between 15% to 50%.

The LTD benefits, with some exceptions, are self-insured, and so the LTD employees will not be entitled to an insurance company settlement to pay for their benefits based on the terms of any third party insurance contracts.

In exchange for this miniscule lifeline in 2010 to the LTD employees, the LTD employees are being asked in this Feb. 8th agreement to give up an estimated 40% to 68% of the estimated total amount owed to them, or \$99 million to \$169 million of legal rights. The legal rights to be given up include:

- (i) the right to sue various parties to the H & WT and the LTD benefits plan and related benefits (parties such as Northern Trust, the trustee of the H & WT, and Sun Life, the Administrative Only Services Agent for Nortel to administer LTD income replacement and other related benefits); except for the following post liquidation lawsuits: (a) against the Directors for misrepresentation, wrongful conduct or oppression, and (b) fraud.
- (ii) the right to make any claim that gives preferential treatment over ordinary unsecured creditor claims, which amounts to giving up the right to the use two CCAA process tools, the seeking of a separate voting class for the LTD employees in a vote on the final CCAA plan, and the seeking of an above equal cash settlement for the LTD employees compared to the other unsecured creditors on fairness grounds in the CCAA Fairness hearing.

Concessions of LTD Employees' Legal Rights are Premature and Deserve Second Legal Opinion

The small upfront lifeline in dollar terms, but not in human life, is being given in exchange for an estimated large loss of legal rights for the LTD employees at this stage in the process. This abusive exchange is made more repugnant when one takes into account the lack of public disclosures to the LTD employees, so that they may make an informed decision affecting the rest of their life. Nortel, Koskie Minsky LP, Segal, RSM Richter, CAW Internal Legal Counsel, the Steering Committee for the LTD Employees, the Steering Committee for the Former Employees, Ernst & Young Canada Court Monitor and Goodmans LP, legal counsel to the Court Monitor, have not released:

- (i) the aggregate creditor claim for the LTD employees;
- (ii) the creditor list of LTD employees, so that the LTD employees can communicate and efficiently retain and fund independent legal and financial advice (free of the conflicts of interest of current

court appointed Representative Counsel for the pensioners, terminated employees and current LTD employees);

- (iii) the estimated allocation of cash to the LTD employees from the \$75 million in the Canada H & WT;
- (iv) identification of other beneficiary groups eligible to claim capital from the H & WT and the basis of their H & WT claims;
- (v) many legal documents and all financial statements for the H & WT and the LTD benefits plan.

The historical record of the H & WT is not clean. More inspection is required by outside experts before legal rights are given up at this time for so little a % of the LTD employees' PV of liabilities owed to them and for so much expected final loss for the LTD employees at the time of the liquidation of the H & WT and Nortel.

The Nortel audit committee, perhaps compelled by the U.S. S.E.C. investigation of Nortel's accounting violations, found it necessary in 2005 to restate the Nortel financial statements in order to fully consolidate the Canada H & WT financial statements. The publicly disclosed reason given for changing the Canada H & WT accounting was that the H & WT assets were commingled with the Nortel operating assets and that Nortel was a primary beneficiary of the Canada H & WT. With this public disclosure of past misconduct, (the 1980 H & WT agreement and the CRA rules for H & WT's require no commingling of assets in the H & WT with Nortel operations), there is reason to be highly diligent about giving up post Nortel liquidation legal rights relating to the H & WT for the LTD employees.

There is evidence of misrepresentation to the employees by Nortel that their LTD benefits were insured before 2005 and that they were funded by Nortel, acting like an insurance company, after 2005.

Furthermore, the 1980 H & WT agreement in the Thirty-Second Monitor's Report says LTD benefits were to be funded on an actuarial basis before Nortel could stop making Employer contributions into the H & WT. Mark Zigler of Koskie Minsky LP has informed the LTD employees that Nortel stopped making contributions into the H & WT for the LTD benefits plan years ago. The LTD employees have not been otherwise informed of this fact by Nortel, the trustee to the H & WT and the Administrative Services Only Agent to Nortel, who administers the LTD Benefit Plan and related benefits. The LTD employees have not been informed about the underfunding of their LTD Benefits Plan at any time, including at this time when they are expected to say yes to this Feb. 8th agreement.

LTD employees are being asked to receive little cash in this Feb. 8th agreement and to give up much on the basis of the legal opinion of Koskie Minsky LP and the CAW internal legal counsel and the decisions of the one woman Legal Steering Committee, Sue Kennedy. The Legal Steering Committee representative was under a Non Disclosure Agreement that prevented her from seeking outside second opinions from legal and financial experts. Her NDA also appears to have prevented her from soliciting the views of members in the LTD employees' constituency.

There is insufficient public disclosure of key facts and readily available legal documents and financial statements on the H & WT and the LTD Benefits Plan to enable the LTD employees to obtain comprehensive second legal and financial opinions. These opinions are required to better ascertain the

prospects for success of litigation post the Nortel liquidation against third parties involved with the H & WT and LTD Benefits Plan. Similarly, second opinions are required to assess the give-up of CCAA procedural rights at this stage of the CCAA process, when so little financial remuneration is given in this Feb. 8th agreement.

Surely, there is no difference in seeking the right to a second legal opinion on the future financial well-being of long term disabled persons in this Nortel CCAA Proceeding than "the right to obtain a second doctor's opinion from a doctor of your choice before going under the knife of the first doctor for serious surgery, when the complexity and severity of the operation poses risk that you might die."

Justice Morawetz To Make the Decision on the Feb. 8th Agreement for the Disabled Not the Monitor

The give up of post Nortel liquidation litigation rights against third parties, such as against Northern Trust and Sun Life, and the give up of CCAA procedural rights at this stage of the CCAA process are best determined by Justice Morawetz and not by an agreement amongst Nortel, Koskie Minsky LP, Segal, RSM Richter, CAW Internal Legal Counsel, the Steering Committee for the LTD Employees, the Steering Committee for the Former Employees, and the Ernst & Young Canada Court Monitor. The Ernst & Young Court Monitor recommends this Feb. 8th agreement without disclosing the key facts and readily available documents to Justice Morawetz so that he may reach a "just decision" on behalf of the LTD employees free of the conflicts of interest that Koskie Minsky LP and the CAW internal legal counsel have between the interests of the 17,749 pensioners, estimated 1500 terminated employees, and the 418 LTD employees.

Comparison of the Pensioners and LTD Employees' Interests in the Feb. 8th Agreement

TABLE 2: Comparison of Pensioners and LTD Employees' Interests in February 8th Agreement

\$ Cdn Millions	Pensioners		LTD Employees		LTD Employees	
	15%	50%	15%	50%	15%	50%
Bankruptcy Estate Cash Settlement	Worst	Best	Worst	Best	Worst	Best
Yes to Feb. 8th Agreement					Yes to Agreement	
Estimated PV Liabilities Owed to Group	\$4,500	\$4,500	\$250	\$250		
Feb. 8th Agreement 2010 Estimated Cash Flow	1%	1%	6%	6%	\$15.2	\$15.2
Estimated Pension Fund/H & WT Funding % (1)	83%	90%	14%	14%	\$36.1	\$36.1
Estimated Bankruptcy Estate Funding % (2)	3%	5%	12%	40%	\$29.8	\$99.4
Estimated Liquidation Settlement %	86%	96%	32%	60%	\$81.1	\$150.7
Estimated Deficit % Relative to Est. PV Liab. (3)	14%	4%	68%	40%	\$168.9	\$99.4
<hr/>						
\$ Cdn Millions	Pensioners		LTD Employees		LTD Employees	
	15%	50%	15%	50%	15%	50%
Bankruptcy Estate Cash Settlement	Worst	Best	Worst	Best	Worst	Best
No to Feb. 8th Agreement					No to Agreement	
Estimated PV Liabilities Owed to Group	\$4,500	\$4,500	\$250	\$250		
Feb. 8th Agreement 2010 Estimated Cash Flow	0%	0%	4%	4%	\$10.7	\$10.7
Estimated Pension Fund/H & WT Funding % (1)	83%	90%	11%	11%	\$27.2	\$27.2
Estimated Bankruptcy Estate Funding % (2)	3%	5%	13%	42%	\$31.8	\$106.0
Estimated Liquidation Settlement %	86%	95%	28%	58%	\$89.8	\$144.0
Estimated Deficit % Relative to Est. PV Liab. (3)	14%	5%	72%	42%	\$180.2	\$106.0

In this Feb. 8th agreement, the Nortel pensioners get incremental cash flow from the extension of medical, dental and life insurance benefits to pensioners until December 31, 2010, instead of these being cut off on March 31, 2010. The pensioners have to give up similar legal rights to the LTD employees, but their litigation rights relate to a lower expected % loss versus the present value of liabilities owed to the pensioners. There are no evident causes of action relating to the pension fund and the provision of medical and dental benefits to the pensioners. Furthermore, in the absence of causes of action relating to the pension fund and the pensioners' medical and dental benefits, there is no significant prospect for litigation success for the pensioners.

The Nortel pensioners have a much better expected final cash settlement % relative to the present value of liabilities owed to them than the LTD employees. This is due to the pension fund having a known funding ratio of 69% according to the unofficial actuarial report tabled in the court by Mercers in March 2009, for the period ending December 31, 2008. Furthermore, the Ontario pensioners, estimated to be 51% of all Nortel Canadian pensioners, get the benefit of the Feb. 8th commitment of the Ontario Government to pay the Ontario Pension Benefit Guarantee Fund (OPBGF). The OPBGF will pay the calculated amount to guarantee the first \$1000 per month of Ontario pensioners' income. There had been considerable doubt about Ontario making this payment since there is a -\$47 million deficit in this insurance fund and the Ontario Government was not legally obligated to make this OPBGF payment.

The average expected final pension fund commuted value is now in the range of 86% to 96%. The corresponding final pension fund deficit estimate range is -4% to -14%. The pension income loss could be higher than this, in the range of -14% to -24% after taking into account the forced wind-up of the pension plan and the purchase of life annuities at today's very low interest rates relative to that assumed in the unofficial actuarial wind-up report for the pension fund. The previously publicized loss % to pensioners is higher than this new estimate of average pension fund deficit due to the OPBGF payment being made to Ontario pensioners and this estimate of loss being for the pension income only, and not including the loss of health care benefits paid to pensioners. This final pension fund deficit estimate range for the pensioners assumes no rally in the value of the pension fund assets or increase in interest rates between December 31, 2008 and the unknown wind-up date for the pension plan.

The final commuted value range estimate for the pension fund in this report is the weighted average commuted value range using an expected final wind-up pension fund CV % of 91%-95% for average Ontario pensioners due to the OPBGF payment; and, 74%-85% CV for the non-Ontario average pensioners (neither of these CV ranges deducts up to another 10% for income loss due to purchased annuities having interest rates below the ones assumed in the pension plan unofficial actuarial wind-up report.) Both the Ontario and Non-Ontario pensioners CV final settlement ranges are after my estimated Nortel bankruptcy Canada estate payments into the pension fund based on a cash settlement ratio range of 15% to 50%.

Koskie Minsky LP and the CAW internal counsel appear to be concluding that there are limited prospects for success of post liquidation litigation relating to both the Pension Plans and the H & WT/LTD Plans. Koskie Minsky LP and RSM Richter have examined many undisclosed legal documents and the financial statements on the Pension Plans, H&WT and LTD Benefits Plans going back to an undisclosed time. We are not aware of any prima facie evidence of any misconduct by any parties with respect to the pension plans and so the pensioners are not being asked to give up plausible legal rights by agreeing now not to sue any of the parties involved with the pension plan. The pensioners have less loss to recover in any case so the high risk of litigation of the parties associated with the pension plan would not likely be of interest to the pensioners.

Giving Up the Right to Ask for LTD Employees to Get a Better Cash Settlement in the Fairness Hearing

Justice Morawetz has the authority under the CCAA to make decisions for the benefit of a minority specific class of unsecured creditors on grounds of unfairness. His fairness decision is based on arguments presented to him in a CCAA Fairness Hearing. The CCAA Fairness Hearing takes place after the negotiated deals between the debtor and creditor groups, after the final CCAA Plan is voted upon and before the judge approves the final CCAA Plan. Unfairness arguments are notwithstanding the LTD employees being unsecured creditors that are to be treated equally as prescribed in the Bankruptcy and Insolvency Act (BIA). Normally the CCAA Plan allocations follow the same priorities as prescribed in the BIA, but there are numerous precedents for CCAA Plans deviating from the BIA creditor priorities. Usually the CCAA deviations from the BIA priorities are for the benefit of the large powerful creditors with negotiating power. In the case of the Eatons bankruptcy, the Eatons family as a majority shareowner got \$11 million of bankruptcy settlement cash, even though the long term disabled employees of Eatons got an estimated settlement of only \$0.48 per dollar of accepted creditor claim. The other unsecured creditors of Eatons were forced to compromise too.

In this Nortel bankruptcy case, an equal cash settlement ratio at the plausible low end of just \$0.15 will result in poverty for the long term disabled employees. See Table 3 showing an average LTD employee in the worst case going from \$39,390 per year income and health care benefits to just \$17,879 of income and health care benefits. The annual income after paying their average essential health care costs will be only \$13,507.

Death and suicides will be an inevitable outcome when the medical services and prescription drugs needed by the long term disabled employees stop getting paid by Nortel, as early as March 31, 2010 if the Feb. 8th agreement is rejected, and Dec. 31, 2010, in any case if it is accepted. The Nortel LTD employees' actual health care costs according to Mark Zigler of Koskie Minsky LLP is \$4,390 per person per year. We have collected a sample of 27 Nortel LTD employees that have health care costs averaging \$14,600 per year per person.

The Hardship Test funding of \$750,000 and the criteria for its use by LTD employees must clearly be revisited in light of this Feb. 8th agreement, because of the firm dates prescribed for the cutting off of LTD employees income and health care benefits and the uncertain dates for any additional cash settlements from liquidation of the H & WT and of Nortel. The subsequent cash settlements from the H & WT and Nortel are rife with prospects for negotiating disputes and protracted court challenges, that the LTD employees will be unable afford to weather on the measly \$13,272 per year of CPP Disability income.

The CCAA Fairness Hearing will be another time when all the other equitable arguments for better treatment of LTD employees can be heard. This is where evidence can be brought that the junk bond owners had access to insurance in the form of credit default swaps and a large proportion of Nortel junk bond holders were insured. The hedged bond owners were made whole at the Feb. 10, 2009 Nortel credit default swap auctions and they will make a profit upon the final Nortel liquidation settlement of the damaged bonds they still own and double-dip on. And, many large suppliers, like Flextronics and Airvana, have been fully cash settled. And, the Nortel executives and current employees were paid bonuses of over \$450 million post January 14, 2009. And, yes the lawyers and financial advisors will have been paid close to \$300 million in professional fees during the Nortel bankruptcy proceeding.

Table 3
Nortel Long Term Disabled Benefit

	Employer Paid to 50%		Employee Optional Added to 70%	
	Worst	Best	Worst	Best
LTD Income All Sources and Health Benefits Before	\$39,390	\$39,390	\$53,390	\$53,390
Health Benefits Nortel Before	\$4,390	\$4,390	\$4,390	\$4,390
LTD Income All Sources Before	\$35,000	\$35,000	\$49,000	\$49,000
CPP Disability First Payer	\$13,272	\$13,272	\$13,272	\$13,272
LTD Income Nortel	\$21,728	\$21,728	\$35,728	\$35,728
Working Income	\$70,000	\$70,000	\$70,000	\$70,000
% LTD benefit	50%	50%	70%	70%
LTD Income All Sources	\$35,000	\$35,000	\$49,000	\$49,000
Health & Welfare Funding Before Cash Settlement	15%	15%	15%	15%
Cash Settlement Ratio	15%	50%	15%	50%
Health & Welfare Funding After Cash Settlement	28%	58%	28%	58%
LTD Income and Health Benefits Nortel After	\$4,515	\$12,516	\$7,000	\$19,166
Health Benefits Nortel After	\$659	\$2,195	\$659	\$2,195
LTD Income Nortel After	\$3,857	\$10,321	\$6,342	\$16,971
% Unfunded Nortel LTD Plan After Cash Settlement	-72%	-43%	-72%	-43%
% LTD Income Nortel Reduction After Annuities Purchase	-82%	-53%	-82%	-53%
% Health Benefits Nortel Reduction	-85%	-50%	-85%	-50%
% LTD Income and Health Benefits Nortel Reduction (Rounded to 5%)	-85%	-50%	-85%	-50%
LTD Income All Sources and Health Benefits After	\$17,787	\$25,788	\$20,272	\$32,438
Health Benefits Nortel After	\$659	\$2,195	\$659	\$2,195
LTD Income All Sources	\$17,129	\$23,593	\$19,614	\$30,243
CPP Disability First Payer	\$13,272	\$13,272	\$13,272	\$13,272
LTD Income Nortel	\$3,857	\$10,321	\$6,342	\$16,971
% Reduction LTD Income All Sources and Health Benefits After (Rounded to 5%)	-55%	-35%	-60%	-40%

Giving up the Right to a Separate Voting Class For The LTD Employees in a Final CCAA Plan Vote

Why waive the right now in this Feb. 8th agreement to a separate class vote for the LTD employees if there were to be a vote on the final CCAA Plan? There is no assurance that there will be a vote due to Nortel's liquidation circumstances rather than Nortel tabling a CCAA Restructuring Plan as an ongoing concern. However, there is still the threat of a vote, and a separate voting class for the LTD employees would give them strong negotiating power. The Judge has the authority to grant the LTD employees a separate voting class for this purpose. The judge has the authority to consider a separate voting class if confronted with evidence of the LTD employees' plight of being pushed into poverty, death and suicide and having no recourse to obtain financial remedy from the cash in the Nortel Estate outside of Canada and the solvent third parties involved with the Canada H & WT and LTD plans. If the separate voting class were rejected by the judge, he could be asked to grant a more lenient legal release to enable post liquidation litigation against the alleged perpetrators of misconduct pertaining to the H & WT and LTD Benefits Plan, for causes of action outside of the currently proposed exceptions of S. 5.1(2) misrepresentations, wrongful conduct and oppression by the directors, and fraud.

Nortel Canada Estate Bankruptcy Getting Low Cash Settlement Wreaking Fear Amongst the Disabled

The Nortel bankruptcy Canada Estate cash settlement scenarios in Tables 1 to 3 are in the broad range of only \$0.15 per \$1.00 of unsecured creditor claim in the worse case and \$0.50 per \$1.00 in the best case. The best case is my current estimate for the average cash settlement ratio for the Nortel Global estate of \$0.50 per \$1.00 of unsecured creditor claim, on the estimates of \$6.4B for cash available for disbursement in the liquidation and \$12.7B of creditor claims. The worst case for the Canada Estate of \$0.15 per \$1.00 creditor claim arises due to:

- (i) the Canada Estate having been depleted of its cash by Canada's operating and restructuring costs since Jan. 14, 2009 and a low starting cash balance in the Canada Estate;
- (ii) the \$348M interim and final Canada Settlement Agreements being grossly inadequate and likely much less than what the "U.S. to Canada Transfer Pricing Agreements" would have paid to the Canada Estate (the Nortel Networks U.K. Administrator complained about this too);
- (iii) the \$75M inter-company D.I.P. financing from the U.S. Estate (possibly being extended to \$200M before this liquidation is complete);
- (iv) the now \$2.6B of pre-filing inter-company loans, including the new \$2.0B inter-company charge as part of the Nortel - U.S. IRS Settlement against the Canada Estate and for the benefit of the U.S. Estate;
- (v) the effort of the U.S. Unsecured Creditor Committee and Ad Hoc Bond Holders Committee to have Canadians believe the Canada Estate is not entitled to the estimated \$2.9B of cash from operations on the Nortel balance sheet held outside of Canada; and,
- (vi) these powerful U.S. players likely being unwilling to accept the Canada Estate getting a large share of the lock box cash of estimated \$3.9B from the businesses' sales.