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Lehman, Nortel must cover U.K. plan deficits, court rules

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Lehman Brothers and Nortel Networks are responsible for about £2.25 billion (\$3.9 billion) in combined pension deficits in their U.K. defined benefit plans, according to a U.K. court decision that also ranked pension obligations before all unsecured creditors in bankruptcy proceedings.

Britain's High Court of Justice ruled Friday that The Pensions Regulator, which oversees U.K. occupational pension plans, can pursue financial support directions and contribution notices to insolvent companies and their overseas parent or subsidiaries to provide financial support for their U.K. pension plans. These obligations are considered "administration or liquidation expenses," according to the judge.

Legal experts added that such a ruling would give pension liabilities "super priority" status, trumping the administrator's own costs, some secured creditors and all unsecured creditors.

The Pensions Regulator said in a statement following the ruling that "it confirms an FSD is valid if issued after an insolvency event. ... More generally, this ruling clarifies the effect of an FSD on an insolvent target. However, it will not alter the regulator's approach to determining FSDs in any situation."

Ben Lloyd, spokesman for the regulator, said there was no further comment beyond what was published.

The regulator had pursued support directions following Lehman Brothers' and Nortel's bankruptcy filings in September 2008 and January 2009, respectively. Nortel's pension deficit was estimated at £2.1 billion and Lehman's at £148 million, both as of Jan. 1, 2007.

Both companies challenged the support directions in the High Court, arguing that the orders were implemented after the insolvency dates.

Attorneys at law firm Linklaters, which is representing Lehman Brothers, declined to comment. Attorneys at the law firm of Herbert Smith, which is representing Nortel, could not be reached for comment by press time.

Several legal experts familiar with the case said an appeal is likely.