



By Julie Triedman

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Nortel Fee Bonanza Continues as Creditors Square Off in NY



Cleary's James Bromley represents Nortel's U.S. unit in the company's contentious insolvency.

Seven years to the day after Canadian telecom giant Nortel Networks filed for bankruptcy protection in three countries, lawyers for the companies warring creditors assembled in New York on Thursday in a last-ditch attempt to resolve the global feud over \$7.3 billion in spoils.

Nortel's insolvency proceedings have now lasted nearly twice as long as those of Lehman Brothers Holdings, the largest bankruptcy in U.S. history. The two-day meeting that began Wednesday is the fourth court-ordered mediation so far aimed at brokering a deal to divide Nortel's remains.

If no settlement is reached, the mammoth case could grind on for years and generate hundreds of millions of dollars in additional professional fees, according to attorneys involved. "It's hard to see how we could go to a round five of mediation," one of the lawyers said.

Close to two dozen law firms have been feasting richly on the Nortel cases. Combined fees for the firms; Ernst & Young, which is handling proceedings in Canada and the U.K.; and other professional services firms have now topped \$1.6 billion, according to court and administrator records and professionals involved. (The record for the most bankruptcy fees—more than \$2.2 billion—is still held by the Lehman proceedings, but the Lehman cases involved vastly larger assets.)

Cleary Gottlieb Steen & Hamilton, which [represents Ontario-based Nortel's U.S. unit](http://www.amlawdaily.typepad.com/amlawdaily/2009/01/cleary-gottlieb-bulks-up-with-two-big-bankruptcy-filings.html) (<http://www.amlawdaily.typepad.com/amlawdaily/2009/01/cleary-gottlieb-bulks-up-with-two-big-bankruptcy-filings.html>), has billed \$284 million to date. Akin Gump Strauss Hauer & Feld, counsel to the official unsecured creditors committee, has billed \$63 million. The Canadian and U.K. proceedings are generating similarly high fees.

The current mediation stems from a dispute over an unusual, [likely unprecedented decision issued last May](http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/nortel-decision/article24400059/?utm_source=Shared+Article+Sent+to+User&utm_medium=E-mail+Newsletters+/-E-Blasts+/-etc.&utm_campaign=Shared+Web+Article+Links) (http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/nortel-decision/article24400059/?utm_source=Shared+Article+Sent+to+User&utm_medium=E-mail+Newsletters+/-E-Blasts+/-etc.&utm_campaign=Shared+Web+Article+Links) by judges in Ontario and Delaware. The U.S. and Canadian judges jointly tossed out competing distribution plans proposed by Nortel, its U.S. unit and the U.K. administrator. Calling each plan flawed and unfair, the judges instead assigned distributions of the \$7.3 billion based on the debt held by each entity.

[The ruling \(http://www.deb.uscourts.gov/sites/default/files/opinions/judge-kevin-gross/nortel-allocation-opinion-and-order_0.pdf\)](http://www.deb.uscourts.gov/sites/default/files/opinions/judge-kevin-gross/nortel-allocation-opinion-and-order_0.pdf) ignored U.S. bankruptcy precedent that favors bondholders and other secured creditors, and meant that a spectrum of unsecured creditors, including 56,000 retirees in Canada and across Europe, would be entitled to [an equal percent recovery \(http://www.bloomberg.com/news/articles/2015-05-12/nortel-bankruptcy-judges-issue-formula-for-dividing-7-billion\)](http://www.bloomberg.com/news/articles/2015-05-12/nortel-bankruptcy-judges-issue-formula-for-dividing-7-billion) on their claims.

"A global solution in this unprecedented situation is required and perforce, as this situation has not been faced before, it will by its nature involve innovation," Ontario Superior Court Justice Frank Newbould wrote in the decision.

Lawyers for the U.S. bondholders have promised to appeal. If the plan put forward by the two judges is overturned, the only way forward would be via a consensual plan by creditors in all the global proceedings. Finding that consensus has grown harder, not easier, over the past few years, some participants say.

Ironically, the Nortel cases were once lauded as a shining example of international cooperation in a global insolvency. In 2009 and 2010, the debtor's lead lawyers at Cleary Gottlieb coordinated fast-tracked sales of Nortel's far-flung businesses and valuable patent portfolio, rather than allowing each of three bankruptcy proceedings to sell assets piecemeal. The American Lawyer named Cleary Gottlieb's James Bromley a [DealMaker of the Year \(http://www.americanlawyer.com/id=1202446518117/Dealmakers-of-the-YearThe-American-Way?slreturn=20160014085209\)](http://www.americanlawyer.com/id=1202446518117/Dealmakers-of-the-YearThe-American-Way?slreturn=20160014085209) for convincing the Canadian monitor, the U.K. administrator and the U.S. bankruptcy judge in Wilmington to agree to quick, court-sanctioned auctions in which active bidding pushed up recovery values by a factor of five.

But some lawyers said that initial goodwill and early motivation to work together evaporated after those hugely successful sales. The \$7.3 billion windfall prompted "a lot of claimants to come out of the woodwork that probably hadn't been paying a lot of attention to Nortel," one lawyer said. "Everyone said 'we need to get our piece of it now.'"

May's joint decision by Justice Newbould and U.S. Bankruptcy Judge Kevin Gross has complicated things even further, promising a contentious meeting for the lawyers this week in New York.

In addition to Cleary Gottlieb's Bromley, the U.S. entity has tapped Morris Nichols Arsht & Tunnell as Delaware counsel and Goodmans as its representative in the Canadian proceedings.

An ad hoc committee of U.S. bondholders holding about \$4 billion in claims against the U.S. and Canadian entities is represented by Andrew Leblanc at Milbank, Tweed, Hadley & McCloy. The official unsecured creditors' committee is represented by Akin Gump -

The Canadian monitor, Ernst & Young, has tapped Allen & Overy in the U.S. The Canadian Creditors Committee, representing 20,000-plus pensioners with about \$3 billion in claims, has looked to Toronto-based Paliare Roland and Koskie Minsky in Canada and DLA Piper and Buchanan Ingersoll & Rooney in the U.S. proceeding.

The Nortel estate in Europe, the Middle East and Africa, which has lodged \$3.5 billion in claims against the Canadian entity, is represented by a team in Debevoise's London office that includes Kevin Lloyd and Richard Lawton. The U.K. pension trust has tapped Hogan Lovells' London insolvency partner Angela Gill in the U.K. and Willkie Farr & Gallagher for the U.S. proceeding.

The U.K. administrator, also Ernst & Young, is represented by Herbert Smith Freehills in several European and U.K. jurisdictions and Hughes Hubbard & Reed for the U.S. proceeding.

The costly, drawn-out proceedings have prompted protests. In November, lawyers entering Cleary Gottlieb's midtown satellite offices encountered someone in a wolf costume handing out leaflets urging all sides to reach a deal.

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