

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION AND NORTEL NETWORKS
TECHNOLOGY CORPORATION**

**APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT
R.S.C. 1985, c. C-36 AS AMENDED**

**AFFIDAVIT OF SUSAN KENNEDY
(sworn February 23, 2010)**

I, Susan Kennedy, of the City of Ottawa, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am an employee of Nortel Networks Limited ("Nortel") and am currently not working due to a medical condition in respect of which I receive long term disability ("LTD") income benefits. I have been receiving LTD income benefits from Nortel since June 23, 1995.
2. I am the Court-appointed Representative for all employees of Nortel who are not working due to an injury, illness or medical condition in respect of which they are receiving or are entitled to receive disability income benefits by or through Nortel ("the LTD Beneficiaries") pursuant to the Representation Order for Disabled Employees dated July 30, 2009 (the "Representation Order"). Attached hereto as **Exhibit "A"** is the Representation Order dated July 30, 2009 (the "Representation Order").

3. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.
4. Capitalized terms used in this Affidavit and not otherwise defined shall have the meanings given to them in the Settlement Agreement dated February 8, 2010, the Monitor's Thirty-Sixth report dated February 8, 2010 (the "Thirty-Sixth Report") and the Monitor's Thirty-Ninth report dated February 18, 2010 (the "Thirty-Ninth Report") that have already been filed with this Court. Attached at Schedule "A" to this Affidavit is a list of those defined terms and their meanings.
5. I swear this Affidavit in support of a motion for the approval of a Settlement Agreement which provides all former employees of Nortel, including pensioners and surviving spouses (the "Former Employees"), and all LTD Beneficiaries, with continued health, dental, life and income benefits until the end of 2010.
6. The specific relief being sought in this motion by the Applicants is outlined in detail at paragraph 4 of the Affidavit of Elena King sworn February 18, 2010 in support of this motion (the "King Affidavit"). I have reviewed the King Affidavit and I am in agreement with the relief being sought as outlined in its paragraph 4. Based on information I have received from a broad cross-section of the LTD Beneficiaries, and after much discussion with Representative Counsel, our financial and actuarial advisors and the Representatives of the Former Employees, I swear this Affidavit in support of this motion on my behalf and on behalf of the individuals I represent, in its form put forward before this Court including in particular, the following relief:
 - (a) Approval of the Settlement Agreement, dated as of February 8, 2010, among the Applicants, the Monitor, the Former Employees' Representatives¹, the LTD Representative², Representative Settlement Counsel and the CAW (the "Settlement Parties") which requires, among other things, that the Applicants pay to the LTD Beneficiaries their disability income benefits on a "pay as you

¹ On their own behalf and on behalf of the parties they represent.

² On her own behalf and on behalf of the parties she represents.

go basis” and shall continue to pay medical and dental benefits and life insurance benefits to Pensioners and LTD Beneficiaries until December 31, 2010;

- (b) An Order that the Applicants shall make all current service payments and special payments to the Pension Plans in the same manner as they have been doing over the course of these insolvency proceedings, through to March 31, 2010, in the aggregate amount of \$2,216,254 per month and that thereafter and through to September 30, 2010, the Applicants shall make only current service payments to the Pension Plans, in the aggregate amount of \$379,837 per month; and
 - (c) An Order that notwithstanding anything else in the Settlement Agreement, in the event of a bankruptcy of Nortel, if there is an amendment to any provision of the *Bankruptcy and Insolvency Act* that changes the current, relative priorities of the claims against the Applicants, no party will be precluded by the Order from arguing the applicability or non-applicability of any such amendment in relation to any such claim.
7. As the Court-appointed Representative of the LTD Beneficiaries, I have been closely involved with Representative Counsel throughout the discussions concerning and negotiations leading up to the Settlement Agreement. In my opinion, this Settlement Agreement represents a fair and reasonable solution for the provision of benefits through 2010 to a small, but vulnerable group of disabled individuals who, for the most part, do not have any other source of income or ability to replace their benefits, and in particular, the health, dental, life and income benefits they receive from Nortel. It also provides more time for the LTD Beneficiaries to prepare to live and support themselves and their families, and to deal with their health concerns and disabilities after Nortel, as we know it, ceases to exist.

BACKGROUND

8. On January 14, 2009, the Applicants (“Nortel”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. c. C-36, as amended (“CCAA”)

pursuant to an initial order (as subsequently amended and restated, the “Initial Order”) of this Honourable Court. Ernst & Young Inc. was appointed as Monitor (the “Monitor”) in the CCAA proceedings. Details regarding the background to the company’s proceedings, and the insolvency proceedings of Nortel’s related foreign entities, are set out in the affidavit of John Doolittle, sworn January 14, 2009, and previously filed by the Applicants in these proceedings and are therefore not repeated herein.

9. The committee now known as the Canadian Nortel Employees on Long Term Disability (“CNELTD”) was formed at the end of January 2009, shortly after Nortel filed for protection under the CCAA. It was originally called the Nortel Networks Long Term Disability Survivors (“NNLTDS”). A number of LTD Beneficiaries, including Charles Black, Connie Walsh and myself, formed the committee for support, information sharing, legal guidance and in order to ensure we had a voice in Nortel’s insolvency proceedings. Upon the resignation of Connie Walsh as committee leader and Yahoo! Group facilitator on April 23, 2009, I volunteered to take over this role. In addition to communicating with the committee via the internet, I set up two face-to-face meetings among committee members in Ottawa on April 30, 2009 and June 1, 2009.
10. Anyone who is an LTD Beneficiary is permitted to join the CNELTD. Membership in the CNELTD grew from about 20 members in June 2009 to approximately 84 members by the end of 2009.
11. At my request, our legal counsel sent a letter to all Nortel LTD Beneficiaries on January 15, 2010. Since then an additional 46 LTD Beneficiaries have contacted and joined the CNELTD, which now has 130 members (a number that continues to increase).
12. Since its establishment, members of the CNELTD have engaged in numerous projects and undertakings to assist in the plight of LTD Beneficiaries. We have done extensive research into Nortel’s decision to self-insure our income benefits, including benefit industry practices, tax implications, the historical documents and legal aspects of the matter. Our members have also met with politicians to lobby for legislative and policy

change, have broadcast information about our situation through the media, and we have created a database of information and documents relevant to our research.

13. From the outset, it has been the mandate of the CNELTD to protect the income and health benefits of the LTD Beneficiaries, as we learned very soon after the Initial Order was issued that both our income benefits and health benefits were in jeopardy by virtue of the insolvency proceedings. Many disabled employees were unaware that our disability income benefits were not insured. We discovered through our research and our discussions with Koskie Minsky LLP that Nortel provided our income benefits on a self-funded basis through a vehicle known as the Health and Welfare Trust ("HWT").
14. I contacted Koskie Minsky LLP in May of 2009 to determine whether they would provide legal representation to the LTD Beneficiaries. I was in regular communication with Koskie Minsky LLP through that period, as the LTD Beneficiaries were very concerned about the effect of Nortel's insolvency on them. It was ultimately agreed that Koskie Minsky LLP would represent us and would seek a representation order from the Court to that effect.
15. By the July 30, 2009 Representation Order, I was appointed as Representative of all LTD Beneficiaries, and Koskie Minsky LLP was appointed as Representative Counsel, subject to certain exceptions. Individuals who are not bound by the Representation Order are:
 - (a) Those LTD Beneficiaries who are employed and whose benefit or other payments arise directly or inferentially out of a Collective Agreement between the Applicants, or any of them, and the CAW; and
 - (b) Any individual LTD Beneficiary who did not wish to be bound by the Order and filed an opt-out notice with the Monitor by September 25, 2009.
16. Individuals who wished to opt-out of the Representation Order were required to do so within thirty days of the publication of the Notice of the Order. As indicated in paragraph 30 of the Monitor's Thirty-Ninth Report already filed with this Court in support of this motion, which I have reviewed, none of the LTD Beneficiaries opted-out

of representation by me and by Representative Counsel. Accordingly, I have the mandate and authority to represent the interests of an estimated 250 individuals.

17. The individuals who belonged to the CNElTD organization at the time of the Representation Order were very pleased to have Koskie Minsky LLP appointed as our Representative Counsel, as we knew from our research that they had experience in this area of law. Additionally, we were glad to be represented as a separate group, rather than as a subgroup of the company's active employee group. Attached hereto as **Exhibit "B"** is a copy of the Representation Order dated July 22, 2009 appointing Representative Counsel on behalf of certain of Nortel's active employees.
18. As indicated in paragraph 3 of our Representation Order, the scope of my mandate is to represent all LTD Beneficiaries in the insolvency proceedings or any other proceeding which has been or may be brought before this Honourable Court, including, without limitation, for the purpose of settling or compromising claims by the LTD Beneficiaries in the insolvency proceedings. I take this significant responsibility very seriously.

ORGANIZATION AND COMMUNICATIONS

19. By the date of my appointment as Representative, I had already been very involved with the CNElTD. I was responsible for communications, maintaining a database of LTD Beneficiaries joining the CNElTD, sending information to members, and interfacing with Koskie Minsky LLP. I also participated with other CNElTD members in meetings with politicians and media events, such as demonstrations. Following my appointment as Representative, I gathered together the key people who had been involved in the CNElTD up to that point, to establish a working group to assist me in these activities and to ensure that the varying interests among the LTD Beneficiaries were being heard and addressed.
20. After July 30, 2009, on an informal basis, we started to regularly seek input from Koskie Minsky LLP as our counsel, to gather information about our situation and to seek guidance from our lawyers as to what steps we could take to improve our position.
21. I arranged for Susan Philpott and Andrea McKinnon of Koskie Minsky LLP to participate in a conference call with the CNElTD members on August 18, 2009. The

CNELTD members then had an opportunity to listen to a Webinar presented by Koskie Minsky LLP on August 25, 2009. We held a meeting on August 28, 2009 with a number of members of our group and discussed different roles that individuals could take on.

22. We established a Legal Steering Committee which participated in periodic calls with Koskie Minsky LLP. We sent out a call for volunteers and from these volunteers, I selected the people I felt would work well together with each other, and with our Representative Counsel. Attached hereto as **Exhibit "C"** is a copy of the Call for Volunteers which was posted on our Yahoo! Group.
23. The CNELTD has had a communications structure in place since September 2009 through the CNELTD Yahoo! Group, and for several months before this date, certain LTD Beneficiaries communicated through the NNLTDs Yahoo! Group. Individuals on long term disability can join CNELTD group by sending an e-mail to CNELTD-Owner@yahoogroups.com. Membership in the group enabled individuals to partake in the e-mail communications that occurred within that group including the circulation of reports and answers to questions pertaining to the circumstances of the LTD Beneficiaries in Nortel's insolvency proceedings. As some LTD Beneficiaries did not wish to join the Yahoo! Group, we established a separate email mechanism to send them information of importance. We also communicate with other LTD Beneficiaries by telephone.
24. We also instructed our counsel to include information for the LTD Beneficiaries on their website. A special page was established on the Koskie Minsky LLP website tabbed "Information for Disabled Employees". We use that page as a means of communication with the members of the CNELTD and all other LTD Beneficiaries who have not joined the group. Anyone with internet access can access that page.
25. At the end of September, 2009 the CNELTD established a formal Legal Steering Committee to liaise regularly with counsel, seek their guidance, provide instructions and provide information to the LTD Beneficiaries group as a whole. The Legal Steering Committee was originally comprised of myself, Johanne Bérubé, Anne Clark-Stewart, Kevin Leblanc, Manon Gaudreau and Sylvain de Margerie, four of whom are bilingual.

Both Manon Gaudreau and Sylvain de Margerie have resigned from the Legal Steering Committee.

26. In addition, Anne Clark-Stewart, who is a Nortel pensioner and a member of the Political Action Committee of the Nortel Retiree and former employee Protection Canada ("NRPC") and who was a disabled employee of Nortel until shortly after the Initial Order was issued, also sits on the Legal Steering Committee. Ms. Clark Stewart fills a valuable role in providing us with information about the political and lobbying efforts of the NRPC and assisting with our own lobbying, and in providing a liaison with the NRPC.
27. The CNETLD and NRPC work together in many circumstances where our collaboration and coordination is advantageous to our constituencies.
28. The Legal Steering Committee participates in weekly teleconference calls with Representative Counsel and our actuarial advisors, the Segal Company. With the assistance of counsel, we prepare reports of those meetings and deliver periodic updates by e-mail to the CNETLD Yahoo! Group. The agendas of our conference calls with counsel and our actuaries are typically informed by the questions and inquiries that we receive from the LTD Beneficiaries.
29. The Legal Steering Committee receives a vast number of e-mail questions and inquiries about the status of the proceedings, the projects in which we are engaged, seeking status reports on the work of counsel, and raising possible legal actions that should be investigated. Despite our disabilities, Johanne, Anne and I spend many hours per day responding to e-mails, speaking with LTD Beneficiaries on the telephone, speaking with our counsel, coordinating with the members of the Legal Steering Committee, preparing presentations and reports and meeting with politicians. Johanne and Kevin are both bilingual.
30. In addition, information is also available to any LTD Beneficiary who wishes to access it through the Koskie Minsky LLP website or by leaving a message on the toll free number that is administered by Koskie Minsky LLP. Individuals can also contact me directly by e-mail (and regularly do) for any information they require.

31. There are approximately 391 LTD Beneficiaries, which include an estimated 100 members of the CAW. CAW members are represented by counsel for the CAW in these proceedings. I have been provided with a list of the individuals in our constituency by Nortel. We communicate with members of our constituency who have contacted us by telephone, email and through the Yahoo! Group and in doing so, keep them advised of all developments in the proceedings.

NATURE OF ISSUES AND CONCERNS OF THE LTD BENEFICIARIES

32. I have personally spoken with numerous LTD Beneficiaries and have had e-mail communications with many more. The range of illnesses, disabilities and medical conditions that exist among the LTD Beneficiaries are quite diverse.
33. In addition, the characteristics of the group in terms of their financial needs and their medical needs vary as well. Included in the group are single parents, individuals with spouses who work and have benefits coverage, individuals who are close to retirement or already qualify for retirement pension, those who are still very young and have no reasonable prospect of ever working again, and those who are highly dependent on costly prescription drugs and medical benefits. The common characteristic of the individuals in the group, however, is that they are all extremely anxious about their futures. They have no financial security or certainty and this is causing great anxiety among members of our group.
34. Many of the LTD Beneficiaries with whom I have spoken or from whom I have received e-mail communication were unaware and shocked about the uninsured nature of their disability income benefits and to learn that those benefits could disappear through Nortel's insolvency. It takes considerable time for people to accept that the benefits were not insured, and I have noticed that some individuals are unwilling to accept that they will receive a future reduction, in any amount, to their monthly income benefit payments. This has been and continues to be a constant source of discontent and disagreement within the CNELTD group.
35. The key concerns of the LTD Beneficiaries that have been articulated to me, and which I share, are as follows:

- a) **Income** – The LTD Beneficiaries want to know whether and for how long their disability income will continue, and from what source it will be paid. They want to know when it will stop and how much notice they will be provided of the cessation of payments because they require time to make other arrangements and plan for their financial futures.
- b) **Medical Benefits** – The LTD Beneficiaries want to know if their health plan will continue, whether they will be able to replace their medical benefits in some way at an affordable cost and whether they will be able to replace their life insurance once coverage by Nortel is terminated.

OUR BENEFITS SINCE THE CCAA FILING

- 36. I understand from counsel that in accordance with the Initial Order, Nortel was “entitled but not required” to make payment of outstanding and future wages, salaries and employee benefits, which specifically included medical benefit plans, and both current service and special payment contributions into the registered Pension Plans. In other words, Nortel could have terminated our income benefit payments at any time after January 14, 2009.
- 37. However, Nortel chose to continue paying and providing the LTD Beneficiaries with our health and medical benefits, to continue making our long term disability income payments out of the HWT, a trust vehicle Nortel uses as a mechanism to fund some of our benefits, and also to continue to make both current service contributions and special payment contributions into the registered Pension Plans.
- 38. The current structure of the HWT, the benefits relevant to the motion that are paid from it and its history, are described by the Monitor in paragraphs 45 through 52 of its Thirty-Ninth Report dated February 18, 2010 (the “Thirty-Ninth Report”), which I have reviewed. I have also reviewed the trust agreement, and amendments thereto³,

³ The Trust Agreement is more fully described at paragraph 46 of the Thirty-Ninth Report, and attached as Appendix “E” thereto.

establishing the HWT and understand from my counsel that based upon the documents and information that they have received, this description is accurate.

39. The HWT is the vehicle through which Nortel provided a Health and Welfare Plan to its employees and retirees. The Health and Welfare Plan included a health care plan, a management long term disability plan, a union long term disability plan, a management survivor income benefit plan, a management short term disability plan and a group life insurance plan. Certain employee benefits, including the income benefits for LTD Beneficiaries, in recent years, have been paid by the HWT with trust assets, whereas other employee benefits, including medical and dental benefits, have been funded by the Applicants on a pay-as-you-go basis, but paid through the HWT as an administrative matter.
40. There was fear among our group that our medical benefits and our monthly income benefits would be discontinued, or worse, that they would be discontinued without notice. This concerned me, and other LTD Beneficiaries who contact me regularly, as we are dependent on these plans to pay for prescription drugs, dental and other health related benefits. The LTD Beneficiaries have significant medical needs in this regard.

CNELTD EFFORTS SINCE REPRESENTATION ORDER

Maximize Replacement of LTD Income

41. One of the main concerns of the LTD Beneficiaries has been their financial security in the future. With this in mind, I and other members of the Legal Steering Committee and members of the CNELTD at large, have explored as many avenues as we can think of to find ways to replace as much of our disability income as possible, knowing that at some point in the not-to-distant future, our disability income payments from Nortel will cease. Accordingly, with the guidance and advice of our counsel at Koskie Minsky LLP, we have explored the following:

(a) HWT – Payment of Assets to the LTD Beneficiaries

We learned from the Thirty-Second Report of the Monitor dated November 30, 2009, that the assets in the HWT had a market value of approximately \$84 million (see

paragraph 19). We have made it a priority to ensure that the LTD Beneficiaries would receive the largest portion of those assets to which we could reasonably claim entitlement. Our counsel, with our input, has been engaged in discussions about the allocation and distribution of the assets in the HWT since early October of 2009. As described in the Thirty-Ninth Report, the Settlement Agreement provides that the Settlement Parties will work towards a court-approved distribution of the HWT in 2010 to its beneficiaries entitled thereto, and to resolve any issues related to this distribution.

With the relief provided by the Settlement Agreement, I understand from our counsel that the objective is to be in a position to have a lump sum distribution from the HWT to the LTD members before our income payments from Nortel cease on December 31, 2010. I have asked our actuaries to calculate roughly what percentage of the future value of our disability income would be paid to us from the HWT assuming that the trust assets are divided pro-rata to the liabilities. I have been advised that although we are still awaiting 2009 numbers, we can expect that there will be a lump sum payment which will be equivalent to a sizeable percentage of the value of our future payments. Attached hereto as **Exhibit "D"** is a copy of an unofficial memorandum prepared by our actuary, Segal Company, delivered to our legal counsel on February 23, 2010.

We are also exploring the most tax effective way of distributing those assets to LTD Beneficiaries and will seek a tax ruling to ensure as tax-effective a distribution as possible.

(b) HWT – Preservation of Assets

Recognizing that the continued payment of our disability income from the HWT was depleting assets that belonged to us in any event, we raised this concern with counsel, and sought ways to have our disability income payments made by Nortel directly rather than from the HWT. The Settlement Agreement achieves that goal for a significant period of twelve (12) months. I am advised by my counsel that this change in payment, if Court approved, will apply retroactively, starting at January 1, 2010.

(c) Making a Claim against Nortel for Negligent Misrepresentation

One of the causes of action that we asked our counsel to explore was the possibility of a negligent misrepresentation claim. Many of our constituents wanted to see such a claim launched, however, our counsel were quite clear that no advantage would be gained by such a claim because Nortel is currently under Court protection and no lawsuits can be made against Nortel while it is under the protection of a stay of proceedings. Nortel will not emerge from Court protection as a viable entity, against which the LTD Beneficiaries could make a claim for the loss in our benefits. In any event, our claim against Nortel for 100% of the loss of our disability income benefits will be made in the claims process.

(d) Making a Claim against Nortel for Failing to Fund the HWT

We also asked our counsel to explore the possibility of suing Nortel for failing to fully fund the HWT and, in particular, failing to remit monies to the HWT sufficient to pay 100% of our disability income.

Again, many of our members urged us to make such a claim, however, our counsel advised us that (i) there was no statutory obligation under the terms of the Trust Agreement which required Nortel to fund in full the HWT benefits, and (ii) no advantage would be gained in any event by such a claim because Nortel is currently under Court protection, no lawsuits can be made against Nortel while it is under the protection of a stay of proceedings, Nortel will not emerge from Court protection as a viable entity, and our claim against Nortel for 100% of the loss of our disability income benefits will be made in the claims process in any event.

(e) Making a Claim against Nortel's Directors

The Legal Steering Committee asked our counsel to evaluate the viability of a claim against Nortel's directors for Nortel's decision to self-insure the LTD program, a claim for negligent misrepresentation by Nortel's directors, a claim against Nortel's directors for failing to ensure that the LTD program was fully funded, and any other possible claim we could make against the directors. We were advised that there are very strict limitations on the kinds of claims that can be made against directors of a corporation.

Our counsel reviewed the documentation pertaining to the HWT and the LTD program including the summary benefits booklets and other communications that were provided to Nortel employees. They also reviewed the applicable case law and statutory provisions. Based on the evidence that was available, our counsel advised us that any claim that could be made against the directors of Nortel would be risky, costly, lengthy and without any guarantee of success.

(f) Making a Claim against the Trustee of the HWT for Failing to Ensure that Nortel Fully Funded the LTD Program

The Trustee of the HWT has responsibility for undertaking actuarial calculations for the benefits to be paid under the health benefit programs in the HWT, but no obligation to pay them. Only Nortel is obliged to pay them and there is no clear obligation on the Trustee to enforce payment. We have been advised by counsel that actuarial calculations for accounting purposes were prepared for accounting purposes by Mercer, the actuaries for the plans, not the Trustee. Further, the Trust Agreement precludes legal action by trust beneficiaries against the Trustee. Any claim against the Trustee is therefore risky and uncertain, both as to liability of the Trustee and any damages that might result.

In summary, like many of our members, the Steering Committee also wished that we could find a way to end up with a greater percentage of our actuarial values. However, we understood that to pursue the lawsuits outlined above in these circumstances would just prolong the process, use up additional funds from Nortel's estate for legal fees, and possibly would lead to the cessation of our medical and income benefits. If this course was taken, we may have had to wait years to receive a distribution in respect to our claims against Nortel, and most disabled employees could not afford to take this chance. We felt that the responsible decision was to rely on the advice of our legal counsel and our actuarial advisors, rather than to proceed with what possibly could be prolonged and risky litigation.

(g) Lobbying

The CNELTD has also been very active politically and has approached various levels of government to request legislative reforms that would offer protection for the

vulnerable members of our group. One initiative is to elevate uninsured disability income benefits to preferred status in any insolvency proceedings. The other is to eliminate the ability of companies to "self-insure" their disability income programs or, if they do self-insure, to ensure that their programs are fully funded. Regardless, the latter request for legislative reforms would not benefit our group.

Ensure Replacement of Health Benefits

42. The second major concern of the LTD Beneficiaries is that they have access to continued prescription drug and other medical and dental benefits coverage. As I have explained, the LTD Beneficiaries are particularly vulnerable and dependent on their medical and drug coverage. Many have prescription drugs costs of thousands of dollars per month and without benefits coverage, would become more ill, and potentially die, and would be required to rely on the mercy of government programs.
43. Over the past year the CNE LTD, with the help of Representative Counsel, has fought hard to keep medical, dental and life insurance benefits intact.
44. The CNE LTD and the NRPC have formed a joint committee, which includes members of both the CNE LTD and the NRPC to explore alternative solutions that would allow some form of replacement benefit coverage to continue once Nortel no longer exists as a company and the HWT is wound up. We have joined with the NRPC in this project because we have been advised that the sheer size of that group will assist in making a plan attractive and viable, and without the pensioners, the LTD Beneficiaries alone might not be in a position to secure benefits coverage.
45. With the help of our actuaries at the Segal Company, our legal counsel, Nortel's benefits personnel, actuaries and consultants at Mercer and the existing benefits administrator, Sun Life, the committee is exploring funding options, and whether there are viable benefit plan options which suit the varied needs of the constituencies. These explorations are still at a preliminary stage but I expect that the work of the joint committee will accelerate in the coming months if the Settlement Agreement is approved, as we will not be distracted by the uncertainty of our benefits continuation in the short term.

OPPOSITION TO CNETLD

46. Shortly after the CNETLD Legal Steering Committee was struck, a dissident group of LTD Beneficiaries formed, who, among other things, were unhappy with the way that the members of the Legal Steering Committee were selected. At various times since then, these individuals have sought to replace me as the Court-appointed Representative (but have never taken formal steps to do so), have insisted they be permitted to access the confidential information disclosed to me and counsel under a non-disclosure agreement, have refused to follow the civility protocols put in place for communications on the CNETLD Yahoo! Group, and have written abusive and harassing emails to me, other members of the Legal Steering Committee and our counsel.
47. Johanne Bérubé is the group owner and moderator of the CNETLD Yahoo! Group. The moderator controls the flow of messages among the members of the group. When emails from certain members became aggressive, threatening and hostile, the Legal Steering Committee instituted a moderating policy whereby all messages were first reviewed to ensure they met a standard of ordinary civility. Messages which did not meet such a standard were not allowed on the site by the moderator and one member was removed. That way the members of the CNETLD who were content with my representation and that of Representative Counsel were not unnecessarily exposed to the hateful communications. I must be clear, however, that I have not stopped responding to the communications and questions in those uncirculated emails. Johanne Bérubé and I conscientiously respond, to the best that we are able, to all of the inquiries that are sent to us. We also ensure that important messages are forwarded to members' email addresses whether or not they are members of the Yahoo group.
48. Most recently, these individuals wrote to Koskie Minsky LLP and a copy of their letter and the reply from counsel is attached hereto as **Exhibit "E"**. Counsel's response is attached.

49. There have been a number of individuals who have communicated to me their opposition to the Settlement Agreement, however, the majority of those who contacted me have been in support of the agreement.

THE SETTLEMENT AGREEMENT

General

50. Efforts of the CNELTD in conjunction with the NRPC have ultimately resulted in the Settlement Agreement that is the subject of this motion. I agreed to the terms of the Settlement Agreement, which was executed on February 8, 2010, following weeks of intensive negotiations by Representative Counsel with the Monitor, the Company, the CAW, the bondholder group and the Unsecured Creditors Committee from the U.S. insolvency proceedings. We were guided in those negotiations by our counsel.
51. The terms of the Settlement Agreement which was ultimately reached have been described by the Monitor in its Thirty-Ninth Report and in paragraph 19 of the King Affidavit. I have reviewed both of these documents and substantially agree with the description of the Settlement Agreement contained therein.

Negotiation of the Settlement Agreement

52. In December 2009, our concern about the future of our disability income, and our health, medical and life insurance benefits increased. We became aware, through discussions with our legal and financial advisors, that there was limited cash flow within the Canadian estate and that a new funding agreement (the "Funding Agreement") was being negotiated to fund Canadian operations through 2010 and beyond. We were uncertain how long the company planned to continue paying for our income and benefits, and were worried that our group's benefits might cease without notice.
53. We were eventually advised that the proposed Funding Agreement ensured the funding of our benefits and the Pension Plans only through to the end of Q1 of 2010. This was unacceptable to us.

54. On January 6, 2010, Representative Counsel, on behalf of both the CNELTD and the NRPC, sent correspondence to a representative of the Monitor, the Monitor's counsel and counsel for Nortel, which explained our discontent with the Funding Agreement in that it provided only for the funding of pension and benefits to March 31, 2010. In that letter our counsel indicated that we would object to the Funding Agreement unless there were some provisions made for the following:
- a) health benefits;
 - b) pension funding;
 - c) payment of long-term disability and SIB income benefits directly by the company; and
 - d) provision for some minimum standards payment for those of our constituency whose employment with Nortel had been terminated without pay. Attached at **Exhibit "F"** is a copy of our counsel's letter dated January 6, 2010.
55. Subsequent to the date of that letter, Representative Counsel entered into negotiations with the Monitor, the company and various other parties concerning our pensions and benefits. I am advised by our counsel that these negotiations were extensive, and took place during various meetings with the company and Monitor, and also in separate meetings with other creditor groups.
56. Despite all parties' good faith negotiations and our best efforts to reach an agreement, there was no settlement agreement reached by January 21, 2010, the date scheduled for the court approval of the Funding Agreement.
57. Representative Counsel attended at the January 21, 2010 hearing to inform the Court that there were ongoing negotiations concerning our benefits. Our counsel insisted that if an Order approving the Funding Agreement was issued on that date, it should include a provision that the approval of the Funding Agreement would not preclude interested parties from seeking relief with respect to the payment of our benefits post-March 31, 2010. Further, our counsel requested that a clause be inserted in the Order to ensure that the Court would in no way be precluded from ordering such relief in the future. Paragraph 17 of the Order dated January 21, 2010 reflects this relief. Paragraph 18

further orders the Monitor to report to the Court on or before January 29, 2010 to advise on the status of the ongoing negotiations.

58. Negotiations continued after the January 21 hearing, and the Settlement Agreement was executed on February 8, 2010.
59. Throughout the negotiations, the inclusion of Clause H.2 in the Settlement Agreement remained critical to me and the Representatives of the Former Employees. The inclusion of this clause would ensure that if future amendments were made to the BIA that were favourable to our group, we would maintain the right to assert that such provisions would apply to our constituency. This clause was imperative to our group, given the lobbying efforts of the CNELTD to date.
60. In the end, I signed a Settlement Agreement with the company and the Monitor that did include clause H.2. When negotiations concluded and the Settlement Agreement had been executed, I was satisfied that we had achieved a good result, and the best outcome obtainable in the circumstances. Essentially, we traded away the right to file risky and uncertain litigation and the right to argue that the LTD Beneficiaries should be in a separate class or have priority in any CCAA Plan, for guaranteed money and benefits for a one year period, while we sort out our futures. We did not give up our claims to the assets in the HWT, our claims against Nortel in the CCAA proceedings, or the rights of the LTD Beneficiaries to object to any CCAA Plan. Attached as **Exhibit "G"** is a chart, in both French and English, that sets out the features of the Settlement Agreement versus rights if the Settlement Agreement is rejected by the Court.

Notice Procedure for the Settlement Agreement

61. Concurrent with the negotiations which resulted in the Settlement Agreement, I was consulted by our counsel about the best ways to provide the LTD Beneficiaries with appropriate notice of the Settlement Agreement, and an opportunity to voice their opinion on its appropriateness.
62. While we were confident that we could reach our CNELTD membership base quite easily through the Yahoo! Groups communication tool, personal emails and in a few cases via phone, we were more concerned with those who we have not been in close

contact with. After some discussion, we agreed that the Notice Procedure, which is outlined in paragraphs 27 through 46 of the Thirty Sixth Report and was approved by this Court on February 9, 2010, provides the members of our constituency with adequate notice and time to review and assess the Settlement Agreement, and to appear in Court and oppose the Settlement Agreement on March 3, 2010, if they wish to do so.

63. All of the members of the Legal Steering Committee reviewed and had input on the Notice Letter that was sent to, among others, each LTD Beneficiary and Former Employee of Nortel.
64. In order to ensure that all individuals are provided with full and accurate information of the Settlement Agreement, the Legal Steering Committee also engaged in a process to generate a set of frequently asked questions, and had our counsel provide responses, all of which have been posted on the website of Koskie Minsky LLP.
65. In addition, the Legal Steering Committee ensured that our Representative Counsel had an active toll-free hotline whereby individuals who do not have access to the internet were able to call and speak to Representative Counsel, or to be directed to a representative of the CNELTD, in order to obtain answers to their questions and concerns about the Settlement Agreement.
66. I, along with the court-appointed Representatives for the Former Employees, held a webcast information session on February 23, 2010. A dial-in audio-only option was available for individuals who did not have access to the internet and there was French translation available.

Benefits of the Settlement Agreement

67. Over the past year, I have come to the realization that Nortel is insolvent and is winding up its business. The company's cessation of the payment of our medical benefits, the discontinuation of our disability income payments, and the transfer of the administration of the Pension Plans is inevitable. These are very unfortunate circumstances. My constituency will suffer significant losses as a result of Nortel's insolvency. I see it as my responsibility to ensure that all available steps to minimize the harm suffered by our constituency are taken, and to seek solutions for the future.

68. From the perspective of the LTD Beneficiaries, the Settlement Agreement provides much-needed certainty and security for 2010. We will continue to receive our disability income and health and medical benefits through 2010 at 100% of current levels. This gives us time to plan for the future and structure our financial arrangements to the extent possible for the time when we know that we will not have 100% of our income and benefits.
69. After canvassing my constituency and engaging in many discussions with interested parties, I have concluded that in the circumstances, the Settlement Agreement represents a fair and reasonable one-year solution for the payment of our disability income and the continuation of our health benefits and in coming to that conclusion I have weighed the concessions we were asked to make. Individuals in our group, for the most part, do not have any other source of income or ability to replace the benefits they receive from Nortel.
70. LTD Beneficiaries will also receive their customary medical benefits through 2010. I am advised by my counsel that the Funding Agreement does not provide for our benefits after March 31, 2010, and there is nothing to require that these benefits continue after March 31, 2010 if the Settlement Agreement is not approved. Many of these people rely heavily on these benefits and continuing them for an additional nine months is critical for them.
71. As I discussed above, Nortel is not obligated to continue the payment of our medical and dental benefits and is able to cut off these payments at any time. Prior to the approval of the Funding Agreement, in January 2010, we were informed by our legal counsel and financial advisors that provisions for our continued benefits were only in the cash flow until March 31, 2010. Our success in securing payments until December 31, 2010 not only provides our constituency with an additional nine months of coverage, it also provides us with additional time to seek alternative replacement benefit coverage.
72. Another key benefit of the Settlement Agreement is that our income will come from Nortel directly through the Company's cash flow for 2010, and not from the HWT, thus preserving those assets as much as possible for the future distribution.

73. I am advised by our actuaries that the \$12.2 million in LTD income payments that will be paid directly by Nortel in 2010 represent approximately 12% of the present value of our claims.
74. I have also been advised by our actuary that based on the existing assets in the HWT and a calculation of the existing obligations of the HWT as at December 31, 2009, a *pro rata* distribution of those assets would provide the LTD Beneficiaries with an approximate 30% of the present value of their LTD income benefits, which produces a higher aggregate recovery when added to future payments. We will also, of course, have a claim against the Nortel Estate for the balance of the value of our LTD income benefits which we know will be paid out at something less than 100% (see our actuaries' memorandum attached at **Exhibit "D"**).
75. The Settlement Agreement will see current service contributions to the Pension Plans continue until September 30, 2010 and special payments will continue to be paid until March 31, 2010. More importantly, the Settlement Agreement provides certainty that Nortel will continue to administer the Pension Plans until September 30, 2010 and that there will be no wind up of the plans before that date.
76. Because of this extension of payments, LTD Beneficiaries will also have their pension accruals continue until at least September 30, 2010, or, if the Pension Plans are not wound up at that time, until December 31, 2010, on which date their employment with Nortel will be terminated. To the extent that they have an entitlement to the continuation of those pension accruals past December 31, 2010, a claim against Nortel in the insolvency proceedings will be made on their behalf.
77. Finally, in order to ensure that the promised payments are made by Nortel, all amounts are secured by a \$57 million charge on the estate, which survives a bankruptcy.

Quid Pro Quo of the Settlement Agreement

78. The Representative and the CNELTD have been involved in many discussions with our Representative Counsel and our constituency. Based on everything I have seen, it is my understanding that the Settlement Agreement can essentially be distilled down to

this: in exchange for security and certainty of our benefits through 2010, we were required to give up rights to future, risky and uncertain litigation.

79. Since the announcement of the Settlement Agreement, the CNELTD has been contacted about the reasons for our release of certain claims. For example, if the signed Settlement Agreement is approved by the Court, it will mean that the LTD Beneficiaries and the Former Employees have done the following:

- a) Acknowledged that all claims made in respect of the Pension Plans or the HWT will be unsecured claims, and will rank as unsecured claims on equal footing with all other unsecured creditors, subject to Clause H.2 of the Settlement Agreement, described further below;
- b) Released all Releasees, which includes directors, trustees and other parties listed in the defined term (see Schedule A), from claims in respect of the HWT and Pension Plans. However, there has been no release of any claim for fraud, and no release against any director for matters concerning misrepresentation or anything else referred to in subsection 5.1(2) of the CCAA;
- c) Acknowledged that LTD Beneficiaries and the Former Employees will not be placed in a separate classification for the purposes of a CCAA Plan of Arrangement, and will be treated as unsecured creditors in terms of distribution, in any future CCAA Plan of Arrangement; and
- d) Agreed that the LTD Beneficiaries and Former Employees will not object to the employee incentive program approved for 2010, provided the Monitor is of the view that the payments are reasonable.

80. The CNELTD Legal Steering Committee, along with the input of our advisors and many others, has discussed these concerns at length. I will address each in turn.

A. Ranking as Unsecured Claim

81. Our acknowledgement that all claims in respect of the Pension Plans or the HWT will rank as unsecured claims means that when it comes time for a distribution of Nortel's estate, we will rank as unsecured creditors and on equal footing with all other

unsecured creditors, subject to clause H.2 of the Settlement Agreement. I have been advised by my legal counsel that this position is consistent with the law and that pension claims are treated as unsecured claims and offered no priority status in a bankruptcy scenario. If we insisted on using our numbers to block a CCAA Plan of Arrangement that did not give us priority, other creditors could easily petition the Applicants into bankruptcy, where there is no priority under the BIA.

82. Clause H.2 of the agreement caused concern for the CNE LTD. It was very important to the CNE LTD and its membership to limit this clause to provide that in the event there is ever an amendment to the BIA giving the LTD Beneficiaries preferred status under the BIA, and that Nortel at the time of the distribution has moved into proceedings under the BIA, we maintained our right to argue that any amendment providing priority should apply to us. We were successful at achieving the inclusion of Clause H.2 in the Settlement Agreement.

B. Releases Against the Company, Directors and Trustee

83. The releases of the Pension Claimants simply means that we have agreed not to pursue claims based on the administration or funding of the Pension Plans against Nortel or its directors and officers or members of the Pension Plan' Committees, or any claims against the trustee of the HWT and Nortel's directors and officers (subject to section 5.1(2) of the CCAA).
84. Essentially, we are giving up the right to pursue risky, costly and very uncertain litigation, which would require evidence of misconduct on the part of these individuals or entities. We have expressly preserved the right to pursue claims with respect to allegations of fraud or misrepresentation. We have not given up that right.
85. Our counsel, actuaries and financial advisors have closely examined documentation pertaining to the Pension Plans and the HWT. I have been advised that any claims against the directors for failing to properly fund the Pension Plans are unlikely to succeed. I have also been advised that claims against the directors for failing to fund the HWT are risky and could take years to resolve without any guarantee of success. There is no evidence of any representation or statement by the directors that would

make them personally liable. However, misrepresentation and fraud claims are excluded from the release.

86. Our counsel have further advised us that any claim against the Trustee for failure of Nortel to adequately fund the HWT benefits is risky and unlikely to result in any significant recovery. Nothing in the trust document makes the Trustee personally responsible for funding the benefits, and the document precludes beneficiary claims against the Trustee.

C. Classification for the Purposes of the Plan

87. With respect to the agreement to be classified in the same group with other unsecured creditors, I am advised by my counsel that this means that LTD Beneficiaries and Former Employees will be placed in the same classification, for voting purposes of a CCAA Plan, as other unsecured creditors. Additionally, we will be entitled to distribution in the same proportion as all other unsecured creditors.
88. It is my understanding that the inclusion of this clause in the Settlement Agreement does not mean that the Court-appointed Representative, the LTD Beneficiaries, or the Representative on behalf of the LTD Beneficiaries, are not entitled to vote on any future Plan of Arrangement. It simply means that we cannot be treated differentially from other unsecured creditors.

D. Agreement not to Challenge 2010 Employee Incentive Programs

89. With respect to our agreement not to challenge the employee incentive programs for 2010, it is through the Monitor, who is involved in the review and assessment of the appropriateness of these payments, that the LTD Beneficiaries and other Canadian creditors have input. We rely on the Monitor as a court-appointed officer to ensure that all incentive payments are reasonable and necessary.
90. Further, we have been advised by our legal and financial counsel that the majority of the monies to be paid in bonuses in 2010 will be paid to eligible employees by the purchasers of Nortel's assets, not by Nortel, thus having little impact on our constituency.

E. Supreme Court of Canada Litigation

91. Finally, in recognition of the priority payments that eligible terminated employees would be entitled to receive from the Termination Fund, we have agreed to abandon the litigation that currently is pending at the Supreme Court of Canada. Again, by giving up this right, we are avoiding uncertain and costly litigation in favour of a payout of funds that is certain, and is payable within a reasonable time frame.

Conclusion

92. I have had a number of discussions with our legal counsel about the benefits of the Settlement Agreement in comparison to the releases of rights that we have agreed to in the agreement. I have had many discussions with our counsel, advisors and the Legal Steering Committee, about the impact the releases of claims against Nortel's directors and the Trustee of the HWT will have on the LTD Beneficiaries. I am advised, and I believe, that all we have given up is the opportunity to file difficult and risky law suits against those individuals and entities, that I am told may easily result in no recovery or a recovery that is less than the benefits attainable under the Settlement Agreement, and which will take years of litigation to resolve. I am advised that the LTD Beneficiaries maintain all valid claims against the assets in the HWT and the Nortel estate.
93. There have been a number of LTD Beneficiaries who have voiced concerns with me about giving up the right to commence a human rights claim against Nortel, and about releasing the right to appeal for fairness in the company's CCAA proceedings. I have discussed these issues with my Representative Counsel. I am advised that any human rights claim likely would take years to resolve and ultimately is just a claim against Nortel, which is insolvent and likely will no longer exist once these proceedings are completed. I am further advised that we have not given up the right to argue fairness at any future sanction hearing in the CCAA proceedings.
94. In assessing the merits of the Settlement Agreement, I, along with the help of the Legal Steering Committee, have canvassed and taken into consideration the interests of a wide cross-section of our constituency. We engaged in many lengthy discussions to assess the advantages and disadvantages of the Settlement Agreement. After careful

consideration and many discussions with our advisors and constituency, I, as Court-appointed Representative, and CNELTD fully support the Settlement Agreement. The Settlement Agreement provides the LTD Beneficiaries with a reasonable outcome, and the best outcome we were able to achieve, given the circumstances.

95. I make this Affidavit in good faith and in support of this motion to approve the Settlement Agreement dated February 8, 2010 and for no improper purpose.

SWORNBEFORE ME at the City of
Toronto, in the province of Ontario, on
February 23, 2010


Commissioner for Taking Affidavits


SUSAN KENNEDY