JENNIFER HOLLEY

Plaintiff

- and -

THE NORTHERN TRUST COMPANY, CANADA
and THE ROYAL TRUST COMPANY

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

Affidavit of CHARLOTTE M. URQUHART

I, CHARLOTTE M. URQUHART, BMATH CPA, CA•IFA, CFI, a CA-designated specialist in investigative and forensic accounting and private investigator of Urquhart Forensics of the City of St. Catharines, in the Province of Ontario, **SOLEMNLY AFFIRM AS FOLLOWS**:

I. INTRODUCTION

1. I submit this affidavit in support of the Plaintiff's motion for certification of a class action under the Class Proceedings Act, relating to the claim that Northern Trust Company, Canada ("Northern Trust") and The Royal Trust Company ("Royal Trust") committed breaches of trust and misrepresentations in respect to the Nortel Health and Welfare Trust ("HWT") that reached the threshold of civil fraud. This affidavit addresses matters relating to:

   a) Misappropriation of HWT assets, whose purpose was to fund Reserved Plans[1] for long term disability ("LTD") and survivors' income insurance obligations and pensioners future life insurance premiums, but instead were used to pay the Paid as Incurred Plans[1] for medical and dental claims and non-pensioners' life insurance premiums that were Nortel's obligation to reimburse on an ongoing basis;

b) HWT assets put at risk by being in the form of a Due From Sponsoring Company account receivable, without any interest or security provided to protect the beneficiaries' rights;

c) HWT and the Health and Welfare Benefit Plan disclosures and omissions of disclosures to HWT beneficiaries, before the Nortel CCAA filing;

d) HWT and Nortel accounting standards, practices, and financial controls;

e) Damages to Nortel HWT beneficiaries.

1. See point 37 below on DESCRIPTION OF THE FUND, within the HWT Financial Statements

   Reserved Plans:
   Plans for which the fund holds assets.

   Paid as Incurred Plans:
   Plans to be reimbursed by Nortel on an ongoing basis.

2. I was retained on February 27, 2013 to complete a forensic analysis on whether Northern Trust and Royal Trust committed breach of trust and misrepresentation within their role of trustees for the Nortel Health and Welfare Trust ("HWT") that reached the level of fraud. These trustees allowed Nortel to withdraw $32 million of irrevocable assets from the Reserved Plans [1] within the HWT, that had a deficit, in order to take an employer contribution holiday with respect to Nortel's own obligations toward a different group of benefit plan members in the Paid as Incurred Plans[1]. Also, these trustees allowed Nortel to substantially increase an HWT Due from Sponsoring Company account receivable to a peak of $43 million, without requiring interest or security, while Nortel was experiencing financial distress. The trustees neither sought re-imbursement of the removed HWT assets, nor repayment of the HWT Due from Sponsoring Company before the CCAA filing, ultimately causing a combined loss of $60 million plus accrued interest for the HWT beneficiaries.

3. I examined the evidence and prepared a timeline of events provided in this affidavit and have concluded that Northern Trust and Royal Trust committed breach of trust in respect to the HWT that has reached the level of fraudulent breach of trust, as defined in numerous common law cases, which is: "**the taking of a risk to the prejudice of another's rights, which risk is known to be one which there is no right to take."** Northern Trust and Royal Trust knowingly took risks with the HWT assets, when they had no rights to do so. Alternatively, the trustees were reckless or wilfully blind to the risks taken and to the rights of the HWT beneficiaries. I attach Exhibit "XX,"

Nortel Health and Welfare Trust Time Line of Events 2002-2011

II. QUALIFICATIONS

4. As shown in Exhibit XX - CV of Charlotte M. Urquhart, I am President of Urquhart Forensics, an investigative and forensic accounting practice and a private investigation agency, which is located in St. Catharines, Ontario. This is a six person agency providing investigation and consulting services to insurers, law firms, government and other corporate bodies. From its inception in 1990, I was a consultant on damage calculations, other accounting matters and fraud investigations. Between 2003 and 2009, I attended to the general management of the agency and oversaw most of the investigations. A re-organization in 2008 under Urquhart Forensics, transitioned my concentration on the Investigative and Forensic Accounting practice. I attach Exhibit "XX,"

Charlotte Urquhart CV

5. I have the designation of CFI - Certified Forensic Investigator and am a member of The Association of Certified Forensic Investigators of Canada, which is an affiliation of

professionals who provide their expertise and services in the areas of fraud prevention, detection and investigation.

6. I also have the designation of CA•IFA Specialist, which is issued by the CICA Alliance for Excellence in Investigative and Forensic Accounting. This is the premier forensic accounting designation in the country, according to CICA. Less than 400 people have successfully completed the Diploma in Investigative & Forensic Accounting (DIFA) and experience required for the CA•IFA Specialist designation. The IFA is trained to recognize and quantify fraud, acting for the victim whether an individual, a business, insurer, government body, or law enforcement.

7. I received my Chartered Accountant (CA) from the Canadian Institute of Chartered Accountants (Ontario) in 1977.

8. I obtained my Ontario Private Investigator licence in 2002.

9. I graduated with a Bachelor of Mathematics from the University of Waterloo, Ontario in 1972.

10. From 1981 to 2001, I was chief financial officer for John Coutts Library Services Ltd., Niagara Falls, Ontario and Coutts Library Services Inc., Niagara Falls, New York, who are book jobbers to university and reference libraries world-wide. With two partners we acquired the operation in 1989 and in 2001 completed its sale. During the period of ownership, I also was responsible for Human Resources.

11. From 1973 to 1981, I was employed with the following Chartered Accounting firms, Turner McCabe, Chartered Accountants, Thornhill, Ontario; Thorne Riddell, Chartered Accountants in

Downtown Toronto; and, Deloitte & Touche, Chartered Accountants, in St Catharines, Ontario. While a CA student, graduate and then supervisor, I completed clients' audits of manufacturing concerns, credit unions, restaurant chains, wineries, construction companies, engineering firms and fruit wholesalers. Before starting my CA program, I performed time management analysis for Lumberman's Mutual Insurance Company in Toronto, Ontario.

III. CALCULATION OF DAMAGES

12. According to Exhibit XX - Appendix D Revised Illustrative Allocation Scenarios, the net assets of the HWT, distributed or to be distributed to Beneficiaries are approximately $80 million, whereas the actuarial liability in respect to the legal beneficiaries of the HWT at December 31, 2010 is $237 million. The legal beneficiaries of the HWT were determined in the HWT wind-up decision of J. Geoffery Morawetz on November 9, 2010. As a result of the fraudulent conduct described herein, the Beneficiaries have suffered damages of $60 million plus accrued interest. I attach Exhibit "XX,"

    Appendix D Revised Illustrative Allocation Scenarios

IV STATUTORY IRREVOCABLE TRUST AND PER SE FIDUCIARY DUTIES

13. To review the history of the Nortel Canadian HWT, in 1980, Nortel created a Trust Fund for the purpose of providing the Health and Welfare Plan benefits to its Employees, which is a statutory trust. Northern Trust and Royal Trust have per se fiduciary duties in respect to this statutory trust. The trustees' fiduciary duties are defined, in part, by The HWT Trustee Agreement dated Jan. 1, 1980 and any amendments thereto, which set out the Trust's legal terms and conditions. Fiduciary duties are well described within Northern Trust's "Role of the Trustee "document on its website, Royal Trust's various trustee obligations as indicated in the RBC Financial's website, as well as being set out within the statutes and common law applicable to trusts .

14. All the payments to the Trustee by the Corporation and by the employees, together with all profits, increments and earnings thereon, shall be irrevocable and constitute upon receipt by the Trustee, the Trust Fund to be administrated by the Trustee in accordance with the terms of the Trustee Agreement, and the Health and Welfare Benefit Plan. See ARTICLE II of the HWT Trustee Agreement.

"ARTICLE II - TRUST FUND

1. The Trust fund is created for the purpose of providing the Health and Welfare Plan benefits for the benefit of the Employees.

2. All payments made to the Trustee from time to time by the Corporation and designated affiliated or subsidiary corporations and by the employees, together with all profits, increments and earning thereon, shall be irrevocable and constitute upon receipt by the Trustee, the Trust Fund to be administered by the Trustee in accordance with the terms of this Trust Agreement, the Health and Welfare Benefit Plan and the Eligibility Requirements."

I attach Exhibit "XX,"

Nortel - Montreal Trust HWT Trustee Agreement Jan. 1, 1980

15. When Northern Trust Canadian management was retained on December 1, 2005 as the trustee for the HWT, they should have followed the fiduciary duties outlined in "The Role of the Trustee," a document currently up on the Northern Trust website which was downloaded on March 20, 2013:

http://www.northerntrust.com/pws/jsp/display2.jsp?XML=pages/nt/0402/44669850_3388.xml

The first two paragraphs of Northern Trust's document state:

"Responsibilities and liabilities regarding the financial welfare of trust beneficiaries

“The trustees role must be taken seriously. **The trustee accepts personal responsibility and legal liability for the financial welfare of trust beneficiaries.[Empahsis added]** The job can involve years of effort, coordination with lawyers and accountants, and detailed record keeping.”

“If you are naming an individual to serve as your trustee, or if someone has asked you to serve as trustee, you should consider carefully:

- The related responsibilities
- The prospective trustee's qualifications and willingness to serve
- **Whether the trust could benefit from the services of a professional trustee or co-trustee like Northern Trust”[emphasis added]**

I attach Exhibit “XX,” a copy of the Northern Trust’s “Role of the Trustee,”

Northern Trust - The Role of the Trustee, Northern Trust Website March 21, 2013

16. Royal Trust should have also followed the fiduciary duties as stated from the following excerpts taken from webpages on the RBC Financial website:

From **RBC Investor Services, Trustee Services downloaded on March 26, 2013:**
“Trustee services allow us to fulfill our fiduciary responsibilities to unitholders and plan participants. With our heritage as one of Canada’s oldest trust companies, clients can be assured that our focus on compliance and risk mitigation is well entrenched. Trustee capabilities extend from Canada to Ireland, Singapore and Hong Kong.”

I attach as Exhibit “XX,”

RBC Website - Trustee Services March 26, 2013

From **RBC Wealth Management – Contentious aspects of modern trusteeship:**
downloaded March 26, 2013:

“Our view as professional trustees is if there has been a mistake – our mistake - we will generally be reluctant to hide behind an exclusion clause because that runs completely counter to the whole thrust of the fiduciary integrity we espouse. This will be largely based on the merits of the claim or allegations against us and we may take a different view if the claims or allegations are without merit.”

“5. Beneficiary disputes

Initially it may be best (if the allegation is coming directly from a beneficiary or beneficiaries) for the trustee to take legal advice but then to respond directly to the beneficiary in the hope of resolving matters in that way. Where the trustee believes that the allegations are without foundation then naturally it will want to defend its position firmly but all the time with a view to bringing matters to an early resolution.

In those cases where the trustee has indeed made a mistake or error to the detriment of the trust, an offer to settle should be made swiftly to remedy the position."

"(ii) Correspondence files

Correspondence files, whether in paper form or held electronically, should also be comprehensive and support the fact that the trustee has gathered the appropriate information, and where necessary, advice regarding decisions that are being taken and that if called upon can demonstrate the fact that such decisions are being appropriately taken in the jurisdiction in which the trust is resident.

The file should reflect the fact that the trustee has not only considered all relevant facts and obtained all necessary information but that this has been achieved in a time scale that allows for a considered decision."

I attach as Exhibit "XX,"

RBC Wealth Management - Contentious aspects of modern trusteeship

17. Nortel by creating the Trust could not subsequently wind-up the Trust without paying all the claims and obligations to the HWT beneficiaries as outlined in the HWT Trustee Agreement; and, without the consent of the Trust beneficiaries as required *under Variation of Trusts Act, R.S.O. 1990, CHAPTER V.1.* See ARTIVLE IV of the HWT Trustee Agreement.

"ARTICLE IV - AMENDMENT AND TERMINATION

Upon sixty (60) days prior written notice to the Trustee, the Corporation may terminate its obligation to make Employer's contributions in respect of benefits after the date of written notice to the Trustee (hereinafter called the "Notice of Termination.") Upon receipt of the Notice of Termination the Trustee shall within one hundred twenty (120) days determine and satisfy all expenses, claims and obligations arising under the terms of the Trust Agreement and Health and Welfare Plan up to the date of the Notice of Termination. The Trustee shall also determine upon a sound actuarial basis, the amount of money necessary to pay and satisfy all future benefits and claims to be make under the Plan in respect to benefits and claims up to the date of the Notice of Termination. The Corporation and the designated affiliated or subsidiary corporations shall be responsible to pay the Trustee sufficient funds to satisfy all the expenses, claims and obligations, and such future benefits and claims. The final accounts of the Trustee shall be examined and the correctness thereof ascertained and certified by the auditors appointed by the Trustee. Any funds remaining in the Trust Fund after the satisfaction of all expenses, claims and obligations and future benefits, and claims, arising under the terms of the Trust Agreement and the Health and Welfare Plan shall revert to the Corporation."

18. Mike McCorkle, the former Assistant Treasurer and Treasurer, swore an affidavit explicitly saying that Mercer's and the Law Department's advice was that such an act [winding-up the HWT] would trigger an obligation to top up the income plan deficits immediately.

"Nortel considered winding up the trust in 2006, but Mercer's and the Law Department's advice was that such an act would trigger an obligation to top up the income plan deficits immediately. Although we did not have a formally approved timeline in place to eliminate the HWT deficit, we did recognize that it was a firm obligation and we planned to return the $30 million plus taken out of the HWT during 2005 to 2006."

I attach Exhibit "XX,"

Affidavit of Michael McCorkle, sworn September 27, 2010

19. Third party trustee, Royal Trust, resigned or was terminated at about December 2005. Royal Trust was replaced by Northern Trust on December 1, 2005, as shown in Exhibit XX – Nortel – Northern Trust HWT Successor Trustee Appointment and Acceptance dated Dec. 1, 2005.

I attach Exhibit "XX,"

Nortel - Northern Trust HWT Successor Trustee Appointment and Acceptance Dec. 1, 2005

20. The Nortel Treasurer Kate Stevenson and General Counsel - Operations William LaSalle wrote a letter to the replacement third party Trustee, Northern Trust, on December 1, 2005. This was the day Northern Trust signed its HWT Trustee Successor Appointment. This letter appeared to indemnify Northern Trust for any liability associated with employer contributions not being determined on a sound actuarial basis, employer contributions being made or not made by Nortel to the HWT despite the HWT Trustee Agreement and even after the HWT is terminated. This letter specifically says:

"Notwithstanding anything to the contrary in the Health and Welfare Trust and for the avoidance of any doubt, we agree that you shall have no responsibility for determining, reviewing or monitoring the amounts of Nortel Networks Limited's contributions required in order to fund adequately the Health and Welfare Plan ("Contribution Amounts") nor to advise and carry out administrative procedures in accordance with the Health and Welfare Plan and the eligibility Requirements. Nortel Networks Limited agrees that it shall be solely responsible for determining said Contribution Amounts on a sound actuarial basis and administering the Health and Welfare Plan and agrees to indemnify and hold you harmless from any and all costs, losses, damages, claims, actions, suits, Liabilities, expenses or other charges (including attorneys' fees) that you incur directly or indirectly arising out of the contributions made (or not made) by Nortel to the Health and Welfare Trust or out of the administration of the Health and Welfare Plan."

"This indemnification shall survive the termination of the Health and Welfare Trust. To the extent necessary, this letter shall constitute an amendment to the Health and Welfare Trust."

I attach Exhibit "XX,"

Letter from Nortel to Northern Trust Dec. 1, 2005

21. Common law and legal academics have called the trustee's fiduciary obligation an "overarching" obligation. Both Northern Trust and Royal Trust had fiduciary duties to protect the interests of the HWT beneficiaries in accordance with the HWT trustee agreement and the common law applicable to trusts. The December 5, 2005 letter to Northern Trust that purports to eliminate much of Northern Trust's fiduciary duties in respect to the HWT, were not disclosed to the HWT beneficiaries and neither Nortel, nor its trustees, can rely upon a document changing the terms of the trust that has not been disclosed and approved by the HWT beneficiaries. Northern Trust cannot usurp its "overarching" fiduciary obligations on the basis of the secret December 5, 2005 letter.

22. The damages from breach of trust were borne by the HWT beneficiaries, who are vulnerable long term disabled ("LTD") and elderly survivors and pensioners, that trusted and relied upon Northern Trust and Royal Trust to make discretionary decisions on their behalf. These trustees failed to apply the care, diligence and skills that reasonable persons would exercise in the circumstances.

23. The breach of trust committed by Northern Trust and Royal Trust in respect to the HWT has reached the level of fraudulent breach of trust as defined in numerous common law cases, which is: "**the taking of a risk to the prejudice of another's rights, which risk is known to be one which there is no right to take." Northern Trust and Royal Trust knowingly took**

risks with the HWT assets, when they had no rights to do so. Alternatively, the trustees were reckless or wilfully blind to the risks taken and to the rights of the HWT beneficiaries.

24. Royal Trust to the extent of its trustee period ending Dec. 1, 2005 and Northern Trust took the risk associated with Nortel's $32 million employer contribution holiday for the Paid as Incurred and the release of the $32 million of HWT assets, which were for the purpose of the Reserved Plans, to pay for the Paid as Incurred Benefit Plans. HWT assets being irrevocable means that they cannot be withdrawn for other than the purposes that are in accordance with the HWT trustee agreement and the Health and Welfare Plan (ie., Reserved Plans are the Plans for which the HWT holds assets, and Paid as Incurred Plans are to be reimbursed by Nortel on an ongoing basis.) Northern Trust's own "Role of the Trustee" document says two of its fiduciary duties are proper administration of the trust and investigation of claims against the trust. RBC Financial's disclosure noted above says its wholly owned subsidiary Royal Trust must make its trustee's decisions supported by appropriate information. Therefore, both trustees had no right to accept Nortel's instructions on face value without themselves as trustees knowing the terms and conditions of the HWT and the Health and Welfare Plan, and particularly the difference between the Reserved Plans and the Paid as Incurred Plans.

25. As stated in the Affidavit of Diane Urquhart, Northern Trust and Royal Trust failed to protect the Reserved Plans' assets in the HWT when Nortel was using the HWT assets to make a material positive impact on Nortel by reducing the negative cash flow from operations in 2005 by 15% and increasing the positive cash flow from operations in 2006 by 11%, by: (a) taking the $32 million employer contribution holiday for its Paid as Incurred Plans during May 2005 to April 2006 and using the HWT assets to pay for the medical and dental claims and non-pensioners life

insurance premiums under the Paid as Incurred Plans; and, (b) by the $22 million increase in the HWT Due from Sponsoring Company account receivable during 2005 to 2006 to a peak of $43 million at December 31, 2006. The affidavit of Diane Urquhart also showed the eventual material adverse impact of the fraudulent breach of trust by the trustees on the HWT beneficiaries, who are vulnerable long term disabled ("LTD") and elderly survivors and pensioners.

26. Professional trustees, Northern Trust and Royal Trust, should have seen the red flags indicating trouble with the HWT assets and the financial welfare of its beneficiaries when there was a complete absence of Nortel employer contributions into the HWT for both the Reserved Plans and the Paid as Incurred Plans during May 2005 to April 2006, when the HWT had a significant deficit at December 31, 2004. There was an employer's withdrawal of irrevocable assets within a trust fund, while it was in deficit, caused by Nortel's employer contribution holiday with respect to the employer's own obligations toward a different group of benefit plan members. Nortel was the ultimate beneficiary of this employer contribution holiday because it eliminated its ongoing expenses for the Paid as Incurred Plans' benefits during the period of May 2005 to April 2006. The reduced expenses had a positive impact on Nortel's profits and operating cash flow. I attach as Exhibit "XX, "

Nortel V. Nortel Health and Welfare Trust 2000-2009

27. Furthermore, the employer contributions for the Reserved Plans being booked as an I Owe You ("IOU"), in the form of the Due from Sponsoring Company account receivable, rather than paid in cash during 2005 and 2006, was another warning sign to Northern Trust and Royal Trust that Nortel could be experiencing financial stress. The increased HWT Due from Sponsoring

Company account receivable was an increased accounts payable from Nortel, that had a positive impact on Nortel's operating cash flow.

28. As noted in the affidavit of Diane Urquhart, another red flag to the trustees would have been that Nortel had no other arm's length suppliers of new credit during 2003 to 2006, due to the three accounting restatements and late filings of the Nortel financial statements. Northern Trust and Royal Trust should not have extended the additional IOU, which is a non-arm's length transaction, when arm's length parties were not willing to supply credit. The trustees did not seek interest or security on the Due from Sponsoring Company accounts receivable despite the evident financial distress of Nortel.

29. Northern Trust and Royal Trust would have another red flag since the HWT assets, typically used in the calculation of trustees' fees, were falling precipitously from $140 million at December 31, 2004 to $109 million at December 31, 2005 and $85 million at December 31, 2006, the latter as reported in the 2006 HWT financial statement and all of these numbers excluding the Due from Sponsoring Company account receivable. The book value of HWT assets had declined by 40% in two years.

30. The trustees knew the falling HWT assets presented a risk to the HWT beneficiaries because the HWT deficit increased from -$56 million (-29%) at December 31, 2004, to -$156 million (-59%) at December 31, 2005 and then to $-170 million (-66%) at December 31, 2006, excluding the Due from Sponsoring Company receivable on the premise it was of questionable value. The HWT deficit imposes the risk that HWT beneficiaries would not get their entitlements in the event that Nortel were to become

insolvent and the HWT as a consequence would be wound-up. The HWT deficit was a significant fact to the trustees, since it is unlawful to pay the Incurred as Paid Plans benefits with the HWT assets when the HWT was in deficit in respect to the Reserved Plans that were the purpose of the HWT assets. I attach as Exhibit “XX,”

Nortel HWT Surplus-Deficit 2002-2009

31. The HWT deficits were still very large, even if Nortel’s Due from Sponsoring Company were to be fully paid at some future point and therefore considered to be a bona fide HWT asset: -$36 million (-18%) at December 31, 2004, -$125 million (-47%) at December 31, 2005 and -$127 million (-50%) at December 31, 2006.

32. Subsequently, the December 31, 2006 HWT assets of $85 million were retroactively restated to $107 million in the 2007 HWT financial statement, an increase of $22 million due to the 2007 change in accounting policy to value the securities at market rather than their book value (excluding the Due From Sponsoring Company receivable as a questionable account.) The marked to market write-up of HWT assets did reduce the 2006 HWT deficit retroactively, however, it remained seriously high at -$149 million (-58%) with the Due from Sponsoring Company written-off and -$106 million (-41%) if it were paid back in full.

33. Northern Trust and Royal Trust could see that HWT deficits were growing significantly from 2004 to 2008 (pre the CCAA filing date of January 14, 2009,) not only due to the $32 million misappropriation of HWT assets, but also due to the sum of employer

contributions (IOUs and cash,) employee contributions and HWT investment income falling well below the annual claims paid. I attach Exhibit "XX,"

Nortel HWT Contributions, Investment Income, Claims and Administration 1982-2009

34. The LTD and survivor beneficiaries were also insureds under an insurance contract with Nortel, for which "utmost good faith" is required. The Nortel HWT was the vehicle for executing Nortel's "utmost good faith" insurance contract. This fact would be known to the trustees, or they were reckless or willfully blind in respect to the insurance nature of the Reserve Plans for the LTD and survivors. In ***Attorney General v. Confederation Life Insurance,*** **[1995] (ON S.C.) ,** Justice Blair provides the following review of what is the definition of a "contract of insurance."

"[82] There is no definition of "contract of insurance" in the federal *Insurance Companies Act* but in Ontario, "insurance" is defined in s. 1 of the *Insurance Act,* R.S.O. 1990, c. I.8, as amended, as follows:

"Insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event, and includes life insurance."

35. The Trustee showed lack of "utmost good faith" within its role of administering the HWT reserve assets backing Nortel's insurance contract, adding to the severity of the fraudulent breach of trust when it knowingly did not stop Nortel from misappropriating HWT assets and increasing the HWT Due from Sponsoring Company account receivable during 2005 and 2006. The persons insured by Nortel were particularly vulnerable since the insurance covered the income of long term disabled employees and the survivors of deceased employees.

V MISAPPROPRIATION OF HWT ASSETS TO THE PAID AS INCURRED PLANS PUTS BENEFICIARIES' RIGHTS AT RISK – MORE EVIDENCE

a) HWT Beneficiaries

36. The legal beneficiaries of the HWT have been decided in the November 9, 2010 HWT Wind-Up distribution decision of J. Geoffery Morawetz:

a) LTD Beneficiaries for LTD Income;

b) LTD Beneficiaries participating under Core Life and Optional Life for the LTD Optional Life Benefit;

c) STB Beneficiaries in pay on or before December 31, 2010 for STBs;

d) SIB Beneficiaries in pay on or before December 31, 2010 for SIBs; and

e) Pensioners (including LTD Beneficiaries) for Pensioner Life.

I attach Exhibit “XX,”

Endorsement HWT Distribution J. Morawetz Nov. 9, 2010

Endorsement Leave to Appeal HWT Distribution J. Weiler Jan. 7, 2011

Supreme Court of Canada Leave to Appeal J. LeBel, J. Fish, J. Cromwell June 9, 2011

37. The HWT Financial Statements categorize the employee benefits plans as either Reserved Plans (plans for which the Fund holds assets) or Paid as Incurred Plans (benefits which are reimbursed by Nortel on an ongoing basis).

1. “DESCRIPTION OF THE FUND

The Health and Welfare Trust Fund (the “Fund”) was established by Nortel Networks Limited (the “Administrator”) on January 1, 1980 in order to fund the employee benefits program for all eligible employees of Nortel Networks Limited and its Canadian subsidiaries (collectively, the “Company”) under the following plans:

Reserved plans (plans for which the Fund holds assets)

(a) Long-term Disability Plan

(b) Survivor Income Benefit Plan

(c) Pensioners’ Insurance Plan

(d) Employee – financed Group Life Plan (Group Life – Part II)

Paid as Incurred Plans (to be reimbursed by Nortel Networks on an ongoing basis)

(e) Dental Plan

(f) Extended Health Plan

(g) Group Life Plan (Group Life – Part I)"

I attach Exhibit "XX,"

HWT Financial Statements - Appendices O-RR

38. The Reserved Plans coincide with HWT legal beneficiaries decided in the November 9, 2010 HWT Wind-Up distribution decision of J. Geoffery Morawetz, except for the Employee – financed Group Life Plan (Group Life – Part II) for everyone, except the LTD employees, which has been determined not to be an HWT legal obligation. The LTD benefits plan committed that Nortel would pay the optional life insurance premiums of the LTD employees based on their selection prior to becoming disabled. Common law and the J. Geoffrey Morawetz HWT Wind-up Distribution decision concludes that the non-LTD employees who contributed excessive premiums for optional life insurance benefits are not legally entitled to claim these excessive premiums for reasons of there being no expectation for the return of excess premiums and there being an excessive administrative burden to identify employees no longer with the corporation.

39. In the 2005 Flex Benefits Handbook Nortel reinstated optional employee life insurance premiums after a three-year premium break. This showed that the HWT assets would no longer be used to pay for the optional employee life insurance premiums and potentially leave more HWT assets available for Nortel's planned employer contribution holiday for the Paid as Incurred Plans and ultimately for Nortel's own benefit by eliminating its own expenses for the Paid as Incurred Plans. The Handbook says:

"Optional employee life insurance premiums will be reinstated in 2005 after a three-year premium break…To lessen the impact on you, premium payments for optional employee life insurance will be phased in over two years, so that you'll pay only 50% of the required premium in 2005 and 100% starting in 2006."

I attach Exhibit "XX,"

2005 FLEX Benefits Handbook

40. The future premiums for core life insurance for the LTD employees would have been paid annually under the Paid as Incurred Plans, Group Life Plan (Group Life – Part I). Nortel agreed to pay the employees' contributions for the optional life insurance selected by the LTD employees before they became disabled, from the time of their disability until age 65, recovery or death. J. Morawetz decided the HWT had a legal obligation to pay both the core and optional life insurance of the LTD, even though the core life insurance was a Paid as Incurred Plans, Group Life Plan (Group Life – Part I) that was not a Reserved Plan; and, the optional life insurance was a Reserved Plan, Employee – finance Group Life Plan (Group Life – Part II) for which there was no HWT legal obligation for the active employees.

41. The sum of the asset reserves for the different Reserved Plans in the HWT equaled total net assets during the period 1982 to 2008 as shown in Chart 4A. There is no residual amount of assets in the HWT available to pay for the Medical and Dental Claims and Core Employer Paid Life Insurance Premiums for the Active and LTD Employees, since these are Paid as Incurred Plans' benefits. I attach Exhibit "XX,"

Nortel HWT Statement of Net Assets Available for Benefits 1982-2009

42. The Health and Welfare Trust Financial Statements Footnote 4 provides cost value of reserved assets for just five sub-accounts: Long Term Disability Plan, Survivor Income Benefits Plan,

Survivor Transition Benefit Plan, Pensioners' Insurance Plan (Retiree Life), and Group Life - Part II (Optional Life). I attach Exhibit "XX,"

Nortel HWT Statement of Net Assets Available for Benefits Dec. 31, 2004

43. In 2007, there was a change in HWT accounting policy that had Paid as Incurred Plans' employer contributions and claims no longer booked through the HWT entity. This was an official acknowledgement that the employer contributions and claims for the Paid as Incurred Plans reimbursed by Nortel on an ongoing basis, had Nortel using the HWT simply as a flow-through administration process for the Paid as the Incurred Plans. The HWT 2007 financial statement says:

> "4. COMPARATIVE AMOUNTS
>
> Due to the implementation of the basis of presentation as outlaid in note 2(c) above, comparative amounts for 2006 have been materially changed to reflect current accounting methodology. 2006 investment in bonds were increased by $21,814 to reflect the market value of these investments. 2006 "change in unrealized gains" were increased by $2,735 to reflect the decrease, year-over- year in the unrealized gain and losses", and the balance of $ 19,086 was added to "Opening Net Assets Available for Benefits".
>
> In addition, the comparative figures in the statement of changes in net assets has been changed to exclude from sponsor company contributions and from benefits paid the amount relating to medical, dental and company paid group life, as these are not benefits for which the Fund has assets. In 2007, the Fund changed its policy to billing the sponsor company directly for the benefits paid on its behalf rather than recording benefits paid and a matching contribution. Accordingly 2006 contributions and benefits paid were reduced by $38,128."

I attach Exhibit "XX,"

Change in HWT Accounting Policies - HWT Financial Statement Period Ending Dec. 31, 2007

b) HWT Assets Used to Pay the Paid as Incurred Plans

44. The Fifty-First Report of the Monitor discloses that there was an exception from past practices during May 2005 to April 2006 where HWT assets were used to pay certain plans that were

funded on a pay-as-you-go basis. These certain plans are the Paid as Incurred Plans and the undisclosed dollar amounts involved is the $32 million of misappropriated HWT assets discussed in this affidavit.

> "81. Nortel's general funding practices are described in the HWT financial statements and the 2005 Mercer Valuation. Though certain benefit plans were funded on a pay-as-you-go basis, an exception to this funding practice occurred from May 2005 until April 2006 when Nortel was contemplating the termination of the HWT. The pay-as-you-go amounts were paid from the HWT and no corresponding contributions were made by Nortel. Once Nortel decided to keep the HWT in place, it made catch up payments through extra contributions in subsequent years in the amount of one month each year."

I attach Exhibit "XX"

Fifty-First Report of the Monitor, dated August 27, 2010

45. The sworn affidavit of Michael McCorkle confirms the differential treatment within the HWT of the Paid as Incurred Plans' medical and dental claims and life insurance premiums versus the Reserved Plans' disability and survivors' income insurance and the PLIF. He says:

> 3. The HWT was set up as a tax efficient vehicle by Nortel many years ago to promote the health and welfare of Nortel employees, and at the same time, to administer payments for Nortel pensioners' medical costs and life insurance coverage. The medical costs and life insurance premiums of the pensioners, and of the active and long term disabled employees were paid on the basis of what we called pay-as-you-go. Nortel made employer contributions into the HWT annually to reimburse the HWT for the employees' and pensioners' medical claims and the life insurance premiums paid to Sun Life.
>
> 4. At some point before my time at the Toronto office, the Pensioners' life insurance premiums stopped being paid for by employer contributions on a pay-as-you-go basis and began to be paid out of the HWT assets. We regarded the reserve assets for the Pensioners' Life Insurance Plan to be in run-off mode, as Nortel had determined earlier in the decade that it was not obliged to pre-fund pensioners' future life insurance premiums.
>
> 5. The income benefits for the long term disabled were treated differently, as these specifically involved the need to make employer contributions into the HWT to accumulate assets and produce investment income to pay for the future income of the employees that had become long term disabled."

I attach Exhibit "XX,"

Affidavit of Michael McCorkle, sworn September 27, 2010

46. An internal Nortel report dated May 31, 1999 received by a Nortel disabled employee in a court discovery process showed that Nortel held in its Reserved Plans a $236,676.44 reserve for a disability incurred claim in her specific name and policy certificate number. I attach Exhibit "XX,"

Nortel Internal Document Showing Reserve $ Amount for LTD Claimant May 31, 1999

47. Page 28 of the Mercer's Valuation of the Obligations of the Health and Welfare Trust as at September 30, 2005 clearly shows that Northern Trust was informed that they removed $18,098 thousands of dollars of contributions from the LTD asset reserve in the HWT [If Northern Trust was not informed of this critically important actuarial report in the course of Nortel taking steps to wind-up its HWT, it was reckless or willfully blind towards Mercers work as the actuary for the HWT and the Health and Welfare Plan.]. This figure is labelled as negative contributions, distinct from benefit payments made to the LTD. This removal of contributions is contrary to the requirements for irrevocability of employer contributions in the HWT Trustee Agreement and the CRA Interpretation Bulletins and Rules relating to the Income Tax Act for HWTs.

"The following table presents a reconciliation of Trust assets by benefit [19]

	Retiree Life	LTD	SIB	Optional Life	Total	
Balance at September 30,	2004	61,079	74,524	18,755	18,938	173,296
Contributions	-	(18,098)	-	2,183	(15,915)	
Benefit Payments	7,374	11,846	1,487	3,641	24,348	
Investment income	3,133	3,822	972	977	8,904	

[19] Figures are in thousands of Canadian dollars

Mercers Human Resource Consulting"

I attach Exhibit "XX,"

Appendix GGG - Valuation of the Obligations of the Health and Welfare Trust as at September 30, 2005

48. Mercer's Valuation of the Obligations of the Health and Welfare Trust as at September 30, 2005 has a date of February 6, 2006 and the scope of work in this document is described to be valuing the net obligations of the Trust in the event they were to be fully funded as of September 30, 2005. Northern Trust and Royal Trust cannot make the defense that Mercer approved the plan to wind-up the HWT and to stop making employer contributions into the HWT beginning May 2005 before it had prepared this report.

"Scope of Work

Mercer Human Resource Consulting ("Mercer") was engaged to value the net obligations of Nortel Networks Corporation's ("Nortel") Health & Welfare Trust ("the Trust"). A description of the work to be performed was provided in our November 7, 2005 letter to Norma Crowder.

The results of this valuation represent the net obligations of the Trust in the event they were to be fully funded as of September 30, 2005. They are intended for use by Nortel in reviewing the Trust and its ongoing operations and may not be suitable for other purposes. In particular, the results of this valuation are not appropriate for accounting purposes or determining contribution levels , without modification. Other purposes may require additional determinations."

I attach Exhibit "XX,"

Appendix GGG - Valuation of the Obligations of the Health and Welfare Trust as at September 30, 2005

49. In addition, Northern Trust and Royal Trust, as professional trustees, would know that actuaries must follow accepted actuarial practice, and it is clearly not accepted actuarial practice to wind-up an HWT, while its corporate sponsor is ongoing, with the intent to remove assets from the HWT that were required to pre-fund the incurred claims of the Nortel disabled and survivors' income insurance. Professional actuaries must describe their valuations clearly, and make them in the context of the HWT Trustee Agreement and the Health and Welfare Benefit Plan documents.

I attach Exhibit "XX,"

Mercer Valuation of Post-Employment Benefit Liabilities for Accounting Purposes Dec. 31, 2008

Mercer Valuation of Post-Employment Benefit Liabilities for Accounting Purposes Dec. 31, 2009

Mercers Valuation of Post-Employment Benefit Liabilities for Accounting Purposes Dec. 31, 2010

50. The Cash Flow Chart in Exhibit "XX" shows that the HWT had two purposes. One purpose was for the HWT to be a conduit for the administration of receiving required employer contributions to pay for Paid as Incurred Plans the Paid as Incurred Plans' benefits. The second purpose of the HWT was for the accumulation of employer contributions, together with

investment income, to fund the Reserved Plans: disability income insurance and survivors' income insurance sponsored by Nortel, and not through third party insurers and the PLIF. Northern Trust and Royal Trust as trustees should have been fully aware of the purpose of the HWT and the cash flows through the HWT. I attach Exhibit “XX,”

Nortel HWT Cash Flow Chart

c) Employee Contributions for the LTD Optional Income Insurance

51. Employees paid source deductions to buy optional LTD income benefits. Starting in 1995 and until 2006, the Core Long-Term Disability Benefit paid by Nortel covered 50% of FLEX Earnings and the employees could purchase Optional Long-Term Disability Benefit to "Raise 50% benefit to 70%." 2007 and later, the Core Long-Term Disability Benefit paid by Nortel covered 50% of FLEX Earnings and the employees could purchase Optional Long-Term Disability Benefit to "Raise 50% benefit to 66-2/3%%." The cost of the Optional Long- Term Disability coverage was unchanged at 0.45% of FLEX Earnings during 1995 up to 2007, rising to 0.50% in 2008. Prior to 1995, the Core Long Term Disability Benefit paid by Nortel covered 70% of FLEX Earnings.

52. Nortel employees paid for their optional disability insurance coverage using a combination of FLEX credits paid for by the employer and payroll deductions from their salaries. A Nortel employee who later became disabled was paying $9.61 per pay period or $250 per year as shown in the Nortel FLEX benefits confirmation statement for 1997. The same Nortel employee was paying $11.33 per pay period or $295 per year for the optional coverage in 1999. I attach Exhibit “XX,”

Nortel FLEX benefits confirmation statement 1997

I attach Exhibit “XX,”

Nortel Your Default Benefit Statement 1999

53. The format of the Nortel FLEX benefits confirmation statement was more informative in 2000, where we see that Nortel paid $467 per year for the core 50% coverage and the employee paid $339 per year for the optional increase in coverage from 50% to 70% of pre-disability income. Interesting to note is that the employee paid more than his fair share of the disability insurance coverage considering his cost was 42% of the combined employer and employee cost, whereas the incremental coverage bought was just 29% of the total coverage amount. The combined employer and employee cost of $806 per year was just 1.07% of pre-disability income. I attach Exhibit “XX,”

Nortel FLEX benefits confirmation statement 2000

d) Reserved Plans’ Terms & Conditions and No Right to Put HWT Assets at Risk

(i) LTD and Survivors’ Income Insurance Contract Obligations

54. The HWT Trustee Agreement stated the Trustee shall determine on a sound actuarial basis at least once every calendar year the level of contributions to the Trust Fund necessary to fund adequately the Health and Welfare Plan. See the specific wording in ARTICLE IV:

"ARTICLE IV - EMPLOYER'S CONTRIBUTIONS

1. The corporations and its designated affiliated or subsidiary corporations agree to make Employer's contributions to the Trust in amounts sufficient to pay any claims which may be asserted against the Trust Fund at a result of the administration of the Health and Welfare Plan, and as may otherwise be required from time to time by this Trust for the purposes of the Health and Welfare Plan, as determined by the Trustee on a sound actuarial basis.

2. The Trustee shall determine or cause to be determined, on a sound actuarial basis from time to time, and in any event, once every calendar year, the level of contributions to the Trust Fund necessary to fund adequately the Health and Welfare Plan.

3. Subject to paragraphs (1) and (2) hereof, the corporation and its designated affiliated or subsidiary corporations shall be responsible for the adequacy of the Trust Fund to meet and

discharge any and all payments and liabilities under the Health and Welfare Plan."

55. The Nortel Internal Company Manual dated in or about 1981 further validates the funding policy of the Nortel disability income benefits within the HWT and therefore indicates the LTD income was a Reserved Plan and not a Paid as Incurred Plan.. The Nortel Internal Company Manual says Nortel's disability income insurance creates an actuarial liability beginning in the year in which the claims are incurred and that this actuarial liability is to be paid at 20 percent per year uniformly over a five year period. This Nortel Internal Company Manual says that Mutual Life, a predecessor of Sun Life is responsible for advice on plan design trends, estimates of outstanding liabilities for future periods and of the level of funding required for expected claims. See point 11.02 and point 1.16:

"11.02 Long-Term Disability
Funding of actuarial liability at 20 percent per year uniformly over a five year period beginning in the year in which the claims are incurred is acceptable and consistent with the Advance Income Tax Ruling from the Department of National Revenue. Payments are made at fiscal year-end."

1.16 Mutual Life shall advise the Trustees and Northern Telecom of the level of funding required to pay for expected claims.. This advice is to be provided no later than year end for each year. Mutual Life's Group Policyholder Service officer is Mr.. Gerry Ward; their actuary is Mr. Kurt Von Schilling. The phone number is 456-0471/2/3/5."

I attach Exhibit “XX,”

Appendix KKK - Internal Company Manual 1981

56. The ASO Agreement between Nortel and Clarica Insurance January 1, 1999 validates the existence of annual estimates of disability and survivor reserves, which supports the statement that LTD income is a Reserved Plan, not a Paid as Incurred Plan.. Royal Trust and Northern Trust, as professional trustees, would have made enquiries and read the ASO Agreement and the related benefit plan legal documents, requiring Sun Life and its predecessor insurers to make annual estimates of disability and survivor reserves. Also, the trustees were releasing HWT assets into the Deposit Bank Account in Trust for transfer into the Disbursement Bank Account

in Trust, where Sun Life was the sole signing authority. The trustees were reckless and willfully blind to the ASO if they had not seen it, and if they released HWT assets without knowledge of Sun Life's role in respect to paying the differentiated Reserved Plans' and Paid as Incurred Plans' benefits. The claim payments went through single bank accounts, however, the book-keeping flow indicates the need for differentiated treatment by the trustee on how the Reserved Plans' and Paid as Incurred Plans' claims paid by Sun Life and the premiums paid to Sun Life were to be funded. The ASO Agreement specifically says:

"Base Fees include the following services:
assistance with plan design and review
annual estimate of incurred but not reported claims
annual estimates of disability and survivor reserves
maintenance of a plan document and ASO
Agreement"

I attach Exhibit "XX,"

ASO Agreement with Clarica Insurance Jan. 1, 1999

I attach Exhibit "XX,"

Nortel Network Corporation Plan Number 90002 Appendix for LTD Benefit July 1, 1994

I attach Exhibit "XX," [Have not yet included a comment on this Exhibit]

Deloitte & Touche, BC HBT Independent Review, Appendix A - Tax Opinion on HBT Surplus Jan. 29, 2004

57. The HWT having a function as a tax efficient vehicle, adds to Nortel's legal obligations in respect to the appropriate use of the assets within the Trust, since access to the HWTs tax benefits are legitimate only when the HWT structure and activities comply with the Income Tax Act provisions and Canada Revenue Agency Interpretations and Rulings for HWTs and Wage Loss Replacement Plans.

I attach Exhibit "XX,"
IT85R - Pre 1986 Health and Welfare Trusts for Employees Jan. 20, 1975 saying:

> "2. Health and welfare benefits for employees are sometimes provided through a trust arrangement under which, the trustees (usually with equal representation from the employer (or employers' group)) and the employees (or their union) receive the contributions from the employer or employers (hereinafter referred to as the employer) and in some cases from employees to provide health and welfare benefits that have been agreed to between the employer and the employees (or their union)). Under such an arrangement an employee is not considered to receive or enjoy a benefit at the time of the employer's contribution is made to the trustees."

I attach Exhibit "XX," [Have not yet included a comment on this Exhibit]
IT85R2 - Health and Welfare Trusts for Employees July 31, 1986

I attach Exhibit "XX,"
IT428 - Wage Loss Replacement Plans April 30, 1979 saying:

> "7. A plan for purposes of paragraph 6(1)(f) of the Act and section 19 of the ITAR must be an "insurance" plan. Those provisions are not applicable, therefore, to uninsured employee benefits such as continuing wage or salary payments based on sick leave debits, which payments are included in income under paragraph 6(1)(a). It is to be noted that, while a plan must involve insurance, it is not necessary that there be a contract of insurance with an insurance company. If, however, insurance is not provided by an insurance company, the plan must be one that is based on insurance principles, i.e., funds must be accumulated, normally in the hands of trustees or in a trust account, that are calculated to be sufficient to meet anticipated claims. If the arrangement merely consists of an unfunded contingency reserve on the part of the employer, it would not be an insurance plan."

I attach Exhibit "XX," [Have not yet included a comment on this Exhibit]
Canadian Pacific Case on LTD Benefits Not a Contingency Reserve Sept. 10, 1998

(ii) Pensioners Life Insurance Fund

58. The Pensioners Life Insurance Fund ("PLIF") is not a contract of insurance, but since it was on the list of Reserved Plans, it was determined by J. Morawetz to be a legal obligation of the HWT.

59. There was an $11 million initial deposit made into the PLIF from a Mutual Life Assurance of Canada transfer of monies accumulated in prior years in respect to Nortel pensioners' group life insurance policies. On December 11, 1979, the Income Tax Act was amended

such that employer contributions made in consideration for insurance in respect of a period after the end of the year were no longer tax deductible. Nonetheless, the PLIF and the initial untaxed transfer of $11 million from Mutual Life Assurance of Canada was approved by the Canada Revenue Agency in an Advanced Tax Ruling dated December 28, 1979.

I attach Exhibit "XX,"

Income Tax Act Amendment S. 18 (9) (a) (iii) Dec. 11, 1979

I attach Exhibit "XX,"

Appendix I - Request for Advanced Income Tax Ruling December 16, 1979

I attach Exhibit "XX,"

Appendix J - CRA Advanced Tax Ruling Dec. 28, 1979

60. The CCAA Court Monitor's 51st Report contains only three Analysis of Funding Status Reports, dated January 1, 1993, January 1, 1998 and January 1, 2002. These three reports show that employer contributions were not made during 1990 to 1992, were made in 1995 and 1996, and 1997 was marked N/A. The Mercers Analysis of Funding Status Report at January 1, 2002 says, "Currently, there is no legislative requirement on the funding of company paid retiree life plans. We understand that the Company has not contributed to the Plan since December 31, 1999 and does not expect to contribute to the fund in the near future." The PLIF was in run-off beginning in the year 2000, such that pensioners' life insurance premiums were paid from the assets of the PLIF without any new employer contributions made. I attach Exhibit "XX,"

Appendices SS-ZZ

Appendix SS - Analysis of the Funding Status of the Pensioners' Insurance Fund as at January 1, 1993

Appendix TT - Analysis of the Funding Status of the Pensioners' Insurance Fund as at January 1, 1998

Appendix UU - Analysis of the Funding Status of the Pensioners' Insurance Fund as at January 1, 2002

61. The HWT's PLIF received annual experience rating refunds under the pooling facility for the active employees' and pensioners' group life insurance policies from 1980 to 2010. The PLIF also received Nortel's annual mutual group life insurance policyholder dividends up to 1999, and Nortel's Mutual Life to Clarica Insurance demutualization equity value proceeds in 1999. I attach Exhibit "XX,"

Internal Company Manual Excerpts Re - Nortel Being Mutual Life Participating Policyholder and Mutual Life Making Special Transfers into the HWT

VI DUE FROM SPONSORING COMPANY ACCOUNT RECEIVABLE PUTS BENEFICIARIES' RIGHTS AT RISK – MORE EVIDENCE

62. Northern Trust and Royal Trust accepted that the HWT Due from Sponsoring Company account receivable was increased by $11 million in 2005 and $11 million in 2006. These IOUs for required employer contributions were at the unprecedented high percentage of total required employer contributions (cash plus IOUs) at 43% in 2005 and 30% in 2006. I attach Exhibit "XX,"

Nortel Annual Employer Contributions - Cash Versus Change in Due from Nortel 2002-2009

63. The trustees doing their requisite due diligence on the HWT assets as reported on the HWT financial statements would have observed that the Due from Sponsoring Company account receivable had become an unprecedented high percentage of the HWT total assets at 22% in 2005,

28% in 2006 and 30% in each of 2007 and 2008.(Due from Sponsoring Company account receivable plus bonds, mortgages and other securities.) I attach Exhibit “XX,”

Nortel HWT Due From Nortel 2002-2009

64. The affidavit of Diane Urquhart shows how the Due From Sponsoring Company account receivable is not in compliance with:

- Common law on civil fraudulent breach of trust
- HWT Trustee Agreement
- Nortel Internal Company Manual
- Ontario Trustee Act
- Quebec Act Respecting Trust Companies And Savings Companies
- Quebec Civil Code

65. The trustees should have asked Nortel to repay the Due from Sponsoring Company Account Receivable when financing had been secured in 2006, and if not then, before the CCAA filing bankruptcy.

VII HWT AND RESERVED PLAN DISCLOSURES TO BENEFICIARIES

66. There was no disclosure made to the Nortel LTD beneficiaries of the following facts that were severely detrimental to their interests and for which all of Nortel's Pension Policy Committee of Directors, Pension Investment Committee of Senior Executives and the HWT's external Trustees, Royal Trust and subsequently Northern Trust, had a fiduciary duty to act in the interests of the HWT's beneficiaries. Failure to disclose HWT activities that are contrary to the

interests of the HWT beneficiaries was nefarious and deceitful.

- Nortel's intent to wind-up the HWT, a Bona Fide Trust, containing the asset reserves specifically there to fund the Reserved Plans and using the HWT asset reserves for the Reserved Plans to pay for the Paid as Incurred Plans' medical and dental claims and life insurance premiums for the active and LTD employees Paid as Incurred Plans during May 2005 to April 2006.
- Not making reimbursement payments into the HWT for the HWT assets used to pay the Paid as Incurred Plans' medical and dental claims and life insurance premiums of the active and LTD employees during May 2005 to April 2006;
- Making required employer contributions in the form of the Due from Sponsoring Company Account rather than cash;

67. Nortel LTD employees received T4s in 1996 from the Health and Welfare Trust and T4As in 2003 from the Nortel Health and _____, and so the employees were informed about the existence of the HWT.

I attach Exhibit "XX,"

T4A 2003

I attach Exhibit "XX"

T4 96 & T4A's 2003 & 2004

68. On March 15, 1999, Nortel disabled employees received a Notice Long Term Disability (Ltd) - Deduction Changes, in which it was disclosed that CPP-QPP contributions would no longer be a payroll deductions from their wage loss replacement income. The reason given provides another disclosure that Nortel's "wage loss replacement plan" was funded under the Northern Health and Welfare Trust:

"Why the Change?
The change stems from our consultants' review of tax issues related to the LTD Program. That review determined that, since the LTD plan is a "wage loss replacement plan" funded under the Northern Telecom Health and Welfare Trust (HWT), CPP/QPP contributions should not apply to LTD benefit payments. The other required change is that LTD benefits will be reported on a T4A slip rather than a T4 slip."

I attach Exhibit "XX,"

Notice Long Term Disability (Ltd) - Deduction Changes March 15, 1999

69. Nortel acknowledged that its Health and Welfare Trust held a reserve from which reimbursement for current and future claims liability for approved LTD claims is paid in correspondence with one Nortel disabled employees' lawyer. This Nortel disabled employee's lawyer asked 3 questions in a letter to a Nortel lawyer dated November 5, 2002:

"i. Is Nortel's LTD plan underwritten by an insurer?

ii. Does Nortel's LTD plan have a segregated fund for financing benefit payments?

iii. What measures has Nortel taken to provide funding for future LTD benefits in the event of an assignment in bankruptcy?"

The Nortel lawyer responded to the 3 questions in a letter dated November 8, 2002:

"No, our LTD plan is self-insured.

Contributions are paid into and claims are paid out of a Health & Welfare Trust.

Nortel's contributions are for core coverage. Employees contribute for optional coverage using company-provided FLEX credits.

I will not engage in this exercise in speculation. I would, however, point out that there is a Health & Welfare Trust that holds a reserve from which reimbursement for current and future claims liability for approved LTD claims is paid, as noted above."

I attach Exhibit "XX,"

Correspondence between LTD's Lawyer and Nortel April 26, 2002 to Feb. 3, 2003

70. Nortel first disclosed its long term disability and survivors' income benefits were self-insured in its 2005 and subsequent benefit handbooks on or about p. 2:

> "Did you know: Most of Nortel's Health & Group Benefits, including short-term disability, long-term disability, medical and dental/vision/hearing care, are self-insured. This means that Nortel plays a role similar to that of an insurance company for its employees. In other words, the Company assumes the risks and pays the claims directly from its net income or retained earnings. The insurance company only provides administrative services such as claims processing."

I attach Exhibit "XX,"
2005 FLEX Benefits Handbook.pdf
2006 FLEX Benefits Handbook.pdf
2008 FLEX Benefits Handbook.pdf
2009 FLEX Benefits Handbook.pdf
2009 New Hire Benefits Information.pdf

71. The trustees would have been aware that the self-insured disclaimer provided in Nortel's 2005 and subsequent year employee benefit brochures are false, misleading and deceitful. Starting in 2005, they knew Nortel was not maintaining adequate financial reserves to fund its disability and survivors' income insurance as it should have done in playing its role similar to that of an insurance company.

72. Nortel led its employees to believe they were insured before 2005 and, even at 2005 and after, Nortel says "Nortel plays a role similar to an insurance company for its employees," while it was removing insurance reserve assets from the HWT in the course of its plan to wind-up the Nortel HWT. The evidence shows Nortel employees knew about the Nortel HWT, and while employees did not see the HWT Trustee Agreement with Northern Trust and prior trust companies, the case law with respect to both Trusts and insurance contracts say the courts must err on the side of Trust beneficiaries and the insured in respect to legal contracts not seen by the Trust beneficiaries and the insured, when making its decisions regarding the legal responsibilities of trustees and insurers. Northern Trust and Royal Trust as trustees should have been aware that any removal or borrowing of funds from the HWT without beneficiary approval

is taking a risk with the HWT beneficiaries' rights that they had no right to take and that should not have been concealed from the HWT beneficiaries.

VIII NORTEL HWT AND NORTEL ACCOUNTING STANDARDS, PRACTICES, AND FINANCIAL CONTROLS

73. The HWT was deceptively not audited from 2002 to 2009 even though the Nortel Internal Company Manual required an annual external audit of the HWT under section 1.17. This is clearly a breach of duty of the Trustee who failed to ensure the audits were completed. Northern Trust's "Role of the Trustee" document contained a fiduciary duty to submit records for independent audit.

74. The HWT Financial Statements stopped being externally audited beginning in the Year 2002, Nortel's Treasurer, Kate Stevenson, is one of the signatories of the HWT Financial Statements in 2001, 2005, and 2006, with an illegible co-signor in 2001 and Controller Canada, Mark Hamilton, the co-signor in 2005 and 2006. There were no Nortel signatures on the HWT Financial Statements for 2003, 2003 and 2004.

HWT Financial Statement Year	Externally Audited	Pg.	Nortel Signatures	Pg.
1982 to 1999	Deloitte & Touche, or Predecessor firm		YES	
2000	Deloitte & Touche	143	Doug Beatty Other (A)	145
2001	Deloitte & Touche	152	Kate Stevenson Other (A)	154
2002	NO Chartered Accounts	161	None	
2003	NO Tax Department File Reference Only	171	None	
2004	NO Tax Department File Reference Only	178	None	
2005	NO Chartered Accountants	188	Kate Stevenson Mark Hamilton - Controller Canada	189
2006	NO No Identifier	195	Kate Stevenson Mark Hamilton - Controller Canada	197
2007	NO No Identifier	203	Wasim Haque - Controller Canada	205
2008	NO Management's Report - Wasim Haque	212	Wasim Haque - Controller Canada	212
2009	NO No Identifier	221	None	

See Exhibit “XX” referred to above.

HWT Financial Statements - Appendices O-RR

75. May 2005 the first month HWT funds were misappropriated for unauthorized use, occurred after Deloitte Touche signed the 2004 auditor's report on April 29, 2005. I attach Exhibit "XX,"

Nortel Networks Corporation 10 K 2004 dated April 29, 2005

76. The Deloitte Touche signing of the 2005 auditor's report on April 28, 2006 did coincide with the subsequent month's reinstatement of Nortel's contributions to the HWT for reimbursement of the Medical and Dental Claims and the Core Employer Paid Life

Insurance Premiums for the Active and LTD Employees paid by the HWT. I attach Exhibit "XX,"

Nortel Networks Corporation 10K 2005 dated April 28, 2006

77. There are inconsistent statements in respect to the HWT being restricted as to its use in the operations of Nortel within two SEC Filings – in 2008 it is and in 2005 it is not. Nortel's 2005 Form 10-K says its HWT was not legally structured so as to segregate and restrict its assets to meet the definition of Plan assets in FASB SFAS 106 and FASB SFAS 112. So therefore Nortel concluded its HWT was a Variable Interest Entity. However, the HWT's status as a bona fide trust, the HWT Trustee Agreement and the CRA Interpretation Bulletins and Rulings for interpretation of the applicable Income Tax Act provisions do indicate a legal structure that segregates and restricts the HWT's assets.

I attach Exhibit “XX,”

Nortel - HWT Accounting Restatement U.S. S.E.C. Form 10K 2005

78. Furthermore, I have concluded that Nortel was not entitled to make this accounting change in any case, since FASB Statement of Financial Accounting Standards No. 46R Consolidation of Variable Interest Entities specifically says: "An employer shall not consolidate an employee benefit plan subject to the provisions of FASB Statements No. 87, Employers’ Accounting for Pensions, No. 106, Employers’ Accounting for Postretirement Benefits Other Than Pensions, and No. 112, Employers’ Accounting for Postemployment Benefits. I attach Exhibit “XX,”

FASB Statement of Financial Accounting Standards No. 46R Consolidation of Variable Interest Entities

79. FASB SFAS 112 for Post Employment Benefits does not have a requirement that plan assets be

segregated and restricted and all the other SFAS 112 requirements (provided in supporting documentation at the links below) were met by Nortel's HWT and its Post Employment Benefit Plans.

I attach Exhibit "XX,"

FASB Statement of Financial Accounting Standards No. 112 Post Employment Benefits

I attach Exhibit "XX,"

FASB Statement of Financial Accounting Standards No. 43 Compensated Absences

80. FASB SFAS 106 for Employers' Accounting for Post Retirement Benefits Other Than Pensions says: "Plan assets are assets—usually stocks, bonds, and other investments ... that have been segregated and restricted (usually in a trust) to be used for postretirement benefits. Nortel's HWT and its Post Retirement Benefits Other Than Pensions met this FASB SFAS 106 requirement. I attach Exhibit "XX,"

FASB Statement of Financial Accounting Standards No. 106 Post Retirement Benefits Other Than Pensions

81. The timing of Nortel deciding to consolidate its HWT as a VIE within Nortel's operating assets and liabilities was in the year 2005. Nortel did not make the HWT consolidation change in 2003, when the new FASB Consolidation of Variable Interest Entities policy was implemented as of July 1, 2003.

82. The 2005 HWT consolidation change was said to be due to the new FASB Statement of Financial Accounting Standards No. 46R Consolidation of Variable Interest Entities, which went into effect on July 1, 2003. Nortel not only adopted the HWT consolidation accounting change in

2005, but also made it retroactive for 2003 and 2004, with the 2003 accounting change applicable to the part of the year after July 1, 2003 when the new FASB Consolidation of Variable Interest Entities policy was implemented. It was during the May 2005 to April 2006 period that Nortel planned to wind-up the HWT, stopped making employer contributions into the HWT, and started taking money from the HWT assets to pay for the Paid as Incurred Plans' benefits.

83. In the Nortel Networks Corporation 2008 10K, the description of the HWT reverts back to the HWT Trustee Agreement requirement for irrevocability and the restriction of the HWT assets use in operations by Nortel. The employer contribution holiday for the Paid as Incurred Plans during May 2005 to April 2006 was ultimately for the benefit of Nortel's operations since it reduced a Nortel expense and had the HWT assets used to pay for the Paid as Incurred Plans' medical and dental claims and the life insurance premiums for the active and LTD employees, which would otherwise have been a Nortel expense.

"Investments included $73 and $101 as of December 31, 2008 and 2007 respectively, related to long-term investment assets held in an employee benefit trust in Canada, and restricted as to their use in operations by Nortel."

I attach Exhibit "XX"

Nortel Investments in Employee Benefit Trust in Canada S SEC Form 10K Dec. 31, 2008

IX CLOSING

84. Our comments are based on information provided to us. If additional information is made available to us, we reserve the right to revise our report. In preparing this report we have relied

upon unaudited financial information, the company's records and financial information prepared by the company. We have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information, and accordingly, express no opinion or other form of assurance on the financial information contained in this report.

85. I swear this affidavit in support of a motion certifying the within action as a class proceeding ….and for no other purpose.

AFFIRMED BEFORE ME at the City	)	
of Toronto, Province of Ontario	)	______________________________
this ● day of April , 2013	)	
	)	
______________________________	)	
A COMMISSIONER, ETC.		

Charlotte M. Urquhart CPA, CA, CA•IFA, CFI
CA-designated specialist in investigative and forensic accounting