

From: Sue Kennedy <kennedy.robinson@rogers.com>
Date: March 29, 2010 11:27:42 AM EDT (CA)
To: 'Johanne Berube' <johanne.berube1@sympatico.ca>
Subject: FW: CNELTD: URGENT : YOUR INPUT NEEDED by 3:00 TODAY Re: Judge Morawetz's Dismissal of Settlement Agreement

Dear CNELTD Member,

As you know, on Friday March 26, Judge Morawetz dismissed the Settlement Agreement because he felt that the H2 Clause was unfair to the other creditors, particularly the bondholders and UCC (Unsecured Creditors Committee). The H2 Clause states that "if there is an amendment to the Bankruptcy and insolvency Act (BIA) that changes the relative priority of claims against Nortel, no party is precluded from...arguing the applicability of that amendment." A BIA amendment to make us preferred creditors moves us to the front of the line of unsecured creditors, so that we would receive a higher % of the value of our claims against Nortel. Judge Morawetz says that settlement deal itself makes us preferred creditors because we are getting money ahead of the other creditors at 100%. We could have already been terminated at this point, but instead the deal gives LTD employees a total of over \$15 million in income and medical benefits, in addition to pension accrual until the end of Sept 2010 for Defined Benefit plans and until the end of December 2010 for Defined Contribution plans.

To see the full text of Judge Morawetz's decision, click on the following link:

[Full text of the decision \(.pdf\)](#)

Without the Settlement agreement, the Monitor has indicated that our medical benefits will terminate on March 31, 2010, and our wage replacement benefits would continue, but they would be paid from the assets in the Health and Welfare Trust (HWT), rather than by Nortel. This would reduce the amount of money that we would receive when the trust is wound up, which we hope will be by the end of 2010. That money would allow us to have a source of income while we are waiting for the money from our claims against Nortel. The Judge noted that our wage and medical benefits must be stopped at some point, and without a court-approved Settlement Agreement, that point is fast approaching. Many of the CNELTD members have contacted us already to express worry about having their medical benefits terminated on March 31, which is only 3 days from now, and also about the depletion of the Health and Welfare Trust.

Our lawyers say that the judge will not be willing to extend our Medical benefits longer without a settlement agreement. Furthermore the Judge has made it clear that no matter how sympathetic the circumstances of the LTD members are, they are not legally entitled to special treatment in Court, such as making them a separate class of creditors.

The Judge makes it clear that the only reason he has rejected the agreement is the H2 clause, and the Company and Monitor have indicated that if we remove that clause we can go back to the Judge, but ~~this must be done quickly.~~ We believe that the benefits of the agreement without H2 still outweigh the disadvantages of having no agreement: Immediate stoppage of medical benefits, LTD income funded from a diminishing HWT, immediate termination of the pension fund without further funding or accrual for LTD's, and giving up millions of dollars in benefits. The disadvantage of removing H2 is that if the BIA was amended to make disabled employees preferred creditors, it is unlikely that we would be able to benefit from this amendment, because it would have to override our own Settlement Agreement and the Court's Order. The same is true for the Pensioners and the Terminated Employees.

Although the opposition parties have proposed BIA amendments for the Disabled Employees and separate amendments for the Pensioners and Terminated Employees, without the support of the Conservatives it is unlikely that a BIA amendment could get passed in time to benefit us. The Opposition parties have made it clear that they need the amendments to be supported by all parties, and despite over a year of lobbying for BIA amendments, the Conservatives have given no indication that they will support such BIA amendments.

Other alternatives are:

1. Seek leave to appeal the Judge's decision, but our lawyers say our chance of getting leave to appeal are less than 5% because the decision is based on the Judge's discretion, and such judgments are hard to overturn.
2. Go without our Medical Benefits and deplete the HWT, in the hope that the Conservatives will support the BIA amendment in time for us, making us preferred creditors and we will have enough money to live on until we receive the money from our claims on the Nortel Estate.
3. Jeopardize our benefits by pursuing risky litigation against Northern Trust (Trustee of the HWT) and the Directors, which would be immediately stayed (not allowed because Nortel is in CCAA), and would likely take years and also likely result in very little money for the disabled employees at the end.

Although this is not a decision in which each CNELTD member gets to vote, at this point the Steering Committee and I would like input from all of the CNELTD members. Please tell us your concerns and worries at this point. Do you support the idea of removing the H2 clause from the Settlement Agreement and going back to the Judge again to see if he will quickly approve the agreement before our Medical Benefits are cut off? How important are these benefits to you?

Please "reply all" to this e-mail and give me your input, preferably by 3:00 today, since this decision must be made quickly. Johanne Berube and I will also be calling CNELTD members to discuss our current situation and what next steps to take.

Regards,
Sue Kennedy
Court-Appointed Representative