
Hughes Hubbard & Reed

Hughes Hubbard Wins Dismissal of Claims Against Nortel's Affiliates

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Hughes Hubbard & Reed recently achieved a victory for the European affiliates of Nortel Networks when a US bankruptcy judge dismissed a claim filed by Nortel's US affiliates in an adversary proceeding related to the telecommunications company's Chapter 11 bankruptcy case.

The underlying lawsuit was initiated by SNMP Research Inc., a software manufacturer that licensed its intellectual property to Nortel for more than a decade prior to Nortel's worldwide insolvency filings in January 2009. SNMP asserted claims against the US and Canadian Nortel affiliates for copyright infringement, breach of contract and violations of trade secrets law, and sought to recover nearly \$200 million from the \$7.3 billion in proceeds of Nortel's postpetition assets sales allegedly attributable to SNMP software. Nortel's US affiliates impleaded the European affiliates in SNMP's adversary proceeding in the US and filed a third-party complaint seeking contribution for any joint and several liability.

Nortel's European affiliates answered the complaint and immediately moved for judgment on the pleadings, arguing that the US affiliates' claims were barred by mutual, general releases contained in a 2013 settlement agreement that resolved all claims and disputes between the European affiliates and the US affiliates. Nortel's US affiliates argued that their contribution claim had been carved out of the settlement agreement or, alternatively, that the relevant provisions were ambiguous.

On May 2, Judge Kevin Gross of the U.S. Bankruptcy Court in Wilmington, Delaware issued a decision rejecting the US affiliates' arguments as "unavailing" and "contrary to the facts of the case." Adopting the European affiliates' interpretation of the settlement agreement, Judge Gross held that its terms unambiguously released the US affiliates' claims, and therefore dismissed their third-party complaint and wiped away a potentially significant eight-figure liability for the European estates. The US affiliates have filed a notice of appeal.

Meanwhile, Nortel's European affiliates recently scored two other victories. On May 3, the Court of Appeal for Ontario dismissed applications for leave to appeal the decision of Justice Frank Newbould of the Ontario Superior Court in Toronto regarding allocation of the \$7.3 billion in sales proceeds.

In May 2015, following an unprecedented cross-border trial, Justice Newbould and Judge Gross issued separate decisions in which they agreed that the sales proceeds should be distributed among the various Nortel estates in proportion to the relative amounts of valid creditor claims asserted against each debtor's estate. Meanwhile, U.S. District Judge Leonard Stark of Delaware recently certified the seven US appeals from Judge Gross's decision for direct appeal to the Third Circuit. Although the Court acted sua sponte, the Hughes Hubbard team had filed papers in support of certification.

Derek Adler leads the Hughes Hubbard team, which includes Gabrielle Glemann, Charles Huberty, Caroline Parker-Beaudrias, Matthew Reynolds and Angela Lelo.

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