

# FINANCIAL POST

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## Legal battle looms over Nortel exec bonuses

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Presented by



Mike Cassese/Reuters

TORONTO -- Nortel Networks Corp. has won approval to pay senior executives millions in retention bonuses as part of a plan to keep key personnel from fleeing the company as it undergoes court-protected restructuring. However, a legal battle is looming.

Courts in Canada and the U.S. granted the company the right pay a combined US\$7.3-million to top-level managers Friday -- even as thousands of former employees are being denied severance payments.

"You need to keep the good people to make sure this restructuring is successful in order to preserve as many jobs as you can and in order to preserve as much value as you can in this enterprise," said Derrick Tay, Nortel's chief counsel during a break in proceedings at the Ontario Superior Court of Justice.

In total, three identified executives in Canada and five in the U.S. will share in the bonus pool.

Another 26 employees in Canada were approved earlier this month to receive a portion of a US\$23-million program designed to retain 92 senior managers worldwide.

The identities of the eight executives were filed in confidential court materials but not made public for competitive reasons, said Mr. Tay.

"If you disclose that information it's very easy for competitors to come along and say, 'Well, you're getting X dollars, I'll give you X plus Y.' You're drawing a road map for competitors to come pick your key people."

It is thought that current chief executive Mike Zafirovski is not among the senior leadership being awarded bonuses.

About 880 additional employees could also be paid US\$22-million in bonus payments while Nortel restructures.

Faced with mounting debt and dwindling revenues, Nortel -- once the largest telecom equipment maker in North America -- filed for creditor protection in January. The Toronto-based company, which has lost at least US\$6-billion since Mr. Zafirovski took over in 2005, is labouring under a complex restructuring plan that will have eliminated a total of 5,000 employees by the end of this year.

Friday's ruling in Canada was objected by a group of about 60 former employees who have been denied severance payments since the company entered bankruptcy protection.

"[Nortel] is saying they can't pay because they don't have the money and the creditors would never allow it, but yet they seem to find enough money to pay some other group of employees about US\$45-million," said Eli Karp, the lawyer representing the group, in an interview. "That's our grievance."

Mr. Karp, who works for Toronto-based Juroviesky & Ricci LLP, said the number of former employees joining the 60 or so he represents is growing "daily."

Mr. Karp plans to appeal to the Canadian court on April 20 for a representation order granting the right to represent all of the estimated 1,100 former employees in Canada that are owed about \$100-million, or about \$90,900 each, in unpaid severance from the company.

"Ultimately we hope to achieve that our [clients] get 100 cents on the dollar of what they're owed," he said.

The company reported at the end of 2008 it had more than US\$2-billion in cash on hand but said in January's filing the funds were needed to continue operations during its restructuring.

The timing of developments could hardly be worse for Nortel.

Public and political outrage has greeted a similar scheme in recent weeks at beleaguered U.S. insurer American International Group Inc., which agreed to pay US\$165-million in bonuses to the very executives blamed for financially crippling the company.

Nortel said in a statement Friday that the "vast majority" of its remaining employees are on some kind of quarterly incentive plan "aligned to the short-term goals" of the company.

"Of those employees, we have identified a few hundred additional individuals to be part of a separate incentive program, including some executives, to ensure that key employees with specific skills and experience remain in place as we deliver on the restructuring."

Reached for comment regarding the negative public sentiment that could threaten to engulf the company, spokesman Mohammed Nakhouda said: "It is critical we move through the restructuring process and all of its elements as quickly as possible."