

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**IN RE NORTEL NETWORKS
CORP. "ERISA" LITIGATION**

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**No. 3:03-md-1537
Judge Nixon
Magistrate Judge Bryant**

Relating to: All Cases

ORDER

This litigation involves consolidated actions asserting claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* ("ERISA"), with respect to the Long-Term Investment Plan (the "Plan"), a 401(k) plan sponsored by Nortel Networks, Inc.

Presented to the Court for preliminary approval is a Settlement whose terms are set out in a Stipulation of Settlement last dated July 26, 2011, executed by counsel on behalf of the Named Plaintiffs and the Settling Defendants.¹

The Settlement would resolve all claims and counterclaims between Named Plaintiffs James Kauffman, Michael Zafarano, and Carol Felts, on behalf of the Plan, themselves, and the Class, and Settling Defendants Nortel Networks Corporation ("NNC"), Nortel Networks Limited ("NNL") and Nortel Networks Inc. ("NNI" and together with NNC and NNL, "Nortel"), and James J. Blanchard, John Edward Cleghorn, L. Yves Fortier, Robert Alexander Ingram, John Andrew Roth, Guylaine Saucier, Sherwood Hubbard Smith, Jr., Lynton Ronald Wilson, Dr. Manfred Bischoff, Robert Ellis Brown, John P. Manley, Richard David McCormick, William

¹ Capitalized terms not otherwise defined in this Order shall have the same meaning ascribed to them in the Stipulation of Settlement. (Doc. No. 280-4.)

Arthur Owens, Harry Jonathan Pearce, Katharine B. Stevenson, Nicholas DeRoma, William J. Donovan, and John M. Doolittle, Mary Cross, and Frank A. Dunn.

The Court has considered the proposed Settlement to determine, among other things, whether to certify a class for settlement purposes and whether the Settlement is sufficient to warrant the issuance of notice to members of the Class. Upon reviewing the Stipulation of Settlement and the Named Plaintiffs' Motion for Order Preliminarily Approving Settlement, Preliminarily Certifying a Settlement Class, Approving Class Notice, and Setting a Fairness Hearing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Class Findings:** The Court preliminarily finds that the requirements of the United States Constitution, the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Middle District of Tennessee, and any other applicable laws have been met as to the "Class" defined below, in that:

- a. The Class is cohesive and well defined;
- b. The members of the Class are ascertainable from records kept with respect to the Plan, and the members of the Class are so numerous that their joinder before the Court would be impracticable;
- c. Based on the record in this litigation, the Court preliminarily finds that there are one or more questions of fact and/or law common to the Class;
- d. Based on the record in this litigation showing that the Settling Defendants engaged in conduct affecting members of the Class in a uniform manner, the Court finds that the claims of the Named Plaintiffs are typical of the claims of the Class;
- e. The Named Plaintiffs will fairly and adequately protect the interests of the Class in that (i) the interests of Named Plaintiffs and the nature of their alleged claims are

consistent with those of the members of the Class; (ii) there appear to be no conflicts between or among Named Plaintiffs and the Class; and (iii) Named Plaintiffs and the members of the Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated ERISA class actions; and

f. The prosecution of separate actions by individual members of the Class would create a risk of (i) inconsistent or varying adjudications as to individual Class members that would establish incompatible standards of conduct for the parties opposing the claims asserted in the Nortel ERISA Action and/or (ii) adjudications as to individual Class members that would, as a practical matter, be dispositive of the interests of the other Class members not parties to the adjudications, or substantially impair or impede the ability of those persons to protect their interests.

2. Class Certification: Based on the findings set out in paragraph 1 above, the Court preliminarily certifies the following class (the "Class") for settlement purposes under Fed. R. Civ. P. 23(b)(1) and (2):

All persons who were participants or beneficiaries of the Plan and who held Nortel stock in their 401(k) individual accounts at any time from March 7, 2000, through January 1, 2008.

Excluded from the Class are (i) the Settling Defendants; (ii) members of the immediate families of each of the Settling Defendants; and (iii) the legal representatives, heirs, predecessors, successors, or assigns of any such excluded person or entity.

3. Class Representation: The Court appoints Named Plaintiffs James Kauffman, Michael Zafarano, and Carol Felts as class representatives for the Class. The Court also appoints the firms Branstetter, Stranch & Jennings, PLLC; Berger & Montague, PC; and Keller Rohrback, LLP as Lead Counsel for the Class.

4. Conditional Nature of Class Certification: This preliminary certification of the Class is solely for purposes of effectuating the Settlement. If the Settlement is terminated or does not reach the Effective Date under the terms of the Stipulation of Settlement, the preliminary certification of the Class shall become null and void, and the settling parties shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument, position, or privilege that any of the settling parties might have asserted but for the Settlement.

5. Preliminary Findings Regarding Proposed Settlement: The Court preliminarily finds that the proposed Settlement should be approved as (a) fair, reasonable and adequate; (b) the product of serious, informed, arm's length, and non-collusive negotiations; (c) having no obvious deficiencies; (d) not improperly granting preferential treatment to Class representatives or segments of the Class; (e) falling within the range of possible approval; and (f) warranting notice to Class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the proposed Settlement.

6. Fairness Hearing: A hearing is scheduled for **January 11, 2012, at 10:00 a.m.** (the "Fairness Hearing"), to determine, among other things:

- a. whether the Class should be finally certified, for settlement purposes, as a class action;
- b. whether the Settlement should be approved as fair, reasonable, and adequate;
- c. whether all claims and counterclaims in the litigation should be dismissed with prejudice pursuant to the terms of the Stipulation of Settlement;
- d. whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved;

e. whether the Notice and the Publication Notice and the means of disseminating same pursuant to the Stipulation of Settlement (i) are appropriate and reasonable and constitute due, adequate, and sufficient notice to all persons entitled to notice and (ii) meet all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;

f. whether to approve the application for attorneys' fees and expenses by Lead Counsel;

g. whether to approve the application for Case Contribution Compensation for the Named Plaintiffs;

h. how to resolve any timely and proper objections to the Settlement, the application for attorneys' fees and expenses, or the application for Case Contribution Compensation for the Named Plaintiffs; and

i. any other matters the Court may deem appropriate.

7. Notice to Class: The settling parties have presented to the Court proposed forms of Notice and Publication Notice, which were attached to the Stipulation of Settlement as Exhibits C-1 and C-2. With respect to the form of such Notice and Publication Notice, the Court finds that they fairly and adequately: (a) describe the terms and effect of the Settlement; (b) notify the Class concerning the proposed Plan of Allocation; (c) notify the Class that Lead Counsel will request an award of attorneys' fees and expenses, as well as case contribution awards for the Named Plaintiffs, from the Gross Settlement Fund; (d) give notice with respect to the proposed release of Released Claims; (e) give notice of the time and place of the Fairness Hearing; and (f) describe how members of the Class may object to approval of the Settlement.

The settling parties have proposed the following manner of disseminating the Notice and

Publication Notice to members of the Class, and the Court finds that such proposed manner of dissemination is appropriate under the circumstances and directs that Lead Counsel shall:

a. By no later than forty-five (45) days before the Fairness Hearing, cause the Notice, with such non-substantive modifications thereto as may be agreed upon by the settling parties, to be mailed by first-class mail, postage prepaid, to the last known address of each person within the Class who can be identified and located by reasonable effort. Nortel or the Plan shall provide the Settlement Administrator with information for this purpose in accordance with paragraph 3.10 of the Stipulation of Settlement;

b. By no later than forty-five (45) days before the Fairness Hearing, cause the Publication Notice, with such non-substantive modifications thereto as may be agreed upon by the settling parties, to be published on at least one occasion in USA Today and The Tennessean; and

c. By no later than forty-five (45) days before the Fairness Hearing, cause the Notice to be published on the website identified in the Publication Notice.

At or before the Fairness Hearing, Lead Counsel shall file with the Court a proof of timely compliance with the foregoing mailing and publication requirements.

8. Injunction: Pending the final determination of the fairness, reasonableness, and adequacy of the Settlement, the Settling Defendants and all members of the Class are preliminarily enjoined from instituting or commencing any action against one another based on the Released Claims defined in the Stipulation of Settlement.

9. Objections to Settlement: All of the following persons shall be referred to herein as "Objectors": (a) any member of the Class who objects to the fairness, reasonableness, or

adequacy of the Settlement, to the Plan of Allocation, to any term of the Stipulation of Settlement, to the proposed attorneys' fees and expenses, or to any request for Case Contribution Compensation for the Named Plaintiffs and (b) any person who would be bound by the release of Released Claims and who objects to approval of the release.

Any Objector must file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such Objector wishes to bring to the Court's attention or introduce in support of such objection. The Objector must also serve the objection and all supporting law and/or evidence to Lead Counsel and counsel for the Settling Defendants.

The Objector and his, her, or its attorney (if any) must both file the objection with the Court and serve it upon counsel listed below so as to be received no later than fourteen (14) calendar days before the date of the Fairness Hearing. If an Objector hires an attorney to represent him, her, or it for the purpose of making an objection pursuant to this paragraph, the attorney must both file a notice of appearance with the Court and serve it upon counsel listed below so as to be received no later than fourteen (14) calendar days before the date of the Fairness Hearing.

The Objector and/or the Objector's attorney may make filings with the Court by mail and service upon counsel by mail or fax as follows:

To the Court:

Clerk of the Court
United States District Court
for the Middle District of Tennessee
801 Broadway, 8th Floor
Nashville, TN 37203

To Lead Counsel:

Ron Kilgard, Esq.
Keller Rohrback, L.L.P.
3101 N. Central Avenue, Suite 1400
Phoenix, AZ 85012
Fax: 602-248-2822

Todd S. Collins, Esq.
Berger & Montague, P.C.
1622 Locust Street
Philadelphia, PA 19103
Fax: 215-875-4604

James G. Stranch, III
Branstetter, Stranch & Jennings, PLLC
227 2nd Ave. N., 4th Floor
Nashville, TN 37201
Fax: 615-255-5419

To counsel for Settling Defendants:

Rene E. Thorne, Esq.
Jackson Lewis LLP
650 Poydras, Suite 1900
New Orleans, LA 70130
Fax: 504-208-1759

Any member of the Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be forever foreclosed from raising any objection, and any untimely objection shall be barred.

10. Appearance at Fairness Hearing: An Objector's attendance at the Fairness Hearing is not necessary; however, an Objector who files and serves a timely, written objection in accordance with paragraph 9 above may appear at the Fairness Hearing either in person or through counsel retained at the Objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must both file with the Court and serve upon counsel listed above, so as to be received no later than fourteen calendar (14) days before the date of the Fairness Hearing, a notice of intention to appear setting forth the name, address, and telephone number of

the Objector (and, if applicable, the name, address and telephone number of the Objector's attorney). Filing with the Court may be effected by mail, and service upon counsel may be effected by mail or fax. Any Objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

11. **Notice Expenses:** Lead Counsel may pay from the Gross Settlement Fund deposited in the Escrow Account up to \$250,000 for actual reasonable costs of notice to Class members and for settlement administration without further order of the Court.

12. **Appointment of Administrator:** This Court appoints Heffler, Radetich & Saitta, LLP, as Settlement Administrator to perform duties including but not limited to provision of notice to the Settlement Class, calculation of Individual Claim Amounts, and preparation of or provision of information for tax-related documents.

13. **Service of Papers:** Settling Defendants' counsel and Lead Counsel shall promptly furnish each other with copies of any and all objections and notices of intention to appear at the Fairness Hearing that come into their possession.


14. **Termination of Settlement:** This preliminary approval of the Settlement shall become null and void, and shall be without prejudice to the rights of the parties to the Settlement, all of whom shall be restored to their respective positions existing immediately prior to the execution of the Stipulation of Settlement, if the Settlement is terminated or does not reach the Effective Date under the terms of the Stipulation of Settlement.

15. **Use of Order:** Under no circumstances shall this Order be construed, deemed, or used as an admission, concession, or declaration by or against any of the Named Plaintiffs, members of the Class, or Settling Defendants of any fault, wrongdoing, breach or liability. Nor

shall the Order be construed, deemed, or used as an admission, concession, or declaration by or against any of the Named Plaintiffs, members of the Class, or Settling Defendants that their claims or counterclaims lack merit or that the relief requested in the Nortel ERISA Action is inappropriate, improper or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

It is so ORDERED.

Entered this 13th day of October, 2011.



JOHN T. NIXON, SENIOR JUDGE
UNITED STATES DISTRICT COURT