

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NORTEL NETWORKS CORP.
SECURITIES LITIGATION

No. 01 Civ. 1855 (RMB)

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**JOINT DECLARATION OF SANFORD P. DUMAIN, DANIEL B. SCOTTI AND
MURRAY GOLD IN SUPPORT OF PROPOSED CLASS ACTION SETTLEMENT,
PLAN OF ALLOCATION, AND PETITION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

We, SANFORD P. DUMAIN, DANIEL B. SCOTTI and MURRAY GOLD hereby
declare as follows:

INTRODUCTION

1. (a) SANFORD P. DUMAIN is a member of the law firm of Milberg Weiss
Bershad & Schulman LLP¹ (“Milberg Weiss” or “Lead Counsel”), counsel for the Ontario Public
Service Employees’ Union Pension Trust Fund (“OPTrust”). OPTrust is the Court-appointed
Lead Plaintiff, and Milberg Weiss is the Court-appointed Lead Counsel for Lead Plaintiff and the
certified Class in the above-captioned federal securities law class action (the “Nortel I Action”).

(b) DANIEL B. SCOTTI is currently a member of the law firm of Dreier
LLP, was formerly a member of Milberg Weiss, and worked extensively on the Nortel I Action.

(c) MURRAY GOLD is a member of the law firm of Koskie Minsky LLP
 (“Koskie Minsky”), a Canadian law firm based in Toronto, Ontario, which serves as regular
counsel to Lead Plaintiff OPTrust, and has represented Lead Plaintiff and the Class in the Nortel
I Action generally and in foreign discovery-related proceedings taken in the Province of Ontario.

¹ Formerly known as Milberg Weiss Bershad Hynes & Lerach LLP.

Milberg Weiss and Koskie Minsky have actively participated in all aspects of this litigation, and, based on the work conducted by attorneys for those firms and our communications with them, we are fully familiar with the facts set forth in this declaration and could and would competently testify thereto.

2. Lead Plaintiff OPTrust is a pension trust which is responsible for the administration and management of a pension plan which provides pension benefits for employees of the Province of Ontario. The pension fund has more than 75,000 members and pensioners and has over \$11.8 billion (CDN) under management. As shown in the accompanying Affidavit of Heather Gavin of the OPTrust, Lead Plaintiff has worked closely with Lead Counsel and Koskie Minsky and has actively managed this litigation continuously since OPTrust's appointment as the sole Lead Plaintiff in January 2002. OPTrust's Board of Trustees formed a Nortel Class Action Subcommittee (the "Committee") that met regularly with Koskie Minsky, with Lead Counsel, or in camera, to discuss strategy and give direction throughout the prosecution of the litigation and the negotiation of the Settlement.

SUMMARY

3. We submit this declaration in support of: (i) the proposed settlement (the "Settlement") of the Nortel I Action pursuant to a Stipulation and Agreement of Settlement dated June 20, 2006 (the "Stipulation") which provides for payments by Nortel Networks Corporation ("Nortel") and its insurance carriers of a total of \$438,667,428 (US\$) in cash plus 314,333,875 shares of Nortel common stock (the "Settlement Shares")^{2,3} for the Nortel I Class certified

² As of June 30, 2006, the market value of Nortel common stock was \$2.24 (US\$) per share, making the total value of the Settlement approximately \$1.142 billion (US\$).

³ As detailed more fully below, the terms of the Stipulation also require Nortel to adopt substantial corporate governance reforms, and to contribute to the Nortel I Class one quarter of the amount of any actual gross recovery,

herein⁴; (ii) the proposed Plan of Allocation for distributing the proceeds of the Settlement to the members of the Class; and (iii) the application of Lead Plaintiff's Counsel in the Nortel I Action for an award of attorneys' fees and reimbursement of expenses. Milberg Weiss, Koskie Minsky and Daniel B. Scotti have actively participated in all aspects of this litigation, and we are familiar with the facts set forth in this declaration.

4. Simultaneously herewith, Nortel is also settling a separate federal securities law action (the "Nortel II Action") relating to a separate and later class period, April 24, 2003 through April 27, 2004 (the "Nortel II Class Period"). The Settlement herein is conditioned upon approval of the settlement of both the Nortel I Action and the Nortel II Action in the Southern District of New York, as well as in certain actions pending in courts in Ontario, Quebec and British Columbia (the "Canadian Actions"). The Canadian Actions involve allegations similar to those contained in the Nortel I Action or the Nortel II Action but with respect to Classes limited to persons resident in Canadian jurisdictions. Unless waived by Nortel, the Settlements must be approved by all such courts because a judgment adverse to Nortel in either the Nortel I Action or the Nortel II Action could expose Nortel to large potential damages. The Classes in the Canadian actions are essentially subclasses of either the Nortel I Class or the Nortel II Class. Members of the Nortel I Canadian Classes⁵ may participate in the Settlement on exactly the same basis as all other Nortel I Class Members.

minus attorneys' fees and expenses, from Nortel's lawsuit against Frank Dunn, Douglas Beatty, and Michael Gologly in the Ontario Superior Court of Justice bearing Court File No. 05-CV-283095PD1.

⁴ As more fully described below, the Nortel I Class certified herein includes "all persons and entities who purchased Nortel common stock and call options on Nortel common stock, or wrote (sold) put options on Nortel common stock, during the period October 24, 2000 through February 15, 2001 inclusive (the "Nortel I Class Period") and suffered damages thereby" (the "Nortel I Class").

⁵ The definitions of the Classes certified for settlement purposes in the Canadian Actions do not include the limitation "and suffered damages thereby." Thus the Canadian Classes may include persons who were not damaged by their purchase of Nortel securities. Nevertheless, the Plan of Allocation provides that only class members who have suffered damages will have a Recognized Claim and be entitled to share in the Settlement's proceeds.

5. We respectfully submit that this Court should approve the Settlement of the Nortel I Action, which is an outstanding result for the Nortel I Class by any measure. The Settlement is one of the largest recoveries ever achieved in a securities class action. Lead Plaintiff achieved the Settlement notwithstanding substantial contested issues with respect to liability and damages, and in light of significant potential collectability issues. The Settlement herein is the culmination of five years of hard-fought litigation that sharply illuminated the strengths and weaknesses of Lead Plaintiff's case. The Settlement was reached only after Lead Plaintiff survived Defendants' motion to dismiss, obtained this Court's certification of the Class, obtained extensive documentary and deposition evidence, pursued extra-territorial discovery against Nortel's Canadian auditors, and after lengthy multi-party negotiations and repeated mediations, involving arm's-length bargaining by experienced and knowledgeable counsel, and with the assistance of a sitting United States District Judge.

6. The proposed Plan of Allocation, which was prepared by Plaintiff's Lead Counsel with the assistance of their damages expert, should also be approved. The Plan of Allocation is set forth in full in the "Notice of Certifications in Canada and Proposed Settlements of Class Actions, Motions for Attorneys' Fees and Settlement Fairness Hearings (Nortel I Notice)" (the "Settlement Notice") and has been distributed to the Nortel I Class. If approved by the Court, the proposed Plan of Allocation will provide the basis on which Nortel I Class Members will share in the net cash and Settlement Shares from the Settlement. The proposed Plan of Allocation reflects the estimated strengths or weakness of claims based on purchase and sale transactions made during the Nortel I Class Period, and provides a reasonable and objective measure of losses to be recognized. Under the proposed Plan of Allocation all Class Members submitting an

acceptable Proof of Claim will share in the net cash settlement fund and net Settlement Shares in proportion to their Recognized Claims.

7. We also submit this declaration in support of the application by Plaintiffs Counsel⁶ for an award of attorneys' fees in the amount of eight and one half percent (8.5%) of both the Gross Cash Settlement Fund and the Settlement Shares. Plaintiffs Counsel also request \$3,750,041.27 in reimbursement of their litigation expenses from the Gross Cash Settlement Fund, together with interest on such expenses at the same rate as earned by the cash settlement funds from the date of inception of the funds through the date of payments. Counsel for Lead Plaintiff undertook the representation of Lead Plaintiff and the Class on a contingent-fee basis, and have rendered their services over the last five years without receiving any payment for their fees. Lead Plaintiff's Counsel shouldered significant risk in committing huge amounts of their time and money to the prosecution of this litigation. Notwithstanding the significant uncertainty as to whether the litigation would succeed, a large number of attorneys, especially from Milberg Weiss, were assigned to the prosecution of this litigation, and worked long hours in an intensely litigated matter. Lead Plaintiff's Counsel have also advanced significant amounts of money to pay the expenses of the litigation. Lead Plaintiff's Counsel's efforts have produced a result for the Class that is excellent by any measure, especially in light of the facts that prior to bringing the Nortel I Action, no governmental investigation was undertaken and Nortel did not formally restate or announce that it would restate its financial results for the Class Period. As discussed below, the requested fee is at the low end of fees when evaluated as a percentage of the amount

⁶ Plaintiffs' Counsel include Lead Plaintiff's Counsel, Milberg Weiss and Koskie Minsky, as well as counsel who represented the plaintiffs initially appointed as Lead Plaintiffs in the Nortel I Action prior to OPTrust's appointment as sole Lead Plaintiff, and counsel who performed services at the request of Lead Plaintiff's Counsel. See Compendium of Supporting Declarations of Plaintiffs' Counsel being submitted herewith.

recovered, and falls well within the range of fees recognized as appropriate in federal securities class actions when viewed on the lodestar and multiplier basis.

8. For the reasons discussed herein, and in the accompanying Lead Plaintiff's Memorandum of Law in Support of Final Approval of the Proposed Class Action Settlement and Proposed Plan of Allocation (the "Settlement Brief") and Memorandum of Law in Support of Plaintiffs Counsel's Application for an Award of Attorneys' Fees and Reimbursement of Expenses and an Award to Lead Plaintiff (the "Fee Brief"), we respectfully submit that the Settlement is worthy of immediate approval, that the proposed Plan of Allocation is equitable and just, and that the requested fees and expenses should be awarded in full.

BACKGROUND AND HISTORY OF THE LITIGATION

A. Background Allegations

9. This is a securities class action brought on behalf of all persons or entities who purchased Nortel common stock or call options on Nortel common stock, or who wrote put options on Nortel common stock, during the period from October 24, 2000 through February 15, 2001 inclusive and were damaged thereby, including, but not limited to, those persons or entities who traded in Nortel Securities on the New York Stock Exchange and/or the Toronto Stock Exchange.⁷

10. Throughout the Nortel I Class Period, Nortel was a leading global supplier of networking solutions and services that support the Internet and other public and private data, voice, and video networks using wireless and wireline technologies. During that same period,

⁷ Excluded from the Nortel I Class are Defendants; all of the officers, directors and partners thereof; members of their immediate families; their legal representatives, heirs, successors, or assigns; and any entity in which any of the foregoing have or had a controlling interest. Also excluded from the Class are the persons and/or entities who previously excluded themselves from the Class in accordance with the requirements set forth in the Notice of Pendency of Class Action dated March 10, 2004, or who exclude themselves in accordance with the requirements set forth in the Settlement Notice.

Defendant Roth was Nortel's Chief Executive Officer ("CEO"), President, and a Director of Nortel; Defendant Chandran was the Chief Operating Officer ("COO") of Nortel; and Defendant Dunn was the Chief Financial Officer ("CFO") of Nortel.

11. The operative complaint herein, which is the Second Consolidated Amended Class Action Complaint filed on January 18, 2002 (the "Complaint"), alleges that, during the Nortel I Class Period, Defendants knowingly or recklessly issued a series of materially false and misleading statements and engaged in a variety of accounting manipulations in violation of generally accepted accounting principles ("GAAP") that: (i) overstated Nortel's reported third quarter and year-end 2000 revenues and earnings; and (ii) falsely represented and reassured the investing public that, despite a massive contraction and retrenchment of the Internet and telecommunications sectors in the United States, Nortel's strong growth, revenues and earnings trends would continue through 2001 without any significant interruption.

12. More specifically, Nortel allegedly represented that its business model and key customer base (*i.e.*, the Internet and telecommunications sector in the United States) were far superior to those of competitors who had suffered serious financial setbacks, that Nortel was less vulnerable to such setbacks, and that Nortel would grow faster than the rest of the market. Lead Plaintiff alleged that these and other similarly positive statements caused Nortel's stock price to trade at artificially inflated levels, facilitating Nortel's strategy of using its shares to acquire other Internet and telecommunications related companies.

13. The Complaint advances two types of allegations.

i False Forward-Looking Statements

14. The first concerns Defendants' materially false and misleading promises and assurances to the market. Despite the implosion of Nortel's principal markets, Defendants

allegedly issued a stream of material misrepresentations meant to reassure the investing public that Nortel was still on track for strong growth in revenues and earnings.

15. Typical of these allegedly false and misleading reassurances to the market were statements in Defendants' October 24, 2000 press release concerning Nortel's future performance. Defendants reassured investors that, based "on the momentum we have experienced during the first nine months and the strong order backlog, we continue to expect that our percentage growth in 2000 over 1999 will be in the low 40's." The press release also predicted "Optical Internet solutions revenues will exceed US\$10 billion," and "percentage growth in EPS from operations in 2000 compared with 1999 will also be in the low 40's, up from our previously stated expectation which was in the high 30's." Complaint ¶ 67.

16. In terms of guidance for 2001, the October 24, 2000 press release reported that "we expect the overall market to grow in excess of 20 percent," and that "we expect to continue to grow significantly faster than the market, with anticipated growth in revenues and EPS from operations in the 30 to 35 percent range." *Id.* ¶ 68

17. On or about November 1, 2000, Roth was quoted on PR Newswire stating: "We continue to expect that our percentage growth in revenue and earnings per share from operations in 2000 over 1999 will be in the low 40's." Regarding Q4 2000, Roth reassured investors that "we expect our revenue and earnings per share from operations in the fourth quarter of 2000 will be in the range of US\$8.5 billion to US\$8.8 billion." Overall, Roth predicted "continued strong growth in Optical Internet, Wireless Internet, Local Internet and eBusiness solutions," and that "optical Internet revenues [would] grow in excess of 125 percent in 2000 over 1999, to exceed US\$10 billion." *Id.* ¶¶ 119-121.

18. The Complaint alleges that the foregoing positive guidance for 2000 and 2001 was materially false and misleading for at least two reasons.

(a) First, such positive predictions were allegedly belied by Defendants' knowledge that Nortel faced the same contraction of demand from Internet and telecommunications sectors that its main competitors, Cisco and Lucent, had been experiencing for months. *Id.* ¶¶ 2, 5, 44-45, 58. Indeed, the Complaint alleges Nortel's customers, which were largely Internet- and telecommunications-related companies, were suffering from a severe deterioration of their businesses as a result of the slowing United States economy, causing them to cancel or reduce orders of new products and either return or delay payment for products that had already been received. By the time Defendants issued their guidance, several of Nortel's largest customers, including WorldCom, Sprint, AT&T, and SBC, had already decreased their orders for Nortel products substantially and informed senior Nortel sales personnel that orders in the fourth quarter of 2000 and throughout 2001 would be even lower. *Id.* ¶¶ 5, 83, 85, 143, 148, 161, 178.

19. (b) Second, Defendants' optimistic future guidance was allegedly based upon improper revenue recognition practices. As detailed further below, the Complaint alleges that the aforementioned decline in demand for Nortel's products forced Defendants to use all manner of improper accounting manipulations to pull forward large amounts of revenue from future quarters into 2000. Since Defendants allegedly knew and/or recklessly disregarded that the only way to make the promised 4Q 2000 numbers was to cannibalize revenue from 2001, Defendants' guidance for 2001 lacked any credible basis. *Id.* ¶¶ 21, 77, 82-83, 97-98, 100, 123, 129, 134, 141, 144-45.

ii Falsely-Reported Financial Results

20. The second category of allegations in the Complaint relates to Defendants' improper revenue recognition, which Lead Plaintiff contends provided the means for Nortel to make the above-cited optimistic projections of future performance. The Complaint alleges that, during the Nortel I class period, Nortel reported false financial results. On October 24, 2000, for example, Defendants issued a press release reporting third quarter revenues of \$7.31 billion, up 42% from the same period in 1999. The Company also reported net earnings from operations of \$574 million, "an increase in earnings per share of operations of 64 percent." *Id.* ¶66.

21. On or about November 7, 2000, Defendants filed a quarterly report on Form 10-Q, confirming their third quarter financial results and representing that the financial results were prepared in conformity with GAAP and fairly presented the Company's financial position. *Id.* ¶75.

22. On or about January 18, 2001, Defendants issued a press release reporting positive results for the year 2000, with particularly strong results for the fourth quarter. In terms of the latter, defendants reported that revenues "increased 34 percent to US\$8.82 billion" and that net earnings from operations "were US\$825 million, or US\$0.26 per share on a diluted basis, compared to US\$607 million, or US\$0.21 per share on a diluted basis, for the same period in 1999, an increase in earnings per share from operations of 24 percent." *Id.* ¶ 152.

23. With respect to the full-year 2000, defendants reported that revenues increased 42% to \$30.28 billion, and that net earnings from operations were \$2.31 billion, or \$0.74 per share on a diluted basis, compared to \$1.43 billion, or \$0.52 per share on a diluted basis, for 1999, an increase in earnings per share from operations of 42%. *Id.* ¶ 153.

24. The Complaint alleges that preceding financial results were materially false and misleading because they were the result of Defendants' premature recognition of revenue, e.g.,

