

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE NORTEL NETWORKS CORP.
SECURITIES LITIGATION**

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

01-CV-1855 (RMB)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' COUNSEL'S
APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

**MILBERG WEISS BERSHAD
& SCHULMAN LLP**
Sanford P. Dumain (SD-8712)
George A. Bauer III (GB-2919)
Ross Brooks (RB-9431)
January L. Kerr (JK-9073)
One Pennsylvania Plaza
New York, NY 10119
Telephone: (212) 594-5300
Facsimile: (212) 868-1229

KOSKIE MINSKY LLP
Murray Gold
20 Queen Street West
Suite 900, Box 52
Toronto, Ontario
Canada M5H 3R3
Telephone: (416) 977-8353
Facsimile: (416) 204-2873

Lead Plaintiff's Counsel

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
A. The Common Fund Recovery	1
B. The Fee Application	3
C. The Settlement Notice.....	5
II. LEAD COUNSEL’S SERVICES	6
III. ARGUMENT	8
A. Lead Counsel Is Entitled to an Award of Attorneys’ Fees and Reimbursement of Expenses from the Common Fund	8
B. The Requested Attorneys’ Fees Are Reasonable Under the Percentage of the Fund Method	12
1. The Time, Labor, and Lodestar are Reasonable.....	14
a. Plaintiffs’ Counsel’s Hours are Reasonable.....	15
b. Plaintiffs’ Counsel’s Hourly Rates Are Reasonable	16
c. The Multiplier is Reasonable as a Cross-Check.....	17
2. The Magnitude, Complexity, and Risks of the Litigation Support the Requested Fee.....	18
3. The Quality of Plaintiffs’ Counsel’s Representation of the Class Supports the Requested Fee	22
4. The Fee Request is Fair In Relation to the Settlement Amount.....	22
5. Public Policy Considerations Support the Requested Fee	23
C. The Class’ Reaction to the Fee Request.....	24
D. Plaintiffs’ Counsel’s Expenses Were Reasonably Incurred and Necessary to the Prosecution of This Action.....	24
CONCLUSION.....	25

TABLE OF AUTHORITIES

Page

CASES

<i>In re 3Com Corp. Sec. Litig.</i> No. C-97-21083, 1999 U.S. Dist. LEXIS 22685 (N.D. Cal. July 7, 1999).....	13
<i>In re Am. Bank Note Holographics, Inc. Sec. Litig.</i> , 127 F. Supp. 2d 418, 422 (S.D.N.Y. 2001).....	12, 18
<i>Amchem Prods. v. Windsor</i> , 521 U.S. 591 (1997).....	18
<i>In re Ashanti Goldfields Sec. Litig.</i> , No. CV-00-717 (DGT), 2005 U.S. Dist. LEXIS 28431 (S.D.N.Y. Nov. 15, 2005).....	25
<i>In re Austrian and German Bank Holocaust Litig.</i> , 80 F. Supp. 2d 164 (S.D.N.Y. 2000).....	18
<i>In re BancAmerica Corp. Sec. Litig.</i> , 228 F. Supp. 2d 1061 (E.D. Mo. 2002).....	13, 17
<i>Basic Inc. v. Levinson</i> , 485 U.S. 224 (1988).....	23
<i>In re Blech Sec. Litig.</i> , No. 94 Civ. 7696, 2000 U.S. Dist. LEXIS 6920 (S.D.N.Y. May 19, 2000).....	10
<i>In re Blech Sec. Litig.</i> , No. 94 Civ. 7696 (RWS), 2002 WL 31720381 (S.D.N.Y. Dec. 4, 2002).....	12
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	8, 9
<i>In re Brand Name Prescription Drugs Antitrust Litig.</i> , No. 94 C 897, 2000 WL 204112 (N.D. Ill. Feb. 10, 2000).....	13
<i>In re Bristol-Myers Squibb Sec. Litig.</i> , 361 F. Supp. 2d 229 (S.D.N.Y. 2005).....	18, 23
<i>In re Broadcom Corp. Sec. Litig.</i> , 01-CV-00275, 2005 U.S. Dist. LEXIS 41993 (C.D. Cal. Sept. 12, 2005).....	12
<i>In re Buspirone Antitrust Litig.</i> , MDL 1413 (JGK), 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. Apr. 11, 2003).....	13

<i>Camden I Condo. Ass'n v. Dunkle</i> , 946 F.2d 768 (11th Cir. 1991).....	11
<i>In re Cardizem Antitrust Litig.</i> , MDL No. 1278 (E.D. Mich., Nov. 10, 2002).....	12
<i>In re Cendant Corp. Deriv. Action Litig.</i> , 232 F. Supp. 2d 327 (D.N.J. 2002)	9
<i>In re Cendant Corp. Litig.</i> , 243 F. Supp. 2d 166 (D.N.J. 2003)	12
<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974).....	19
<i>City of Detroit v. Grinnell Corp.</i> , 560 F.2d 1093 (2d Cir. 1977).....	16
<i>In re Computer Assocs. Sec. Litig.</i> , 98-CV-4839 (TCP) (E.D.N.Y. Dec. 16, 2003)	13
<i>In re Cont'l Ill. Sec. Litig.</i> , 962 F.2d 566 (7th Cir. 1992).....	10, 19
<i>Cosgrove v. Sullivan</i> , 759 F. Supp. 166 (S.D.N.Y. 1991).....	18
<i>Cruz v. Local Union No. 3 Of IBEW</i> , 34 F.3d 1148 (2nd Cir. 1994).....	16
<i>Dura Pharm., Inc. v. Broudo</i> , 125 S. Ct. 1627 (2005).....	20
<i>In re Elan Sec. Litig.</i> , 385 F. Supp. 2d 363 (S.D.N.Y. April 19, 2005)	14, 18
<i>Emergent Capital Inv. Mgmt., LLC v. Stonepath Group, Inc.</i> , 343 F.3d 189 (2d Cir. 2003).....	20
<i>FTR Consulting v. Advantage Fund II, Ltd.</i> , 02 Civ. 8608, 2005 U.S. Dist. LEXIS 20013 (S.D.N.Y. Sept. 13, 2006)	14, 16, 18
<i>In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.</i> , 55 F.3d 768 (3d Cir. 1995), <i>cert. denied</i> , 516 U.S. 824 (1995)	10
<i>Gierlinger v. Gleason</i> , 160 F.3d 858 (2d Cir. 1998).....	17

<i>Goldberger v. Integrated Res., Inc.</i> , 209 F.3d 43 (2d Cir. 2000).....	<i>passim</i>
<i>Gottlieb v. Barry</i> , 43 F.3d 474 (10th Cir. 1994).....	10
<i>Grant v. Martinez</i> , 973 F.2d 96 (2d Cir. 1992).....	17
<i>In re Holocaust Victim Assets Litig.</i> , 424 F.3d 150 (2d Cir. 2005).....	12
<i>Strougo v. Bassini</i> , 258 F. Supp. 2d 254 (S.D.N.Y. 2003).....	9, 11, 12, 14
<i>In re Indep. Energy Holdings PLC Sec. Litig.</i> , 302 F. Supp. 2d 180 (S.D.N.Y. 2003).....	24
<i>In re Indep. Energy Holdings PLC Sec. Litig.</i> , No. 00 Civ. 6689, 2003 U.S. Dist. LEXIS 17090 (S.D.N.Y. Sept. 26, 2003)	17
<i>In re Interpub. Group Sec. Litig.</i> , 02 Civ. 6527 2004 U.S. Dist. LEXIS 21429 (S.D.N.Y. Oct. 26, 2004).....	17
<i>Johnston v. Comerica Mortgage Corp.</i> , 83 F.3d 241 (8th Cir. 1996).....	10
<i>Jones v. Amalgamated Warbasse Houses, Inc.</i> , 721 F.2d 881 (2d Cir. 1983).....	16
<i>In re KeySpan Corp. Sec. Litig.</i> , No. CV 2001-5852, 2005 U.S. Dist. LEXIS 29068 (E.D.N.Y. Aug. 25, 2005)	17
<i>Klein v. PDG Remediation, Inc.</i> No. 95 Civ. 4954, 1999 U.S. Dist. LEXIS 650 (S.D.N.Y. Jan. 26, 1999)	10, 12
<i>Lemmer v. Golden Books Family Entm't Inc.</i> , 98 Civ. 5748 (S.D.N.Y. 1999).....	18
<i>Lentell v. Merrill Lynch & Co.</i> , 396 F.3d 161 (2d Cir. 2005).....	20
<i>In re Linerboard Antitrust Litig.</i> , No. MDL 1261, 2004 WL 1221350 (E.D. Pa. June 2, 2004)	12
<i>In re Lloyd's Am. Trust Fund Litig.</i> , 96 Civ. 1262, 2002 U.S. Dist. LEXIS 22663 (S.D.N.Y. Nov. 26, 2002).....	11, 20

<i>In re Lucent Techs., Inc. Sec. Litig.</i> , 327 F. Supp. 2d 426 (D.N.J. 2004)	12
<i>Luciano v. Olsten Corp.</i> , 109 F.3d 111 (2d Cir. 1997).....	16
<i>Maley v. Del Global Techs. Corp.</i> , 186 F. Supp. 2d 358 (S.D.N.Y. 2002).....	21, 23
<i>Meriwether v. Coughlin</i> , 727 F. Supp. 823 (S.D.N.Y. 1989).....	16
<i>In re Metro. Life Deriv. Litig.</i> , 935 F. Supp. 286 (S.D.N.Y. 1996).....	17
<i>In re Microstrategy, Inc. Sec. Litig.</i> , 172 F. Supp. 2d 778 (E.D. Va. 2001).....	13
<i>Mills v. Elec. Automobile-Lite Co.</i> , 396 U.S. 375 (1970)	8
<i>Missouri v. Jenkins</i> , 491 U.S. 274 (1989)	17
<i>In re NASDAQ Market-Makers Antitrust Litig.</i> , 187 F.R.D. 465 (S.D.N.Y. 1998)	13
<i>Newman v. Carbiner Int'l</i> , 99 Civ. 2271 (GEL) (S.D.N.Y. 2001)	17
<i>In re Oxford Health Plans Inc. Sec. Litig.</i> , MDL 1222, 2003 U.S. Dist. LEXIS 26795 (S.D.N.Y. June 12, 2003).....	12
<i>In re Prudential Sec. Ltd. P'ships Litig.</i> , 985 F. Supp. 410 (S.D.N.Y. 1997).....	25
<i>In re RJR Nabisco, Inc. Sec. Litig.</i> , MDL No. 818 (MBM), 88 Civ. 7905 1992 U.S. Dist. LEXIS 12702 (S.D.N.Y. Aug. 24, 1992).....	11
<i>Rawlings v. Prudential-Bache Props.</i> , 9 F.3d 513 (6th Cir. 1993).....	10
<i>Reid v. New York</i> , 584 F. Supp. 461 (S.D.N.Y. 1984).....	17
<i>In re Rite Aid Corp. Sec. Litig.</i> , 269 F. Supp. 2d 603 (E.D. Pa. 2003)	13

<i>Shaw v. Toshiba Am. Info. Sys.</i> , 91 F. Supp. 2d 942 (E.D. Tex. 2000)	13
<i>Silverberg v. People's Bank</i> , 23 Fed. Appx. 46, 48 (2d Cir. 2001)	12
<i>Six Mexican Workers v. Ariz. Citrus Growers</i> , 904 F.2d 1301 (9th Cir. 1990).....	10
<i>In re Sumitomo Copper Litig.</i> , 74 F. Supp. 2d 393 (S.D.N.Y. 1999).....	10, 11
<i>Swedish Hosp. Corp. v. Shalala</i> , 1 F.3d 1261 (D.C. Cir. 1993)	11
<i>Teachers Ret. Sys. of La. v. A.C.L.N., Ltd.</i> , No. 01-CV-11814, 2004 WL 1087261 (S.D.N.Y. May 14, 2004).....	21
<i>Trustees v. Greenough</i> , 105 U.S. 527 (1882)	8
<i>In re Twinlab Corp. Sec. Litig.</i> , 187 F. Supp. 2d 80 (E.D.N.Y. 2002)(S.D.N.Y. 2001)	10
<i>In re Visa Check/Mastermoney Antitrust Litig.</i> , 297 F. Supp. 2d 503 (E.D.N.Y. 2003).....	10, 12
<i>In re Warner Commc'ns Sec. Litig.</i> , 618 F. Supp. 735 (S.D.N.Y. 1985).....	19
<i>In re Worldcom, Inc. Sec. Litig.</i> , No. 02 Civ. 3288 (DLC), 2004 U.S. Dist. LEXIS 22992 (S.D.N.Y. Nov. 12, 2004).....	10, 12

STATUTES

15 U.S.C. §78u-4(a)(6).....	10
-----------------------------	----

The Ontario Public Service Employee Union Pension Plan Trust Fund, Court-appointed Lead Plaintiff and Representative of the Class certified herein (“Lead Plaintiff” or “OPTrust”), and the undersigned Court-appointed Lead Counsel, respectfully submit this Memorandum in support of their application for an award of attorneys’ fees and reimbursement of expenses (the “Fee Application”).

This Fee Application is also supported by the accompanying: 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 (the “Joint Declaration”); Declaration of Heather Gavin, Chief Administrative Officer and Plan Manager of the Ontario Public Service Employees’ Union Pension Plan Trust Fund, in Support of Final Approval of Settlement and Award of Attorneys’ Fees and Reimbursement of Expenses (the “Gavin Declaration”); Compendium of Affidavits and Declarations of Plaintiff Counsel in support of Plaintiff Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses (the “Compendium”); Affidavit of Neil L. Zola Regarding the Mailing of the Nortel I Settlement Notice and Proof of Claim Form (the “Zola Affidavit”); and Lead Plaintiff’s Memorandum of Law in Support of Final Approval of the Proposed Nortel I Class Action Settlement and Proposed Plan of Allocation (“Settlement Memo”) filed concurrently herewith.

I. INTRODUCTION

A. The Common Fund Recovery

The settlement (the “Nortel I Settlement”) of this certified class action is proposed pursuant to the terms of a Stipulation and Agreement of Settlement dated June 20, 2006 (the

“Stipulation”) entered between Lead Plaintiff OPTrust, on behalf of itself and the Nortel I Class,¹ and defendant Nortel Networks Corporation (“Nortel”). As shown in the Gavin Declaration, the OPTrust is a large and sophisticated investor with a large monetary interest in this action. It was appointed by the Court as the sole Lead Plaintiff and Class Representative and it has been intimately involved with the prosecution and settlement of this litigation. Lead Plaintiff fully supports approval of the Settlement.

By any measure, the settlement obtained in this case is an excellent result for the Nortel I Class. The Nortel I Settlement includes a \$438,667,428 (US\$) cash settlement fund, which has been deposited in escrow and has been earning interest for the benefit of the Nortel I Class since March 23, 2006, and 314,333,875 shares of Nortel common stock (the “Settlement Shares”) to be issued for the benefit of the Nortel I Class, for a total value (as of June 30, 2006) of approximately \$1.142 billion.² The terms of the Stipulation also require Nortel to contribute to the Nortel I Class 25% of the amount of any actual gross recovery, minus attorneys’ fees and expense, from Nortel’s currently-pending lawsuit against defendants Frank Dunn, Douglas Beatty and Michael Gollogly. The Stipulation also requires Nortel to adopt substantial corporate governance reforms which should help protect the value of the Settlement Shares. *See* Joint Declaration at ¶¶ 31, 80.

¹ The 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”). Excluded from the Nortel I Class are the persons and/or entities who previously excluded themselves in accordance with the requirements set forth in the Notice of Pendency of Class Action dated March 10, 2004, or who now exclude themselves in accordance with the requirements set forth in the Notice of Settlement dated July 21, 2006.

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 Shares approximately \$704 million (US\$).

The Nortel I Settlement is an outstanding result given the many obstacles and risks of litigation faced by Lead Plaintiff. The recovery for the Nortel I Class represents most of the Defendants' ability to pay. This result is proof positive of the quality of Lead Plaintiff's Counsel's services rendered on behalf of the Nortel I Class. The Settlement is one of the largest recoveries ever achieved in a securities class action.

B. The Fee Application

As compensation for their considerable services rendered to obtain these substantial benefits for the Nortel I Class, and to reward counsel for risking their significant investment of lodestar, Lead Plaintiff submits that an award of Attorneys' Fees in the amount of 8.5% of the common fund recovery obtained, payable in kind from both the cash recovery and the Settlement Shares is fair and reasonable and should be approved by the Court. Significantly higher percentage fees have been awarded in numerous cases that were far less risky, were not as intensely litigated and did not get past the class certification phase.

Lead Plaintiff OPTrust retained Milberg Weiss ("Lead Counsel"), on a contingent-fee basis pursuant to a written retainer agreement dated December 20, 2001. Lead Plaintiff's Counsel have worked diligently for five years without receiving any compensation for their services, in the expectation that if they succeeded in obtaining a large recovery for Lead Plaintiff and the Nortel I Class they would share in such recovery. Lead Plaintiff's Counsel have now succeeded in obtaining that recovery and now seek to realize on their expectation.

Pursuant to the retainer agreement Lead Counsel agreed that it would submit its proposed fee application to Lead Plaintiff for its approval before the Fee Application could be submitted to the Court. In connection with seeking Lead Plaintiff's approval of this Fee Application, Lead Counsel have provided Lead Plaintiff with the time and expense reports of Lead Counsel, as well as other counsel that cooperated in the prosecution of this case. Prior to signing the Stipulation

and in connection with determining the fee amount to be reported in the Settlement Notice, Lead Plaintiff and Lead Counsel negotiated and agreed that the Settlement Notice would state that Lead Plaintiff's Counsel in this Action would move for an award of attorneys' fees "in an amount not to exceed ten percent (10%)" of the cash and Settlement Shares. Lead Plaintiff and Lead Plaintiff's Counsel have held further negotiations since the Stipulation was signed. After extensive review of the time and expense reports, and with full knowledge of the amounts recovered, Lead Plaintiff has negotiated further with Lead Counsel and they have agreed to reduce Plaintiffs' Counsel's³ requested fees to just eight and one-half percent (8.5%) of cash funds and Settlement Shares.

OPTrust, a major payer of our fee⁴, and the fiduciary representative of the Nortel I Class, has stated its belief that such fee is fair and reasonable to the Nortel I Class and Plaintiff Counsel and should be approved by the Court. *See* Gavin Affidavit ¶¶ 43-45. It is respectfully submitted that the Court should therefore give great deference to Lead Plaintiff's agreement that the Fee Application is fair, reasonable and adequate.

Lead Counsel also request reimbursement of the costs and expenses incurred by Plaintiffs' Counsel in connection with the litigation in the amount of \$3,750,041.27, together with interest on such amount at the same rate as accrued by the cash settlement funds from the

³ Plaintiffs' Counsel include Lead Plaintiff's Counsel, Milberg Weiss Bershad & Schulman LLP (formerly known as Milberg Weiss Bershad Hynes & Lerach LLP) ("Milberg Weiss") and the Ontario law firm of Koskie Minsky LLP, regular pension counsel to the Lead Plaintiff ("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, including the New York law firms of Abraham, Fruchter & Twersky LLP (formerly Fruchter & Twersky LLP), Weiss & Lurie (formerly Weiss & Yourman), Lovell Stewart Halebian, LLP, Wechsler Harwood LLP (formerly Wechsler Harwood Halebian & Feffer, LLP), Murray, Frank & Sailer LLP, Mager & Goldstein, and the Philadelphia law firm of the Law Offices of Bernard M. Gross, P.C. *See* Compendium.

⁴ Pursuant to the Private Securities Litigation Reform Act ("PSLRA"), OPTrust was granted Lead Plaintiff status based, among other things, on its loss, \$33,073,424.00 (CDN\$), being the largest of those seeking to be appointed as Lead Plaintiff. Thus it has a direct and substantial interest in seeking to limit counsel's fee.

date of deposit of the funds in escrow through the date of payments. These costs and expenses have been advanced by Lead Counsel over the course of the last five years and represent a significant investment made by Lead Counsel, without which the case could not have succeeded.

C. The Settlement Notice

In accordance with the Court's June 29, 2006 Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings (the "Preliminary Approval Order"), on July 21, 2006, Lead Counsel caused the Claims Administrator to distribute over 733 thousand copies of the Court-approved Notice of Certifications in Canada and Proposed Settlements of Class Actions, Motions for Attorneys' Fees and Settlement Fairness Hearings (Nortel I) (the "Nortel I Settlement Notice") to potential Class members. *See Zola Affidavit* ¶14. As a result of requests from brokers and other nominees, over 470 thousand additional copies of the Settlement Notice and Proof of Claim forms have been sent out to members of the Class. *See Zola Affidavit* ¶18. In total over 1,245,000 copies of the Settlement Notice and Proof of Claim forms have been sent out to date. *See Zola Affidavit* ¶28.

The Settlement has also been published on the Internet, www.nortelsecuritieslitigation.com, which includes printable versions of the Settlement Notice, the Proof of Claim form, the Stipulation of Settlement, and various relevant litigation documents. The Notice notified the Class, *inter alia*, that Lead Counsel would apply to the Court for an award of attorneys' fees not to exceed 10 % of the proposed Settlement, plus reimbursement of reasonable costs and expenses incurred in connection with the prosecution of this litigation in an amount not to exceed \$5 million, the deadline for Class members to file objections to the requested fees and expenses is September 19, 2006.

II. LEAD COUNSEL'S SERVICES

Plaintiffs respectfully refer the Court to the Joint Declaration filed herewith for a full description of the claims (¶¶ 9-27), the history of the litigation (¶¶ 28-79), the substantial risks and uncertainties that Lead Counsel surmounted (¶¶ 86-105), and the other factors that support both the Settlement and this Fee Application (¶¶ 106-139).

The proposed Settlement came neither quickly nor easily. The following is only a brief summary of the major services performed and major steps leading to the Nortel I Settlement. This case was commenced in February of 2001. Defendants' motion to dismiss was fully briefed and argued and was denied by this Court. Lead Plaintiff moved to certify the Class and appoint OPTrust as Class representative. In connection with this motion, OPTrust produced thousands of pages of documents and Defendants deposed two OPTrust representatives. The certification motion was extensively briefed, notably including submissions from five different experts, and was extensively argued. This Court granted class certification. Nortel petitioned for leave to appeal the Court's certification decision, which petition was denied. Lead Plaintiff and Defendants argued over the Notice of Pendency until this Court rejected Defendants' arguments and ordered Defendants to negotiate with Class Counsel on agreed language for the Notice of Pendency. Over 591,000 copies of the Notice of Pendency were distributed in 2004 and a Summary Notice of Pendency was published in 7 newspapers, in two different languages, on three different occasions. In response to the Notice of Pendency, 1,583 timely and 55 late requests for exclusion were submitted.⁵

⁵ See Affidavit of Jack R. DiGiovanni Re: (A) Mailing of Notice of Pendency of Class Action; (B) Publication of the Summary Notice; and (C) Report on Exclusion Requests Received, dated July 2, 2004, filed with the Court on July 6, 2004.

