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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,<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> 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's<sup>3</sup> requested fees to just eight and one-half percent (8.5%) of cash funds and Settlement Shares.

OPTrust, a major payer of our fee<sup>4</sup>, 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

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<sup>3</sup> 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.

<sup>4</sup> 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](http://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.<sup>5</sup>

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<sup>5</sup> 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.

Lead Plaintiff conducted extensive discovery both here in the United States and abroad. The domestic discovery efforts included a document review consisting of approximately 715,000 pages originally produced by Defendants and 23 non-parties, as well as approximately 1.1 million additional pages of documents from Defendants concerning Nortel's restatement. Lead Plaintiff conducted 12 depositions of parties and non-parties. Moreover, Lead Plaintiff vigorously and successfully fought in Canada, all the way to the Ontario Court of Appeal, for the issuance and subsequent enforcement of Letters Rogatory for the production of workpapers by Deloitte & Touche LLP Canada ("Deloitte Canada"), Nortel's auditor during the Nortel I Class Period.

The settlement process in this action was highly complex, contentious, time-consuming, and included a unique three-phase process. The Nortel I Settlement is tied to the settlement of a separate putative class action against Nortel relating to a later time period, the Nortel II Action. The settlements are each conditioned on approval of the other and on the approval of the dismissals of similar actions filed in various courts in different Canadian Provinces. The first phase of the settlement process involved coordinating with the Nortel II Lead Plaintiffs and creating an allocation agreement that all lead plaintiffs in both cases could agree upon. These negotiations required the guidance of mediation sessions before United States District Court Judge Robert K. Sweet.

The Parties in Nortel I and Nortel II then embarked on comprehensive settlement negotiations, again under Judge Sweet's guidance, involving their Counsel, corporate finance experts, attorneys for multiple layers of Company insurance, and several senior Nortel officials. Although an agreement in principal with Nortel was announced on February 8, 2006, scores of issues were left to be negotiated and documented, as well as the amount to be paid by the

Insurers. Additionally, the parties were required to meet with counsel representing the proposed classes in the Canadian Actions about arranging the dismissals of those actions pursuant to the benefits flowing to the members of the classes in Canada from the Nortel I and Nortel II Settlements. The Stipulation was signed on June 20, 2006 and orders of preliminary approval were obtained in the Nortel I and Nortel II actions and in five Canadian courts.

Plaintiffs' Counsel performed the foregoing services, and more, over the course of five years on a contingent-fee basis, 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. Having obtained a large recovery for Lead Plaintiff and the Nortel I Class, Plaintiffs' Counsel now request payment for their services from the common fund recovery. Lead Plaintiff and Lead Counsel believe that the Fee Application is fair and reasonable under the circumstances.

### **III. ARGUMENT**

#### **A. Lead Counsel Is Entitled to an Award of Attorneys' Fees and Reimbursement of Expenses from the Common Fund**

Courts have long recognized that when, as in this case, a party maintains a suit that results in the creation of a fund for the benefit of a class, the costs of the litigation, including an award of reasonable attorneys' fees, should be recovered from the fund created by the litigation. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000) (where a class action settlement creates a common fund, the plaintiffs' attorneys "are entitled to a reasonable fee – set by the court – to be taken from the fund"). This "equitable" or "common fund" doctrine established more than a century ago in *Trustees v. Greenough*, 105 U.S. 527 (1882), spreads the cost of the litigation, including attorneys' fees, among the fund's beneficiaries.

The rationale for the common fund principle was described by the Supreme Court in

*Boeing* as follows:

this Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole....Jurisdiction over the fund involved in the litigation allows a court to prevent ...inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit. (Citations omitted).

444 U.S. at 478.

Two methods for calculating attorneys' fees are available to courts in common fund cases -- the "percentage method" and the "lodestar method." *Goldberger*, 209 F.3d at 47. The percentage method is the simpler method of the two and involves awarding counsel a percentage of the recovery as a fee. *Id.* The lodestar method requires the Court to scrutinize the fee petition to ascertain the number of hours reasonably billed, then multiply that figure by an appropriate hourly rate. *Id.* District courts may use both methods when approving attorney fees. *Id.* at 50. The Second Circuit, however, encourages using the lodestar method only as a cross-check for the percentage method. *Id.*; *Strougo v. Bassini*, 258 F. Supp. 2d 254, 263 (S.D.N.Y. 2003). In any event, the Court should be wary of using the lodestar method as a cross-check in a "mega-fund"<sup>6</sup> case because:

The use of a lodestar/multiplier methodology in mega-fund cases becomes a less reliable cross-check. This is because the multiplier is generally above the norm in these cases even though the percentage of recovery may be lower than the norm. To rely too heavily on the lodestar/multiplier methodology in such cases would thus eviscerate the percentage of recovery method, which I think is the appropriate metric.

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<sup>6</sup> See *In re Cendant Corp. Deriv. Action Litig.*, 232 F. Supp. 2d 327, 337 (D.N.J. 2002) (noting that a mega fund case "generally require[s] awards of at least \$100 million).

*In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 525 n.32 (E.D.N.Y. 2003) (quoting Professor Arthur R. Miller).<sup>7</sup>

The percentage of recovery method is routinely approved by the Second Circuit and the district courts in this Circuit.<sup>8</sup> This method is consistent with the PSLRA, which provides that “[t]otal attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class....” See 15 U.S.C. §78u-4(a)(6). Given the language of the PSLRA, the Second Circuit’s explicit approval of the percentage method in *Goldberger*, and the trend among district courts in this Circuit and others,<sup>9</sup> the Court should award Plaintiffs’ Counsel attorneys’ fees based on a percentage of the fund.

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<sup>7</sup> Professor Arthur R. Miller teaches at Harvard Law School. He has authored many books and treatises, including *Federal Practice and Procedure*, as well as law reviews and articles on the subject of class actions and attorneys’ fees. He also served as reporter for the *Third Circuit’s Task Force on Court Awarded Attorneys’ Fees*. 297 F. Supp. 2d at 525 n.32.

<sup>8</sup> See, e.g., *In re Worldcom, Inc. Sec. Litig.*, No. 02 Civ. 3288 (DLC), 2004 U.S. Dist. LEXIS 22992, at \*75 (S.D.N.Y. Nov. 12, 2004); *In re Visa Check/MasterMoney*, 297 F. Supp. 2d at 520-21 (trend in this Circuit is to award attorneys’ fees using percentage method); *In re Twinlab Corp. Sec. Litig.*, 187 F. Supp. 2d 80, 85 (E.D.N.Y. 2002) (“[t]he trend in the Second Circuit is to use the percentage method”) (citing *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 431)(S.D.N.Y. 2001); *In re Blech Sec. Litig.*, No. 94 Civ. 7696, 2000 U.S. Dist. LEXIS 6920, at \*14-15 (S.D.N.Y. May 19, 2000) (“This Court ... continues to find that the percentage of the fund method is more appropriate than the lodestar method for determining attorney’s fees in common fund cases.”); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 397 (S.D.N.Y. 1999) (“Support for the lodestar/multiplier approach in common fund cases has eroded, and there has been a ‘ground swell of support for mandating a percentage-of-the-fund approach’ in the common fund cases.”) (citation omitted); *Klein v. PDG Remediation, Inc.*, No. 95 Civ. 4954, 1999 U.S. Dist. LEXIS 650, at \*10 (S.D.N.Y. Jan. 26, 1999) (“The lodestar approach has been criticized, and courts now favor awarding counsel in common fund cases ... a percentage of the settlement fund.”).

<sup>9</sup> Ten Circuits -- the First, Second, Third, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and District of Columbia -- have either endorsed or required the percentage of fund approach method for awarding counsel fees. See, e.g., *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995), *cert. denied*, 516 U.S. 824 (1995) (“In common fund cases, a district judge can award attorneys’ fees as a percentage of the fund recovered”) (citations

In addition to its relative simplicity and disincentive against running up fees, the percentage method has been favored because it “directly aligns the interests of the class and its counsel[,]...provides a powerful incentive for the efficient prosecution and early resolution of litigation,”<sup>10</sup> and most closely approximates the manner in which private litigants compensate their attorneys in the marketplace contingency fee model.<sup>11</sup>

Under either method, the award must be reasonable in light of the “traditional criteria,” *i.e.*, “(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of the representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.” *Goldberger*, 209 F.3d at 50 (citing *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163

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omitted); *Rawlings v. Prudential-Bache Props.*, 9 F.3d 513, 516 (6th Cir. 1993) (district court has discretion to award a percentage of the common fund); *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (fee award should not be based on “individual hours,” but rather on the percentage that counsel “would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client”); *Johnston v. Comerica Mortgage Corp.*, 83 F.3d 241, 246 (8th Cir. 1996) (authorizing percentage method); *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) (“a reasonable fee under the common fund doctrine is calculated as a percentage of the recovery”); *Gottlieb v. Barry*, 43 F.3d 474, 484 (10th Cir. 1994) (fee award should be calculated using the percentage method; “use of the lodestar in common fund cases is ‘out of fashion’”); *Camden I Condo. Ass’n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) (mandating use of percentage method); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993) (“percentage-of-the-fund method is the appropriate mechanism for determining the attorney fees award in common fund cases”).

<sup>10</sup> *In re Lloyd’s Am. Trust Fund Litig.*, 96 Civ.1262, 2002 U.S. Dist. LEXIS 22663, at \*74 (S.D.N.Y. Nov. 26, 2002).

<sup>11</sup> *See Strougo*, 258 F. Supp. 2d at 262 (“the percentage method is consistent with and, indeed, is intended to mirror, practice in the private marketplace”); *In re Sumitomo Copper*, 74 F. Supp. 2d at 397 (noting that the percentage approach is “uniquely the formula that mimics the compensation system actually used by individual clients to compensate their attorneys.”); *In re RJR Nabisco, Inc. Sec. Litig.*, MDL No. 818 (MBM), 88 Civ. 7905 (MBM), 1992 U.S. Dist. Lexis 12702 (S.D.N.Y. Aug. 24, 1992) (“What should govern such awards is not the essentially whimsical view of a judge, or even a panel of judges, as to how much is enough in a particular case, but what the market pays in similar cases[.]”).

(S.D.N.Y. 1989)). Determination of reasonableness is within the Court's discretion. *Id.*; *In re Holocaust Victim Assets Litig.*, 424 F.3d 150, 157 (2d Cir. 2005).

**B. The Requested Attorneys' Fees Are Reasonable Under the Percentage of the Fund Method**

The requested percentage fee is entitled to great deference as it was negotiated by a sophisticated institutional Lead Plaintiff with a significant monetary interest in the Settlement. Joint Declaration at ¶ 114. The fee requested in this case, 8.5% of the proposed Settlement, is at the lower end of, or below, the range of fees awarded by courts under the percentage method in cases involving very large recoveries.<sup>12,13</sup> In cases involving recoveries in excess of \$100 million, plaintiffs' counsel have generally been awarded fees much larger than the 8.5% requested here. *See, e.g., In re Broadcom Corp. Sec. Litig.*, 01-CV-00275 DT, 2005 U.S. Dist. LEXIS 41993 (C.D. Cal. Sept. 12, 2005) (25% of \$150 million); *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426 (D.N.J. 2004) (awarding 17% of approximately \$517<sup>14</sup> million settlement); *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350 (E.D. Pa. June

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<sup>12</sup> In cases not involving very large recoveries, courts in this District and elsewhere frequently award attorneys' fees of 25-33 1/3 % or more of the settlement fund in securities class actions, significantly more than the fee award being sought here. *See Silverberg v. People's Bank*, 23 Fed. Appx. 46, 48 (2d Cir. 2001). *See also Strougo*, 258 F. Supp. 2d at 262 (using the percentage method and awarding attorneys' fees of 33.3% of the \$1.5 million common fund recovery); *In re Blech Sec. Litig.*, No. 94 Civ. 7696 (RWS), 2002 WL 31720381, at \*1 (S.D.N.Y. Dec. 4, 2002) (awarding attorneys' fees of 33 1/3%); *Am. Bank Note*, 127 F. Supp. 2d at 422 (awarding attorneys' fees of 25% of the \$14.85 million benefit); *Klein*, 1999 U.S. Dist. LEXIS 650, at \*11 ("33% of the settlement fund ... is within the range of reasonable attorney fees awarded in the Second Circuit.").

<sup>13</sup> In the few cases involving recoveries over \$2 billion, lower percentages have been awarded. *In re WorldCom*, 2004 U.S. Dist. LEXIS 22992 (\$6.133 billion recovery, 5.5% fee award); *In re Cendant Corp. Litig.*, 243 F. Supp. 2d 166, 174 (D.N.J. 2003) (\$3.2 billion recovery, 1.7% fee award); *In re Visa Check/Mastermoney*, 297 F. Supp. 2d at 524 (\$3.383 billion recovery, 6.511% fee award).

<sup>14</sup> In *Lucent*, the court awarded lead counsel a fee equal to 17% of the estimated \$517 million recovery to the common shareholder class. The remainder of the estimated \$610 million global recovery was distributed to the ERISA, derivative, note holder and debt securities holder classes, whose counsel were awarded fees between 15% and 25% of their respective class recovery. *Lucent*, 327 F. Supp. 2d at 433-62.

2, 2004) (30% of \$203 million); *In re Buspirone Antitrust Litig.*, MDL 1413 (JGK), 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. Apr. 11, 2003) (33% of \$220 million); *In re Rite Aid Corp. Sec. Litig.*, 269 F. Supp. 2d 603 (E.D. Pa. 2003), and 146 F. Supp. 2d 706 (E.D. Pa. 2001) (collectively awarding 25% of combined \$319 million settlement); *In re Computer Assocs. Sec. Litig.*, 98-CV-4839 (TCP), (E.D.N.Y. Order filed Dec. 16, 2003) (fee awarded in shares equal to 25% of 5.7 million shares worth approximately \$23.43 per share or a total of some \$133.5 million); *In re Oxford Health Plans Inc. Sec. Litig.*, MDL 1222, 2003 U.S. Dist. LEXIS 26795 (S.D.N.Y. June 12, 2003) (awarded 28% of \$300 million settlement); *In re Cardizem Antitrust Litig.*, MDL No. 1278, (E.D. Mich., Nov. 10, 2002) (30% of \$110 million); *In re Methionine Antitrust Litig.*, MDL No. 00-1311(CRB) (N.D. Cal. Oct. 3, 2002) (22.6% of \$107 million reasonable); *In re BancAmerica Corp. Sec. Litig.*, 228 F. Supp. 2d 1061 (E.D. Mo. 2002) (awarding 18% of \$490 million settlement); *In re Microstrategy, Inc. Sec. Litig.*, 172 F. Supp. 2d 778 (E.D. Va. 2001) (awarding 18% of \$192.5 million settlement); *Shaw v. Toshiba Am. Info. Sys.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) (awarding attorneys' fees from 13.4% to 14.75% of settlement valued at \$1 to \$1.1 billion;<sup>15</sup> *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 2000 WL 204112 (N.D. Ill. Feb. 10, 2000) (awarding 25% of \$697 million settlement); *In re 3Com Corp. Sec. Litig.*, No. C-97-21083, 1999 U.S. Dist. LEXIS 22685 (N.D. Cal. July 7, 1999) (awarding attorneys' fees of 18% of \$259 million settlement); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998) (awarding attorneys' fees of 14% of \$1.027 billion settlement). In light of these higher percentage fee awards in other actions where the settlement fund is measured in the hundreds of millions of dollars to less than

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<sup>15</sup> Although the settlement in *Shaw* was for \$2.1 billion, only \$1 billion was in cash, with the remainder in coupons and replacement patches. The court valued the settlement at \$1-1.1 billion and stated that, although counsel only requested \$147.5 million in fees, a percentage recovery of 15% would have been reasonable. *Shaw*, 91 F. Supp. 2d at 972.

\$2 billion, Lead Plaintiff's and Lead Counsel's request here for an 8.5% fee award to Plaintiffs' Counsel is clearly modest and no more than fair and reasonable compensation.

Since this is a mega-fund case, the Settlement is substantially different than others approved by this Court. See *FTR Consulting v. Advantage Fund II, Ltd.*, 02 Civ. 8608, 2005 U.S. Dist. LEXIS 20013 (S.D.N.Y. Sept. 13, 2006) (Berman, J.) (approving 25% award); *In re Elan Sec. Litig.*, 385 F. Supp. 2d 363 (S.D.N.Y. April 19, 2005) (Berman, J.) (approving 12% award). For example, *FTR Consulting* was a Section 16 (b) case where it is normal for the lodestar to far exceed the requested fee. *FTR Consulting*, 2005 U. S. Dist. LEXIS 20013, at \*13. Furthermore, this Court in *FTR Consulting* determined that a substantial amount of the lodestar amount related to an unsuccessful claim. In *Elan*, a case somewhat analogous to the one at bar, there was a crucial difference --the settlement came in conjunction with an SEC settlement and suggested "that it was the Company's desire, prompted by the SEC, to put its house in order that caused the settlement, not any action on the part of Lead Counsel." *Elan*, 385 F. Supp. 2d at 374 (citation omitted). The same can not be said of this case.

Consideration of the relevant factors confirms that the requested fee is fair and reasonable and, as such, should be approved.

#### **1. The Time, Labor, and Lodestar are Reasonable**

The first factor for determining a reasonable fee is "the time and labor expended by counsel." *Goldberger*, 209 F.3d at 50. Similarly, the first step of the lodestar analysis is to multiply the number of hours reasonably expended in the litigation by each attorney by the appropriate hourly rate for that attorney. *Strougo*, 258 F. Supp. 2d at 263. As shown in the

Compendium, Plaintiffs' Counsel to date<sup>16</sup> reasonably expended a total of 47,846.07 hours, incurring a lodestar of \$16,655,970.60 based on reasonable hourly rates. Joint Declaration at ¶ 115. The requested 8.5% fee of approximately \$37.3 million in cash and 26.72 million Settlement Shares worth approximately \$59,849,170<sup>17</sup> for a total fee of approximately \$97.1 million represents a multiple of 5.8 which, as shown below, is amply justified by application of the relevant factors.

**a. Plaintiffs' Counsel's Hours are Reasonable**

Where the lodestar is used simply as a crosscheck, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50. The Nortel I Action spanned a 5-1/2 year period and was conducted by Lead Counsel assisted primarily by Koskie Minsky and to a limited extent by the other Plaintiffs' Counsel included in the Compendium. Lead Counsel coordinated all counsel's efforts in a well-organized manner to ensure efficiency and to minimize unnecessary duplication of work.

The extensive history of this litigation and the nature of the services performed are described in depth in the accompanying Joint Declaration. The time expended by each attorney or other professional is set forth and categorized in the affidavits and declarations of each of Plaintiffs' Counsel firms contained in the Compendium. The Joint Declaration and Compendium are incorporated by reference to show that Plaintiffs' Counsel's hours are reasonable.

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<sup>16</sup> Substantial additional time will necessarily be expended in connection with the four separate Settlement Fairness Hearings, one in this Court and additional hearings in Toronto, Quebec and Vancouver, Canada. Additional time will also be expended in further proceedings related to claims administration.

<sup>17</sup> Valued as of June 30, 2006.

Lead Counsel reviewed all time records which documented the work expended on this litigation. Lead Counsel excluded from the lodestar calculation any time that did not appear to benefit the prosecution of this action or that was not specifically authorized by Lead Counsel. It should also be emphasized that Plaintiffs' Counsel's lodestar figures do not include the time which Plaintiffs' Counsel have expended in preparing the Fee Application. Joint Declaration. at ¶ 114. The resulting lodestar reflects Lead Counsel's supervision of every aspect of this litigation to avoid duplication and to ensure the efficient prosecution of the case. *See Id.* at ¶ 119.<sup>18</sup> Given the significant length of time this case has been pending, Plaintiffs' Counsel's zealous prosecution of the litigation, the success in overcoming Defendants' motion to dismiss, their heated oppositions to class certification, and the international nature of the discovery, the total number of hours billed by Plaintiffs' Counsel is amply justified.

**b. Plaintiffs' Counsel's Hourly Rates Are Reasonable**

In a lodestar analysis, the appropriate hourly rates are "those prevailing in the community for similar services of lawyers of reasonably comparable skill, experience and reputation." *Cruz v. Local Union No. 3 Of IBEW*, 34 F.3d 1148, 1159 (2nd Cir. 1994) (citing *Blum v. Stenson*, 465 U.S. 886 (1984)); *see also Luciano v. Olsten Corp.*, 109 F.3d 111, 115-16 (2d Cir. 1997); *City of Detroit v. Grinnell Corp.*, 560 F.2d 1093, 1098 (2d Cir. 1977). Awards in comparable cases are an appropriate measure of the market value of counsel's time. *Jones v. Amalgamated Warbasse Houses, Inc.*, 721 F.2d 881, 885 (2d Cir. 1983). The amount an attorney normally charges is presumed reasonable. *See Meriwether v. Coughlin*, 727 F. Supp. 823, 831 (S.D.N.Y. 1989)

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<sup>18</sup> In *FTR Consulting*, this Court found that the work among counsel was not adequately delegated to younger lawyers or paralegals at lower rates. *FTR Consulting*, 2005 U.S. Dist. LEXIS at \*17. In the case at bar, three associates and two paralegals were assigned to this case at all times. This Court also found duplication of efforts amongst co-counsel in *FTR Consulting*. *Id.* at \*18. Here, sole Lead Counsel's intense supervision and scrutiny prevented duplicative efforts amongst co-counsel firms.

(“usual hourly billing rates charged to paying clients by [counsel] are reasonable rates of compensation for their work...”); *Reid v. New York*, 584 F. Supp. 461, 462 (S.D.N.Y. 1984) (customary hourly rate of law firm attorneys are their “market rates”).

The rates used to calculate the lodestar should be “current rather than historic hourly rates,” *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998), in order to compensate counsel for the delay in payment. *Grant v. Martinez*, 973 F.2d 96, 100 (2d Cir. 1992). Courts in this Circuit and around the country have repeatedly found rates charged by plaintiffs’ counsel in class actions that are comparable to those at issue here to be reasonable.<sup>19</sup> Thus, a market check and substantial precedent demonstrate that the rates utilized by Plaintiffs’ Counsel in calculating their lodestars are reasonable.

**c. The Multiplier is Reasonable as a Cross-Check**

Once the lodestar is calculated, the court considers whether a multiple of the lodestar is warranted. *In re Metro. Life Deriv. Litig.*, 935 F. Supp. 286, 295 (S.D.N.Y. 1996). A multiplier may be applied to the lodestar to account for factors such as contingent risk, quality of representation, and results achieved. *Id.* See also *Goldberger*, 209 F.3d at 54 (“We have historically labeled the risk of success as ‘perhaps the foremost’ factor to be considered in determining whether to award an enhancement.”) A number of courts in this District have awarded fees representing a multiplier in excess of five times the lodestar. See *In re Interpub. Group Sec. Litig.*, 02 Civ. 6527 (DLC), 2004 U.S. Dist. LEXIS 21429 (S.D.N.Y. Oct. 26, 2004) (awarding multiplier of 5.62); *Newman v. Carbiner Int’l*, 99 Civ. 2271 (GEL) (S.D.N.Y. 2001)

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<sup>19</sup> See, e.g., *In re Indep. Energy Holdings PLC Sec. Litig.*, No. 00 Civ. 6689, 2003 U.S. Dist. LEXIS 17090, at \*30 (S.D.N.Y. Sept. 26, 2003) (rates of \$650/hour for a partners, and \$300-\$425 hour for associates, are “not extraordinary for a top-flight New York City law firm”); *BancAmerica*, 228 F. Supp. 2d at 1065 (hourly rates ranging up to \$695 are within the range of reasonableness).

(7 multiplier reasonable); *Lemmer v. Golden Books Family Entm't Inc.*, 98 Civ. 5748 (S.D.N.Y. 1999) (5.4 multiplier reasonable); *Cosgrove v. Sullivan*, 759 F. Supp. 166, 167 n.1 (S.D.N.Y. 1991) (awarding multiplier of 8.74).

## 2. The Magnitude, Complexity, and Risks of the Litigation Support the Requested Fee

The second and third general *Goldberger* factors are the magnitude, complexity, and riskiness of the litigation. *Goldberger*, 209 F.3d at 50. Courts have long recognized that shareholder class actions are notoriously complex and difficult to prove. *See, e.g., Amchem Prods. v. Windsor*, 521 U.S. 591, 614-15 (1997); *In re KeySpan Corp. Sec. Litig.*, No. CV 2001-5852, 2005 U.S. Dist. LEXIS 29068, at \*28 (E.D.N.Y. Aug. 25, 2005); *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000). The risk of the litigation is often cited as the most important *Goldberger* factor. *In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 233 (S.D.N.Y. 2005). Risk is measured as of the commencement of the case. *Goldberger*, 209 F.3d at 55.<sup>20</sup>

The Court of Appeals for the Second Circuit has long recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award:

No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

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<sup>20</sup> In *FTR Consulting*, this Court determined that the case was neither unusually large, complex nor risky. *FTR Consulting*, 2005 U.S. Dist. LEXIS 20013, at \*15. In *Elan*, this Court held that although the case was large and complex, the factual and legal issues were not novel. *Elan*, 385 F. Supp. 2d at 374. Furthermore, Counsel in *Elan* incorrectly postulated that the risk of litigation was based after filing of the complaint, not at the time of commencement of the case as is mandated by law.

*City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted); *see Am. Bank Note*, 127 F. Supp. 2d at 432-33 (“[It is] appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award.”) (citing *In re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 226, 236) (2d Cir. 1987); *In re Warner Commc’ns Sec. Litig.*, 618 F. Supp. 735, 747 (S.D.N.Y. 1985) (“Numerous cases have recognized that the attorneys’ contingent fee risk is an important factor in determining the fee award.”).

Lead Counsel not only faced the risk of non-payment, but the risk of underpayment as well. *See In re Cont’l Ill.*, 962 F.2d at 569-70 (reversing district court’s fee award because it failed to recognize, among other things, that contingent fee counsel face considerable risk of underpayment). Even assuming that some recovery is likely in a particular case, there is no guarantee that the recovery will be enough to fully compensate class counsel for the time and money they invest in prosecuting the case on behalf of the class. *Id.*

Plaintiffs’ Counsel undertook this large, complex action on a wholly contingent fee basis, knowing that it would require them to risk a tremendous amount of time to prosecute the action appropriately, with an unusually high possibility of losing their entire investment. Joint Declaration at ¶¶ 122, 130. Lead Counsel received no retaining fees from the Lead Plaintiff. *Id.* at ¶ 122. Virtually all of the factors that demonstrate the fairness of the proposed Settlement (*see* the Settlement Memo) also demonstrate the size, complexity, and riskiness of the action for purposes of the Fee Application. This action was extraordinarily large and risky, and presented highly complex issues of jurisdiction, liability, causation and damages. Counsel was also unassisted by any government investigation or prosecution in reaching the settlement. *Id.*

This complicated fact pattern created unusual risks to the Securities Class in establishing loss causation and damages from the outset of the litigation. These risks were heightened by

new legal authority, including the recent United States Supreme Court decision in *Dura Pharmaceuticals, Inc. v. Broudo*, 125 S. Ct. 1627 (2005) (See Joint Declaration at ¶ 95), and two Second Circuit decisions, *Emergent Capital Investment Management, LLC v. Stonepath Group, Inc.*, 343 F.3d 189, 197 (2d Cir. 2003) and *Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 173 (2d Cir. 2005), all issued during the pendency of this case. Lead Plaintiff was also sure to face stiff challenges on the merits where reliance is concerned. See Joint Declaration at ¶ 94.

Furthermore, Lead Plaintiff faced a substantial risk that the Court would revisit the question of subject matter jurisdiction over foreign purchasers of Nortel securities on foreign stock exchanges such as the Toronto Stock Exchange. *Id.* at ¶ 97.

Because of the nature of these claims, proof would have been exceedingly difficult. Defendants and third parties had produced almost two million pages of documents, which Plaintiffs' Counsel had painstakingly reviewed and analyzed. Joint Declaration at ¶ 50. However, even if all of the relevant information were available, it would have been difficult to explain to a jury why even one of the many allegedly false statements was in fact false. See *Id.* at ¶¶ 90-92. It was unclear whether Plaintiffs would ever be able to prove any material misrepresentations or non-disclosures. Defendants had reasonable potential defenses on the merits to each of these claims. *Id.* at ¶ 96.

Had the case proceeded to trial, Lead Plaintiff would have had to continue to use their expert witnesses and consultants on the issues of materiality, causation, damages, and accounting under Canadian and U.S. Generally Accepted Accounting Principles ("GAAP"), as well as forensic and investigative accountants. See Joint Declaration at ¶¶ 94, 101. Even in the context of negotiating the proposed Settlement, Plaintiffs were compelled to retain several outside experts in order to ensure that Settlement was fair and reasonable to the Class. *Id.* at ¶¶ 71-74.

Additionally, had the lawsuit proceeded to trial, Lead Plaintiff's case-in-chief would have been hampered by the fact that its case would have primarily been proven through the testimony of employees of Nortel and Deloitte Canada. Such witnesses would have been hostile to Lead Plaintiff's case while testifying. *Id.* at ¶ 99.

Lead Plaintiff also faced significant risks establishing the amount of damages caused by Defendants. Both sides would have produced experts that would present sophisticated analyses and methods for calculating damages, and it is impossible to predict which testimony the jury would accept. A jury's verdict with respect to damages would have depended on its reaction to the extensive and technical testimony of experts, a reaction that is uncertain at best. *See In re Lloyd's*, 2002 U.S. Dist. LEXIS 22663, at \*61; *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 365 (S.D.N.Y. 2002). Indeed, there was a considerable risk that a jury might disagree with Lead Plaintiff's damage analysis. *Teachers Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814, 2004 WL 1087261, at \*4 (S.D.N.Y. May 14, 2004).

Lead Plaintiff would also bear the burden of persuading a jury that Defendants acted with *scienter* in issuing false guidance and violating GAAP. Although Lead Plaintiff's Counsel were confident that they had amassed strong proof of *scienter*, establishing Defendant's mental state is inherently difficult. Therefore, *scienter* would have remained a serious hurdle to be surmounted at summary judgment and trial. *See Joint Declaration* at ¶ 93.

Finally, even if Lead Plaintiff overcame all the foregoing obstacles, Defendants' ability to pay presents a further risk to any recovery, and certainly a large risk to obtaining a larger recovery. *Id.* at ¶ 100. Notwithstanding the size and complexity of the case, Plaintiffs' Counsel assumed the huge risk associated with pursuing it, zealously represented the Class, and secured a historical result. These factors confirm that the requested fee is fair and reasonable.

**3. The Quality of Plaintiffs' Counsel's Representation of the Class Supports the Requested Fee**

The fourth factor cited by the Second Circuit is the “quality of representation” delivered in the litigation. *Goldberger*, 209 F.3d at 50. The quality of the representation is best measured by the results achieved. *Id.* at 55. The Settlement is an excellent result for the Class. Plaintiff’s Lead Counsel were able to obtain a Settlement valued at over \$1.142 billion (US\$) even though trial might have resulted in a finding in favor of the Defendants on liability and/or damages. Joint Declaration at ¶ 120. Plaintiff’s Lead Counsel, who assumed most of the risk and performed most of the work, are nationally known in the fields of securities class actions and complex litigation. See Joint Declaration at ¶ 118, and Exhibit 3 of Declaration from Lead Counsel in the Compendium. As demonstrated by the risks and obstacles overcome by Lead Plaintiff’s Counsel, such as their successful opposition to Defendants’ motion to dismiss, their successful motion for class certification, and in their successes in obtaining orders at both the Ontario Superior Court and Court of Appeal levels directing Deloitte Canada to produce documents to Lead Plaintiff, the proposed Settlement represents an extremely favorable result for the Class, one that is attributable to the diligence, determination and hard work of Lead Plaintiff’s Counsel.

**4. The Fee Request is Fair In Relation to the Settlement Amount**

The fifth factor cited by the Second Circuit for determining a reasonable fee award in class actions is the “requested fee in relation to the settlement.” *Goldberger*, 209 F.3d at 50. Plaintiffs’ Counsel created a very substantial benefit for the Class. As detailed above, the fee requested by Plaintiffs’ Counsel is at or below the low end of the range of percentage fees awarded in cases involving very large recoveries, and is fair and reasonable given the

extraordinary outcome achieved in the face of the serious obstacles and risks involved with continued litigation.

Moreover, the requested fee is actually well below the maximum amount that the Notice stated could be requested. The Notice mailed to Class members discloses that Lead Plaintiff's Counsel in the U.S. Action "are moving before the U.S. Court for an award to counsel of attorneys' fees in the amount not to exceed ten percent (10%) of the Gross Settlement Fund after deducting litigation expenses awarded by the U.S. Court, and for reimbursement of expenses incurred in connection with the prosecution of the U.S. Action in an amount not to exceed \$5 million." The fee actually requested represents a 15% discount from such maximum.

#### **5. Public Policy Considerations Support the Requested Fee**

The sixth factor a court considers in determining a reasonable fee is public policy. *See Goldberger*, 209 F.3d at 50. The federal securities laws are remedial in nature. To effectuate their purpose of protecting investors, the courts must encourage private lawsuits. *See Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988). Lead Counsel, in exchange for the expectancy of a contingent fee award, assumed the responsibility of representing Lead Plaintiff and the Nortel I Class in the face of tremendous risks and obstacles, and they have zealously pursued the Class' claims against the Defendants for over five years. It should be noted that Lead Counsel filed this case years prior to either the U.S. SEC or the Canadian SEC's commencements of their respective investigations of Nortel.

Courts have repeatedly held that it is in the public interest to have experienced and able counsel enforce the securities laws. "[P]ublic policy supports granting attorneys fees that are sufficient to encourage plaintiffs' counsel to bring securities class actions that supplement the efforts of the SEC." *In re Bristol-Myers*, 361 F. Supp. 2d at 236; *see also Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the

federal securities laws must be considered”). The SEC, a vital but understaffed government agency does not have the budget or staffing to ensure complete enforcement of the securities laws and regulations. *See* Joint Declaration at ¶ 132. Plaintiffs’ Counsel’s willingness to assume these risks resulted in a substantial benefit to a large class of securities holders. If this important public policy is to be carried out, the courts should award fees which will adequately compensate plaintiffs’ counsel, taking into account the enormous risks undertaken with a clear view of the economics of the situation. Thus, public policy considerations also favor the granting of the fee and expense application.

**C. The Class’ Reaction to the Fee Request**

Assessment of the reaction of the Nortel I Class to the Fee Request must await the time to object to the Fee Request, which expires on September 19, 2006. Lead Counsel will file supplemental papers after that deadline.

**D. Plaintiffs’ Counsel’s Expenses Were Reasonably Incurred and Necessary to the Prosecution of This Action**

Plaintiffs’ Counsel also request reimbursement of \$3,750,041.27 in expenses incurred while prosecuting this action.<sup>21</sup> *See* Compendium. It is appropriate to award costs to counsel who create a common fund. *In re Ashanti Goldfields Sec. Litig.*, No. CV-00-717 (DGT), 2005 U.S. Dist. LEXIS 28431, at \*15 (S.D.N.Y. Nov. 15, 2005) (“Counsel is entitled to reimbursement from the common fund for reasonable litigation expenses”); *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (Court may compensate

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<sup>21</sup> This expense amount has been reduced by the costs imposed against Deloitte Canada in connection with their unsuccessful opposition to Lead Plaintiff’s discovery based on Letters Rogatory. This amount has been increased by the estimated transportation and hotel expenses anticipated to be incurred in connection with Lead Plaintiff’s and counsel’s appearances at the four Settlement Fairness Hearings, in New York, Toronto, Quebec and Vancouver.

class counsel for reasonable out-of-pocket expenses necessary to the representation of the class);  
*In re Prudential Sec. Ltd. P'ships Litig.*, 985 F. Supp. 410, 418 (S.D.N.Y. 1997).

The affidavits and declarations in the Compendium demonstrate that the requested expenses were necessary litigation expenses, reasonably incurred, reasonably related to the interests of the members of the Class, and adequately documented. *See e.g., In re Ashanti*, 2005 U.S. Dist. LEXIS 28431, at \*15 (awarding \$1.3 million in expenses, noting "this is not unusual in securities litigation actions"). Accordingly, Plaintiffs' Counsel's application for reimbursement of these expenses should be granted.

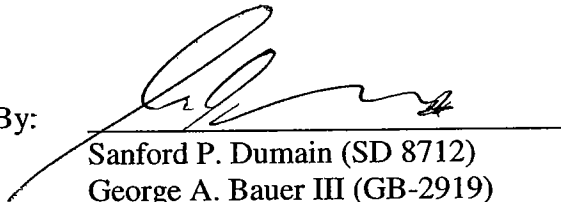
**CONCLUSION**

The proposed Settlement is a historic result reached under extremely challenging circumstances. Lead Counsel respectfully requests that the Court approve the Fee Application in the amount of 8.5% of the Gross Cash Settlement Fund and the Settlement Shares, and reimbursement of expenses in the amount of \$3,750,041.27.

DATED: September 5, 2006

Respectfully submitted,

**MILBERG WEISS BERSHAD  
& SCHULMAN LLP**

By:   
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 10119-0165  
Telephone: (212) 594-5300  
Facsimile: (212) 868-1229

-and -

**KOSKIE MINSKY LLP**

Murray Gold

20 Queen Street West

Suite 900, Box 52

Toronto, Ontario

Canada M5H 3R3

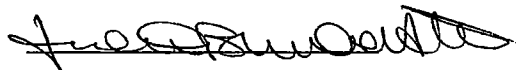
Telephone: (416) 977-8353

Facsimile: (416) 204-2873

*Counsel for Lead Plaintiff and the Class*

**CERTIFICATE OF SERVICE**

I, Julie B. Rubenstein, hereby certify that on September 5, 2006, I caused a true and correct copy of the foregoing MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF COUNSELS' APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND AN AWARD TO LEAD PLAINTIFFS to be served via first class mail to all counsel listed on the attached service list.



Julie B. Rubenstein  
Legal Assistant

SERVICE LIST

Stuart J. Baskin, Esq.  
Tai H. Park, Esq.  
**Shearman & Sterling**  
599 Lexington Avenue  
New York, New York 10022

Murray Gold, Esq.  
**Koskie Minsky LLP**  
20 Queen Street West  
Suite 900, Box 52  
Toronto, Ontario  
Canada M5H 3R3

John Halebian, Esq.  
**Lovell Stewart Halebian LLP**  
500 Fifth Avenue  
New York, NY 10110

Joseph H. Weiss, Esq.  
**Weiss & Lurie**  
The Fred French Building  
551 Fifth Avenue  
New York, NY 10176

Jayne A. Goldstein, Esq.  
**Mager & Goldstein**  
One Liberty Place, 21<sup>st</sup> Floor  
1650 Market Street  
Philadelphia, PA 19103

Daniel Belleau, Esq.  
**Belleau Lapointe**  
306, Place d'Youville  
Bureau B-10  
Montréal, Québec  
Canada H2Y 2B6

Paul Unterberg, Esq.  
**Unterberg Labelle, Lebeau**  
1980, rue Sherbrooke Ouest, bureau 700  
Montréal, Québec  
Canada H3H 1E8

Richard F. Albert, Esq.  
**Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C**  
565 Fifth Avenue  
New York, NY 10017

Daniel B. Scotti, Esq.  
**Dreier LLP**  
499 Park Avenue  
New York, NY 10022

Mitchell Twersky, Esq.  
**Abraham Fruchter & Twersky**  
One Pennsylvania Plaza, Suite 2805  
New York, NY 10119

Brian P. Murray, Esq.  
**Murray, Frank & Sailer, LLP**  
275 Madison Avenue, Suite 801  
New York, NY 10016

Deborah R. Gross, Esq.  
**Law Offices of Bernard M. Gross, P.C.**  
Suite 450, John Wanamaker Bldg.  
Juniper and Market Sts.  
Philadelphia, PA 19107

Philippe Trudel, Esq.  
**Trudel Johnston**  
85, rue de la Commune Est, 3e Etage  
Montréal, Québec  
Canada H2Y 1J1

Joel Rochon, Esq.  
**Rochon Genova**  
121 Richmond St. W. Suite 903  
Toronto, Ontario  
Canada M5H 2K1

David A. Klein  
**Klein Lyons**  
1100-1333 West Broadway  
Vancouver, British Columbia  
Canada V6H 4C1

Courtesy copies are also being provided to:

Judge Berman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 650  
New York, NY 10007-1312

Judge Sweet  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1920  
New York, NY 10007-1312

Justice Winkler  
Ontario Superior Court of Justice  
393 University Avenue, 10<sup>th</sup> Floor  
Toronto, Ontario  
Canada M5G 1E6

Justice Groberman  
Supreme Court of British Columbia  
800 Smithe Street  
Vancouver, British Columbia  
Canada V6Z 2E1

Madame Justice Monast  
Superior Court of Quebec  
1 Notre-Dame East  
Montreal, Quebec  
Canada H2Y 1B6