

News

Court rejects Lehman Brothers, Nortel appeal in UK pensions regulator case

14 Oct 2011



UK – The Court of Appeal has rejected Lehman Brothers' European division and Nortel Networks' appeal in the case with the UK Pensions Regulator (TPR).

Last year, TPR issued two Financial Support Directions (FSDs) against Lehman Brothers and Nortel, asking them to pay more than £148m (€170m) and £2.1bn, respectively, to cover deficits in their UK pension plans.

Article continues below

RBC DEXIA
INVESTOR SERVICES

Technology
moves markets.

Learn more in Perspectives

In December 2010, TPR won its dispute with Justice Briggs arguing that, where an FSD was issued against a company after insolvency, the cost of complying with that direction was an expense in that insolvency.

According to Briggs, the FSD therefore had to be paid before any distributions to unsecured creditors.

Following the decision, Lehman Brothers and Nortel decided to challenge the order.

Since then, a number of insolvency practitioners have warned that the judgment represented a serious setback for the UK's "rescue culture", according to TPR, if debts to occupational pension schemes arising from FSDs ranked above other creditors in an insolvency.

But today the Court of Appeal confirmed the finding of the High Court, handed down at the end of last year.

Stephen Soper, TPR's executive director for defined benefit funding, welcomed the decision, arguing that "this ruling further supports the claims of the Nortel and Lehman pension trustees in their respective administrations".

Jonathon Land, partner at PwC, who advised the Nortel pension plan trustees on the case, added: "Today's Court of Appeal ruling is highly significant and impacts the Nortel pension plan, and pension schemes more widely.

"The Nortel case judgment will improve the position of the pensioners who are currently negotiating with US bond holders over the split of \$7.5bn (€5.4bn) of cash realised from the sale of global assets."

However, Lehman Brothers and Nortel could decide to bring the case to the Supreme Court for an absolute final decision due to corporate implications for the dispute, according to Jennie Kreser, a partner within the pension law practice at law firm Silverman Sherliker.

She told IPE: "There are wider implications to this judgement. The case could act as a break on companies' merger and acquisition activity because no one is going to buy or merge with a company that has a significant pension deficit with the risk that the company itself can go bust if, by doing so, another company could find itself on the hook."

Kreser also stressed that if Lehman Brothers and Nortel decided to bring the case to the Supreme Court, they would have to receive permission from the Court of Appeal first.

Author: Cecile Sourbes

Search Results for kreser

Recent | Most read in the last week

NEWS: Court rejects Lehman Brothers, Nortel appeal in UK pensions regulator case 14 Oct 2011

RSS | What is RSS?

SHARE

Articles you've viewed recently

The 'Occupy' protests: We are the 99%... but also the 10% 31 Oct 2011

Twitter

LinkedIn

facebook

IPE JOBS
www.ipejobs.com

+ 4 parallel masterclasses