

Court case proves need for non-rescindable cover: Saddington

News today that Chubb Insurance Co. was seeking to rescind US\$40 million in coverage for directors and officers of Nortel Network Corp. highlights the need for companies to purchase non-rescindable cover, says Scott Saddington, chief underwriting officer for Executive Risk Services.

Saddington says it was coincidental that the Chubb news was reported today by the Toronto Star just as his company launched its own "side-A non-rescindable" D&O coverage. The Star reported Chubb filed a statement of claim in Ontario Superior Court claiming the coverage should be rescinded because certain executives had "made material misrepresentations" in obtaining the cover. Nortel has already filed a lawsuit against its former CEO Frank Dunn, CFO Douglas Beatty and controller Michael Gollogly alleging the three signed off on financial statements which inflated the company's earnings.

"While today's announcement [by Executive Risk] is coincidental with recent publicity surrounding the attempt to rescind certain Nortel insurance coverage including a directors and officers liability policy, it clearly points out the problems faced by the seven independent directors of Nortel," Saddington says. The Nortel case is only the latest example of this coverage gap, he says, adding, "...recent case law and settlements have made it very clear that severability of the insurance application and policy exclusions are no longer sufficient protection by themselves." He says endorsements which ensure coverage continues even in the face of allegations of wrongful acts committed by other executives or board members should be "required risk management" for all independent directors.