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Chubb suit against Nortel rings alarm bells
Board members of other companies urged to check out their own policies

Chubb Insurance Co. of Canada's attempt this week to rescind \$40-million in insurance coverage for the directors and officers of **Nortel Networks Corp.** takes the case into rare legal territory in Canada and should cause directors of other companies to ask some pointed questions about their own insurance policies, industry experts say. Earlier this week, the insurer filed a statement of claim with the Ontario Superior Court asking that four policies written between March, 2003, and November, 2004, with the troubled high-tech firm be rescinded "because of material misrepresentations and non-disclosures" that influenced premium levels and Chubb's decision to issue the policies. "This is new territory. I've never seen this before," said an expert familiar with litigation of directors and officers insurance in Canada.

Insurers have tried in the past to have policies rescinded via the courts, such as in the case of Toronto-based Livent Inc. and Montreal-based Cinar Corp., he said. But in those instances, a shortened process was used seeking only an interpretation of an insurance contract, not a full-blown lawsuit, said the expert who asked not to be named. Nortel spokeswoman Tina Warren said none of the policies in question has been used in the firm's defence against the current onslaught of legal challenges. She said the Chubb policies represent just one type of insurance for one period and Nortel has other forms of coverage. Ms. Warren said she did not know of any other attempts by insurers of the company to rescind coverage.

At issue in the suit is information provided by Brampton, Ont.-based Nortel in its financial statements that Chubb said it relied upon in issuing directors and officers coverage. D&O insurance is used to cover the legal costs of defending company officials against lawsuits and any settlements that may be awarded against them. The Chubb statement of claim names Nortel, its former chief executive officer Frank Dunn and 19 other former and current company executives and directors as defendants. None of the claims made by the insurer has been proved in court.

The industry expert said that so long as Nortel is a going concern, the cost of defending directors and officers should be covered by the company itself. But a lack of insurance would become a major issue in the case of insolvency. Even so, some said yesterday that the move by Toronto-based Chubb should have all directors checking their policies. "I hope most directors are asking 'can that happen to me?' " said Toronto lawyer and corporate governance expert Carol Hansell. She said directors often feel awkward asking about insurance coverage and may be reluctant to approve higher and more costly coverage levels. But she said that's changing.

Scott Saddington, senior vice-president with Toronto-based D&O insurance provider Executive Risk, said the case may also get Canadian directors asking for policies that cannot be rescinded. Liberty Mutual Insurance Co. sued Cinar in 2001 over allegations the children's entertainment producer concealed The Globe and Mail: Chubb suit against Nortel rings alarm bells or misrepresented information on applications for insurance coverage. The insurer sought a court order canceling Cinar's coverage, including directors' liability, for policies dating from April, 1996, to May, 2000. Boston-based Liberty also asked to be reimbursed for about \$900,000 it said it spent defending Cinar. The suit was settled out of court. Details were not disclosed.

Earlier this year, two high-profile U.S. cases saw directors dipping into their own pockets to cover major cash settlements. At WorldCom Inc., then based in Clinton, Miss., 10 directors agreed to pay \$18-million (U.S.) beyond the \$36-million paid under their directors and officers liability insurance policy. At Houston-based Enron Corp., 10 directors agreed to put \$13-million of their money toward a \$168-million settlement of a shareholder suit.