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## **Nortel Wins \$47.4 Million In Punitives**

Small Competitor Allegedly Used Copied Software -- Enhanced Phone Systems

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SANTA ANA - A San Diego federal jury has awarded **Nortel Networks** \$47.4 million in punitive damages against a smaller competitor that allegedly used a bootleg copy of the telephone giant's software to give its own customers enhanced versions of Nortel phone systems.

The verdict "shows that juries understand the importance of protecting intellectual property rights and punishing those individuals who violate those rights," Nortel attorney David R. Sugden of Call, Jensen & Ferrell in Newport Beach said in a statement.

Sugden said Thursday's verdict may be the largest punitives award in California this year. *Nortel Networks Ltd. v. Platinum Networks*, 04CV-1968 (S.D. Cal., filed Sept. 29, 2004).

Prominent plaintiffs' lawyer Michael J. Piuze of Los Angeles, who won a \$28 billion punitive-damages verdict against Philip Morris in 2002, agreed he had not heard of a larger punitive verdict in the state this year.

The losing defense attorney, Joseph M. Aliberti of Newport Beach, declined to comment on the verdict but filed a motion Thursday to have the huge award thrown out.

Six days before it came back with the huge verdict, the same jury had awarded Nortel only \$6,000 in compensatory damages for copyright infringement. The U.S. Supreme Court has ruled punitive damages rarely should be more than nine times larger than compensatory damages. *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

Last week, the Supreme Court agreed to consider a case out of Oregon in which the punitive damages are 97 times the compensatory damages. *Philip Morris v. Williams*, 05-1256.

The punitive award in Nortel case is 7,900 times the compensatory damages.

The lawsuit pitted the Canadian maker of office telephone systems against a San Diego Web-hosting company that also resells used telephone systems. Nortel uses a software program called GenKey to enable it to quickly upgrade systems, such as adding extra lines or mail boxes.

In its suit, Nortel charged that Platinum and its owner, Gerald Medina, obtained a copy of GenKey and were using that copy to upgrade used Nortel systems Platinum had for sale. Nortel also charged that Platinum sold a copy of GenKey to another person for \$6,000.

Shortly after filing the lawsuit, Nortel obtained a court order allowing its representatives and U.S. marshals to search Platinum's offices and computers for copies of GenKey and other evidence. Sugden said the search did uncover a copy of the program, as well as inter-office e-mails acknowledging that using the GenKey copy was illegal.

Nortel sued Medina and his company each for trade-secrets infringement, conversion, breach of contract and copyright infringement. The company asked the jury to award it \$340 million.

But in its first verdict May 26, the jury found the defendants liable only on the copyright claim. It awarded no damages against Medina and \$6,000 against Platinum, apparently based on the sale price of the one GenKey copy the company sold outright.

"I was puzzled by that," Sugden said about the seven-person jury's first verdict.

He speculated it was a compromise, discarding some causes of action but leaving one behind.

But the jury did find the defendants actions "were willful, malicious or oppressive or in conscious disregard of the plaintiff's rights," allowing it to consider punitive damages. On Thursday, the jury awarded \$5 million against Medina and \$42.4 million against his company.

Sugden said he spoke to five of the seven jurors. They told him "they understood Nortel's right to protect its intellectual property, and they were offended by what the defendants had done," he said.

Curt C. Cutting, a partner with Horvitz & Levy in Encino who has worked on many punitive-damages appeals, agreed with Sugden and Piuze that the \$47.4 million verdict may be a state record for this year. But Cutting said the verdict is "off the charts" compared to the compensatory award.

"I don't think any court would interpret *State Farm* to authorize" such a huge disparity, he said.

The Supreme Court ruling requires the ratio between compensatory and punitive damages to be reasonable and suggests that ratios larger than single digits should be reserved for unusual cases.

But Sugden and Piuze said the court's ruling allows larger ratios in certain situations, including ones in which actual damages are very small. Other Supreme Court precedents, they said, allow larger ratios in cases where there was potential for additional harm to the plaintiff if the defendant hadn't been stopped.

"The jury can consider not only actual damages but the potential damages of the defendant's conduct," Sugden said.

He said Nortel faced substantial potential harm if Platinum had been allowed to continue to use GenKey to take customers away from Nortel.

U.S. District Judge Irma E. Gonzales is set to hear the defense motion to throw out the punitive damages verdict on July 14.