

**IN THE HIGH COURT OF JUSTICE**  
**THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (ChD)**

**IN THE MATTER OF:**

**NORTEL NETWORKS S.A.**

**No. 539 of 2009 / CR-2009-000048**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

---

**TWENTIETH  
WITNESS STATEMENT OF  
ALAN ROBERT BLOOM**

---

I, **ALAN ROBERT BLOOM** of Ernst & Young LLP, 1 More London Place, London SE1 2AF, **DO STATE** as follows:

**INTRODUCTION**

1. I am a licensed insolvency practitioner and prior to my retirement, was a Partner in the firm of Ernst & Young LLP ("**EY**"). Since my retirement I have continued to be engaged by EY as a senior advisor. I was appointed as a joint administrator of Nortel Networks S.A. (the "**Company**") on 14 January 2009 together with Stephen Harris, Alan Michael Hudson and Christopher John Wilkinson Hill of EY pursuant to an Order of Mr Justice Blackburne. A copy of that Order is at **[1/1]** of ARB19.
2. This witness statement is made in support of an application dated 2 September 2021 in these proceedings and is supplemental to my nineteenth witness statement of the same date in support of the application ("**Bloom19**"). Unless the context otherwise requires, capitalised terms in this document have the meaning given to them in Bloom19.
3. This witness statement has been prepared over the telephone and by exchange of drafts by email with the assistance of HSF, HSF Paris and the relevant EY staff in London and Paris. Save where I indicate to the contrary, the facts contained in this witness statement are within my own knowledge and are true. Where the facts stated are not within my own knowledge, I

have identified my sources of information and/or belief. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

4. Insofar as I refer to legal advice I have received, save to the extent I disclose that advice but only to that extent, I do not intend to waive privilege in that advice.
5. The purpose of this witness statement is to update the court in relation to correspondence which has been sent and received in relation to the Humanis Policy, the Humanis Reserve, the New Humanis Policy and the Humanis Health Policies since the date the Application was filed. The background to these matters is set out in detail at paragraphs 69 to 76 of Bloom19.
6. There is now produced and shown to me an electronic bundle of documents marked "ARB20" to which I shall refer in this witness statement. References in this document to exhibits are in the form [Tab/Page].

#### **A) Background**

7. After the conclusion of the Secondary Proceedings, the Joint Administrators were prompted by one of the Redundant Employees to investigate the Humanis Policy, a life and disability insurance policy entered into by the Company in 1993 (a copy of which is at [40/1037] of ARB19), and the Humanis Reserve in connection with the Humanis Policy, which the Joint Administrators understood from the former French Liquidator could be "made available" to the Company in certain circumstances. The former French Liquidator had investigated the Humanis Policy and the Humanis Reserve over a number of years and concluded that the significant work involved in investigating and realising the Humanis Reserve (the prospects of which were highly uncertain) was disproportionate to the potential benefit to the Secondary Proceedings.
8. In the course of the Joint Administrators' own investigations of the Humanis Policy and the Humanis Reserve:
  - 8.1 the Joint Administrators wrote to Humanis on 4 May 2021, 1 June 2021 and 26 August 2021 (copies and a translations of which are at [43/1106] and [44/1114] of ARB19 respectively) but did not receive a response;
  - 8.2 HSF Paris advised the Joint Administrators that Humanis verbally confirmed that no former employees benefit today from this Humanis Policy;
  - 8.3 the Joint Administrators concluded that it is unlikely that the Humanis Reserve represented an asset of the Company that could be recovered and distributed to the Company's creditors and that in the unlikely event that the Humanis Reserve were to be made available to the Company following its dissolution, a French law

voluntary liquidation of the Company could be opened by the French Court to recover such asset and make further distributions;

8.4 in the course of a number of telephone conversations between HSF Paris and representatives of Humanis, Humanis informed HSF Paris orally that:

8.4.1 the Humanis Policy had been terminated or had been amended in 2010 and had been replaced by the New Humanis Policy (a copy of which the Joint Administrators requested on multiple occasions, but which Humanis has failed to provide) for the benefit of former employees of the Company until such employees are re-employed;

8.4.2 while the New Humanis Policy was still technically in force, from 2017 there were no longer any former employees of the Company benefiting from the New Humanis Policy; and

8.4.3 in addition to the New Humanis Policy, the Company had entered into the Humanis Health Policies in 2010 and 2013 under which four Redundant Employees had certain benefits (the "**Health Employees**");

8.5 HSF Paris advised the Joint Administrators that the anticipated striking off of the Company from the French Trade and Companies Register would lead to the termination of the New Humanis Policy, but that on the basis of Humanis' oral confirmation that no Redundant Employees remained beneficiaries under the New Humanis Policy, such termination was unlikely to have any practical effect; and

8.6 the former French Liquidator's legal advisers informed the Joint Administrators that the former French Liquidator had no record of the Humanis Health Policies, had not caused the Company to enter into them in 2010 and 2013, at a time when only the former French Liquidator could bind the Company and that they therefore concluded that the Humanis Health Policies were direct policies between Humanis and the relevant Redundant Employees.

9. Given the likely delay in any response from Humanis, the Joint Administrators contacted the Health Employees by email to remind them of the Humanis Health Policies. A copy of the email sent to each of the employees on 31 August 2021 is at [45/1122] of ARB19). Their responses are set out in section (C) below.

#### **B) Letter to the directeur général of Humanis**

10. In view of the lack of a written response from Humanis to any of the Joint Administrators' letters, and in absence of written confirmation that no Redundant Employees remained beneficiaries under the New Humanis Policy (which Humanis had communicated to HSF

Paris by telephone), the Joint Administrators wrote to the *directeur general* of Humanis directly to seek to prompt a response from Humanis. Copy of the letters to Humanis dated 8 September 2021 and 15 September 2021 are at [1/1] and [2/3] of ARB20 respectively. Translations of these letters into English are at [3/14] and [4/16] of ARB20 respectively. As at the date of this statement, Humanis has not acknowledged receipt of or replied to either of these letters.

### **C) Responses from three of the Health Employees**

11. Of the four employees who, according to Humanis, were Health Employees, three have responded to the Joint Administrators' email of 31 August 2021 (at [45/1122] of ARB19) as at the date of this supplemental witness statement.

#### **Employee Number 1**

12. The email correspondence with the first employee to respond ("**Employee #1**") is at [5/17] of ARB20. Employee #1 confirmed by emails dated 1 and 2 September 2021 and during a telephone conversation with EY on 10 September 2021 that:

12.1 following his redundancy, he had received payments from Humanis under a disability, incapacity and death policy (the Joint Administrators' understanding is that this is likely to be a reference to the New Humanis Policy), but such payments had ceased after he had been re-employed elsewhere (and he had received a letter from Humanis at the time confirming this);

12.2 he had been one of the final four employees to have been made redundant in 2013;

12.3 following his redundancy, he had received a further letter from Humanis advising him that he was a beneficiary under a health insurance contract (i.e., a Humanis Health Policy);

12.4 he had not expected to receive a health insurance policy, had not entered into it directly and he was not aware who arranged it on his behalf;

12.5 he speculated that this Humanis Health Policy for the benefit of the final remaining employees may have been funded from the Humanis Reserve; and

12.6 he had made claims under the Humanis Health Policy in the past (although not in recent years).

13. On 14 September 2021 Employee #1 also sent the Joint Administrators invoices associated with his Humanis Health Policy which are at [6/26] of ARB20. These records make reference to the Company and the policy is referred to as a "collective" policy but do not contain the policy terms. The invoices provided by Employee #1 show that no amounts were payable by Employee #1 under his Humanis Health Policy due to "miscellaneous deductions" (*deductions diverses*). Employee #1 confirmed in his email that he had no concerns with the

termination of the Administration, and that he did not wish to delay the Final Distribution (which he stood to share in) on account of his Humanis Health Policy.

14. The Joint Administrators responded to Employee #1 by email on 13 September 2021 (at [5/17] of ARB20) thanking him for his assistance and noting that:

14.1 in the interest of making the Final Distribution without delay, the Joint Administrators intended to continue with the Application and that any person who considered themselves to be affected by the Application had a right to attend and be heard at the hearing listed for 20 September 2021;

14.2 despite their efforts, the Joint Administrators had not been furnished with documentation in relation to the Humanis Health Policies, such they were not in a position to determine whether the proposed dissolution of the Company may negatively impact any Redundant Employees' rights under the Humanis Health Policies;

14.3 if he had documentation in relation to the Humanis Health Policies which would help the Joint Administrators understand them, he should share these documents by return; and

14.4 if he had concerns with:

14.4.1 the termination of the Administration, he should contact the Joint Administrators;

14.4.2 the dissolution of the Company and its potential impact on the New Humanis Policy,

any correspondence would be forwarded to the Mandataires.

### **Employee Number 2**

15. The second response was received from "**Employee #2**" on 13 September 2021, a copy and a translation of which is at [7/31] and [8/36] of ARB20 respectively, which provided as follows:

15.1 Employee #2 considers that he remains a beneficiary of both: (i) a disability, incapacity and death policy (the Joint Administrators' understanding is that this is likely to be a reference to the New Humanis Policy); and (ii) a health insurance policy (i.e. a Humanis Health Policy) arranged by the Company;

15.2 he believed that had the Company not arranged these policies on his behalf, Humanis would not have been entitled to disclose information about them to the Joint Administrators;

15.3 his understanding was that under the terms of the End of Strike Agreement (details of which are at paragraph 22 of Bloom19) and the associated "**Job Preservation Plan**" (*Plan de Sauvegarde de l'Emploi (PSE)*), which is at [9/39] of ARB20 and a

translation of the relevant excerpt is at [10/100] of ARB20), which had been approved by order of the Commercial Court of Versailles on 24 September 2009 (a copy of which is at [11/101] of ARB20), the Humanis Reserve must be used to secure the provision of disability, incapacity and death and health insurance cover until the Redundant Employees return to work or retire;

15.4 he had neither returned to work or retired and, as such, remained a beneficiary of the insurance arrangements set out in paragraph 15.1; and

15.5 he sought clarity on the future use of the Humanis Reserve and the continued provision of his insurance benefits in light of the Mandataires planned dissolution of the Company.

16. The Joint Administrators responded to Employee #2 by email (at [7/30] of ARB20) on materially the same terms as their response to Employee #1 (summarised in paragraph 14 above). In response to the specific points noted by Employee #2, the Joint Administrators noted that:

16.1 the Joint Administrators' understanding of the facts in relation to insurance policies with Humanis were summarised in paragraphs 69 to 77 of Bloom19 (and provided them with a link to Bloom19 on the EMEA Website);

16.2 despite their efforts, neither the Joint Administrators nor the former French Liquidator had been furnished with documentation in relation to the Humanis Health Policies, such that the Joint Administrators were not in a position to determine whether the proposed dissolution of the Company may negatively impact any Former Employees' rights under the Humanis Health Policies;

16.3 whilst the Joint Administrators and the former French Liquidator had taken significant steps to investigate the Humanis Reserve, the Joint Administrators had concluded that it was unlikely that the Humanis Reserve could be recovered by the Company for the benefit of its creditors and that the cost of continuing the Administration to pursue an uncertain asset could be substantial; and

16.4 they understood from Humanis that there were no further beneficiaries under the New Humanis Policy.

### **Employee Number 3**

17. The third employee to respond ("**Employee #3**") on 13 September 2021 (a copy of which is at [12/109] of ARB20) noted the following:

17.1 he was a beneficiary under a Humanis Health Policy which was paid for annually by the Company; and

17.2 he considered that the liquidation of the Company would negatively impact him,

and provided a copy of records relating to his Humanis Health Policy on 15 September 2021 (which are materially similar to the records provided by Employee #1 and which are therefore not reproduced separately in ARB20).

18. The Joint Administrators responded to Employee #3 by email on 13 and 15 September 2021 (at [13/114] and [13/115] of ARB20) on materially the same terms as their response to Employee #2 (summarised in paragraph 16), save that no comments were made in relation to the New Humanis Policy and the Humanis Reserve (at paragraphs 16.3 and 16.4 above).

**D) Email from a Redundant Employee in relation to the Application**

19. The Joint Administrators also received an email from a further employee ("**Employee #4**") in response to the Joint Administrators' notice of intention to make the Application (a copy of which is at [52/1223] of ARB19). In his email dated 13 September 2021 (a copy of which is at [14/122] of ARB20), Employee #4 noted that:

19.1 he understood that the Humanis Reserve still contained "hundreds of thousands of euros" and was being used by Humanis to fund contributions towards (what the Joint Administrators understand to be) the New Humanis Policy;

19.2 he had received payments under (what the Joint Administrators understand to be) the New Humanis Policy until his retirement in 2017;

19.3 he understood that a meeting had been planned between the former French Liquidator and a representative of Humanis (with both of whom Employee #4 had been in correspondence) to discuss the Humanis Reserve but that he was unaware of the outcome of that meeting;

19.4 from his previous correspondence with the representative of Humanis, he understood that Humanis intended to keep the funds in the Humanis Reserve, and that this was contrary to an agreement reached with union representatives and Kerry Trigg, who was acting on behalf of the Joint Administrators (and that the minutes of such meeting evidencing such agreement could be made available to the Joint Administrators on request); and

19.5 in the absence of a satisfactory response from the Joint Administrators in relation to the future of the Humanis Reserve, he would take the matter to the French Courts, which he considered to have jurisdiction in relation to the Humanis Reserve.

20. The Joint Administrators responded to Employee #4 by email on 13 and 15 September 2021 (at [14/120] of ARB20), on materially the same terms as their response to Employee #2 (summarised in paragraph 16 above), save that no comments were made in relation to the Humanis Health Policies, and save that the Joint Administrators also requested a copy of the minutes of the meeting with the union representatives and Kerry Trigg mentioned at

paragraph 19.4. A copy of the minutes of the meeting have not been received as at the date of this statement.

**E) Further correspondence with the former French Liquidator**

21. As noted at paragraph 8.6 above and at paragraph 75 of Bloom19, the former French Liquidator had advised on 30 August 2021 that he had not caused the Company to enter into the Humanis Health Policies.
22. After the Joint Administrators had shared with him the email from Employee #1, the former French Liquidator responded to the Joint Administrators by email (a copy and a translation of which are at [15/126] and [16/138] respectively) confirming that he had been advised by his legal advisers that:
  - 22.1 even following further investigations, they had not been able to locate any record of the Humanis Health Policies;
  - 22.2 it was very likely that the Humanis Health Policies had been concluded between Humanis and the Redundant Employees in question directly (and without any involvement of the Company) in the context of French Legislation (article 4 of the Envin law), which allows former employees of a company to continue certain insurance policies on materially the same terms as those insurance policies concluded for their benefit by their former employer; and
  - 22.3 if this was correct Employee #1 would have had to, at a minimum, write to Humanis in the 6 months following his redundancy requesting to benefit from the relevant French legislation.
23. Having received the email from Employee #2, which made reference to the End of Strike Agreement and the Job Preservation Plan (see paragraph 15.3) and the email from Employee #3, which referred to an agreement with the trade unions in relation to the Humanis Reserve (see paragraph 19.4, which may be a further reference to the Job Preservation Plan) HSF Paris contacted the legal advisers of the former French Liquidator who had been involved in the drafting of the Job Preservation Plan and requested a copy of the Job Preservation Plan, which was provided to them by return.
24. Article 3.10 of the Job Preservation Agreement (at [9/83] of ARB20 with a translation at [10/100] of ARB20) provides that:
  - 24.1 the Redundant Employees shall benefit from the continued maintenance of the insurance cover under the existing *prévoyance policy* (covering incapacity, death and healthcare costs), subject to compensation by unemployment insurance;
  - 24.2 corresponding contributions will be funded using the reserve amount originating from past contributions and until this reserve is fully used up;

- 24.3 Redundant Employees must provide evidence to Novalis (now Humanis) every three months that they remain unemployed and notify the insurer of any employment or retirement; and
- 24.4 the insurance will be administered by Novalis (now Humanis) directly.
25. After the Joint Administrators shared with him the emails received of Employee #2, Employee #3 and Employee #4, the former French Liquidator reconfirmed by email on 15 September 2021 that:
- 25.1 he had not caused the Company to enter into any insurance policy with Humanis or make any payments under any such policies;
- 25.2 the analysis carried out by the Secondary Proceedings was that the Company's rights to the Humanis Reserve were too uncertain to justify bringing a claim against Humanis for its recovery; and
- 25.3 that it was for individual Former Employees to bring claims against Humanis in respect of the Humanis Reserve if they wished to do so.

**The Joint Administrators' position in response to the above developments**

26. The Joint Administrators' position in response to the above developments is as follows:
- 26.1 The Joint Administrators assessment in relation to the Humanis Reserve is unchanged from the position set out in paragraph 77 of Bloom19 that it is unlikely that the Humanis Reserve represents an asset of the Company that could be recovered and distributed to the Company's creditors in a timeframe and at a cost that would be proportionate to the potential benefit (which is uncertain). The former French Liquidator has reconfirmed that he continues to share this view and that it is incumbent on the Former Employees who were beneficiaries under the Humanis Policy to make a claim in respect of the Humanis Reserve directly against Humanis (see paragraph 70.6 of Bloom19). Employee #4 has noted in his correspondence that he is considering such a course of action.
- 26.2 The Joint Administrators have not received policy documents in relation to the New Humanis Policy, despite the numerous requests made of Humanis as described above. The provisions in the Job Preservation Agreement relating to continued insurance cover (summarised in paragraph 24) are consistent with the information that had been provided by Humanis to HSF Paris by telephone on 23 August 2021 (see paragraph 73 of Bloom19) that the Humanis Policy had been replaced by the New Humanis Policy on more beneficial terms in 2010. The Joint Administrators also understand from an email sent by Humanis to the former French Liquidator on 9 September 2018 (a copy and a translation of which are at [17/144] and [18/147] of ARB20) that Humanis made deductions from the Humanis Reserve between 2011 and 2018 to fund contributions on behalf of Redundant Employees in respect

of insurance policies. This is consistent with the provisions of Article 3.10 of the Job Preservation Agreement. It is not currently clear to the Joint Administrators (and to the former French Liquidator) who (if anyone) caused the Company to enter into the New Humanis Policy in accordance with the terms of the Job Preservation Agreement. For the avoidance of doubt, the Joint Administrators did not cause the Company to enter into it. The Joint Administrators have not been in a position to verify Humanis' information (provided by telephone to HSF Paris) that there are no further beneficiaries under the New Humanis Policy. This information is inconsistent with contention of Employee #2 that he still benefits from a disability, incapacity and death policy. In any event, the Joint Administrators' position is that they have not themselves entered into any such policy.

- 26.3 The Joint Administrators are equally unable to confirm who (if anyone) caused the Company to enter into the Humanis Health Policies. For the avoidance of doubt, the Joint Administrators did not cause the Company to enter into them. It is possible that the Humanis Health Policies form part of the insurance package agreed for the benefit of Former Employees under the Job Preservation Agreement, as article 3.10 refers to coverage for healthcare costs. On the basis that the former French Liquidator has confirmed that he had not caused the Company to pay premiums under the Humanis Health Policies and that the Health Employees do not appear to have paid for these premiums themselves, the Joint Administrators assume (but cannot conclude definitively) that the premiums have been drawn by Humanis from the Humanis Reserve.
- 26.4 As to the statement from Employee #4 (at paragraph 19.4 above) that he understood that Humanis intended to keep the funds in the Humanis Reserve, and that this was contrary to an agreement reached with union representatives and the Joint Administrators, the Joint Administrators have no record of such agreement and Ms Trigg has no recollection of such meeting taking place. A copy of the minutes of that meeting, which Employee #4 referred to in his letter, has been requested but has not been received in response. It is possible that Employee #3 was referring to the Job Preservation Agreement.
- 26.5 Due to the fact that the Joint Administrators did not enter into the New Humanis Policy or any Humanis Health Policy, and that the Joint Administrators were not a party to the End of Strike Agreement or the Job Preservation Agreement (although as explained in paragraph 24 of Bloom19, they did send a letter on 21 July 2009 that they confirmed the undertakings attributed to the Joint Administrators under the End of Strike Agreement and that they had no objections to the French officeholders performing in their entirety the provisions of the End of Strike Agreement) it is clear that the New Humanis Policy or the Humanis Health Policies

do not give rise to any administration expense or obligation on the Joint Administrators. Even if there were any such obligation, it would have been released pursuant to the expense bar date (see paragraph 46 of Bloom19) and the releases in Clause 32 of the CVA (see paragraph 109 of Bloom19 and [23/794] of ARB19), the 2017 Employee Settlement Agreement (see paragraph 36 of Bloom19 and [21/698] of ARB19) and the Settlement and Plans Support Agreement (see paragraph 109 of Bloom19 and [15/372] of ARB19).

26.6 The Joint Administrators' are advised that the Order sought should not have a direct effect on any insurance policy described above. Insofar as any policy would be terminated, the Joint Administrators understand it would be terminated following the subsequent dissolution by the Mandataires. Former Employees should therefore raise any concerns regarding the effects of the dissolution of the Company with the Mandataires, who are competent to deal with such matters having regard to their functions as described in paragraph 99 of Bloom19, rather than the Joint Administrators or this Court. The granting of the relief sought in this Application should therefore not directly impact on any policy that may be in place.

26.7 For these reasons, the Joint Administrators continue to consider that the objectives of the administration have been satisfied for the reasons set out at paragraph 110 of Bloom19.

27. For the reasons mentioned above and in Bloom19, I respectfully request that the Court grants the relief sought by the Application.



.....  
**ALAN ROBERT BLOOM**

Date: 16 September 2021