

FORM B10 (Official Form 10) (4/01)

UNITED STATES BANKRUPTCY COURT		DISTRICT OF	PROOF OF CLAIM
Name of Debtor Allegiance Telecom, Inc.		Case Number 03-13057	DISTRICT OF NEW YORK ALLEGIANCE TELECOM, INC 03-13057 (RRD) 2192 RECD THIS SPACE IS FOR COURT USE ONLY DEC 03 2003 BMC
Name of Creditor (The person or other entity to whom the debtor owes money or property) Gregory Smit		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach a copy of statement of claim with particular.	
Name and address where notices should be sent c/o John McBride, Esq. 2125 Canoas Garden Ave., #120 San Jose, CA 95125 Telephone number 408-979-2920		<input checked="" type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case <input type="checkbox"/> Check box if the address differs from the address on the envelope sent in you by the court.	
Account or other number by which creditor identifies debtor		Check here if this claim <input type="checkbox"/> replaces or <input type="checkbox"/> amends a previously filed claim.	
1 Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input checked="" type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS # 561 79 2191 Unpaid compensation for services performed Long term disability payments from 3/22/01 to present (date) (date)	
2 Date debt was incurred. 3/22/01 to present		3. If court judgment, date obtained	
4. Total Amount of Claim at Time Case Filed If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		\$ 116,000 plus \$3,875 mo on going plus interest and attorney's fees	
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff) Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim if any \$ _____		6. Unsecured Priority Claim <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ 4,650 Specify the priority of the claim. <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$4,650) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100* of deposits toward purchase lease or rental of property or services for personal, family or household use 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse or child 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other Specify applicable paragraph of 11 U.S.C. § 507(a)_____ *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment	
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim		THIS SPACE IS FOR COURT USE ONLY	
8 Supporting Documents. Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		N 20 CLERK'S OFFICE DISTRICT COURT OF NEW YORK EASTERN DISTRICT OF NEW YORK	
9 Date-Stamped Copy. To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim			
Date 11/25/03	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) Carol L. Koenig, Esq.		
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years or both			



ENDORSED

FILED

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**KIRI TORRE
CHIEF CLERK
SUPERIOR COURT OF CA
SANTA CLARA
Karissa Shaw DEPUTY**

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8 Attorneys for Plaintiff
9 GREGORY SMIT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

11 GREGORY SMIT,
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13 Plaintiff,
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15 vs

Case No **103CV008037**
**COMPLAINT FOR DAMAGES FOR
FAILURE TO PAY LONG TERM
DISABILITY BENEFITS**

14 ALLEGIANCE TELECOM, INC , GROUP
15 LONG TERM DISABILITY PLAN FOR
16 EMPLOYEES OF ALLEGIANCE TELECOM,
17 INC and DOES 1 to 10, inclusive,
18
19 Defendants

GENERAL JURISDICTION

19 Plaintiff complains of defendants, and each of them, and alleges as follows

20 1 Plaintiff does not know the true names and capacities of the defendants designated
21 herein as Does 1 to 10 and therefore sues said defendants by such fictitious names Plaintiff prays
22 leave of court to amend this complaint to insert the true names and capacities when the same have
23 been ascertained, plaintiff is informed and believes and thereon alleges that each of the defendants
24 designated herein was in some manner legally responsible for the events and happenings hereinafter
25 referred to

26 2 At all times herein mentioned, each of the defendants was the agent, servant,
27 employee parent and/or subsidiary of the remaining defendants and was acting in the course and
28 scope of such relationship, plaintiff is informed and believes and thereon alleges that each of the

1 defendants was in some manner legally responsible for the events and happenings hereinafter
2 alleged

3 3 At all times herein mentioned, defendant Allegiance Telecom, Inc had its principal
4 place of business in the City of San Jose, County of Santa Clara, California

5 4 On or about April 17, 2000, plaintiff commenced employment with defendant
6 Allegiance Telecom, Inc as a business development manager in San Jose, California

7 5 As part of his compensation and as one of the employee benefits, defendant
8 Allegiance Telecom, Inc provided to plaintiff and other employees a long term disability plan
9 entitled Group Term Disability Plan For Employees Of Allegiance Telecom, Inc , (hereinafter
10 "Disability Plan") under the terms of which employees were entitled to long term disability benefits
11 in the event they became disabled as a result of injury or sickness and which disability prevented
12 them from performing one or more of the essential duties of their occupation

13 6 On or about March 22, 2001, while plaintiff was still employed by defendant
14 Allegiance Telecom, Inc , he became disabled and unable to perform one or more than one of the
15 essential duties of his job, and thus became entitled to the long term disability benefits under the
16 terms of the Disability Plan Plaintiff remains so disabled to date

17 7 On or about November 13, 2001, plaintiff submitted his application for long term
18 disability benefits under the terms of the Disability Plan

19 8 On or about February 4, 2002, Hartford Life and Specialty Risk Services, Inc , acting
20 as an agent of the defendants, denied plaintiff's claim for benefits Thereafter, on or about July 25,
21 2002, plaintiff submitted to defendants his appeal of the denial of benefits

22 9 Defendants have failed and refused to respond to plaintiff's appeal as required by the
23 Disability Plan and have failed and refused to pay to plaintiff the long term disability benefits to
24 which he is entitled

25 10 As a result of the acts of defendants, plaintiff has been damaged in the sum of
26 \$116 000 00 to date and will be damaged in the amount of \$3 875 00 per month hereafter so long as
27 he remains disabled under the terms of the disability policy

28

1 11 Pursuant to 29 USC §1132 (g), plaintiff is entitled to an award of reasonable
2 attorney's fees

3 WHEREFORE, plaintiff prays judgment against defendants, and each of them, as follows

4 1 For damages in the amount of \$116,000 00 together with \$3,875 00 per month
5 hereafter, together with interest as provided by law,

6 2 For reasonable attorney's fees

7 3 For costs of suit incurred herein, and

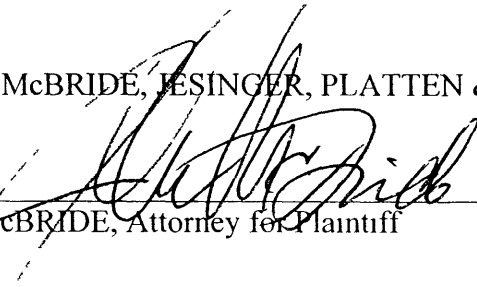
8 4 For such other and further relief as the court deems just and proper

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10 Dated 10/28/03

WYLIE, McBRIDE, JESINGER, PLATTEN & RENNER

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JOHN McBRIDE, Attorney for Plaintiff

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**WYLIE, MCBRIDE,
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Of Counsel

Direct Dial Number

November 25, 2003

United States Bankruptcy Court
Southern District of New York
Allegiance Claims Docketing Center
One Bowling Green, Rm 534
New York, NY 10004-1408

**Re Allegiance Telecom, Inc
Case No 03-13057**

Dear Clerk

Enclosed please find an original and two copies of the Proof of Claim in the above matter for filing. Please file the original and return the filed copies to our office in the enclosed envelope. If you have any questions please call. Thank you for your courtesy.

Yours truly,

WYLIE, MCBRIDE, JESINGER,
PLATTEN & RENNER



JUDITH L CASELLA
Legal Assistant to John McBride
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