

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

 COPY

In re

: Chapter 11 Case
Allegiance Telecom, Inc., et al., : No. 03-13057(RDD)
Debtors. : Jointly
X Administered

MARK TRESNOWSKI

New York, New York

Wednesday, October 1, 2003

Reported by:
Kathy S. Klepfer, RMR
Job No. 401

October 1, 2003

2:20 P.M.

DEPOSITION of MARK TRESNOWSKI,
pursuant to notice at the offices of Akin,
Gump, Strauss, Hauer & Feld, LLP, 590
Madison, New York, New York, before Kathy S.
Klepfer, a Registered Merit Reporter and
Notary Public of the State of New York.

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APPEARANCES

3

AKIN, GUMP, STRAUSS, HAUER & FELD, LLP

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Attorneys for the Official Committee of Unsecured

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Creditors

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590 Madison Avenue

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New York, New York 10022-2524

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BY: PHILIP C. DUBLIN, ESQ.

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COLIN M. ADAMS, ESQ.

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HERRICK, FEINSTEIN LLP

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BY: STEPHEN M. RATHKOPF, ESQ.

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KIRKLAND & ELLIS

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Attorneys for Debtors and Debtors in Possession and

19

the Witness

20

Citigroup Center

21

153 East 53rd Street

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New York, New York 10022-4611

23

BY: JONATHAN S. HENES, ESQ.

24

ALSO PRESENT:

25

PAUL A. STREET

1
2 IT IS HEREBY STIPULATED AND AGREED, by and
3 between counsel for the respective parties
4 hereto, that the sealing and filing of the
5 within deposition be waived; that such
6 deposition may be signed and sworn to before any
7 officer authorized to administer an oath; that
8 all objections, except as to form are reserved
9 to the time of trial.

1 Tresnowski

2 (Time noted: 2:20 P.M.)

3 MARK TRESNOWSKI, called as a
4 witness, having been duly sworn by a Notary
5 Public, was examined and testified as
6 follows:

7 EXAMINATION BY

8 MR. DUBLIN:

9 Q. Good afternoon, Mr. Tresnowski.

10 A. Good afternoon.

11 Q. As you are aware, I'm Phil Dublin from
12 Akin Gump Strauss Hauer & Feld. We represent
13 the official committee of unsecured creditors in
14 the Allegiance Telecom bankruptcy case.

15 We're here today in connection with
16 the debtors' motion with respect to the
17 retention of Impala Partners, LLC with respect
18 to their fee arrangement, and they operate as
19 the debtors' CRO.

20 I'm going to ask you a series of
21 questions today, and to the extent that I ask
22 you a question and you determine that it's
23 unintelligible, or if you have a problem
24 understanding any part of it, please stop me,
25 let me know what you don't understand, and I'll

1 Tresnowski

2 be happy, to the best of my ability, to try to
3 make it more clear.

4 If you need to take a break, just let
5 me know, and I'll be happy to accommodate you,
6 except to the extent we are in the middle of a
7 question. If you just would answer that
8 question and then we can go ahead and take a
9 break.

10 Can you please state your full name
11 for the record?

12 A. Mark Tresnowski.

13 Q. I'm going to skip the usual
14 formalities. I think you have been through this
15 process a number of times. We don't need to
16 know your title or your education. We're all
17 aware of that already.

18 What did you do to prepare for today's
19 deposition?

20 A. I really didn't do anything in the way
21 of document review. All I really did was just
22 kind of go through my own recollection and
23 remember -- try to refresh myself without the
24 aid of any documents or discussions with others
25 as to the events that led up to the retention of

1 Tresnowski

2 Impala and what they have done at Allegiance
3 and, in particular, the discussions surrounding
4 their engagement letter.

5 Q. So you did not discuss with counsel or
6 any other party your deposition today or what
7 you would be discussing?

8 A. No, I did not.

9 Q. Is there any reason at all why you
10 feel like you would not be able to testify
11 today?

12 A. No.

13 Q. What is your recollection of when the
14 relationship between Allegiance and Impala
15 began?

16 A. It began in the late May, early June
17 timeframe. The genesis of the relationship was
18 a suggestion by the senior creditors that we
19 consider retaining a CRO, chief restructuring
20 officer, or firm that engaged in operational
21 restructuring, and we considered that request
22 and then went out and did a number of things to
23 try to find someone who was good in that area.

24 Q. What's your general understanding of
25 what a CRO would be brought in to do for the

1 Tresnowski

2 company?

3 A. I had no understanding prior to this
4 experience, so I'll start with that.

5 As I looked into the concept, and
6 again, initially it was suggested by our senior
7 creditor, so I started by saying, what do you
8 want? You're saying it's very important to get
9 someone like this. Why is it very important, so
10 what do you think they would bring to the
11 process?

12 And as I recall, they said that they
13 wanted, in our particular case, they wanted
14 someone who could do several things: One, just
15 do an independent assessment of the company, and
16 by that I took them to mean from market
17 position, product offerings, personnel, just a
18 real independent, very experienced manager-type
19 people would come in and say, here's what we see
20 to not only them but to our board of directors
21 and the unsecured creditors.

22 They wanted someone who had skill and
23 experience in the bankruptcy process, in
24 particular, the process of rejecting contracts,
25 cutting costs, using the tools of bankruptcy to

Tresnowski

improve a company's cost structure and market position.

I think one of the other aspects of that is to also counsel the company during the process as to what do you do to hold the company together during this process, how do you deal with morale issues, how do you deal with customer perception issues. So that was also part of it.

And I think the other thing that they thought was important, and we tended to agree with them, is that our case had landed in a, you know, in a posture such that they thought it would be helpful to get an independent party to come in and communicate with the creditors and say here's what we see.

I mean, they were very frank and they said that, in terms of the business projections and the understanding and view of the business' future, they thought that the company didn't have the kind of credibility that they wanted, because this management team had operated the company for so many years.

Q. Who initiated the contact between the

Tresnowski

company and Impala?

A. I don't know. I think it may have been Royce Holland, our chairman. I know that Impala was recommended to us, highly recommended to us, by a number of different sources, two of whom were former colleagues of Royce's, who said that they had worked -- without being specific, that folks were at KMC and the other folks were at Velocita, that was the other company.

And they had heard that we were in the process of looking for a CRO, and they called unsolicited and said, hey, if you're looking for a CRO, the folks at Impala are just -- we've had a great experience with them, they have added a lot of value and you really ought to consider them. So it was definitely something that was initiated on the management side, as opposed to a lot of the other candidates came from the creditors.

Q. So, after the initial contact was made by Royce, at what point did you get involved in the process of the retention of Impala?

A. As with the other candidates, we had set up a process where the candidates would

1 Tresnowski

2 interview with various senior managers, myself
3 included, and at least one and preferably two or
4 three members of the board of directors, and
5 then -- and I knew there were interviews going
6 on with the creditors. I guess I was less
7 involved in directing that.

8 I don't recall the day, but I was down
9 in Dallas when Paul was down in Dallas, and we
10 got together and talked about the potential
11 engagement, his experiences, and what they could
12 bring to us, what I thought we needed. And
13 then, you know, then I was very involved in the
14 process of selecting -- probably within a week
15 or two after that of selecting them as the CRO.

16 Q. What was it that you believed you
17 needed? You referenced that when you were
18 talking with Mr. Street you were talking about
19 what you thought you needed.

20 A. Yes, I think -- you know, it was
21 interesting. I think the creditors, the senior
22 creditors, if you will, came at this, you know,
23 as an, almost as a demand, that they actually
24 were going to hold up the cash collateral order
25 unless we did this. And I never quite

Tresnowski

understood that because we didn't approach it as a negative thing. I mean, we approached it as something we certainly would want to look at.

And I think the specific things I had in mind were that, you know, we had no one on our management team, to my recollection, who had ever gone through a bankruptcy process, myself included. So we didn't have that kind of expertise walking the halls down there.

Secondly, we -- and that brings with it, again, as I said earlier, the contract rejection activities, the employee morale activities, the cost cutting activities, everything that goes with it was something we were going to cut our teeth on by ourselves. And we had outside advisors, obviously. We had a law firm and we had Greenhill, but we had no one resident at the company who would deal with that on a day-to-day basis, although we certainly had planned to do the best we could.

So we saw value clearly there, and I think I sat down with the creditors, senior creditors, sorry, the week after the bankruptcy and had a fairly sobering discussion with them

1 Tresnowski

2 where they said, you know, your projections
3 don't have credibility. I contested that. I
4 said they should have credibility, and they were
5 put together in a credible way, but, I said,
6 it's important that you feel that way.

7 And they said, we don't think they
8 have credibility and, you know, they said, we
9 don't really know why it's often hard for
10 someone's who's built a company from scratch to
11 see it accurately in a different market
12 environment, and so we really, really stress
13 that we think that you would benefit, we would
14 benefit, and the process would benefit by having
15 an outsider come in and live at the company and
16 produce a set of financials that had credibility
17 in their eyes.

18 Q. The projections that you are referring
19 to, is this what's commonly referred to as the
20 Triad III business plan?

21 A. I don't think so. No, I don't think
22 that's what -- they didn't refer to that
23 specifically. I think it was more of -- and I
24 don't think they were -- it wasn't my impression
25 they were looking at a set of projections and

Tresnowski

1
2 saying those don't have credibility. I think
3 they were -- and I'm speculating a little bit
4 here, but I think they were sitting there
5 saying, you know, you folks have grown this
6 business from scratch into a company that's got,
7 you know, \$800 million in revenue, but you don't
8 understand bankruptcy, you don't understand how
9 you can cut costs, you don't have a real good
10 sense for the impact this will have on the
11 business, and you also suffer from looking at it
12 the way you've always looked at it and that
13 gives you a bias that makes us uncomfortable.
14 So we want someone else to come in here who
15 doesn't have that bias and give us a fresh look
16 at it.

17 Q. Those projections they were
18 discussing, were they prepared by the company or
19 by an advisor for the company?

20 A. The projections that were prepared
21 prior to Impala's arrival were really a joint
22 work product of the company and Greenhill.

23 Q. And it was the senior lenders' view
24 that the joint effort by the company and
25 Greenhill lacked credibility?

1 Tresnowski

2 A. I would state it differently. It was
3 their view that it would be much better if the
4 set of projections that they used to restructure
5 the company on that we all used came from --
6 benefited from the input of someone else like a
7 CRO.

8 Q. You mentioned earlier that you had
9 interviewed a number of different CRO
10 candidates. Who were they?

11 A. The three -- well, actually four, four
12 were given what I would call full consideration
13 down to the end. One was a group called CXO
14 based out of Austin and Dallas, I think; one was
15 a group -- it was an individual by the name of
16 Keith Maeb, M-A-E-B, I believe, who had been
17 recommended by the senior creditors and works
18 more in an individual capacity; and then there
19 was another gentleman by the name of C.P. -- the
20 initials C.P. -- Shangkar, and he didn't -- I
21 don't think he did -- he was more like an
22 executive-for-hire, and so he was a little bit
23 different than the typical. He didn't have a
24 lot of bankruptcy experience, but fresh ideas.
25 Some of our private equity investors had worked

1 Tresnowski

2 with him and thought he was a good turn-around
3 guy, if you will; and then Impala, of course,
4 and then we took all four of those.

5 And with C.P. I don't think we ever
6 got to the discussion of compensation or
7 engagement terms. With the other three we did.
8 So he kind of -- I say that just to point out
9 that he kind of was dismissed from the process
10 before we got to the very end.

11 Q. Was this process with the other -- as
12 long as the process went on with these other
13 three candidates in addition to Impala, was it
14 the same process where the potential candidate
15 would come in and speak with a number of members
16 of the senior management and I think it was one
17 or two members of the board --

18 A. Yes.

19 Q. -- I think, was that on an individual
20 basis, or did they meet in groups with members
21 of senior management and board members?

22 A. It was on an individual basis, and it
23 was basically, depending on schedules, wherever
24 they could. I met with the CXO folks in New
25 York, for example. I met with Paul in Dallas.

1 Tresnowski

2 Our senior managers met with all four
3 of them. Our directors -- those tended to be
4 individual meetings, like, you know, Paul may
5 have had dinner or breakfast with a director,
6 and I think in the case of Reid Hunt, I recall
7 it was a phone call. I don't think it was a
8 meeting. That's my recollection anyway.

9 But that was the process that was used
10 for all of them.

11 Q. So after you had interviewed these
12 four candidates, did everybody then get in a
13 room or get on a conference call or whatever it
14 was and compare notes and determine who they
15 thought would be the best candidate for the
16 company?

17 A. Yes.

18 Q. And did you take notes in connection
19 with these interviews?

20 A. I did not. I'm not a note-taker by --

21 Q. Do you know if any other members of
22 the senior management took notes?

23 A. I don't know. It would -- "I don't
24 know" is the answer. They tended to not be
25 those types of meetings. I mean, a lot of what

1 Tresnowski

2 you're looking for there is, of course, there's
3 questions about experiences and things like
4 that, but there's fit, you know, is this someone
5 who's going to walk the halls here and fit in or
6 are they going to walk the halls here and not
7 fit in. So that was -- but someone may have
8 taken notes, I don't know.

9 MR. DUBLIN: I would just ask if you
10 can check with the company and see if the
11 people at the interviews took notes, I would
12 like to get copies of those.

13 Q. The process after you had these
14 initial meetings, when the final decision was
15 made on retaining Impala, was that decision made
16 by management, or was that decision made by the
17 board, a combination of the two? How did that
18 happen?

19 A. My recollection is that there was
20 clearly a board vote and the board made a
21 determination, but as part of that
22 determination, they asked for management's
23 recommendation.

24 Q. And why was it management's -- well,
25 first, I'm sorry, to the extent -- do you know

1 Tresnowski

2 if there are board minutes from that vote?

3 A. There should be. I can check that.

4 MR. DUBLIN: Again, we would like to
5 get copies of the minutes from the meeting
6 where the board determined to select Impala.

7 Q. Why was it that -- I guess senior
8 management made the recommendation that Impala
9 should be the CRO for the company?

10 A. Yes.

11 Q. Why was it that Impala was chosen by
12 senior management as opposed to any of the other
13 three candidates?

14 A. First of all, I will say it was a very
15 strong sense of support for them, so it
16 wasn't -- in other words, it was not a close
17 call. And I think there were a number of
18 things. I think there was a sense of personal
19 fit with the style of Paul and Pete Keenoy --
20 Paul Street and Pete Keenoy. I met them both.

21 There was a tremendous amount of
22 respect for their experience. I mean, these
23 were -- they didn't fit the mold, at least the
24 mold as we saw it. A lot of the CRO candidates
25 seemed to be people who had an experience here

1 Tresnowski

2 or there and decided that they were chief
3 restructuring officers, and here we had a team
4 of very seasoned executives, many from General
5 Electric, but then predating that to McKinsey &
6 Company, in the case of Paul.

7 And you know, it was, frankly, it was
8 just overwhelming that we were going to get some
9 seasoned executives who have seen any number of
10 businesses in different industries and have seen
11 companies that needed to be restructured,
12 companies that had worked, and we just thought
13 we were getting a lot. So it was a very, in a
14 sense, a very short discussion. It was one of
15 those things where you say, Dan, what do you
16 think? It's easy. Clay, what do you think?
17 Royce? You know, great.

18 Q. Was the decision to retain Impala made
19 before or after a discussion of the compensation
20 arrangement for Impala?

21 A. I think it was after. My
22 recollection -- that job usually falls to me, so
23 my recollection is I talked to Paul, as I did
24 with the other candidates, and I said, okay,
25 let's talk about money. And we had a very open

1 Tresnowski

2 discussion about that, and so I had a sense for
3 what that was going to be and conveyed that to
4 the board. And so it was done prior to their
5 decision.

6 Q. I just want to show you a document
7 real quick. I have copies for everybody. I'm
8 just going to give you all at the same time and
9 I'll reference which document we use.

10 A. Great.

11 Q. The first document we would like to
12 start with is the Motion of Debtors Pursuant to
13 Sections 105 and 363 of the Bankruptcy Code for
14 Approval of Services Agreement with Impala
15 Partners, LLC.

16 Please take a moment to review the
17 document.

18 (Pause.)

19 A. Okay.

20 Q. Have you ever seen this document
21 before?

22 A. I believe so.

23 Q. What is it?

24 A. This is the -- our motion to engage
25 Impala.

1 Tresnowski

2 MR. DUBLIN: I'd like to mark this
3 exhibit as Tresnowski Exhibit 1.

4 (Tresnowski Exhibit 1, Motion of
5 Debtors Pursuant to Sections 105 and 363 of
6 the Bankruptcy Code for Approval of Services
7 Agreement with Impala Partners, LLC, marked
8 for identification, as of this date.)

9 Q. There is an exhibit to the motion.
10 We'll just refer to it as "the motion," if
11 that's okay.

12 A. Sure.

13 Q. That contains Impala's letterhead?

14 A. Yes.

15 Q. It's dated July 11, 2003?

16 A. Yes.

17 Q. Just take a second to look that over.

18 A. Yes, I'm familiar with this.

19 Q. What is it?

20 A. This is the actual engagement letter
21 that we signed with Impala.

22 Q. The version that's attached, and I
23 believe this is the document that was filed with
24 the court, is not signed. To the extent counsel
25 can provide us with a signed copy, we would

1 Tresnowski

2 appreciate getting one.

3 A. Okay.

4 Q. Were you the person primarily
5 responsible for negotiating the terms of this
6 agreement for the debtors?

7 A. Yes, I was.

8 Q. If I can ask you to turn to the -- on
9 the first page, and just go to the third
10 paragraph that's labeled "Services."

11 A. Uh-huh.

12 Q. Can you tell me what this paragraph
13 describes as what Impala's role was going to be
14 for the company?

15 A. I'm sorry, there's a paragraph labeled
16 "Services"?

17 Q. It's on the first page.

18 A. Oh, I'm sorry. Here it is. It's on
19 the first page.

20 MR. RATHKOPF: Objection to form.

21 A. I'm sorry, if you can repeat the
22 question. You want me to describe what it --
23 what the service are, or --

24 Q. If you can just tell me what this
25 paragraph says the role that CRO will perform

1 Tresnowski

2 for the company.

3 A. Well, I wouldn't be comfortable doing
4 that unless I read it into the record, but
5 it's -- it is a, you know, a complete
6 description of the services that they will
7 perform -- I'm sorry, it's not a complete
8 description, it's a description that is
9 inclusive in the sense that it has some general
10 language and then some specifics, and those
11 specifics being a reduction of costs, an
12 increase in efficiency, improvement in sales
13 productivity and profitability, management of
14 operational bankruptcy task forces established
15 by the company, and developing the company's
16 long-term business strategy.

17 Q. Is that what it says, that third
18 paragraph marked "Services," or is that just the
19 general, what you view as being the role as the
20 advisor as set forth in paragraph --

21 MR. HENES: Can I ask a question?
22 Since it's all stated here, can't we just --
23 it says what it says, right? I'm just not
24 sure why Mark has to read it.

25 MR. DUBLIN: I just want to make sure

1 Tresnowski

2 he understands that the document says what
3 it says.

4 MR. HENES: Okay. Can you just ask
5 him if he understands that? That would be
6 easier.

7 Q. Do you understand that the purpose of
8 this document was to delineate the services --
9 among other things, delineate the services that
10 Impala will be providing for the debtor?

11 A. I don't understand it to be an
12 exclusive list of the services.

13 Q. If you look, please, at, again, that
14 paragraph, third paragraph labeled "Services,"
15 can you just read into the record that first
16 sentence.

17 A. "Impala shall serve as the company's
18 chief restructuring officer and provide advice
19 and information to the company in connection
20 with the restructuring."

21 Q. And then if you can turn to page 3 and
22 look at paragraph 5.

23 A. Yes.

24 Q. That's "Role as Advisor." I believe
25 that's the paragraph you were looking at a few

1 Tresnowski

2 moments ago. Can you again read into the record
3 just the -- I think it's the tenth sentence, the
4 one that begins "Impala's primary
5 responsibility."

6 A. "Impala's primary responsibility is to
7 advise on the operational restructuring of the
8 company, including, but not limited to, (a) the
9 reduction of costs and expenses and
10 efficiencies; (b) the improvement of sales
11 productivity and profitability; (c) management
12 of the operational task forces established
13 within the company; and (4) developing the
14 company's long-term business strategy."

15 Q. Do you understand these four
16 delineated items to be the primary, I understand
17 not necessarily all of the responsibilities that
18 Impala may have for the debtors, but the primary
19 responsibilities?

20 A. I wouldn't -- no, I wouldn't say that.
21 I mean, I just -- you know, what it says is
22 their primary responsibility shall be to be the
23 operational restructuring officer, and that that
24 primary responsibility will include 1 through 4,
25 but there might be other things. And we were

1 Tresnowski

2 getting into this engagement like any
3 engagement: You want to leave some flexibility
4 and let it develop over time with the
5 circumstances. So it has a tendency to say that
6 you'll do these things and not these things.

7 Q. Do you think, broad strokes, the items
8 that are delineated here are typical or
9 commonplace of what a CRO would perform for a
10 company such as Allegiance in Chapter 11?

11 A. I really don't know.

12 Q. Again, let's go back to your initial
13 discussions that I believe, after your group had
14 coalesced around Impala, that you were then the
15 guy that was going to go negotiate with Paul and
16 with Peter to determine the fee structure and
17 the scope of the engagement.

18 In the course of these discussions,
19 did you discuss Impala's compensation or fee
20 arrangement?

21 A. Yes.

22 Q. And what was discussed with respect to
23 Impala's proposed fees?

24 A. We discussed two components: That
25 there would be a monthly fee, if you will, and

Tresnowski

then there would be some kind of a success fee. Of course, there would be expense reimbursements and indemnification and other standard provisions, but the two kind of compensation components would be the monthly fee and the success fee.

Q. Okay. Can you describe the discussions with respect to the monthly fee?

A. We discussed what they thought was appropriate. We were aware of what some monthly fees were in some other cases. We looked at that, and, you know, like good corporate stewards, we tried to get the fee reduced.

And frankly, I had a conversation with Paul where I pushed him very hard and said, you know, why this, why not some other number, and he answered that to my satisfaction. And I talked to the other managers and the board as to how he came up with that number and said that, in my opinion, I thought it was a reasonable number.

Q. You said you had looked at some other monthly fee arrangements in other cases. Do you recall the cases that you looked at?

1 Tresnowski

2 A. I know one I looked at was the
3 Metropolitan Fiber Networks, and I think the fee
4 was 275, but -- and I also had some sense for
5 what other people were charging. This is a
6 experience not unlike hiring any professionals
7 in bankruptcy. Word gets out that you're hiring
8 someone of this kind and you get lots of e-mails
9 and calls, and so I actually, whether I wanted
10 it or not, I had the benefit of talking to more
11 than just those four.

12 Someone from Wilson Alvarez called and
13 someone from Glass something called. A lot of
14 people called and, you know, and what I
15 generally said was we're -- we've narrowed down
16 our focus, we're looking for something specific,
17 but, oh, by the way, if I thought about it, what
18 do you charge? And I would get numbers -- and
19 again, I didn't record this in any way, but I
20 would get numbers that were in the 200,000,
21 300,000 dollar a month range.

22 Q. You mentioned specifically MFN,
23 MetroMedia Fiber Network?

24 A. Yes.

25 Q. Do you remember which chief

1 Tresnowski

2 restructuring officer, which firm that was?

3 A. I think that was Impala. That's why I
4 had looked at that.

5 Q. Did Impala provide you with any
6 comparables to look at?

7 A. I think Paul offered to do that. I
8 didn't -- I'm not really sure. I'm not really
9 sure.

10 Paul and I had a very frank discussion
11 about the number and what the right number was,
12 and, you know, in the context of getting a real
13 good sense from people I have talked to, looking
14 at some filings and knowing that this was
15 clearly in the ballpark, you know, I didn't want
16 to turn it into a three-week project because we
17 were in a sense of urgency to get going.

18 Q. And you just don't recall offhand,
19 other than MFN, what filings you had looked at?

20 A. I don't.

21 Q. And other than speaking with Wilson
22 Alvarez and I think it's Glass Associates --

23 A. Glass Associates, yes.

24 Q. -- you don't recall any other people
25 that you had had contacted with other than the

1 Tresnowski

2 three firms you had interviewed?

3 A. Yes. Like I said, I did talk to the
4 other three and I talked specifically about fees
5 with CXO and with Keith Maeb. I may have talked
6 to Chris Nichols at GE Capital about it as well
7 because I think Chris had done somewhat of an
8 independent search and talked to a number of
9 people, some of whom we never did talk to,
10 but --

11 Q. Do you recall the monthly fee
12 structures that were posed by any of the other
13 three candidates that the company had
14 interviewed?

15 A. I don't have a specific recollection.
16 The only recollection I have is they were in
17 this ballpark.

18 Q. They were all in the 2 --

19 A. Kind of 2, 300,000 dollar a month
20 ballpark.

21 Q. Did each of those also include a
22 component for a success fee?

23 A. Yes, they did.

24 Q. We'll go back to that later on.

25 A. Sure.

1 Tresnowski

2 Q. Were there any internal Allegiance
3 discussions about the compensation, potential
4 compensation arrangement among yourself and
5 others at the company?

6 A. Yes, there were.

7 Q. And with whom?

8 A. I know I talked to Dan and Royce about
9 it. We, you know, I mean, I think our approach
10 to this was like our approach to everything
11 else. We didn't want -- well, we've engaged a
12 lot of professionals over the course of the
13 company, and I had worked with Dan and Royce and
14 Tom in doing that, and, for better or worse, I
15 was an outside professional one time in my
16 career. So my view of this is, this project, in
17 any context is you don't want to pay more than
18 you have to pay, but if you're going to get good
19 people, you're going to pay prices that reflect
20 their experience, skills, and quality.

21 And so over the years, we have -- I
22 had a real good sense for the management team's
23 philosophy on this. Dan tends to be the most
24 frugal. He minds the budget. And so I know I
25 talked to Dan because he was working on the

1 Tresnowski

2 budget and trying to cut costs everywhere he
3 could, and I asked him about this fee and we
4 talked about it and again ultimately agreed that
5 it was reasonable.

6 Q. Did the company request any of its
7 other retained professionals, whether it's
8 attorneys or Greenhill & Company, to put
9 together some type of comparable analysis of
10 restructuring advisory retentions in Chapter 11
11 cases?

12 A. I don't recall any.

13 Q. Do you recall if either of your
14 advisors had volunteered information with
15 respect to recent fee arrangements in connection
16 with retentions of chief restructuring officers
17 in Chapter 11 cases?

18 A. I recall -- well, when I said I didn't
19 recall, I don't recall them preparing any kind
20 of written summary of comparables, but I
21 certainly recall talking to Kirkland --
22 certainly talking to Kirkland about what was
23 reasonable, you know, what they thought was
24 reasonable, and I probably talked to Mike Kramer
25 at Greenhill as well.

1 Tresnowski

2 Q. But no recollection of if you
3 definitely talked to Mike Kramer or not?

4 A. No. No. Again, I think my reference
5 point would have been, to a certain extent,
6 Kirkland, but then also to a certain extent
7 Chris Nichols at GE just because, again, this
8 whole concept was something that was introduced
9 by them and they had -- they had interviewed a
10 lot of people and had used a lot of people in
11 recent credit. So Chris seemed like someone who
12 had a lot of recent market data.

13 Q. At the time of the discussions, they
14 were before the execution of the engagement
15 letter on July 11?

16 A. Yes.

17 Q. Were there discussions with respect to
18 the success fee in addition to the monthly fee?

19 A. Yes.

20 Q. And what were those discussions?

21 A. Well, I said to Paul, what do you, you
22 know, what do you -- he made it clear there
23 would be a success fee. I didn't volunteer
24 that, but I wasn't surprised because Keith Maeb
25 at CXO had said there had also been a success

Tresnowski

fee.

I asked them -- I asked Paul specifically, I said, how do you -- you know, what's the best way to approach this? Because I don't know, every engagement's a little bit different. And he said, they are a little bit different and the best way to approach it is let us get our feet wet, let us get on the ground and let's come back to you with something that we think makes sense and negotiate something.

Q. Were there any preliminary numbers exchanged on the success fee prior to the execution of the engagement letter on July 11th?

A. Very, very informally, in the sense of, you know, could be 5 million, could be more, could be less. I mean, I think 5 million was kind of thrown out there, but it was going to -- don't really know what we're going to be faced with here. You know, I don't want to recreate the conversation because I probably would get it wrong, but I know that from talking -- and it was either with Paul or some of these other people, they get into a company and find out there was a lot more work than they thought or

1 Tresnowski

2 they would get into a company and they would
3 find out that there wasn't nearly as much work
4 as they thought. And so what they preferred to
5 do was go in and get the answers to those
6 questions and then talk about a fee that they
7 thought made sense.

8 And that was quite similar to the CXO
9 approach. They were not going to -- because I
10 pushed them too, and they said they would want
11 to wait and see what made sense there. Keith
12 Maeb had proposed something, and I think it was
13 something like 2 percent of the enterprise value
14 or something. You know, it struck me it was --
15 it was definitely like 1 and half or 2 percent
16 of the entire enterprise value upon
17 confirmation.

18 Q. I believe you testified earlier that a
19 general fee discussion was among yourself and
20 Paul?

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. That's prior to the execution of the
25 engagement letter?

Tresnowski

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A. Right.

Q. What was, if you recall, Impala's initial offer to you on the monthly fee?

A. On the monthly fee?

Q. Yes.

A. It was -- well, the -- I just want to make it clear. I wasn't the only person they talked to. I was clearly the primary person who negotiated it, but Paul would have discussions with Royce. I wasn't in the interviews that he had with Royce and Dan and other people, so I don't know what they had talked to -- talked about, but the letter that came to me had 250 in it.

Q. And that was the initial letter that came to you?

A. That was the initial letter that came to me.

Q. And what was the final monthly fee number that was agreed upon by the company?

A. 250.

Q. 250?

A. Yes.

Q. Did the company ever seek to make a

1 Tresnowski

2 counterproposal to the 250 or, when presented
3 with the 250, accepted the 250?

4 A. I had talked to Paul and pushed back
5 and said, why 250? I mean, I'm more comfortable
6 with 200 or, you know, Greenhill's at 175, and
7 Paul said that it wasn't -- I'm just -- my
8 recollection is that Paul said something like:
9 This isn't a number I pulled out of the air,
10 here's what went into it. I've discussed this
11 with Dan and Royce.

12 And I think my approach was, look,
13 lower numbers are better than higher numbers,
14 but I'm happy to listen to your arguments and
15 I'll talk to Dan and Royce and then I'll get
16 back to you and let you know if we think this is
17 reasonable. And I did that. I said to Dan -- I
18 remember specifically talking to Dan saying,
19 what do you think about this? And, you know, we
20 just decided to come back and take that, take
21 that number.

22 Q. And the board signed off on that
23 \$250,000?

24 A. Yes.

25 Q. Do you believe that \$250,000 that was

1 Tresnowski

2 discussed reflected the market price for those
3 services to be provided?

4 A. I thought it was a reasonable price
5 under the circumstances, and the reason I answer
6 it that way is that there were -- you know, what
7 I want to stress is there was a big difference
8 in the candidates we saw, and so -- and they all
9 operated differently was the impression we
10 strongly had as a management team.

11 And one of the things with Impala that
12 we saw was an opportunity to get a, you know,
13 you would get, in one package, you would get a
14 CRO, a former kind of credit officer,
15 understands credit agreements inside and out;
16 you would get a, in Paul's case, a guy who was
17 at McKinsey for, I don't know, ten years or
18 something; and so you were getting a whole
19 bundle of things that we just clearly weren't
20 getting from the others, and that's why I say it
21 was very easy decision to make.

22 So, was it market? I don't know that
23 we even thought of it that way. Was it a fair
24 compensation for what we were getting? We
25 thought it was.

1 Tresnowski

2 Q. You said you thought it was reasonable
3 under the circumstances.

4 A. Yes.

5 Q. What were the circumstances?

6 A. What they brought to the table. We
7 thought it was a -- we were getting a lot of
8 different things. That's why, when you had
9 talked about their role, I mean, I know what I
10 thought about Paul and Pete, and I met them
11 both, I certainly didn't want to say, do these
12 things and don't do these things. If you guys
13 see other problems here, have at it, just let's
14 get as much as we can.

15 Q. I would like to turn your attention to
16 the thin document that's in front of you. It's
17 a notice of hearing on motion of the debtors
18 pursuant to Sections 105 and 363 of the
19 bankruptcy code for approval of services
20 agreement with the Impala Partners, LLC.

21 If you take a minute and just flip
22 through that.

23 A. Yes, I'm familiar with that.

24 Q. And what is it?

25 A. This is the -- it's the, what I would

1 Tresnowski

2 call is the notice of hearing to approve the
3 final success fee arrangement and the
4 modification to the monthly fees that we had
5 reached with Impala.

6 MR. DUBLIN: I would like to mark this
7 as Tresnowski Exhibit 2.

8 (Tresnowski Exhibit 2, Notice of
9 Hearing on Motion of the Debtors Pursuant to
10 Sections 105 and 353 of the Bankruptcy Code
11 for Approval of Services Agreement with
12 Impala Partners, LLC, marked for
13 identification, as of this date.)

14 Q. Were you the person primarily
15 responsible for negotiating the terms of this
16 modification to the engagement letter to the
17 debtors?

18 A. I was primarily responsible, yes.

19 Q. Who else was responsible?

20 A. Royce was involved, Dan was involved,
21 members of our board were involved. When I say
22 "involved," I mean they were considering it and
23 approving it, but I was the one taking proposals
24 back and forth and negotiating with Paul.

25 Q. If you look at page 2 of the notice --

1 Tresnowski

2 A. Yes.

3 Q. -- the second paragraph, the second
4 full paragraph on that page says "that the
5 debtors and Impala, after negotiations, have
6 agreed on the terms of a success fee."

7 A. Uh-huh.

8 Q. What do you view a success fee to be?

9 A. You know, it's a fee that you get when
10 the job's done and, you know, you have delivered
11 what you were engaged to deliver.

12 Q. Do you need to have a success in order
13 to have a success fee?

14 A. I think that's more nomenclature than
15 anything you can read a lot into. I mean,
16 there's -- as I get schooled in this process of
17 bankruptcy, a lot of people get paid what are
18 called success fees, and you know, as far as I
19 can see, they're fees that get paid at the end
20 of the case. And again, I'm not an expert, but
21 my sense is that, you know, if they have done
22 their job and delivered, you know, they get
23 that. If they haven't for some reason, if they
24 get dismissed or something, they would just take
25 whatever they got paid through that date.

1. Tresnowski

2. But I really, you know, I really view
3. the word "success" as just, you know, a label.

4. Q. What is the proposed success fee for
5. Impala in these cases?

6. A. \$2 and a half million.

7. Q. Is it your understanding that Impala
8. is entitled to the success fee upon confirmation
9. of any plan of reorganization or upon a sale of
10. substantially all of the debtors' assets?

11. A. Yes.

12. Q. Is that without regard to the
13. provisions of that plan or without -- I'm sorry,
14. without regard to the provisions of the plan?

15. A. That's correct.

16. Q. Is that without regard to any
17. consideration that may be received by the estate
18. in connection with the sale of substantially all
19. of the debtors' assets?

20. A. That is correct.

21. Q. So what exactly does Impala have to do
22. in order to earn the success fee?

23. A. They have to perform the services that
24. we engage them to perform, see the process
25. through to fruition, and then they would earn

Tresnowski

the fee.

Q. What are the services that the company engaged them to perform?

A. Well, as I testified earlier, there was a, you know, whole host of services, and the significant -- you know, there's lots of significant ones. They include helping us cut costs, and last count, I think we have cut over \$80 million of annual cost out of the business; helping us put together a very detailed, very thorough business plan and financial forecast. And they have done that.

And they were engaged to explain that forecast, defend it, and, if they did their job well, establish its credibility. And again, from my feedback I've gotten, they have done that very well. It's been very well received. And people have difference of opinion on assumptions, which you would expect, but I've not heard any suggestion that it was anything less than what we had wanted, you know, which was a very detailed, thorough, thought-out plan.

They have been involved in issues of communication with employees, letters to

1 Tresnowski

2 customers, how do you try to retain your
3 revenue. They have been involved of late in
4 go-to-market strategy, how can you sell more
5 products and fill up the network. And so, I
6 mean, I can go back through the engagement
7 letter, but they have done all the things,
8 generally, that they have been engaged to do.
9 And they continue to do it. I mean, the
10 engagement's not over.

11 Q. But none of these -- the engagement
12 letter does not provide that any of these things
13 need to be completed in order for Impala to
14 obtain the success fee?

15 A. No. No. The success fee is only
16 contingent on a -- the confirmed plan or a sale
17 of the company.

18 Q. Who negotiated the success fee on
19 behalf of Impala?

20 A. Primarily, Paul Street.

21 Q. And did Impala make the first offer to
22 the company or did the company make an initial
23 proposal to Impala? We're talking just about
24 the success fee.

25 A. The success fee, I think Impala

1 Tresnowski

2 probably made the first proposal. They made the
3 first proposal to us and then we negotiated.

4 Q. Do you recall what the initial
5 proposal was?

6 A. Yes. It was fairly complex. It was
7 there was going to be a fee that was payable
8 based on \$20 million increments of cost
9 reduction versus the May 2003 run rate, and they
10 could have earned up to \$5 million there, but
11 the cost reduction would have had to have been I
12 think in excess of what we actually achieved.
13 So I don't know what they would have actually
14 earned, but it could have been as much as 5
15 million.

16 And then there was a fee, an
17 additional fee, that was tied to when the plan
18 got filed, and I think those two numbers would
19 add up to, you know, best case scenario,
20 something like 7 or 8 million. And then there
21 was a different fee of about 3 million if we
22 sold the company in a way that precluded them
23 from earning the other fees.

24 Q. So the 3 million is not cumulative
25 with --

1 Tresnowski

2 A. It wasn't, no, it wasn't additive to
3 the other number. I mean, we didn't draft the
4 document, but that was clearly my understanding.
5 The way we were going to draft it is that that
6 was a failsafe, if you will. If they were
7 deprived -- you know, if they had devoted all
8 their time and energy and allocated resources to
9 it, and then we sold the company out from under
10 them, that would be their compensation.

11 Q. Was this initial proposal in writing?

12 A. I think so. I mean, actually, I don't
13 know if I memorialized it in writing or if they
14 gave it to me in writing. There was a writing
15 that may have had this in it. It may have just
16 been my notes. I don't recall.

17 Q. To the extent you have those notes of
18 that writing, we would like to get a copy of
19 that as well.

20 A. Sure.

21 Q. What did the company do with this
22 initial proposal?

23 A. We immediately sat down with Pete and
24 Paul and talked about it and we asked, you know,
25 how they came up with it, what were their

1 Tresnowski

2 thoughts, and then we said, okay, we'll think
3 about it, we'll talk to the board about it.

4 And then we were also getting input
5 from the creditors at that point. I mean, this
6 was something that both the unsecured creditors
7 and the senior creditors -- secured creditors,
8 rather, were saying, you know, what are you
9 going to do about Impala, what's their fee going
10 to be, and so there was a lot of discussion
11 about it.

12 Q. What was the company's
13 counterproposal?

14 A. Unfortunately, we didn't make one.
15 Then we were, you know, we were struggling, to
16 be honest with you, to -- we wanted something
17 that was fair. I mean, there was no question in
18 our mind that they were delivering value and
19 they were going to be a very important part of
20 the process, and there was no question in our
21 mind that they were folks who could go out and
22 earn lots of money doing engagements for other
23 people. So if we couldn't come to terms with
24 them, they would go get that money someplace
25 else.

1 Tresnowski

2 So we had a real good sense of what
3 their market value was. We had a real good
4 sense of how important they were in our process.
5 And we struggled a bit, you know. We wanted to
6 make -- we wanted to avoid a fight with the
7 creditors. We wanted to do something the
8 creditors thought would be fair. So there was
9 dialogue going back and forth.

10 We spent a lot of time internally
11 debating success. You know, if you're going to
12 do a success fee -- and this was a recurring
13 theme throughout the whole bankruptcy process
14 with, you know, whether it's our own curb or
15 engagement of any professional or whatever, you
16 know, you sit there and say, well, what's
17 success?

18 And, you know, for every formulation
19 you can come up with, you can come up with
20 deficiencies in that formulation that might lead
21 you astray, that might lead you to do things
22 that weren't good for the enterprise, but they
23 were good for this constituency or vice-versa
24 and that you don't get a very satisfactory
25 response.

1 Tresnowski

2 And again, I've been through this now
3 with, you know, went through it with Greenhill,
4 and I think we struggled quite a bit. Paul and
5 I talked about it, and I think we were both
6 unhappy that we hadn't resolved it and it had
7 lingered, frankly.

8 The agreement we had with them was to
9 get them a proposal -- well, to get it done in
10 like 30 days after their engagement, and then we
11 had like a 15-day slippage where we would get
12 together and negotiate it if we had any
13 differences. And we had, somewhat unfairly to
14 Impala, we had kind of blown past those
15 deadlines, and they were still working away and
16 we were kind of getting down to the end of
17 August.

18 And I think frankly because it was
19 such a difficult issue that, you know, we
20 just -- we couldn't come to a resolution, and
21 then finally we just said, look, we got to do
22 something here. You guys are valuable, you can
23 go do things for other people and make a lot
24 more money than certainly just making your
25 monthly, and we need you guys.

Tresnowski

Our board felt adamant, absolutely adamant, that it would be a huge setback in the case if we lost Impala, and we said -- and I don't recall the exact sequence of conversations, but the gist of it was like, hey, Paul, let's do something here, let's cut a deal, let's make it simple, everyone's getting tangled up, if I can say it, in their underwear trying to figure out how do you define success, and we just said let's just cut a deal, let's just get certainty on both sides, we know what we're going to pay, you guys are, unfortunately because of circumstances and maybe because of our own delay, you guys have performed, you know, some significant percent of the work to be done.

So there wasn't a lot of risk that we weren't going to get stuff from them, because they had done it and they had lived with us for going on three months now. So we just said, after many meetings and board meetings or board, you know, individual conversations with board members, we just said, here's the deal, we've gone back and forth and back and forth and back

1 Tresnowski

2 and forth, here's the deal, we think it works,
3 they think it works, let's get on with it.

4 Q. Let's just take a step back.

5 A. Sure.

6 Q. You referenced that you went back and
7 forth and back and forth.

8 A. Uh-huh.

9 Q. And please correct me if I'm wrong, I
10 take that to mean you went back and forth on how
11 much the success fee should be?

12 A. It wasn't -- no, it wasn't a numbers
13 type of discussion. There were numbers --
14 obviously there were numbers engaged in it, but
15 it was, you know, the issue was do we put these
16 guys at risk somehow in a success formula and
17 then maybe there's a higher payout, or do we
18 have less risk at a lower payout that's certain,
19 which means we run some risk then because
20 they're going to get the payout, you know, just
21 when there's a plan. So I think the back and
22 forth was more on concepts than anything else.

23 Q. What was the debtor's reasoning in
24 removing the metric concept that Impala had
25 included in its original construction to go down

1 Tresnowski

2 to a flat fee arrangement?

3 A. Yes, that is something we didn't do
4 lightly. And I know that's not an unusual way
5 to structure these fees. The problem we had
6 with that is that -- and Impala was sensitive to
7 this too, you know -- cutting costs is not an
8 absolute good. You know, it's good up to a
9 point and then it can turn bad.

10 And you know, we had talked about,
11 well, you could just have an incentive based on
12 cost-cutting, which was kind of like their
13 proposal, and the board of directors could be
14 the governor on that, but we didn't want to
15 really get in a situation where, for example,
16 Paul said, ghees, I think we should close the
17 XYZ facility, I really think that's the right
18 thing to do, and then we would have to evaluate
19 that -- not we, but mainly the board, knowing
20 that it came out of his pocket.

21 You know, I mean, it wasn't a good
22 dynamic that we wanted to have, because we
23 hadn't -- we had worked in a very open fashion,
24 you know, where we did the right thing. That's
25 kind of the -- you do the right thing. And so I

1 Tresnowski

2 think that made us uncomfortable.

3 The same thing with getting a plan
4 filed. As I told -- in a different context I've
5 told people, I said no one wants to get a plan
6 filed faster than the people working on this
7 deal, I mean, across the board. And so I didn't
8 need -- I didn't feel like I needed an economic
9 incentive for everyone -- anyone to try to get
10 this thing done.

11 And that includes -- I mean, I know
12 the argument you can make, well, they're getting
13 a monthly fee and so the longer it goes, the
14 better, but these are guys that have got other
15 opportunities, other demands, and not something
16 I could -- didn't really have any concern about
17 them sitting around milking the engagement.
18 That was not -- I wouldn't have -- I don't think
19 we would have engaged someone where we would
20 have those types of concerns.

21 Q. Did the company look at comparable
22 success fees in other cases?

23 A. We did. We certainly did do that, and
24 we did have -- we had a number of things. And
25 I'll caution you there's some documents, there's

1 Tresnowski

2 a summary, and it's a little bit -- you have to
3 take into account there was a summary of, I
4 don't know who, but the banks have put together
5 a summary and they had shared it with us,
6 Kirkland had put together a summary, and I think
7 there was a consolidated summary. We'll get all
8 these documents for you.

9 But the other thing that we had was
10 from Paul; he had sent us engagement letters
11 that they had in other engagements. So, I mean,
12 I guess here's the point I'm trying to make: We
13 looked at comparables in other situations, but
14 we also looked at what Impala did in other
15 engagements, because Impala did a range of
16 engagements. They weren't necessarily CRO-type
17 engagements. They did -- they had been involved
18 in the Consecro deal, they had been involved in
19 some of the Enron unraveling of partnership
20 deals, and, you know, if I can say, they
21 generally got very well-compensated.

22 And so it's a bit tough to compare an
23 Impala to a Wilson Alvarez, for example -- is
24 that the name? No, that's the baseball player.

25 Q. Alvarez & Marcel.

1 Tresnowski

2 A. Alvarez & Marcel.

3 Q. He's a very good baseball player this
4 year.

5 A. If I can get it in the record, the
6 Cubs yesterday.

7 MR. RATHKOPF: It may be the only
8 time.

9 A. Let's get back on track here.

10 But one of the things we struggled
11 with is they looked at the -- we looked at the
12 comparables, and you have what I call CRO firms
13 and they do CRO engagements, they do one after
14 the other, and they have a very standardized way
15 of going about it, and then you have firms that
16 don't fit the mold as well.

17 And I had talked to Paul about this,
18 and he said, you know, we do all kinds of
19 engagements. And I said, well, send me a bunch
20 of letters, send me engagement letters so I can
21 see them and get a sense. And he sent those to
22 me. And again, it was very much -- the
23 decision-making process on our end was very much
24 what are these particular folks worth in this
25 particular situation, but certainly not without

1. Tresnowski

2 regard to market comparables, because those are
3 relevant.

4 Q. Can you recall any -- first, I would
5 like to get copies of those engagement letters
6 that Paul sent to you.

7 A. Yes.

8 Q. Can you recall any of the cases that
9 you looked at for CROs of Wilson -- I mean of
10 Alvarez & Marcel or a Zulfo Cooper or somebody
11 like that that had done these types of things,
12 do you recall any cases that you -- comparables
13 that you looked at?

14 A. There was -- I mean, there was a
15 chart. I remember the MFN. I think MFN had a
16 fee of about -- I think it was about 2 and a
17 half million. I think they brought in Zulfo
18 Cooper, I believe. And they had an arrangement.
19 I generally remember that it was about \$2 and a
20 half million, although there was some success
21 kind of criteria that were in there, and that
22 was different than ours.

23 Q. They were metrics as opposed to a flat
24 fee?

25 A. They were metrics as opposed to a flat

1 Tresnowski

2 fee, and I inquired specifically about that with
3 people who had familiarity with the case and
4 said, you know, why did they do it that way, and
5 they said that, well, they're basically running
6 the company.

7 Because Paul and I had many
8 discussions, and one of them was, you know, why
9 aren't you guys -- why don't we tie it to free
10 cash flow or something, and the point they made
11 was that they weren't running the company. I
12 mean, they weren't -- unlike other cases,
13 Allegiance wasn't a case where you kick out the
14 management team, they were gone, and you brought
15 someone in to run the company and, therefore,
16 you could hold them totally responsible for
17 performance.

18 That wasn't their role. It isn't
19 their role today. So, again, it was just one of
20 those things that made us -- it made it
21 reasonable for us to think that a flat fee was
22 going to be the more realistic way to go.

23 Q. Do you recall looking at any
24 comparables where a restructuring advisory firm
25 was being brought in to do the same types of

Tresnowski

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2 tasks as Impala was being brought in the
3 Allegiance case where they received a flat fee?

4 A. I was not aware of, you know, cases
5 where that was true. I mean, it's a hard for me
6 to see that from a survey, but the -- you know,
7 again, what I had heard is that the CXO
8 management team in effect -- I'm sorry, the CTC
9 management team had effectively left and CXO was
10 in there running it. And it seemed like in the
11 vast majority of these cases that was true.

12 And I may be completely wrong about
13 this, my understanding was that WorldCom, J.
14 Alix came in to run it, and then they brought in
15 a new management team but then they had some
16 continuing role. But it was different for us,
17 because every time we looked at it, they all
18 looked like different types of engagements, and
19 I was not aware of an engagement where someone
20 was brought in with the exact same mandate that
21 we had brought Impala into our company.

22 Q. Had you asked Impala if they were
23 aware of any other cases which would be
24 comparable or whether they were engaged in other
25 cases with comparables so you would have

1 Tresnowski

2 something to look at analyzing the success fee?

3 A. Yes. I mean, I had talked to them
4 about, you know, what do you guys -- what do you
5 guys get paid for what you do? Because you're
6 the best market comparable out there, and they
7 had given us a bunch of examples where they got
8 compensated very well.

9 And some had some criteria, some
10 didn't, but it was, you know, the specific
11 discussion I recall, at least the one that was
12 influential on our decision-making process, was
13 that Impala had a different kind of way of doing
14 business. They were very selective in the cases
15 they took. They took cases where they thought
16 they could add a lot of value, where they would
17 get very senior-level involvement, in this case,
18 you know, two of the principals and an
19 associate. And they structure their fees
20 accordingly, as opposed to some of the bigger
21 shops that didn't do it that way.

22 MR. RATHKOPF: Paul has to leave, so
23 he --

24 MR. DUBLIN: Can we go off the record?

25 MR. RATHKOPF: You previously

1 Tresnowski

2 requested that copies of any letters that
3 Paul gave to Mark Tresnowski be produced.
4 We're going to object and not produce them
5 because the companies that authorized Paul
6 to give them to Allegiance did not authorize
7 that to go beyond Allegiance to be published
8 or destroy the confidentiality of those
9 engagements.

10 MR. DUBLIN: To the extent any of
11 those are a matter of public record, we
12 would like to receive those.

13 MR. RATHKOPF: That's fine.

14 (Recess; time noted: 3:29 P.M.)

15 (Time noted: 3:38 P.M.)

16 BY MR. DUBLIN:

17 Q. Mr. Tresnowski, I'm just reading from
18 the transcript here. One of the last things
19 that you mentioned was that there were three
20 people from Impala that are working on this
21 engagement?

22 A. Yes.

23 Q. Who are they?

24 A. Paul Street, Pete Keenoy, K-E-E-N-O-Y,
25 and Aamir Chinoy. I think it's C-H-I-N-O-Y.

Tresnowski

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2 I'm not sure.

3 Q. We have the names.

4 A. Okay. I know him as Aamir. They are
5 the ones working full-time in the company. I
6 don't know if there are some people behind them
7 or not.

8 Q. Do you know how much of these people,
9 the three individuals you just mentioned, their
10 respective time is spent on Allegiance?

11 A. Yes. I think it's full-time for Pete
12 and Aamir, and it may be full-time for Paul. I
13 know it's like Fridays he's back East, but he's
14 usually on the phone on this deal. So kind of
15 my impression is that this is their -- just
16 about full-time for all of them.

17 Q. So for Pete and for Aamir, they are at
18 Allegiance's offices Monday through Friday
19 during business hours?

20 A. That's my -- yes, that's my
21 understanding. But Paul is there I think four
22 days a week, three or four days a week. Then
23 they all three have offices right up across the
24 hall from Royce and Dan, so ...

25 Q. Does the company keep track of the

1 Tresnowski

2 hours that the Impala employees work?

3 A. No.

4 Q. To the best of your knowledge, does
5 Impala keep track of its hours?

6 A. I don't believe so.

7 Q. You mentioned earlier that Impala was
8 involved in the preparation of the company's
9 business plan?

10 A. Yes.

11 Q. What exactly did they do in connection
12 with the business plan?

13 A. Well, it's a fairly broad question.
14 They had a lot of input into things that went
15 into the business plan, including cost cutting,
16 but in terms of the plan itself, they in essence
17 owned the plan. They kept the model. Aamir
18 kept it on his computer, maybe Pete did as well,
19 but all of the inputs in the company came into
20 Impala. You know, my legal budget, for example,
21 went into Impala, all of the inputs on the
22 expense items, revenue items, and they would
23 take it and then, you know, interact with people
24 and come up with assumptions for areas of the
25 plan that needed assumptions and just develop,

1 Tresnowski

2 you know, typical process of developing a
3 business plan. But they were very much running
4 the process and, if you will, kind of owning the
5 model.

6 Q. Who, apart from Impala, was involved
7 in preparing the business plan?

8 A. You know, I -- it's -- I'd have to say
9 the entire senior management team was involved,
10 but I think in particular Dan Yost, Royce
11 Holland, Clay Myers, Tom Lord, I mean they were
12 all involved. The only person who was excluded
13 was our vice-president of business planning,
14 Sanji Sapi, because he's being investigated by
15 counsel, by outside counsel, so we didn't want
16 him to have any role in the process. So he's
17 not been involved.

18 Q. Did any of the company's other outside
19 advisors assist in the preparation of the
20 business plan?

21 A. Yes. Greenhill was very involved in
22 the -- you know, just to step back, there were
23 lots of inputs into the plan that Impala was
24 involved in. For example, the various task
25 forces that we have, Impala's a member of every

1 Tresnowski

2 task force. And so they're involved in all the
3 decision making that leads up to the input into
4 the plan.

5 When we got to the stage of taking all
6 of the inputs, putting a plan together, and
7 trying various assumptions and testing the
8 reasonableness of them, a Greenhill team kind of
9 moved into Dallas with the Impala team, and they
10 both worked together with our management team
11 and came up with the plan.

12 Q. Was it Impala that came up with the
13 plan and then Greenhill reviewed it with them,
14 or Greenhill actually did work on the plan with
15 Impala?

16 A. I think Greenhill did work
17 side-by-side with Impala on the plan.

18 Q. Has Impala been involved in the
19 preparation of a plan of reorganization for the
20 company?

21 A. Not directly, no.

22 Q. Has Impala been involved in working
23 with the company analyzing alternative
24 transactions?

25 A. They are getting involved in that

Tresnowski

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process.

Q. What is Impala's role to be?

A. We are, as you may know, we're looking at a couple of transactions. One, for example, is a business combination that would -- that the creditors would take interest in the combined entity, and so we're trying to develop a model what those combined companies would look like. And they're involved in looking at the combined model and really -- and I'm not an expert in financial modeling, so bear with my explanation here, but there's financial models and they have characteristics and, as I understand it, when you take another company and try and combine it and do a combined model, you got to have some consistencies in the way you categorize certain costs and the way your assumptions mesh, and so they're very instrumental on pushing those two models together and I think also making sure that the same level of detail in the stand-alone model is important to the combined model.

Q. Is Impala's job -- will Impala's job include analyzing the model and making a recommendation to the company on how to proceed

1 Tresnowski

2 with respect to the proposed transaction?

3 A. I think they will definitely have a
4 role in that. I don't know that they will --
5 you know, I think we're trying to figure that
6 out right now. I think one of the things we're
7 looking from them is -- to help us with is that
8 if, for example, a particular transaction we're
9 looking at, if both companies are cash flow
10 positive and can service debt, then, you know,
11 it looks like a good deal, you know; if they're
12 going to burn cash and not be able to service
13 debt, it's not as good of a deal. So we're just
14 trying to get a sense for that.

15 And I think our attitude is, we've got
16 Impala, we've got Greenhill, we've got smart
17 people at the company; everyone get in the room
18 here and pitch in and roll up your sleeves and
19 help us out.

20 Q. I just want to turn back to Tresnowski
21 Exhibit 1 for a moment.

22 A. Sure.

23 Q. Back to the Impala engagement letter
24 dated July 11th that we referred to.

25 A. Uh-huh.

1 Tresnowski

2 Q. Back to paragraph 5, which was their
3 role as the advisor?

4 A. Uh-huh.

5 Q. You had read into the record the --
6 four of the responsibilities that Impala would
7 have in connection with their restructuring of
8 the company.

9 A. Uh-huh.

10 Q. Which included the reduction of costs
11 and increasing efficiencies, the improvement in
12 sales productivity and profitability, management
13 of the task forces that you just mentioned, and
14 working on the long-term business strategy,
15 which I believe would be part of the business
16 plan that we just discussed.

17 A. Yes.

18 Q. In any of your meetings with Impala
19 representatives, did you ever indicate, or did
20 any representatives of Allegiance indicate, that
21 the company was in the process of analyzing ways
22 to cut costs or increase efficiencies or improve
23 sales force productivity?

24 A. Yes, we certainly did.

25 Q. And were these efforts undertaken

1 Tresnowski

2 prior to Impala being retained?

3 A. Yes.

4 Q. What had Allegiance done at the time
5 that Impala was retained to achieve those goals
6 of cutting costs and increasing efficiencies and
7 improving sales force productivity?

8 A. We have an ongoing process, as any
9 management team would do, of stepping back and
10 looking at the company and trying to improve it,
11 but specifically cost cutting was important, and
12 it's been important since, I don't know,
13 sometime in 2002, kind of increased importances,
14 and preservation of cash because it became so
15 critical and the capital markets had shut down.

16 But specifically what we had done, and
17 really I think almost simultaneous with the
18 bankruptcy filing, so it was probably almost a
19 month before Impala got formally engaged, is we
20 put task forces together and we divided up the
21 company into critical areas of focus, network
22 costs, sales and general administrative
23 expenses, the go-to-market strategy and a bunch
24 of different task forces, and we said, okay, who
25 are the kind of day-to-day experts in these

1 Tresnowski

2 areas, let's put them on the task force and then
3 let's drive progress in each one of the task
4 forces.

5 Q. Just prior to July 11th, with the
6 execution of the engagement letter by the Impala
7 company board, could you put a dollar number on
8 the amount of cost-cutting initiatives or the
9 identification of cost-cutting initiatives that
10 the company should undertake as of that time?

11 A. I think you could, and I think we did.
12 I mean, I think we were looking at something in
13 the neighborhood of \$60 million in cost cutting.

14 Q. And you had identified the company had
15 identified the way to cut those \$60 million in
16 costs?

17 A. I think, yes, generally we have for
18 each one of them.

19 Q. And since July 11th how much
20 additional cost-cutting initiatives or
21 identifying ways of cutting additional costs has
22 Impala found?

23 A. Boy, you know, it's hard to quantify
24 that because it's -- you know, that question
25 would kind of imply that Impala came in as an

Tresnowski

independent force, and what they really did was they joined into each one of the task forces and helped drive the process.

I mean, one of the things that, you know, was clear to us and one of the reasons we were interested in getting a CRO was that we could identify areas where you would reduce costs. I mean, you've got a lot of network costs, and so you're going to reduce those network costs. And you have some feel for how much you should be able to do, but someone has got to kind of take charge of that process and execute it.

I'll give you a good example. We have a lot of fiber leases, dark fiber leases with MFN and a lot of other providers, and so we can sit there and say, okay, there's a task force and one of the things we're going to do is reduce those costs on MFN. But someone needs to go out there and be a, first of all, have a real good sense for what's achievable and how to get it done and go and negotiate it and, you know, just cut a deal, and that's really what Impala has done. That's an area where Paul

Tresnowski

individually has kind of taken the lead on it.

But, you know, it's always Paul and one or two people from the company or Pete and one or two people from the company. The same thing with our headquarters lease. I think that was maybe more Pete than Paul, but it was, you know, we sat there and said, ghees, we've got a lease that we entered into three years ago, market rates have gone down, we can reject it in bankruptcy, you should be able to save X, and that's one thing, but then getting to X or getting better than X, someone's got to, you know, go around, get comparables, convince the landlord that you're serious and sit down and negotiate a deal and deliver it and then understand, while you're doing that, you know, cure costs and residual claims and how all that stuff works together.

So Impala didn't come and say, okay, you've done 60, we're going to add -- I think it was like 80. You know, we're going to add 20. What they came and said, okay, you're going to do 60, let's find out some more, but also let us kind of, you know, man the ship here and get

1 Tresnowski

2 there with you.

3 Q. Was the company's general view that
4 they would not be able to implement, fully
5 implement that 60 million and find additional
6 without a chief restructuring officer?

7 A. I don't know. We certainly thought
8 they would help a lot. You know, but if you're
9 saying, you know, would you have failed to do
10 that without them? I think we certainly -- we
11 had a concern that that would be a risk. I
12 don't think we ever think we're going to fail at
13 anything, but I think we certainly thought that
14 was a risk.

15 One of the things that was pressing
16 and, you know, I know people -- I've said this
17 to other -- to creditors and they kind of
18 question me, but there's not -- you know,
19 everyone at the company had a full-time job
20 before we went into bankruptcy. So everyone was
21 very busy doing what they were doing, and to
22 take two very experienced executives like Pete
23 and Paul and add them to your team and say your
24 job, your only real job, is to do these things
25 is tremendously helpful.

1 Tresnowski

2 And, you know, I have one creditor
3 that said, what can two guys do? What can three
4 guys do? And the answer is a tremendous amount.
5 They really do a tremendous amount. And if they
6 don't do it, could we do it? Yeah, because
7 we've done things like this before. I think the
8 problem is if you're doing that, you're not
9 doing something else. And then, you know, it's
10 hard to calculate the costs you suffer by taking
11 your eye off those other balls, so --

12 Q. You mentioned a couple of times that
13 one of the jobs for Impala was to increase
14 efficiencies. What does that mean?

15 A. You know, what they do -- it can be
16 many things, but one of the things they do is
17 they could be pretty rough guys. You know, the
18 network people come in and they will say, I can
19 reduce these circuit costs and I can get it done
20 in six months, and Paul says, that's crazy,
21 we're not waiting six months, you got 30 days.
22 I can't do it in 30 days. Well, why aren't you
23 doing it in 30 days?

24 And I got a lot of people that come
25 into my office and say, God, these guys from

Tresnowski

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2 Impala are really tough. That's kind of what
3 they do, they drive people, they test people.
4 And they're in a somewhat of a unique situation
5 where they can do that. They don't need to
6 have, you know, an ongoing business relationship
7 with a guy who's in charge of circuit costs.
8 They don't need to have an ongoing relationship
9 with the ILECS, whereas we do.

10 It's a little bit tougher for us to
11 come in and beat them over the head, or MFN, for
12 example. But Paul can do that because that's
13 his job. So he comes in and, you know, I don't
14 know if -- that's what I think of when you say
15 "drive efficiencies," basically push people
16 beyond where they think they can go and bring a
17 sense of -- what I think they do, and what you
18 don't get otherwise, is a sense of, you're in
19 bankruptcy, time is of the essence. The
20 business isn't going to function in bankruptcy
21 forever and you don't have six months, you have
22 30 days. If you can't do everything in 30 days,
23 what can you do in 30 days? And, you know,
24 that's the give and take that's going on on a
25 daily basis with them.

1 Tresnowski

2 Q. Did anyone from Impala represent to
3 you or, to your knowledge, represent to anybody
4 else in the company that they had the ability to
5 identify additional cost savings, efficiencies,
6 or productivity increases?

7 A. Did anyone from Impala -- yes, I think
8 that they were hopeful that they could identify
9 some more, and they certainly communicated that
10 to us and probably to other people.

11 Q. Have they?

12 A. I think they have. It's hard for me
13 to quantify, because you would have to calculate
14 the cumulative effect of conversations like the
15 hypothetical one I just showed you. I mean,
16 because it literally -- you know, and I'm in
17 Dallas quite a bit, so I see them, and they're
18 the first guys in there and the last guys home
19 at night. So they're sitting there all day
20 long, pushing people. And, you know, what's the
21 quantitative impact on that? I don't know. I
22 mean, I think it's meaningful, very meaningful,
23 but I don't know what it is.

24 You know, when -- I'll just, again,
25 one of the areas that I've been involved in a

1 Tresnowski

2 little bit is MFN. They say, you know, ghees, I
3 don't know if I can get them the \$43 of fiber
4 mile. Paul's like, what do you mean? Let's go
5 26. Oh, okay, 26. So it's just push them, push
6 them, push them.

7 I don't know where we're going to wind
8 up on that, but, you know, they're definitely,
9 you know, an aggressive group of guys.

10 Q. I just want to focus on a couple of
11 different things there.

12 A. Yes.

13 Q. Do you happen to know what the
14 debtors' monthly network expense was prior to
15 when Impala was retained?

16 A. I don't.

17 Q. I guess, do you know now?

18 A. No, I don't know that number.

19 Q. Do you know if it's increased or
20 decreased since Impala was retained?

21 A. I think it's decreased significantly.

22 Q. And how was the debtors' sales force
23 performing prior to Impala's retention?

24 A. I think that there was a real problem
25 with productivity, and one of the things we had

1 Tresnowski

2 heard from advisors to your committee and to the
3 banks was that, vis-a-vis other CLECS, our sales
4 force was not as productive.

5 Q. Has that changed since Impala was
6 retained?

7 A. Yes. I think productivity per head
8 has definitely increased.

9 Q. Do you think that could be attributed
10 to Impala's presence and Impala's work at the
11 company?

12 A. I don't know the answer to that. I
13 mean, the -- that's something I've looked at
14 over the years. You have, to simplify, if you
15 have 30 sales reps. in Manhattan and they're
16 selling -- I'll just make up a number -- a
17 hundred lines a month, and you go down to 20,
18 their productivity goes up kind of just by the
19 math. I mean, because there's fewer people
20 going out to get those lines.

21 And we've reduced the sales force, so
22 productivity has gone up. And how much of it is
23 what Impala did or how much of it is the, you
24 know, fewer people chasing the same number of
25 fish in the barrel, I just don't know. It would

1 Tresnowski

2 be very hard to calculate.

3 Q. Do you know what the debtors' churn
4 rate was prior to the Impala retention?

5 A. I think it was about 2.7, 2.8 percent
6 per month.

7 Q. Do you know where we are now?

8 A. We got to about 2.4 percent in May,
9 and then we went back up a little bit, and I
10 think most recently, which would probably be
11 August, it was 2.5 percent. So it's kind of
12 like 2.7, 2.8. May would dip down to 2.5 or so,
13 and then went back up to the prefiling rates and
14 then went down again in August.

15 Q. Do you have a rationale for that
16 fluctuation in the churn rate?

17 A. Well, you know, as my boss says, a
18 month doesn't make a trend, but what I would
19 like to think is that the churn is decreasing
20 and that is a trend, and that it's decreasing
21 because we are taking better credit, you know,
22 less credit risk on customers and we're
23 providing better service.

24 And my sense is that that is true,
25 that we are -- that we will see less churn in

Tresnowski

the future due to process improvements that we're making now. Although, you know, I have to weigh that against the fact that being in bankruptcy creates churn. You know, customers leave, competitors take advantage of the fact that you're in bankruptcy, and so many factors come in to influence churn, it's hard to figure out, you know, if you're making progress or not.

Q. What would you view as Impala's accomplishment to date?

A. I think that they did an excellent job in putting this -- pulling this plan together. I mean, I was really impressed that -- because we put them under a lot of pressure, especially at the end of August.

But we put together a plan that was as detailed a plan as at least this company has ever seen. We went from the market level up, from the circuit level up across a nationwide phone company, and did it in detail, and the thought that went into it and the assumptions that went into it and got a very receptive response from at least the advisors that I had talked to at both levels of the creditor group.

1 Tresnowski

2 And I think that was an accomplishment
3 because there was so much confusion, skepticism,
4 whatever you want to call it, about the
5 Allegiance business model. I mean, what's the
6 company really going do? Where is it really
7 going? Difficult -- it's a complex company in a
8 complicated market.

9 So, you know, when I go back to May
10 and I listen to the senior creditors, at least,
11 saying, this is what you need to get this thing
12 done, to get a bankruptcy done that people will
13 get on board with, and I sit here in September
14 and we have that thing, and so I say that's
15 good. Because this is a huge enterprise that's,
16 you know, there's a lot of money here at stake
17 for your clients and the senior creditors and to
18 get a foundation on which we can do a plan, you
19 know, very, very valuable. So I think that's an
20 accomplishment.

21 I think they have, again, I think they
22 have pushed the management team -- not
23 necessarily the management, the employees of the
24 company in these areas further than we would
25 have pushed them or would have known to have

1 Tresnowski

2 pushed them.

3 One of the things that -- I'm a
4 recovering lawyer, so I read books on business,
5 but one of the books I'm reading is a book
6 called "Execution." And it was interesting, it
7 says most companies fail because they don't
8 execute, not because they don't have plans.
9 Most companies have really good plans, they just
10 don't get it done.

11 And I think Impala has come in and
12 said, it doesn't work, we got to get it done,
13 here's the deadline, you got to make it happen.
14 And so taking, whether it's a 60 million or 80
15 million dollar cost reduction from a piece of
16 paper and a Power Point slide to account X in a
17 bank, that's an accomplishment.

18 Did they do that on their own? No.
19 Were they instrumental in that? I think they
20 were. But I also think, you know, you got to
21 give a lot of credit to the Dan Yosts and guys
22 like that who are in the operation team who are
23 doing that as well.

24 I think that their job's not over. I
25 think that they're going to be instrumental in

Tresnowski

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2 explaining the business to people and defending
3 their view of the business, debating other views
4 of the business, and I think that as we come
5 into the stage right now where you say, okay,
6 hopefully we're all kind of coalescing at a view
7 of the business and what it's going to do in the
8 future, and my hope is that we all, everyone
9 around the table kind of says, okay, what do you
10 want to do with this? What's the best outcome?
11 How do you maximize things for people? And I
12 think that that's, you know, of necessity going
13 to involve looking at combinations.

14 That may not be the answer. Maybe we
15 do a stand-alone thing, but look at
16 combinations, and I just think Impala's going to
17 be real central for that process, too, in terms
18 of, what do you guys think, you know. And
19 again, that's something they're starting to do
20 right now.

21 So, I'm trying to think what other
22 accomplishments. I don't know. These are the
23 main things that come to mind.

24 Q. Is there anything that you have not
25 been satisfied with as far as the work that

1 Tresnowski

2 Impala has performed?

3 A. Well, that's a tough question, because
4 I would be more satisfied if churn was 1.5
5 percent and, you know, sales were going up 20
6 percent a month. And I mean, at a real kind of
7 personal level, I think this company, you know,
8 I just think the market opportunity is so huge I
9 would just love to see more results.

10 But, you know, can Impala overcome a
11 recession and a regulatory climate that's, you
12 know, as cloudy as can be? And I don't think --
13 I'm not sure it's fair to hold them to that.
14 But, yes, I'm never satisfied in terms of what
15 can be done with the company. But I don't
16 think, you know, I would point the finger at
17 Impala for that, I think -- or at anyone. Those
18 are just circumstances.

19 But, you know, I think, again, I
20 just -- the one thing that I thought was
21 absolutely critical and that I frankly was going
22 to judge their effectiveness on was creating a
23 plan that people said, you know, that looks like
24 the plan. I mean, we may have a little bit
25 difference of assumptions here, but

1 Tresnowski

2 fundamentally in terms of the integrity, how it
3 was put together, that's the plan.

4 And my sense is everyone is sitting
5 around the table saying that, so that's the
6 first step in getting this thing done, which is
7 kind of what I wanted to do.

8 Q. Let's turn to the -- we're almost
9 done. Let's turn to the task forces that you
10 had mentioned earlier.

11 A. Sure.

12 Q. You had testified that one of Impala's
13 primary responsibilities is the management of
14 the operational task forces. That's correct?

15 A. Yes.

16 Q. And were you present at a meeting
17 between the debtors and members of the creditors
18 committee, I believe the meeting was held here
19 on June 12th, where a presentation was made with
20 respect to a number of things, including these
21 task forces?

22 A. Yes, I was.

23 Q. Do you recall who made the
24 presentation?

25 A. I believe Dan Yost was the primary

1. Tresnowski

2 presenter, and I think Royce had some things to
3 add because Royce is -- when you get to the
4 network areas, that was mainly Royce's area.

5 Q. If you can just look at the document
6 that's in front of you and just identify for me
7 what it is.

8 A. This is the written copy of the
9 presentation that was delivered at the meeting
10 you just mentioned, is what it looks like to me.

11 MR. DUBLIN: I would like to mark this
12 exhibit as Tresnowski Exhibit 3.

13 (Tresnowski Exhibit 3, written copy of
14 presentation, marked for identification, as
15 of this date.)

16 Q. If you can turn to page 7 of the
17 exhibit. Starting on page 7 and going through
18 to page 10 lists a number of task forces. Who
19 suggested that these task forces be established?

20 A. Royce and Dan.

21 Q. And who was responsible for the
22 implementation of the task forces?

23 A. I think it was Dan. I mean, the
24 concept of a task force is a classic Royce
25 Holland concept. We're going to get people to

Tresnowski

focus on it, we're going to fix this problem, and then I believe Royce was -- then said to Dan, you know, basically let's put these things together, let's have a meeting on each one of them, let's define their charter and let's get going.

Q. Did Impala suggest creation of any of the task forces?

A. Not to my knowledge.

Q. And are all these task forces still in place?

A. I think they are, yes.

Q. Since the time that Impala was engaged, have they suggested that any new task forces should be formed?

A. I don't believe so.

Q. Has Impala requested since its retention that any task forces should be done away with?

A. I don't think so.

Q. And is it your understanding that Impala has been significantly involved in the following through of these task forces with their initiatives?

1 Tresnowski

2 A. Yes, they have.

3 Q. Can you give me some examples?

4 A. They have -- I'll just go through.

5 There's many task forces, but if you look at --
6 the regulatory task force is a good example, the
7 regulatory contracts committee. One of the
8 issues there we have is what we're going to do
9 with the contracts with the Bell Telephone
10 Companies. And you know, there again, there --
11 and that's a committee that I'm involved in as
12 well.

13 You know, Pete Keenoy would be
14 involved in these meetings, and I think really
15 framing discussion, driving processes to action
16 and saying, okay, well, this is good, so who's
17 going to do what? How are we going to get it
18 done? And then, if they think it's appropriate,
19 you know, they will get directly involved.

20 The two areas that come to mind is, in
21 the real estate task force, they got directly
22 involved and negotiated with the landlord, and
23 the contracts committee, you know, they get
24 directly involved because another area where my
25 responsibilities have intersected with them is

Tresnowski

1
2 looking at our HR area, you know, why do you
3 engage -- they would go, why do you engage this
4 consultant? What do they do? Do we need them?
5 Can we get a better price? This is something
6 Impala would be saying.

7 You have got this software license.
8 What is that? Why do you need it? What would
9 it be like without it? If you didn't have it,
10 would you add half or subtract? So they kind of
11 go through with every business group and look at
12 the -- the SG & A task force is one where, you
13 know, Dan's very involved in that, but they will
14 sit down and, you know, with each business head,
15 each head of every business unit and say, you
16 know, why do you have three regulatory lawyers?
17 Can you get by with less? You know, I want to
18 understand your case as to why you're doing
19 this. So they do that.

20 They're also heavily involved -- the
21 network task force is one of the most important
22 because that's where a lot of costs are, and I
23 know they're involved in that one looking at
24 each one of our co-locations and basically
25 making people justify, you know, why do you have

Tresnowski

this facility, what are the alternatives to having the facility, and then they make recommendations. And on a number of cases they just -- we're going to close down the co-location, we're going to power it down and either abandon or sell off the equipment.

But, you know, on all these tasks forces we made it clear to them when they came in that we had these in place. I mean, if they would have done it a different way, they weren't given the chance to do that. We said, look, we got a task force in place, we've hit the ground running here, and your job is to come into our structure and add value in our structure. We understand that you might propose a different way of doing it, but, you know, we don't have to time to lose here so let's get going.

Q. If we can just run through a couple of examples.

A. Sure.

Q. If you flip to page 23.

A. Yes.

Q. It makes reference to the activities of the real estate reduction task force.

1 Tresnowski

2 A. Uh-huh.

3 Q. References the closing of five sales
4 offices?

5 A. Uh-huh.

6 Q. These are, it's my understanding,
7 offices that have been closed?

8 A. Yes.

9 Q. And they were closed as of June 12th,
10 2003?

11 A. Yes.

12 Q. Have any additional sales offices been
13 identified for closure or been closed since?

14 A. I don't think so. I don't think so.

15 Q. Has Impala suggested that sales
16 offices should be closed?

17 A. I don't believe so.

18 Q. If you flip to 25 for a second, which
19 is restructuring activities and it's field sales
20 and headcount reductions, have the headcount
21 reductions referenced here -- I assume since it
22 goes through June they have all been
23 implemented?

24 A. Yes, they have.

25 Q. Have any additional headcount

1 Tresnowski

2 reductions in the field and sales area been
3 implemented since this time?

4 A. Yeah, we did -- actually, the most
5 significant reduction in force we had was the
6 end of July, and there was some trailing amount
7 in August, but that was the big reduction in
8 force.

9 Q. Was that a headcount reduction that
10 was identified by representatives or employees
11 of the company as opposed to any outside
12 advisors?

13 A. That was -- that one, in that one,
14 Impala was intimately involved. You know, the
15 ones you're talking about here really predated
16 their involvement. I mean, this was, you know,
17 you knew you had some sales offices you could
18 get rid of and consolidate, and now that you had
19 the ability to reject real estate leases, it was
20 easy to make that decision.

21 The real tough thing was taking out an
22 additional -- I don't know whether it was 3 or
23 400 heads in July, and that was one where they,
24 you know, they were side-by-side with Dan and
25 other people going through that process.

1 Tresnowski

2 Q. If you flip to page 27, which is the
3 SG & A cost reductions?

4 A. Uh-huh.

5 Q. Have these reductions referenced here
6 been implemented?

7 A. I actually think we've done more than
8 this at this point. It says August would go
9 down to 3,232 employees. I think we're right
10 now just below 3,000. So I think we've done
11 these and some.

12 Q. Was the headcount reduction that you
13 referenced a few minutes ago for a July?

14 A. Yes.

15 Q. Included here? Referenced here?

16 A. Yes, they're included here but then
17 there were more than that. I think that's what
18 happened in July. And again, Impala's central
19 in this process. They said, you know, this
20 ain't going to get it done. We need to get
21 below 3,000.

22 I don't think that's -- I don't think
23 there was anything particular about that goal,
24 but they said we got to take more heads than
25 this out in order to get, you know, to the

1 Tresnowski

2 efficiencies we want to get to.

3 Q. How many more?

4 A. I think it was about -- again, I think
5 it's about another 230 heads from this plan.

6 Q. I just want to take a step back to
7 something we discussed at the beginning, which
8 was, and correct me if my recollection is
9 incorrect, was that you were one of the main
10 people involved in connection with the
11 negotiation of Impala's retention?

12 A. Yes.

13 Q. And the fee?

14 A. Yes.

15 Q. And I believe you had referenced that
16 you had not been involved in this type of
17 engagement before personally?

18 A. That's correct. Not a CRO, no.

19 Q. Had any member of management or of the
20 board been involved in that type of undertaking
21 before?

22 A. I don't believe so, with the possible
23 exception -- well, I don't believe anyone in
24 management had been involved in that type of
25 engagement before, including me. As to our

1 Tresnowski

2 board, I think that Jim Perry and Paul Finnegan
3 had experience with it because they had other
4 companies that had engaged people like that.
5 They had some experience.

6 Andy Lipman, who is a lawyer and is
7 involved in a lot of companies and served on a
8 lot of boards, probably has some experience. He
9 certainly -- he actually -- he seemed to know a
10 lot of the people who were CROs, so he had
11 personal knowledge of people. But beyond that,
12 I don't think so.

13 Q. It was Jim Perry and who was it, Paul?

14 A. Paul Finnegan, who was Jim's partner
15 at Madison Deerborn, was also on the board.

16 Q. What was Jim and Paul's role in
17 connection with the Impala retention?

18 A. I would say they were less involved
19 than some of the other directors. They are
20 general partners of Madison Deerborn Capital,
21 which was our largest shareholder when we into
22 bankruptcy, and so we had kind of had a habit of
23 keeping them out of some of the decisions if we
24 wanted just independent directors to focus on
25 it.

1 Tresnowski

2 And then, as we've come along here,
3 we've changed that because it doesn't look like
4 the equity holders have a conflict here, but
5 the -- so they were less involved in it.

6 It was primarily Reid Hunt, Jack
7 Goldberg, and Andy Lipman who were interviewing
8 CRO candidates and considering the process and
9 dealings with us. As a matter of fact, all
10 three of those interviewed Impala.

11 MR. DUBLIN: I don't have any more
12 questions right now. If you want to ask
13 anything --

14 MR. HENES: Yes. We'll take a step --
15 we'll go off the record.

16 (Recess; time noted: 4:21 P.M.)

17 (Time noted: 4:28 P.M.)

18 MR. RATHKOPF: I have just really one
19 question that I would like to ask.

20 EXAMINATION BY

21 MR. RATHKOPF:

22 Q. Mr. Tresnowski, when you were
23 questioned earlier, a few minutes ago, you were
24 asked about what had happened since July 11th,
25 the date of the engagement letter. Is that date

1 Tresnowski

2 the date that Impala first began to render
3 services to the company?

4 A. No, I believe they started -- I think
5 it was like the first full week of June or
6 thereabouts, but they -- we had selected them
7 and -- we had their engagement letter and we had
8 selected them, and then we wanted to go through
9 a process through our advisors and our counsel
10 to solicit the input of the unsecured creditors
11 and their counsel and the secured creditors and
12 their counsel, so -- and that took a long time.
13 But they had started working early in June.

14 Q. And by second or third week in June,
15 were they working basically full-time in Dallas?

16 A. Absolutely.

17 MR. RATHKOPF: I have no further
18 questions.

19 MR. HENES: I've got a few questions.

20 MR. DUBLIN: Okay.

21 EXAMINATION BY

22 MR. HENES:

23 Q. I believe you testified earlier that
24 the business plan, the preparation of that was
25 one of the most important parts so far of these

1 Tresnowski

2 Chapter 11 cases; is that correct?

3 A. That's correct.

4 Q. And why is the business plan so
5 important?

6 A. It's, you know, it's really the
7 foundation for a reorganization or, if it turns
8 out, you know, a sale of the company. And one
9 of the things that we learned from the process
10 we had gone through to date is that it was
11 difficult to make progress on a plan of
12 reorganization.

13 We had talked to our creditors and
14 didn't make, frankly, much progress, and the
15 reason it kept coming back to us is everyone
16 disagreed on the business plan. And so it was
17 clear to us that if that disagreement continued,
18 it would bode ill for the entire process; and
19 conversely, if you could eliminate that
20 disagreement, it would open up the process for a
21 resolution. So it was the essential piece of
22 the puzzle, as far as we were concerned.

23 Q. And they have completed that plan, as
24 you have testified?

25 A. Yes, they had largely completed that

1 Tresnowski

2 plan, you know, at the end of August. I mean,
3 we really, from the end of August, third week of
4 August to the delivery date, you know, that's
5 when you're testing and fine-tuning and, you
6 know, but basically it was done.

7 Q. If the bankruptcy court in these cases
8 confirms a plan or enters an order authorizing
9 the sale of substantially all of the debtors'
10 assets, would you deem that to be a success?

11 A. Yes. Yes, I think that -- just
12 elaborate a bit as to why. I think that it
13 makes sense, and I think I speak for the whole
14 management team in the way we view this is that
15 one thing that has been clear to us is that you
16 don't get a bankruptcy confirmed or a business
17 sold unless you have either consensus among the
18 stakeholders or you're able to weather
19 objections and overcome them. And either way,
20 that's not easy.

21 It's not easy to get a consensus, it's
22 not easy to overcome objections, but from the
23 perspective of the enterprise and keeping it
24 healthy and generating as much wealth as you
25 possibly can, getting it done is the goal.

1. Tresnowski

2 Q. And because Impala's preparation of
3 the plan is critical to that, would it be fair
4 to say that if a plan is confirmed or a sale is
5 approved by the court, that Impala was
6 successful in these cases?

7 A. Yes, I would agree with that
8 conclusion.

9 Q. Okay. In terms of the success fee,
10 there was a lot of testimony that there's no
11 metrics in it currently. By the time the
12 success fee was negotiated, where was Impala in
13 terms of the cost-cutting initiatives and the
14 preparation of the plan?

15 A. Well, they were, again, they were
16 essentially complete. And we had spent a lot of
17 time looking at this, and I'm certainly well
18 aware that there are metrics in these types of
19 engagements, in some of them, and so we spent a
20 lot of time thinking, okay, well, should we have
21 metrics? So, okay, what would the metric be?
22 Well, it would be that they would complete the
23 plan.

24 Everyone talked about that and they
25 said, okay, we'll put that in, they got to

Tresnowski

complete the plan. I said, that's kind of silly, they've already done that. What else do they have to do? They have to defend the plan and work with us to build consensus around -- and I said, just as a lawyer, I said, you want me to write that? That they're going to defend the plan and build a -- of course, they're going to do that. They're professionals, they will never get another engagement if they don't.

So, this had been going on for weeks, and we just said, look, we're making this too complicated. They have done most of what they're supposed to do, the rest of what they're going to do we're highly confident they're going to do it, let's get this thing behind us.

And besides that, you know, again, I thought it was a reasonable deal in the sense that, you know, we were talking about -- in the very first meeting with them they were talking about \$5 million and in their proposals we were looking at 5 to 8 million dollars. And so we were, you know, I think we did a pretty good job and we were down to \$2.5 million and, you know, we were kind of at that juncture where you lay a

1 Tresnowski

2 bunch of conditions on top of that.

3 And we thought about doing that very
4 thing. You got to finish the plan, you got to
5 defend it, you got to show up at work and you
6 got to -- we just said, you know, that's not
7 worth it.

8 Q. Do you recall what the initial offer
9 that Impala made for the success fee and the
10 metrics for cost cutting, do you recall what
11 they -- how that was set up?

12 A. I think it was a million dollars for
13 every \$20 million of cost cutting over the May
14 run rate, and that's when I said we had 60
15 million or 80 million, it's over the May run
16 rate that I'm talking about. So -- and I think
17 we're coming in at 80 million. It may be more
18 at the end of the day, but --

19 Q. And so based on that approximately
20 what -- if that was the deal with those metrics,
21 what would their success fee have been?

22 A. It would be at least 4 million and
23 then going up from there.

24 Q. So, based on this entire case and
25 negotiations with Impala and where the cases are

1 Tresnowski

2 today, do you believe that the \$2.5 million
3 success fee is a reasonable fee?

4 A. Yes.

5 MR. HENES: No more questions.

6 MR. DUBLIN: A couple of more
7 questions.

8 THE WITNESS: Sure.

9 EXAMINATION BY

10 MR. DUBLIN:

11 Q. If a plan is confirmed in these
12 cases --

13 A. Uh-huh.

14 Q. -- and unsecured creditors get little
15 to no recovery, is that a success?

16 A. Not for the unsecured creditors, and
17 you know, again, I guess I would come back to
18 the definition that I had before, which is that
19 to me there's two ways to get a bankruptcy done.
20 And again, I'm not the expert, but based on
21 several months' of experience, you get a
22 consensus and everyone agrees and everyone kind
23 of -- they may not get what they want, but they
24 get something they're willing to agree to.
25 That's the preferred approach.

1 Tresnowski

2 If you can't get there, people object
3 and you try to overcome those objections based
4 on the merits of the case. There's X value, and
5 it's just not enough value for everyone. And I
6 think, you know, is that a success? Yeah, it
7 may be in that -- if that's what it comes to,
8 that may be a success.

9 You know, but under either scenario --
10 I think that my view of is that, under either
11 scenario, the business plan that's been produced
12 by these kind of outsiders who came in and
13 looked at it becomes the central focus, you
14 know, because even if you disagree with it, it's
15 the model on which you can say, look, I
16 understand that model, but here's the different
17 assumptions we would make, and based on these
18 assumptions, it's worth more or whatever.

19 But it's a thing everyone looks at in
20 the middle of the table and pushes around to
21 see, you know, to focus the argument. Whereas,
22 prior to that, I don't think we had -- I mean,
23 for whatever reason, we had people saying I
24 don't even want to talk about your model, you
25 know, and that was a bad situation. So...

1 Tresnowski

2 Q. Does the debtor have a duty to
3 maximize recovery for its unsecured creditors?

4 A. I go back to Chancellory Allen. I
5 think his definition is that the debtor has a
6 duty of maximizing the wealth-generating
7 capacity of the enterprise. That's kind of my
8 litmus test. But I've read many cases and they
9 say slightly different things, so...

10 Q. So you would view it that a debtor has
11 an obligation to maximize the value of the
12 estate?

13 A. Yes.

14 Q. For the benefit of -- maximize the
15 value of the estate for the benefit of all
16 creditors?

17 A. Interestingly, he didn't say that, so
18 I don't want to get into a legal -- I mean,
19 again, I think that that, you know -- and this
20 is something we take seriously and have talked
21 about extensively, is, you know, we are trying
22 to make this enterprise as valuable as we
23 possibly can in whatever form that is, whether
24 it's stand-alone or with some other company, and
25 not an easy thing to do, but it's what we're

1 Tresnowski

2 trying to do.

3 MR. DUBLIN: Take one second.

4 We can go off the record.

5 (Pause.)

6 BY MR. DUBLIN:

7 Q. You were questioned a few minutes ago
8 by Mr. Rathkopf that, when did Impala begin to
9 work for the company?

10 A. Yes.

11 Q. And you testified that it was prior to
12 the date of the engagement letter. Do you know
13 the date as of which Impala started getting
14 compensated for the work it was performing for
15 the company?

16 A. I don't. I don't know the answer to
17 that.

18 Q. Out of the information that we looked
19 at in Exhibit 3, the task force document?

20 A. Yes.

21 Q. And the cost-cutting initiatives that
22 are set forth on there, were those prepared with
23 the input of Impala or were those prepared by
24 the debtors' management employees?

25 A. I think those had the input of Impala,

1 Tresnowski

2 is my recollection.

3 Q. It's your understanding that it
4 included additional cost-cutting initiatives and
5 identification of additional savings by Impala?

6 A. You know, I just -- I don't know the
7 nature of the input, but I have a recollection
8 that they were on board and we said we were
9 going to make this presentation and they got
10 involved in it. What they did, I just wasn't
11 directly involved, so ...

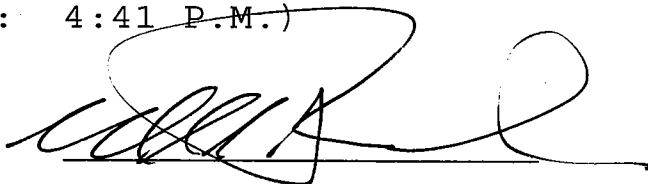
12 MR. DUBLIN: I don't have any other
13 questions.

14 THE WITNESS: Thanks.

15 (Time noted: 4:41 P.M.)

16

17

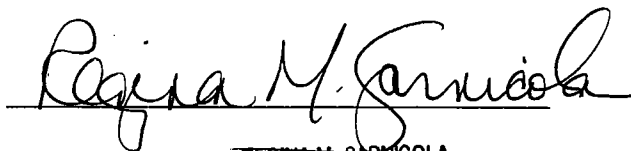


MARK TRESNOWSKI

18

19 Subscribed and sworn to
20 before me this 7th day
21 of October 2003.

21



22

~~REGINA M. SARNICOLA~~
Notary Public, State of New York

23

24

25

REGINA M. SARNICOLA
Notary Public, State of New York
No. 01SA5026825
Qualified in Nassau County
Commission Expires April 25, 19~~2006~~ 2006

1
2 CERTIFICATE
3

STATE OF NEW YORK)

4 : SS

COUNTY OF NEW YORK)

5
6 I, Kathy S. Klepfer, a Registered
7 Merit Reporter and Notary Public within and
8 for the State of New York, do hereby
9 certify:10 That MARK TRESNOWSKI, the witness
11 whose deposition is herein before set forth,
12 was duly sworn by me and that such
13 deposition is a true record of the testimony
14 given by such witness.15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage and that I am in no way
18 interested in the outcome of this matter.19 In witness whereof, I have hereunto
20 set my hand this 1st day of October, 2003.
2122 -----
KATHY S. KLEPFER, RMR
23
24
25

INDEX

TESTIMONY OF M. TRESNOWSKI: PAGE

By Mr. Dublin 5, 103

By Mr. Rathkopf 96

By Mr. Henes 97

TRESNOWSKI EXHIBITS: PAGE

Exhibit 1, Motion of Debtors Pursuant 22

to Sections 105 and 363 of the
Bankruptcy Code for Approval of Services
Agreement with Impala Partners, LLC

Exhibit 2, Notice of Hearing on Motion 41

of the Debtors Pursuant to Sections 105
and 353 of the Bankruptcy Code for
Approval of Services Agreement with
Impala Partners, LLC

Exhibit 3, written copy of presentation 86

REQUESTS FOR PRODUCTION:

Page 18, Line 9

Page 22, Line 22

Page 47, Line 17

Page 57, Line 4

Page 61, Line 10

1

2 NAME OF CASE: In re Allegiance Telecom, et al.

3 DATE OF DEPOSITION: October 1, 2003

4 NAME OF WITNESS: Mark Tresnowski

5 Reason Codes:

6 1. To clarify the record.

2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

From _____ to _____

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Page _____ Line _____ Reason _____

From _____ to _____

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11 Page _____ Line _____ Reason _____

From _____ to _____

11

12

Page _____ Line _____ Reason _____

From _____ to _____

13

14 Page _____ Line _____ Reason _____

From _____ to _____

14

15

Page _____ Line _____ Reason _____

From _____ to _____

16

17 Page _____ Line _____ Reason _____

From _____ to _____

17

18

Page _____ Line _____ Reason _____

From _____ to _____

19

20 Page _____ Line _____ Reason _____

From _____ to _____

20

21

Page _____ Line _____ Reason _____

From _____ to _____

22

23 Page _____ Line _____ Reason _____

From _____ to _____

23

24

25

MARK TRESNOWSKI

1 Tresnowski

2 or there and decided that they were chief
3 restructuring officers, and here we had a team
4 of very seasoned executives, many from General
5 Electric, but then predating that to McKinsey &
6 Company, in the case of Paul.

7 And you know, it was, frankly, it was
8 just overwhelming that we were going to get some
9 seasoned executives who have seen any number of
10 businesses in different industries and have seen
11 companies that needed to be restructured,
12 companies that had worked, and we just thought
13 we were getting a lot. So it was a very, in a
14 sense, a very short discussion. It was one of
15 those things where you say, Dan, what do you
16 think? It's easy. Clay, what do you think?
17 Royce? You know, great.

18 Q. Was the decision to retain Impala made
19 before or after a discussion of the compensation
20 arrangement for Impala?

21 A. I think it was after. My
22 recollection -- that job usually falls to me, so
23 my recollection is I talked to Paul, as I did
24 with the other candidates, and I said, okay,
25 let's talk about money. And we had a very open

1 Tresnowski

2 discussion about that, and so I had a sense for
3 what that was going to be and conveyed that to
4 the board. And so it was done prior to their
5 decision.

6 Q. I just want to show you a document
7 real quick. I have copies for everybody. I'm
8 just going to give you all at the same time and
9 I'll reference which document we use.

10 A. Great.

11 Q. The first document we would like to
12 start with is the Motion of Debtors Pursuant to
13 Sections 105 and 363 of the Bankruptcy Code for
14 Approval of Services Agreement with Impala
15 Partners, LLC.

16 Please take a moment to review the
17 document.

18 (Pause.)

19 A. Okay.

20 Q. Have you ever seen this document
21 before?

22 A. I believe so.

23 Q. What is it?

24 A. This is the -- our motion to engage
25 Impala.

1 Tresnowski

2 MR. DUBLIN: I'd like to mark this
3 exhibit as Tresnowski Exhibit 1.

4 (Tresnowski Exhibit 1, Motion of
5 Debtors Pursuant to Sections 105 and 363 of
6 the Bankruptcy Code for Approval of Services
7 Agreement with Impala Partners, LLC, marked
8 for identification, as of this date.)

9 Q. There is an exhibit to the motion.
10 We'll just refer to it as "the motion," if
11 that's okay.

12 A. Sure.

13 Q. That contains Impala's letterhead?

14 A. Yes.

15 Q. It's dated July 11, 2003?

16 A. Yes.

17 Q. Just take a second to look that over.

18 A. Yes, I'm familiar with this.

19 Q. What is it?

20 A. This is the actual engagement letter
21 that we signed with Impala.

22 Q. The version that's attached, and I
23 believe this is the document that was filed with
24 the court, is not signed. To the extent counsel
25 can provide us with a signed copy, we would

1 Tresnowski

2 appreciate getting one.

3 A. Okay.

4 Q. Were you the person primarily
5 responsible for negotiating the terms of this
6 agreement for the debtors?

7 A. Yes, I was.

8 Q. If I can ask you to turn to the -- on
9 the first page, and just go to the third
10 paragraph that's labeled "Services."

11 A. Uh-huh.

12 Q. Can you tell me what this paragraph
13 describes as what Impala's role was going to be
14 for the company?

15 A. I'm sorry, there's a paragraph labeled
16 "Services"?

17 Q. It's on the first page.

18 A. Oh, I'm sorry. Here it is. It's on
19 the first page.

20 MR. RATHKOPF: Objection to form.

21 A. I'm sorry, if you can repeat the
22 question. You want me to describe what it --
23 what the service are, or --

24 Q. If you can just tell me what this
25 paragraph says the role that CRO will perform

1 Tresnowski

2 for the company.

3 A. Well, I wouldn't be comfortable doing
4 that unless I read it into the record, but
5 it's -- it is a, you know, a complete
6 description of the services that they will
7 perform -- I'm sorry, it's not a complete
8 description, it's a description that is
9 inclusive in the sense that it has some general
10 language and then some specifics, and those
11 specifics being a reduction of costs, an
12 increase in efficiency, improvement in sales
13 productivity and profitability, management of
14 operational bankruptcy task forces established
15 by the company, and developing the company's
16 long-term business strategy.

17 Q. Is that what it says, that third
18 paragraph marked "Services," or is that just the
19 general, what you view as being the role as the
20 advisor as set forth in paragraph --

21 MR. HENES: Can I ask a question?
22 Since it's all stated here, can't we just --
23 it says what it says, right? I'm just not
24 sure why Mark has to read it.

25 MR. DUBLIN: I just want to make sure

1 Tresnowski

2 he understands that the document says what
3 it says.

4 MR. HENES: Okay. Can you just ask
5 him if he understands that? That would be
6 easier.

7 Q. Do you understand that the purpose of
8 this document was to delineate the services --
9 among other things, delineate the services that
10 Impala will be providing for the debtor?

11 A. I don't understand it to be an
12 exclusive list of the services.

13 Q. If you look, please, at, again, that
14 paragraph, third paragraph labeled "Services,"
15 can you just read into the record that first
16 sentence.

17 A. "Impala shall serve as the company's
18 chief restructuring officer and provide advice
19 and information to the company in connection
20 with the restructuring."

21 Q. And then if you can turn to page 3 and
22 look at paragraph 5.

23 A. Yes.

24 Q. That's "Role as Advisor." I believe
25 that's the paragraph you were looking at a few

1 Tresnowski

2 moments ago. Can you again read into the record
3 just the -- I think it's the tenth sentence, the
4 one that begins "Impala's primary
5 responsibility."

6 A. "Impala's primary responsibility is to
7 advise on the operational restructuring of the
8 company, including, but not limited to, (a) the
9 reduction of costs and expenses and
10 efficiencies; (b) the improvement of sales
11 productivity and profitability; (c) management
12 of the operational task forces established
13 within the company; and (4) developing the
14 company's long-term business strategy."

15 Q. Do you understand these four
16 delineated items to be the primary, I understand
17 not necessarily all of the responsibilities that
18 Impala may have for the debtors, but the primary
19 responsibilities?

20 A. I wouldn't -- no, I wouldn't say that.
21 I mean, I just -- you know, what it says is
22 their primary responsibility shall be to be the
23 operational restructuring officer, and that that
24 primary responsibility will include 1 through 4,
25 but there might be other things. And we were

1 Tresnowski

2 getting into this engagement like any
3 engagement: You want to leave some flexibility
4 and let it develop over time with the
5 circumstances. So it has a tendency to say that
6 you'll do these things and not these things.

7 Q. Do you think, broad strokes, the items
8 that are delineated here are typical or
9 commonplace of what a CRO would perform for a
10 company such as Allegiance in Chapter 11?

11 A. I really don't know.

12 Q. Again, let's go back to your initial
13 discussions that I believe, after your group had
14 coalesced around Impala, that you were then the
15 guy that was going to go negotiate with Paul and
16 with Peter to determine the fee structure and
17 the scope of the engagement.

18 In the course of these discussions,
19 did you discuss Impala's compensation or fee
20 arrangement?

21 A. Yes.

22 Q. And what was discussed with respect to
23 Impala's proposed fees?

24 A. We discussed two components: That
25 there would be a monthly fee, if you will, and

Tresnowski

then there would be some kind of a success fee. Of course, there would be expense reimbursements and indemnification and other standard provisions, but the two kind of compensation components would be the monthly fee and the success fee.

Q. Okay. Can you describe the discussions with respect to the monthly fee?

A. We discussed what they thought was appropriate. We were aware of what some monthly fees were in some other cases. We looked at that, and, you know, like good corporate stewards, we tried to get the fee reduced.

And frankly, I had a conversation with Paul where I pushed him very hard and said, you know, why this, why not some other number, and he answered that to my satisfaction. And I talked to the other managers and the board as to how he came up with that number and said that, in my opinion, I thought it was a reasonable number.

Q. You said you had looked at some other monthly fee arrangements in other cases. Do you recall the cases that you looked at?

1 Tresnowski

2 A. I know one I looked at was the
3 Metropolitan Fiber Networks, and I think the fee
4 was 275, but -- and I also had some sense for
5 what other people were charging. This is a
6 experience not unlike hiring any professionals
7 in bankruptcy. Word gets out that you're hiring
8 someone of this kind and you get lots of e-mails
9 and calls, and so I actually, whether I wanted
10 it or not, I had the benefit of talking to more
11 than just those four.

12 Someone from Wilson Alvarez called and
13 someone from Glass something called. A lot of
14 people called and, you know, and what I
15 generally said was we're -- we've narrowed down
16 our focus, we're looking for something specific,
17 but, oh, by the way, if I thought about it, what
18 do you charge? And I would get numbers -- and
19 again, I didn't record this in any way, but I
20 would get numbers that were in the 200,000,
21 300,000 dollar a month range.

22 Q. You mentioned specifically MFN,
23 MetroMedia Fiber Network?

24 A. Yes.

25 Q. Do you remember which chief

1 Tresnowski

2 restructuring officer, which firm that was?

3 A. I think that was Impala. That's why I
4 had looked at that.

5 Q. Did Impala provide you with any
6 comparables to look at?

7 A. I think Paul offered to do that. I
8 didn't -- I'm not really sure. I'm not really
9 sure.

10 Paul and I had a very frank discussion
11 about the number and what the right number was,
12 and, you know, in the context of getting a real
13 good sense from people I have talked to, looking
14 at some filings and knowing that this was
15 clearly in the ballpark, you know, I didn't want
16 to turn it into a three-week project because we
17 were in a sense of urgency to get going.

18 Q. And you just don't recall offhand,
19 other than MFN, what filings you had looked at?

20 A. I don't.

21 Q. And other than speaking with Wilson
22 Alvarez and I think it's Glass Associates --

23 A. Glass Associates, yes.

24 Q. -- you don't recall any other people
25 that you had had contacted with other than the

1 Tresnowski

2 three firms you had interviewed?

3 A. Yes. Like I said, I did talk to the
4 other three and I talked specifically about fees
5 with CXO and with Keith Maeb. I may have talked
6 to Chris Nichols at GE Capital about it as well
7 because I think Chris had done somewhat of an
8 independent search and talked to a number of
9 people, some of whom we never did talk to,
10 but --

11 Q. Do you recall the monthly fee
12 structures that were posed by any of the other
13 three candidates that the company had
14 interviewed?

15 A. I don't have a specific recollection.
16 The only recollection I have is they were in
17 this ballpark.

18 Q. They were all in the 2 --

19 A. Kind of 2, 300,000 dollar a month
20 ballpark.

21 Q. Did each of those also include a
22 component for a success fee?

23 A. Yes, they did.

24 Q. We'll go back to that later on.

25 A. Sure.

1 Tresnowski

2 Q. Were there any internal Allegiance
3 discussions about the compensation, potential
4 compensation arrangement among yourself and
5 others at the company?

6 A. Yes, there were.

7 Q. And with whom?

8 A. I know I talked to Dan and Royce about
9 it. We, you know, I mean, I think our approach
10 to this was like our approach to everything
11 else. We didn't want -- well, we've engaged a
12 lot of professionals over the course of the
13 company, and I had worked with Dan and Royce and
14 Tom in doing that, and, for better or worse, I
15 was an outside professional one time in my
16 career. So my view of this is, this project, in
17 any context is you don't want to pay more than
18 you have to pay, but if you're going to get good
19 people, you're going to pay prices that reflect
20 their experience, skills, and quality.

21 And so over the years, we have -- I
22 had a real good sense for the management team's
23 philosophy on this. Dan tends to be the most
24 frugal. He minds the budget. And so I know I
25 talked to Dan because he was working on the

1 Tresnowski

2 budget and trying to cut costs everywhere he
3 could, and I asked him about this fee and we
4 talked about it and again ultimately agreed that
5 it was reasonable.

6 Q. Did the company request any of its
7 other retained professionals, whether it's
8 attorneys or Greenhill & Company, to put
9 together some type of comparable analysis of
10 restructuring advisory retentions in Chapter 11
11 cases?

12 A. I don't recall any.

13 Q. Do you recall if either of your
14 advisors had volunteered information with
15 respect to recent fee arrangements in connection
16 with retentions of chief restructuring officers
17 in Chapter 11 cases?

18 A. I recall -- well, when I said I didn't
19 recall, I don't recall them preparing any kind
20 of written summary of comparables, but I
21 certainly recall talking to Kirkland --
22 certainly talking to Kirkland about what was
23 reasonable, you know, what they thought was
24 reasonable, and I probably talked to Mike Kramer
25 at Greenhill as well.

1 Tresnowski

2 Q. But no recollection of if you
3 definitely talked to Mike Kramer or not?

4 A. No. No. Again, I think my reference
5 point would have been, to a certain extent,
6 Kirkland, but then also to a certain extent
7 Chris Nichols at GE just because, again, this
8 whole concept was something that was introduced
9 by them and they had -- they had interviewed a
10 lot of people and had used a lot of people in
11 recent credit. So Chris seemed like someone who
12 had a lot of recent market data.

13 Q. At the time of the discussions, they
14 were before the execution of the engagement
15 letter on July 11?

16 A. Yes.

17 Q. Were there discussions with respect to
18 the success fee in addition to the monthly fee?

19 A. Yes.

20 Q. And what were those discussions?

21 A. Well, I said to Paul, what do you, you
22 know, what do you -- he made it clear there
23 would be a success fee. I didn't volunteer
24 that, but I wasn't surprised because Keith Maeb
25 at CXO had said there had also been a success

Tresnowski

fee.

I asked them -- I asked Paul specifically, I said, how do you -- you know, what's the best way to approach this? Because I don't know, every engagement's a little bit different. And he said, they are a little bit different and the best way to approach it is let us get our feet wet, let us get on the ground and let's come back to you with something that we think makes sense and negotiate something.

Q. Were there any preliminary numbers exchanged on the success fee prior to the execution of the engagement letter on July 11th?

A. Very, very informally, in the sense of, you know, could be 5 million, could be more, could be less. I mean, I think 5 million was kind of thrown out there, but it was going to -- don't really know what we're going to be faced with here. You know, I don't want to recreate the conversation because I probably would get it wrong, but I know that from talking -- and it was either with Paul or some of these other people, they get into a company and find out there was a lot more work than they thought or

1 Tresnowski

2 they would get into a company and they would
3 find out that there wasn't nearly as much work
4 as they thought. And so what they preferred to
5 do was go in and get the answers to those
6 questions and then talk about a fee that they
7 thought made sense.

8 And that was quite similar to the CXO
9 approach. They were not going to -- because I
10 pushed them too, and they said they would want
11 to wait and see what made sense there. Keith
12 Maeb had proposed something, and I think it was
13 something like 2 percent of the enterprise value
14 or something. You know, it struck me it was --
15 it was definitely like 1 and half or 2 percent
16 of the entire enterprise value upon
17 confirmation.

18 Q. I believe you testified earlier that a
19 general fee discussion was among yourself and
20 Paul?

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. That's prior to the execution of the
25 engagement letter?

1 Tresnowski

2 A. Right.

3 Q. What was, if you recall, Impala's
4 initial offer to you on the monthly fee?

5 A. On the monthly fee?

6 Q. Yes.

7 A. It was -- well, the -- I just want to
8 make it clear. I wasn't the only person they
9 talked to. I was clearly the primary person who
10 negotiated it, but Paul would have discussions
11 with Royce. I wasn't in the interviews that he
12 had with Royce and Dan and other people, so I
13 don't know what they had talked to -- talked
14 about, but the letter that came to me had 250 in
15 it.

16 Q. And that was the initial letter that
17 came to you?

18 A. That was the initial letter that came
19 to me.

20 Q. And what was the final monthly fee
21 number that was agreed upon by the company?

22 A. 250.

23 Q. 250?

24 A. Yes.

25 Q. Did the company ever seek to make a

1 Tresnowski

2 counterproposal to the 250 or, when presented
3 with the 250, accepted the 250?

4 A. I had talked to Paul and pushed back
5 and said, why 250? I mean, I'm more comfortable
6 with 200 or, you know, Greenhill's at 175, and
7 Paul said that it wasn't -- I'm just -- my
8 recollection is that Paul said something like:
9 This isn't a number I pulled out of the air,
10 here's what went into it. I've discussed this
11 with Dan and Royce.

12 And I think my approach was, look,
13 lower numbers are better than higher numbers,
14 but I'm happy to listen to your arguments and
15 I'll talk to Dan and Royce and then I'll get
16 back to you and let you know if we think this is
17 reasonable. And I did that. I said to Dan -- I
18 remember specifically talking to Dan saying,
19 what do you think about this? And, you know, we
20 just decided to come back and take that, take
21 that number.

22 Q. And the board signed off on that
23 \$250,000?

24 A. Yes.

25 Q. Do you believe that \$250,000 that was

1 Tresnowski

2 discussed reflected the market price for those
3 services to be provided?

4 A. I thought it was a reasonable price
5 under the circumstances, and the reason I answer
6 it that way is that there were -- you know, what
7 I want to stress is there was a big difference
8 in the candidates we saw, and so -- and they all
9 operated differently was the impression we
10 strongly had as a management team.

11 And one of the things with Impala that
12 we saw was an opportunity to get a, you know,
13 you would get, in one package, you would get a
14 CRO, a former kind of credit officer,
15 understands credit agreements inside and out;
16 you would get a, in Paul's case, a guy who was
17 at McKinsey for, I don't know, ten years or
18 something; and so you were getting a whole
19 bundle of things that we just clearly weren't
20 getting from the others, and that's why I say it
21 was very easy decision to make.

22 So, was it market? I don't know that
23 we even thought of it that way. Was it a fair
24 compensation for what we were getting? We
25 thought it was.

1 Tresnowski

2 Q. You said you thought it was reasonable
3 under the circumstances.

4 A. Yes.

5 Q. What were the circumstances?

6 A. What they brought to the table. We
7 thought it was a -- we were getting a lot of
8 different things. That's why, when you had
9 talked about their role, I mean, I know what I
10 thought about Paul and Pete, and I met them
11 both, I certainly didn't want to say, do these
12 things and don't do these things. If you guys
13 see other problems here, have at it, just let's
14 get as much as we can.

15 Q. I would like to turn your attention to
16 the thin document that's in front of you. It's
17 a notice of hearing on motion of the debtors
18 pursuant to Sections 105 and 363 of the
19 bankruptcy code for approval of services
20 agreement with the Impala Partners, LLC.

21 If you take a minute and just flip
22 through that.

23 A. Yes, I'm familiar with that.

24 Q. And what is it?

25 A. This is the -- it's the, what I would

1 Tresnowski
2 call is the notice of hearing to approve the
3 final success fee arrangement and the
4 modification to the monthly fees that we had
5 reached with Impala.

6 MR. DUBLIN: I would like to mark this
7 as Tresnowski Exhibit 2.

8 (Tresnowski Exhibit 2, Notice of
9 Hearing on Motion of the Debtors Pursuant to
10 Sections 105 and 353 of the Bankruptcy Code
11 for Approval of Services Agreement with
12 Impala Partners, LLC, marked for
13 identification, as of this date.)

14 Q. Were you the person primarily
15 responsible for negotiating the terms of this
16 modification to the engagement letter to the
17 debtors?

18 A. I was primarily responsible, yes.

19 Q. Who else was responsible?

20 A. Royce was involved, Dan was involved,
21 members of our board were involved. When I say
22 "involved," I mean they were considering it and
23 approving it, but I was the one taking proposals
24 back and forth and negotiating with Paul.

25 Q. If you look at page 2 of the notice --

1 Tresnowski

2 A. Yes.

3 Q. -- the second paragraph, the second
4 full paragraph on that page says "that the
5 debtors and Impala, after negotiations, have
6 agreed on the terms of a success fee."

7 A. Uh-huh.

8 Q. What do you view a success fee to be?

9 A. You know, it's a fee that you get when
10 the job's done and, you know, you have delivered
11 what you were engaged to deliver.

12 Q. Do you need to have a success in order
13 to have a success fee?

14 A. I think that's more nomenclature than
15 anything you can read a lot into. I mean,
16 there's -- as I get schooled in this process of
17 bankruptcy, a lot of people get paid what are
18 called success fees, and you know, as far as I
19 can see, they're fees that get paid at the end
20 of the case. And again, I'm not an expert, but
21 my sense is that, you know, if they have done
22 their job and delivered, you know, they get
23 that. If they haven't for some reason, if they
24 get dismissed or something, they would just take
25 whatever they got paid through that date.

1. Tresnowski

2. But I really, you know, I really view
3. the word "success" as just, you know, a label.

4. Q. What is the proposed success fee for
5. Impala in these cases?

6. A. \$2 and a half million.

7. Q. Is it your understanding that Impala
8. is entitled to the success fee upon confirmation
9. of any plan of reorganization or upon a sale of
10. substantially all of the debtors' assets?

11. A. Yes.

12. Q. Is that without regard to the
13. provisions of that plan or without -- I'm sorry,
14. without regard to the provisions of the plan?

15. A. That's correct.

16. Q. Is that without regard to any
17. consideration that may be received by the estate
18. in connection with the sale of substantially all
19. of the debtors' assets?

20. A. That is correct.

21. Q. So what exactly does Impala have to do
22. in order to earn the success fee?

23. A. They have to perform the services that
24. we engage them to perform, see the process
25. through to fruition, and then they would earn

1 Tresnowski

2 the fee.

3 Q. What are the services that the company
4 engaged them to perform?

5 A. Well, as I testified earlier, there
6 was a, you know, whole host of services, and the
7 significant -- you know, there's lots of
8 significant ones. They include helping us cut
9 costs, and last count, I think we have cut over
10 \$80 million of annual cost out of the business;
11 helping us put together a very detailed, very
12 thorough business plan and financial forecast.
13 And they have done that.

14 And they were engaged to explain that
15 forecast, defend it, and, if they did their job
16 well, establish its credibility. And again,
17 from my feedback I've gotten, they have done
18 that very well. It's been very well received.
19 And people have difference of opinion on
20 assumptions, which you would expect, but I've
21 not heard any suggestion that it was anything
22 less than what we had wanted, you know, which
23 was a very detailed, thorough, thought-out plan.

24 They have been involved in issues of
25 communication with employees, letters to

1 Tresnowski

2 customers, how do you try to retain your
3 revenue. They have been involved of late in
4 go-to-market strategy, how can you sell more
5 products and fill up the network. And so, I
6 mean, I can go back through the engagement
7 letter, but they have done all the things,
8 generally, that they have been engaged to do.
9 And they continue to do it. I mean, the
10 engagement's not over.

11 Q. But none of these -- the engagement
12 letter does not provide that any of these things
13 need to be completed in order for Impala to
14 obtain the success fee?

15 A. No. No. The success fee is only
16 contingent on a -- the confirmed plan or a sale
17 of the company.

18 Q. Who negotiated the success fee on
19 behalf of Impala?

20 A. Primarily, Paul Street.

21 Q. And did Impala make the first offer to
22 the company or did the company make an initial
23 proposal to Impala? We're talking just about
24 the success fee.

25 A. The success fee, I think Impala

1 Tresnowski

2 probably made the first proposal. They made the
3 first proposal to us and then we negotiated.

4 Q. Do you recall what the initial
5 proposal was?

6 A. Yes. It was fairly complex. It was
7 there was going to be a fee that was payable
8 based on \$20 million increments of cost
9 reduction versus the May 2003 run rate, and they
10 could have earned up to \$5 million there, but
11 the cost reduction would have had to have been I
12 think in excess of what we actually achieved.
13 So I don't know what they would have actually
14 earned, but it could have been as much as 5
15 million.

16 And then there was a fee, an
17 additional fee, that was tied to when the plan
18 got filed, and I think those two numbers would
19 add up to, you know, best case scenario,
20 something like 7 or 8 million. And then there
21 was a different fee of about 3 million if we
22 sold the company in a way that precluded them
23 from earning the other fees.

24 Q. So the 3 million is not cumulative
25 with --

1 Tresnowski

2 A. It wasn't, no, it wasn't additive to
3 the other number. I mean, we didn't draft the
4 document, but that was clearly my understanding.
5 The way we were going to draft it is that that
6 was a failsafe, if you will. If they were
7 deprived -- you know, if they had devoted all
8 their time and energy and allocated resources to
9 it, and then we sold the company out from under
10 them, that would be their compensation.

11 Q. Was this initial proposal in writing?

12 A. I think so. I mean, actually, I don't
13 know if I memorialized it in writing or if they
14 gave it to me in writing. There was a writing
15 that may have had this in it. It may have just
16 been my notes. I don't recall.

17 Q. To the extent you have those notes of
18 that writing, we would like to get a copy of
19 that as well.

20 A. Sure.

21 Q. What did the company do with this
22 initial proposal?

23 A. We immediately sat down with Pete and
24 Paul and talked about it and we asked, you know,
25 how they came up with it, what were their

1 Tresnowski

2 thoughts, and then we said, okay, we'll think
3 about it, we'll talk to the board about it.

4 And then we were also getting input
5 from the creditors at that point. I mean, this
6 was something that both the unsecured creditors
7 and the senior creditors -- secured creditors,
8 rather, were saying, you know, what are you
9 going to do about Impala, what's their fee going
10 to be, and so there was a lot of discussion
11 about it.

12 Q. What was the company's
13 counterproposal?

14 A. Unfortunately, we didn't make one.
15 Then we were, you know, we were struggling, to
16 be honest with you, to -- we wanted something
17 that was fair. I mean, there was no question in
18 our mind that they were delivering value and
19 they were going to be a very important part of
20 the process, and there was no question in our
21 mind that they were folks who could go out and
22 earn lots of money doing engagements for other
23 people. So if we couldn't come to terms with
24 them, they would go get that money someplace
25 else.

1 Tresnowski

2 So we had a real good sense of what
3 their market value was. We had a real good
4 sense of how important they were in our process.
5 And we struggled a bit, you know. We wanted to
6 make -- we wanted to avoid a fight with the
7 creditors. We wanted to do something the
8 creditors thought would be fair. So there was
9 dialogue going back and forth.

10 We spent a lot of time internally
11 debating success. You know, if you're going to
12 do a success fee -- and this was a recurring
13 theme throughout the whole bankruptcy process
14 with, you know, whether it's our own curb or
15 engagement of any professional or whatever, you
16 know, you sit there and say, well, what's
17 success?

18 And, you know, for every formulation
19 you can come up with, you can come up with
20 deficiencies in that formulation that might lead
21 you astray, that might lead you to do things
22 that weren't good for the enterprise, but they
23 were good for this constituency or vice-versa
24 and that you don't get a very satisfactory
25 response.

1 Tresnowski

2 And again, I've been through this now
3 with, you know, went through it with Greenhill,
4 and I think we struggled quite a bit. Paul and
5 I talked about it, and I think we were both
6 unhappy that we hadn't resolved it and it had
7 lingered, frankly.

8 The agreement we had with them was to
9 get them a proposal -- well, to get it done in
10 like 30 days after their engagement, and then we
11 had like a 15-day slippage where we would get
12 together and negotiate it if we had any
13 differences. And we had, somewhat unfairly to
14 Impala, we had kind of blown past those
15 deadlines, and they were still working away and
16 we were kind of getting down to the end of
17 August.

18 And I think frankly because it was
19 such a difficult issue that, you know, we
20 just -- we couldn't come to a resolution, and
21 then finally we just said, look, we got to do
22 something here. You guys are valuable, you can
23 go do things for other people and make a lot
24 more money than certainly just making your
25 monthly, and we need you guys.

Tresnowski

Our board felt adamant, absolutely adamant, that it would be a huge setback in the case if we lost Impala, and we said -- and I don't recall the exact sequence of conversations, but the gist of it was like, hey, Paul, let's do something here, let's cut a deal, let's make it simple, everyone's getting tangled up, if I can say it, in their underwear trying to figure out how do you define success, and we just said let's just cut a deal, let's just get certainty on both sides, we know what we're going to pay, you guys are, unfortunately because of circumstances and maybe because of our own delay, you guys have performed, you know, some significant percent of the work to be done.

So there wasn't a lot of risk that we weren't going to get stuff from them, because they had done it and they had lived with us for going on three months now. So we just said, after many meetings and board meetings or board, you know, individual conversations with board members, we just said, here's the deal, we've gone back and forth and back and forth and back

1 Tresnowski

2 and forth, here's the deal, we think it works,
3 they think it works, let's get on with it.

4 Q. Let's just take a step back.

5 A. Sure.

6 Q. You referenced that you went back and
7 forth and back and forth.

8 A. Uh-huh.

9 Q. And please correct me if I'm wrong, I
10 take that to mean you went back and forth on how
11 much the success fee should be?

12 A. It wasn't -- no, it wasn't a numbers
13 type of discussion. There were numbers --
14 obviously there were numbers engaged in it, but
15 it was, you know, the issue was do we put these
16 guys at risk somehow in a success formula and
17 then maybe there's a higher payout, or do we
18 have less risk at a lower payout that's certain,
19 which means we run some risk then because
20 they're going to get the payout, you know, just
21 when there's a plan. So I think the back and
22 forth was more on concepts than anything else.

23 Q. What was the debtor's reasoning in
24 removing the metric concept that Impala had
25 included in its original construction to go down

1 Tresnowski

2 to a flat fee arrangement?

3 A. Yes, that is something we didn't do
4 lightly. And I know that's not an unusual way
5 to structure these fees. The problem we had
6 with that is that -- and Impala was sensitive to
7 this too, you know -- cutting costs is not an
8 absolute good. You know, it's good up to a
9 point and then it can turn bad.

10 And you know, we had talked about,
11 well, you could just have an incentive based on
12 cost-cutting, which was kind of like their
13 proposal, and the board of directors could be
14 the governor on that, but we didn't want to
15 really get in a situation where, for example,
16 Paul said, ghees, I think we should close the
17 XYZ facility, I really think that's the right
18 thing to do, and then we would have to evaluate
19 that -- not we, but mainly the board, knowing
20 that it came out of his pocket.

21 You know, I mean, it wasn't a good
22 dynamic that we wanted to have, because we
23 hadn't -- we had worked in a very open fashion,
24 you know, where we did the right thing. That's
25 kind of the -- you do the right thing. And so I

1 Tresnowski

2 think that made us uncomfortable.

3 The same thing with getting a plan
4 filed. As I told -- in a different context I've
5 told people, I said no one wants to get a plan
6 filed faster than the people working on this
7 deal, I mean, across the board. And so I didn't
8 need -- I didn't feel like I needed an economic
9 incentive for everyone -- anyone to try to get
10 this thing done.

11 And that includes -- I mean, I know
12 the argument you can make, well, they're getting
13 a monthly fee and so the longer it goes, the
14 better, but these are guys that have got other
15 opportunities, other demands, and not something
16 I could -- didn't really have any concern about
17 them sitting around milking the engagement.
18 That was not -- I wouldn't have -- I don't think
19 we would have engaged someone where we would
20 have those types of concerns.

21 Q. Did the company look at comparable
22 success fees in other cases?

23 A. We did. We certainly did do that, and
24 we did have -- we had a number of things. And
25 I'll caution you there's some documents, there's

1 Tresnowski

2 a summary, and it's a little bit -- you have to
3 take into account there was a summary of, I
4 don't know who, but the banks have put together
5 a summary and they had shared it with us,
6 Kirkland had put together a summary, and I think
7 there was a consolidated summary. We'll get all
8 these documents for you.

9 But the other thing that we had was
10 from Paul; he had sent us engagement letters
11 that they had in other engagements. So, I mean,
12 I guess here's the point I'm trying to make: We
13 looked at comparables in other situations, but
14 we also looked at what Impala did in other
15 engagements, because Impala did a range of
16 engagements. They weren't necessarily CRO-type
17 engagements. They did -- they had been involved
18 in the Conseco deal, they had been involved in
19 some of the Enron unraveling of partnership
20 deals, and, you know, if I can say, they
21 generally got very well-compensated.

22 And so it's a bit tough to compare an
23 Impala to a Wilson Alvarez, for example -- is
24 that the name? No, that's the baseball player.

25 Q. Alvarez & Marcel.

1 Tresnowski

2 A. Alvarez & Marcel.

3 Q. He's a very good baseball player this
4 year.

5 A. If I can get it in the record, the
6 Cubs yesterday.

7 MR. RATHKOPF: It may be the only
8 time.

9 A. Let's get back on track here.

10 But one of the things we struggled
11 with is they looked at the -- we looked at the
12 comparables, and you have what I call CRO firms
13 and they do CRO engagements, they do one after
14 the other, and they have a very standardized way
15 of going about it, and then you have firms that
16 don't fit the mold as well.

17 And I had talked to Paul about this,
18 and he said, you know, we do all kinds of
19 engagements. And I said, well, send me a bunch
20 of letters, send me engagement letters so I can
21 see them and get a sense. And he sent those to
22 me. And again, it was very much -- the
23 decision-making process on our end was very much
24 what are these particular folks worth in this
25 particular situation, but certainly not without

1. Tresnowski

2 regard to market comparables, because those are
3 relevant.

4 Q. Can you recall any -- first, I would
5 like to get copies of those engagement letters
6 that Paul sent to you.

7 A. Yes.

8 Q. Can you recall any of the cases that
9 you looked at for CROs of Wilson -- I mean of
10 Alvarez & Marcel or a Zulfo Cooper or somebody
11 like that that had done these types of things,
12 do you recall any cases that you -- comparables
13 that you looked at?

14 A. There was -- I mean, there was a
15 chart. I remember the MFN. I think MFN had a
16 fee of about -- I think it was about 2 and a
17 half million. I think they brought in Zulfo
18 Cooper, I believe. And they had an arrangement.
19 I generally remember that it was about \$2 and a
20 half million, although there was some success
21 kind of criteria that were in there, and that
22 was different than ours.

23 Q. They were metrics as opposed to a flat
24 fee?

25 A. They were metrics as opposed to a flat

1 Tresnowski

2 fee, and I inquired specifically about that with
3 people who had familiarity with the case and
4 said, you know, why did they do it that way, and
5 they said that, well, they're basically running
6 the company.

7 Because Paul and I had many
8 discussions, and one of them was, you know, why
9 aren't you guys -- why don't we tie it to free
10 cash flow or something, and the point they made
11 was that they weren't running the company. I
12 mean, they weren't -- unlike other cases,
13 Allegiance wasn't a case where you kick out the
14 management team, they were gone, and you brought
15 someone in to run the company and, therefore,
16 you could hold them totally responsible for
17 performance.

18 That wasn't their role. It isn't
19 their role today. So, again, it was just one of
20 those things that made us -- it made it
21 reasonable for us to think that a flat fee was
22 going to be the more realistic way to go.

23 Q. Do you recall looking at any
24 comparables where a restructuring advisory firm
25 was being brought in to do the same types of

Tresnowski

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2 tasks as Impala was being brought in the
3 Allegiance case where they received a flat fee?

4 A. I was not aware of, you know, cases
5 where that was true. I mean, it's a hard for me
6 to see that from a survey, but the -- you know,
7 again, what I had heard is that the CXO
8 management team in effect -- I'm sorry, the CTC
9 management team had effectively left and CXO was
10 in there running it. And it seemed like in the
11 vast majority of these cases that was true.

12 And I may be completely wrong about
13 this, my understanding was that WorldCom, J.
14 Alix came in to run it, and then they brought in
15 a new management team but then they had some
16 continuing role. But it was different for us,
17 because every time we looked at it, they all
18 looked like different types of engagements, and
19 I was not aware of an engagement where someone
20 was brought in with the exact same mandate that
21 we had brought Impala into our company.

22 Q. Had you asked Impala if they were
23 aware of any other cases which would be
24 comparable or whether they were engaged in other
25 cases with comparables so you would have

1 Tresnowski

2 something to look at analyzing the success fee?

3 A. Yes. I mean, I had talked to them
4 about, you know, what do you guys -- what do you
5 guys get paid for what you do? Because you're
6 the best market comparable out there, and they
7 had given us a bunch of examples where they got
8 compensated very well.

9 And some had some criteria, some
10 didn't, but it was, you know, the specific
11 discussion I recall, at least the one that was
12 influential on our decision-making process, was
13 that Impala had a different kind of way of doing
14 business. They were very selective in the cases
15 they took. They took cases where they thought
16 they could add a lot of value, where they would
17 get very senior-level involvement, in this case,
18 you know, two of the principals and an
19 associate. And they structure their fees
20 accordingly, as opposed to some of the bigger
21 shops that didn't do it that way.

22 MR. RATHKOPF: Paul has to leave, so
23 he --

24 MR. DUBLIN: Can we go off the record?

25 MR. RATHKOPF: You previously

1 Tresnowski

2 requested that copies of any letters that
3 Paul gave to Mark Tresnowski be produced.
4 We're going to object and not produce them
5 because the companies that authorized Paul
6 to give them to Allegiance did not authorize
7 that to go beyond Allegiance to be published
8 or destroy the confidentiality of those
9 engagements.

10 MR. DUBLIN: To the extent any of
11 those are a matter of public record, we
12 would like to receive those.

13 MR. RATHKOPF: That's fine.

14 (Recess; time noted: 3:29 P.M.)

15 (Time noted: 3:38 P.M.)

16 BY MR. DUBLIN:

17 Q. Mr. Tresnowski, I'm just reading from
18 the transcript here. One of the last things
19 that you mentioned was that there were three
20 people from Impala that are working on this
21 engagement?

22 A. Yes.

23 Q. Who are they?

24 A. Paul Street, Pete Keenoy, K-E-E-N-O-Y,
25 and Aamir Chinoy. I think it's C-H-I-N-O-Y.

Tresnowski

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2 I'm not sure.

3 Q. We have the names.

4 A. Okay. I know him as Aamir. They are
5 the ones working full-time in the company. I
6 don't know if there are some people behind them
7 or not.

8 Q. Do you know how much of these people,
9 the three individuals you just mentioned, their
10 respective time is spent on Allegiance?

11 A. Yes. I think it's full-time for Pete
12 and Aamir, and it may be full-time for Paul. I
13 know it's like Fridays he's back East, but he's
14 usually on the phone on this deal. So kind of
15 my impression is that this is their -- just
16 about full-time for all of them.

17 Q. So for Pete and for Aamir, they are at
18 Allegiance's offices Monday through Friday
19 during business hours?

20 A. That's my -- yes, that's my
21 understanding. But Paul is there I think four
22 days a week, three or four days a week. Then
23 they all three have offices right up across the
24 hall from Royce and Dan, so ...

25 Q. Does the company keep track of the

1 Tresnowski

2 hours that the Impala employees work?

3 A. No.

4 Q. To the best of your knowledge, does
5 Impala keep track of its hours?

6 A. I don't believe so.

7 Q. You mentioned earlier that Impala was
8 involved in the preparation of the company's
9 business plan?

10 A. Yes.

11 Q. What exactly did they do in connection
12 with the business plan?

13 A. Well, it's a fairly broad question.
14 They had a lot of input into things that went
15 into the business plan, including cost cutting,
16 but in terms of the plan itself, they in essence
17 owned the plan. They kept the model. Aamir
18 kept it on his computer, maybe Pete did as well,
19 but all of the inputs in the company came into
20 Impala. You know, my legal budget, for example,
21 went into Impala, all of the inputs on the
22 expense items, revenue items, and they would
23 take it and then, you know, interact with people
24 and come up with assumptions for areas of the
25 plan that needed assumptions and just develop,

1 Tresnowski

2 you know, typical process of developing a
3 business plan. But they were very much running
4 the process and, if you will, kind of owning the
5 model.

6 Q. Who, apart from Impala, was involved
7 in preparing the business plan?

8 A. You know, I -- it's -- I'd have to say
9 the entire senior management team was involved,
10 but I think in particular Dan Yost, Royce
11 Holland, Clay Myers, Tom Lord, I mean they were
12 all involved. The only person who was excluded
13 was our vice-president of business planning,
14 Sanji Sapi, because he's being investigated by
15 counsel, by outside counsel, so we didn't want
16 him to have any role in the process. So he's
17 not been involved.

18 Q. Did any of the company's other outside
19 advisors assist in the preparation of the
20 business plan?

21 A. Yes. Greenhill was very involved in
22 the -- you know, just to step back, there were
23 lots of inputs into the plan that Impala was
24 involved in. For example, the various task
25 forces that we have, Impala's a member of every

1 Tresnowski

2 task force. And so they're involved in all the
3 decision making that leads up to the input into
4 the plan.

5 When we got to the stage of taking all
6 of the inputs, putting a plan together, and
7 trying various assumptions and testing the
8 reasonableness of them, a Greenhill team kind of
9 moved into Dallas with the Impala team, and they
10 both worked together with our management team
11 and came up with the plan.

12 Q. Was it Impala that came up with the
13 plan and then Greenhill reviewed it with them,
14 or Greenhill actually did work on the plan with
15 Impala?

16 A. I think Greenhill did work
17 side-by-side with Impala on the plan.

18 Q. Has Impala been involved in the
19 preparation of a plan of reorganization for the
20 company?

21 A. Not directly, no.

22 Q. Has Impala been involved in working
23 with the company analyzing alternative
24 transactions?

25 A. They are getting involved in that

Tresnowski

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process.

Q. What is Impala's role to be?

A. We are, as you may know, we're looking at a couple of transactions. One, for example, is a business combination that would -- that the creditors would take interest in the combined entity, and so we're trying to develop a model what those combined companies would look like. And they're involved in looking at the combined model and really -- and I'm not an expert in financial modeling, so bear with my explanation here, but there's financial models and they have characteristics and, as I understand it, when you take another company and try and combine it and do a combined model, you got to have some consistencies in the way you categorize certain costs and the way your assumptions mesh, and so they're very instrumental on pushing those two models together and I think also making sure that the same level of detail in the stand-alone model is important to the combined model.

Q. Is Impala's job -- will Impala's job include analyzing the model and making a recommendation to the company on how to proceed

1 Tresnowski

2 with respect to the proposed transaction?

3 A. I think they will definitely have a
4 role in that. I don't know that they will --
5 you know, I think we're trying to figure that
6 out right now. I think one of the things we're
7 looking from them is -- to help us with is that
8 if, for example, a particular transaction we're
9 looking at, if both companies are cash flow
10 positive and can service debt, then, you know,
11 it looks like a good deal, you know; if they're
12 going to burn cash and not be able to service
13 debt, it's not as good of a deal. So we're just
14 trying to get a sense for that.

15 And I think our attitude is, we've got
16 Impala, we've got Greenhill, we've got smart
17 people at the company; everyone get in the room
18 here and pitch in and roll up your sleeves and
19 help us out.

20 Q. I just want to turn back to Tresnowski
21 Exhibit 1 for a moment.

22 A. Sure.

23 Q. Back to the Impala engagement letter
24 dated July 11th that we referred to.

25 A. Uh-huh.

1 Tresnowski

2 Q. Back to paragraph 5, which was their
3 role as the advisor?

4 A. Uh-huh.

5 Q. You had read into the record the --
6 four of the responsibilities that Impala would
7 have in connection with their restructuring of
8 the company.

9 A. Uh-huh.

10 Q. Which included the reduction of costs
11 and increasing efficiencies, the improvement in
12 sales productivity and profitability, management
13 of the task forces that you just mentioned, and
14 working on the long-term business strategy,
15 which I believe would be part of the business
16 plan that we just discussed.

17 A. Yes.

18 Q. In any of your meetings with Impala
19 representatives, did you ever indicate, or did
20 any representatives of Allegiance indicate, that
21 the company was in the process of analyzing ways
22 to cut costs or increase efficiencies or improve
23 sales force productivity?

24 A. Yes, we certainly did.

25 Q. And were these efforts undertaken

Tresnowski

prior to Impala being retained?

A. Yes.

Q. What had Allegiance done at the time that Impala was retained to achieve those goals of cutting costs and increasing efficiencies and improving sales force productivity?

A. We have an ongoing process, as any management team would do, of stepping back and looking at the company and trying to improve it, but specifically cost cutting was important, and it's been important since, I don't know, sometime in 2002, kind of increased importances, and preservation of cash because it became so critical and the capital markets had shut down.

But specifically what we had done, and really I think almost simultaneous with the bankruptcy filing, so it was probably almost a month before Impala got formally engaged, is we put task forces together and we divided up the company into critical areas of focus, network costs, sales and general administrative expenses, the go-to-market strategy and a bunch of different task forces, and we said, okay, who are the kind of day-to-day experts in these

1 Tresnowski

2 areas, let's put them on the task force and then
3 let's drive progress in each one of the task
4 forces.

5 Q. Just prior to July 11th, with the
6 execution of the engagement letter by the Impala
7 company board, could you put a dollar number on
8 the amount of cost-cutting initiatives or the
9 identification of cost-cutting initiatives that
10 the company should undertake as of that time?

11 A. I think you could, and I think we did.
12 I mean, I think we were looking at something in
13 the neighborhood of \$60 million in cost cutting.

14 Q. And you had identified the company had
15 identified the way to cut those \$60 million in
16 costs?

17 A. I think, yes, generally we have for
18 each one of them.

19 Q. And since July 11th how much
20 additional cost-cutting initiatives or
21 identifying ways of cutting additional costs has
22 Impala found?

23 A. Boy, you know, it's hard to quantify
24 that because it's -- you know, that question
25 would kind of imply that Impala came in as an

Tresnowski

independent force, and what they really did was they joined into each one of the task forces and helped drive the process.

I mean, one of the things that, you know, was clear to us and one of the reasons we were interested in getting a CRO was that we could identify areas where you would reduce costs. I mean, you've got a lot of network costs, and so you're going to reduce those network costs. And you have some feel for how much you should be able to do, but someone has got to kind of take charge of that process and execute it.

I'll give you a good example. We have a lot of fiber leases, dark fiber leases with MFN and a lot of other providers, and so we can sit there and say, okay, there's a task force and one of the things we're going to do is reduce those costs on MFN. But someone needs to go out there and be a, first of all, have a real good sense for what's achievable and how to get it done and go and negotiate it and, you know, just cut a deal, and that's really what Impala has done. That's an area where Paul

Tresnowski

individually has kind of taken the lead on it.

But, you know, it's always Paul and one or two people from the company or Pete and one or two people from the company. The same thing with our headquarters lease. I think that was maybe more Pete than Paul, but it was, you know, we sat there and said, ghees, we've got a lease that we entered into three years ago, market rates have gone down, we can reject it in bankruptcy, you should be able to save X, and that's one thing, but then getting to X or getting better than X, someone's got to, you know, go around, get comparables, convince the landlord that you're serious and sit down and negotiate a deal and deliver it and then understand, while you're doing that, you know, cure costs and residual claims and how all that stuff works together.

So Impala didn't come and say, okay, you've done 60, we're going to add -- I think it was like 80. You know, we're going to add 20. What they came and said, okay, you're going to do 60, let's find out some more, but also let us kind of, you know, man the ship here and get

1 Tresnowski

2 there with you.

3 Q. Was the company's general view that
4 they would not be able to implement, fully
5 implement that 60 million and find additional
6 without a chief restructuring officer?

7 A. I don't know. We certainly thought
8 they would help a lot. You know, but if you're
9 saying, you know, would you have failed to do
10 that without them? I think we certainly -- we
11 had a concern that that would be a risk. I
12 don't think we ever think we're going to fail at
13 anything, but I think we certainly thought that
14 was a risk.

15 One of the things that was pressing
16 and, you know, I know people -- I've said this
17 to other -- to creditors and they kind of
18 question me, but there's not -- you know,
19 everyone at the company had a full-time job
20 before we went into bankruptcy. So everyone was
21 very busy doing what they were doing, and to
22 take two very experienced executives like Pete
23 and Paul and add them to your team and say your
24 job, your only real job, is to do these things
25 is tremendously helpful.

1 Tresnowski

2 And, you know, I have one creditor
3 that said, what can two guys do? What can three
4 guys do? And the answer is a tremendous amount.
5 They really do a tremendous amount. And if they
6 don't do it, could we do it? Yeah, because
7 we've done things like this before. I think the
8 problem is if you're doing that, you're not
9 doing something else. And then, you know, it's
10 hard to calculate the costs you suffer by taking
11 your eye off those other balls, so --

12 Q. You mentioned a couple of times that
13 one of the jobs for Impala was to increase
14 efficiencies. What does that mean?

15 A. You know, what they do -- it can be
16 many things, but one of the things they do is
17 they could be pretty rough guys. You know, the
18 network people come in and they will say, I can
19 reduce these circuit costs and I can get it done
20 in six months, and Paul says, that's crazy,
21 we're not waiting six months, you got 30 days.
22 I can't do it in 30 days. Well, why aren't you
23 doing it in 30 days?

24 And I got a lot of people that come
25 into my office and say, God, these guys from

Tresnowski

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2 Impala are really tough. That's kind of what
3 they do, they drive people, they test people.
4 And they're in a somewhat of a unique situation
5 where they can do that. They don't need to
6 have, you know, an ongoing business relationship
7 with a guy who's in charge of circuit costs.
8 They don't need to have an ongoing relationship
9 with the ILECS, whereas we do.

10 It's a little bit tougher for us to
11 come in and beat them over the head, or MFN, for
12 example. But Paul can do that because that's
13 his job. So he comes in and, you know, I don't
14 know if -- that's what I think of when you say
15 "drive efficiencies," basically push people
16 beyond where they think they can go and bring a
17 sense of -- what I think they do, and what you
18 don't get otherwise, is a sense of, you're in
19 bankruptcy, time is of the essence. The
20 business isn't going to function in bankruptcy
21 forever and you don't have six months, you have
22 30 days. If you can't do everything in 30 days,
23 what can you do in 30 days? And, you know,
24 that's the give and take that's going on on a
25 daily basis with them.

1 Tresnowski

2 Q. Did anyone from Impala represent to
3 you or, to your knowledge, represent to anybody
4 else in the company that they had the ability to
5 identify additional cost savings, efficiencies,
6 or productivity increases?

7 A. Did anyone from Impala -- yes, I think
8 that they were hopeful that they could identify
9 some more, and they certainly communicated that
10 to us and probably to other people.

11 Q. Have they?

12 A. I think they have. It's hard for me
13 to quantify, because you would have to calculate
14 the cumulative effect of conversations like the
15 hypothetical one I just showed you. I mean,
16 because it literally -- you know, and I'm in
17 Dallas quite a bit, so I see them, and they're
18 the first guys in there and the last guys home
19 at night. So they're sitting there all day
20 long, pushing people. And, you know, what's the
21 quantitative impact on that? I don't know. I
22 mean, I think it's meaningful, very meaningful,
23 but I don't know what it is.

24 You know, when -- I'll just, again,
25 one of the areas that I've been involved in a

1 Tresnowski

2 little bit is MFN. They say, you know, ghees, I
3 don't know if I can get them the \$43 of fiber
4 mile. Paul's like, what do you mean? Let's go
5 26. Oh, okay, 26. So it's just push them, push
6 them, push them.

7 I don't know where we're going to wind
8 up on that, but, you know, they're definitely,
9 you know, an aggressive group of guys.

10 Q. I just want to focus on a couple of
11 different things there.

12 A. Yes.

13 Q. Do you happen to know what the
14 debtors' monthly network expense was prior to
15 when Impala was retained?

16 A. I don't.

17 Q. I guess, do you know now?

18 A. No, I don't know that number.

19 Q. Do you know if it's increased or
20 decreased since Impala was retained?

21 A. I think it's decreased significantly.

22 Q. And how was the debtors' sales force
23 performing prior to Impala's retention?

24 A. I think that there was a real problem
25 with productivity, and one of the things we had

1 Tresnowski

2 heard from advisors to your committee and to the
3 banks was that, vis-a-vis other CLECS, our sales
4 force was not as productive.

5 Q. Has that changed since Impala was
6 retained?

7 A. Yes. I think productivity per head
8 has definitely increased.

9 Q. Do you think that could be attributed
10 to Impala's presence and Impala's work at the
11 company?

12 A. I don't know the answer to that. I
13 mean, the -- that's something I've looked at
14 over the years. You have, to simplify, if you
15 have 30 sales reps. in Manhattan and they're
16 selling -- I'll just make up a number -- a
17 hundred lines a month, and you go down to 20,
18 their productivity goes up kind of just by the
19 math. I mean, because there's fewer people
20 going out to get those lines.

21 And we've reduced the sales force, so
22 productivity has gone up. And how much of it is
23 what Impala did or how much of it is the, you
24 know, fewer people chasing the same number of
25 fish in the barrel, I just don't know. It would

1 Tresnowski

2 be very hard to calculate.

3 Q. Do you know what the debtors' churn
4 rate was prior to the Impala retention?

5 A. I think it was about 2.7, 2.8 percent
6 per month.

7 Q. Do you know where we are now?

8 A. We got to about 2.4 percent in May,
9 and then we went back up a little bit, and I
10 think most recently, which would probably be
11 August, it was 2.5 percent. So it's kind of
12 like 2.7, 2.8. May would dip down to 2.5 or so,
13 and then went back up to the prefiling rates and
14 then went down again in August.

15 Q. Do you have a rationale for that
16 fluctuation in the churn rate?

17 A. Well, you know, as my boss says, a
18 month doesn't make a trend, but what I would
19 like to think is that the churn is decreasing
20 and that is a trend, and that it's decreasing
21 because we are taking better credit, you know,
22 less credit risk on customers and we're
23 providing better service.

24 And my sense is that that is true,
25 that we are -- that we will see less churn in

1 Tresnowski

2 the future due to process improvements that
3 we're making now. Although, you know, I have to
4 weigh that against the fact that being in
5 bankruptcy creates churn. You know, customers
6 leave, competitors take advantage of the fact
7 that you're in bankruptcy, and so many factors
8 come in to influence churn, it's hard to figure
9 out, you know, if you're making progress or not.

10 Q. What would you view as Impala's
11 accomplishment to date?

12 A. I think that they did an excellent job
13 in putting this -- pulling this plan together.
14 I mean, I was really impressed that -- because
15 we put them under a lot of pressure, especially
16 at the end of August.

17 But we put together a plan that was as
18 detailed a plan as at least this company has
19 ever seen. We went from the market level up,
20 from the circuit level up across a nationwide
21 phone company, and did it in detail, and the
22 thought that went into it and the assumptions
23 that went into it and got a very receptive
24 response from at least the advisors that I had
25 talked to at both levels of the creditor group.

1 Tresnowski

2 And I think that was an accomplishment
3 because there was so much confusion, skepticism,
4 whatever you want to call it, about the
5 Allegiance business model. I mean, what's the
6 company really going do? Where is it really
7 going? Difficult -- it's a complex company in a
8 complicated market.

9 So, you know, when I go back to May
10 and I listen to the senior creditors, at least,
11 saying, this is what you need to get this thing
12 done, to get a bankruptcy done that people will
13 get on board with, and I sit here in September
14 and we have that thing, and so I say that's
15 good. Because this is a huge enterprise that's,
16 you know, there's a lot of money here at stake
17 for your clients and the senior creditors and to
18 get a foundation on which we can do a plan, you
19 know, very, very valuable. So I think that's an
20 accomplishment.

21 I think they have, again, I think they
22 have pushed the management team -- not
23 necessarily the management, the employees of the
24 company in these areas further than we would
25 have pushed them or would have known to have

1 Tresnowski

2 pushed them.

3 One of the things that -- I'm a
4 recovering lawyer, so I read books on business,
5 but one of the books I'm reading is a book
6 called "Execution." And it was interesting, it
7 says most companies fail because they don't
8 execute, not because they don't have plans.
9 Most companies have really good plans, they just
10 don't get it done.

11 And I think Impala has come in and
12 said, it doesn't work, we got to get it done,
13 here's the deadline, you got to make it happen.
14 And so taking, whether it's a 60 million or 80
15 million dollar cost reduction from a piece of
16 paper and a Power Point slide to account X in a
17 bank, that's an accomplishment.

18 Did they do that on their own? No.
19 Were they instrumental in that? I think they
20 were. But I also think, you know, you got to
21 give a lot of credit to the Dan Yosts and guys
22 like that who are in the operation team who are
23 doing that as well.

24 I think that their job's not over. I
25 think that they're going to be instrumental in

Tresnowski

1
2 explaining the business to people and defending
3 their view of the business, debating other views
4 of the business, and I think that as we come
5 into the stage right now where you say, okay,
6 hopefully we're all kind of coalescing at a view
7 of the business and what it's going to do in the
8 future, and my hope is that we all, everyone
9 around the table kind of says, okay, what do you
10 want to do with this? What's the best outcome?
11 How do you maximize things for people? And I
12 think that that's, you know, of necessity going
13 to involve looking at combinations.

14 That may not be the answer. Maybe we
15 do a stand-alone thing, but look at
16 combinations, and I just think Impala's going to
17 be real central for that process, too, in terms
18 of, what do you guys think, you know. And
19 again, that's something they're starting to do
20 right now.

21 So, I'm trying to think what other
22 accomplishments. I don't know. These are the
23 main things that come to mind.

24 Q. Is there anything that you have not
25 been satisfied with as far as the work that

1 Tresnowski

2 Impala has performed?

3 A. Well, that's a tough question, because
4 I would be more satisfied if churn was 1.5
5 percent and, you know, sales were going up 20
6 percent a month. And I mean, at a real kind of
7 personal level, I think this company, you know,
8 I just think the market opportunity is so huge I
9 would just love to see more results.

10 But, you know, can Impala overcome a
11 recession and a regulatory climate that's, you
12 know, as cloudy as can be? And I don't think --
13 I'm not sure it's fair to hold them to that.
14 But, yes, I'm never satisfied in terms of what
15 can be done with the company. But I don't
16 think, you know, I would point the finger at
17 Impala for that, I think -- or at anyone. Those
18 are just circumstances.

19 But, you know, I think, again, I
20 just -- the one thing that I thought was
21 absolutely critical and that I frankly was going
22 to judge their effectiveness on was creating a
23 plan that people said, you know, that looks like
24 the plan. I mean, we may have a little bit
25 difference of assumptions here, but

1 Tresnowski

2 fundamentally in terms of the integrity, how it
3 was put together, that's the plan.

4 And my sense is everyone is sitting
5 around the table saying that, so that's the
6 first step in getting this thing done, which is
7 kind of what I wanted to do.

8 Q. Let's turn to the -- we're almost
9 done. Let's turn to the task forces that you
10 had mentioned earlier.

11 A. Sure.

12 Q. You had testified that one of Impala's
13 primary responsibilities is the management of
14 the operational task forces. That's correct?

15 A. Yes.

16 Q. And were you present at a meeting
17 between the debtors and members of the creditors
18 committee, I believe the meeting was held here
19 on June 12th, where a presentation was made with
20 respect to a number of things, including these
21 task forces?

22 A. Yes, I was.

23 Q. Do you recall who made the
24 presentation?

25 A. I believe Dan Yost was the primary

1. Tresnowski

2 presenter, and I think Royce had some things to
3 add because Royce is -- when you get to the
4 network areas, that was mainly Royce's area.

5 Q. If you can just look at the document
6 that's in front of you and just identify for me
7 what it is.

8 A. This is the written copy of the
9 presentation that was delivered at the meeting
10 you just mentioned, is what it looks like to me.

11 MR. DUBLIN: I would like to mark this
12 exhibit as Tresnowski Exhibit 3.

13 (Tresnowski Exhibit 3, written copy of
14 presentation, marked for identification, as
15 of this date.)

16 Q. If you can turn to page 7 of the
17 exhibit. Starting on page 7 and going through
18 to page 10 lists a number of task forces. Who
19 suggested that these task forces be established?

20 A. Royce and Dan.

21 Q. And who was responsible for the
22 implementation of the task forces?

23 A. I think it was Dan. I mean, the
24 concept of a task force is a classic Royce
25 Holland concept. We're going to get people to

Tresnowski

focus on it, we're going to fix this problem, and then I believe Royce was -- then said to Dan, you know, basically let's put these things together, let's have a meeting on each one of them, let's define their charter and let's get going.

Q. Did Impala suggest creation of any of the task forces?

A. Not to my knowledge.

Q. And are all these task forces still in place?

A. I think they are, yes.

Q. Since the time that Impala was engaged, have they suggested that any new task forces should be formed?

A. I don't believe so.

Q. Has Impala requested since its retention that any task forces should be done away with?

A. I don't think so.

Q. And is it your understanding that Impala has been significantly involved in the following through of these task forces with their initiatives?

1 Tresnowski

2 A. Yes, they have.

3 Q. Can you give me some examples?

4 A. They have -- I'll just go through.

5 There's many task forces, but if you look at --
6 the regulatory task force is a good example, the
7 regulatory contracts committee. One of the
8 issues there we have is what we're going to do
9 with the contracts with the Bell Telephone
10 Companies. And you know, there again, there --
11 and that's a committee that I'm involved in as
12 well.

13 You know, Pete Keenoy would be
14 involved in these meetings, and I think really
15 framing discussion, driving processes to action
16 and saying, okay, well, this is good, so who's
17 going to do what? How are we going to get it
18 done? And then, if they think it's appropriate,
19 you know, they will get directly involved.

20 The two areas that come to mind is, in
21 the real estate task force, they got directly
22 involved and negotiated with the landlord, and
23 the contracts committee, you know, they get
24 directly involved because another area where my
25 responsibilities have intersected with them is

Tresnowski

1
2 looking at our HR area, you know, why do you
3 engage -- they would go, why do you engage this
4 consultant? What do they do? Do we need them?
5 Can we get a better price? This is something
6 Impala would be saying.

7 You have got this software license.
8 What is that? Why do you need it? What would
9 it be like without it? If you didn't have it,
10 would you add half or subtract? So they kind of
11 go through with every business group and look at
12 the -- the SG & A task force is one where, you
13 know, Dan's very involved in that, but they will
14 sit down and, you know, with each business head,
15 each head of every business unit and say, you
16 know, why do you have three regulatory lawyers?
17 Can you get by with less? You know, I want to
18 understand your case as to why you're doing
19 this. So they do that.

20 They're also heavily involved -- the
21 network task force is one of the most important
22 because that's where a lot of costs are, and I
23 know they're involved in that one looking at
24 each one of our co-locations and basically
25 making people justify, you know, why do you have

Tresnowski

this facility, what are the alternatives to having the facility, and then they make recommendations. And on a number of cases they just -- we're going to close down the co-location, we're going to power it down and either abandon or sell off the equipment.

But, you know, on all these tasks forces we made it clear to them when they came in that we had these in place. I mean, if they would have done it a different way, they weren't given the chance to do that. We said, look, we got a task force in place, we've hit the ground running here, and your job is to come into our structure and add value in our structure. We understand that you might propose a different way of doing it, but, you know, we don't have to time to lose here so let's get going.

Q. If we can just run through a couple of examples.

A. Sure.

Q. If you flip to page 23.

A. Yes.

Q. It makes reference to the activities of the real estate reduction task force.

1 Tresnowski

2 A. Uh-huh.

3 Q. References the closing of five sales
4 offices?

5 A. Uh-huh.

6 Q. These are, it's my understanding,
7 offices that have been closed?

8 A. Yes.

9 Q. And they were closed as of June 12th,
10 2003?

11 A. Yes.

12 Q. Have any additional sales offices been
13 identified for closure or been closed since?

14 A. I don't think so. I don't think so.

15 Q. Has Impala suggested that sales
16 offices should be closed?

17 A. I don't believe so.

18 Q. If you flip to 25 for a second, which
19 is restructuring activities and it's field sales
20 and headcount reductions, have the headcount
21 reductions referenced here -- I assume since it
22 goes through June they have all been
23 implemented?

24 A. Yes, they have.

25 Q. Have any additional headcount

1 Tresnowski

2 reductions in the field and sales area been
3 implemented since this time?

4 A. Yeah, we did -- actually, the most
5 significant reduction in force we had was the
6 end of July, and there was some trailing amount
7 in August, but that was the big reduction in
8 force.

9 Q. Was that a headcount reduction that
10 was identified by representatives or employees
11 of the company as opposed to any outside
12 advisors?

13 A. That was -- that one, in that one,
14 Impala was intimately involved. You know, the
15 ones you're talking about here really predated
16 their involvement. I mean, this was, you know,
17 you knew you had some sales offices you could
18 get rid of and consolidate, and now that you had
19 the ability to reject real estate leases, it was
20 easy to make that decision.

21 The real tough thing was taking out an
22 additional -- I don't know whether it was 3 or
23 400 heads in July, and that was one where they,
24 you know, they were side-by-side with Dan and
25 other people going through that process.

1 Tresnowski

2 Q. If you flip to page 27, which is the
3 SG & A cost reductions?

4 A. Uh-huh.

5 Q. Have these reductions referenced here
6 been implemented?

7 A. I actually think we've done more than
8 this at this point. It says August would go
9 down to 3,232 employees. I think we're right
10 now just below 3,000. So I think we've done
11 these and some.

12 Q. Was the headcount reduction that you
13 referenced a few minutes ago for a July?

14 A. Yes.

15 Q. Included here? Referenced here?

16 A. Yes, they're included here but then
17 there were more than that. I think that's what
18 happened in July. And again, Impala's central
19 in this process. They said, you know, this
20 ain't going to get it done. We need to get
21 below 3,000.

22 I don't think that's -- I don't think
23 there was anything particular about that goal,
24 but they said we got to take more heads than
25 this out in order to get, you know, to the

1 Tresnowski

2 efficiencies we want to get to.

3 Q. How many more?

4 A. I think it was about -- again, I think
5 it's about another 230 heads from this plan.

6 Q. I just want to take a step back to
7 something we discussed at the beginning, which
8 was, and correct me if my recollection is
9 incorrect, was that you were one of the main
10 people involved in connection with the
11 negotiation of Impala's retention?

12 A. Yes.

13 Q. And the fee?

14 A. Yes.

15 Q. And I believe you had referenced that
16 you had not been involved in this type of
17 engagement before personally?

18 A. That's correct. Not a CRO, no.

19 Q. Had any member of management or of the
20 board been involved in that type of undertaking
21 before?

22 A. I don't believe so, with the possible
23 exception -- well, I don't believe anyone in
24 management had been involved in that type of
25 engagement before, including me. As to our

1 Tresnowski

2 board, I think that Jim Perry and Paul Finnegan
3 had experience with it because they had other
4 companies that had engaged people like that.
5 They had some experience.

6 Andy Lipman, who is a lawyer and is
7 involved in a lot of companies and served on a
8 lot of boards, probably has some experience. He
9 certainly -- he actually -- he seemed to know a
10 lot of the people who were CROs, so he had
11 personal knowledge of people. But beyond that,
12 I don't think so.

13 Q. It was Jim Perry and who was it, Paul?

14 A. Paul Finnegan, who was Jim's partner
15 at Madison Deerborn, was also on the board.

16 Q. What was Jim and Paul's role in
17 connection with the Impala retention?

18 A. I would say they were less involved
19 than some of the other directors. They are
20 general partners of Madison Deerborn Capital,
21 which was our largest shareholder when we into
22 bankruptcy, and so we had kind of had a habit of
23 keeping them out of some of the decisions if we
24 wanted just independent directors to focus on
25 it.

1 Tresnowski

2 And then, as we've come along here,
3 we've changed that because it doesn't look like
4 the equity holders have a conflict here, but
5 the -- so they were less involved in it.

6 It was primarily Reid Hunt, Jack
7 Goldberg, and Andy Lipman who were interviewing
8 CRO candidates and considering the process and
9 dealings with us. As a matter of fact, all
10 three of those interviewed Impala.

11 MR. DUBLIN: I don't have any more
12 questions right now. If you want to ask
13 anything --

14 MR. HENES: Yes. We'll take a step --
15 we'll go off the record.

16 (Recess; time noted: 4:21 P.M.)

17 (Time noted: 4:28 P.M.)

18 MR. RATHKOPF: I have just really one
19 question that I would like to ask.

20 EXAMINATION BY

21 MR. RATHKOPF:

22 Q. Mr. Tresnowski, when you were
23 questioned earlier, a few minutes ago, you were
24 asked about what had happened since July 11th,
25 the date of the engagement letter. Is that date

1 Tresnowski

2 the date that Impala first began to render
3 services to the company?

4 A. No, I believe they started -- I think
5 it was like the first full week of June or
6 thereabouts, but they -- we had selected them
7 and -- we had their engagement letter and we had
8 selected them, and then we wanted to go through
9 a process through our advisors and our counsel
10 to solicit the input of the unsecured creditors
11 and their counsel and the secured creditors and
12 their counsel, so -- and that took a long time.
13 But they had started working early in June.

14 Q. And by second or third week in June,
15 were they working basically full-time in Dallas?

16 A. Absolutely.

17 MR. RATHKOPF: I have no further
18 questions.

19 MR. HENES: I've got a few questions.

20 MR. DUBLIN: Okay.

21 EXAMINATION BY

22 MR. HENES:

23 Q. I believe you testified earlier that
24 the business plan, the preparation of that was
25 one of the most important parts so far of these

1 Tresnowski

2 Chapter 11 cases; is that correct?

3 A. That's correct.

4 Q. And why is the business plan so
5 important?

6 A. It's, you know, it's really the
7 foundation for a reorganization or, if it turns
8 out, you know, a sale of the company. And one
9 of the things that we learned from the process
10 we had gone through to date is that it was
11 difficult to make progress on a plan of
12 reorganization.

13 We had talked to our creditors and
14 didn't make, frankly, much progress, and the
15 reason it kept coming back to us is everyone
16 disagreed on the business plan. And so it was
17 clear to us that if that disagreement continued,
18 it would bode ill for the entire process; and
19 conversely, if you could eliminate that
20 disagreement, it would open up the process for a
21 resolution. So it was the essential piece of
22 the puzzle, as far as we were concerned.

23 Q. And they have completed that plan, as
24 you have testified?

25 A. Yes, they had largely completed that

1 Tresnowski

2 plan, you know, at the end of August. I mean,
3 we really, from the end of August, third week of
4 August to the delivery date, you know, that's
5 when you're testing and fine-tuning and, you
6 know, but basically it was done.

7 Q. If the bankruptcy court in these cases
8 confirms a plan or enters an order authorizing
9 the sale of substantially all of the debtors'
10 assets, would you deem that to be a success?

11 A. Yes. Yes, I think that -- just
12 elaborate a bit as to why. I think that it
13 makes sense, and I think I speak for the whole
14 management team in the way we view this is that
15 one thing that has been clear to us is that you
16 don't get a bankruptcy confirmed or a business
17 sold unless you have either consensus among the
18 stakeholders or you're able to weather
19 objections and overcome them. And either way,
20 that's not easy.

21 It's not easy to get a consensus, it's
22 not easy to overcome objections, but from the
23 perspective of the enterprise and keeping it
24 healthy and generating as much wealth as you
25 possibly can, getting it done is the goal.

1. Tresnowski

2 Q. And because Impala's preparation of
3 the plan is critical to that, would it be fair
4 to say that if a plan is confirmed or a sale is
5 approved by the court, that Impala was
6 successful in these cases?

7 A. Yes, I would agree with that
8 conclusion.

9 Q. Okay. In terms of the success fee,
10 there was a lot of testimony that there's no
11 metrics in it currently. By the time the
12 success fee was negotiated, where was Impala in
13 terms of the cost-cutting initiatives and the
14 preparation of the plan?

15 A. Well, they were, again, they were
16 essentially complete. And we had spent a lot of
17 time looking at this, and I'm certainly well
18 aware that there are metrics in these types of
19 engagements, in some of them, and so we spent a
20 lot of time thinking, okay, well, should we have
21 metrics? So, okay, what would the metric be?
22 Well, it would be that they would complete the
23 plan.

24 Everyone talked about that and they
25 said, okay, we'll put that in, they got to

Tresnowski

complete the plan. I said, that's kind of silly, they've already done that. What else do they have to do? They have to defend the plan and work with us to build consensus around -- and I said, just as a lawyer, I said, you want me to write that? That they're going to defend the plan and build a -- of course, they're going to do that. They're professionals, they will never get another engagement if they don't.

So, this had been going on for weeks, and we just said, look, we're making this too complicated. They have done most of what they're supposed to do, the rest of what they're going to do we're highly confident they're going to do it, let's get this thing behind us.

And besides that, you know, again, I thought it was a reasonable deal in the sense that, you know, we were talking about -- in the very first meeting with them they were talking about \$5 million and in their proposals we were looking at 5 to 8 million dollars. And so we were, you know, I think we did a pretty good job and we were down to \$2.5 million and, you know, we were kind of at that juncture where you lay a

1 Tresnowski

2 bunch of conditions on top of that.

3 And we thought about doing that very
4 thing. You got to finish the plan, you got to
5 defend it, you got to show up at work and you
6 got to -- we just said, you know, that's not
7 worth it.

8 Q. Do you recall what the initial offer
9 that Impala made for the success fee and the
10 metrics for cost cutting, do you recall what
11 they -- how that was set up?

12 A. I think it was a million dollars for
13 every \$20 million of cost cutting over the May
14 run rate, and that's when I said we had 60
15 million or 80 million, it's over the May run
16 rate that I'm talking about. So -- and I think
17 we're coming in at 80 million. It may be more
18 at the end of the day, but --

19 Q. And so based on that approximately
20 what -- if that was the deal with those metrics,
21 what would their success fee have been?

22 A. It would be at least 4 million and
23 then going up from there.

24 Q. So, based on this entire case and
25 negotiations with Impala and where the cases are

1 Tresnowski

2 today, do you believe that the \$2.5 million
3 success fee is a reasonable fee?

4 A. Yes.

5 MR. HENES: No more questions.

6 MR. DUBLIN: A couple of more
7 questions.

8 THE WITNESS: Sure.

9 EXAMINATION BY

10 MR. DUBLIN:

11 Q. If a plan is confirmed in these
12 cases --

13 A. Uh-huh.

14 Q. -- and unsecured creditors get little
15 to no recovery, is that a success?

16 A. Not for the unsecured creditors, and
17 you know, again, I guess I would come back to
18 the definition that I had before, which is that
19 to me there's two ways to get a bankruptcy done.
20 And again, I'm not the expert, but based on
21 several months' of experience, you get a
22 consensus and everyone agrees and everyone kind
23 of -- they may not get what they want, but they
24 get something they're willing to agree to.
25 That's the preferred approach.

1 Tresnowski

2 If you can't get there, people object
3 and you try to overcome those objections based
4 on the merits of the case. There's X value, and
5 it's just not enough value for everyone. And I
6 think, you know, is that a success? Yeah, it
7 may be in that -- if that's what it comes to,
8 that may be a success.

9 You know, but under either scenario --
10 I think that my view of is that, under either
11 scenario, the business plan that's been produced
12 by these kind of outsiders who came in and
13 looked at it becomes the central focus, you
14 know, because even if you disagree with it, it's
15 the model on which you can say, look, I
16 understand that model, but here's the different
17 assumptions we would make, and based on these
18 assumptions, it's worth more or whatever.

19 But it's a thing everyone looks at in
20 the middle of the table and pushes around to
21 see, you know, to focus the argument. Whereas,
22 prior to that, I don't think we had -- I mean,
23 for whatever reason, we had people saying I
24 don't even want to talk about your model, you
25 know, and that was a bad situation. So...

1 Tresnowski

2 Q. Does the debtor have a duty to
3 maximize recovery for its unsecured creditors?

4 A. I go back to Chancellory Allen. I
5 think his definition is that the debtor has a
6 duty of maximizing the wealth-generating
7 capacity of the enterprise. That's kind of my
8 litmus test. But I've read many cases and they
9 say slightly different things, so...

10 Q. So you would view it that a debtor has
11 an obligation to maximize the value of the
12 estate?

13 A. Yes.

14 Q. For the benefit of -- maximize the
15 value of the estate for the benefit of all
16 creditors?

17 A. Interestingly, he didn't say that, so
18 I don't want to get into a legal -- I mean,
19 again, I think that that, you know -- and this
20 is something we take seriously and have talked
21 about extensively, is, you know, we are trying
22 to make this enterprise as valuable as we
23 possibly can in whatever form that is, whether
24 it's stand-alone or with some other company, and
25 not an easy thing to do, but it's what we're

1 Tresnowski

2 trying to do.

3 MR. DUBLIN: Take one second.

4 We can go off the record.

5 (Pause.)

6 BY MR. DUBLIN:

7 Q. You were questioned a few minutes ago
8 by Mr. Rathkopf that, when did Impala begin to
9 work for the company?

10 A. Yes.

11 Q. And you testified that it was prior to
12 the date of the engagement letter. Do you know
13 the date as of which Impala started getting
14 compensated for the work it was performing for
15 the company?

16 A. I don't. I don't know the answer to
17 that.

18 Q. Out of the information that we looked
19 at in Exhibit 3, the task force document?

20 A. Yes.

21 Q. And the cost-cutting initiatives that
22 are set forth on there, were those prepared with
23 the input of Impala or were those prepared by
24 the debtors' management employees?

25 A. I think those had the input of Impala,

1
2 CERTIFICATE
3

STATE OF NEW YORK)

4 : SS

COUNTY OF NEW YORK)

5
6 I, Kathy S. Klepfer, a Registered
7 Merit Reporter and Notary Public within and
8 for the State of New York, do hereby
9 certify:10 That MARK TRESNOWSKI, the witness
11 whose deposition is herein before set forth,
12 was duly sworn by me and that such
13 deposition is a true record of the testimony
14 given by such witness.15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage and that I am in no way
18 interested in the outcome of this matter.19 In witness whereof, I have hereunto
20 set my hand this 1st day of October, 2003.
2122 -----
KATHY S. KLEPFER, RMR
23
24
25

INDEX

TESTIMONY OF M. TRESNOWSKI: PAGE

By Mr. Dublin 5, 103

By Mr. Rathkopf 96

By Mr. Henes 97

TRESNOWSKI EXHIBITS: PAGE

Exhibit 1, Motion of Debtors Pursuant 22

to Sections 105 and 363 of the
Bankruptcy Code for Approval of Services
Agreement with Impala Partners, LLC

Exhibit 2, Notice of Hearing on Motion 41

of the Debtors Pursuant to Sections 105
and 353 of the Bankruptcy Code for
Approval of Services Agreement with
Impala Partners, LLC

Exhibit 3, written copy of presentation 86

REQUESTS FOR PRODUCTION:

Page 18, Line 9

Page 22, Line 22

Page 47, Line 17

Page 57, Line 4

Page 61, Line 10

1

2 NAME OF CASE: In re Allegiance Telecom, et al.

3 DATE OF DEPOSITION: October 1, 2003

4 NAME OF WITNESS: Mark Tresnowski

5 Reason Codes:

6 1. To clarify the record.

2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

From _____ to _____

9

Page _____ Line _____ Reason _____

From _____ to _____

10

11 Page _____ Line _____ Reason _____

From _____ to _____

11

12

Page _____ Line _____ Reason _____

From _____ to _____

13

14 Page _____ Line _____ Reason _____

From _____ to _____

14

15

Page _____ Line _____ Reason _____

From _____ to _____

16

17 Page _____ Line _____ Reason _____

From _____ to _____

17

18

Page _____ Line _____ Reason _____

From _____ to _____

19

20 Page _____ Line _____ Reason _____

From _____ to _____

20

21

Page _____ Line _____ Reason _____

From _____ to _____

22

23 Page _____ Line _____ Reason _____

From _____ to _____

23

24

25

MARK TRESNOWSKI