

# **Exhibit B**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:

ALLEGIANCE TELECOM, INC., et al.,

Debtors.

Chapter 11 Case No. 03-13057 (RDD)

Deposition of MARK TRESNOWSKI, ESQ. held  
at the offices of Sidley Austin Brown & Wood  
LLP, 787 Seventh Avenue, New York, New York,  
on Tuesday, May 18, 2004, commencing at  
9:13 a.m., before James W. Johnson, Registered  
Professional Reporter and a Notary Public of  
the State of New York.

1  
2  
3 **A P P E A R A N C E S :**

4  
5 **AKIN GUMP STRAUSS HAUER & FELD LLP**

6 Attorneys for the Official Committee

7 of Unsecured Creditors

8 590 Madison Avenue

9 New York, New York 10022-2524

10 BY: COLIN M. ADAMS, ESQ.

11 BLOSSOM KAN, ESQ.

12  
13 **SIDLEY AUSTIN BROWN & WOOD LLP**

14 Attorneys for KMC Telecom

15 787 Seventh Avenue

16 New York, New York 10019

17 BY: KIMBERLY A. JOHNS, ESQ.

18  
19 **TOGUT SEGAL & SEGAL LLP**

20 Attorneys for the Debtor

21 One Penn Plaza

22 New York, New York 10119

23 BY: GERARD DI CONZA, ESQ.

24 JONATHAN HOOK, ESQ.

1  
2  
3 IT IS HEREBY STIPULATED AND AGREED by  
4 and between the attorneys for the respective  
5 parties herein, that the filing and sealing of  
6 the within deposition be waived.

7 IT IS FURTHER STIPULATED AND AGREED that  
8 all objections, except as to the form of the  
9 question, shall be reserved to the time of the  
10 trial.

11 IT IS FURTHER STIPULATED AND AGREED that  
12 the within deposition may be sworn to and  
13 signed before any officer authorized to  
14 administer an oath with the same force and  
15 effect as if signed and sworn to before the  
16 Court.

17  
18  
19  
20  
21  
22  
23 - oOo -  
24  
25

1 Tresnowski

2 **MARK TRESNOWSKI**, called as a  
3 witness, having been first duly sworn by a  
4 Notary Public, was examined and testified  
5 under oath as follows:

6 **EXAMINATION BY MS. JOHNS:**

7 **Q. Mr. Tresnowski, did you do anything to**  
8 **prepare for today's deposition?**

9 A. I reviewed some, but not all, of the  
10 e-mails that were produced, and I've had several  
11 conversations with my attorney, Mr. DiConza.

12 **Q. The e-mails that you reviewed, were they**  
13 **produced by Allegiance?**

14 A. Yes.

15 **Q. Did you review any documents produced by**  
16 **the KMC estate?**

17 A. I don't believe so.

18 **Q. Did any of the e-mails you reviewed**  
19 **refresh your memory?**

20 A. Yes.

21 **Q. Which ones?**

22 A. The, there were several aspects of this  
23 transaction that I was involved in, and I didn't,  
24 reviewing the e-mails didn't, didn't recall the  
25 details of those involvements, but after looking at

1 Tresnowski

2 the e-mails I was able to recall what my specific  
3 role in the issues that I was focusing on was.

4 **Q. What were those aspects?**

5 A. One was, at the time we entered into a  
6 transaction that their, KMC wanted to have us  
7 contract with a company that they were just  
8 forming.

9 I think it was a limited liability  
10 company, and we had a lot of concerns about the  
11 wherewithal of that company to perform and where it  
12 fit into the KMC capital structure, and so that's  
13 something I specifically got involved in and dealt  
14 with.

15 Bill Stewart, who I believe was the  
16 chief financial officer, and Roscoe Young and Ann  
17 Falvey, who at the time was, I think she may have  
18 been a college grad at that time, but I looked at  
19 that issue. I reviewed their credit agreement to  
20 determine whether there really was a necessity to  
21 structure it that way.

22 So I was involved on that issue, and  
23 then really the other, probably, primary  
24 involvement I had in this arrangement was way after  
25 the fact, when KMC was negotiating with Level 3 to

Page 6

1                   Tresnowski  
2 have Level 3 essentially buy out and terminate what  
3 we called the PRI agreement.  
4           And the entire KMC team asked me to look  
5 at their term sheet, send me a copy of their term  
6 sheet, and then there were subsequent e-mails and  
7 discussions with Roscoe Young specifically about  
8 their, their need to continue the collocation  
9 agreement after the PRI agreement was terminated.  
10          I talked to Roscoe about that several  
11 times, and there were e-mails that I looked at that  
12 refreshed my recollection of that series of  
13 discussions.  
14       **Q. You said you spoke to Mr. Young about**  
15 **the need to continue the collocation.**  
16       **When were those conversations?**  
17       A. They were probably in the December  
18 timeframe, to the best of my recollection.  
19       **Q. Of what year?**  
20       A. I'm sorry, December of 2003.  
21       **Q. And what was the substance of those**  
22 **conversations?**  
23       A. Roscoe was very, very concerned about  
24 the possibility that the collocation agreement  
25 wouldn't continue after the PRI agreement was

Page 8

1                   Tresnowski  
2 then, to the best of my recollection, it kind of  
3 died out.  
4           My impression was that their discussions  
5 with Level 3 about a buyout, just, they couldn't  
6 close the gap on valuation, so I don't have  
7 firsthand knowledge of that, but my impression is  
8 that that avenue of solving their problem wasn't  
9 going to work, so the discussion stopped.  
10       **Q. Did you ever discuss with Mr. Young**  
11 **whether or not the PRI agreement and collocation**  
12 **agreement were integrated contracts?**  
13       A. No.  
14       **Q. Did you ever discuss that with anyone**  
15 **else?**  
16       MR. DI CONZA: I'm going to caution the  
17 witness not to divulge discussions with other  
18 employees at Allegiance if Mr. Tresnowski was  
19 acting as general counsel.  
20       A. Up until this became an issue, I don't  
21 think we ever considered that there was any  
22 possibility they were one contract.  
23       **Q. Would you please describe for me your**  
24 **education and subsequent training.**  
25       A. I went to the University of Illinois in

Page 7

1                   Tresnowski  
2 terminated.  
3           He -- I specifically recall, just  
4 because it impressed me at the time that he was  
5 willing to fly to Chicago just to meet with me on  
6 that one topic, and I was impressed that the  
7 president of the company was so concerned about it  
8 that he'd want to make a special trip, and I told  
9 him that that wasn't necessary.  
10          He talked to our chairman, Royce  
11 Holland, and that was basically it. I just knew  
12 that, for whatever reason, the continuation of the  
13 collocation agreement after the termination of the  
14 PRI agreement was critically important to KMC.  
15       **Q. What did you tell Mr. Young in these**  
16 **conversations?**  
17       A. You know, I don't have a specific  
18 recollection. I know that my concern was that he  
19 wanted to extend the term of the -- beyond its  
20 current term, and he, you know, we talked about the  
21 pricing of, what they would pay us for the  
22 collocation space, and I don't think the  
23 discussions went very far.  
24           I mean, I, as I recall, he said we would  
25 pay current market rate for, for that space, and

Page 9

1                   Tresnowski  
2 Champaign-Urbana, got a bachelor of arts in  
3 psychology and also got a CPA at the same time, and  
4 then went to the University of Virginia Law School  
5 in Charlottesville, graduated law school in 1986,  
6 and that was the end of my formal education.  
7       **Q. And how were you employed subsequent to**  
8 **graduating from law school?**  
9       A. I went directly to Kirkland & Ellis in  
10 Chicago in 1986, and became a partner there in  
11 1992. I think I became a share partner in 1995,  
12 which is a real partner, if they publicly say that,  
13 but -- and in February of 1999 I left Kirkland and  
14 joined Allegiance Telecom full-time as general  
15 counsel.  
16       **Q. While you were at Kirkland & Ellis what**  
17 **was your area of practice?**  
18       A. I would say it was corporate finance,  
19 mergers and acquisitions, corporate governance and  
20 private equity.  
21       **Q. As general counsel of Allegiance what**  
22 **were your responsibilities?**  
23       MR. DI CONZA: And, again, I'm going to  
24 caution the witness not to divulge any  
25 attorney/client privileged communications.

Tresnowski

A. The, the, my role at Allegiance was to, on the management side, to manage the legal function, the regulatory function and the human resources function, and for a period of time I also managed the real estate function.

**Q. What do you mean by "manage the legal function?"**

A. Well, I was, I was in charge of the law department so we had, you know, at various times -- it started out, we always had myself and another lawyer who was nonregulatory.

There were also regulatory lawyers, and then over time we added, I think, up to three more lawyers, up to four lawyers, a couple of legal assistants, and I tended to focus primarily on the areas of expertise, when it came to legal issues, that I had developed at Kirkland, so the corporate governance issues, did all the acquisition work, all the financing work.

I was less involved in the commercial, what I would call commercial transactions then, unless for some reason they were critical to the company.

**Q. In the period of 2001 to 2002 who at**

Tresnowski

**Allegiance was involved in the commercial transaction aspect of the legal department?**

A. The -- what we would typically do, if it was a complex commercial arrangement I'd actually use outside counsel.

There was a group that Brown and Rudnick -- I'm sorry, Piper Rudnick, different law firm, Piper Rudnick Chicago, that had developed, really, a kind of a unique expertise in telecommunications commercial transactions.

Karen O'Connor was the partner that I worked with, so I would bring Karen in on complex commercial arrangements that were, you know, particularly important to the company, and then if I had a routine-type commercial arrangement I'd generally have one of the attorneys in Dallas, like Randall Hand.

Randall's a, kind of a general commercial lawyer who's done a lot of, you know, off-the-shelf type things, and my recollection of this particular case is what I did was Karen handled the PRI agreement and Randall had separately handled the collocation agreement, because that was more of a, first of all, it was a

Tresnowski

different project.

I considered it a different project and considered it to be a routine kind of, you know, collocation is just stuff we sell. It's just kind of commodity, and Randall may have been involved in some aspects of the PRI agreement. I don't, I don't know, but I know Karen was going to run that project.

**Q. So you're typically not involved in collocation agreements?**

A. No. Not at this stage of the company. When I started I was involved in everything.

**Q. Who did you report to at Allegiance?**

A. Royce Holland, the chairman and chief executive officer.

**Q. Did you report to anyone else?**

A. No.

**Q. In 2001/2002 what was the business of Allegiance?**

A. The business was, I suppose it was probably best divided into three kind of components. One, the largest components, was providing a full suite of communication services. By that I mean local, long distance, Internet

Tresnowski

access, web hosting to small and medium enterprises, just to businesses not to residences, and not to really large corporations, generally. That was the one of the core focuses.

One of the others was what we call the wholesale business, and it really was founded on the core business.

Once you build a network throughout the major cities of America, you know, one of the things you want to do is use it as much as you can, because you've invested that capital, and so we looked for opportunities to use that network, and at the time Genuity, which was a major provider for America On Line, what Genuity did was -- American On Line doesn't own their own networks.

At least I don't think they do, so what they do is they contract out with companies so that when you dial up on AOL, you know, there's a whole system of networks that are involved in that.

Genuity handled both what we call the long-haul piece of that, but Genuity didn't have any local network, so they had to go out to people like Allegiance, companies that operated local networks, and we provided, actually, the banks of

Tresnowski

modems so that, for example, in -- I think this is a fairly accurate statistic at the time -- if you were in New York City or Chicago and you dialed an AOL number, there's a one in four chance you would dial into an Allegiance switch and an Allegiance modem and then it would hand it off to Genuity.

So that became a relatively significant part of our business. We had other wholesale customers, much smaller ones than that, where we provided services to, basically, other carriers who had a different focus in the marketplace.

And then our third business was web hosting, where we, it, essentially there's three ways to provide those type of services. One is, you have what's called a shared hosting, where several customers will share a server that's in our facilities.

The other service -- and these kind of go, you know, in order of more involvement, more expensive. The other would be dedicated hosting, where the customer would have their own server, and then finally we had what we called collocation, which is really dedicated hosting, where the customer had access and the customer would, would

Tresnowski

kind of manage the equipment on our premises, or we might manage some of the forum, but it was much more of an ownership-type arrangement.

And that -- I want to distinguish -- that's not necessarily the same collocation we're talking about with KMC. That's a word that's used a lot in the industry and can mean just, you know, people have equipment on your premises, they'll call it collocation.

When I'm using it there, I'm specifically talking about web hosting, where you're hosting a web site, so those were, those were our key businesses at that, at that time.

**Q. Are you familiar with KMC?**

A. Yes.

**Q. When did you first become familiar with KMC?**

A. I had a general notion that they were another CLIC out there in the market, and my first real involvement with them was this transaction.

**Q. When did you first become involved in the transaction?**

A. I don't recall the specific date, but I do recall there was a meeting in Dallas with

Tresnowski

Roscoe, and I recall it was the first time I'd met Roscoe and Kevin Bittner. I believe Royce was, he may have been there for part of the meeting. I'm not sure, and, to be honest with you, I don't, I don't recall who else was in the meeting from Allegiance.

**Q. Do you remember approximately when this meeting occurred?**

A. Yeah, I'm sorry, I just, I don't. It was at the beginning of the process. It was -- the -- the rough agenda of the meeting was, you know, we had, we were entering into an amended agreement Level 3 that I was very involved in and that was going to significantly expand the number of markets and the extent in the markets that we provided service to Genuity.

I said Level 3; I meant Genuity, that We were going to expand the Genuity contract, and part of the expanse was to go into, have service in some of the markets where we didn't have a network, so we, we had a need for either getting a subcontractor or building a network in those markets.

And we were, we had, someone approached

Tresnowski

KMC. I'm not sure if they approached us or we approached them, but we were talking to them about whether there was a mutually beneficial way in which they could provide that service, so it was one of those kind of high-level, you know, "does this make sense" type meetings.

**Q. What was the result of this meeting?**

A. I think there was, I think there was no conclusion. I think it was, my recollection is that there was, there was --

MR. DI CONZA: I don't want the witness to speculate here. Only if you know.

A. I know, I mean, I know the focus of the meeting was on the economics of the transaction, and by that I mean the pricing of the PRI services and whether, you know, whether we could make money and they could make money and whether those numbers were the same, and I don't think there was a conclusion at that meeting.

**Q. What were the pricing, what pricing was discussed?**

A. The -- I recall that the pricing discussions were really focused on, on one, one thing, because it's a very, it's a very simple

1                   Tresnowski  
2 business arrangement.  
3           We get paid a certain amount per modem  
4 by Genuity, and then, you know, KMC would charge us  
5 a certain amount, so you had to have a sufficient  
6 margin in there to make it worth your while, and  
7 KMC had to have a sufficient margin in there to  
8 make it worth their while.  
9           And I think that was, I specifically  
10 recall the time is, depending on where that number  
11 came out, we said maybe we should build our own  
12 networks or maybe we should have these guys do it,  
13 so it was all focused on the modem pricing. That's  
14 my recollection.  
15           I mean, I, I'm not a technology expert,  
16 so I may, I may have misunderstood what they were  
17 talking about, but that's my recollection.  
18       **Q. Do you recall what the specific prices**  
19 **that were discussed were?**  
20       A. No.  
21       **Q. What was the sufficient margins that**  
22 **Allegiance needed to make it worthwhile?**  
23       A. Yeah, I don't know exactly what it was,  
24 but I do know that that was the issue, because,  
25 again, I specifically remember talking -- this was

1                   Tresnowski  
2           I know Karen O'Connor was involved,  
3 because I would -- at that point I really kind of  
4 just focused on other things and got reinvolved  
5 when this issue came up about, you know, the  
6 special entity they were setting up, but really  
7 relied on Karen to manage the legal aspects of the  
8 deal.  
9       **Q. Any particular reason why you became**  
10 **less involved?**  
11       A. I'd have to see what's was going on, but  
12 it's, it was, it was probably just a time  
13 management issue.  
14           In other words, the, the things I tended  
15 to not delegate at all were issues like  
16 acquisitions, and we did a lot of acquisitions. We  
17 did, I think, 13 of them, and so I was very focused  
18 on that, very focused on all the SEC obligations  
19 and filings, financings, and so I don't recall  
20 there being any reason, other than just it was in  
21 good hands.  
22           I was going to focus on some other  
23 things. Karen is a lawyer I think very highly of,  
24 so I tended to, if I was going to -- I don't want  
25 to offend any of my colleagues in private practice,

1                   Tresnowski  
2 not a legal issue -- just talking about at what  
3 point are you not making enough money so that it  
4 would actually make sense to raise the capital and  
5 actually build those networks yourself.  
6       **Q. And you said that there were discussions**  
7 **that KMC needed to make a sufficient margin on the**  
8 **transaction as well?**  
9       A. I don't know if there were specific  
10 discussions on that. I mean, I think that was just  
11 my recollection of, the nature of the meeting was  
12 basically one of those meetings where Roscoe, I  
13 think, you know, was kind of, the message was, hey,  
14 if this makes sense, if we can both make money,  
15 we'll do a deal; if we can't, we won't do a deal.  
16       **Q. Did KMC and Allegiance continue to**  
17 **discuss a possible business relationship after this**  
18 **meeting?**  
19       A. Yes, they did.  
20       **Q. Who was involved in those discussions?**  
21       A. I'll answer in the negative. I became  
22 less involved, and I don't have a real clear  
23 recollection, other than reading the e-mails that  
24 indicate that John Nishimoto was involved. Jeff  
25 Feinberg was involved.

1                   Tresnowski  
2 but if I was going to spend the money I was going  
3 to just rely on her, and it didn't make any sense  
4 for me to spend my time when I had to hire someone  
5 from the outside come in and take over.  
6       **Q. At this meeting in Dallas that you**  
7 **mentioned, did the topic of co-location space come**  
8 **up?**  
9       A. I don't recall that it came up. And let  
10 me be specific about that. I recall the meeting,  
11 and I don't recall that being discussed. It's not  
12 that I don't recall what was discussed, but, to my  
13 knowledge, that never was discussed.  
14       **Q. When was the subject of collocation**  
15 **space provided by Allegiance first discussed**  
16 **between the parties?**  
17       A. I don't know.  
18       **Q. Were you involved in any discussions**  
19 **regarding co-location?**  
20       A. I don't recall any. Not during the  
21 documentation of the transactions; just subsequent  
22 to them, as I said, like December of 2003.  
23       **Q. Were you involved in any discussions**  
24 **regarding the pricing of collocation space?**  
25       A. Not to my recollection.

Page 22

1                   Tresnowski

2     **Q. Who is Peter Swenson?**

3     A. I don't know.

4     **Q. Prior to the execution of the**

5 **collocation agreement did you review that**

6 **agreement?**

7     A. I don't recall reviewing it, and it

8 would have been unusual for me to review an

9 agreement like that, I think, just because it was a

10 routine agreement.

11    **Q. Did you have any discussions regarding**

12 **Allegiance's provision of collocation space to KMC**

13 **at no cost?**

14       MR. DI CONZA: I'm going to just caution

15 the witness not to divulge any attorney/

16 client communications.

17    A. Again, I -- the, at the -- if we could

18 bifurcate time into after this dispute arose and

19 before this dispute arose, before this dispute

20 arose I don't recall having any discussion with

21 them. After that I did, but I think those are

22 probably all privileged.

23    **Q. Whose responsibility is it to set**

24 **collocation prices?**

25    A. The -- a lot of people actually are

Page 24

1                   Tresnowski

2       MR. DI CONZA: I don't want the witness

3 to speculate here.

4    A. I don't know. I don't know.

5    **Q. Other than KMC, has Allegiance ever**

6 **entered into a collocation agreement where it**

7 **agreed to provide collocation space for free?**

8       MR. DI CONZA: Objection to form.

9    A. I, I don't know.

10       (KMC Exhibit 1, Primary Rate Interface

11 Services Agreement between Allegiance Telecom

12 Company Worldwide and KMC Telecom XI, LLC,

13 marked for identification.)

14    **Q. The court reporter has handed you what's**

15 **been marked as KMC Exhibit 1. Could you take a**

16 **moment --**

17    A. Sure.

18    **Q. -- and look at it, and tell me if you're**

19 **familiar with this document.**

20    A. Yes, I'm familiar with this document.

21    **Q. And what is this document?**

22    A. This is what we refer to as the PRI

23 agreement with KMC Telecom.

24    **Q. Are you familiar with the terms of this**

25 **agreement?**

Page 23

1                   Tresnowski

2 involved in pricing decisions at the company, at

3 the -- but it's a very informal process as well, so

4 the people working on the transaction, like a Jeff

5 Feinberg or John Dumbleton or John Nishimoto would

6 have some degree of authority to set a price like

7 that.

8       I think that, you know, there are

9 general, general notions about what were the right

10 levels at which to sell, you know, again,

11 commodity-type services. You know, we're going to

12 sell long distance service.

13       Here's what we charge if someone wants

14 to collocate some equipment, and so we charge this

15 much for power and that much for the space and this

16 much for various services we can provide them, and

17 those are those were kind of my impression,

18 although I don't get, really, direct involvement.

19       My impression is that those are kind of,

20 you know, like you've got your list of rates that

21 you charge, but there's some discretion that the

22 salespeople can use.

23    **Q. Would Mr. Feinberg, Mr. Dumbleton and**

24 **Mr. Nishimoto have to seek approval from anyone for**

25 **prices they would set?**

Page 25

1                   Tresnowski

2    A. I would, I would say at a fairly high

3 level, yes.

4    **Q. Have you ever read this agreement**

5 **before?**

6    A. I, I am -- I'll tell you what I recall

7 specifically and what I don't recall.

8       I know I was given every single draft of

9 this agreement, because that's the way Karen and I

10 worked together, but I -- and, and I would review

11 them, you know, when I thought that, you know, that

12 this was close to final or final. I don't know

13 whether I read the entire document before it got

14 signed.

15    **Q. Were you involved in the negotiation of**

16 **any of the terms of this agreement?**

17    A. I don't, I don't believe so.

18    **Q. Were you involved in the revision of any**

19 **of the terms of this agreement?**

20    A. I don't believe so.

21    **Q. Who executed this document on behalf of**

22 **Allegiance?**

23    A. Jeff Feinberg.

24    **Q. And what was his position as of**

25 **February 11, 2002?**



Page 26

1                   Tresnowski

2       A. I don't recall his specific title. I

3 think he was vice president, but Jeff was, Jeff was

4 the lead negotiator for Genuity, before we hired

5 him, for all of their outsourcing of network

6 contracts, and he was a very competent, very

7 impressive, and capable negotiator and someone that

8 really understood this part of the business, and we

9 had an opportunity to hire him and bring him over.

10       I don't recall exactly when, but, but

11 he, he negotiated, he was among the people who

12 negotiated this.

13       **Q. Did he have authority to the execute**

14 **this agreement on behalf of Allegiance?**

15       A. Yeah, I believe so.

16       **Q. Who drafted this agreement?**

17       A. I don't, I don't really know.

18       **Q. I, my, the --**

19       MR. DI CONZA: To the extent you don't

20 know, you don't have to answer.

21       A. Yeah, the -- okay, yeah, I just don't

22 recall.

23       (KMC Exhibit 2, E-Mail dated

24 November 28, 2001 from Mikhael Vitenson to

25 Randall Hand and Anne Falvey, with

Page 28

1                   Tresnowski

2 was doing the drafting, but they -- other than to

3 say that I know that there was there were a lot of

4 drafts kind of going back and forth, so --

5       **Q. What was the purpose of the PRI**

6 **agreement?**

7       A. The -- my, my general understanding is

8 that we had to provide service to these markets,

9 these smaller markets that KMC operated in which we

10 didn't operate in, under the overall Genuity

11 contract.

12       And, again, I'm not a technology expert,

13 but my understanding is that they would essentially

14 deliver traffic from those markets back to an

15 Allegiance market through the PRIs, which are just

16 basically broadband connections where you could

17 send a lot of traffic.

18       So my, my understanding is that you had

19 KMC routing all this traffic to and from its

20 markets to our markets via these PRI connections,

21 but I'm sure there's a lot more involved in it than

22 that.

23       (KMC Exhibit 3, Infrastructure

24 Interconnection Agreement, marked for

25 identification.)

Page 27

1                   Tresnowski

2 Attachments, Bates Stamped KMC 000519-580,

3 marked for identification.)

4       **Q. The court reporter has handed you what's**

5 **been marked as KMC Exhibit 2.**

6       **Have you seen this e-mail before?**

7       A. I believe so.

8       **Q. And the second e-mail address in the**

9 **"to" line, is that your e-mail address?**

10       A. No, if it was sent that way it wouldn't

11 have gotten to me, because you have to have a dot

12 between the "K" and the "T."

13       **Q. Would you just take a moment to read the**

14 **text of the e-mail.**

15       A. Sure. Okay.

16       **Q. Mr. Vitenson wrote, "Please find a**

17 **markup of the KMC/Allegiance agreement that was**

18 **originally forwarded to KMC by Allegiance."**

19       **Does this refresh your recollection that**

20 **Allegiance drafted the PRI agreement?**

21       MR. DI CONZA: Objection to form.

22       A. It -- you know, I don't have a

23 recollection of who was drafting. What I mean, I

24 know what the words mean here, but -- and what they

25 imply, but I just don't have a recollection of who

Page 29

1                   Tresnowski

2       **Q. The court reporter has handed you KMC**

3 **Exhibit 3. If you can, take a moment and look at**

4 **it and tell me what that document is.**

5       A. This document is the, what we've been

6 referring to as the collocation agreement.

7       **Q. Are you familiar with the terms of this**

8 **agreement?**

9       A. Yes, I am.

10       **Q. What was the purpose of the collocation**

11 **agreement?**

12       A. Let me just say, I have no recollection

13 of this agreement until the dispute arose, so I

14 don't, I don't recall this agreement the way I

15 recall getting drafts of the PRI agreement. I may

16 have, but I have no recollection of that, so I have

17 reviewed this in the context of this dispute.

18       **Q. And when you say, "until the dispute**

19 **arose," when are you referring to?**

20       A. I'm specifically referring to

21 preparation for the hearing of the assignment of

22 the PRI agreement, the Level 3, when KMC said, made

23 the claim that this agreement was actually part of

24 the PRI agreement.

25       **Q. And you don't recall reviewing this**

1 **Tresnowski**  
2 **agreement prior to that time?**  
3 A. I don't recall it, no.  
4 **Q. I take it, then, you were not involved**  
5 **in the negotiation --**  
6 A. No.  
7 **Q. -- of this document?**  
8 A. Not to my knowledge.  
9 **Q. And you were not involved in the**  
10 **revision of this document?**  
11 MR. DI CONZA: Objection to form.  
12 A. Not to my knowledge.  
13 **Q. Who executed the collocation agreement**  
14 **on behalf of Allegiance?**  
15 A. Jeff Feinberg.  
16 **Q. Did he have authority to execute the**  
17 **collocation agreement on behalf of Allegiance?**  
18 A. Yes, I believe he did.  
19 **Q. Who drafted the collocation agreement?**  
20 A. Again, I don't have a specific  
21 recollection.  
22 **Q. Do you have a general recollection?**  
23 MR. DI CONZA: Objection. I don't want  
24 the witness to speculate here.  
25 A. I have a general recollection only,

1 **Tresnowski**  
2 based on looking at e-mails in preparation for the  
3 deposition, but even that's fairly general. I  
4 mean, it seems like there were comments and drafts  
5 going back and forth.  
6 **Q. Did those e-mails refresh your**  
7 **recollection as to who drafted the collocation**  
8 **agreement?**  
9 A. No, not really.  
10 **Q. Does Allegiance have standard**  
11 **collocation agreements?**  
12 A. We have -- yes, we have, we have  
13 standard collocation agreements.  
14 **Q. Did those standard agreements differ,**  
15 **based on who the counterparty is?**  
16 A. They're generally negotiated, yes.  
17 **Q. Is KMC Exhibit 3 based on a standard**  
18 **Allegiance collocation agreement?**  
19 A. I don't know.  
20 **Q. Does Allegiance have standard**  
21 **collocation agreements for counterparties who are**  
22 **vendors to Allegiance?**  
23 A. I don't, I don't know if we have  
24 different standards for vendors versus others.  
25 **Q. What was the purpose of the collocation**

1 **Tresnowski**  
2 **agreement?**  
3 A. It appears to be to provide space for  
4 KMC to collocate equipment from which it can  
5 provide services.  
6 **Q. And what were those services?**  
7 A. It can provide services to Allegiance,  
8 and, and it can provide services to other parties,  
9 but I don't know the specific nature of the  
10 services.  
11 **Q. Were you aware that KMC would not**  
12 **execute the PRI agreement without execution of the**  
13 **co-lo agreement?**  
14 A. I have no knowledge of that.  
15 **Q. Did KMC ever tell you that it would only**  
16 **execute both documents at the same time?**  
17 A. The only thing KMC ever told me was that  
18 they needed a co-location agreement to survive the  
19 termination of the PRI agreement.  
20 **Q. Who told you that?**  
21 A. Roscoe did.  
22 **Q. Did he tell you why?**  
23 A. He didn't.  
24 **Q. When did he tell you this?**  
25 A. Well, he, he, we had conversation again

1 **Tresnowski**  
2 in the December 2003 timeframe, and, and, actually,  
3 it was more than just Roscoe, because I got this  
4 term sheet that explicitly said, you know, we're  
5 going to, our proposal for Level 3 is we'll  
6 terminate the PRI agreement, you'll pay us the  
7 money and Allegiance will continue to honor the  
8 collocation agreement and actually expand the term  
9 of it.  
10 And so there was, it was in there, and  
11 then there were subsequent conversations where  
12 Roscoe said that that was really important that  
13 they would be able to do that.  
14 **Q. When were the PRI and collocation**  
15 **agreements signed?**  
16 A. I, I don't know.  
17 **Q. Did you receive the PRI agreement and**  
18 **the collocation agreement after they were executed?**  
19 A. I recall receiving the PRI agreement. I  
20 don't, I don't have a recollection of the  
21 collocation agreement.  
22 **Q. Did you receive signature pages for the**  
23 **PRI agreement and collocation agreement?**  
24 A. I, I don't have a recollection.  
25 (KMC Exhibit 4, E-Mail dated

1 Tresnowski  
 2 February 11, 2002 from Karen J. O'Connor to  
 3 Anne Falvey and Mikhael Vitenson, Bates  
 4 Stamped KMC 000010-14, marked for  
 5 identification.)  
 6 **Q. If you can, take a look at KMC Exhibit 4**  
 7 **and tell me if you recognize that document.**  
 8 A. I don't recognize it from any prior -- I  
 9 recognize what it is, but I don't have any prior  
 10 recollection of it.  
 11 **Q. And is that your e-mail address in the**  
 12 **"cc" line?**  
 13 A. Yes, that is my correct e-mail address.  
 14 **Q. And the date of this e-mail?**  
 15 A. February 11th, 2002.  
 16 **Q. And what are the attachments to this**  
 17 **e-mail?**  
 18 A. I believe it is a personal note. My  
 19 guess is that it's probably Jeff Feinberg's  
 20 writing, thanking Karen, and then it looks like  
 21 there are two signature pages to two separate  
 22 agreements.  
 23 **Q. Are those the signature pages to the PRI**  
 24 **and collocation agreements?**  
 25 A. I would expect they are, but I'd have to

1 Tresnowski  
 2 to third parties we get paid for that, and if  
 3 you're providing service to us we may not get paid  
 4 for it, but we'd get some benefit, because we're  
 5 the ones who are getting service.  
 6 So yeah, I mean, I think it would be, it  
 7 could be profitable, and, again, I, the other way  
 8 that it could be profitable is that it's my  
 9 understanding that it's not unusual to have  
 10 collocation sold at, if you will, very deep  
 11 discounts, because, again, it's just, getting a  
 12 customer in your services can lead to a lot of  
 13 other profitable business.  
 14 **Q. Was KMC required to use the Allegiance**  
 15 **collocation space to service those parties?**  
 16 A. No, they're not required to.  
 17 **Q. At the time the document was signed, did**  
 18 **KMC have any third parties that it intended to**  
 19 **service as third-party agents for collocation**  
 20 **space?**  
 21 A. I have no knowledge of that.  
 22 **Q. If KMC had no third parties, would the**  
 23 **collocation agreement without the PRI agreement**  
 24 **have been profitable for Allegiance?**  
 25 MR. DI CONZA: Objection, calls for

1 Tresnowski  
 2 look at the documents to know.  
 3 **Q. Would Allegiance have entered into the**  
 4 **collocation agreement with KMC without the PRI**  
 5 **agreement?**  
 6 A. I suppose it's conceivable.  
 7 **Q. Under what circumstances would you**  
 8 **conceive of that?**  
 9 A. Well, we sell, we sell collocation  
 10 services, so, you know, it's a generally, my  
 11 understanding is it's a, it's a good service,  
 12 because it tends to lead to other services.  
 13 You know, when someone collocated in  
 14 your facility they tend to need connectivity to the  
 15 Internet and maintenance and lots of other things,  
 16 so it is a, my general impression is it's a good  
 17 product to sell.  
 18 **Q. Would the collocation agreement without**  
 19 **the PRI agreement have been profitable for**  
 20 **Allegiance?**  
 21 A. Could have been.  
 22 **Q. How could it have been profitable for**  
 23 **Allegiance?**  
 24 A. Well, what the agreement pretty clearly,  
 25 what it require is that if you're providing service

1 Tresnowski  
 2 speculation.  
 3 A. I, I don't, I don't know. Again, I, my  
 4 understanding is that, that if it leads to enough  
 5 other services, depending on what those are priced  
 6 at, it can make sense, but that's just not my area  
 7 of expertise.  
 8 **Q. Can you turn to Exhibit C to KMC**  
 9 **Exhibit 3. Are you familiar with Exhibit C?**  
 10 A. Generally, yes.  
 11 **Q. What is Exhibit C?**  
 12 A. It sets forth the pricing for the  
 13 collocation and related services.  
 14 **Q. How were the prices on Exhibit C**  
 15 **determined?**  
 16 A. I don't know.  
 17 **Q. How do the prices in the chart under**  
 18 **paragraph two compare to Allegiance's standard**  
 19 **rates?**  
 20 A. I don't, I don't know that you could say  
 21 we have standards rates, because if someone had one  
 22 collocation they would get a rate; if someone had  
 23 like, I guess we're going to be at 14 sites or  
 24 something, you'd get a different rate, so I think  
 25 these rates are highly negotiated.

Tresnowski

**Q. Has Allegiance ever sent its invoice to KMC under the collocation agreement with respect to third parties?**

A. I don't know if we have. I know that my understanding is that we have no way of knowing if they're using it for third parties, so I don't know how we could send an invoice. My understanding is that KMC is obligated to pay us and notify us that they're using it for third parties.

**Q. What is your understanding as to where the obligation to notify Allegiance comes from?**

A. Well, when we got into this and KMC, my understanding, KMC told XO that they were using it for third parties, and my understanding is that was news to us, because they had never paid us for that.

So I, I actually, I was on the road somewhere, went back to Chicago, where I worked, and I went down to our switch site and talked to the manager of their Chicago switch, and I said, can you show me the KMC collocation boxes.

So he walked me back there and showed me them, so I said something to the effect of, is there any way to tell how KMC is using those, in

Tresnowski

terms of whether they're servicing us or third parties.

And he said no, there's no way you'd be able to tell, and then, you know, it seems pretty clear to me that it is not permissible under the agreement to provide service to third parties where only you would know whether you were doing it or not, and just not pay for it, when the agreement explicitly says you can't do that.

**Q. Going back to the obligation to notify, where do you have --**

A. There's an obligation.

**Q. -- that obligation?**

MR. DI CONZA: I think that's been asked and answered.

A. Yeah, there's an obligation that's crystal clear in the agreement to not use it for third parties unless you're paying, so forget about notifying. That's the obligation. If you use it for third parties you're in breach. That's very clear.

**Q. What was the name of the, I think you said, manager at the switch site in Chicago?**

A. I believe his name is Jennings,

Tresnowski

something like that, and I don't know if, as I think about it, he may have, he may have referred me, he let me into the switch site. He may have given me someone who had more specific knowledge about the collocation box.

As a matter of fact, now I recall it, that there was a, a guy whose job it was to kind of monitor things like that, so I think he's the gentleman. I don't know his name, who showed me the facilities.

**Q. How --**

A. Jensen (ph), I'm sorry, Jensen is his name, the manager of the switch site.

**Q. How would KMC use equipment in Allegiance's collocation space to provide services to their third parties?**

A. I don't know. I mean, that was, that was, in, to a great extent, that was my question. I mean, I was curious, and that's why I wanted to actually physically see the box and see, hook up a different pipe, see, you know, does a different light go off when a third party uses it, because I just didn't know, flat out.

The answer is, according to this

Tresnowski

gentleman, we wouldn't know.

**Q. But you don't know his name?**

A. I don't know. I'm sure I could find out.

**Q. Do you know what his position was?**

A. I don't know.

**Q. Did you ask anyone else whether or not Allegiance had been notified about KMC's use of equipment for third party services?**

A. I think I had asked, I know I asked John Nishimoto and John Dumbleton.

**Q. When did you ask them?**

A. I believe it was just in the context of, of -- when this dispute arose, when we were talking to, I was talking to Anne Falvey and I was talking to the people at XO, trying to find some way to get XO to come in and provide collocation services, it just came up in that context, so I asked John and John separately whether they knew if KMC was servicing third parties.

**Q. And what did they tell you?**

A. My recollection is that they both said that they didn't --

MR. DI CONZA: To the extent that this

1                   Tresnowski  
2       is not privileged --  
3       THE WITNESS: Yes.  
4       A. My recollection is that both said they  
5       didn't know, I mean, that, I think it was that KMC  
6       could very well be doing that, but they didn't  
7       know.  
8       **Q. Are you familiar with KMC's motion for**  
9       **an order to determine the infrastructure**  
10      **interconnection agreement is integrated with the**  
11      **primary rate interface services agreement?**  
12      A. Yes, I am.  
13      **Q. Have you read that motion?**  
14      A. I believe so.  
15      **Q. Have you read Constance Loosemore's**  
16      **affidavit submitted in connection with that motion?**  
17      A. No. I mean, I was sent her affidavit.  
18      I'm sorry, I thought you meant deposition. Yes, I  
19      read her affidavit.  
20      **Q. And you've read the objection of**  
21      **Allegiance and the creditors' committee in response**  
22      **to that motion?**  
23      A. Yes, I have.  
24      **Q. You mentioned deposition transcripts.**  
25      **Have you reviewed any deposition**

1                   Tresnowski  
2      **transcripts?**  
3      A. Yes, I just -- that's what I thought you  
4      had referred to. I, I received the transcripts. I  
5      didn't really, I think I glanced at them, but I  
6      didn't really, didn't really read them.  
7      **Q. Was there anything in Ms. Loosemore's**  
8      **affidavit that you disagreed with?**  
9      A. There was. And, you know, I, I have one  
10     specific recollection.  
11     I'm sure if I read it I'd have more, but  
12     there was a, there was an argument, I believe, that  
13     the, that the PRI pricing, I know the PRI price --  
14     the pricing on the PRI agreement was somehow  
15     influenced by the pricing of the collocation  
16     agreement, the fact that there was no charge for  
17     collocation services and somehow that affected the  
18     PRI pricing, I just don't believe that to be true.  
19     **Q. Why don't you believe that to be true?**  
20     A. Again, I think that the, the -- my  
21     impression -- and, again, I'm not an expert here,  
22     but my impression is that collocation services are  
23     not a, you know, you can buy it from anybody, and  
24     it's not a -- the way they're sold is different.  
25     For example, I was just talking to John

1                   Tresnowski  
2      Ryan at Level 3 -- he's their assistant general  
3      counsel -- in connection with this dispute.  
4      I think he said something like, you  
5      know, we'd give them collocation space, it's, it's  
6      not, you know, you know, it's not, you've got the  
7      space, it's a fixed cost, you've got the power,  
8      and, you know, you -- and I asked him, I said, why  
9      would you give the space away.  
10     And I think he said that, you know, you  
11     get other stuff from them. You get, they buy  
12     transport from you, and sometimes, you know, if you  
13     have a business relationship with them you just  
14     feel more comfortable that they're, they're  
15     providing services, if they're providing services,  
16     that they're providing services out of their  
17     facilities, because we know how our facilities are  
18     run.  
19     You know, we take great pains to make  
20     sure that they're fireproof, heatproof, all that  
21     kind of stuff, and I just think there's a level of  
22     comfort going that they're run that way.  
23     So I just, I don't think that the --  
24     there's, in the Loosemore affidavit there's kind of  
25     an implication that there was some really

1                   Tresnowski  
2      calculated interplay between the pricing  
3      structures, and I just don't think that's true.  
4      **Q. Were you involved in the negotiation of**  
5      **the pricing under the PRI agreement?**  
6      MR. DI CONZA: I believe that was asked  
7      and answered.  
8      A. I -- no. Other than, again, I had  
9      mentioned the meeting with Roscoe and people early  
10     on, and there was a, my impression again, there was  
11     a, the pricing of the PRI was, it was all relative  
12     to the pricing of the Genuity contract, and it all  
13     kind of flowed down from there, which was relevant  
14     to the pricing of the AOL contract.  
15     And it, you know, that's why that kind  
16     of informs my opinion that I find it hard to  
17     believe that the collocation agreement has any real  
18     impact on that, I'm sorry, the PRI -- the pricing.  
19     **Q. Does Allegiance have a document**  
20     **retention policy?**  
21     A. Not my knowledge. I mean, we have, we  
22     have policies that impact document retention, but I  
23     don't believe we have a comprehensive retention  
24     policy.  
25     One of the things we do is we don't save

1 Tresnowski  
 2 e-mails very long, unless the individual user takes  
 3 steps to save them, and that was driven by a,  
 4 there's actually a cost concern, because to save  
 5 e-mails is, is -- actually, I was impressed by the  
 6 fact that it's several hundred thousand dollars for  
 7 storage space.  
 8 So several, you know, maybe three or  
 9 four years back, I don't recall when, but at some  
 10 point we just said, I think the general rules are  
 11 to wipe out the e-mails after 90 days or something  
 12 like that.  
 13 (Discussion off the record.)  
 14 (Recess taken.)  
 15 **Q. I just have a couple more questions.**  
 16 A. Okay.  
 17 **Q. Other than the first meeting that we**  
 18 **discussed earlier, did you attend any other**  
 19 **meetings regarding the transaction?**  
 20 A. I don't believe so.  
 21 **Q. Was there anything in the objection of**  
 22 **Allegiance and the creditors' committee that you**  
 23 **disagreed with?**  
 24 A. No.  
 25 MS. JOHNS: That's all I have.

1 Tresnowski  
 2 MR. DI CONZA: Okay. You're done.  
 3 (Time noted: 10:42 a.m.)  
 4  
 5  
 6 **MARK TRESNOWSKI**  
 7  
 8 Sworn and subscribed to  
 9 before me this \_\_\_\_ day  
 10 of \_\_\_\_\_ 2004.  
 11  
 12  
 13 **NOTARY PUBLIC**  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1  
 2 **C E R T I F I C A T E**  
 3  
 4 STATE OF NEW YORK )  
 5 ss  
 6 COUNTY OF NEW YORK )  
 7  
 8 I, JAMES W. JOHNSON, a Registered  
 9 Professional Reporter and Notary Public within  
 10 and for the State of New York, do hereby  
 11 certify:  
 12 That MARK TRESNOWSKI, the witness whose  
 13 deposition is hereinbefore set forth, was duly  
 14 sworn by me and that such deposition is a true  
 15 record of the testimony given by such witness.  
 16 I further certify that I am not related  
 17 to any of the parties to this action by blood  
 18 or marriage and that I am in no way interested  
 19 in the outcome of this matter.  
 20 IN WITNESS WHEREOF I have hereunto set  
 21 my hand this 18th day of May 2004.  
 22  
 23  
 24 **JAMES W. JOHNSON**  
 25 Registration #01J05000925  
 Commission Expires 9/4/2006

1  
 2  
 3 -----I N D E X-----  
 4 WITNESS EXAMINATION BY PAGE  
 5 Mark Tresnowski Ms. Johns 4  
 6  
 7  
 8 -----EXHIBITS-----  
 9 KMC PAGE  
 10 1 Primary Rate Interface Services  
 11 Agreement 24  
 12 2 E-Mail dated Nov 28, 2001 from  
 13 Mikhael Vitenson, KMC 000519-580 26  
 14 3 Infrastructure Interconnection  
 15 Agreement 28  
 16 4 E-Mail dated Feb 11, 2002 from Karen  
 17 O'Connor to Anne Falvey and Mikhael  
 18 Vitenson, KMC 000010-14 33  
 19  
 20  
 21  
 22  
 23  
 24  
 25

<p><b>A</b></p> <p><b>able</b> 5:2 33:13 39:5</p> <p><b>about</b> 5:10 6:7,10,14 6:23 7:7,20 8:5 15:7 15:12 17:3 18:17 19:2 20:5 21:10 23:9 39:19 40:3,6 41:9</p> <p><b>access</b> 13:2 14:25</p> <p><b>according</b> 40:25</p> <p><b>accurate</b> 14:3</p> <p><b>acquisition</b> 10:19</p> <p><b>acquisitions</b> 9:19 20:16,16</p> <p><b>acting</b> 8:19</p> <p><b>action</b> 48:17</p> <p><b>actually</b> 11:5 13:25 19:4,5 22:25 29:23 33:2,8 38:18 40:21 46:4,5</p> <p><b>ADAMS</b> 2:10</p> <p><b>added</b> 10:14</p> <p><b>address</b> 27:8,9 34:11 34:13</p> <p><b>administer</b> 3:14</p> <p><b>affected</b> 43:17</p> <p><b>affidavit</b> 42:16,17,19 43:8 44:24</p> <p><b>after</b> 4:25 5:24 6:9,25 7:13 19:17 22:18,21 33:18 46:11</p> <p><b>again</b> 9:23 18:25 22:17 23:10 28:12 30:20 32:25 36:7,11 37:3 43:20,21 45:8 45:10</p> <p><b>agenda</b> 16:12</p> <p><b>agents</b> 36:19</p> <p><b>agreed</b> 3:3,7,11 24:7</p> <p><b>agreement</b> 5:19 6:3,9 6:9,24,25 7:13,14 8:11,12 11:23,24 12:7 16:14 22:5,6,9 22:10 24:6,11,23,25 25:4,9,16,19 26:14 26:16 27:17,20 28:6 28:24 29:6,8,11,13 29:14,15,22,23,24 30:2,13,17,19 31:8 31:18 32:2,12,13,18 32:19 33:6,8,17,18 33:19,21,23,23 35:4 35:5,18,19,24 36:23 36:23 38:3 39:7,9 39:18 42:10,11 43:14,16 45:5,17 49:11,15</p> <p><b>agreements</b> 12:11 31:11,13,14,21 33:15 34:22,24</p>	<p><b>AKIN</b> 2:5</p> <p><b>al</b> 1:6</p> <p><b>Allegiance</b> 1:6 4:13 8:18 9:14,21 10:2 11:2 12:14,20 13:24 14:6,6 16:7 18:22 19:16 21:15 24:5,11 25:22 26:14 27:18 27:20 28:15 30:14 30:17 31:10,18,20 31:22 32:7 33:7 35:3,20,23 36:14,24 38:2,12 41:9 42:21 45:19 46:22</p> <p><b>Allegiance's</b> 22:12 37:18 40:16</p> <p><b>although</b> 23:18</p> <p><b>always</b> 10:11</p> <p><b>amended</b> 16:13</p> <p><b>America</b> 13:10,15</p> <p><b>American</b> 13:15</p> <p><b>among</b> 26:11</p> <p><b>amount</b> 18:3,5</p> <p><b>Ann</b> 5:16</p> <p><b>Anne</b> 26:25 34:3 41:16 49:17</p> <p><b>another</b> 10:11 15:20</p> <p><b>answer</b> 19:21 26:20 40:25</p> <p><b>answered</b> 39:16 45:7</p> <p><b>anybody</b> 43:23</p> <p><b>anyone</b> 8:14 12:17 23:24 41:8</p> <p><b>anything</b> 4:7 43:7 46:21</p> <p><b>AOL</b> 13:19 14:5 45:14</p> <p><b>appears</b> 32:3</p> <p><b>approached</b> 16:25 17:2,3</p> <p><b>approval</b> 23:24</p> <p><b>approximately</b> 16:8</p> <p><b>area</b> 9:17 37:6</p> <p><b>areas</b> 10:17</p> <p><b>argument</b> 43:12</p> <p><b>arose</b> 22:18,19,20 29:13,19 41:15</p> <p><b>arrangement</b> 5:24 11:5,16 15:4 18:2</p> <p><b>arrangements</b> 11:14</p> <p><b>arts</b> 9:2</p> <p><b>asked</b> 6:4 39:15 41:11 41:11,19 44:8 45:6</p> <p><b>aspect</b> 11:3</p> <p><b>aspects</b> 4:22 5:4 12:7 20:7</p> <p><b>assignment</b> 29:21</p> <p><b>assistant</b> 44:2</p> <p><b>assistants</b> 10:16</p> <p><b>attachments</b> 27:2</p>	<p>34:16</p> <p><b>attend</b> 46:18</p> <p><b>attorney</b> 4:11 22:15</p> <p><b>attorneys</b> 2:6,14,20 3:4 11:17</p> <p><b>attorney/client</b> 9:25</p> <p><b>Austin</b> 1:11 2:13</p> <p><b>authority</b> 23:6 26:13 30:16</p> <p><b>authorized</b> 3:13</p> <p><b>avenue</b> 1:12 2:8,15 8:8</p> <p><b>aware</b> 32:11</p> <p><b>away</b> 44:9</p> <p><b>a.m</b> 1:14 47:3</p> <p><b>B</b></p> <p><b>bachelor</b> 9:2</p> <p><b>back</b> 28:4,14 31:5 38:19,23 39:11 46:9</p> <p><b>banks</b> 13:25</p> <p><b>based</b> 31:2,15,17</p> <p><b>basically</b> 7:11 14:11 19:12 28:16</p> <p><b>Bates</b> 27:2 34:3</p> <p><b>became</b> 8:20 9:10,11 14:8 19:21 20:9</p> <p><b>become</b> 15:17,22</p> <p><b>before</b> 1:14 3:13,15 22:19,19 25:5,13 26:4 27:6 47:9</p> <p><b>beginning</b> 16:11</p> <p><b>behalf</b> 25:21 26:14 30:14,17</p> <p><b>being</b> 20:20 21:11</p> <p><b>believe</b> 4:17 5:15 16:3 25:17,20 26:15 27:7 30:18 34:18 39:25 41:14 42:14 43:12 43:18,19 45:6,17,23 46:20</p> <p><b>beneficial</b> 17:4</p> <p><b>benefit</b> 36:4</p> <p><b>best</b> 6:18 8:2 12:22</p> <p><b>between</b> 3:4 21:16 24:11 27:12 45:2</p> <p><b>beyond</b> 7:19</p> <p><b>bifurcate</b> 22:18</p> <p><b>Bill</b> 5:15</p> <p><b>Bittner</b> 16:3</p> <p><b>blood</b> 48:17</p> <p><b>BLOSSOM</b> 2:11</p> <p><b>both</b> 13:21 19:14 32:16 41:23 42:4</p> <p><b>box</b> 40:6,21</p> <p><b>boxes</b> 38:22</p> <p><b>breach</b> 39:21</p> <p><b>bring</b> 11:13 26:9</p> <p><b>broadband</b> 28:16</p> <p><b>Brown</b> 1:11 2:13 11:7</p>	<p><b>build</b> 13:9 18:11 19:5</p> <p><b>building</b> 16:23</p> <p><b>business</b> 12:19,21 13:7,8 14:9,13 18:2 19:17 26:8 36:13 44:13</p> <p><b>businesses</b> 13:3 15:14</p> <p><b>buy</b> 6:2 43:23 44:11</p> <p><b>buyout</b> 8:5</p> <p><b>C</b></p> <p><b>C</b> 2:3 37:8,9,11,14 48:2,2</p> <p><b>calculated</b> 45:2</p> <p><b>call</b> 10:22 13:6,21 15:10</p> <p><b>called</b> 4:2 6:3 14:16 14:23</p> <p><b>calls</b> 36:25</p> <p><b>came</b> 10:17 18:11 20:5 21:9 41:19</p> <p><b>capable</b> 26:7</p> <p><b>capital</b> 5:12 13:12 19:4</p> <p><b>carriers</b> 14:11</p> <p><b>case</b> 1:8 11:22</p> <p><b>caution</b> 8:16 9:24 22:14</p> <p><b>cc</b> 34:12</p> <p><b>certain</b> 18:3,5</p> <p><b>certify</b> 48:11,16</p> <p><b>chairman</b> 7:10 12:15</p> <p><b>Champaign-Urbana</b> 9:2</p> <p><b>chance</b> 14:5</p> <p><b>Chapter</b> 1:8</p> <p><b>charge</b> 10:9 18:4 23:13,14,21 43:16</p> <p><b>Charlottesville</b> 9:5</p> <p><b>chart</b> 37:17</p> <p><b>Chicago</b> 7:5 9:10 11:9 14:4 38:19,21 39:24</p> <p><b>chief</b> 5:16 12:15</p> <p><b>circumstances</b> 35:7</p> <p><b>cities</b> 13:10</p> <p><b>City</b> 14:4</p> <p><b>claim</b> 29:23</p> <p><b>clear</b> 19:22 39:6,18,22</p> <p><b>clearly</b> 35:24</p> <p><b>CLIC</b> 15:20</p> <p><b>client</b> 22:16</p> <p><b>close</b> 8:6 25:12</p> <p><b>COLIN</b> 2:10</p> <p><b>colleagues</b> 20:25</p> <p><b>college</b> 5:18</p> <p><b>collocate</b> 23:14 32:4</p> <p><b>collocated</b> 35:13</p> <p><b>collocation</b> 6:8,15,24 7:13,22 8:11 11:24 12:5,11 14:23 15:6</p>	<p>15:10 21:14,24 22:5 22:12,24 24:6,7 29:6,10 30:13,17,19 31:7,11,13,18,21,25 33:8,14,18,21,23 34:24 35:4,9,18 36:10,15,19,23 37:13,22 38:3,22 40:6,16 41:18 43:15 43:17,22 44:5 45:17</p> <p><b>come</b> 21:5,7 41:18</p> <p><b>comes</b> 38:12</p> <p><b>comfort</b> 44:22</p> <p><b>comfortable</b> 44:14</p> <p><b>commencing</b> 1:13</p> <p><b>comments</b> 31:4</p> <p><b>commercial</b> 10:21,22 11:2,5,11,14,16,20</p> <p><b>Commission</b> 48:24</p> <p><b>committee</b> 2:6 42:21 46:22</p> <p><b>commodity</b> 12:6</p> <p><b>commodity-type</b> 23:11</p> <p><b>communication</b> 12:24</p> <p><b>communications</b> 9:25 22:16</p> <p><b>companies</b> 13:18,24</p> <p><b>company</b> 5:7,10,11 7:7 10:24 11:15 12:12 23:2 24:12</p> <p><b>compare</b> 37:18</p> <p><b>competent</b> 26:6</p> <p><b>complex</b> 11:5,13</p> <p><b>components</b> 12:23,23</p> <p><b>comprehensive</b> 45:23</p> <p><b>conceivable</b> 35:6</p> <p><b>conceive</b> 35:8</p> <p><b>concern</b> 7:18 46:4</p> <p><b>concerned</b> 6:23 7:7</p> <p><b>concerns</b> 5:10</p> <p><b>conclusion</b> 17:10,20</p> <p><b>connection</b> 42:16 44:3</p> <p><b>connections</b> 28:16,20</p> <p><b>connectivity</b> 35:14</p> <p><b>considered</b> 8:21 12:3 12:4</p> <p><b>Constance</b> 42:15</p> <p><b>context</b> 29:17 41:14 41:19</p> <p><b>continuation</b> 7:12</p> <p><b>continue</b> 6:8,15,25 19:16 33:7</p> <p><b>contract</b> 5:7 8:22 13:18 16:19 28:11 45:12,14</p> <p><b>contracts</b> 8:12 26:6</p> <p><b>conversation</b> 32:25</p> <p><b>conversations</b> 4:11 6:16,22 7:16 33:11</p>
--	--	--	--	--

<b>CONZA</b> 2:23 8:16 9:23 17:12 22:14 24:2,8 26:19 27:21 30:11,23 36:25 39:15 41:25 45:6 47:2 <b>copy</b> 6:5 <b>core</b> 13:5,8 <b>corporate</b> 9:18,19 10:18 <b>corporations</b> 13:4 <b>correct</b> 34:13 <b>cost</b> 22:13 44:7 46:4 <b>counsel</b> 8:19 9:15,21 11:6 44:3 <b>counterparties</b> 31:21 <b>counterparty</b> 31:15 <b>COUNTY</b> 48:6 <b>couple</b> 10:15 46:15 <b>court</b> 1:2 3:16 24:14 27:4 29:2 <b>co-lo</b> 32:13 <b>co-location</b> 21:7,19 32:18 <b>CPA</b> 9:3 <b>credit</b> 5:19 <b>creditors</b> 2:7 42:21 46:22 <b>critical</b> 10:23 <b>critically</b> 7:14 <b>crystal</b> 39:18 <b>curious</b> 40:20 <b>current</b> 7:20,25 <b>customer</b> 14:22,25,25 36:12 <b>customers</b> 14:10,17	<b>depending</b> 18:10 37:5 <b>deposition</b> 1:10 3:6,12 4:8 31:3 42:18,24 42:25 48:13,14 <b>describe</b> 8:23 <b>details</b> 4:25 <b>determine</b> 5:20 42:9 <b>determined</b> 37:15 <b>developed</b> 10:18 11:9 <b>DI</b> 2:23 8:16 9:23 17:12 22:14 24:2,8 26:19 27:21 30:11 30:23 36:25 39:15 41:25 45:6 47:2 <b>dial</b> 13:19 14:6 <b>dialed</b> 14:4 <b>DiConza</b> 4:11 <b>died</b> 8:3 <b>differ</b> 31:14 <b>different</b> 11:8 12:2,3 14:12 31:24 37:24 40:22,22 43:24 <b>direct</b> 23:18 <b>directly</b> 9:9 <b>disagreed</b> 43:8 46:23 <b>discounts</b> 36:11 <b>discretion</b> 23:21 <b>discuss</b> 8:10,14 19:17 <b>discussed</b> 17:22 18:19 21:11,12,13,15 46:18 <b>discussion</b> 8:9 22:20 46:13 <b>discussions</b> 6:7,13 7:23 8:4,17 17:24 19:6,10,20 21:18,23 22:11 <b>dispute</b> 22:18,19,19 29:13,17,18 41:15 44:3 <b>distance</b> 12:25 23:12 <b>distinguish</b> 15:5 <b>DISTRICT</b> 1:2,3 <b>divided</b> 12:22 <b>divulge</b> 8:17 9:24 22:15 <b>document</b> 24:19,20 24:21 25:13,21 29:4 29:5 30:7,10 34:7 36:17 45:19,22 <b>documentation</b> 21:21 <b>documents</b> 4:15 32:16 35:2 <b>doing</b> 28:2 39:8 42:6 <b>dollars</b> 46:6 <b>done</b> 11:20 47:2 <b>dot</b> 27:11 <b>down</b> 38:20 45:13 <b>draft</b> 25:8 <b>drafted</b> 26:16 27:20	30:19 31:7 <b>drafting</b> 27:23 28:2 <b>drafts</b> 28:4 29:15 31:4 <b>driven</b> 46:3 <b>duly</b> 4:3 48:13 <b>Dumbleton</b> 23:5,23 41:12 <b>during</b> 21:20	<b>expand</b> 16:15,19 33:8 <b>expanse</b> 16:20 <b>expect</b> 34:25 <b>expensive</b> 14:21 <b>expert</b> 18:15 28:12 43:21 <b>expertise</b> 10:17 11:10 37:7 <b>Expires</b> 48:24 <b>explicitly</b> 33:4 39:10 <b>extend</b> 7:19 <b>extent</b> 16:16 26:19 40:19 41:25 <b>e-mail</b> 26:23 27:6,8,9 27:14 33:25 34:11 34:13,14,17 49:12 49:16 <b>e-mails</b> 4:10,12,18,24 5:2 6:6,11 19:23 31:2,6 46:2,5,11	<b>fixed</b> 44:7 <b>flat</b> 40:24 <b>flowed</b> 45:13 <b>fly</b> 7:5 <b>focus</b> 10:16 14:12 17:14 20:22 <b>focused</b> 17:24 18:13 20:4,17,18 <b>focuses</b> 13:5 <b>focusing</b> 5:3 <b>follows</b> 4:5 <b>force</b> 3:14 <b>forget</b> 39:19 <b>form</b> 3:8 24:8 27:21 30:11 <b>formal</b> 9:6 <b>forming</b> 5:8 <b>forth</b> 28:4 31:5 37:12 48:13 <b>forum</b> 15:3 <b>forwarded</b> 27:18 <b>founded</b> 13:7 <b>four</b> 10:15 14:5 46:9 <b>free</b> 24:7 <b>from</b> 9:8 16:6 21:5 23:24 26:24 28:14 28:19 32:4 34:2,8 38:12 43:23 44:11 44:12 45:13 49:12 49:16 <b>full</b> 12:24 <b>full-time</b> 9:14 <b>function</b> 10:4,4,5,6,8 <b>further</b> 3:7,11 48:16
<b>D</b> <b>D</b> 49:3 <b>Dallas</b> 11:17 15:25 21:6 <b>date</b> 15:24 34:14 <b>dated</b> 26:23 33:25 49:12,16 <b>day</b> 47:9 48:21 <b>days</b> 46:11 <b>deal</b> 19:15,15 20:8 <b>dealt</b> 5:13 <b>Debtor</b> 2:20 <b>Debtors</b> 1:7 <b>December</b> 6:17,20 21:22 33:2 <b>decisions</b> 23:2 <b>dedicated</b> 14:21,24 <b>deep</b> 36:10 <b>degree</b> 23:6 <b>delegate</b> 20:15 <b>deliver</b> 28:14 <b>department</b> 10:10 11:3		<b>E</b> <b>E</b> 2:3,3 4:2 48:2,2 49:3 <b>earlier</b> 46:18 <b>early</b> 45:9 <b>economics</b> 17:15 <b>education</b> 8:24 9:6 <b>effect</b> 3:15 38:24 <b>either</b> 16:22 <b>Ellis</b> 9:9,16 <b>employed</b> 9:7 <b>employees</b> 8:18 <b>end</b> 9:6 <b>enough</b> 19:3 37:4 <b>entered</b> 5:5 24:6 35:3 <b>entering</b> 16:13 <b>enterprises</b> 13:3 <b>entire</b> 6:4 25:13 <b>entity</b> 20:6 <b>equipment</b> 15:2,9 23:14 32:4 40:15 41:10 <b>equity</b> 9:20 <b>ESQ</b> 1:10 2:10,11,17 2:23,24 <b>essentially</b> 6:2 14:14 28:13 <b>estate</b> 4:16 10:6 <b>et</b> 1:6 <b>even</b> 31:3 <b>ever</b> 8:10,14,21 24:5 25:4 32:15,17 38:2 <b>every</b> 25:8 <b>everything</b> 12:13 <b>exactly</b> 18:23 26:10 <b>EXAMINATION</b> 4:6 49:4 <b>examined</b> 4:4 <b>example</b> 14:2 43:25 <b>except</b> 3:8 <b>execute</b> 26:13 30:16 32:12,16 <b>executed</b> 25:21 30:13 33:18 <b>execution</b> 22:4 32:12 <b>executive</b> 12:16 <b>Exhibit</b> 24:10,15 26:23 27:5 28:23 29:3 31:17 33:25 34:6 37:8,9,11,14 <b>EXHIBITS</b> 49:8	<b>F</b> <b>F</b> 48:2 <b>facilities</b> 14:18 40:11 44:17,17 <b>facility</b> 35:14 <b>fact</b> 5:25 40:7 43:16 46:6 <b>fairly</b> 14:3 25:2 31:3 <b>Falvey</b> 5:17 26:25 34:3 41:16 49:17 <b>familiar</b> 15:15,17 24:19,20,24 29:7 37:9 42:8 <b>far</b> 7:23 <b>Feb</b> 49:16 <b>February</b> 9:13 25:25 34:2,15 <b>feel</b> 44:14 <b>Feinberg</b> 19:25 23:5 23:23 25:23 30:15 <b>Feinberg's</b> 34:19 <b>FELD</b> 2:5 <b>filing</b> 3:5 <b>filings</b> 20:19 <b>final</b> 25:12,12 <b>finally</b> 14:23 <b>finance</b> 9:18 <b>financial</b> 5:16 <b>financing</b> 10:20 <b>financings</b> 20:19 <b>find</b> 27:16 41:4,17 45:16 <b>fireproof</b> 44:20 <b>firm</b> 11:9 <b>first</b> 4:3 11:25 15:17 15:20,22 16:2 21:15 46:17 <b>firsthand</b> 8:7 <b>fit</b> 5:12	<b>G</b> <b>gap</b> 8:6 <b>general</b> 8:19 9:14,21 11:19 15:19 23:9,9 28:7 30:22,25 31:3 35:16 44:2 46:10 <b>generally</b> 11:17 13:4 31:16 35:10 37:10 <b>gentleman</b> 40:10 41:2 <b>Genuity</b> 13:14,15,21 13:22 14:7 16:17,18 16:19 18:4 26:4 28:10 45:12 <b>GERARD</b> 2:23 <b>getting</b> 16:22 29:15 36:5,11 <b>give</b> 44:5,9 <b>given</b> 25:8 40:5 48:15 <b>glanced</b> 43:5 <b>go</b> 13:23 14:20 16:20 40:23 <b>going</b> 8:9,16 9:23 12:8 16:15,19 20:11,22 20:24 21:2,2 22:14 23:11 28:4 31:5



33:5 37:23 39:11 44:22 good 20:21 35:11,16 gotten 27:11 governance 9:19 10:19 grad 5:18 graduated 9:5 graduating 9:8 great 40:19 44:19 group 11:7 guess 34:19 37:23 GUMP 2:5 guy 40:8 guys 18:12	23:17,19 35:16 43:21,22 45:10 impressive 26:7 INC 1:6 indicate 19:24 individual 46:2 industry 15:8 influenced 43:15 informal 23:3 informs 45:16 infrastructure 28:23 42:9 49:14 integrated 8:12 42:10 intended 36:18 interconnection 28:24 42:10 49:14 interested 48:18 interface 24:10 42:11 49:10 Internet 12:25 35:15 interplay 45:2 invested 13:12 invoice 38:2,8 involved 4:23 5:13,22 10:21 11:2 12:6,10 12:13 13:20 15:22 16:14 19:20,22,24 19:25 20:2,10 21:18 21:23 23:2 25:15,18 28:21 30:4,9 45:4 involvement 5:24 14:20 15:21 23:18 involvements 4:25 issue 5:19,22 8:20 18:24 19:2 20:5,13 issues 5:3 10:17,19 20:15	33:3 36:11 37:6 39:9 40:24 41:14,19 43:3,18,25 44:13,21 44:23 45:3 46:10,15	knowing 38:6 knowledge 8:7 21:13 30:8,12 32:14 36:21 40:5 45:21	make 7:8 17:7,17,18 18:6,8,22 19:4,7,14 21:3 37:6 44:19 makes 19:14 making 19:3 manage 10:3,7 15:2,3 20:7 managed 10:6 management 10:3 20:13 manager 38:21 39:24 40:14 margin 18:6,7 19:7 margins 18:21 Mark 1:10 47:6 48:12 49:5 marked 24:13,15 27:3 27:5 28:24 34:4 market 7:25 15:20 28:15 marketplace 14:12 markets 16:16,16,21 16:24 28:8,9,14,20 28:20 markup 27:17 marriage 48:18 matter 40:7 48:19 may 1:13 3:12 5:17 12:6 16:4 18:16,16 29:15 36:3 40:3,3,4 48:21 maybe 18:11,12 46:8 mean 7:24 10:7 12:25 15:8 17:14,16 18:15 19:10 27:23,24 31:4 36:6 40:18,20 42:5 42:17 45:21 meant 16:18 42:18 medium 13:2 meet 7:5 meeting 15:25 16:4,6 16:9,12 17:8,15,20 19:11,18 21:6,10 45:9 46:17 meetings 17:7 19:12 46:19 memory 4:19 mentioned 21:7 42:24 45:9 mergers 9:19 message 19:13 met 16:2 might 15:3 Mikhael 26:24 34:3 49:13,17 misunderstood 18:16 modem 14:7 18:3,13 modems 14:2 moment 24:16 27:13 29:3
<b>H</b> hand 11:18 14:7 26:25 48:21 handed 24:14 27:4 29:2 handed 11:23,24 13:21 hands 20:21 hard 45:16 HAUER 2:5 having 4:3 22:20 hearing 29:21 heatproof 44:20 held 1:10 her 21:3 42:17,19 hereinbefore 48:13 hereunto 48:20 hey 19:13 high 25:2 highly 20:23 37:25 high-level 17:6 him 7:9 26:5,9,9 44:8 hire 21:4 26:9 hired 26:4 Holland 7:11 12:15 honest 16:5 honor 33:7 hook 2:24 40:21 hosting 13:2 14:14,16 14:21,24 15:12,13 human 10:4 hundred 46:6	<b>J</b> J 34:2 James 1:14 48:8,23 Jeff 19:24 23:4 25:23 26:3,3 30:15 34:19 Jennings 39:25 Jensen 40:13,13 job 40:8 John 19:24 23:5,5 41:11,12,19,20 43:25 Johns 2:17 4:6 46:25 49:5 Johnson 1:14 48:8,23 joined 9:14 JONATHAN 2:24 just 5:7 7:3,5,11 8:5 12:5,5 13:3 15:8 16:10 19:2,10 20:4 20:12,20 21:3,21 22:9,14 26:21 27:13 27:25 28:15 29:12	<b>K</b> K 4:2,2 27:12 KAN 2:11 Karen 11:12,13,22 12:8 20:2,7,23 25:9 34:2,20 49:16 Kevin 16:3 key 15:14 KIMBERLY 2:17 kind 8:2 11:10,19 12:4,5,22 14:19 15:2 17:6 19:13 20:3 23:17,19 28:4 40:8 44:21,24 45:13 45:15 Kirkland 9:9,13,16 10:18 KMC 2:14 4:16 5:6 5:12,25 6:4 7:14 15:7,15,18 17:2 18:4,7 19:7,16 22:12 24:5,10,12,15 24:23 26:23 27:2,5 27:18 28:9,19,23 29:2,22 31:17 32:4 32:11,15,17 33:25 34:4,6 35:4 36:14 36:18,22 37:8 38:3 38:9,13,14,22,25 40:15 41:20 42:5 49:9,13,18 KMC's 41:9 42:8 KMC/Allegiance 27:17 knew 7:11 41:20 know 7:17,18,20 10:10 11:14,20 12:4 12:8,8 13:10,19 14:20 15:8 16:13 17:6,13,14,14,17 18:4,23,24 19:9,13 20:2,5 21:17 22:3 23:8,10,11,20 24:4 24:4,9 25:8,11,11 25:12 26:17,20 27:22,24 28:3 31:19 31:23 32:9 33:4,16 35:2,10,13 37:3,16 37:20 38:5,5,7 39:5 39:8 40:2,10,18,22 40:24 41:2,3,4,6,7 41:11 42:5,7 43:9 43:13,23 44:5,6,6,8 44:10,12,17,19 45:15 46:8	<b>L</b> large 13:4 largest 12:23 law 9:4,5,8 10:9 11:8 lawyer 10:12 11:20 20:23 lawyers 10:13,15,15 lead 26:4 35:12 36:12 leads 37:4 least 13:17 left 9:13 legal 10:3,7,15,17 11:3 19:2 20:7 less 10:21 19:22 20:10 let 21:9 29:12 40:4 level 5:25 6:2 8:5 16:14,18 25:3 29:22 33:5 44:2,21 levels 23:10 liability 5:9 light 40:23 like 11:17 13:24 20:15 21:22 22:9 23:4,6 23:20 31:4 34:20 37:23 40:2,9 44:4 46:12 limited 5:9 line 13:15,16 27:9 34:12 list 23:20 LLC 24:12 LLP 1:12 2:5,13,19 local 12:25 13:23,24 long 12:25 23:12 46:2 long-haul 13:22 look 6:4 24:18 29:3 34:6 35:2 looked 5:18 6:11 13:13 looking 4:25 31:2 looks 34:20 Loosemore 44:24 Loosemore's 42:15 43:7 lot 5:10 11:20 15:8 20:16 22:25 28:3,17 28:21 36:12 lots 35:15	
<b>I</b> identification 24:13 27:3 28:25 34:5 Illinois 8:25 impact 45:18,22 implication 44:25 imply 27:25 important 7:14 11:15 33:12 impressed 7:4,6 46:5 impression 8:4,7			<b>M</b> M 2:10 4:2 made 29:22 Madison 2:8 maintenance 35:15 major 13:10,14	

<p>money 17:17,18 19:3 19:14 21:2 33:7 monitor 40:9 more 10:14 11:25 14:20,20 15:4 28:21 33:3 40:5 43:11 44:14 46:15 motion 42:8,13,16,22 much 13:11 14:10 15:3 23:15,15,16 mutually 17:4 myself 10:11</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p>N 2:3 4:2 49:3 name 39:23,25 40:10 40:14 41:3 nature 19:11 32:9 necessarily 15:6 necessary 7:9 necessity 5:20 need 6:8,15 16:22 35:14 needed 18:22 19:7 32:18 negative 19:21 negotiated 26:11,12 31:16 37:25 negotiating 5:25 negotiation 25:15 30:5 45:4 negotiator 26:4,7 network 13:9,13,23 16:21,23 26:5 networks 13:16,20,25 18:12 19:5 never 21:13 38:16 New 1:3,12,12,16 2:9 2:9,16,16,22,22 14:4 48:4,6,10 news 38:16 Nishimoto 19:24 23:5 23:24 41:12 nonregulatory 10:12 Notary 1:15 4:4 47:13 48:9 note 34:18 noted 47:3 notified 41:9 notify 38:9,12 39:11 notifying 39:20 notion 15:19 notions 23:9 Nov 49:12 November 26:24 number 14:5 16:15 18:10 numbers 17:18</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/>	<p>O 4:2 oath 3:14 4:5 objection 24:8 27:21 30:11,23 36:25 42:20 46:21 objections 3:8 obligated 38:9 obligation 38:12 39:11,13,14,17,20 obligations 20:18 occurred 16:9 off 14:7 40:23 46:13 offend 20:25 officer 3:13 5:16 12:16 offices 1:11 Official 2:6 off-the-shelf 11:21 okay 26:21 27:15 46:16 47:2 Once 13:9 one 2:21 5:5 7:6 8:22 11:17 12:23 13:5,6 13:10 14:5,15 17:6 17:24,24 19:12 37:21 43:9 45:25 ones 4:21 14:10 36:5 only 17:13 30:25 32:15,17 39:8 oOo 3:23 operate 28:10 operated 13:24 28:9 opinion 45:16 opportunities 13:13 opportunity 26:9 order 14:20 42:9 originally 27:18 other 5:23 8:17 14:9 14:11,19,21 19:23 20:4,14,20,22 24:5 28:2 32:8 35:12,15 36:7,13 37:5 44:11 45:8 46:17,18 others 13:6 31:24 out 6:2 8:3 10:11 13:18,23 15:20 18:11 40:24 41:5 44:16 46:11 outcome 48:19 outside 11:6 21:5 outsourcing 26:5 over 10:14 21:5 26:9 overall 28:10 own 13:16,16 14:22 18:11 ownership-type 15:4 O'Connor 11:12 20:2 34:2 49:17</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/>	<p>P 2:3,3 PAGE 49:4,9 pages 33:22 34:21,23 paid 18:3 36:2,3 38:16 pains 44:19 paragraph 37:18 part 14:9 16:4,19 26:8 29:23 particular 11:22 20:9 particularly 11:15 parties 3:5 21:16 32:8 36:2,15,18,22 38:4 38:7,10,15 39:3,7 39:19,21 40:17 41:21 48:17 partner 9:10,11,12 11:12 party 40:23 41:10 pay 7:21,25 33:6 38:9 39:9 paying 39:19 Penn 2:21 people 13:23 15:9 22:25 23:4 26:11 41:17 45:9 per 18:3 perform 5:11 period 10:5,25 permissible 39:6 personal 34:18 Peter 22:2 ph 40:13 physically 40:21 piece 13:22 pipe 40:22 Piper 11:8,9 Plaza 2:21 please 8:23 27:16 point 19:3 20:3 46:10 policies 45:22 policy 45:20,24 position 25:24 41:6 possibility 6:24 8:22 possible 19:17 power 23:15 44:7 practice 9:17 20:25 premises 15:2,9 preparation 29:21 31:2 prepare 4:8 president 7:7 26:3 pretty 35:24 39:5 PRI 6:3,9,25 7:14 8:11 11:23 12:7 17:16 24:22 27:20 28:5,20 29:15,22,24 32:12,19 33:6,14,17 33:19,23 34:23 35:4 35:19 36:23 43:13</p>	<p>43:13,14,18 45:5,11 45:18 price 23:6 43:13 priced 37:5 prices 18:18 22:24 23:25 37:14,17 pricing 7:21 17:16,21 17:21,23 18:13 21:24 23:2 37:12 43:13,14,15,18 45:2 45:5,11,12,14,18 primarily 10:16 primary 5:23 24:10 42:11 49:10 prior 22:4 30:2 34:8,9 PRIs 28:15 private 9:20 20:25 privileged 9:25 22:22 42:2 probably 5:23 6:17 12:22 20:12 22:22 34:19 problem 8:8 process 16:11 23:3 produced 4:10,13,15 product 35:17 Professional 1:15 48:9 profitable 35:19,22 36:7,8,13,24 project 12:2,3,9 proposal 33:5 provide 14:15 17:5 23:16 24:7 28:8 32:3,5,7,8 39:7 40:16 41:18 provided 13:25 14:11 16:17 21:15 provider 13:14 providing 12:24 35:25 36:3 44:15,15 44:16 provision 22:12 psychology 9:3 Public 1:15 4:4 47:13 48:9 publicly 9:12 purpose 28:5 29:10 31:25</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p>question 3:9 40:19 questions 46:15</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p>R 2:3 4:2,2 48:2 raise 19:4 Randall 11:18,23 12:6 26:25 Randall's 11:19</p>	<p>rate 7:25 24:10 37:22 37:24 42:11 49:10 rates 23:20 37:19,21 37:25 RDD 1:8 re 1:5 read 25:4,13 27:13 42:13,15,19,20 43:6 43:11 reading 19:23 real 9:12 10:6 15:21 19:22 45:17 really 5:20,23 11:10 13:4,7 14:24 17:24 20:3,6 23:18 26:8 26:17 31:9 33:12 43:5,6,6 44:25 reason 7:12 10:23 20:9,20 recall 4:24 5:2 7:3,24 15:24,25 16:2,6 17:23 18:10,18 20:19 21:9,10,11,12 21:20 22:7,20 25:6 25:7 26:2,10,22 29:14,15,25 30:3 33:19 40:7 46:9 receive 33:17,22 received 43:4 receiving 33:19 Recess 46:14 recognize 34:7,8,9 recollection 6:12,18 7:18 8:2 11:21 17:10 18:14,17 19:11,23 21:25 27:19,23,25 29:12 29:16 30:21,22,25 31:7 33:20,24 34:10 41:23 42:4 43:10 record 46:13 48:15 refer 24:22 referred 40:3 43:4 referring 29:6,19,20 refresh 4:19 27:19 31:6 refreshed 6:12 regarding 21:19,24 22:11 46:19 Registered 1:14 48:8 Registration 48:24 regulatory 10:4,13 reinforced 20:4 related 37:13 48:16 relationship 19:17 44:13 relative 45:11 relatively 14:8 relevant 45:13 relied 20:7</p>
---	---	--	---	---

<p>rely 21:3 remember 16:8 18:25 report 12:14,17 reporter 1:15 24:14 27:4 29:2 48:9 require 35:25 required 36:14,16 reserved 3:9 residences 13:3 resources 10:5 respect 38:3 respective 3:4 response 42:21 responsibilities 9:22 responsibility 22:23 result 17:8 retention 45:20,22,23 review 4:15 22:5,8 25:10 reviewed 4:9,12,18 5:19 29:17 42:25 reviewing 4:24 22:7 29:25 revision 25:18 30:10 right 23:9 road 38:18 role 5:3 10:2 Roscoe 5:16 6:7,10,23 16:2,3 19:12 32:21 33:3,12 45:9 rough 16:12 routine 12:4 22:10 routine-type 11:16 routing 28:19 Royce 7:10 12:15 16:3 Rudnick 11:8,8,9 rules 46:10 run 12:8 44:18,22 Ryan 44:2</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p>S 2:3 4:2,2 salespeople 23:22 same 3:14 9:3 15:6 17:19 32:16 save 45:25 46:3,4 says 39:10 school 9:4,5,8 sealing 3:5 SEC 20:18 second 27:8 see 20:11 40:21,21,22 seek 23:24 seems 31:4 39:5 seen 27:6 SEGAL 2:19,19 sell 12:5 23:10,12 35:9,9,17 send 6:5 28:17 38:8 sense 17:7 19:4,14</p>	<p>21:3 37:6 sent 27:10 38:2 42:17 separate 34:21 separately 11:24 41:20 series 6:12 server 14:17,22 service 14:19 16:17 16:20 17:5 23:12 28:8 35:11,25 36:3 36:5,15,19 39:7 services 12:24 14:11 14:15 17:16 23:11 23:16 24:11 32:5,6 32:7,8,10 35:10,12 36:12 37:5,13 40:16 41:10,18 42:11 43:17,22 44:15,15 44:16 49:10 servicing 39:2 41:21 set 22:23 23:6,25 48:13,20 sets 37:12 setting 20:6 Seventh 1:12 2:15 several 4:10,22 6:10 14:17 46:6,8 share 9:11 14:17 shared 14:16 sheet 6:5,6 33:4 show 38:22 showed 38:23 40:10 side 10:3 Sidley 1:11 2:13 signature 33:22 34:21 34:23 signed 3:13,15 25:14 33:15 36:17 significant 14:8 significantly 16:15 simple 17:25 single 25:8 site 15:13 38:20 39:24 40:4,14 sites 37:23 small 13:2 smaller 14:10 28:9 sold 36:10 43:24 solving 8:8 some 4:9 10:23 12:7 15:3 16:20 20:22 23:6,14,21 36:4 41:17 44:25 46:9 somehow 43:14,17 someone 16:25 21:4 23:13 26:7 35:13 37:21,22 40:5 something 5:13 37:24 38:24 40:2 44:4 46:11</p>	<p>sometimes 44:12 somewhere 38:19 sorry 6:20 11:8 16:10 40:13 42:18 45:18 SOUTHERN 1:3 space 7:22,25 21:7,15 21:24 22:12 23:15 24:7 32:3 36:15,20 40:16 44:5,7,9 46:7 special 7:8 20:6 specific 5:2 7:17 15:24 18:18 19:9 21:10 26:2 30:20 32:9 40:5 43:10 specifically 5:13 6:7 7:3 15:12 18:9,25 25:7 29:20 speculate 17:13 24:3 30:24 speculation 37:2 spend 21:2,4 spoke 6:14 ss 48:5 stage 12:12 Stamped 27:2 34:4 standard 31:10,13,14 31:17,20 37:18 standards 31:24 37:21 started 10:11 12:13 State 1:16 48:4,10 STATES 1:2 statistic 14:3 steps 46:3 Stewart 5:15 STIPULATED 3:3,7 3:11 stopped 8:9 storage 46:7 STRAUSS 2:5 structure 5:12,21 structures 45:3 stuff 12:5 44:11,21 subcontractor 16:23 subject 21:14 submitted 42:16 subscribed 47:8 subsequent 6:6 8:24 9:7 21:21 33:11 substance 6:21 sufficient 18:5,7,21 19:7 suite 12:24 suppose 12:21 35:6 sure 16:5 17:2 24:17 27:15 28:21 41:4 43:11 44:20 survive 32:18 Swenson 22:2 switch 14:6 38:20,21</p>	<p>39:24 40:4,14 sworn 3:12,15 4:3 47:8 48:14 system 13:20</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p>T 4:2 27:12 48:2,2 take 21:5 24:15 27:13 29:3 30:4 34:6 44:19 taken 46:14 takes 46:2 talked 6:10 7:10,20 38:20 talking 15:7,12 17:3 18:17,25 19:2 41:15 41:16,16 43:25 team 6:4 technology 18:15 28:12 Telecom 1:6 2:14 9:14 24:11,12,23 telecommunications 11:11 tell 7:15 24:18 25:6 29:4 32:15,22,24 34:7 38:25 39:5 41:22 tend 35:14 tended 10:16 20:14,24 tends 35:12 term 6:5,5 7:19,20 33:4,8 terminate 6:2 33:6 terminated 6:9 7:2 termination 7:13 32:19 terms 24:24 25:16,19 29:7 39:2 testified 4:4 testimony 48:15 text 27:14 thanking 34:20 their 5:6,19 6:5,5,8,8 8:4,8 13:16 14:22 18:8 26:5 38:21 40:17 44:2,16 thing 17:25 32:17 things 11:21 13:11 20:4,14,23 35:15 40:9 45:25 think 5:9,17 7:22 8:21 9:11 10:14 13:17 14:2 17:9,9,10,19 18:9 19:10,13 20:17 20:23 22:9,21 23:8 26:3 36:6 37:24 39:15,23 40:3,9 41:11 42:5 43:5,20 44:4,10,21,23 45:3</p>	<p>46:10 third 14:13 36:2,18 36:22 38:4,7,10,15 39:2,7,19,21 40:17 40:23 41:10,21 third-party 36:19 thought 25:11 42:18 43:3 thousand 46:6 three 10:14 12:22 14:14 46:8 through 28:15 throughout 13:9 time 3:9 5:5,17,18 7:4 9:3 10:5,14 13:14 14:3 15:14 16:2 18:10 20:12 21:4 22:18 30:2 32:16 36:17 47:3 timeframe 6:18 33:2 times 6:11 10:10 title 26:2 today's 4:8 together 25:10 TOGUT 2:19 told 7:8 32:17,20 38:14 topic 7:6 21:7 traffic 28:14,17,19 training 8:24 transaction 4:23 5:6 11:3 15:21,23 17:15 19:8 23:4 46:19 transactions 10:22 11:11 21:21 transcripts 42:24 43:2,4 transport 44:12 Tresnowski 1:10 4:1 4:7 5:1 6:1 7:1 8:1 8:18 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 47:6 48:12 49:5 trial 3:10 trip 7:8 true 43:18,19 45:3 48:14 trying 41:17 Tuesday 1:13 turn 37:8 two 34:21,21 37:18 type 11:21 14:15 17:7</p>
---	---	--	---	--

typically 11:4 12:10	15:13	years 46:9	7
<b>U</b>	<b>well</b> 10:9 19:8 23:3	<b>York</b> 1:3,12,12,16 2:9	787 1:12 2:15
<b>under</b> 4:5 28:10 35:7	32:25 35:9,24 38:13	2:9,16,16,22,22	
37:17 38:3 39:6	42:6	14:4 48:4,6,10	<b>9</b>
45:5	<b>went</b> 7:23 8:25 9:4,9	<b>Young</b> 5:16 6:7,14	9/4/2006 48:24
<b>understanding</b> 28:7	38:19,20	7:15 8:10	9:13 1:14
28:13,18 35:11 36:9	<b>were</b> 4:10,12,22 5:4,7	<b>#</b>	90 46:11
37:4 38:6,8,11,14	6:6,11,16,17 8:12	<b>#01J05000925</b> 48:24	
38:15	8:22 9:7,16,22	<b>0</b>	
<b>understood</b> 26:8	10:13,23 11:14 14:4	<b>000010-14</b> 34:4 49:18	
<b>unique</b> 11:10	15:13,14,19 16:13	<b>000519-580</b> 27:2	
<b>UNITED</b> 1:2	16:19,25 17:3,19,21	49:13	
<b>University</b> 8:25 9:4	17:24 18:16,19,19	<b>03-13057</b> 1:8	
<b>unless</b> 10:23 39:19	19:6,9 20:6,15	<b>1</b>	
46:2	21:18,23 23:9,17	1 24:10,15 49:10	
<b>Unsecured</b> 2:7	25:15,18 28:3 30:4	<b>10:42</b> 47:3	
<b>until</b> 8:20 29:13,18	30:9 31:4 32:6,11	<b>10019</b> 2:16	
<b>unusual</b> 22:8 36:9	33:11,14,18 37:14	<b>10022-2524</b> 2:9	
<b>use</b> 11:6 13:11,13	38:14 39:8 41:15	<b>10119</b> 2:22	
23:22 36:14 39:18	45:4	<b>11</b> 1:8 25:25 34:2	
39:20 40:15 41:9	<b>we'll</b> 19:15 33:5	49:16	
<b>used</b> 15:7	<b>we're</b> 15:6 23:11 33:4	<b>11th</b> 34:15	
<b>user</b> 46:2	36:4 37:23	<b>13</b> 20:17	
<b>uses</b> 40:23	<b>we've</b> 29:5	<b>14</b> 37:23	
<b>using</b> 15:11 38:7,10	<b>WHEREOF</b> 48:20	<b>18</b> 1:13	
38:14,25	<b>wherewithal</b> 5:11	<b>18th</b> 48:21	
<b>V</b>	<b>while</b> 9:16 18:6,8	<b>1986</b> 9:5,10	
<b>valuation</b> 8:6	<b>whole</b> 13:19	<b>1992</b> 9:11	
<b>various</b> 10:10 23:16	<b>wholesale</b> 13:7 14:9	<b>1995</b> 9:11	
<b>vendors</b> 31:22,24	<b>willing</b> 7:5	<b>1999</b> 9:13	
<b>versus</b> 31:24	<b>wipe</b> 46:11	<b>2</b>	
<b>very</b> 6:23,23 7:23	<b>witness</b> 4:3 8:17 9:24	2 26:23 27:5 49:12	
16:14 17:25,25	17:12 22:15 24:2	<b>2001</b> 10:25 26:24	
20:17,18,23 23:3	30:24 42:3 48:12,15	49:12	
26:6,6 36:10 39:21	48:20 49:4	<b>2001/2002</b> 12:19	
42:6 46:2	<b>Wood</b> 1:11 2:13	<b>2002</b> 10:25 25:25 34:2	
<b>via</b> 28:20	<b>word</b> 15:7	34:15 49:16	
<b>vice</b> 26:3	<b>words</b> 20:14 27:24	<b>2003</b> 6:20 21:22 33:2	
<b>Virginia</b> 9:4	<b>work</b> 8:9 10:19,20	<b>2004</b> 1:13 47:10 48:21	
<b>Vitenson</b> 26:24 27:16	<b>worked</b> 11:13 25:10	24 49:11	
34:3 49:13,18	38:19	26 49:13	
<b>W</b>	<b>working</b> 23:4	<b>28</b> 26:24 49:12,15	
<b>W</b> 1:14 4:2 48:8,23	<b>Worldwide</b> 24:12	<b>3</b>	
<b>waived</b> 3:6	<b>worth</b> 18:6,8	3 5:25 6:2 8:5 16:14	
<b>walked</b> 38:23	<b>worthwhile</b> 18:22	16:18 28:23 29:3,22	
<b>want</b> 7:8 13:11 15:5	<b>wouldn't</b> 6:25 27:10	31:17 33:5 37:9	
17:12 20:24 24:2	41:2	44:2 49:14	
30:23	<b>writing</b> 34:20	<b>33</b> 49:18	
<b>wanted</b> 5:6 7:19 40:20	<b>wrote</b> 27:16	<b>4</b>	
<b>wants</b> 23:13	<b>X</b>	4 33:25 34:6 49:5,16	
<b>wasn't</b> 7:9 8:8	<b>X</b> 49:3	<b>5</b>	
<b>way</b> 5:21,24 17:4 25:9	<b>XI</b> 24:12	<b>590</b> 2:8	
27:10 29:14 36:7	<b>XO</b> 38:14 41:17,18		
38:6,25 39:4 41:17	<b>Y</b>		
43:24 44:22 48:18	<b>yeah</b> 16:10 18:23		
<b>ways</b> 14:15	26:15,21,21 36:6		
<b>web</b> 13:2 14:13 15:12	39:17		
	<b>year</b> 6:19		