

1  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
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6  
7 In the Matter

8 of Case No.

9 03-B-13057

10 ALLEGIANCE TELECOM, INC.,

11 Debtors.  
12 -----x

13  
14 August 11, 2003

15 United States Customs House

16 One Bowling Green

17 New York, New York 10004

18 Application to employ-application of Debtors  
19 for entry of an order authorizing the  
20 employment and retention of Greenhill & Co.,  
21 LLC as financial advisor and investment banker  
22 filed by Jonathan S. Henes on behalf of  
23 Allegiance Telecom, Inc., et cetera.

24 B E F O R E:

25 HON. ROBERT D. DRAIN,

Bankruptcy Judge.

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ALLEGIANCE TELECOM, INC.

A P P E A R A N C E S:

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ALLEGIANCE TELECOM, INC.

A P P E A R A N C E S (Continued):

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-and-

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-and-

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of Counsel

1 ALLEGIANCE TELECOM, INC.

2 P R O C E E D I N G S

3

4 THE COURT: Mr. Cantor.

5 MR. CANTOR: Good morning,

6 Matthew Cantor, from the firm of Kirkland &

7 Ellis on behalf of the Debtors.

8 We are here on behalf of the

9 motion to retain Greenhill & Co., LLC for

10 Debtor's financial advisor, and we are moving

11 under 328 of the Bankruptcy Code.

12 By way of background, Your Honor,

13 in the fall of 2000, the Debtors embarked on a

14 process where they determined they would need

15 to restructure their company's balance sheet

16 or produce some sort of refinancing to take

17 out some or all of the existing debt.

18 You will hear about the general

19 process by the company, the process that they

20 embarked on, and how they ultimately

21 determined that the fee that Greenhill was

22 requesting and the company ultimately agreed

23 to was reasonable and within what the market

24 was bearing.

25 You will hear from Mr. Michael

1 ALLEGIANCE TELECOM, INC.

2 Kramer from Greenhill, basically, what his  
3 background his, what his bona fides is, some  
4 experiences he has, all of which will support  
5 the company's decision that he is the right  
6 banker.

7 Basically, the fee arrangement  
8 was that Greenhill would be getting a monthly  
9 fee of \$175,000 per month starting in March of  
10 2003. They would begin crediting 50 percent  
11 against a restructure transaction fee, which I  
12 will describe, and in October they would  
13 credit 100 percent of the monthly fee against  
14 the restructure fee. The restructure fee  
15 agreed to was about \$6 and-a-half million,  
16 about 62 percent of the funded debt. It  
17 doesn't take into account --

18 THE COURT: .62.

19 MR. CANTOR: .62. Sorry, I  
20 misspoke. Taking into consideration any  
21 unsecured trade debt that may come out of the  
22 restructure process, I think right now the  
23 estimates are somewhere between 50 and 200  
24 million of additional debt of the operating  
25 company may end up coming to pass through

1 ALLEGIANCE TELECOM, INC.

2 rejections and those sorts of things.

3 Since their engagement Greenhill  
4 has been actively involved in reviewing the  
5 business plans and providing restructuring  
6 advice to the company and to the board and  
7 helping to try to get a restructuring done,  
8 and the company needs Greenhill's continued  
9 advice and participation in the process to  
10 ultimately have a successful reorganization.

11 As you know, on May 14, we  
12 commenced cases on the same day we moved to  
13 have Greenhill's retention approved on an  
14 interim basis and on May 15, the Court signed  
15 the order. We are now here on the final.  
16 We received two objections. One objection is  
17 from the creditors committee, one objection is  
18 the from bank's steering committee, and they  
19 have various objections which at the end of  
20 the day I will let you know what those  
21 objections are.

22 Your Honor, I think the law is  
23 clear the Debtor has the right here to operate  
24 its business and do what it needs to do within  
25 reasonable limits to get a restructuring

1 ALLEGIANCE TELECOM, INC.

2 done.

3 A company of this size, a public  
4 company with this amount of debt, I think  
5 certainly it is reasonable that they feel they  
6 need a professional financial advisor to  
7 advise them to provide advice and assistance  
8 in the restructuring process, And that  
9 ultimately, at the end of the day will provide  
10 testimony to Your Honor as to the  
11 reasonableness of whatever restructuring it is  
12 that comes out of the end of this bankruptcy  
13 case.

14 Section 328 actually, as you  
15 mentioned at the last hearing on retentions,  
16 authorizes the Debtor to retain a professional  
17 and the Court to approve compensation on any  
18 reasonable terms. And the Court retains the  
19 right that at the end of the day,  
20 circumstances not known to us today, it would  
21 have the providence to approve that  
22 compensation. Your Honor certainly retains  
23 the right to allow compensation different from  
24 what we approve today, but that is a very  
25 different standard than the standard under 327

1 ALLEGIANCE TELECOM, INC.

2 and 330.

3 The evidence will show that Mr.  
4 Kramer is certainly qualified to do the job  
5 that he and Greenhill have been retained for,  
6 and through testimony from the company we will  
7 support why the company believes that the  
8 retention and the fees in the retention are  
9 reasonable and will be necessary to keep the  
10 process going forward.

11 So first I would like, unless  
12 there is an objection from the committee and  
13 the banks to just offer as an offer of proof  
14 Mr. Kramer's bona fides, basically, his  
15 educational background, and some of the cases  
16 he has been involved in, and then to call him  
17 as an witness, which I expect there will be  
18 some cross-examination, Mr. Tresnowski from  
19 the company on why the company believes the  
20 fee is reasonable and what they found the  
21 market to be.

22 THE COURT: Does anyone have an  
23 objection to the introduction of Mr. Kramer's,  
24 for want of a better word, summary of his  
25 resume?



1 ALLEGIANCE TELECOM, INC.

2 MR. DUBLIN: Phil Dublin, from  
3 the firm of Akin Gump Strauss Hauer & Feld.  
4 We have no objection.

5 MR. AUSTIN: Jesse Austin, from  
6 the firm of Paul Hastings Janofsky & Walker,  
7 on behalf of GE Capital Corporation.

8 We have no objection, subject to  
9 whether they ultimately call Mr. Kramer as a  
10 witness that we would like to call to  
11 cross-examine.

12 THE COURT: I take it you want  
13 to have all his professional obligations  
14 rather than how he did his fee application?

15 MR. CANTOR: Yes. For the  
16 record, the company retained Michael Kramer  
17 who a managing director at Greenhill &  
18 Company, and will be leading the engagement.

19 As far as his background, he has  
20 a bachelor of science in business  
21 administration from California State  
22 University at North Ridge. He also attended  
23 Richmond College in London, England with a  
24 concentration in international economics.  
25 Mr. Kramer has been in the restructuring

## 1 ALLEGIANCE TELECOM, INC.

2 business as a financial advisor since January  
3 of 1997, where he was at Houlihan Lokey, a  
4 firm representing the Chapter 11 committee in  
5 this Chapter 11 case. He worked through  
6 August of '89 in various positions, from  
7 originally -- I'm sorry, I misspoke, Mr.  
8 Kramer started at Houlihan Lokey in June of  
9 1989 and worked until December 2000. He  
10 started in the database analysis in the  
11 restructuring and ending up as a managing  
12 director of the firm. His primary  
13 responsibilities at Houlihan included the  
14 co-head of the eastern district restructuring  
15 and specifically for financial restructuring,  
16 corporate financial and actually for the  
17 mergers and acquisition business as well. He  
18 was responsible for Houlihan's international  
19 operations and a member of the Houlihan Lokey  
20 board of directors.

21 In January of 2000, Mr. Kramer  
22 went over to Greenhill & Company, where he  
23 heads up their financial restructuring  
24 business. He is a managing director there.

25 For the purposes of his

## 1 ALLEGIANCE TELECOM, INC.

2 experience, I would identify a number of cases  
3 where Mr. Kramer led the representation of  
4 either the creditors committee or of the  
5 company itself in the restructuring, and it  
6 lists, and I will go through it, in the  
7 Adelphia Communications Corp. case, Mr. Kramer  
8 represented the creditors committee while he  
9 was with Greenhill.

10 In the American Airlines  
11 restructuring, which was not a Chapter 11  
12 case, recently Mr. Kramer represented the  
13 company in that restructuring. In the  
14 Ameri Food Service case (phonetic), Mr. Kramer  
15 represented the Debtor. While he was at  
16 Houlihan, AT&T Latin America, which is a  
17 telecom currently pending, Mr. Kramer  
18 represents the Debtor.

19 In a number of cases he  
20 represented the creditors committee and I  
21 won't go through all: Carter Hawley Hale  
22 Stores (phonetic), Circle K Corporation, Eagle  
23 Picture Industries and the Elder Bera  
24 (phonetic) Company and the Mercury Finance  
25 case.

1 ALLEGIANCE TELECOM, INC.

2 And then moving on to Debtor's  
3 representations, Mr. Kramer represents Metro  
4 Media Fiber for the company, a telecom case;  
5 the Sterling Chemical case. Mr. Kramer  
6 represents Webbling Wireless Inc. which  
7 represents the company in a paging company  
8 case. Mr. Kramer represented while he was at  
9 Houlihan, United Artists that went through a  
10 restructure, Regal Cinemas, he represented the  
11 company while at Greenhill. He represented  
12 the company PCTV Corporation, Paging Network,  
13 Inc., KCS Energy Inc., Donca Business  
14 Solutions and Greater Beijing, First Expressway  
15 Limited, which is just a restructure and not a  
16 Chapter 11 case, and Greenhill and Mr. Kramer  
17 represented RCN in their restructuring.

18 Based upon that offer of proof, I  
19 would suggest that Greenhill and Mr. Kramer  
20 certainly have enough experience and  
21 background to suggest that they are capable of  
22 handling of the restructuring of the company  
23 and is the best choice.

24 THE COURT: Does anyone want to  
25 cross-examine Mr. Kramer on that proof that

1 ALLEGIANCE TELECOM, INC.

2 has been offered up and basically focused on  
3 his experiences and eligiblity?

4 MR. AUSTIN: We have no  
5 questions on those aspects of his  
6 background.

7 THE COURT: I take it from the  
8 silence that the committee has no questions.

9 MR. GREENBLATT: No, we have no  
10 questions on those matters.

11 MR. CANTOR: I call Mark  
12 Tresnowski, who is general counsel and who  
13 will testify how the company came to decide  
14 and why the company believes the fee is  
15 reasonable within the scope of what the market  
16 is bearing currently.

17 M A R K T R E S N O W S K I,

18 having been first duly sworn by the  
19 Notary Public, was examined and  
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. CANTOR:

23 Q. Would you state your name for the  
24 record.

25 A. Mark Tresnowski.

1 ALLEGIANCE TELECOM, INC.

2 Q. Where are you employed?

3 A. Allegiance Telecom.

4 Q. What is your title there and your  
5 responsibilities?

6 A. My title is executive vice  
7 president, general counsel and secretary. My  
8 formal responsibilities are overseeing the  
9 legal department, regulatory department and  
10 the human resources department. In addition,  
11 I am engaged in really all transactional  
12 matters, mergers and acquisitions, corporate  
13 financing and general strategic issues.

14 Q. Since the late summer and fall of  
15 2002, when it became apparent the company was  
16 going to need to be involved in restructuring  
17 did you have any other responsibilities?

18 A. I was tasked with really just  
19 running the restructuring process in terms of  
20 as the executive of the company who was going  
21 to be primarily responsible.

22 Q. For the sake of the full record,  
23 could you describe your educational  
24 background?

25 A. Sure. I have a bachelor of arts

1 ALLEGIANCE TELECOM, INC.

2 in psychology at the University of Illinois.  
3 I graduated in 1982 and received a certified  
4 public accountant certificate at that time as  
5 well and then I went on to law school at the  
6 University of Virginia School of Law and  
7 graduated from there in 1986.

8 Q. And after law school where did  
9 you go to work?

10 A. I went directly to Kirkland &  
11 Ellis in Chicago and joined them in the summer  
12 of 1986.

13 Q. And how long were you at Kirkland  
14 & Ellis?

15 A. I was at Kirkland & Ellis from  
16 1986 until 1998 -- I'm sorry, until  
17 February 1, 1999, and then I was an associate  
18 until I made partner in 1992.

19 Q. What area did you practice law in  
20 when you were with Kirkland & Ellis?

21 A. I was in what is known as the  
22 corporate department, and for a corporate  
23 lawyer I was somewhat of a generalist, I did  
24 securities work, mergers and acquisitions,  
25 private financing, metro capital work and just

1 ALLEGIANCE TELECOM, INC.

2 had a whole spectrum of corporate work.

3 Q. Had you ever been involved in  
4 representing clients in the retention of  
5 investment bankers?

6 A. Yes, frequently as part of the  
7 transactions I worked, as the client retained  
8 financial advisors, I would get involved in  
9 that aspect of the transaction.

10 Q. And since you have been with  
11 Allegiance, has Allegiance engaged investment  
12 bankers and financial advisors?

13 A. We have. Up until the  
14 restructuring process it was primarily in  
15 capital raising. We did three or four  
16 transactions where we raised it for debt and  
17 equities securities and we had a couple of  
18 major M&A transactions where we had investment  
19 bankers retained as well.

20 Q. Have you been in the process on  
21 behalf of Allegiance?

22 A. I have been in the process of  
23 working on those transactions and helping in  
24 the selection of the professionals and  
25 probably was more involved in terms of their



1 ALLEGIANCE TELECOM, INC.

2 retention.

3 Q. So you have negotiated the  
4 engagement of other investment  
5 bankers --

6 A. Yes.

7 Q. -- for its restructuring. In  
8 that context how did the company go about  
9 trying to determine that the fees that the  
10 bankers were charging were reasonable?

11 A. We certainly did. I think there  
12 is obviously a number of factors that go into  
13 selecting someone to advise you. I think we  
14 put a premium on getting top tier advisors and  
15 then within the top tier, making sure that the  
16 compensation was at a market rate.

17 Q. What was the process of  
18 determining whether or not it was at market  
19 rate?

20 A. Oftentimes we would consider  
21 several candidates for any particular  
22 engagement and talk about their qualifications  
23 and their compensation arrangements and gather  
24 information on what the market was, just  
25 through that process.

1 ALLEGIANCE TELECOM, INC.

2 Q. Did there come a time that the  
3 company determined it was going to need the  
4 advice of an investment banker in the  
5 restructuring of the company?

6 A. Yes. I would say in the  
7 September or October time frame of 2002.

8 Q. Could you elaborate on the fact  
9 and circumstances that gave rise to that?

10 A. Yes. As we got through the  
11 middle of 2002, we were growing the company at  
12 50 percent, meaning the revenue was growing 50  
13 percent and that was what their covenant  
14 required under our secured credit facilities,  
15 that we continue at a high growth rate and  
16 rapid geographic expansion. And then that  
17 would continue on until 2003 when was clear to  
18 everyone that the market didn't want that from  
19 a merging telecom company, they wanted  
20 profitability and cash preservation. So it  
21 became increasingly apparent it would be  
22 better for the company if we had a different  
23 set of covenants, and we knew we were going to  
24 be entering into a renegotiation of our  
25 credit.

1 ALLEGIANCE TELECOM, INC.

2 Q. What steps did the company take  
3 next?

4 A. Well, the first thing we did was  
5 retain counsel that had expertise in that area  
6 and start working with them and the banks that  
7 formed a steering committee. So, really just  
8 myself and the CFO of the company, some  
9 internal management with counsel sat down and  
10 started talking to the banks.

11 Q. What is the message from the  
12 banks when you started talking to them?

13 A. Well, they agreed that some  
14 covenant adjustment was appropriate. And we  
15 agreed that some significant reduction of the  
16 amount of debt the company had was  
17 appropriate, and I don't know there was any  
18 consensus as to how to get that. I think we  
19 talked about exchange offers or prepackage  
20 bankruptcy, and one of the things that they  
21 wanted, encouraged us, is to get a financial  
22 restructuring advisor to help us through the  
23 process and make it go more smoothly.

24 Q. What did the company do after  
25 that?

1 ALLEGIANCE TELECOM, INC.

2 A. Well, we discussed, we had  
3 discussed that issue with the board and as a  
4 management team on and off through the summer,  
5 and as we got into negotiations with the banks  
6 they actually made it a priority of their own  
7 that we would get someone. We solicited  
8 views from the -- from our counsel, from our  
9 board members and throughout the management  
10 team as to who did this kind of work, who the  
11 top tier firms were in this area. This is  
12 not an area we had experience with. And so  
13 we -- just basically we developed a list based  
14 on the information we got. And there is  
15 something about this process that is  
16 interesting, when you decide that you are  
17 interested in getting an advisor like this,  
18 they tend to call you. So we got a number of  
19 calls from advisors who were looking to help  
20 us as well.

21 Q. What were some of the financials  
22 from the company's perspective that they would  
23 be requiring of an investment banker in this  
24 restructuring process? Could you describe  
25 what the company was looking for?

1 ALLEGIANCE TELECOM, INC.

2 A. Well, it was interesting because  
3 we weren't the only emerging telecom company  
4 to have to consider something like this. As  
5 a matter of fact, a number of companies that  
6 were comparable in terms of their business  
7 plan said they had gone, into bankruptcy, gone  
8 into restructuring. So -- and I would say  
9 from our perspective with varying degrees of  
10 success. I think we were concerned about  
11 whether those companies would succeed, and we  
12 wanted to find an advisor who would help us do  
13 a successful restructuring.

14 We thought at the time, and  
15 continue to believe that we had a better  
16 capital structure than a lot of our peers in  
17 the industry and we didn't want to just kind  
18 of follow their path, especially since we  
19 didn't think it was very successful in some of  
20 cases. So we wanted for someone to help us  
21 to figure out what our business could  
22 realistically do in this kind of  
23 environment. What capital structure would be  
24 appropriate for a company like ours, and then  
25 probably it was as important as these other

1 ALLEGIANCE TELECOM, INC.

2 two things, how do you get that done, how do  
3 you execute it. So these were the kind of  
4 key things you look for.

5 Q. So did the company set up a  
6 process similar to the kind of process like  
7 that?

8 A. It was probably even more  
9 formal. The board asked me to gather all of  
10 the information on who the top tier firms  
11 were, set up an interview process, a formal  
12 interview process with some number of firms  
13 and then as a management team evaluate and  
14 talk to the board and get their input and make  
15 a selection, and to do so I would say fairly  
16 quickly, because we had gone fairly far into  
17 the process. We had negotiations with the  
18 banks. So we needed to get someone on board  
19 fairly soon.

20 Q. So did the list get developed?

21 A. Yes, I developed the list.

22 Q. Who was on the list?

23 A. Well, a couple of people kind of  
24 came into the plan, not because they were on  
25 the list. So they called us. I will go

## 1 ALLEGIANCE TELECOM, INC.

2 through the whole list: Channing Capital  
3 Partners called our chairman Royce Starling,  
4 who met with the folks in Dallas, and I  
5 reviewed a written presentation they put  
6 together. They were the first ones I we  
7 talked to.

8 There was another group, their  
9 primary contact was with Royce and our CFO,  
10 group of corporate partners out of New York.  
11 They similarly they talked to our management  
12 team and gave us a presentation book, and I  
13 saw that and then we had also been contacted  
14 by Miller Bockfire (phonetic) as well and got  
15 a book from them, but we didn't -- that firm  
16 we had the least amount of dialogue with  
17 because they were actually restructuring. A  
18 company called Focal Communications that was  
19 just a little bit too close to our company for  
20 us to be comfortable using the same advisor.

21 The real formal process was the  
22 list we had put together and that included  
23 Blackstone, Rothschild, Goldman Sachs,  
24 Jeffries and Greenhill.

25 What we did we just set aside,

## 1 ALLEGIANCE TELECOM, INC.

2 and I think it was October 2002, I may not be  
3 exactly right about that, we set aside a week  
4 and we did about four hours a day with each  
5 one of these firms. So I know Blackstone was  
6 the first firm. So they would come down with  
7 their team, and we would listen to them, talk  
8 about their qualifications, talk about their  
9 relevant experience with telecom companies,  
10 and talk about what they thought our situation  
11 was, just based on a preliminary look at it.  
12 We had sent them some data.

13 Each of these firms, actually a  
14 lot of data advanced to these meetings and  
15 then we talked about their compensation and  
16 who on the team would be working on it. So  
17 we did, literally it was one firm a day of  
18 those five firms during a one-week period of  
19 time.

20 And then we just kind of mentally  
21 rated them on the criteria I had talked about,  
22 but also in addition, we talked about expense  
23 and who the team would be, and whether we felt  
24 we had a personal fit with that team. So  
25 that is the process we went through to select.



1 ALLEGIANCE TELECOM, INC.

2 Q. You talked to the various bankers  
3 and interviewed them about the expense?

4 A. Yes.

5 Q. Did you develop an understanding  
6 of what was being asked of the company?

7 A. Yes, I developed a good  
8 understanding of what they were expecting in  
9 terms of compensation.

10 Q. Did you notice any consistency in  
11 what was being asked?

12 A. Yes, there was -- there was a  
13 high degree of consistency. I think even more  
14 than in general, in almost every case the way  
15 they approached that was to have a monthly  
16 fee, and I think they ranged from \$150,000 a  
17 month to \$200,000 a month and then they would  
18 have a success fee, although some didn't  
19 explicitly didn't state this that way, it  
20 correlated to the amount of debt that was  
21 going to be restructured and was in the range  
22 of 60 basis points to 100 basis points times  
23 that debt.

24 Q. In addition to that general  
25 canvassing of the market, did you do anything

1 ALLEGIANCE TELECOM, INC.

2 else to try to determine what telecoms were  
3 paying in restructuring to the financial  
4 advisors?

5 A. Yes. Our board is comprised of  
6 people who have a lot of experience in this  
7 area. We have a number of private equity  
8 investors, actually currently I think we are  
9 down to two. But we had three at that time,  
10 who had gone on through this process with a  
11 lot of their portfolio accounts. So they had  
12 a lot of information about the fees and we had  
13 another director who was affiliated with  
14 Blackstone. I think he is an advisor with  
15 Blackstone. So he had a lot of information  
16 about what the case would be.

17 Q. You mentioned Focal. Do you  
18 know what the fee arrangement was in that  
19 case?

20 A. Yes, I called the CFO of Focal, a  
21 gentleman I know quite well. He was -- and  
22 the Focal case was three or four, five months  
23 ahead of us. And so I called him and said  
24 what was your arrangement with Miller  
25 Bockfire.

1 ALLEGIANCE TELECOM, INC.

2 My recollection was that it  
3 was -- the total fee was about half of the fee  
4 that we were hearing from our prospective  
5 advisors for about half of the amount of  
6 debt. So it seemed to me it was a  
7 confirmation that that was the market.

8 Q. After the process of interviewing  
9 the advisors, developing the views,  
10 understanding what the market was, telling you  
11 what the fees would be, did you make a choice?

12 A. Yes. We selected Greenhill.

13 Q. Did you discuss with Greenhill  
14 what the company's goals were in the process?

15 A. Yes, extensively.

16 Q. And you have had negotiations  
17 with them about their engagement?

18 A. We did. I mean we had a pretty  
19 good idea of what their fees were going to  
20 be. And to be honest, to be direct about it,  
21 we didn't spend a lot of time on the amount of  
22 the success fee because their success fee was  
23 actually very reasonable compared to a lot of  
24 the other success fees we had gotten. I  
25 think we actually brought them down a little

1 ALLEGIANCE TELECOM, INC.

2 bit. I don't have a specific recollection of  
3 where they started, but I don't think it was  
4 very significant. We just settled on the  
5 6.5. We spent a lot more time talking about  
6 the monthly fee in terms of when it would  
7 start crediting against the success fee, and  
8 we spent a fair amount of time talking about  
9 how the success fee got paid. I think  
10 Greenhill started out asking for payments  
11 based on milestones throughout the case.

12 So, in other words, if we amended  
13 our credit facility to solve the covenant  
14 issue, they would get the payment, and they  
15 wanted to kind of go down the road that way.

16 What was important to us, we  
17 didn't know really specifically where this was  
18 headed, whether it would even involve a  
19 bankruptcy. So what was important to us was  
20 a fee that was fixed in amount and not payable  
21 until the entire case was completed, and then,  
22 obviously what was important also that be well  
23 within the market comparables we had seen.

24 Q. Did you ask Greenhill to discuss  
25 their rationale for the fees they were

1 ALLEGIANCE TELECOM, INC.

2 charging?

3 A. Yes, we did. 6.5 million is a  
4 lot of money, and all these fees are a lot of  
5 money, so we spent a lot of time asking them  
6 what is involved in the process and what do  
7 you do to facilitate the process. And a  
8 couple of points that Mr. Kramer made, and  
9 Harvey Miller who was, at that stage he was  
10 one of the people from Greenhill who came  
11 down, to talk to us about the engagement.

12 This was -- in one sense it is  
13 not a complex case because it is too much debt  
14 and you need less debt, and so -- and it was a  
15 fairly simple capital structure with senior  
16 secured debt, unsecured debt and equity. But  
17 in another sense they thought it could be a  
18 very complex case for a couple of reasons.

19 One is that the telecom market  
20 itself was, and unfortunately to a certain  
21 extent still is, in a state of utter  
22 turmoil. So trying to get the right capital  
23 structure for a company like ours is not easy,  
24 and we were counseled there would be vastly  
25 divergent views on what the answer was. And

1 ALLEGIANCE TELECOM, INC.

2 the other things they explained was even at  
3 that stage they had acquired multiple views  
4 within the credit ranks. In other words, we  
5 had the traditional banks who had loaned us  
6 the money initially.

7 We had people who had come in  
8 that bought that bank debt at significant  
9 discount and then in the bonds you had some  
10 kind of phenomena, some card holders, people  
11 who came in afterwards and because of the  
12 structure of the company, the bonds of the  
13 holding company and the banks down in the  
14 operating company, there were other  
15 complications in terms of the amount of  
16 unsecured creditors you would create if you  
17 went through bankruptcy, and you would create  
18 another set of creditors that may have yet a  
19 different view on this.

20 So as I said while on paper it  
21 looked fairly simple, and I thought a lot of  
22 people thought it would be fairly simple but  
23 as we got into it, it looked like it would be  
24 potentially extremely complex and difficult to  
25 do.

1 ALLEGIANCE TELECOM, INC.

2 Q. So based on your general  
3 canvassing of the market are you comfortable  
4 that the fees being proposed here are within  
5 the market range?

6 A. I am. I am actually -- I think  
7 we were wise in the structure. The way we did  
8 it we did with a fixed amount. One of the  
9 things that Greenhill talked about and other  
10 firms talked about was actually using a  
11 percent of the total debt with unsecured  
12 claims increasing in this case. I don't know  
13 what the total debt will be, it may be 1.4  
14 billion or something. I don't want to  
15 speculate what it is going to be. It will be  
16 a big number. If you look at it as a kind of  
17 percentage of the debt restructuring, it may  
18 be significantly below what the market is.

19 Q. Is it your view it is reasonable  
20 business judgment for the company to hire  
21 investment bankers to get you through the  
22 process?

23 A. Absolutely. We have done that  
24 in similar processes.

25 MR. CANTOR: That is all I

1 ALLEGIANCE TELECOM, INC.

2 have.

3 CROSS-EXAMINATION

4 BY MR. GREENBLATT:

5 Q. I am Mark Greenblatt from Akin  
6 Gump. I represent the unsecured creditors  
7 committee. I just have a couple of questions  
8 for you.

9 A. Sure.

10 Q. You had principal responsibility  
11 for setting up a process to hire a financial  
12 advisor?

13 A. Correct.

14 Q. None of the eight banks that you  
15 interviewed prepared any type of chart or  
16 document reflecting any fee arrangement in any  
17 other retention, did they?

18 A. No, they did not.

19 Q. You discussed with Greenhill  
20 their prior retentions in other telecom  
21 matters, didn't you?

22 A. Yes. To a certain extent. We  
23 -- yes.

24 Q. You discussed AT&T Canada?

25 A. AT&T Canada is the one we



1 ALLEGIANCE TELECOM, INC.

2 discussed fees with them.

3 Q. You discussed RW?

4 A. Yes, we probably did, yes.

5 Q. Those discussions about  
6 Greenhill's retentions in those matters, you  
7 never discussed any fee arrangement?

8 A. I did not ask them what their  
9 specific fees were in those specific  
10 transactions, no.

11 Q. You never asked Greenhill how the  
12 6.5 success fee compared to what other  
13 financial advisors were getting in other  
14 bankruptcies, did you?

15 A. Actually, I recall we did talk to  
16 them about whether this was market, whether  
17 they thought -- where did they come up with  
18 that number.

19 Q. But you never compared that  
20 number with Greenhill for other bankruptcies  
21 other than that general talk of market?

22 A. Yes, that is correct.

23 Q. I take it that your conclusion  
24 that Greenhill's proposed fee arrangement was  
25 reasonable was based on the other proposals

1 ALLEGIANCE TELECOM, INC.

2 you had received from the other banks you were  
3 interviewing?

4 A. That was a factor. But as I  
5 said, I talked to board members, legal counsel  
6 who spent their careers doing this kind of  
7 work, people in other companies. There were  
8 a lot of factors. But yes, that was fairly  
9 important.

10 Q. But you never negotiated with any  
11 of the other investment advisors?

12 A. No, I did not -- well, I'm sorry,  
13 not on that engagement. We had considered  
14 one of those advisors subsequent to engaging  
15 Greenhill for a different type of  
16 engagement. But not on that engagement, no.

17 Q. Aside from that subsequent  
18 engagement, in 2002 --

19 A. Yes.

20 Q. For this engagement you didn't  
21 try to negotiate with any of the other  
22 investment banks, did you?

23 A. No. Our approach was to look at  
24 the fee estimates, look at the qualifications  
25 and go through all those criteria and pick the

1 ALLEGIANCE TELECOM, INC.

2 firm we wanted to go with and then see if we  
3 could negotiate a deal that was acceptable to  
4 us and if we wanted to try to go back to some  
5 of the others to do that.

6 Q. So the answer is no?

7 A. The answer is no.

8 Q. Did those board members which you  
9 discussed the retention at issue, did they  
10 give you any empirical data requiring fee  
11 arrangements for other investment advisors in  
12 other bankruptcy matters?

13 A. No, no. It was more, as I said,  
14 and as I think you said, just generally this  
15 is a reasonable fee given this set of  
16 circumstances. So, no specific --

17 MR. GREENBLATT: Subject to  
18 redirect, we have nothing further.

19 CROSS EXAMINATION

20 BY MR. AUSTIN:

21 Q. Good morning, Mr. Tresnowski. I  
22 am Jesse Austin, counsel to GE Capital  
23 Corporation.

24 In connection with Greenhill's  
25 application, one of the documents that has

1 ALLEGIANCE TELECOM, INC.

2 been submitted is an amended fee engagement  
3 agreement, originally dated October 20, as  
4 amended on May 8.

5 Are you generally familiar with  
6 that document?

7 A. Generally, yes.

8 Q. Within that agreement it sets  
9 out, among other things, the monthly fee to be  
10 paid of approximately \$175,000 and an  
11 additional fee of approximately \$6 and-a-half  
12 million to be paid for the economic components  
13 of the Greenhill engagement; correct?

14 A. Correct.

15 Q. Has there always been, in fact, a  
16 payment of a \$6 and-a-half million success fee  
17 with Greenhill?

18 A. Yes, since the initial engagement  
19 letter.

20 Q. So that 6 and-a-half million was  
21 set on the original engagement back in  
22 October?

23 A. That is correct.

24 Q. It has not changed since then?

25 A. That is correct.

1 ALLEGIANCE TELECOM, INC.

2 Q. Neither has the \$175,000 a month?

3 A. That is correct too.

4 Q. I believe one of the points you  
5 testified to earlier in response to  
6 questioning by Mr. Cantor is that one of the  
7 issues that you focus on in your negotiations  
8 with Greenhill was the level of crediting  
9 against a success fee, monthly fee, correct?

10 A. Yes.

11 Q. Do you recall that testimony?

12 A. Yes.

13 Q. And I believe the way it is set  
14 up is that the success -- the monthly fee is  
15 credited 50 percent to the success fee March  
16 through mid-October of this year and therefore  
17 100 percent, correct?

18 A. Correct.

19 Q. In your mind, Mr. Tresnowski, in  
20 looking at this crediting arrangement, at the  
21 outset how long did you anticipate the  
22 Greenhill engagement would last?

23 A. You know, to be honest, I didn't  
24 have a real good feel for that. I had enough  
25 of a feel for it that I wanted to make sure

1 ALLEGIANCE TELECOM, INC.

2 that at some point the monthly fee would be  
3 credited against the success fee. And I  
4 believe we kind of generally talked about the  
5 fact that it could go on for more than a  
6 year. I think it is roughly a year is when  
7 it starts to credit 100 percent. So I didn't  
8 think the case would necessarily be over then,  
9 but I wanted to make sure we got a crediting  
10 at that time.

11 Q. With respect to the other  
12 advisors with whom you spoke and received  
13 proposals, did each of those, to your  
14 recollection, also have a success fee  
15 component?

16 A. Yes, each of them has a success  
17 fee component.

18 Q. Do you recall if they also had a  
19 credit component of the monthly fee, crediting  
20 of the monthly fee to the success fee?

21 A. I don't recall whether they each  
22 brought that up. It was, it was my  
23 understanding that was an issue that you  
24 negotiated. I can't really recall  
25 specifically whether -- where I got that

1 ALLEGIANCE TELECOM, INC.

2 impression. But that was my impression as I  
3 went into the discussion with Mr. Kramer, one  
4 of the things we would be talking about at one  
5 point would be monthly fees to start crediting  
6 against the success fee.

7 Q. With respect to the other  
8 advisors with whom you spoke, did you have any  
9 discussion with any or all of them relative to  
10 how to define success to earn a success fee?

11 A. Yes.

12 Q. What were those discussions?

13 A. We had discussed that with other  
14 advisors and others, meaning people within the  
15 company and outside the company. As I  
16 understood it and I continue to understand it,  
17 there are two ways you could do it. One is  
18 you could build in an incentive based upon a  
19 particular outcome and the other one is based  
20 on a completed restructuring.

21 We considered both very  
22 carefully, and I think the reason we decided  
23 that it was better to have it based on a  
24 completed restructuring, was that I don't  
25 think we had enough information to know what

1 ALLEGIANCE TELECOM, INC.

2 it is we wanted to incentavise, in terms of  
3 what concerned me in particular about it, you  
4 were going to incentavise based on the return  
5 to any particular group of stakeholders, than  
6 I just had concern about that, that it is  
7 inappropriate to structure the incentives like  
8 that especially at the beginning of the case.

9 Q. How do you in your mind define  
10 success, Mr. Tresnowski, for Greenhill to  
11 successfully earn a \$6 and-a-half million fee?

12 MR. CANTOR: Objection, Your  
13 Honor. It is irrelevant. The success of  
14 the transaction in the engagement is set out  
15 there, it is approved by the Court for the  
16 confirmation of the plan.

17 THE COURT: I will let him  
18 answer the question.

19 A. In a very clear way it was that  
20 success would mean that company would emerge  
21 from the process. Again, at that time I  
22 didn't know if it would involve a  
23 bankruptcy. But it would emerge from the  
24 process with a strong capital structure, and  
25 that it could go forward. And I believed in



1 ALLEGIANCE TELECOM, INC.  
2 the company from the beginning. I still do.  
3 It is a company that provides utility services  
4 to businesses. So the viability of the  
5 company and its financial strength go hand and  
6 hand with their ability to stay in business  
7 and succeed.

8 To me success was going to be a  
9 capital structure that was very solid and that  
10 we could take the company and continue on and  
11 provide competition in the legal market.

12 MR. AUSTIN: That is all the  
13 questions I have.

14 THE COURT: Okay. Does anyone  
15 else have any cross?

16 MR. CANTOR: Your Honor, I have  
17 nothing further of Mr. Tresnowski.

18 THE COURT: All right. You may  
19 step down.

20 (Witness excused.)

21 MR. CANTOR: I would say in  
22 closing, unless you want to hear from the  
23 objectant --

24 THE COURT: I think we ought to  
25 hear from the objectant. I am not clear from

1 ALLEGIANCE TELECOM, INC.

2 where we are right now, whether all of the  
3 objections still are being pursued. I know  
4 there was one asserted by the banks in terms  
5 of duplication. So I think I would like to  
6 hear from the objectant first.

7 MR. AUSTIN: I take it by Mr.  
8 Cantor's comment they did not intend to put  
9 Mr. Kramer on the stand.

10 MR. CANTOR: That is correct,  
11 judge.

12 MR. AUSTIN: We would like to call  
13 Mr. Kramer for the purpose of  
14 cross-examination, Your Honor.

15 THE COURT: Well, on his direct  
16 testimony?

17 MR. AUSTIN: They have  
18 submitted, I believe, an affidavit in  
19 connection with his application. Yes, we  
20 would like to ask questions.

21 THE COURT: You want to do a  
22 cross examination on his affidavit?

23 MR. AUSTIN: Yes.

24 M I C H A E L K R A M E R,  
25 having been first duly sworn

1 ALLEGIANCE TELECOM, INC.

2 by the Notary Public, was examined and  
3 testified as follows:

4 MR. AUSTIN: Your Honor, so  
5 there is no misunderstanding we are calling  
6 Mr. Kramer in terms in support of our own  
7 objections in terms of the approval of the  
8 application in total.

9 I will clarify for the record at  
10 this point, Your Honor, that the lenders are  
11 primarily objecting to the payment, approval  
12 today under 328 of the success fee. We were  
13 going to ask in our argument that the Court  
14 reserve the right to review the success fee  
15 under a reasonable standard at the conclusion  
16 of the case, which we believe would allow that  
17 to have to be approved either by complete  
18 retention or preserving the right under 330 in  
19 approving the application.

20 THE COURT: Okay.

21 CROSS-EXAMINATION

22 BY MR. AUSTIN:

23 Q. Mr. Kramer, for the record, my  
24 name is Jesse Austin, counsel for GE Capital  
25 Corporation.

1 ALLEGIANCE TELECOM, INC.

2 Do you recall there was a  
3 deposition taken of you in connection with  
4 this application at the initial request of the  
5 counsel for the creditors committee, correct?

6 A. Yes.

7 Q. And in that deposition at the end  
8 of it, I asked you a number of questions. Do  
9 you recall?

10 A. Yes.

11 Q. One of those questions was in  
12 connection with this engagement. I believe  
13 you are the lead of the engagement on behalf  
14 of Greenhill?

15 A. Yes, I am.

16 Q. And you have four additional  
17 people working with you on that engagement,  
18 correct?

19 A. And there is probably more than  
20 four. I think what we talked about is  
21 primarily four.

22 Q. You testified Sule Lunt  
23 (phonetic), Ryan Taylor, Alan Miller and  
24 Elliot Weiss.

25 A. Elise.

1 ALLEGIANCE TELECOM, INC.

2 Q. Elise.

3 But that the core of the  
4 engagement, the way you testified, was  
5 yourself, Mr. Lenot (phonetic), and Mr.  
6 Taylor.

7 MR. CANTOR: Objection, Your  
8 Honor. I want to understand the  
9 reasonableness of these questions to the  
10 approval of the fee under 328, which has no  
11 relationship to the amount of time or people  
12 he applied to this matter.

13 THE COURT: Let me see a little  
14 more about where Mr. Austin is going before we  
15 get to this type of issue.

16 Q. I believe your testimony, at  
17 least at your deposition, was that at the time  
18 you did not know what the knowledge and  
19 experience levels were of any of the four  
20 other primary members of the team; is that  
21 correct?

22 A. I will take your word for it.  
23 As I sit here I don't know their background  
24 per se.

25 Q. So today, your testimony would be

1 ALLEGIANCE TELECOM, INC.

2 today you don't know their background?

3 A. I don't know the details of their  
4 background.

5 Q. And I believe also at your  
6 deposition you announced at that time you  
7 personally were working on seven publicly  
8 announced deals in addition to the Allegiance  
9 transaction?

10 A. I think that was an  
11 approximation.

12 Q. And I think you also testified  
13 that you were working on nonpublicly announced  
14 five engagements, where the name Greenhill had  
15 been engaged for that particular client had  
16 not been disclosed. Is that correct?

17 A. Again, I believe it is an  
18 approximation.

19 Q. On the seven publicly announced  
20 deals, could you identify what they are?

21 A. The actual names of them?

22 Q. Yes.

23 A. We are currently with RCN,  
24 currently working with Metro Media Fiber,  
25 currently AT&T Latin America, currently

1 ALLEGIANCE TELECOM, INC.  
2 working with Adelphia Communications,  
3 currently working with Cable and Wireless,  
4 currently working with AMF Bowling. Those  
5 are some of the ones I remember offhand.

6 MR. CANTOR: I will object, Your  
7 Honor.

8 MR. AUSTIN: Just so we can find  
9 out what the relevance to the other cases Mr.  
10 Kramer is working on as to the need of this  
11 company to have a financial advisor of its  
12 choosing.

13 THE COURT: Mr. Austin, you will  
14 get to the point pretty shortly, I think. I  
15 hope you do.

16 Q. Mr. Kramer, I think your  
17 testimony at your deposition was that it has  
18 been some time since you visited Allegiance's  
19 offices in Dallas?

20 A. I don't remember the last time  
21 that I visited. The core is actually done  
22 out of New York.

23 Q. You haven't been down there since  
24 your deposition; is that correct?

25 A. No.

1 ALLEGIANCE TELECOM, INC.

2 Q. I believe your testimony was also  
3 that under the terms of your engagement from  
4 your perspective, you believe that \$6  
5 and-a-half million success fee would be paid  
6 to Greenhill or should be paid to Greenhill  
7 irrespective of whether Greenhill is the  
8 architect of the restructure or restructuring  
9 plan?

10 A. Correct.

11 Q. Is it also correct, Mr. Kramer,  
12 that in addition to not visiting Allegiance's  
13 offices that there has not been a meeting with  
14 the steering committee, the representatives of  
15 the lender group since this bankruptcy group  
16 started in which you participated?

17 A. Since the beginning of this  
18 case?

19 Q. Yes.

20 A. No, I disagree with that.

21 Q. Since the Chapter 11 case was  
22 filed on April 10?

23 A. Yes, I think there has been  
24 meetings.

25 Q. That you participated in?



1 ALLEGIANCE TELECOM, INC.

2 A. Yes.

3 Q. Personally or by telephone call?

4 A. By telephone. They are weekly  
5 calls by telephone which I participate on  
6 sometimes. I don't recall if there have been  
7 any in person, no.

8 MR. CANTOR: Your Honor --

9 THE COURT: I think you should  
10 continue. He is just trying to establish, I  
11 think, correct me if I'm wrong, one of the  
12 factors that Mr. Tresnowski testified to is  
13 staffing and the importance of the  
14 relationship with people who work at the  
15 financial advisors and the company's  
16 executives. I think that is where Mr. Austin  
17 is going.

18 MR. AUSTIN: That is part of  
19 where I am going. And to the extent there  
20 are approvals of fees under 328, one of the  
21 standards this Court has to look at, as  
22 opposed to whether one could review, if you  
23 will, at the end of a case whether there are  
24 circumstances that we may know today or see  
25 today that could have an impact on ultimately

1 ALLEGIANCE TELECOM, INC.

2 awarding the fee. That would be part of our  
3 closing argument.

4 THE COURT: Okay.

5 Q. Mr. Kramer, you have been on this  
6 engagement since what, October?

7 A. Yes, approximately.

8 Q. Is it a correct analysis that  
9 there is no value to the equity interest in  
10 this case?

11 A. Yes.

12 Q. Is it also a correct statement  
13 while there has been an exchange of various  
14 term sheets from time to time between the  
15 company and the lender's steering committee  
16 that at this point there has not been one that  
17 has been accepted by the lender's steering  
18 committee?

19 A. In whole, no. I agree there is  
20 no full term sheet that has been accepted.

21 Q. Mr. Kramer, you are asking on  
22 behalf of Greenhill that this application be  
23 approved under Section 328 of the Bankruptcy  
24 Code, correct?

25 A. On behalf of Greenhill, yes.

1 ALLEGIANCE TELECOM, INC.

2 MR. CANTOR: Just to clarify,  
3 the company is requesting approval under  
4 328.

5 Q. Mr. Kramer, if there is a later  
6 review of the allowance of \$6 and-a-half  
7 million under a reasonableness standard, I am  
8 assuming it is correct that Greenhill is not  
9 going to abandon it?

10 MR. CANTOR: Objection, it is a  
11 complete hypothetical. I think it. It  
12 depends on the facts and circumstances, I  
13 would hope Greenhill would not abandon the  
14 case, it is the company's view based on  
15 that. That is what Greenhill has agreed to  
16 under the terms of the engagement letter.

17 Q. Answer the question, please.

18 THE COURT: I am not sure  
19 exactly how --

20 MR. AUSTIN: I will rephrase  
21 it.

22 THE COURT: Are you asking if  
23 the motion is denied?

24 On the basis that a reasonable  
25 review is required, would Greenhill continue

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ALLEGIANCE TELECOM, INC.

to work?

THE WITNESS: Should I answer that?

THE COURT: Yes.

A. I don't know that I could answer that as I sit here. Would I abandon the company? I think if we didn't move forward with the assignment of the company, we would work with the company on a transitional period.

As I sit here today it is our firm's policy we don't take on deals under anything on 328, but I would probably go back and sit with my partners an discuss it and see which way we would go.

MR. AUSTIN: That is all the questions I have, Your Honor.

THE COURT: Okay.

MR. CANTOR: Just so I understand, you called Mr. Kramer as a hostile witness.

MR. AUSTIN: Yes.

CROSS-EXAMINATION

BY MR. GREENBLATT:

Q. Your responsibilities at

1 ALLEGIANCE TELECOM, INC.

2 Greenhill include negotiating fee arrangements  
3 with the client, correct?

4 A. Yes.

5 Q. In proposing the fee structure,  
6 one of the considerations is what you perceive  
7 the market to be; is that correct?

8 A. Correct.

9 Q. In determining what the market  
10 is, one of the things you look at is what  
11 Greenhill has been paid in other cases,  
12 correct.

13 A. Yes.

14 Q. Another consideration is setting  
15 the fees for what other advisors are getting  
16 in other cases, correct?

17 A. To the extent we know about it,  
18 yes.

19 Q. In other words, what you are able  
20 to get in other deals provides you with an  
21 indication of where the market is; right?

22 A. Not in the absolute. It is a  
23 bench marking.

24 Q. But you didn't use any other  
25 cases to benchmark the compensation fee you

1 ALLEGIANCE TELECOM, INC.

2 set in this case?

3 MR. CANTOR: Objection, Your  
4 Honor. We didn't have any evidence here as  
5 to what Mr. Kramer used to determine what fees  
6 should be used here. So if counsel wants to  
7 ask Mr. Kramer some questions, he can, but he  
8 can't put the words in his mouth.

9 THE COURT: Well, he is a  
10 hostile witness. I am not sure whether your  
11 question presupposed an answer.

12 Maybe you could answer him. Did  
13 Mr. Kramer consider as a benchmark other fees  
14 in negotiating this fee?

15 MR. GREENBLATT: Yes.

16 Q. In your internal discussions with  
17 Greenhill did you, in determining what an  
18 appropriate fee would be, did you look at  
19 other comparable arrangements with other  
20 financial advisors with any other cases?

21 THE COURT: Did you look at --

22 MR. CANTOR: Objection, Your  
23 Honor.

24 THE COURT: Did you look at  
25 other financial arrangements?

1 ALLEGIANCE TELECOM, INC.

2 THE WITNESS: We didn't have a  
3 database. We sat down and discussed what the  
4 appropriate fee would be. We discussed it.  
5 There are no direct bench marks with other  
6 cases.

7 Q. In your discussions with Mr.  
8 Tresnowski, you never presented him with a  
9 chart or table to show how your proposed fee  
10 compared to other fees for our financial  
11 advisors in other cases, did you?

12 A. No.

13 Q. Did Mr. Tresnowski ever ask you  
14 how your proposed fee compared with other  
15 cases in which Greenhill had been retained?

16 A. I don't recall. I don't believe  
17 so.

18 Q. And Mr. Tresnowski never asked  
19 you about how Greenhill's fee compared to fees  
20 paid to financial advisors in other telecom  
21 cases, did he?

22 A. No.

23 Q. In determining the appropriate  
24 fee to charge for your service, the  
25 complexities of the case is one of the

1 ALLEGIANCE TELECOM, INC.

2 relevant considerations, yes?

3 A. Yes, it could have an effect,  
4 yes.

5 Q. The higher the complexity, the  
6 higher the fee?

7 A. Yes.

8 Q. And you would agree that  
9 Allegiance is typical in terms of its  
10 complexity, correct?

11 MR. CANTOR: Objection. Let  
12 Mr. Kramer describe the situation if that is  
13 what counsel is asking for, but he put the  
14 words in his mouth.

15 THE COURT: He is a hostile  
16 witness here. So he could do some leading.

17 A. Would I describe this as  
18 typical? I think in terms of assessing the  
19 fee, you assess it at the beginning of case.  
20 At the beginning of the case was this viewed  
21 as typical? I don't know what "typical" would  
22 be. But in terms of the number of  
23 constituencies, a lot of cases have debt  
24 bond holders. As the case has been  
25 progressing that is becoming more and more



1 ALLEGIANCE TELECOM, INC.

2 complex.

3 Q. At the time you proposed your fee  
4 in October of 2002, you considered Allegiance  
5 to be a typical case in terms of complexity,  
6 correct?

7 A. I think it had -- again, I am not  
8 sure again what "typical" would mean. Each  
9 case is different. But I think it had some  
10 general characteristics of most cases, yes.

11 Q. At your deposition, didn't you  
12 describe the Allegiance case that you  
13 perceived in October of 2002, Allegiance to be  
14 typical in terms of complexity?

15 A. Could you repeat the question.

16 Q. In October of 2002 -- I'm sorry,  
17 that is wrong.

18 At your deposition, didn't you  
19 describe your perception of the Allegiance  
20 restructuring as typical in terms of  
21 complexity?

22 A. If you have the transcript there  
23 and that is what it says, yes. I don't  
24 recall exactly what I said.

25 MR. GREENBLATT: Your Honor, if

1 ALLEGIANCE TELECOM, INC.

2 I may, I would like to present a copy of Mr.  
3 Kramer's deposition transcript to the witness.

4 THE COURT: Okay.

5 Q. I will direct your attention --  
6 before we get there, do you recall at your  
7 deposition I asked you the question:

8 "QUESTION: Did you consider" --

9 MR. CANTOR: Objection, Your  
10 Honor. I think we are reading from page 45,  
11 that would be lines 18 through 23, following  
12 on page 46, rather than have Mr. Kramer sort  
13 of repeat what he said. I think you could  
14 see what he said there. He talked about the  
15 case being a typical level of complexity to  
16 something higher.

17 MR. GREENBLATT: Slightly  
18 higher. I have no problem with that being in  
19 as evidence rather than repeating it.

20 THE COURT: Is the section you  
21 were going to quote from on page 46?

22 MR. GREENBLATT: On page 45,  
23 Your Honor. The lines that Mr. Cantor  
24 referred to, 18 through 22 -- 23, I'm sorry.

25 THE COURT: Okay.

1 ALLEGIANCE TELECOM, INC.

2 Q. Mr. Kramer, another factor that  
3 goes in to determine how you charge for your  
4 services is the nature of the particular case;  
5 is that correct?

6 A. The nature of the case, is that  
7 what you said?

8 Q. Correct.

9 A. What do you mean by "nature"?

10 Q. Well, in terms of the services  
11 Greenhill would provide.

12 A. The services which we would  
13 provide, yes, it would.

14 Q. And the services you would  
15 provide for Allegiance at the time you were  
16 negotiating the fee were fairly standard; is  
17 that correct?

18 A. Yes, they were open ended in  
19 terms of what we would provide in a typical  
20 structure, yes.

21 MR. GREENBLATT: I have no  
22 further questions, Your Honor.

23 THE COURT: Okay.

24 MR. CANTOR: Your Honor, if I  
25 could have a minute to look at my notes and

1 ALLEGIANCE TELECOM, INC.

2 see if there is anything I would want to --

3 THE COURT: Okay.

4 (Pause in the proceeding.)

5 EXAMINATION

6 BY MR. CANTOR:

7 Q. Mr. Kramer, you were asked a  
8 couple of questions about how many times you  
9 have been down to Dallas and how many meetings  
10 you have had with creditors.

11 Have you had teleconferences with  
12 the company during the pendency of the Chapter  
13 11 case?

14 A. Yes, I probably talked to the  
15 company on average at least once a day.

16 Q. Do you recall that you are able  
17 to communicate with the people of the company  
18 to conduct the business you need to rather  
19 than flying to Dallas?

20 A. Yes.

21 Q. With respect to meetings with  
22 creditors, the case was commenced on May 14,  
23 right?

24 A. Yes.

25 Q. Were you in a meeting with the

1 ALLEGIANCE TELECOM, INC.

2 bank's steering committee on May 28?

3 THE COURT: Was that a  
4 question?

5 THE WITNESS: I was at a meeting  
6 with the banks. I am not exactly sure, it  
7 was on or around.

8 Q. Have you had meetings with  
9 individual members of the steering committee?

10 A. Not meetings. I had  
11 conversations.

12 Q. And you have had conversations  
13 with the members of the bank's steering  
14 committee?

15 A. Yes.

16 Q. Have you had meetings with the  
17 members of the creditors committee?

18 A. Yes.

19 Q. Who is the chairman of the  
20 creditors committee?

21 A. Gary Singer.

22 MR. DIZENGOFF: To clarify,  
23 Romulus Holding (phonetic)s is the chairman,  
24 not Mr. Singer.

25 THE COURT: He is with Romulus?

1 ALLEGIANCE TELECOM, INC.

2 MR. DIZENGOFF: Yes, the  
3 representative.

4 Q. That was the last time you saw  
5 Mr. Singer?

6 A. Thursday.

7 Q. Did you talk about restructuring?

8 A. Yes.

9 Q. Were you trying to negotiate some  
10 sort of resolution amongst these creditor  
11 groups that we have in this case?

12 A. I think we would have liked to.  
13 I think we talked about the case and the  
14 different things that were going on.

15 Q. Prior to the commencement of the  
16 case, had the company made proposals to the  
17 bank's steering committee?

18 A. Yes.

19 Q. And after the commencement of the  
20 case, did the company make proposals on  
21 restructuring to the bank's steering  
22 committee?

23 A. Yes.

24 Q. Did there come a time that the  
25 bank's steering committee requested the

1 ALLEGIANCE TELECOM, INC.

2 company stop making proposals?

3 A. Yes.

4 Q. Would you care to elaborate on  
5 that for me? How has that affected your  
6 ability to negotiate resolutions to this case?

7 A. The steering committee has  
8 suggested that they didn't want to see any  
9 proposals for a period of time, and based on  
10 that you can't have a one-way negotiation.

11 Q. Have you nevertheless endeavored  
12 to have communications with members of the  
13 steering committee?

14 A. We did talk to people, yes.

15 Q. Since the commencement of the  
16 case, have you attended meetings with Mr.  
17 Austin, counsel for the bank's steering  
18 committee?

19 A. Yes, we have had conversations  
20 yes.

21 Q. Were those conversations intended  
22 to help the company ultimately negotiate a  
23 restructuring with its creditors?

24 A. I think all conversations related  
25 to this are intended to help progress the

1 ALLEGIANCE TELECOM, INC.

2 restructuring.

3 Q. Are you familiar with the name  
4 Silverpoint?

5 A. Yes.

6 Q. What is Silverpoint?

7 A. It is the name of a bank debt  
8 holder.

9 Q. Has that bank debt holder  
10 accumulated a fair amount of the bank debt?

11 A. It is my understanding.

12 Q. Have you ever had a meeting with  
13 Silverpoint in an attempt to determine what  
14 the appropriate restructuring would be for  
15 this company?

16 A. Prior to them joining a steering  
17 committee with the lender group, we had had  
18 conversations with them. And since they have  
19 joined we have not.

20 Q. Are you familiar with the name  
21 Cardinal Investments?

22 A. Yes.

23 Q. Who is Cardinal Investments?

24 A. They are another large bank debt  
25 holder.



1 ALLEGIANCE TELECOM, INC.

2 Q. Have you had discussions with  
3 Cardinal Investments about the appropriateness  
4 of the restructure.

5 A. Yes.

6 Q. How many, ballpark?

7 A. Five, approximately.

8 Q. Thereabouts, when was the first  
9 conversation you had with Cardinal, the time?

10 A. It was probably closer to the  
11 original date in October.

12 Q. When was the most recent?

13 A. I don't recall.

14 Q. So you have had discussions with  
15 the major holders of the bank debt, major  
16 holders of the debt both before and after the  
17 commencement of the case?

18 A. Yes.

19 Q. And you have been spending a fair  
20 amount of time having discussions with those  
21 creditor constituencies and with the company  
22 trying to negotiate a resolution here?

23 A. Yes.

24 MR. CANTOR: No further  
25 questions, Your Honor.

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Mr. Kramer, can I  
3 ask you a question? Is it fairly common in  
4 your practice to engage in some form of  
5 renegotiation of an engagement letter with the  
6 creditor constituencies in connection with the  
7 financial advisor's retention application?

8 THE WITNESS: Again, I don't know  
9 if I would say it is common or not common.  
10 It does happen sometimes, yes.

11 THE COURT: Is it Greenhill's  
12 position or your position that the case has  
13 become more complicated since your original  
14 retention?

15 THE WITNESS: Yes.

16 THE COURT: Has that perception  
17 increased your reluctance to engage in any  
18 further negotiation of your fees?

19 THE WITNESS: Yes.

20 THE COURT: I have nothing --

21 MR. AUSTIN: I would ask if I  
22 could of Mr. Cantor, not on the record, to ask  
23 him one question and to determine whether I  
24 need to ask the witness another question.

25 THE COURT: Okay.

1 ALLEGIANCE TELECOM, INC.

2 (Pause in the proceeding.)

3 MR. AUSTIN: I don't need to ask  
4 any further questions at this point.

5 THE COURT: Okay. You may be  
6 excused.

7 (Witness excused.)

8 At this time the committee would  
9 put on a presentation.

10 THE COURT: Does anyone have any  
11 evidentiary presentation they want to make?

12 MR. DUBLIN: The committee,  
13 no.

14 THE COURT: Mr. Austin?

15 MR. AUSTIN: No. Our questions  
16 goes to the evidence we want to present that  
17 would be in support of our argument.

18 THE COURT: Whoever wants to go  
19 first on the record. The objectors?

20 MR. DUBLIN: Phil Dublin, from  
21 Akin Gump from the committee.

22 As the Court will note, the  
23 committee's objection is narrowly tailored, we  
24 do not object to the Debtor's purported need  
25 to retain a financial advisor or seek to

1 ALLEGIANCE TELECOM, INC.

2 retain that financial advisor under 328. As  
3 the standard under bankruptcy, we have an  
4 issue whether the Debtors have met the  
5 standard for 328 to be applied today.

6 Your Honor, our primary point:

7 How did the company determine that a  
8 \$6 and-a-half million success fee, when  
9 coupled with the \$175,000 monthly fee, albeit  
10 with certain crediting at certain times in the  
11 case is reasonable in light of the Debtor's  
12 failure to indicate that the fee is market  
13 based, and it is that market that must be  
14 examined in order to determine that the fee is  
15 reasonable.

16 The Debtors devote an amount of  
17 time in their response and spend a substantial  
18 portion setting forth what the debt standard  
19 is for the Court's approval of the fee under  
20 328. The committee does not take issue with  
21 that standard. The committee agrees with  
22 it. The Debtors say no less than eight times  
23 in their response, and did so a number of  
24 times today that in order for a fee to be  
25 reasonable it needs to be market driven and it

1 ALLEGIANCE TELECOM, INC.

2 needs to be consistent with fees charged by  
3 other financial advisors in other cases. It  
4 needs to be market based.

5 Your Honor, in essence,  
6 everything about the fee must relate to the  
7 market. In Mr. Kramer's testimony he has  
8 agreed you look at the market to determine  
9 what the fee is, what an appropriate fee is,  
10 but, Your Honor, the record today is devoid of  
11 what the market is. Let's focus on what  
12 evidence we do have.

13 Mr. Kramer was asked today, as he  
14 was asked at his deposition, how do you  
15 determine what the market is. His answer is  
16 on what Greenhill and others charge in other  
17 cases. That, Your Honor, is what Mr. Kramer  
18 believes is the market, what Greenhill and  
19 others charge in other cases.

20 Your Honor, I have a  
21 demonstrative exhibit that I would like to use  
22 as I go on. It was attached as Exhibit A to  
23 our exhibits.

24 THE COURT: I have it.

25 MR. DUBLIN: I have a larger

1 ALLEGIANCE TELECOM, INC.

2 exhibit, too. I can give you this.

3 THE COURT: It might be  
4 helpful.

5 MR. CANTOR: I don't want to get  
6 into the middle of Mr. Dublin's explanation of  
7 his exhibit. I will reserve all rights to  
8 permit this exhibit to go in as evidence for  
9 the purpose of the hearing. But I want to  
10 hear what Mr. Dublin has to say about it,  
11 because as I read it it enforces the  
12 reasonableness of the fee.

13 THE COURT: Okay, you say it  
14 supports it.

15 MR. DUBLIN: Again, Your Honor,  
16 I will point out this exhibit is strictly for  
17 demonstrative purposes.

18 Your Honor, as I mentioned, Mr.  
19 Kramer testified that in order to determine  
20 what the market is, he looked at what  
21 Greenhill and what others in the industry  
22 charge in other cases.

23 MR. CANTOR: Objection, Your  
24 Honor. Mr. Kramer didn't say that.

25 MR. DUBLIN: Your Honor, I

1 ALLEGIANCE TELECOM, INC.

2 believe that was one of the factors he  
3 mentioned.

4 THE COURT: Well, it was a  
5 factor. But he said it in his own way.

6 MR. DUBLIN: All right. I will  
7 let the record stand as it is.

8 THE COURT: I think he said it  
9 was a benchmark for others.

10 MR. DUBLIN: It was a  
11 benchmark. So, Your Honor, what other  
12 people, what Greenhill charges in other cases  
13 is a benchmark and what Greenhill would look  
14 at in a transaction to determine what it  
15 should charge here. We went through, there  
16 are 22 cases on this chart. They are telecom  
17 cases on the Debtors side of the financial  
18 engagement. We asked Mr. Kramer if he had  
19 considered any of these cases as a benchmark  
20 in setting his fee. He responded he did  
21 not. Mr. Kramer was asked if he looked at  
22 any other cases in setting his fee. His  
23 answer was no.

24 MR. CANTOR: Objection, Your  
25 Honor. This came from the deposition. They

1 ALLEGIANCE TELECOM, INC.

2 were not introduced as testimony as to Mr.  
3 Kramer here today.

4 MR. DUBLIN: I believe Mr.  
5 Kramer said he did not look at any other  
6 cases, specifically, when he was trying to  
7 determine his fee in this case. He testified  
8 that one of the benchmarks he looks at are  
9 fees in other cases, but he did not do so  
10 here.

11 THE COURT: I think it is  
12 probably less relevant to what he did than  
13 what the data is.

14 MR. DUBLIN: Thank you, Your  
15 Honor. When Mr. Tresnowski and Mr. Kramer  
16 were on the stand today, they were asked  
17 whether Mr. Tresnowski had asked for or been  
18 provided with a comparable analysis for other  
19 cases. The answer was no. Mr. Kramer did  
20 not offer one to him, nor did Mr. Tresnowski  
21 ask for one. Mr. Tresnowski did not ask to  
22 see what the market is. Now, granted, he did  
23 interview several other financial firms.  
24 Those firms set forth a fee arrangement for  
25 Debtors to consider. But the Debtors did not



1 ALLEGIANCE TELECOM, INC.  
2 negotiate with them. They said Greenhill is  
3 \$6 and-a-half million and this is lower than  
4 the other ones, so this is the market.

5 I liken that to the buyer going  
6 to a car showroom, seeing the car the buyer  
7 wants to purchase. He looks in the window  
8 and sees a price, the sticker price. He  
9 calls over a salesman and tells him they are  
10 interested in the car and asks the price.  
11 The salesman look at the sticker price and  
12 cites that price to the buyer.

13 Your Honor, the Debtor would have  
14 us believe, the buyer would then write a check  
15 to the dealer and ride out with the car.  
16 That is not what the buyer does. He  
17 determines what the market is, he goes to  
18 other dealers to see what cars there are, he  
19 looks in the newspapers, ads, the blue book on  
20 the value. He investigates.

21 He does not say this offer seems  
22 lower on its face than the other ones, so I  
23 will take it. The creditors of this estate  
24 that should not be forced to accept this. If  
25 this was an unusual case, that might be

1 ALLEGIANCE TELECOM, INC.  
2 something we would consider, but it is not  
3 unusual and as Mr. Kramer stated, it is a  
4 typical case.

5 Your Honor, this is a fairly  
6 standard case. It is not terribly complex,  
7 not terribly large. It is fairly standard.  
8 Yet Greenhill is seeking a success fee.

9 When you look at the 22 cases, on  
10 average this one is 40 percent higher. That  
11 is when you couple it with a monthly fee of  
12 \$175,000 and take into the crediting of the  
13 fee, after March and after October, we assume  
14 a 20-month restructuring, which I believe Mr.  
15 Tresnowski believed it might go a year, maybe  
16 more. It is 40 percent higher than the  
17 average, Your Honor.

18 THE COURT: When you say, "on  
19 average," you are assuming the same 12  
20 months?

21 MR. DUBLIN: Yes, the same 12  
22 months with the 22 cases with applicable  
23 crediting, where there are applicable cases.  
24 There is no evidence it is 40 times more  
25 complex, 40 percent bigger or 40 percent more

1 ALLEGIANCE TELECOM, INC.

2 unusual.

3 Your Honor, rather it is just  
4 fairly standard. The Debtor in its response  
5 tries to make light of the committee's views,  
6 you add up the 22 cases and you just look at  
7 the figure but don't look at the funded debt,  
8 just the total fees to be incurred, that this  
9 \$6 and-a-half million or the \$6.9 million,  
10 which was approximately an aggregate over 12  
11 months is right in the middle. I think the  
12 average comes out, if you add them all up to  
13 7.1 million. Debtors would like the Court to  
14 look at a comparable case where the buyers are  
15 charged 1 million, and in other cases charged  
16 13, and add them together and divide by 2  
17 is 7.

18 So you would say \$6 and-a-half  
19 would be in that range, so \$6 and-a-half  
20 million should be reasonable. That is not  
21 the way it works, Your Honor. There needs to  
22 be a benchmark. You can't just add up the  
23 fees.

24 One of the ways to look at it is  
25 the funded debt, as Mr. Tresnowski looked at

1 ALLEGIANCE TELECOM, INC.  
2 the debt is something people look at when they  
3 are setting the fees. The committee believes  
4 the fees are not market tested. The Debtors  
5 did not do their job to determine and make  
6 sure that the estate, what the estate was  
7 supposed to pay is the market. They are not  
8 reasonable under the circumstances and should  
9 be adjusted accordingly.

10 THE COURT: Let me back up.

11 Assume for the moment you are  
12 right, the Debtors didn't do a full market  
13 test. We are having one today, so I want to  
14 make sure I understand what you are saying.

15 It really is a percentage of the  
16 funded debt, if that is what you think it is,  
17 aren't the Debtors more right than you in  
18 looking at the average because otherwise, if  
19 you are just basing it on the dollar amount  
20 you have a big swing because some cases have  
21 more funded debt than others? So isn't it  
22 more important to look at the average?

23 MR. DUBLIN: The average when  
24 you looked at the funded debt?

25 THE COURT: Yes.

1 ALLEGIANCE TELECOM, INC.

2 MR. DUBLIN: The Debtors would  
3 have to disregard the funded debt variable.

4 THE COURT: In terms of dollars,  
5 you would have me disregard that? You are  
6 measuring two ways. I am trying to figure out  
7 which way I should measure it by, in the  
8 committee's view. Should I just be focusing  
9 on a percentage of funded debt, because  
10 otherwise aren't you talking about apples and  
11 oranges, when you just look at the dollars?

12 MR. DUBLIN: If we take the  
13 funded debt, and we work in the monthly fee as  
14 well as the success fee and you propose a  
15 12-month structure, so we could be on the same  
16 page, and you take a variety of cases and take  
17 the highest and lowest and look at the median;  
18 if you want to take out the highest and lowest  
19 and show a much higher rate here than when you  
20 look at of the prepetition debt on average,  
21 4.4 billion which would set a  
22 44.6 or 44 basis point, the Debtors are 40  
23 percent higher than that. Here we have 1.1  
24 billion and a 6.9 billion, assuming a 12-month  
25 restructure.

1 ALLEGIANCE TELECOM, INC.

2 If we look at, pull out just the  
3 specifics on the chart, that of our closest  
4 and prepetition funded debt to where we are  
5 here today, look at the 1 to 2 billion or 1 to  
6 3 billion, it is a significant difference.

7 THE COURT: What is the time  
8 frame for these engagements?

9 MR. DUBLIN: This is all  
10 assuming a 12-month restructuring.

11 THE COURT: What I am saying,  
12 there is a big difference, 360 Networks is  
13 11 basis point percent of funded debt.  
14 That's a full year's case? Has the market  
15 changed since then?

16 MR. DUBLIN: 360 confirmed in  
17 the last year, Your Honor.

18 THE COURT: When were they  
19 engaged then?

20 MR. DUBLIN: I think the case  
21 commenced in May 2001, but I would have to  
22 double check that.

23 THE COURT: Do you have an  
24 explanation as to whether Lazard would have  
25 charged so much less in 360 Networks than

1 ALLEGIANCE TELECOM, INC.  
2 almost everyone else except for United Pan  
3 American? Are they trying to drum up  
4 business? Is that why they are charging  
5 less?

6 MR. DUBLIN: I don't have  
7 firsthand knowledge. Their monthly fee was  
8 one of the highest that we referenced and we  
9 looked over a year period of 4.4 million is a  
10 significant amount of money. The unsecured  
11 creditors in the 360 Network case, for lack of  
12 a better term, took a beating, Your Honor. I  
13 believe the company, I don't want to --

14 THE COURT: When you take out  
15 Lazard, what is the spread between this fee  
16 here and the other fees? I am assuming, for  
17 example, if you have the Worldcom case, you  
18 have quite a large success fee, they are  
19 willing to take a very low percent.

20 MR. DUBLIN: If we take out  
21 Lazard and the Worldcoms of the world?

22 THE COURT: Yes.

23 MR. DUBLIN: If you look at  
24 Adelpia, there is a prepetition debt of  
25 approximately 1.4, the monthly fee is the same

1 ALLEGIANCE TELECOM, INC.  
2 as we have here, 175. If we, again, go out  
3 for the, assuming the 12-month period,  
4 Adelphia Business Solutions has gone past that  
5 period. The 4 million success fee was  
6 requested and we get to 28 basis points, Your  
7 Honor.

8 THE COURT: Is Focal a CLEC  
9 also?

10 MR. DUBLIN: Yes, but it is less  
11 than approximately less than a third of what  
12 we have here.

13 THE COURT: Are there others in  
14 this list that are particularly comparable --  
15 you have WorldCom, Global Crossing. Those  
16 are really different businesses.

17 Do you have others besides the  
18 two you mentioned that are comparable  
19 businesses?

20 MR. CANTOR: Your Honor --

21 THE COURT: -- in trying to  
22 determine whether there is really a well  
23 defined market here or --

24 MR. DUBLIN: If you look at a  
25 company such as XO Communications, you have to



1 ALLEGIANCE TELECOM, INC.  
2 step up the amount of the funded debt which is  
3 about five times what we are looking at  
4 today.

5 When we look at the fee that is  
6 requested, 20 million, in essence, we are  
7 looking at only seven basis points. Another  
8 CLEC, XO Communications.

9 THE COURT: XO, Focal and  
10 Adelphia Business Solutions are the ones you  
11 think are the CLEC cases?

12 MR. DUBLIN: WorldCom we took  
13 out as the larger CLEC.

14 THE COURT: Yes.

15 MR. DUBLIN: Taking out 360  
16 Network because it is a confirmed case.

17 THE COURT: What are the CLECs  
18 today?

19 MR. CANTOR: Flag Telecom, ICG,  
20 Focal, actually, a case the committee cites to  
21 with Kirkland & Ellis.

22 MR. DIZENGOFF: Where does that  
23 relate to what is before the Court?

24 THE COURT: I am just asking a  
25 simple question, which are the CLECs.

1 ALLEGIANCE TELECOM, INC.

2 MR. DUBLIN: Flag Telecom is not  
3 a CLEC.

4 THE COURT: Okay.

5 MR. DUBLIN: Thank you, Your  
6 Honor.

7 MR. AUSTIN: Your Honor, at the  
8 outset I would like to, one, clarify the  
9 lender position and also identify a number of  
10 cases which we would be relying on and making  
11 reference to in our legal argument.

12 Let me give you the cases first  
13 we would be looking at, in Re Reimers, which  
14 is 972, F2d 1127. It is the Ninth Circuit  
15 decision of 1992. The BUM International  
16 case, 229 F.3d, 824, Eighth Circuit  
17 decision. The Drexel Burham decision of this  
18 Court, 133 Bankruptcy Reporter page 13,  
19 1991. The Mortgage and Realty Trust case,  
20 cited as 123 Bankruptcy Reporter, 626, that is  
21 the Central District of California decision,  
22 of 1991.

23 In clarifying the lender's  
24 position, Your Honor, we are not here today  
25 opposing Greenhill's retention as a general

1 ALLEGIANCE TELECOM, INC.

2 matter. We are also not here today opposing  
3 payment of \$175,000 per month.

4 What we do oppose, what we ask  
5 this Court to modify with respect to the  
6 application in the engagement that was filed,  
7 which the Court has a right to do under 328,  
8 we believe, which is how the application is  
9 being presented, is that we ask that the  
10 \$175,000 monthly fee be credited 100 percent  
11 to the success fee beginning on May 1, which  
12 is essentially the engagement of this case as  
13 opposed to currently a 50 percent credit  
14 through September 30 and, therefore, 100  
15 percent.

16 Most importantly, we ask that  
17 this Court retain the right for all parties in  
18 interest, specifically we as counsel and the  
19 lenders themselves to review the \$6 and-a-half  
20 million success fee under a section 330 review  
21 at the end of the case.

22 We do not believe that the  
23 approval of the success fee is currently  
24 mandated under the evidence presented under  
25 328 and is not currently supportable in this

1 ALLEGIANCE TELECOM, INC.

2 case with respect to the case law we cite.

3 We note, Your Honor, that the  
4 interim order that approved Greenhill's  
5 engagement specifically retained for the U.S.  
6 Trustee the right to review all fees paid to  
7 Greenhill on a the fair and reasonable  
8 standard.

9 It is our understanding that the  
10 final order, the form of the final order as  
11 has been circulated at least will also include  
12 that right on to the U.S. Trustee. We are  
13 simply asking that we be afforded the same  
14 right, Your Honor, which was specifically  
15 followed in and retained in both the BUM  
16 International, and the Drexel case, which I  
17 will address more.

18 THE COURT: Before I get into  
19 that, Mr. Austin, do I take it that the other  
20 objection that GE Capital made on behalf of  
21 the banks, that there was duplication with the  
22 restructuring advisor who was retained last  
23 time, you are not pursuing that?

24 MR. AUSTIN: We are not pursuing  
25 it. In the course of those objections that

1 ALLEGIANCE TELECOM, INC.  
2 have been filed there has been clarification,  
3 and as one would say a clear delineation of  
4 duties, such as we do not believe there would  
5 be an issue relative to the duplication.

6 THE COURT: Okay.

7 MR. AUSTIN: What do we have  
8 with respect to Greenhill? From our  
9 perspective we think the evidence supports  
10 that we do have a recognized national  
11 restructuring financial advisor which in this  
12 particular instance is staffed with  
13 professionals whose experience level is  
14 unknown to Mr. Kramer.

15 While Mr. Kramer is the lead, we  
16 believe the testimony presented was not clear  
17 as to the knowledge of the other experience  
18 levels of his team and that with respect to  
19 him personally he is working on a significant  
20 number of additional other significant  
21 engagements. That certainly impacts the  
22 ability to focus on the Allegiance engagement  
23 in bringing this, hopefully, to some more  
24 rapid conclusion.

25 We do recognize this case has

## ALLEGIANCE TELECOM, INC.

1  
2 gotten a bit more complicated since the  
3 inception giving rise to the potential  
4 increase in unsecured creditors claims and the  
5 operating company levels. But irrespective  
6 of that, Your Honor, we are still dealing with  
7 an engagement where Mr. Kramer himself has a  
8 significant number of other matters on his  
9 plate, and that the other members of his team  
10 are also working on other things, that where  
11 this Debtor is currently asking this Court to  
12 say today even if Greenhill does nothing, if  
13 this Court approves the application today as  
14 filed, this estate will be burdened with a  
15 \$6 and-a-half million fee which will have to  
16 be paid.

17 We assert it is too early and  
18 inappropriate at this time to approve that fee  
19 under 328(a). Approval of the fee under 328  
20 would mean that the creditors in this Court  
21 could not review the value that Greenhill  
22 would bring Greenhill to earn this fee. We  
23 recognize that is how Greenhill has done its  
24 applications in the past or at least presented  
25 its engagements.

1 ALLEGIANCE TELECOM, INC.

2 But here, Your Honor, the  
3 standard of engagement under 328 is not a  
4 reasonable standard as a benefit to the estate  
5 standard, but it is more difficult. Once the  
6 Court approves Greenhill's success fee under  
7 328 we cannot thereafter undertake a  
8 reasonable review. It can be modified and  
9 altered only if this Court determines, as was  
10 held in the Reimer decision that the terms and  
11 conditions of Greenhill's engagement and  
12 success fee proves to be an improvident and  
13 not capable of being anticipated, what has  
14 otherwise been known as the unforeseen  
15 circumstances test.

16 While we can appreciate Mr.  
17 Kramer will be professional and we assume he  
18 will do things necessary to actually earn this  
19 fee, we are in a situation where we can't  
20 determine that today and if Greenhill does  
21 nothing, by approving the fee today in or 328  
22 we have an obligation to the estate to them to  
23 pay it. As Mr. Greenhill testified --

24 THE COURT: You mean Mr.  
25 Kramer?

1 ALLEGIANCE TELECOM, INC.

2 MR. AUSTIN: Excuse me, Mr.  
3 Kramer. As Mr. Kramer testified, and as the  
4 engagement is presented, even if Greenhill  
5 does nothing to foster the reorganization, it  
6 will be then due a success fee of \$6  
7 and-a-half million.

8 The problem we have in approval  
9 fees such as these for investment bankers and  
10 this type of financial advisor, is approving a  
11 success fee, approving a success fee based on  
12 future events whether it is impossible to  
13 determine whether that would indeed be  
14 earned.

15 We submit, Your Honor, there is  
16 not evidence presented by the Debtor to  
17 support a 328 approval of the success fee  
18 now.

19 In the papers filed in response  
20 to our objections, the Debtor's argument that  
21 Greenhill has complied in its application with  
22 the standard set forth in the case of Drexel  
23 Burnham, which I cited a moment ago, and as  
24 and as a result of the application should be  
25 approved under 328. We submit, Your Honor,



1 ALLEGIANCE TELECOM, INC.

2 that that is often the case the law arising  
3 from the decisions often are not supported by  
4 the case itself, and we suggest that the  
5 Debtors and we invite the Court to review that  
6 case's fine print.

7 We submit, Your Honor, that  
8 Drexel does not stand for the proposition that  
9 simple compliance with the standards for the  
10 application gives automatic approval to the  
11 proposed engagement. Indeed, in Drexel it  
12 sets forth what it then determines to be the  
13 minimum of an application for an investment  
14 banker which has subsequently been federally  
15 adopted by the judges in this district.  
16 However, if the Court reviews that decision  
17 closely it will take the two investment  
18 advisors at issue, which were then Wilbur Ross  
19 of the Rothschild firm and Golub & Associates  
20 (phonetic) that this Court will see that those  
21 investment advisors engaged at least were  
22 ultimately held to a 330 standard of review as  
23 to what they would be paid at the end of the  
24 case.

25 All we are asking, Your Honor, is

1 ALLEGIANCE TELECOM, INC.

2 the same thing in this particular instance  
3 with respect to \$6 and-a-half million fee.  
4 What we are asking for today is indeed what  
5 the Court determined would be the right course  
6 of action in the BUM International case and  
7 what this Debtor has already agreed to with  
8 respect to the U.S. Trustee.

9 We are not asking in this case  
10 that Greenhill file monthly fee applications,  
11 keep time records and the like. We are also  
12 not asking for future review of the monthly  
13 fee, but only that it be credited 100 percent  
14 from May against any success fee which may be  
15 ultimately awarded.

16 At this point, Your Honor, we are  
17 simply asking that with respect to the success  
18 fee component of the proposed applications,  
19 Greenhill held to the same standard of review  
20 as to all other professionals employed in the  
21 case, and that there be a section 330 review  
22 at the end of the case to determine if  
23 Greenhill's fee is reasonable in light of the  
24 results achieved.

25 We submit if Greenhill is

1 ALLEGIANCE TELECOM, INC.  
2 confident it will perform and make a  
3 contribution, then the risks of it not  
4 receiving a success fee would be low.

5 Greenhill, like other  
6 professionals who have not been paid, bear  
7 some of the risk, and, indeed, as one would  
8 say have to earn its pay. This is what was  
9 done in the Drexel, as to Golub & Associates,  
10 and Rothschild and the BUM International case  
11 and we ask the Court to do the same here in  
12 this case in what is asked of Greenhill with  
13 respect to their \$6 and-a-half million success  
14 fee under the proposed engagement. Thank  
15 you.

16 THE COURT: Let me ask you, you  
17 said you proposed a 100 percent credit from  
18 May 1.

19 MR. AUSTIN: Yes.

20 THE COURT: That difference is  
21 about \$435,000?

22 MR. AUSTIN: Approximately,  
23 yes.

24 THE COURT: What was the  
25 rationale behind that? Is that market driven

1 ALLEGIANCE TELECOM, INC.

2 or just a sense of where the case is going?

3 MR. AUSTIN: A sense of where  
4 the case is going and a sense that it is  
5 probably not a wild assumption that at the  
6 beginning people were hopeful this case could  
7 be concluded within 12 months of Greenhill's  
8 engagement.

9 It certainly now would appear  
10 that it is going to go at least past  
11 October. I think that is a fair assessment  
12 of this case, past October, which would be the  
13 first anniversary. We were simply trying to  
14 make a suggestion as to some additional level  
15 of a crediting back against some success fee  
16 which might be awarded.

17 THE COURT: Okay. I am also --  
18 I think I have this right, Houlihan was  
19 retained subject to 328(a) or a 330 review.

20 MR. DUBLIN: 328, yes.

21 MR. AUSTIN: That is why in part  
22 we are not objecting to the monthly fee and we  
23 are not suggesting that it be subject to a 330  
24 review. It is only the \$6 and-a-half  
25 million.

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Okay. Mr. Cantor.

3 MR. CANTOR: Your Honor, on  
4 behalf of the company, as you heard from the  
5 company, the company determined it needed to  
6 retain an investment banker. They went  
7 through the process to determine what  
8 investment bankers were being compensated by  
9 the kind of service the company wanted here.  
10 It is a far cry from buying a used car. We  
11 have some very sophisticated people on board  
12 of this company, in the management of this  
13 company, and they undertook what I would  
14 suggest is one of the most deliberate recent  
15 processes to find the most appropriate  
16 investment banker to help them get through a  
17 complicated restructuring.

18 With respect to the demonstrative  
19 exhibit that the committee put together, I  
20 would suggest and we did it in our papers in  
21 though their review of what certain cases,  
22 Debtors were paying for restructuring advice  
23 to legal advisors. I think it is clear 62  
24 basis points is certainly within the range of  
25 what the market contemplated for success fees

1 ALLEGIANCE TELECOM, INC.

2 without knowing myself how long these cases  
3 were taking and certainly the \$175,000 a month  
4 fee is also well within the range of what the  
5 market shows.

6 I don't want to adopt this  
7 exhibit as evidence, but I think it  
8 demonstrates that the process that the company  
9 undertook to get itself comfortable that it  
10 was paying its investment banker what was a  
11 fair and reasonable amount was consistent with  
12 what the market was showing.

13 With respect to the bank's  
14 objection, Your Honor, the bank is relying on  
15 a case from the Central District of California  
16 that was confirmed when I was a second year  
17 associate in 1991. In this district, and we  
18 cited decisions or at least orders entered in  
19 the Adelpia Business Solutions in the Chapter  
20 11 case, the Asia Global case Chapter 11 case  
21 and the Williams Communications, Chapter 11  
22 case, all entered within the last year by  
23 judges in this Court approving compensation  
24 arrangements similar to the one here. I  
25 think it is fair to say -- --

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: Those were not  
3 contested, were they?

4 MR. CANTOR: Excuse me, Your  
5 Honor?

6 THE COURT: Were they  
7 contested?

8 MR. CANTOR: I don't know  
9 whether they were or weren't, Your Honor.

10 THE COURT: Okay.

11 MR. CANTOR: Your Honor, in this  
12 I think what you are seeing and what you may  
13 hear from the testimony, we have a fractured  
14 bank group, some members would like to see it  
15 come up one way and some another way. We  
16 also have some diversity of interestss between  
17 the members of the creditors committee and the  
18 bank group.

19 At one point I remember seeing in  
20 the pleading in the case, there was an  
21 agreement between the bank group and creditors  
22 committee and now I will tell you from  
23 experience it is pretty clear there isn't.  
24 One of the things that the company needs here  
25 and has received was independent financial

1 ALLEGIANCE TELECOM, INC.

2 advice from its financial advisors and to hold  
3 out to the end of the case, the approval of  
4 Greenhill's retention and the terms of that  
5 retention to see whether or not all creditors  
6 in the case are satisfied.

7 I think would be the  
8 inappropriate as to the investment banker  
9 under 328 Your Honor has the authority to  
10 determine at the end of the case if, for  
11 instance, as the bank's attorney suggest and  
12 things don't turn out the way the banks like.  
13 Arguably the case could be made that the  
14 approval of retention today would have been  
15 improvident based on what happened  
16 subsequently, and I think that is the whole  
17 point of 328.

18 I was told in this particular  
19 case Greenhill has provided the company with  
20 very effective independent advice, whereas  
21 earlier on in the case Greenhill very easily  
22 could have maybe given in and told the company  
23 that through a greater transaction it may not  
24 have been in the company's \$6 and-a-half  
25 million dollars, but Greenhill didn't. But



1 ALLEGIANCE TELECOM, INC.  
2 it has decided first to give the company sound  
3 advice so that we have a successful  
4 restructure that is not likely to be followed  
5 by some subsequent restructure. Based upon  
6 the evidence we showed the rates are fair and  
7 reasonable and certainly consistent with the  
8 market. Certainly what the markets told  
9 these companies to take on this project and I  
10 would submit it should be approved.

11 THE COURT: Okay.

12 MR. DUBLIN: The committee has  
13 else to add, Your Honor.

14 MR. AUSTIN: No further comment.

15 THE COURT: All right. Thank  
16 you.

17 The objections are somewhat  
18 different, and I will address the GE objection  
19 first and then the committee's objection. GE  
20 really makes two objections. One is to the  
21 propriety of using a section 328(a) retention  
22 or subjecting Greenhill's fees at the end of  
23 the case to the standard of 328(a) as opposed  
24 to a reasonable review.

25 It, like the committee, also

1 ALLEGIANCE TELECOM, INC.

2 objects to the reasonableness of the fee  
3 although at this point it focuses just on a  
4 crediting percentage and when that kicks in.

5 I disagree with the first  
6 point. I think Congress in Section 328(a)  
7 specifically contemplated the propriety of  
8 professionals being retained pursuant to a fee  
9 structure and whether that be a contingency  
10 fee or flat fee or a flat monthly fee or what  
11 is what might inappropriately be determined as  
12 a success fee because people's definitions of  
13 success vary so much. And I think that the  
14 determination by Congress should not be read  
15 out of the Code, what 328(a) says is that as  
16 long as the terms and conditions of employment  
17 are reasonable, the Court approve the  
18 retention subject to that higher review  
19 standard.

20 That reasonable review standard  
21 has become I think the norm in bankruptcy  
22 cases of this level of complexity. Although  
23 the cases cited by the Debtor I don't think  
24 were contested, the courts have recognized  
25 that in a number of situations on a contested

1 ALLEGIANCE TELECOM, INC.

2 basis that 328(a) retention is appropriate as  
3 long as, as was the case here, the parties  
4 were adequately on notice of the professional  
5 retention to be retained under 328(a) and the  
6 Court made the finding in advance at the time  
7 of retention that the terms were, in fact,  
8 reasonable.

9 I think there is a basis for  
10 distinguishing the U.S. Trustee from the other  
11 creditors here. One of the reasons that  
12 328(a)'s retention I think is a positive thing  
13 for bankruptcy cases is that it does enable  
14 the professional to provide his or her work  
15 without the pressure of knowing that when the  
16 work is done and they are not needed anymore  
17 the standard by which their work will be  
18 reviewed will be one where they can be  
19 reasonable confident that they will be paid  
20 and so that they do not have the pressures  
21 from their adversaries in the course of  
22 negotiations to be less than diligent in  
23 representing their client's interests. I am  
24 not saying that professionals do that, but it  
25 does at times under the 330 standard create a

1 ALLEGIANCE TELECOM, INC.

2 pretty unseemingly scene at the end of  
3 cases.

4 The United States Trustee on the  
5 other hand has no particular ax to grind on  
6 behalf of any constituency, and I think is  
7 therefore distinguishable from the other  
8 creditors and can be relied upon by  
9 professionals not to hold a grudge, for  
10 example, not to remember a heated point of  
11 negotiation and to take it against the  
12 professional personally when the professional  
13 was simply representing its client's views or  
14 frankly, trying to hold up a professional when  
15 the professional is not needed anymore which  
16 at times happens.

17 So I think 328(a) is an  
18 appropriate device if it is here brought on  
19 adequate notice and review and we now had a  
20 two hour hearing on it and there has been  
21 sufficient review to determine whether or not  
22 the terms are reasonable or not. I think  
23 because professionals represent their clients  
24 first and foremost, you can't really define a  
25 success fee case with the precision that is

1 ALLEGIANCE TELECOM, INC.

2 necessary.

3 I think the company is right with  
4 respect to Mr. Tresnowski's testimony in not  
5 defining success as pertaining to a particular  
6 constituent's recovery, it is very hard under  
7 those terms to measure the value that  
8 professionals bring and as Judge Wolrath in  
9 the Smart Talk case where Houlihan's actions  
10 were being attacked recognized an investment  
11 banker can conduct an auction and do all that  
12 it is supposed to do in trying to get people  
13 to participate and yet it is quite possible  
14 that no one shows up and under those  
15 circumstances she found that Houlihan should  
16 be paid because they did all that they were  
17 supposed to do. It doesn't matter there was  
18 no ultimate value produced and I think her  
19 rationale was right. The parties need to go  
20 through that process. It was not a wasted  
21 exercise by any means.

22 With that being said, and I think  
23 Mr. Cantor recognized 328(a) is not a free  
24 pass in a couple of respects, I think that any  
25 professionals and certainly Greenhill seeks

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2 retention on the basis that it will do a  
3 professional job and I think it is  
4 unforeseeable that they wouldn't do a  
5 professional job. So if there are serious  
6 staffing problem or other problems, in my view  
7 that is not something that is anticipatable.  
8 I know there are some courts who have taken  
9 what is anticipatable to some extremes, but I  
10 think everyone recognizes that a professional  
11 bills itself and holds itself out as a  
12 professional and will do a professional job.

13 Secondly, one has to be  
14 disinterested to be compensated but there are  
15 instances where professionals have become so  
16 aligned with clients who have themselves been  
17 very interested that the professionals have  
18 been interested as well and and in that  
19 context, in my view, they are not given a free  
20 pass by 328(a).

21 When I was in private practice I  
22 was always amused by judges that cite  
23 themselves, but I did write about this, and it  
24 is fresh in my mind in the Senardo (phonetic)  
25 case. So I will approve Greenhill's

## 1 ALLEGIANCE TELECOM, INC.

2 retention under the 328 case or subject to the  
3 328 review standard, subject to the 330  
4 reservation by the U.S. Trustee that Greenhill  
5 has agreed to.

6 The harder question is the one  
7 that both objectants raises which is, are  
8 these terms and conditions reasonable. I  
9 think based on my review of Mr. Tresnowski's  
10 testimony, I think the company did do a pretty  
11 thorough job of canvassing the universe of  
12 available investment bankers in this area in  
13 trying to determine whether Greenhill's fees  
14 were in the market ranges. I don't think  
15 this is exactly a cookie cutter type of  
16 determination. I don't think as much as  
17 sometimes we may joke that they are, that  
18 financial advisors are like a used car or a  
19 new car. So you can't check the blue book.  
20 And I think that the chart for demonstrative  
21 purposes that the committee attached to its  
22 objection illustrates this, there are wide  
23 swings in the benchmarks here, just as far as  
24 to what I think is the most reasonable measure  
25 the percentage of funded debt.

1 ALLEGIANCE TELECOM, INC.

2 You have a swing from in the  
3 percent in the relatively small case, but the  
4 case of a company that is agreed to by the  
5 parties to be a pretty comparable company here  
6 which is Focal Power Point, and a lower number  
7 for WorldCom.

8 Now, obviously, the fee in  
9 WorldCom is \$15 million, and it is going to be  
10 a long case, I think, and the monthly fees are  
11 quite large, \$300,000, and there is probably a  
12 fair amount of prestige for Lazard to be  
13 retained in WorldCom. So there are a lot of  
14 reasons for that low number.

15 But from the colloquy earlier,  
16 says Lazard generally has charged higher  
17 monthly fees and a lower success fee. So  
18 there are swings among the firms and swings  
19 among the types of companies, but it seems to  
20 me that as a percentage of funded debt,  
21 particularly given the added complexity of  
22 this case since the time Greenhill signed the  
23 retention letter that I find that transaction  
24 fee or the success fee is reasonable.

25 I do, though, have some concerns



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2 about the crediting and think just as perhaps  
3 the case has become more complex and,  
4 therefore, justifies the success fee at the  
5 level it has also become longer and I think it  
6 is probably appropriate to have an earlier  
7 appropriate crediting period than what was  
8 originally contemplated.

9 So I think that I could impose it  
10 or suggest that the parties negotiate it but I  
11 think the bank's suggestion does have some  
12 merit to it given the length of the case and  
13 that I would have really no reservations if,  
14 in fact, the hundred percent crediting started  
15 in May in finding that the overall fee  
16 arrangements in the retention are  
17 reasonable.

18 MR. CANTOR: Your Honor, can I  
19 take one moment to confer with Mr. Kramer?

20 THE COURT: Why don't you do  
21 that.

22 (Pause in the proceeding.)

23 MR. CANTOR: Your Honor, that is  
24 an acceptable proposal as Greenhill has  
25 indicated so we accept it also.

1 ALLEGIANCE TELECOM, INC.

2 THE COURT: So the crediting  
3 would start in the month of May, the hundred  
4 percent crediting. I will repeat something I  
5 said last time too, which is the best way to  
6 reduce the fees here is for the parties to get  
7 together on a plan and appreciate that in this  
8 case that people alternatively call simple and  
9 complex that you are not there yet, but I  
10 really urge you to try to get there.

11 It appears to me from Mr.  
12 Kramer's testimony here today and Mr.  
13 Tresnowski's testimony that the focus is  
14 largely on the financial viability of the  
15 company coming out as opposed to trying to  
16 reserve value for the equity here. So I  
17 think you have a fairly narrow band of issues  
18 to deal with although you may have a lot of  
19 different goals because you have different  
20 types of holders and I also think that you  
21 have in Greenhill and Houlihan two very  
22 experienced, probably the most experienced  
23 types of firms in dealing with those types of  
24 issues as well as a pretty sophisticated bank  
25 group.

1 ALLEGIANCE TELECOM, INC.

2 So I really do expect some  
3 discussions at a high level pretty soon and if  
4 I don't get a sense that is happening I may  
5 want someone to step in because, frankly, I am  
6 not quite sure why at this point they are not  
7 happening.

8 I understand as Mr. Tresnowski  
9 said the telecom market is in a kind of a  
10 black hole, but I would hope that offsetting  
11 that is the concern to get out of bankruptcy  
12 and avoid the fee battle of the black hole of  
13 bankruptcy.

14 I don't know if you have to mark  
15 up your order to deal with the one change we  
16 talked about today, but if you do that I would  
17 just ask you to circulate it to Mr. Austin and  
18 the folks at Akin Gump and then you could  
19 submit it to chambers.

20 MR. CANTOR: Thank you, judge.  
21 We will do that.

22 MR. AUSTIN: Thank you, Your  
23 Honor.

24

25

1 ALLEGIANCE TELECOM, INC.

2 C E R T I F I C A T E

3 STATE OF NEW YORK )

4 ) ss.:

COUNTY OF NEW YORK )

5  
6  
7 I, MINDY ROTHMAN, a Shorthand  
8 Reporter and Notary Public within and for  
9 the State of New York, do hereby certify:

10 I reported the proceedings in the  
11 within-entitled matter and that the within  
12 transcript is a true record of such  
13 proceedings.

14 I further certify that I am not  
15 related, by blood or marriage, to any of  
16 the parties in this matter and that I am  
17 in no way interested in the outcome of  
18 this matter.

19 IN WITNESS WHEREOF, I have hereunto  
20 set my hand this 13th day of August,  
21 2003.

22  
23  
24 MINDY ROTHMAN