

1 Tresnowski

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

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

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

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

1 Tresnowski

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

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

10 A. Great.

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

16 Please take a moment to review the
17 document.

18 (Pause.)

19 A. Okay.

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

22 A. I believe so.

23 Q. What is it?

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

1 Tresnowski

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

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

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

12 A. Sure.

13 Q. That contains Impala's letterhead?

14 A. Yes.

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

16 A. Yes.

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

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

19 Q. What is it?

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

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

1 Tresnowski

2 appreciate getting one.

3 A. Okay.

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

7 A. Yes, I was.

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

11 A. Uh-huh.

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

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

17 Q. It's on the first page.

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

20 MR. RATHKOPF: Objection to form.

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

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

1. Tresnowski

2. for the company.

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

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

21. MR. HENES: Can I ask a question?

22. Since it's all stated here, can't we just --
23. it says what it says, right? I'm just not
24. sure why Mark has to read it.

25. MR. DUBLIN: I just want to make sure

1 Tresnowski

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

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

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

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

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

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

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

23 A. Yes.

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

1 Tresnowski

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

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

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

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

Tresnowski

1
2 getting into this engagement like any
3 engagement: You want to leave some flexibility
4 and let it develop over time with the
5 circumstances. So it has a tendency to say that
6 you'll do these things and not these things.

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

11 A. I really don't know.

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

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

21 A. Yes.

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

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

1 Tresnowski

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

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

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

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

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

1 Tresnowski

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

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

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

24 A. Yes.

25 Q. Do you remember which chief

Tresnowski

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

restructuring officer, which firm that was?

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

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

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

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

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

A. I don't.

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

A. Glass Associates, yes.

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

1 Tresnowski

2 three firms you had interviewed?

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

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

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

18 Q. They were all in the 2 --

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

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

23 A. Yes, they did.

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

25 A. Sure.

1 Tresnowski

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

6 A. Yes, there were.

7 Q. And with whom?

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

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

Tresnowski

1
2 Q. But no recollection of if you
3 definitely talked to Mike Kramer or not?

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

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

16 A. Yes.

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

19 A. Yes.

20 Q. And what were those discussions?

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

1 Tresnowski

2 fee.

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

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

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

1 Tresnowski

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

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

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

21 A. Yes.

22 Q. Is that correct?

23 A. Yes.

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

Tresnowski

1

2 A. Right.

3 Q. What was, if you recall, Impala's

4 initial offer to you on the monthly fee?

5 A. On the monthly fee?

6 Q. Yes.

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

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

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

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

22 A. 250.

23 Q. 250?

24 A. Yes.

25 Q. Did the company ever seek to make a

1 Tresnowski

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

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

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

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

24 A. Yes.

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

1 Tresnowski

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

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

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

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

1 Tresnowski

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

4 A. Yes.

5 Q. What were the circumstances?

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

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

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

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

24 Q. And what is it?

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