

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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
04-13638-rdd

-----x

IN RE:

RCN CORPORATION,

Debtor.

-----x

United States Custom House
One Bowling Green
New York, New York
April 12, 2005
10:10 a.m.

B e f o r e:

ROBERT D. DRAIN,
United States Bankruptcy Judge

Application By AP Services, LLC For
Approval And Payment Of The Contingent
Success Fee for AP Services, LLC

RE: Doc #567; Objection Of Official
Committee Of Unsecured Creditors To
Application By AP Services, LLC For
Approval And Payment Of Contingent Success
Fee (related document(s) 543)

RE: Doc #576; Certificate of Service
Reply to Motion Reply of Success Fee
Applicant, AP Services, LLC, to Objection
of Unsecured Creditors Committee

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

A P P E A R A N C E S:
LAW OFFICE OF SHELDON S. TOLL PLLC
2000 Town Center, Suite 2550
Southfield, Michigan 48075
Attorneys for AP Services, LLC and
Alix Partners, LLC
BY: SHELDON S. TOLL, ESQ.

MILBANK TWEED HADLEY & McCLOY LLP
1 Chase Manhattan Plaza
New York, New York 10005
Attorneys for Official Committee of
Unsecured Creditors
BY: SUSHEEL KIRPALANI, ESQ.
DENNIS F. DUNNE, ESQ.

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

THE COURT: Okay, RCN. Do you want to go first, Mr. Toll?

MR. TOLL: Yes, your Honor. Good morning. May it please the Court, Sheldon Toll appearing on behalf of Alix Partners and its affiliate, AP Services.

This is an application by my client for a \$4 million success fee in the RCN case, and I would like to make a brief opening statement if I may, your Honor.

THE COURT: Okay. Do you anticipate putting on witnesses?

MR. TOLL: Yes.

THE COURT: Just very briefly. I've read the papers, obviously, and I would rather get into the evidence. But if you want to make a brief statement, that is fine.

MR. TOLL: I would like to just address what the reasonableness factors are under Section 330, which I didn't particularly discuss in my brief.

As your Honor knows, there are five factors under Section 330. The first

1
2 two, the time standard of rates charged
3 are usually deemed not applicable in
4 connection with the success fee, and the
5 cite for that is the Onologic case from
6 the Western District of Texas, 188 BR 559,
7 and Judge Gonzalez's recent decision in
8 the XO Communications case, slip opinion,
9 page 15.

10 So the remaining factors are
11 subsection (c), whether the services were
12 necessary or beneficial, and we will
13 present evidence that the services were
14 both necessary and beneficial. Subsection
15 (d), that the services were performed
16 within a reasonable time. It is not
17 contested that this bankruptcy case lasted
18 a mere 28 weeks, and we believe that that
19 requirement has been satisfied. And
20 subsection (e), whether the compensation
21 sought is comparable to customary
22 compensation charged by comparably skilled
23 practitioners in nonbankruptcy cases. We
24 will present evidence that that rule has
25 been satisfied.

1 FASOLA - DIRECT

2 Thank you, your Honor.

3 THE COURT: Okay. Do you want
4 to call your witness, then?

5 MR. TOLL: Yes. We will call
6 Mr. Alfred Fasola.

7 * * *

8 A L F R E D F A S O L A,
9 called as a witness, having been first
10 duly sworn, was examined and testified
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. TOLL:

14 Q. Mr. Fasola, would you state
15 your full name for the record, please.

16 A. Alfred F. Fasola, Jr.

17 Q. Were you on the board of
18 directors of RCN during the Chapter 11
19 case?

20 A. I was.

21 Q. Do you have any affiliation
22 with RCN today?

23 A. I do not.

24 Q. When did you first become a
25 director of RCN?

1 FASOLA - DIRECT

2 A. Right after it spun off of
3 C-Tech. I believe that was early '97.

4 Q. During the Chapter 11 case,
5 what were your positions with RCN?

6 A. My duties were generally the
7 Audit Committee, member of the
8 Compensation Committee, and lead director
9 after the first week of July.

10 Q. Were the terms of the AP
11 Services engagement, specifically the
12 success fee that was negotiated on March
13 20, '04, ever discussed with you as a
14 director of RCN?

15 A. Yes. We had numerous
16 discussions about the various professional
17 contracts, including AP Services, at the
18 board level.

19 Q. Did the board vote to approve
20 the AP Services success fee as part of the
21 engagement?

22 A. We did.

23 Q. Prior to voting, did the board
24 do anything to determine whether the AP
25 hourly fees plus success fee were

1 FASOLA - DIRECT

2 comparable to the market?

3 A. We did the only thing that we
4 could do, which was to direct management
5 to conduct such a market study and to come
6 back and to present their findings to us.

7 Q. Did they?

8 A. They did.

9 Q. And what were their findings?

10 A. Their findings were that for
11 these type of cases it was not unusual to
12 have a combination of paid hourly fees
13 coupled with a success fee.

14 Q. Do you think that having the
15 confirmation date as a trigger for the AP
16 Services success fee in the RCN case was a
17 good way to benchmark the success of the
18 restructuring?

19 A. I always believe that the
20 quicker the proceedings can be done, the
21 better off the restructured company is. I
22 suppose there are other metrics that are
23 meaningful, but in my opinion time was a
24 very important one in this case.

25 Q. Did there ever come a time

1 FASOLA - DIRECT
2 during the RCN bankruptcy proceedings when
3 the board wanted to terminate Alix
4 Partners?

5 A. Well, not to make light of a
6 serious situation, there were times when
7 that board wanted to terminate everybody.

8 When I was appointed lead
9 director, they gave me the job of
10 discussing with all of the appropriate
11 stakeholders all of the professionals, and
12 then left it up to me to decide whether or
13 not we needed some lineup changes.

14 I had extensive conversations
15 with the bank group. I believe that the
16 most important constituency was the
17 Creditors Committee, and I had extensive
18 conversations with them on an ongoing
19 basis about all the professionals.

20 Q. Did the Unsecured Creditors
21 Committee ever recommend to you as lead
22 director that the board should terminate
23 Alix Partners?

24 A. The Committee believed, I'm
25 speaking from my opinion only, that there

1 FASOLA - DIRECT

2 had already been enough changes in the
3 lineup of professionals at RCN, and they
4 did not believe it was in the best
5 interests of the case to make additional
6 changes, and that was at the time I was
7 appointed and then on subsequent
8 occasions.

9 Q. Subsequent to Mr. Aquino being
10 engaged by RCN, did Mr. Dubbel's role at
11 RCN change?

12 A. Yes, there were a series of
13 changes. We intensified the focus on a
14 number of restructuring issues, in
15 particular the franchise agreements and
16 the retail leases. It obviously was going
17 to take Mr. Aquino some time to get his
18 hand around operations. So there was a
19 phase-in and a phase-out of time.

20 It was our intention to always
21 put the highest and best use of people on
22 what was topical at the moment. So to go
23 through the week without change really
24 meant that you weren't focusing on the
25 task at hand. So yes, there were changes.

1 FASOLA - CROSS

2 MR. TOLL: No further
3 questions.

4 THE COURT: Cross?

5 MR. KIRPALANI: Thank you, your
6 Honor.

7 CROSS-EXAMINATION BY MR. KIRPALANI:

8 Q. Mr. Fasola, do you know how
9 much Alix Partners received on an hourly
10 basis for its services to RCN both before
11 and after the Chapter 11 case?

12 A. As I recall, there was a
13 sliding scale from the \$650 plus per hour
14 down to a rate for juniors that I believe
15 was under \$200.

16 Q. And all in, Mr. Fasola, is it
17 fair to say the fees incurred by Alix
18 Partners that were approved and paid by
19 the company was \$6 million roughly?

20 A. I was going to guess it was
21 somewhere over 5.

22 Q. You don't really have a view,
23 Mr. Fasola, as to whether \$6 million is
24 sufficient compensation for the work that
25 they did?

1 FASOLA - CROSS

2 A. We've had this conversation
3 before, Counsel, and I am no smarter now
4 than I was when we had it before.

5 Everyone involved in this case
6 had a different deal. Some of them were
7 hourly. Some of them were fixed. Some of
8 them had success fees. Some of them did
9 not. I am not smart enough to know an
10 algorithm that makes sense out of all
11 that, so I can't opine on that.

12 Q. Mr. Fasola, the board consented
13 to the fee structure negotiated by the
14 prebankruptcy CEO without any changes,
15 didn't it?

16 A. Say that again. The
17 prebankruptcy CEO?

18 Q. Correct. Well, let me put it
19 this way: The board consented to the fee
20 structure prior to the bankruptcy case
21 that was negotiated with the CEO without
22 making any changes to the fee structure;
23 isn't that true?

24 A. I believe that's true. I mean,
25 no one on the board negotiated the

1 FASOLA - CROSS

2 contract, if that is what you are asking.

3 The contract was negotiated between the
4 CEO and Alix Partners.

5 Q. Could you just elaborate on the
6 extent of the due diligence that the board
7 did with respect to whether the Alix
8 Partners engagement letter was a market
9 rate?

10 A. I think I've already said that,
11 but I will go over it again.

12 We instructed the CEO, and
13 through use of the general counsel, to try
14 to tell us what a market deal would look
15 like in a particular case like this
16 because we really had no way to benchmark
17 it. At the time, the only thing we really
18 had seen emerge was the Merrill Lynch
19 proposal.

20 So we did the due diligence
21 that was normal in a case like this, which
22 is we had two options. One is to go to
23 management and say "You do the study."
24 The other is to bring in a third party to
25 go through what we felt was far too long

1 FASOLA - CROSS

2 and tedious a process. We felt like we
3 had to act on this in a responsible
4 manner, so we put the onus on where it
5 should be, which was the CEO.

6 Q. Mr. Fasola, didn't the board
7 specifically ask the CEO and the general
8 counsel to take a look at comparables,
9 including Houlihan Lokey?

10 A. Yes, sir, we did.

11 Q. Do you know what business
12 Houlihan Lokey is in?

13 A. I don't. I mean, I know they
14 are in the advisory business. We did
15 specify what the comparables would be.
16 There were various names thrown out, of
17 which Houlihan Lokey, Alvarez & Marsal,
18 and some others that were known for work
19 on the debtor's side of this would be.

20 And, remember, all we wanted to
21 establish was are we doing the right thing
22 in the right way at the right time.

23 Q. And you testified on direct,
24 Mr. Fasola, that the CEO returned findings
25 to the board; isn't that correct?

1 FASOLA - CROSS

2 A. They reported back orally to us
3 at a conference call. I can't remember
4 the exact date.

5 Q. So when you said they reported
6 their findings, you didn't mean they
7 reported anything written?

8 A. No, it was an oral
9 presentation.

10 Q. Were you aware at the time of
11 consenting to the Alix Partners engagement
12 letter that Alix Partners had very
13 recently been engaged in the WorldCom case
14 to assist the debtor?

15 A. We had been advised when we
16 first met John Dubbel that they had had
17 some experience in telecom, and WorldCom
18 was one of the citings of that experience.

19 Q. But at the time you approved
20 the engagement letter, you weren't aware,
21 were you, Mr. Fasola, that John Dubbel and
22 his team at Alix Partners did not receive
23 any success fee in the WorldCom case?

24 A. No, sir.

25 Q. That fact was not brought to

1 FASOLA - CROSS

2 your attention as a result of the due
3 diligence that the CEO did?

4 A. It was not.

5 MR. KIRPALANI: I have no
6 further questions.

7 THE COURT: Does anyone else
8 have any other questions?

9 You mentioned Mr. Aquino being
10 retained during the case?

11 THE WITNESS: Yes, sir.

12 THE COURT: Do you recall
13 whether there was any price put on his
14 contract on an annual basis?

15 THE WITNESS: Your Honor, when
16 the Committee approached me about the
17 concept of having Pete Aquino come in to
18 begin a transition into permanent
19 management, it was initially as a
20 consultant that was then going to phase
21 into a corporate officer role.

22 My job was really to facilitate
23 that transition with the board and the
24 bank group and the other parties. I did
25 not place a value on it in my own mind,

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

FASOLA - CROSS

and I think the real focus was getting something done so that the Committee would have the comfort of having somebody in the company.

THE COURT: So you don't remember the terms of his compensation arrangement?

THE WITNESS: No, sir. I do believe it was in the half-million category as a consultant. I can't tell you what the intention of any of the parties were for corporate office.

THE COURT: Okay, thanks. Any redirect?

MR. TOLL: No redirect, your Honor.

THE COURT: You could step down, sir.

MR. TOLL: Mr. John Dubbel.

* * *

J O H N D U B B E L,
called as a witness, having been first duly sworn, was examined and testified as follows:

1 DUBBEL - DIRECT

2 DIRECT EXAMINATION BY MR. TOLL:

3 Q. Please state your full name for
4 the record.

5 A. John S. Dubbel, D-u-b-b-e-l.

6 Q. You are a managing director
7 with Alix Partners; is that right?

8 A. I am.

9 Q. And you became RCN's president
10 and chief operating officer on February
11 12, 2004; is that right?

12 A. That is correct.

13 Q. And that came about as a result
14 of a crisis management engagement between
15 RCN and Alix Partners; is that correct?

16 MR. KIRPALANI: Objection, your
17 Honor. A couple of leading questions are
18 okay on direct, but now we are getting
19 into characterizing his role. I think it
20 is more appropriate to ask a direct-style
21 question.

22 THE COURT: If you could try
23 not to lead.

24 Q. How did it come about that you
25 became RCN's president and chief operating

1 DUBBEL - DIRECT

2 officer?

3 A. It came about through an
4 engagement between AP Services and RCN
5 Corporation.

6 Q. Is there any particular type of
7 engagement that Alix Partners terms those
8 type of services?

9 A. Yes, we look at them as crisis
10 management or interim management type of
11 services in this particular situation.

12 Q. Can you briefly describe what a
13 crisis management engagement consists of?

14 A. Yes. In situations like this,
15 we get involved to provide management
16 services to the company either to fill a
17 hole if someone has left the organization
18 at a senior level or to add some
19 additional bench strength, also to bring
20 some additional credibility to deals based
21 upon our experience of having worked
22 through over 20 years of doing these types
23 of services, engagements with companies
24 that are going through a restructuring or
25 a Chapter 11 or any of those types of

1 DUBBEL - DIRECT

2 situations.

3 Q. At the time that you became
4 RCN's president and chief operating
5 officer, did Alix Partners furnish any
6 other interim officers to RCN?

7 A. Yes. We had a chief
8 restructuring officer. Actually, I think
9 his initial title was treasurer and then
10 changed to chief restructuring officer.
11 And also a vice president of finance to
12 assist. Then others who didn't take
13 officer roles, but provided temporary
14 employment services.

15 MR. TOLL: For the record, I've
16 had marked as Exhibit 1 a document that
17 purports to be the RCN public press
18 release announcing the retention of
19 Mr. Dubbel as the president and chief
20 operating officer, dated February 12,
21 2004.

22 May I approach the witness,
23 your Honor?

24 THE COURT: Yes.

25 Q. Could you look at Exhibit 1 and

1 DUBBEL - DIRECT

2 tell me whether you've ever seen that
3 document before today.

4 A. I have.

5 Q. Did you first see it on or
6 about February 12, 2004?

7 A. On or about. It might have
8 been the 11th that it was initially
9 drafted, but it was issued on the 12th.

10 Q. Is this the press release that
11 RCN issued announcing the retention of you
12 and your firm?

13 A. Yes, it is.

14 Q. Now, this press release states
15 in part that "Alix Partners is a firm
16 known for delivering results in difficult
17 situations"; is that correct?

18 MR. KIRPALANI: Objection, your
19 Honor. This is hearsay. This document is
20 some article, and I'm confused as to how
21 Counsel is asking questions and asking the
22 witness to comment on statements that are
23 out of court.

24 THE COURT: Are you trying to
25 use this to get to the truth of the

1 DUBBEL - DIRECT

2 statement?

3 MR. TOLL: No, just that the
4 press release so stated that, whether it
5 is true or not.

6 THE COURT: I will allow the
7 question, but it is not for the truth of
8 the matter.

9 MR. KIRPALANI: Just so I can
10 state my objection formally for the
11 record, your Honor, it is not an
12 admission. We are the Official Committee
13 of Unsecured Creditors. We are not RCN.
14 I don't see the purpose. If your Honor
15 wants to allow it, we reserve our
16 objection on relevance grounds.

17 MR. TOLL: I will withdraw the
18 question, your Honor.

19 Q. Mr. Dubbel, is it your position
20 that Alix Partners or AP Services, its
21 affiliate, delivered any results in the
22 RCN case?

23 A. Yes, it is.

24 Q. What results do you contend
25 that AP Services delivered in the RCN

1 DUBBEL - DIRECT

2 case?

3 A. Well, the case itself was a
4 very successful restructuring, providing
5 several things that took place in it.

6 Number one, for the actual
7 bankruptcy proceedings themselves, it took
8 approximately 28 weeks, which was a
9 relatively short period of time, and we
10 were able to then turn over the company to
11 the unsecured bondholders group as part of
12 the ownership change. A couple of other
13 things took place during the case. There
14 was a refinancing in excess of \$400
15 million of senior secured debt. There was
16 a renegotiation of about a \$30 million
17 second lien facility with Evergreen.
18 There were a tremendous number of SG&A
19 cuts that were taken throughout the case,
20 both prior to the actual filing, but also
21 during the case, and setting the company
22 on a path to do additional cost reductions
23 as were laid out in the business plan
24 throughout.

25 There were approximately \$720

1 DUBBEL - DIRECT

2 million worth of build-out requirements
3 that were requirements that the local
4 franchising authorities had in their
5 agreements with the company that were
6 renegotiated down so that the company did
7 not have that \$720 million of obligations.
8 There were a significant number of real
9 estate leases that were renegotiated or
10 eliminated, obviously not all of them
11 during the short period of time that it
12 was taking place, and also because of the
13 fact that not all of the operating
14 subsidiaries were in Chapter 11, but still
15 a significant amount. It was in the
16 millions of dollars in annual savings and
17 in excess of \$100 million in overall
18 savings by the renegotiation of these
19 leases.

20 That is a good chunk. I'm
21 probably missing numerous other things
22 that were done throughout the case.

23 Q. In addition to what you
24 mentioned, did Alix Partners have any role
25 in considering substantive consolidation

1 DUBBEL - DIRECT

2 issues?

3 A. Yes. Throughout the
4 negotiations with the ad hoc committee,
5 both prior to the actual filing of Chapter
6 11 and during the actual Chapter 11
7 filing, Alix Partners, or AP Services, was
8 very instrumental in reviewing from an
9 operational/finance point of view, not
10 obviously from a legal point of view, the
11 issues as it relates to substantive
12 consolidation.

13 That led to ultimately a term
14 sheet that was agreed to on May 26th which
15 did not have any of the operating
16 subsidiaries file and thus not have a
17 substantive consolidation, but even
18 reviewing it subsequent to that to see if
19 there was a need to have all of the
20 operating subs file and a substantive
21 consolidation take place.

22 Q. Did Alix Partners have any role
23 in employee turnover, if any?

24 A. Well, I would like to say it
25 was a team effort between all of the other

1 DUBBEL - DIRECT

2 folks and the senior management. But we
3 were instrumental in keeping everyone
4 informed of what was taking place
5 throughout the Chapter 11, and the more
6 information and communication that goes
7 across the board to the employees to let
8 them know what exactly is going to
9 transpire helped so there was not a large
10 loss of employees at key levels.

11 There always will be some
12 employees that are either let go or leave
13 of their own volition, but no major holes
14 were left open by people leaving during
15 the Chapter 11 proceeding.

16 Q. At time of exit from
17 bankruptcy, what was the condition of
18 RCN's balance sheet?

19 A. It was actually -- it was a
20 very strong balance sheet, an awful lot
21 stronger than what happened -- than what
22 it looked like at the time we were engaged
23 back in February of '04.

24 Q. Mr. Dubbel, according to the
25 Committee's objection, most of the terms

1 DUBBEL - DIRECT
2 of the plan had been finalized prior to
3 Alix Partners' retention, including a
4 commitment for an exit facility from
5 Deutsche Bank.

6 MR. TOLL: I'm quoting from
7 paragraph 13, your Honor.

8 Q. Is that a true statement?

9 A. I think it depends on what you
10 mean by "retention." We view our
11 retention as being on February 12th when
12 we were retained by the company to assist.
13 At that point in time there was no deal
14 with all of the parties. Nobody at the
15 company had even talked to Deutsche Bank
16 about a potential refinancing.

17 So at the time we were retained
18 in February, there was no deal, there was
19 no refinancing in place. At the time that
20 we were retained in June by the bankruptcy
21 court, obviously having worked through to
22 that point in time, all of those things
23 had been put in place. As a matter of
24 fact, we didn't file a Chapter 11 until we
25 had a deal in principle and a commitment

1 DUBBEL - DIRECT

2 letter from Deutsche Bank.

3 Q. Did Alix Partners have any role
4 in obtaining the commitment from Deutsche
5 Bank?

6 A. Yes, we did.

7 Q. What was that?

8 A. Well, as the president and
9 chief operating officer and other roles
10 that we played, we were very instrumental
11 in working with all of the various
12 different constituents. And, in fact, I
13 was responsible for leading the
14 refinancing efforts through utilizing the
15 resources that we had at hand, which
16 included our legal counsel, Skadden Arps,
17 our investment banker, Blackstone Group.

18 We were also instrumental in
19 working with the company to put together
20 the business plan that was redone prior to
21 the refinancing commitment being put in
22 place.

23 Q. Did Alix Partners have any role
24 in connection with the closing and the
25 funding of the exit facility?

1 DUBBEL - DIRECT

2 A. Yes. As is normal in these
3 situations, we continued to work with the
4 bank group. The bank group, actually
5 Deutsche Bank, who was the party putting
6 out the commitment, put the commitment in
7 place in the May time frame just prior to
8 the filing of the Chapter 11 and did not
9 actually fund it until December 21st when
10 the company emerged from Chapter 11.

11 So we worked with Deutsche Bank
12 throughout that process to continue to go
13 through the efforts on the business plan,
14 to work with them as it related to meeting
15 with all of the different credit rating
16 agencies, because in order to get the
17 syndication moving forward, we needed to
18 get credit scores from the various
19 different agencies.

20 And, also, we were very
21 instrumental in the actual syndication
22 meetings, and I had many follow-up
23 meetings and discussions with the various
24 different parties that were involved in
25 participating in the syndication.

1 DUBBEL - DIRECT

2 Q. Was RCN's 28-week exit from
3 bankruptcy of any importance to RCN's
4 business?

5 A. We believe it was. It kept the
6 company moving forward towards the
7 ultimate end game, which was to eliminate
8 its debt, come out with a stronger balance
9 sheet, keep the employees comfortable
10 during that short time frame that there
11 was a real business.

12 And obviously anytime you go
13 through a Chapter 11, a heightened concern
14 is that there could have been a potential
15 liquidation of the company. It was very
16 important to the customer base because
17 there was a lot of competition out there.
18 The other cable companies and the RBOCs
19 were using the Chapter 11 proceeding
20 against us in their own marketing, where
21 they were going out and telling our
22 customers or potential customers that RCN
23 was going out of business, was going to be
24 liquidating.

25 So it was important to have

1 DUBBEL - DIRECT

2 this company emerge from Chapter 11 as
3 appropriate.

4 Q. In your declaration filed in
5 support of the success fee in this case,
6 you state that "In addition to time
7 charged, success fees are a normal part of
8 compensation for firms like Alix
9 Partners."

10 Does Alix Partners receive
11 success fees for bankruptcy matters and
12 nonbankruptcy matters in the crisis area?

13 A. Yes, it does.

14 Q. Is this also true of Alix
15 Partners' competitors?

16 A. It is my understanding that
17 they do, yes.

18 Q. Can you describe generally the
19 success fees Alix Partners has received
20 since 1995?

21 A. Yes. We've received
22 approximately -- well, in excess of 60
23 success fees on various different
24 situations, and they range from as low as
25 \$50,000 to in some cases we have gotten

1 DUBBEL - DIRECT

2 them in the 10, 11, \$12 million range.

3 Q. Do you have any idea what the
4 aggregate amount of success fees was since
5 1995 to date?

6 A. For approximately that ten-year
7 period, I think it was on average about
8 \$3.2 million or so.

9 Q. Is a success fee structure with
10 a confirmation trigger normal in the
11 crisis management business as far as Alix
12 Partners is concerned?

13 A. It was definitely one of the
14 things that we would consider having as a
15 trigger. It depends on the circumstances.
16 But it is not uncommon for us to have the
17 emergence from Chapter 11 as a trigger for
18 the success fee.

19 MR. TOLL: For the record, your
20 Honor, I'm going to show the witness a
21 document that was marked at the
22 depositions as Exhibit 2. It purports to
23 be an emergence cash flow bridge.

24 Q. Mr. Dubbel, have you seen that
25 document before today?

1 DUBBEL - DIRECT

2 A. Yes, I have.

3 Q. Approximately at what point in
4 time did you first see this document?

5 A. This document would have been
6 prepared sometime during the summer of
7 2004 as we were preparing the information
8 for the disclosure statement.

9 Q. Who got copies of this
10 document?

11 A. This would have been given to
12 the various different advisors for the
13 company and for the bank group, so the
14 Committee's advisors, and also we would
15 have shown this to the bank group, both
16 the preexisting bank group and also the
17 new lender.

18 Q. Does this document make any
19 reference to a success fee for Alix
20 Partners?

21 A. Yes, it does.

22 Q. Where in the document is that
23 mentioned?

24 A. In the top right corner, under
25 "Subtotal for Restructuring Fees," there

1 DUBBEL - DIRECT
2 is a line called "Alix Partners" and "\$5
3 million."

4 And I think at the time that
5 this was initially put together, because
6 it was a time-based success fee, if the
7 company had confirmed the plan before
8 September 15th, it could have been up to
9 \$5 million. That was the number initially
10 put into this document.

11 MR. TOLL: Your Honor, I'm
12 going to show the witness next a document
13 that was marked at the depositions as
14 Exhibit 3. It purports to be RCN Corp.'s
15 Summary of Sources and Uses of Cash, Cash
16 Roll Forward.

17 May I approach the bench, your
18 Honor?

19 THE COURT: Yes.

20 MR. KIRPALANI: Objection, your
21 Honor. The witness is not saying he can't
22 remember anything. I don't understand
23 this coaching by giving documents to the
24 witness and walking him through it.

25 These documents are hearsay.

1 DUBBEL - DIRECT

2 They are out-of-court statements. We
3 allowed the first one so we could see what
4 he is trying to do, but Counsel is not
5 introducing these into evidence because he
6 presumably understands they are hearsay.

7 Secondly, he can ask questions
8 about what was shown and discussed with
9 the Committee without having this cheat
10 sheet in front of him.

11 I don't understand the purpose,
12 your Honor.

13 MR. TOLL: Your Honor, I am
14 introducing them into evidence. In fact,
15 I was waiting until I had all the exhibits
16 shown to the witness and they were
17 authenticated. But I would move for the
18 admission of Exhibit 2, your Honor.

19 THE COURT: I don't think you
20 objected to that one, right?

21 MR. KIRPALANI: The one he just
22 went through with him, I am objecting. It
23 is hearsay. It is something written by
24 the Blackstone Group apparently, who is
25 not here to testify or be cross-examined

1 DUBBEL - DIRECT

2 on this document.

3 MR. TOLL: The witness
4 testified it was shown to all of the
5 constituents in the case, including the
6 advisors for the Unsecured Creditors
7 Committee, and I think on that basis it
8 could be admitted into evidence.

9 MR. KIRPALANI: No, your Honor.
10 I think he can ask questions about it, and
11 similarly I can ask questions of the
12 Committee chair when he testifies about
13 the information, but the document itself
14 is hearsay with no exception, your Honor.

15 THE COURT: I won't admit it,
16 but you can ask questions on what you've
17 already done.

18 MR. TOLL: May I approach the
19 bench?

20 THE COURT: Yes. And this is
21 on Exhibit 3?

22 MR. TOLL: Yes.

23 Q. Mr. Dubbel, are you familiar
24 with the document that has been marked as
25 Exhibit 3?

1 DUBBEL - DIRECT

2 A. Yes, I am.

3 Q. Do you know when it was
4 prepared?

5 A. Yes. This was prepared under
6 my direction sometime in the December time
7 frame as we were emerging -- getting ready
8 to emerge from Chapter 11. As with
9 Exhibit 2, I asked that these type of
10 documents be prepared under my direction
11 to make sure that we had an understanding
12 of what the cash needs would be at the
13 emergence date.

14 Q. Who got copies of this
15 document, if you know?

16 A. It would have been the same
17 parties as I testified to as to Exhibit 2.
18 It would have been shared with all of the
19 various constituents, both the Creditors
20 Committee advisors and the prepetition
21 bank group, along with the new bank group
22 led by Deutsche Bank.

23 Q. Does this document make any
24 mention of Alix Partners' success fee?

25 A. Yes, it does.

1 DUBBEL - DIRECT

2 Q. What is the amount of the
3 success fee shown on this document?

4 A. On the second page of the
5 document, under the line item AP LLC, the
6 amount under the Holdback and Other column
7 is \$4 million. Under our retention
8 agreement, we were not subject to a
9 holdback, but the \$4 million would be the
10 portion of the success fee that was built
11 into the cash flows.

12 MR. TOLL: My final exhibit
13 with this witness, your Honor, was marked
14 at the depositions as Exhibit 4. It
15 purports to be a funds flow analysis dated
16 December 20, '04.

17 May I approach, your Honor?

18 THE COURT: Yes.

19 Q. Mr. Dubbel, have you seen this
20 document before today?

21 A. Yes, I have.

22 Q. When did you first see it?

23 A. This would have been in the
24 mid-December time frame. Again, this
25 would have been a document, as with

1 DUBBEL - DIRECT

2 Exhibits 2 and 3, that would have been
3 prepared under my direction to provide us
4 with the funds flow analysis that we would
5 need on or about the 21st when we were
6 expecting to actually have the effective
7 date of the plan.

8 Q. Who got copies of this
9 document?

10 A. Again, it would have been the
11 same parties. Actually, in this
12 particular situation, I believe it was
13 sent to all of the participating parties
14 listed on the bottom of the first page to
15 make sure that we had all of the
16 information we needed in here.

17 I don't know that it would have
18 actually gone to the actual Creditors
19 Committee members, because there were some
20 restrictions on what they wanted to see
21 due to their confidentiality reasons and
22 their ability to trade or not trade their
23 debt. But it would have gone to the same
24 group of advisors I talked about before.

25 Q. Does this document make

1 DUBBEL - DIRECT

2 reference to any success fee for Alix
3 Partners?

4 A. It does on the third page under
5 "Debtors, AP Services." The \$5.150
6 million is inclusive of the \$4 million
7 shown on Exhibit 3 plus the monthly fees
8 that were still outstanding at the time.

9 Q. Mr. Dubbel, was there any
10 requirement that RCN had a certain amount
11 of cash on exit from bankruptcy?

12 A. Yes. As part of the
13 refinancing of the prepetition facility,
14 Deutsche Bank had a requirement that we
15 have approximately \$115 million of cash on
16 hand in order to have them fund the new
17 facility.

18 Q. Was the exit cash requirement
19 satisfied when RCN emerged from
20 bankruptcy?

21 A. Yes, it was, or we would not
22 have been able to emerge from Chapter 11.

23 Q. If this court were to order
24 payment of Alix Partners' requested \$4
25 million success fee, will the anticipated

1 DUBBEL - CROSS

2 exit cash be diminished in any way?

3 A. No, because the anticipated
4 exit cash was developed anticipating that
5 the \$4 million success fee would have been
6 paid.

7 MR. TOLL: No further
8 questions, your Honor.

9 THE COURT: Any cross?

10 MR. KIRPALANI: Thank you, your
11 Honor.

12 CROSS-EXAMINATION BY MR. KIRPALANI:

13 Q. Good morning, Mr. Dubbel.

14 You testified on direct that
15 the three documents that you were handed,
16 the emergence cash flow bridge and funds
17 flow analysis and cash flow forward, these
18 were all documents prepared at your
19 direction?

20 A. I'm sorry, could you repeat the
21 question?

22 Q. You testified on direct, I just
23 want to make sure I got it right, that the
24 three documents that Mr. Toll showed you,
25 the emergence cash flow bridge, which was

1 DUBBEL - CROSS

2 identified as Exhibit 2, the summary of
3 sources and uses of cash roll forward
4 document, which was identified as Exhibit
5 3, and the funds flow analysis with RCN's
6 logo on it identified as Exhibit 4,
7 although not in evidence, that these were
8 prepared at your direction?

9 A. They were under my direction to
10 make sure that we were preparing all of
11 the necessary cash flow information that
12 was required as part of the exit facility,
13 yes.

14 Q. So you certainly wanted to be
15 conservative and ensure that if there were
16 any potential costs, they should be
17 included in that funds flow analysis;
18 isn't that right?

19 A. We wanted to be accurate as to
20 what the actual costs would be.

21 Q. But there would have been a
22 danger, wouldn't there have been, in not
23 putting in the costs that later could be
24 allowed; isn't that true?

25 A. If we didn't have an accurate

1 DUBBEL - CROSS

2 statement prepared, yes, there could be a
3 danger. But we had a sufficient amount of
4 excess cash. I think the requirement was,
5 as I mentioned, approximately \$115
6 million, and we had actually \$140 million
7 or so projected at emergence.

8 Q. So in your view, the documents
9 we referred to earlier, the funds flow
10 analysis type documents, they were
11 accurate?

12 A. To the best of our ability,
13 yes, they were accurate.

14 Q. And they were prepared at your
15 direction?

16 A. At my direction, yes.

17 Q. Mr. Dubbel, you were formally
18 engaged back in February 2004; isn't that
19 right?

20 A. Yes, that's correct.

21 Q. You testified a little bit
22 about this on direct, that at the time of
23 your engagement in February of 2004, there
24 had already been an ad hoc committee of
25 noteholders of RCN formed and organized;

1 DUBBEL - CROSS

2 isn't that right?

3 A. Yes, there was.

4 Q. At the time of the bankruptcy
5 filing in May of 2004, a commitment to
6 provide exit financing and the terms of
7 the global restructuring had been
8 negotiated; isn't that true?

9 A. Yes, that's correct.

10 Q. When you referred, on your
11 direct testimony, to RCN emerging with a
12 stronger balance sheet or a strong balance
13 sheet, Mr. Dubbel, are you referring to
14 the fact that 100 percent of the
15 approximately \$1.1 billion of unsecured
16 debt were converted into equity?

17 A. It is more than just that. The
18 fact is there was a \$450 million
19 prebankruptcy facility which was
20 refinanced. That prebankruptcy facility
21 had very short payment terms in terms of
22 principal payments. So you had a
23 refinanced bank facility that had a
24 seven-year term to it. You had obviously
25 the conversion of the debt under the bonds

1 DUBBEL - CROSS

2 into equity.

3 So yes, those were -- parts of
4 those components caused me to believe that
5 the company had a much stronger balance
6 sheet.

7 Q. I would like to ask you about
8 that senior secured debt refinancing that
9 you testified just now about and on
10 direct.

11 You testified on direct that
12 you took the lead in negotiating the exit
13 financing facility with Deutsche Bank; is
14 that your testimony?

15 A. No, I was responsible for
16 directing all of the various constituents
17 of the company, the advisors, the lawyers,
18 etc. The actual day-to-day negotiations
19 with the various different parties,
20 because we went with like 11 different
21 financing groups, was led by the
22 Blackstone Group, but they were working
23 under my direction.

24 Q. Isn't it true, Mr. Dubbel, that
25 the Blackstone Group, not Alix Partners,

1 DUBBEL - CROSS

2 was primarily responsible for obtaining
3 the refinancing of the senior secured debt
4 of RCN?

5 A. As in any restructuring, it is
6 not done by one party or one person.
7 Anybody who believes that to be the case
8 is kidding themselves. You work with a
9 team. You go out and select the best
10 people you can to do the work that you
11 can. We selected the Blackstone Group.
12 They worked under my direction. They were
13 responsible for the day-to-day
14 negotiations with the various different
15 refinancing constituents.

16 Q. But my question, Mr. Dubbel,
17 was, is it not true that Blackstone was
18 primarily responsible from the company's
19 side for arranging the senior secured
20 financing?

21 A. They were responsible for
22 getting various different constituents.
23 And the company, and not just me, but
24 members of senior management, were also
25 very instrumental in preparing due

1 DUBBEL - CROSS

2 diligence efforts and presenting
3 presentations to the various different
4 banking institutions to come in.

5 But yes, Blackstone was the
6 ultimate party because that is their job
7 as the investment banker, to help us help
8 the company select the right party and
9 communicate that and negotiate that with
10 the various different constituents, the
11 the ad hoc committee. Obviously there was
12 an easy discussion with the previous
13 senior secured lenders since they were
14 being taken out.

15 Q. Mr. Dubbel, isn't it true that
16 you hired Blackstone to go and refinance
17 the senior secured debt, that was their
18 job, true or false?

19 A. The company retained
20 Blackstone. That was one of the things
21 that they would have on their plate to do
22 as the investment banker for the company.

23 Q. Mr. Dubbel, do you recall being
24 deposed in connection with this proceeding
25 by me?

1 DUBBEL - CROSS

2 A. I do.

3 Q. Do you recall being asked the
4 following question: "And it is true, is
5 it not, Mr. Dubbel, that in fact
6 Blackstone was primarily responsible from
7 the company's side for arranging the
8 senior secured alternative sources of
9 lending?" And you gave the following
10 answer: "That is why we hired them, yes."

11 Was that a true statement on
12 that day?

13 A. It was.

14 Q. Mr. Dubbel, you referred also
15 to the elimination of approximately \$720
16 million of build-out obligations. Were
17 you referring to the franchise agreement
18 amendments made in San Francisco and
19 Chicago?

20 A. Among others. There were
21 approximately 150 or so different
22 franchising agreements, of which I would
23 want to say 30 or 40 that had significant
24 build-out requirements.

25 Chicago and San Francisco were

1 DUBBEL - CROSS

2 the two largest amounts of the build-out
3 requirements, yes.

4 Q. Is it true that Chicago and San
5 Francisco together make up the \$720
6 million number?

7 A. No. San Francisco was
8 approximately -- well, was \$200 million.
9 Chicago was 300 and something. So that
10 would have been a little over \$500 million
11 of the total. Then there were another 25
12 or so various different constituents that
13 added another \$200 million or so.

14 Q. Mr. Dubbel, isn't it true that
15 the amendments in San Francisco and
16 Chicago were primarily handled by RCN's
17 general counsel, who was a former
18 regulatory lawyer, and RCN's outside
19 regulatory counsel?

20 A. As I stated before, it is a
21 team effort to get these things done.
22 This work was done under my direction and
23 under my supervision, and also I was
24 responsible for pushing forward the
25 different processes.

1 DUBBEL - CROSS

2 And the general counsel and
3 outside regulatory counsel consulted with
4 me on all of the settlements. We had
5 extensive conversations about various
6 different strategies that we would take.
7 But the actual day to day, as you would
8 expect, was done by the general counsel,
9 who had significant regulatory experience,
10 and her outside regulatory counsel.

11 Q. But your testimony is that you
12 supervised those negotiations?

13 A. I supervised or I provided
14 guidance or strategic thought process on
15 how we should move the process forward to
16 get to a zero number at the end of the
17 day.

18 Q. Isn't it true, Mr. Dubbel, that
19 you never once attended a meeting in
20 either San Francisco or Chicago in
21 connection with those amendment
22 negotiations?

23 A. That is true.

24 Q. With respect to the refinancing
25 of the senior secured debt, we talked

1 DUBBEL - CROSS

2 about Blackstone's role.

3 Isn't it true, Mr. Dubbel, that
4 members of the Creditors Committee and
5 other unsecured noteholders provided a
6 significant part of the refinancing needed
7 to take out the prepetition bank group?

8 A. Members of the Committee or
9 ex-officio and official members of the
10 Committee along with participants who had
11 been part of the Committee prior to the
12 filing did provide a significant portion
13 of the \$150 million facility that was the
14 second lien facility. Then a third party
15 also provided a portion of that in
16 addition.

17 Q. And Blackstone arranged that
18 tranche financing, too, didn't it?

19 A. That was actually kind of a
20 combination of a lot of people. As I
21 understand it, the initial contact with
22 B.E. Shaw, who was, I will call it, the
23 lead on that particular piece, was through
24 I think one of the members of the
25 Committee.

1 DUBBEL - CROSS

2 It was one of those situations
3 where Deutsche Bank had been willing to
4 put up the second lien piece, but when
5 presented with a different proposal, which
6 took a lot of negotiation obviously, the
7 company and the Official Committee decided
8 to go with this other group led by B.E.
9 Shaw and also the Creditors Committee
10 members and the ad hoc committee members.

11 Q. You testified on direct,
12 Mr. Dubbel, that in some sense your job is
13 that of a crisis manager; isn't that true?

14 A. It depends on the particular
15 situation, but yes.

16 Q. For RCN's situation, were you a
17 crisis manager?

18 A. A crisis manager and interim
19 manager, yes.

20 Q. Cost reduction in terms of
21 settling SG&A costs was an expected part
22 of your job as a crisis manager for RCN,
23 wasn't it?

24 A. In this particular situation,
25 yes.

1 DUBBEL - CROSS

2 Q. And you knew that it would be
3 part of the job when you were engaged
4 pursuant to the bankruptcy court retention
5 order, didn't you?

6 A. It had been part of the job
7 prior to the retention, yes. So I knew
8 that it would be a continuing effort that
9 would take place during the bankruptcy,
10 and, you know, would have to continue to
11 take place after the Chapter 11
12 proceeding, to be honest with you.

13 Q. Mr. Dubbel, what about
14 renegotiating real estate leases, was that
15 an expected part of your job as a crisis
16 manager for RCN?

17 A. That was one of the things,
18 yes, that we were responsible for, to work
19 with the company and its various
20 landlords.

21 Q. At the time the bankruptcy
22 court approved your retention, you were
23 aware of that being part of your job,
24 weren't you?

25 A. That's correct.

1 DUBBEL - CROSS

2 Q. Isn't it true, Mr. Dubbel, that
3 the entire real estate effort was a team
4 effort, a collaborative effort that
5 involved the company's lawyers and
6 numerous key employees at RCN?

7 A. Yes. As I mentioned earlier,
8 any of these types of situations, it
9 always is a team effort. One shop, one
10 person, cannot do it all themselves. If
11 they do try to do that, they will fail.

12 Q. You testified on direct that
13 there was very little employee attrition
14 during the course of the case; is that
15 your testimony?

16 A. Very little senior-level
17 employee attrition of people that we would
18 not have wanted to see leave due to them
19 being concerned about the Chapter 11
20 proceedings and their future.

21 Q. Isn't it true, Mr. Dubbel, that
22 the CEO, COO, and the general manager for
23 the Boston area all left during the course
24 of the case?

25 A. I'm sorry, are you saying that

1 DUBBEL - CROSS
2 is one position in Boston or three
3 different positions? I don't understand.

4 Q. I will ask it separately.

5 Isn't it true that the CEO of
6 RCN stepped down during the course of the
7 Chapter 11 case?

8 A. It is not my understanding that
9 he stepped down during the case. His
10 employment wasn't continued as the company
11 emerged from Chapter 11.

12 But he was the CEO up through
13 the emergence date, and it was never
14 expected -- at least at the time that the
15 filing took place, it was more or less
16 known when I was initially retained that
17 he would not probably have a continuing
18 role with the company as the CEO of the
19 company after the emergence.

20 Q. What about your predecessor as
21 COO, is he still with the company?

22 A. There wasn't really a
23 predecessor when I got there in that
24 position. I think it had been several
25 years before that that person had left.

1 DUBBEL - CROSS

2 Q. And the general manager for the
3 Boston area?

4 A. The general manager for the
5 Boston area was --

6 Q. The question is, just to remind
7 you, did he leave during the course of the
8 case?

9 A. I don't recall whether he left
10 because we offered him the opportunity to
11 resign or whether we actually terminated
12 him. But he was put into a position where
13 that was his choice, either resign or be
14 terminated.

15 Q. Isn't it also true, Mr. Dubbel,
16 that approximately 250 employees were
17 fired during the course of the Chapter 11
18 case?

19 A. I don't know the exact number.
20 There were a number of employees that were
21 terminated prior to the filing and there
22 were a number of employees that were
23 terminated during the case, and I do know
24 that there was a significant number of
25 employees terminated on or about the time

1 DUBBEL - CROSS

2 that the company was emerging from Chapter
3 11.

4 Q. As a crisis manager, you didn't
5 cause these layoffs to occur, did you?

6 A. Some of them I was responsible
7 for making sure it happened, and others,
8 the latter part that took place in the
9 December time frame, were part of I will
10 call it the new management team,
11 Mr. Aquino, who was coming in to take over
12 the company.

13 But these were all anticipated
14 that they would happen as part of the
15 business plan that we had put together.
16 We knew that we would have to make --
17 continue to make significant cost
18 reductions.

19 Q. Mr. Dubbel, you testified on
20 direct that contingent success fees were a
21 normal and regular part of Alix Partners'
22 compensation scheme. Do you recall that
23 testimony?

24 A. I don't recall using the word
25 "contingent." But yes, success fees are a

1 DUBBEL - CROSS

2 normal part of the Alix Partners or AP
3 Services retention.

4 Q. Mr. Dubbel, Alix Partners was
5 engaged by the debtor in the WorldCom
6 bankruptcy, wasn't it?

7 A. Yes, it was.

8 Q. In fact, you personally worked
9 on that engagement, didn't you?

10 A. Yes, I did.

11 Q. Correct me if I am wrong, but
12 isn't it true that the WorldCom case was
13 the largest bankruptcy case that Alix
14 Partners ever worked on?

15 A. I believe it is the largest
16 case anyone has ever worked on.

17 Q. And you did not receive, did
18 you, Mr. Dubbel, at the end of the day, a
19 success fee as part of your compensation
20 in the WorldCom case, did you?

21 A. We did not.

22 Q. You were comfortable being
23 compensated solely on the basis of your
24 standard hourly rates without a success
25 fee in the WorldCom case, weren't you?

1 DUBBEL - CROSS

2 A. I was not comfortable with it,
3 but we made a business decision based upon
4 the facts and circumstances not to seek
5 one.

6 Q. Mr. Dubbel, do you recall
7 testifying at your deposition in
8 connection with this proceeding?

9 A. Yes, I do.

10 Q. Do you recall being asked the
11 following question and giving me the
12 following answer: "Question: Do you
13 believe you were compensated fairly in the
14 WorldCom case?" Your answer: "I believe
15 we agreed to a compensation structure that
16 we were comfortable with at the end of the
17 day."

18 Was that your testimony?

19 A. Yes, it was.

20 Q. Mr. Dubbel, I would like to
21 show you a copy of your declaration dated
22 February 4th, 2005 which your attorney
23 filed for you in connection with this
24 proceeding.

25 MR. KIRPALANI: Your Honor, may

1 DUBBEL - CROSS

2 I approach the witness?

3 THE COURT: Yes.

4 Q. Mr. Dubbel, do you recognize
5 the declaration I just handed you?

6 A. I do.

7 Q. And you executed this
8 declaration in connection with the success
9 fee application, didn't you?

10 A. I did.

11 Q. I would like to turn your
12 attention to paragraph 6 of the
13 declaration. Do you see that?

14 A. I do.

15 Q. Can you please read that
16 paragraph out loud for the Court.

17 A. "In 58 engagements of APS and
18 affiliates between 1995 and 2004, both
19 bankruptcy and nonbankruptcy, success fees
20 paid have ranged from \$50,000 to
21 \$11,908,000."

22 Q. Does that paragraph in your
23 declaration include all of Alix Partners'
24 engagements over the course of a ten-year
25 period?

1 DUBBEL - CROSS

2 A. No, it does not.

3 Q. It doesn't include the WorldCom
4 case, does it?

5 A. It does not. This relates
6 solely to the ones in which we have
7 received a success fee.

8 Q. Did you disclose to the Court
9 the number of engagements you were
10 retained or Alix Partners was retained in
11 which you didn't gain a success fee?

12 A. I do not see it in this
13 document.

14 Q. Do you see it in any document
15 disclosed to the Court?

16 A. I don't recall.

17 Q. Do you have any reason to
18 believe you have disclosed that
19 information to the Court?

20 A. I have no reason to believe we
21 disclosed that to the Court, no.

22 Q. I would like to turn your
23 attention to paragraph 7 in your sworn
24 declaration. The latter part of that
25 paragraph says the fees sought in this

1 DUBBEL - CROSS

2 case, I'm paraphrasing, is "consistent
3 with the average for large cases."

4 Do you agree with that
5 statement sitting here today, Mr. Dubbel?

6 A. I do.

7 Q. At the time of preparing and
8 signing this declaration, did you compute
9 an arithmetic mean in connection with that
10 statement?

11 A. I did not compute an arithmetic
12 mean, no.

13 Q. Mr. Dubbel, prior to joining
14 Alix Partners, you were a partner at
15 Arthur Andersen; were you not?

16 A. No, I was not. Not prior to
17 joining Alix Partners.

18 Q. Well, not immediately prior,
19 but at some point prior to joining Alix
20 Partners, were you a partner at Arthur
21 Andersen?

22 A. About a dozen years ago, yes.

23 Q. But you were a partner there?

24 A. I was a partner at Arthur
25 Andersen from 1991 to -- or 1990 to early

1 DUBBEL - CROSS

2 1993, about two and a half years. I can't
3 remember the exact time frame.

4 Q. As a partner at Arthur
5 Andersen, you were a co-founder of the
6 Restructuring Group; isn't that true?

7 A. That's correct.

8 Q. Andersen never received success
9 fees for its restructuring services, did
10 it?

11 A. At the time that I was there,
12 it did not. I don't know what they did
13 after I left. That was a dozen years ago.

14 Q. But when you were at Andersen
15 doing restructuring, you didn't see
16 success fees?

17 A. We had a lot of prohibitions on
18 it, because, in essence, it was a
19 contingent type of fee. Arthur Andersen,
20 because of its role as an auditor, wasn't
21 allowed to seek success fees that were
22 contingent, in essence.

23 Q. It was not part of their
24 compensation structure?

25 A. No.

1 DUBBEL - CROSS

2 Q. They relied on the hourly
3 basis?

4 A. Andersen did rely on the hourly
5 basis, yes.

6 Q. After leaving Andersen,
7 Mr. Dubbel, you didn't undergo any special
8 formalized training or certifications to
9 become a principal at Alix Partners, did
10 you?

11 A. In order to become a principal,
12 no, I did not have to go through any
13 special certifications.

14 MR. KIRPALANI: No further
15 questions for this witness.

16 THE COURT: Mr. Dubbel, you are
17 aware, because you are involved in this
18 business, that investment bankers
19 frequently charge success fees?

20 THE WITNESS: Yes, I am aware
21 of that.

22 THE COURT: And do they often
23 charge them based on a particular
24 measurement, like a basis point of the
25 debt that is being restructured and the

1 DUBBEL - CROSS

2 like? Are you aware of how they calculate
3 their fees generally?

4 THE WITNESS: In general, it
5 depends on the facts and circumstances of
6 what has been taking place. There have
7 been situations where they get a success
8 fee for a sale of the business, whether it
9 is a 363 sale. They may get something
10 based upon a formula of a sale. They may
11 get a formula based upon going out and
12 raising capital.

13 Quite often they will get just
14 a standard fee for the emergence,
15 successful emergence. Obviously if there
16 is a Chapter 7 liquidation, it is not
17 considered successful.

18 THE COURT: Is there any
19 similar formulaic approach to the
20 calculation of success fees by AP Services
21 or its competitors?

22 THE WITNESS: I can't speak to
23 the competitors, your Honor. Our approach
24 is different. We are not investment
25 bankers. In these types of situations, we

1 DUBBEL - CROSS

2 are a management. So we will look to work
3 with the company to develop whatever is
4 the appropriate compensation model,
5 whether it is based upon the success fee
6 being based on changes in EBITDA, changes
7 in the value of the company from the time
8 that we got engaged until the emergence or
9 the end of our engagement.

10 There may be specific tasks
11 that we are engaged to do, but there is
12 nothing that I could say specifically ties
13 us in a formula directly to the
14 compensation model of what investment
15 bankers do, because they do something
16 completely different from what we do.

17 THE COURT: But is there any
18 sort of formula that is recognized in your
19 industry, in the crisis management
20 industry?

21 THE WITNESS: I don't know of a
22 specific formula, your Honor. We look at
23 each of the situations. We look at the
24 size of the case. Obviously for a much
25 smaller case than RCN we would not be

1 DUBBEL - CROSS

2 seeking something of this magnitude. Our
3 services probably would not be the same
4 level of effort.

5 So it depends on the size.
6 Again, it depends on the role that we
7 would have. If our role in a company was
8 strictly related to a specific small task,
9 then the level of success fee wouldn't be
10 the same formula-based type of thing.

11 THE COURT: Mr. Fasola
12 testified that management did a market
13 analysis in connection with determining
14 whether your fee was reasonable or not,
15 the success fee. Did they talk with you
16 about how to understand whether it was
17 market or not?

18 THE WITNESS: They did. The
19 general counsel spoke with me, as did, at
20 points in time, the CEO.

21 THE COURT: How do you go about
22 saying that it is market?

23 THE WITNESS: What we looked at
24 is I gave examples of what we had done in
25 the past in success fees in cases of a

1 DUBBEL - CROSS

2 similar size. We actually gave a range.
3 It could have been from \$5 million down to
4 \$3 million. It was ultimately determined
5 based on the timing issue.

6 I also pointed them to the
7 success fees that had been received, you
8 know, there was the Daily Bankruptcy
9 Review and others that report those type
10 of things, I pointed them to that. The
11 general counsel had previously been
12 involved in a Chapter 11, as I recall, I
13 don't remember the name of it, but he had
14 some familiarity with those types of
15 situations.

16 THE COURT: Did you say that
17 the 3 to \$5 million, I'm not sure I
18 understood your answer, the 3 to \$5
19 million that you negotiated based on
20 timing, was that specific range based on
21 comparables in prior engagements that you
22 had had?

23 THE WITNESS: Yes. We had
24 opportunities to get even more than that
25 in other situations, and obviously we had

1 DUBBEL - CROSS

2 situations where there was less. But in a
3 case of this size, that was the rough
4 range that we were looking at as
5 comparable. It is not uncommon for us to
6 put together a range, because the company
7 wanted us to have an incentive to do
8 something to get the higher end of the
9 range.

10 THE COURT: You mentioned 58 or
11 60 engagements where there had been
12 success fees for AP or one of its
13 affiliates. Do you have any knowledge as
14 to how many engagements in the last ten
15 years where there weren't success fees?

16 THE WITNESS: I don't. I think
17 the vast majority of our situations we
18 have received a success fee. There are
19 some situations in which we will target
20 something. A lot of times you get
21 involved in these deals and the company is
22 specifically asking you to target it based
23 on EBITDA.

24 If you have only been there a
25 couple of weeks, to make a determination

1 DUBBEL - CROSS

2 sometimes you might get aggressive in
3 working with the company in putting
4 together a formula that doesn't work for
5 you because you cannot achieve what has
6 been asked for you. In those situations,
7 that is the risk we take, and we don't get
8 the success fee if we don't achieve it.

9 THE COURT: In what percentage
10 over the last ten years of engagements
11 where AP or one of its affiliates were
12 involved in crisis management did you not
13 even have any provision for a success fee,
14 leaving aside ones where you didn't earn
15 it, but where you wouldn't have a success
16 fee at all?

17 THE WITNESS: When we were
18 doing these types of services, crisis
19 management or interim management, it is my
20 understanding that in all of those
21 situations we ask for a success fee
22 formula as part of our normal compensation
23 model. I am not aware of any in which we
24 have gone into a situation without at
25 least having the opportunity to earn it.

1 DUBBEL - CROSS

2 THE COURT: Okay. Any
3 redirect?

4 MR. TOLL: No redirect, your
5 Honor.

6 THE COURT: Do you want to ask
7 anything based on my questions?

8 MR. KIRPALANI: No, your Honor.
9 We do have a couple of our own witnesses,
10 though.

11 THE COURT: Okay, you can step
12 down, Mr. Dubbel.

13 MR. TOLL: I would like to call
14 Mr. Pantaleo as a witness.

15 MR. KIRPALANI: Your Honor, we
16 object. This was not on the previously
17 exchanged witness lists. This is
18 literally the first time this is being
19 mentioned.

20 THE COURT: Is this fact
21 testimony or can Mr. Pantaleo make a
22 representation based on being counsel?

23 MR. KIRPALANI: Your Honor, if
24 that is the choice, I would prefer to have
25 him testify. We have no idea what he is

1 PANTALEO - DIRECT
2 going to say. The bank group who he
3 represented has not even joined us in this
4 matter. We have no pleadings whatsoever.
5 We would have deposed principals had we
6 known they were taking a position in this
7 matter.

8 If he would like to testify, we
9 have no objection, your Honor.

10 * * *

11 P E T E R P A N T A L E O,
12 called as a witness, having been first
13 duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION BY MR. TOLL:

16 Q. Sir, please state your full
17 name for the record.

18 A. Peter V. Pantaleo.

19 Q. What, if anything, was your
20 role in the RCN Chapter 11 proceeding?

21 A. My firm was counsel to JP
22 Morgan as agent to the prepetition secured
23 lenders.

24 Q. Did you have any role prior to
25 the bankruptcy filing?

1 PANTALEO - DIRECT

2 A. Yes. We were involved in the
3 same capacity in the workout phase of the
4 RCN matter.

5 Q. Can you describe the banks'
6 position in the case?

7 A. The banks were senior secured
8 lenders. They were owed I think at the
9 time of filing just south of about \$500
10 million.

11 Q. And were they paid off 100
12 percent?

13 A. Yes, on the effective date of
14 the plan, yes.

15 Q. Can you describe Alix Partners'
16 interaction, if any, with the banks?

17 A. Yes. Alix Partners, as you
18 heard earlier, was retained sometime in
19 February of '04, and at that time they had
20 contacted the agent and began having
21 direct discussions with the agent over the
22 general direction of the case.

23 Q. Paragraph 13 of the Committee's
24 objection to the Alix Partners success fee
25 says "Most of the terms of the plan had

1 PANTALEO - DIRECT

2 been finalized prior to APS's retention,
3 including a commitment for an exit
4 facility from Deutsche Bank."

5 Is that a true statement, sir?

6 A. That statement may technically
7 be true. In fact, I'm sure it is
8 technically accurate. I think, though,
9 that it underassesses and underestimates
10 the impact that Alix had in the
11 restructuring and the bankruptcy.

12 Specifically, at the time they
13 were introduced in the case, there were
14 negotiations between the banks and the
15 bondholders that had hit an absolute
16 stalemate principally because the banks
17 were being asked to underwrite a plan
18 which was probably the sixth plan in five
19 years which had as its components losing
20 approximately \$150 million of the banks'
21 cash before there was any prospect of
22 profitability. At that point there was no
23 agreement between the banks and the
24 bondholders, and I will tell you at that
25 point the banks had reached a point where

1 PANTALEO - CROSS

2 they were very seriously preparing for a
3 possible liquidation of the company in a
4 contested proceeding.

5 It was only at that point when
6 Alix Partners was retained when they
7 approached the banks and suggested very
8 strongly they would take the case in a
9 different direction, not impose the risk
10 of the business plan on the banks' back
11 and secure the banks' indulgence over
12 several months to be patient, and allow
13 them, with Blackstone, to secure a
14 different plan which the banks supported.

15 MR. TOLL: No further
16 questions.

17 MR. KIRPALANI: Your Honor, if
18 I could beg the Court's indulgence,
19 Mr. Dunne has a lot more knowledge about
20 the case. I would ask him to do the
21 cross-examination.

22 THE COURT: That is fine.

23 CROSS-EXAMINATION BY MR. DUNNE:

24 Q. Good morning, Mr. Pantaleo.

25 A. Good morning, Mr. Dunne.

1 PANTALEO - CROSS

2 Q. Isn't it true, Mr. Pantaleo,
3 that the company, the lenders, and the ad
4 hoc committee had many discussions about
5 potential restructuring in the spring of
6 '04 prior to the filing of these cases?

7 A. Yes, that is true.

8 Q. Isn't it a fair statement to
9 say your clients were not very bullish on
10 the future prospects of RCN?

11 A. That's correct.

12 Q. Isn't it true that at no point
13 during the process did your client offer
14 to underwrite the exit financing?

15 A. I'm not sure that is completely
16 accurate. I think in the course of the
17 negotiations between the banks and the
18 bondholders where the bondholders were
19 asking, in effect, the banks to underwrite
20 the exit, the banks sought certain terms
21 which I think the bondholders viewed as
22 unacceptable.

23 But if you mean underwriting
24 the exit in a way which Deutsche Bank did,
25 the answer is clearly no.

1 PANTALEO - CROSS

2 Q. Did your client ever offer to
3 underwrite on terms substantially similar
4 to the Deutsche Bank facility?

5 A. To my knowledge, no.

6 Q. And your clients are senior
7 secured lenders, correct?

8 A. They were at the time, yes.

9 Q. And they had a lien on
10 substantially all of the assets in the
11 company?

12 A. Including cash collateral, yes.

13 Q. And what they wanted was to get
14 cashed out as quickly as possible,
15 correct?

16 A. Eventually, yes. They wanted
17 to get paid.

18 Q. And whether that cash-out
19 occurred with a company that was best
20 positioned to succeed in the future was
21 irrelevant to them so long as Deutsche
22 Bank closed on the exit financing?

23 A. I think you've got to be
24 specific about the point in time in which
25 you are speaking. At some point when it

1 PANTALEO - CROSS

2 became clear that in fact there would be a
3 Deutsche Bank financing, you are right, it
4 became irrelevant to them.

5 But at the time in 2004, in
6 February/March when Alix Partners became
7 involved in the case, the prospect of
8 being taken out by Deutsche Bank or anyone
9 else didn't appear to exist. It was, for
10 that reason, very important to the banks
11 to make sure that the company was
12 positioned in whatever configuration it
13 needed to be to get them paid as quickly
14 as possible, including, if necessary, a
15 liquidation.

16 Q. Success for your client was
17 getting cash in their pocket, correct?

18 A. Getting as much as they thought
19 they could get out of the value of the
20 assets.

21 Q. Whether that resulted in a zero
22 recovery to unsecured creditors or 100
23 percent to unsecured creditors, your
24 client was indifferent, correct?

25 A. Yes.

1 PANTALEO - CROSS

2 Q. Does JP Morgan ever, as agent
3 on secured bank facilities, recommend
4 turnaround consultants or crisis managers
5 to its borrower?

6 A. They recommend the borrower
7 consider hiring turnaround managers, yes.

8 Q. Has JP Morgan ever recommended
9 that a buyer ever hire Alix Partners?

10 A. I imagine they may have. I
11 just don't know, though.

12 Q. Would you be surprised to find
13 that out?

14 A. I would not be surprised. They
15 did not do so in this case.

16 Q. Were they consulted in this
17 case prior to the hiring of Alix Partners?

18 A. Honestly, I don't think they
19 were. I think it is something they found
20 out about after it was determined to
21 engage them.

22 Q. Does your client have an
23 interest in reorganized RCN?

24 A. It may through some other desk
25 of the bank. But to my knowledge, I have

1 PANTALEO - CROSS

2 no knowledge of any interest that they
3 have.

4 Q. Does the financing facility for
5 which you represent at JP Morgan exist
6 today?

7 A. No, it was paid in full.

8 Q. Whether the Court allows Alix
9 Partners' fees at zero or \$4 million
10 today, it will not affect the economic
11 recovery of your clients under that
12 facility one iota?

13 A. We've been paid, yes.

14 MR. DUNNE: I have no further
15 questions.

16 THE COURT: You can step down.

17 MR. TOLL: At this juncture,
18 we've finished with our evidence. I would
19 like to move Exhibits 2, 3, and 4 into
20 evidence on the grounds that they are
21 business records kept in connection with
22 the confirmation of the plan of
23 reorganization.

24 MR. KIRPALANI: Your Honor, we
25 object. The requirements for showing

1 AQUINO - DIRECT

2 business records exception under the
3 Federal Rules of Evidence were not met.
4 We don't even think they were attempted.

5 THE COURT: I think that is
6 right. I think you've gotten what you
7 wanted out of them anyway. So I won't
8 admit them.

9 MR. TOLL: We rest our case.

10 MR. KIRPALANI: The Official
11 Committee of Unsecured Creditors of RCN
12 would call the first of its two witnesses,
13 Mr. Peter Aquino.

14 * * *

15 P E T E R A Q U I N O ,
16 called as a witness, having been first
17 duly sworn, was examined and testified
18 as follows:

19 DIRECT EXAMINATION BY MR. KIRPALANI:

20 Q. Good morning, Mr. Aquino.

21 A. Good morning.

22 Q. Mr. Aquino, who are you
23 currently employed by?

24 A. I'm employed by RCN
25 Corporation.

1 AQUINO - DIRECT

2 Q. What is your position at RCN?

3 A. President and CEO.

4 Q. How long have you held the
5 position of president and chief executive
6 officer of RCN?

7 A. Since December 2004.

8 Q. Did you have any connection to
9 RCN prior to that?

10 A. Prior to that I operated under
11 my individual company name, PDA Group LLC,
12 a Virginia company, and I was hired as
13 operations consultant in August of 2004.

14 Q. I believe the Court had a
15 question earlier of Mr. Fasola as to what
16 your compensation was for serving as a
17 consultant to RCN as debtor-in-possession.
18 Do you recall that?

19 A. Yes. I had a six-month
20 agreement, \$45,000 a month, flat fee.

21 Q. What sort of consulting
22 services did you provide to the company?

23 A. Primarily operations
24 consultant.

25 Q. Did you do any cost-cutting

1 AQUINO - DIRECT

2 consulting?

3 A. It involves the revenue line,
4 the expense line, the capital budget,
5 organization structure, many aspects of
6 the operations day to day.

7 Q. Was that your first exposure to
8 the bankruptcy case, serving as a
9 consultant to the debtor?

10 A. No, it was not.

11 Q. What did you do prior to that?

12 A. Prior to that, under my company
13 name, I was hired by Communications
14 Technology Advisors, and I was hired to
15 help them in different restructuring
16 operations, and I was on the RCN case with
17 CTA. We represented the unsecured
18 creditors.

19 Q. Just to make sure we have this
20 right, CTA was retained by the unsecured
21 official committee?

22 A. Yes.

23 Q. You were hired as a consultant
24 to CTA prior to being a consultant to the
25 debtor?

1 AQUINO - DIRECT

2 A. Correct.

3 Q. Can you explain in your own
4 words how you went from being on the
5 Creditors Committee side of the case to
6 being hired by the board?

7 A. I would say it was a little
8 unusual. But around the summertime, the
9 company basically asked me to take a
10 position directly with RCN, and CTA agreed
11 that that would happen, and I basically
12 signed an agreement with RCN at that time
13 to concentrate solely on the RCN project.

14 Q. What exactly were you asked by
15 the company to concentrate on?

16 A. The company asked me to focus
17 primarily on operations, take over all
18 aspects of the business, have all entities
19 basically report to me, and that included
20 the general managers and the corporate
21 staff that ran day-to-day operations.

22 Q. Was this at the same time that
23 Mr. John Dubbel was the interim chief
24 operating officer of RCN?

25 A. At that point there was a

1 AQUINO - DIRECT

2 change. I basically took over most of
3 John's operating work. He focused in on
4 restructuring and I stuck with the
5 operations.

6 Q. It was the company, though, not
7 the Committee, that asked you to work for
8 RCN?

9 A. I was hired by the company.

10 Q. When you mentioned that you
11 implemented cost-cutting measures, did you
12 work together with Alix Partners on this
13 aspect of the operational restructuring?

14 A. At the time that I joined in
15 August, most of the Alix Partners
16 employees that were focused on operations
17 basically left. I think there was one
18 employee that had maybe a two-week
19 layover, and then basically all operations
20 were my responsibility.

21 Q. And when you say your
22 responsibility, did you use the company's
23 own personnel to accomplish those
24 objectives?

25 A. Yes.

1 AQUINO - DIRECT

2 Q. Now, having served as an
3 operations consultant on the Committee
4 side and operations consultant to the
5 company, and as currently the president
6 and chief executive officer of RCN, would
7 you characterize Alix Partners' services
8 in these cases as extraordinary?

9 A. No.

10 Q. Why not?

11 A. First of all, for me to enter
12 in August, something was going on where
13 they wanted to bring in another operator.
14 So step one was to basically take over the
15 work that they were doing up to date and
16 carry it forward. So there must have been
17 some dissatisfaction overall. It was a
18 team effort, as John said, but I took over
19 completely in August.

20 Q. Do you agree with Alix Partners
21 that their efforts were instrumental in
22 negotiating and confirming a
23 reorganization plan in these cases?

24 A. I was not personally involved
25 in much of the negotiations with the

1 AQUINO - DIRECT

2 creditors and the banks, but I focused
3 primarily on operations. I was aware of
4 much of the work.

5 Q. In the operational area, would
6 you agree with Alix Partners that their
7 services were extraordinary?

8 A. No.

9 Q. Did you read the reply that
10 Alix Partners filed in response to the
11 Committee's objection to their success
12 fee?

13 A. Yes, sir.

14 Q. Do you recall that in the reply
15 Alix Partners lists a number of facts that
16 they claim demonstrate that their services
17 in this case were extraordinary?

18 A. Yes.

19 Q. One of these facts is that the
20 company's Chapter 11 case lasted only 28
21 weeks. In your view, was that due to
22 anything that Alix Partners did?

23 A. I'm sure many folks had a hand
24 in that. But the fact that the case went
25 28 weeks had a lot of companies involved

1 AQUINO - DIRECT

2 in that.

3 Q. Did the fact that it was a
4 prenegotiated case in your mind contribute
5 to the length of the case?

6 A. Certainly that helped. Filing
7 the parent only and having a deal with the
8 capital structure pretty quickly pretty
9 much sped the case along very nicely.

10 Q. Do you agree with Alix Partners
11 that the company emerged with a strong
12 balance sheet?

13 A. The company did emerge with a
14 stronger balance sheet than it had before.
15 Certainly the purpose of the restructuring
16 was to improve it. So I would agree it
17 was improved from when they started.

18 Q. Was that a result of Alix
19 Partners' work per se?

20 A. I would say in part it had
21 something to do with the investment
22 bankers. It had something to do with the
23 company. There were a lot of folks
24 involved in getting that fixed. But
25 Blackstone was hired basically to fix the

1 AQUINO - DIRECT

2 capital structure.

3 Q. And you believe Blackstone did
4 a good job at that?

5 A. I believe they did a good job
6 at that, yes.

7 Q. Did Blackstone receive a
8 success fee in connection with that
9 effort?

10 A. I believe they did.

11 Q. Mr. Aquino, you heard
12 Mr. Dubbel testify a little while ago that
13 employee attrition was minimized during
14 the course of the case. Do you agree with
15 that statement?

16 A. By December there were many,
17 many people who left the company. There
18 were some key positions. The COO that you
19 mentioned before was in a key role, he
20 left during bankruptcy. Our general
21 manager of Boston, our largest market,
22 left during the bankruptcy.

23 By the time it got to December
24 and I was in charge, I was well aware that
25 we were going to miss some of our targets,

1 AQUINO - DIRECT

2 and I took an action to lay off another
3 200 plus people to get close to the target
4 that was put forth in the plan of
5 reorganization.

6 Q. You say that the company was in
7 a position in the fall of 2004 to miss its
8 business plan?

9 A. When I took over in August, I
10 was concerned about the run rates, and I
11 felt that I had to take action before the
12 end of the year to get back on track.

13 Q. What would have happened if you
14 didn't take that action?

15 A. The plan of reorganization, at
16 least for 2005, the first year of
17 reorganization, should not be the year
18 that you miss coming out of a plan. So I
19 was very concerned.

20 Q. Had you not laid off those 250
21 people, do you believe that the company
22 would have been able to secure the exit
23 financing with Deutsche Bank?

24 A. I believe it was an action that
25 was taken as part of day to day, I don't

1 AQUINO - DIRECT

2 think it had a real impact on the exit
3 financing at that time. But it had a lot
4 to do with basically the credibility of
5 RCN coming out of bankruptcy.

6 Q. Do you recall Alix Partners'
7 claim that it was responsible for
8 eliminating \$720 million of franchise
9 build-out obligations?

10 A. Yes.

11 Q. Do you agree that is something
12 that Alix Partners accomplished?

13 A. As John said, it was a team
14 effort, but the company hired Swidler
15 Berlin to primarily do the negotiations
16 with the franchise restructuring. Also,
17 the key management that worked with me at
18 that time in August had a key hand in
19 that. The general managers are the local
20 representatives of RCN, and they were
21 basically called in to help negotiate,
22 too.

23 Q. Mr. Aquino, without going into
24 any commercially sensitive information, as
25 CEO of RCN, do you feel that the

1 AQUINO - DIRECT

2 amendments to the franchise agreements in
3 San Francisco and Chicago were a great way
4 to avoid the build-out requirements?

5 A. In the case of restructuring
6 franchise agreements, it is quite
7 complicated because you are giving up
8 something.

9 In the case of Chicago, we had
10 four areas to build out. We gave back
11 three. So we are not able today to build
12 out in parts of Chicago that we had
13 before. The relationship in Chicago is
14 also very strenuous right now. We have an
15 issue today with Chicago that we have to
16 work on. In addition, as part of the
17 settlement with Chicago, we gave them lots
18 of fiber. The fiber is going to be used
19 in Chicago hopefully for homeland
20 security. But we gave them assets as part
21 of the trade. That is the Chicago deal.

22 In the case of San Francisco,
23 there is also a trade there, which I would
24 rather not go into, but we actually
25 changed the structure of our franchise

1 AQUINO - DIRECT

2 agreement. That may provide some
3 challenges for us in the future.

4 But overall, the build-out
5 requirements were eliminated through
6 strategies of this nature.

7 Q. Mr. Aquino, what can you say
8 about the statement in the reply filed by
9 Alix Partners that their efforts prevented
10 the filing of some of RCN's subsidiaries
11 and therefore avoided a substantive
12 consolidation fight?

13 A. As an operator, much of the
14 costs in RCN were at the subsidiaries. It
15 is a full-time job. I feel today I'm in
16 the real estate business because I still
17 have approximately 150 real estate
18 properties to manage.

19 Some of them were taken care
20 of, but many are still in the process of
21 trying to get them back to market. Many
22 facilities today, they are still empty,
23 and I have to find a solution for that.

24 Q. In its reply, Alix Partners
25 claims that the lease of an office

1 AQUINO - DIRECT

2 building in New York City was the only
3 lease out of more than 100 that Alix
4 Partners failed to successfully
5 renegotiate. I believe Alix Partners
6 called it evidence of a great batting
7 average. Do you recall that?

8 A. I do.

9 Q. Did Alix Partners do
10 restructuring of 100 plus leases?

11 A. I don't think that is the
12 number. They focused on the top leases,
13 and by the time of the exit, a handful of
14 the ones that they targeted were still
15 open. The one they mentioned in the
16 document was one of a handful that are
17 still open that are significant for the
18 company.

19 Q. And the one that was mentioned
20 specifically by the Committee in its
21 objection, that New York City office
22 lease, was that one that was slotted for
23 termination on the petition?

24 A. Yes, it was.

25 Q. So in your view, Mr. Aquino, as

1 AQUINO - DIRECT

2 the CEO that inherited the company from
3 Alix Partners senior management, does Alix
4 Partners deserve a \$4 million success fee?

5 A. I do not believe so.

6 Q. Why not?

7 A. I think they were
8 well-compensated throughout the case, and
9 to the extent that I had to come in and
10 take over operations in August basically
11 says at least for part of the term more
12 folks on the operations side were required
13 to help.

14 MR. KIRPALANI: I have nothing
15 further on direct, your Honor.

16 THE COURT: Okay. Mr. Toll.

17 MR. TOLL: I have no questions
18 of this witness, your Honor.

19 THE COURT: Mr. Aquino, is RCN
20 a public company, does it make public
21 filings at this point?

22 THE WITNESS: We are a public
23 company. We are listed on the NASDAQ.

24 THE COURT: Has it made a
25 filing on the basis of the value of your

1 AQUINO - DIRECT

2 compensation package on an annual basis?

3 THE WITNESS: My agreement is
4 not signed yet.

5 THE COURT: Is there an amount
6 that you value it at on an annual basis?

7 THE WITNESS: My compensation
8 on a salary basis is the same I was paid
9 as a consultant, so \$45,000 a month is my
10 pay. And the company has a short-term
11 incentive plan which is 50 percent of my
12 base, subject to performance, and it has
13 an equity program, three-year vesting
14 equity program, half is subject to
15 performance and half is subject to time.

16 THE COURT: Okay. You can step
17 down.

18 MR. KIRPALANI: Our next
19 witness, your Honor, is the chairman of
20 the Creditors Committee, Mr. Darryl Shaw.

21 * * *

22 D A R R Y L S H A W,
23 called as a witness, having been first
24 duly sworn, was examined and testified
25 as follows:

1 SHAW - DIRECT

2 DIRECT EXAMINATION BY MR. KIRPALANI:

3 Q. Good morning, Mr. Shaw. Who
4 are you employed by?

5 A. Tudor Investment Corporation.

6 Q. What is the business of Tudor
7 Investment Corporation?

8 A. Tudor Investment Corporation is
9 a worldwide investor in financial
10 securities.

11 Q. Did Tudor Investment
12 Corporation hold any of the RCN bonds
13 prior to bankruptcy?

14 A. Yes, we were a substantial
15 holder of those bonds.

16 Q. And other than being a
17 substantial holder of bonds of RCN, did
18 you have any other involvement in the RCN
19 case?

20 A. Well, I guess that is how I was
21 interested in the case, because I was a
22 holder of bonds, yes.

23 Q. But you served on the Creditors
24 Committee?

25 A. Yes, I did.

1 SHAW - DIRECT

2 Q. Prior to the bankruptcy filing,
3 did Tudor have any involvement in the
4 prebankruptcy negotiations?

5 A. Yes. Tudor began to acquire
6 our bonds in November of 2002. In so
7 doing, we had spoke to people in the
8 market and understood that the company had
9 been approached by an ad hoc group of
10 holders in August I believe of 2002 to
11 approach them on a potential
12 restructuring, and at that time they were
13 rebuffed.

14 After we had accumulated a
15 fairly sizable position through one of the
16 directors of RCN, we were introduced to
17 the CEO in April of 2002, and at that
18 point in time sat down with them in a
19 series of negotiations or meetings to
20 educate them on what we felt the value of
21 the company was, the prospects of
22 reorganization, and basically made various
23 proposals starting in April of 2003.

24 I'm sorry, it was April of 2003
25 when we sat down with the company and

1 SHAW - DIRECT

2 started negotiations over restructuring.

3 Q. And during those negotiations,
4 was Alix Partners a part of those?

5 A. No, they were not.

6 Q. Did any of those negotiations
7 involve the conversion of all of the bond
8 debt into equity?

9 A. Yes, some of those discussions
10 did.

11 Q. How many advisors did RCN have
12 on the financial advisory or restructuring
13 side prior to Alix Partners?

14 A. Prior to Alix Partners,
15 Greenhill and Merrill Lynch were engaged
16 as advisors on the financial side, and the
17 company had engaged a gentleman by the
18 name of Douglas Bradbury as a chief
19 restructuring officer.

20 Q. There came a point in time when
21 Merrill Lynch was terminated; isn't that
22 true?

23 A. That is correct.

24 Q. Who replaced Merrill Lynch?

25 A. Blackstone Group.

1 SHAW - DIRECT

2 Q. At the time Blackstone was
3 engaged by the company, was Alix Partners
4 already on the scene?

5 A. Yes, they were.

6 Q. Was there a division of
7 responsibilities between Blackstone and
8 Alix Partners?

9 A. As it was introduced to me by
10 the CEO of the company, Alix Partners was
11 brought in in an operations role
12 internally within the company and
13 Blackstone was brought in as what I would
14 term a traditional investment banking and
15 financier's role in helping to negotiate a
16 financial plan and also to pursue avenues
17 to help in refinancing the company's debt.

18 Q. So was it Blackstone that the
19 ad hoc committee and the banks primarily
20 negotiated with after Merrill was fired?

21 A. With regard to the financial
22 aspects of the plan of reorganization,
23 yes.

24 Q. In your opinion, did Alix
25 Partners play a role in those

1 SHAW - DIRECT

2 negotiations?

3 A. They played a role to a minor
4 extent. It was basically Blackstone's
5 ball to carry.

6 Q. Mr. Shaw, were the ad hoc
7 committee's negotiations with the company
8 over the terms of a restructuring
9 completed at the time of the bankruptcy
10 filing?

11 A. The ad hoc committee, at the
12 time of the filing, there was I would say
13 a substantive understanding as to what the
14 financial plan of reorganization would
15 look like at that point. Given certain
16 things happening, the term sheet that we
17 had in place would hold.

18 Q. Did that term sheet in fact
19 form the template for the plan that was
20 confirmed in this case?

21 A. Yes, it did.

22 Q. Was the template for the plan
23 already in place in February of 2004 when
24 Alix Partners was hired by the company?

25 A. In my opinion, I would say the

1 SHAW - DIRECT

2 majority of the -- I would say the
3 foundation of the plan of reorganization
4 had been set in negotiations that we had,
5 we, the Committee, had directly with the
6 bank group at JP Morgan.

7 Q. Mr. Shaw, did there ever come a
8 point in time when the board or any member
9 of the board came to you as the Committee
10 chairman and said "We really want to fire
11 John Dubbel"?

12 A. Yes, that was sometime in
13 August of 2004.

14 Q. Can you tell the Court the
15 circumstances of that discussion?

16 A. Frankly, I don't recall if it
17 was in person or over the telephone, but
18 the Committee in total was contacted and
19 we had a discussion with Alfred Fasola,
20 the lead director, someone that was
21 introduced to us -- actually that I had
22 had discussions with starting I would say
23 in April or May, but was introduced to us
24 as the lead director in late June or July.

25 And basically Al came to us and

1 SHAW - DIRECT

2 expressed his frustration with what was
3 going on, the progress of the plan, and
4 conveyed the CEO's feelings that
5 operationally, and from his own
6 perspective, that operationally the
7 company was starting to fail from an
8 operations standpoint, that the top line
9 had topped off and through the summer
10 months operations of top-line revenues
11 started to decline, and if that decline
12 wasn't arrested in the fall, as we were
13 going to go to market with the Deutsche
14 Bank facility and market that facility,
15 basically financial results could
16 deteriorate significantly, endangering the
17 successful restructuring of the company.

18 Because of that, they were
19 concerned and came to us basically feeling
20 us out as to whether we thought that the
21 appropriate measure was to dismiss Alix
22 Partners and specifically John Dubbel and
23 perhaps hire another consultant at that
24 time.

25 Q. What was your view as the

1 SHAW - DIRECT

2 chairman of the Committee as to whether
3 that was the right thing to do at that
4 time?

5 A. It was a difficult decision.
6 We didn't like what we heard. It was the
7 first time we had heard that operations
8 were starting to decline.

9 But we had been basically in
10 and around restructuring this case since
11 April of 2003 and felt that it had to come
12 to an end at some point, and that at that
13 point in time to dismiss Alix Partners and
14 not be able to give the kind of disclosure
15 you would like to the public might send a
16 bad signal to the market and would perhaps
17 chill the company's relationship with
18 Deutsche Bank and endanger the
19 restructuring of the company.

20 Q. Mr. Shaw, you mentioned that
21 this was the first you had heard about the
22 board's dissatisfaction with John Dubbel's
23 performance. Did the Committee have its
24 own view of Alix Partners' performance?

25 A. Yes, we did, at the time.

1 SHAW - DIRECT

2 Q. What was that view?

3 A. I would say it was -- at the
4 time before or after Al made these
5 disclosures to us?

6 Q. Why don't we take it in two
7 steps.

8 A. Before I would say it was
9 satisfactory, although there were certain
10 material aspects of the plan that we
11 didn't get good answers to and we expected
12 answers to take place. Obviously we were
13 a committee operating on the outside of
14 the company and we are privy to things
15 only as the company basically -- or our
16 advisors disclose those things to us.

17 So I would say we had a neutral
18 view of Alix Partners. Like I said, being
19 honest about it, there were certain things
20 they were doing fine and other things we
21 thought they were doing very poorly. It
22 all balanced out to I would call it a C
23 performance.

24 After Mr. Fasola made these
25 disclosures to us and told us that

1 SHAW - DIRECT

2 operationally the hands were off the
3 wheel, again, it was a shock to us. No
4 one from the company had disclosed these
5 things to us before, not in several
6 discussions I had with John Dubbel either
7 in a Committee sense or privately. And at
8 that point in time basically Dubbel and
9 Alix Partners' credibility was severely
10 damaged because they had not made these
11 disclosures to us prior.

12 And basically these issues, had
13 they not been addressed, could have
14 endangered the entire restructuring.

15 Q. Did the company take any
16 measures to supplement Mr. Dubbel's
17 operations talent at the company?

18 A. Consensually, over the period
19 of a week to ten days, we worked with Al
20 Fasola to basically -- you know, at the
21 end of the day, it was the company's
22 decision. But we suggested they bring in
23 Pete Aquino, who had, as a member of CTA,
24 prior knowledge of the company. And
25 basically CTA, when it started its

1 SHAW - DIRECT

2 diligence in November of 2003, basically
3 prior to Alix Partners' arrival, basically
4 put forward an operational turnaround of
5 the company and a plan and presented that
6 to the company and also to the bank group.
7 That is why they were brought in.

8 But they basically put forward
9 what was the operational plan of the
10 company, and Pete Aquino had a lot of
11 experience both as a member of CTA and
12 also his prior experience. We thought,
13 again, rather than fire someone, bring in
14 a new party, cause disruption, we would
15 supplement. And this was a decision made
16 consensually with the board of directors,
17 bring in Pete, who had quite a bit of
18 experience not only with the company, but
19 in general, and get things hopefully back
20 on track.

21 Q. Mr. Shaw, did you read the
22 reply that Alix Partners filed in response
23 to the Committee's objection to the
24 success fee?

25 A. Yes, I did.

1 SHAW - DIRECT

2 Q. Do you recall that in the reply
3 Alix Partners lists a number of facts that
4 they claim demonstrates their services
5 were extraordinary?

6 A. Yes, I do.

7 Q. One of those facts is that the
8 company's Chapter 11 case only lasted 28
9 weeks. In your view as chairman of the
10 Committee, was that due to anything that
11 Alix Partners did?

12 A. I think Alix Partners was
13 brought into the case and helped
14 facilitate the bankruptcy, but they didn't
15 do things that were extraordinary. They
16 didn't put together an operational plan.
17 That was basically -- they basically
18 embraced the plan that CTA put forward to
19 the company and was developed by CTA in
20 December and January -- December of 2003
21 and January of 2004.

22 They basically were handed a
23 package that was heavily negotiated over a
24 number of months prior, starting with my
25 personal experience, starting in April of

1 SHAW - DIRECT

2 2003. So it wasn't something that they
3 had just come into and out of the sky
4 pulled together a plan. This started
5 months, and, frankly, almost a year prior
6 to when Alix Partners was engaged.

7 So the answer to that is no.

8 Q. When was the first time you
9 were told that Alix Partners was going to
10 seek a success fee in the case?

11 A. I think it was sometime in
12 March/April when we had specifically asked
13 the CEO as to the compensation structures
14 of both Alix Partners and Blackstone.

15 Q. So this is prebankruptcy when
16 you were a member of the ad hoc committee.

17 A. Yes.

18 Q. Did you have a response to the
19 compensation?

20 A. Yes, we found it objectionable
21 because there was no determination of what
22 success meant other than an arbitrary
23 passage of time. We didn't feel as the
24 economic stakeholders in the company --
25 after all, the bonds at that point in

1 SHAW - DIRECT

2 time, there was about \$1.1 billion of
3 bonds trading at, call it 45 to maybe 50
4 cents on the dollar. So there was \$500
5 million of value, of which Tudor owned
6 about 20 percent. So we had a \$100
7 million investment in the company.

8 It was arbitrary to us as
9 investors and looking through the Chapter
10 11 process to the eventual health of the
11 company, not only in January of 2005, but
12 into the future, that just saying okay, on
13 this date the Chapter 11 gets done, that
14 is a success. Because basically it just
15 incents the board, who, in my opinion, at
16 that point in time, wanted to get this off
17 their hands and get any potential
18 liability off their hands. It didn't
19 necessarily enhance or build value for the
20 stakeholders of the company, being the
21 creditors and obviously the potential
22 equity holders and other parties in
23 interest, the company's employees or the
24 vendors that they did business with.

25 Q. Did you ever tell Mr. Dubbel or

1 SHAW - DIRECT

2 any person at Alix Partners that you
3 thought their fee was objectionable?

4 A. I told him on a number of
5 occasions, and other members of the
6 Creditors Committee voiced those
7 complaints.

8 Q. How was that issue resolved
9 eventually?

10 A. Prior to Alix Partners'
11 approval of their fee arrangement, the
12 Committee came to an agreement with Alix
13 Partners that they would strike their
14 success fee and that we would enter into a
15 good negotiations effort at the end of the
16 case to determine what success meant and
17 how they should be compensated at that
18 point in time.

19 Q. You said that they would strike
20 their success fee. Did the court order,
21 if you recall, literally strike out the
22 success fee provisions in their
23 engagement?

24 A. Yes, to my knowledge,
25 absolutely. They were stricken.

1 SHAW - DIRECT

2 Q. And you mentioned that you and
3 Mr. Dubbel agreed at the beginning of the
4 case that at the end of the case there
5 would be a good-faith discussion about it.

6 Did Mr. Dubbel ever come to you
7 as chairman of the Committee?

8 A. Just to clarify, at or around
9 the time that the order was entered, that
10 is when we agreed that we would have a
11 handshake and that at the end of the case
12 we would sit down and negotiate in good
13 faith as to their success.

14 Q. Did that negotiation ever
15 occur?

16 A. No.

17 Q. Did Mr. Dubbel ever call you or
18 come talk to you about their success fee?

19 A. No, nor did any other member of
20 Alix Partners.

21 Q. What can you tell us, Mr. Shaw,
22 about the statement in the reply that Alix
23 Partners' efforts prevented the filing of
24 some of RCN's subsidiaries and thereby
25 avoided a substantive consolidation

1 SHAW - DIRECT

2 litigation?

3 A. Well, that was done not by Alix
4 Partners, but, again, as others have
5 testified, in a group setting. In other
6 words, every professional and constituency
7 was involved with that determination.

8 Q. Did Mr. Dubbel ever tell you or
9 the Committee that in fact the
10 subsidiaries should be filed and they
11 should be consolidated?

12 A. I would say Mr. Dubbel
13 flip-flopped on that matter, and that was
14 one of the issues -- when I said, prior to
15 Mr. Fasola's disclosure to us, that
16 operations were falling down, that is one
17 of the issues that kind of led us to
18 thinking of it in a neutral way.

19 At the beginning of the case, I
20 feel he was open to the matter. In fact,
21 John Dubbel said all issues would be laid
22 open and investigated by Alix Partners and
23 that we were having discussions with them
24 about substantive consolidation in May or
25 June of 2004. And then I think that

1 SHAW - DIRECT

2 basically precipitated Al Fasola's role as
3 a director coming in. Dubbel communicated
4 this to the board. The board objected to
5 substantive consolidation. That is when
6 they inserted Al Fasola as the lead
7 director in the case.

8 Q. Do you recall in the
9 Committee's objection your lawyers filed a
10 pleading that supported the Committee's
11 view that there was one real estate lease
12 in New York City that Alix Partners failed
13 to negotiate or terminate; do you recall
14 that lease?

15 A. I recall the lease, yes.

16 Q. Why did the Committee single
17 out that lease?

18 A. It happened to have been an
19 example, not necessarily one out of
20 hundreds, but an example of where we felt
21 that Alix Partners completely missed a
22 significant lease.

23 After a period of time where
24 this was on a schedule and a period of
25 focus for months, in other words, these

1 SHAW - DIRECT

2 leases were brought to our attention as
3 significant leases back in I think the
4 May/June time frame, we understood
5 subsequent to the consummation of the plan
6 through Pete Aquino that the main landlord
7 had not ever been contacted to basically
8 test out whether or not they would accept
9 a lower value. So that lease basically
10 rolled over into the restructured company
11 and now Mr. Aquino is having to deal with
12 it, and it is a significant amount of
13 money.

14 But it was an example, not the
15 end-all of everything.

16 Q. Mr. Shaw, did you hear the
17 testimony earlier with Mr. Dubbel about
18 these emergence cash flows and cash flow
19 projections?

20 A. Yes.

21 Q. Do you recall seeing emergence
22 cash flows and cash flow projections that
23 included an Alix Partners success fee as a
24 Committee member?

25 A. I recall being presented

1 SHAW - DIRECT
2 schedules with cash going in and cash
3 going out. No one specifically pointed
4 out Alix Partners. There was numbers of
5 entries and they were complex. No one
6 pointed out to us Alix Partners.

7 Q. At any point in time when you
8 received the emergence cash flows, did you
9 or any member of the Committee, to your
10 knowledge, tell Alix Partners that the
11 success fee that is in there shouldn't be
12 counted on?

13 A. No. The same provision that we
14 talked to prior to the order being entered
15 carried. In other words, again, Dubbel or
16 any member of Alix Partners never pointed
17 that out to us, and we were under the
18 agreement or the impression that at the
19 end of the case, whenever that
20 consummation took place, that we would sit
21 down and negotiate a fee.

22 Q. Let me ask you about the
23 success fee at issue here, Mr. Shaw. Do
24 you think that Alix Partners deserves a
25 success fee in this case?

1 SHAW - DIRECT

2 A. No.

3 Q. Why don't you feel that way?

4 A. Well, on several levels. The
5 primary level was they were brought in --
6 Alix Partners was brought in as a crisis
7 manager. John was brought in as a COO of
8 the company, a chief operating officer.
9 We didn't, but the company, replaced him
10 or supplemented him in August as
11 operations started to fail.

12 To me, in my own mind, that was
13 his chief and key role. If operations
14 fail, there was no reason to give him more
15 than what he had already earned, which we
16 believed was sizable relative to what
17 other professionals had received in the
18 case and what other professionals receive
19 in other cases, which was about \$6
20 million.

21 Q. Mr. Shaw, as chairman of the
22 Committee, can you tell the Court why some
23 professionals in the RCN case received
24 success fees and why the Committee is
25 opposing AP's fees?

1 SHAW - DIRECT

2 A. Either in sitting on this
3 committee or other committees I've sat on,
4 and given the other people I've dealt with
5 as committee members, there were other
6 fees paid out as success fees.

7 Blackstone had definitive
8 stakes in the ground as to what they would
9 receive if they did certain things. That
10 was ironclad and plain to see. They also
11 had a very low monthly retainer.

12 Basically their interest in success
13 aligned themselves with the company's.

14 CTA basically was the
15 architect, in our mind, of the operational
16 plan. Before they were involved, the
17 company, as actually Mr. Pantaleo
18 mentioned earlier, had several plans, none
19 of them which were based in any kind of
20 operational basis or financial due
21 diligence. You basically eviscerate them
22 in a few questions. They had no basis for
23 them. And CTA came in, studied the
24 company from their prior experience, and
25 put forward a plan that basically

1 SHAW - DIRECT

2 Mr. Aquino is executing on today, which is
3 bringing the company back to financial
4 health. So to us that was critical.

5 Also, CTA, in October of 2004,
6 when, again, discussions of substantive
7 consolidation were coming to a head,
8 basically had to, on I would call it a
9 SWAT team basis, come into the company and
10 review contracts and agreements on an
11 operational level, thousands. I think
12 there were thousands of contracts over a
13 short period of time that Alix Partners
14 had not reviewed. And, again, at the
15 time, this incensed us, because at the
16 beginning of the case Mr. Bell made it
17 very clear to us that no stone would be
18 left unturned, that they would look at
19 everything afresh.

20 We understood the basics of
21 just organizing these contracts, to review
22 them internally, had never been done, and
23 CTA had to come in in a very short amount
24 of time and give us some assurance that
25 there would be no material damage to the

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

company had we allowed just a holdco
bankruptcy to follow, and they did that
diligence.

Q. To recap, there were three
professionals that received success fees
in the RCN case, Blackstone, Channin ,and
CTA?

A. Yes.

Q. To your knowledge, did any of
those professionals work for hourly rates
or were they all flat monthly rates?

A. They were all flat monthly
rates.

MR. KIRPALANI: We have nothing
further.

THE COURT: Any cross?

MR. TOLL: No
cross-examination.

MR. KIRPALANI: Could we
proceed with the brief argument, your
Honor?

THE COURT: Yes.

MR. TOLL: At the inception,
your Honor, I indicated what the Section

1
2 330 requirements were, and I submit that
3 Alix Partners has met its evidentiary
4 burden of satisfying that the services
5 were necessary and beneficial. Obviously
6 there is a conflict of testimony on this.
7 But, your Honor, obviously as a finder of
8 fact, we will have to do what finders of
9 fact do and therefore assess the
10 credibility of witnesses. Obviously both
11 sides are interested in the outcome one
12 way or the other. But I submit that Alix
13 Partners presented clear and convincing
14 testimony that the services were necessary
15 and beneficial.

16 The services were performed
17 within a reasonable period of time, 28
18 weeks. I don't think that is in dispute,
19 your Honor. Finally, that the services
20 were market, that they were customary
21 compensation charged by comparably skilled
22 practitioners in nonbankruptcy cases. I
23 think that was established by Alix
24 Partners' testimony. There really was no
25 testimony from the fee opponents to the

1
2 contrary. So I believe, respectfully,
3 your Honor, that that should be defined in
4 the court.

5 In essence, your Honor, I think
6 the testimony is clear, there was no deal
7 on the table when Alix Partners was hired
8 in February '04. I think the Committee is
9 splitting hairs when they say that by the
10 time of Alix Partners' retention, I
11 presume they mean the bankruptcy
12 retention, not the February '04 retention,
13 but the retention in June or July, that
14 there was a deal already made. Yes, there
15 might have been at that time, but Alix
16 Partners was there in '04. Mr. Pantaleo
17 testified that there was no deal on the
18 table. Alix Partners basically caused
19 this deal to be made, albeit with other
20 actors. We don't maintain we are the sole
21 actor.

22 Finally, your Honor, we submit
23 under all the circumstances that Alix
24 Partners performed significant services as
25 interim management of this company and

1
2 that the Court should respectfully award
3 the success fee in the amount requested.

4 MR. KIRPALANI: Thank you, your
5 Honor.

6 Your Honor, the Committee
7 respectfully submits that evidence and the
8 record of these proceedings shows the
9 following to be true: Alix Partners'
10 court-approved engagement letter expressly
11 deleted any reference in the prepetition
12 engagement letter to a success fee,
13 whether it was \$4 million or \$4. So this
14 is essentially a professional's request
15 for a bonus even though Alix Partners was
16 paid its standard hourly rates. It is
17 unclear to us exactly what statute Alix
18 Partners is proceeding under. They were
19 retained under Section 363 of the
20 Bankruptcy Code. Only the trustee or
21 debtor in possession has standing to make
22 an application under Section 363 of the
23 Bankruptcy Code. I stand before the Court
24 saying that they should be governed by the
25 330 standard of reasonableness, but even

1
2 assuming that that is the right standard,
3 they haven't met their burden, your Honor.

4 The key issue, your Honor, is
5 that the \$4 million number that was
6 negotiated prebankruptcy in the engagement
7 letter has absolutely no relevance to
8 today's proceeding, because, as a matter
9 of record in these cases, that provision
10 was stricken from the application. The
11 burden is now on Alix Partners to show
12 that the compensation they received, which
13 is undisputed to be \$6 million, for
14 essentially a six-month engagement, that
15 that was somehow insufficient.

16 The current CEO of RCN and the
17 Committee's chairman each independently
18 testified that Alix Partners' services,
19 efforts in these cases, were less than
20 spectacular. Alix Partners was
21 essentially a caretaker of the bankruptcy
22 process, but did not perform at an
23 extraordinary level or achieve any
24 extraordinary results by any stretch.
25 Both the Committee chair and RCN's current

1
2 CEO testified in their own words that the
3 performance was subpar at best.

4 Let's briefly examine, your
5 Honor, the key components to RCN's
6 restructuring and how Alix Partners
7 alleged that they supported awarding them
8 a bonus compared to the testimony.

9 The speed of the case, this is
10 a red herring, your Honor. The case
11 really began when the bondholders sat
12 down, got organized, hired professionals,
13 and started negotiating the restructuring.
14 This happened as early as 2003. The case
15 was prearranged. So of course, your
16 Honor, the case itself only lasted 28
17 weeks. The length of the case in and of
18 itself means nothing, and Alix Partners
19 can't take credit for the many lawyer
20 hours spent and your Honor's agreement to
21 work through the very tight time frames as
22 we turned the term sheet into a disclosure
23 statement and a plan.

24 Refinancing of the existing
25 senior secured bank debt, this was done by

1
2 Blackstone, and even Mr. Dubbel finally
3 admitted that. Blackstone received \$7.8
4 million, a healthy success fee, for doing
5 it, which the Committee did not oppose.
6 In fairness, your Honor, Alix Partners
7 can't take credit for the success of
8 Blackstone in refinancing the secured
9 debt.

10 Converting the existing bond
11 debt to equity, this relatively simple
12 concept was patently obvious to
13 bondholders long before Alix Partners was
14 retained. It was discussed with the
15 company and its advisors long before Alix
16 Partners was retained, and the only thing
17 that changed after Alix Partners arrived
18 was that the document got penned down.

19 The strong balance sheet
20 argument, your Honor, any company that is
21 delevered as a result of a billion-dollar
22 bond-for-stock conversion has a stronger
23 balance sheet. The other piece was the
24 successful refinancing on better terms of
25 \$400 million or more of senior secured

1
2 bank debt. That was done by Deutsche Bank
3 through the auspices of Blackstone and by
4 the Creditors Committee, not by Alix
5 Partners.

6 The amendments to the franchise
7 agreements, while it is true that the
8 amendments were made, the evidence also
9 showed that Mr. Dubbel and the Alix
10 Partners team had very little to do with
11 them. They were regulatory and legal
12 negotiations. They were handled by the GC
13 and by Swidler Berlin. These negotiations
14 were ongoing when Alix Partners arrived
15 and they were done without Alix Partners
16 even attending a single meeting in San
17 Francisco or Chicago. How can they take
18 credit for it, your Honor? The CEO
19 himself testified, although he was being
20 careful not to reveal commercially
21 sensitive information, that the
22 concessions RCN had to agree to were not
23 clear victories.

24 The SG&A cost reductions, the
25 evidence shows cost reductions were a

1
2 collaborative effort. They were a team
3 effort. CTA did the operations plan.
4 Pete Aquino came in to implement that
5 plan. These were the operations
6 specialists who were sent in to help
7 Mr. Dubbel do his job as chief operating
8 officer. Mr. Aquino even says today that
9 the job is far from over and that he is
10 right now in the real estate business.
11 Even the most painful cost reduction, the
12 termination of 250 employees around
13 Christmastime, was done not by a hired
14 crisis manager, but by Pete Aquino,
15 because he felt he had no choice and it
16 was a job left undone.

17 Substantive consolidation, it
18 is unclear, your Honor, how Mr. Dubbel
19 tries to take credit for avoiding
20 litigation over one of the most complex
21 legal issues faced by bankruptcy courts.
22 The evidence shows that the Committee
23 undertook its own analysis with its own
24 advisors. It was agreed to consensually
25 after everyone did their own independent

1
2 due diligence. The only evidence that we
3 have on Mr. Dubbel's views of substantive
4 consolidation was that he flip-flopped.

5 Given the lackluster efforts of
6 Alix Partners in this case, the Court may
7 wonder why didn't the board ever consider
8 terminating Alix Partners? Your Honor,
9 they did. We heard from the chair of the
10 Creditors Committee that the lead director
11 asked the Committee whether the board
12 should fire John Dubbel, fire him, and yet
13 we are here and he is seeking a success
14 fee. The only evidence that we heard of
15 the Committee ever agreeing, allegedly, to
16 a success fee was the tag "you're it" with
17 the emergence cash flows that were
18 circulated, but never explained. Your
19 Honor, that doesn't make their fee request
20 reasonable.

21 I just want to address briefly
22 success fees generally and the XO
23 Communications decision, which I have
24 extra copies of which I can hand up to
25 your Honor if you need it. As to the

1
2 legal standards, there is no magic to the
3 payment of professional bonuses in
4 bankruptcy cases. We all agree, I think
5 even Mr. Toll would agree with me, that
6 the Court has wide latitude and discretion
7 to determine whether the hourly
8 compensation was or was not sufficient for
9 the services rendered.

10 The Court should be aware, your
11 Honor, and this came out in the testimony,
12 not in their pleadings, that Alix Partners
13 did not establish that success fees were
14 always awarded in addition to hourly fees.
15 We heard just the opposite. The largest
16 bankruptcy case in the history of the
17 United States, the WorldCom case, where
18 Mr. Dubbel served as senior management,
19 was a case where they didn't receive any
20 success fee, yet they remain comfortable
21 based on their hourly compensation. Here
22 they effectively served from February
23 until late summer when Mr. Aquino came in
24 and took over operations and they made \$6
25 million.

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

XO Communications is the last point I wanted to raise. I don't know if you are that familiar with the recent decision.

THE COURT: I am.

MR. KIRPALANI: Bankruptcy Judge Gonzalez, it was a case unlike this one where the professional involved, which was Houlihan Lokey, was an investment banker working on a monthly flat rate, and had, as part of its retention order, specifically deferred the issue that the \$20 million success fee contemplated by the engagement letter would be considered at the end, not like our case where it was X'd out. It would be considered at the end.

At the end of the case, they came in and they made their showing. Judge Gonzalez examined the facts and found it was market practice for investment bankers that worked on flat fees to receive success fees, but the success fee would be about 40 basis points

1
2 on the debt restructured. It has got to
3 be, your Honor, the debt restructured by
4 that professional, it has got to be that
5 the professional himself or itself was
6 instrumental in that restructuring. It
7 can't be they were essentially a
8 caretaker.

9 Then Judge Gonzalez said that
10 on the facts of that case, the only debt
11 that was really restructured by Houlihan
12 was about a billion dollars of secured
13 debt. Using 40 basis points, Judge
14 Gonzalez denied the success fee request of
15 \$20 million and awarded \$4 million. Then
16 using Section 330, reasonableness, he said
17 the \$4 million should be reduced by the
18 amount of the monthly flat fees received,
19 which was \$2 million. So ultimately he
20 said you get another \$2 million.

21 Here Blackstone was our
22 investment banker. They already received
23 a success fee for restructuring the
24 secured debt. We don't have to pay twice
25 for the same success, your Honor. This

1

2 wasn't something that Alix Partners did
3 anyway. The bond debt was not really
4 restructured. It was converted from debt
5 to equity, which was a concept discussed
6 by the bondholders themselves long before
7 Alix Partners ever came to the scene.

8 Your Honor, the only debt that
9 was arguably restructured, and Mr. Dubbel
10 didn't go into it in detail, is about
11 \$32.5 million of the Evergreen junior
12 secured facility. That Mr. Dubbel did do
13 personally. At 40 basis points, that is
14 about \$130,000. They earned \$6 million.

15 We do not seek a refund, your
16 Honor. But even if the Court were to
17 treat Mr. Dubbel as if he were an
18 investment banker entitled to success fees
19 in addition to their hourly rates, he has
20 been more than reasonably compensated
21 under Section 330 of the Bankruptcy Code.

22 THE COURT: Is there anything
23 in the record besides the WorldCom
24 reference, contrary to the testimony, that
25 their average success fee, and I know that

1
2 he said he didn't do an arithmetic
3 calculation, that their average success
4 fee is approximately \$3 million?

5 MR. KIRPALANI: I think that
6 was in response to one of your Honor's
7 questions. I don't think there is any
8 competent evidence about what their
9 arithmetic mean or average is. I don't
10 know what the word "average" meant when
11 Mr. Dubbel said it. The range I believe
12 was \$50,000 to \$12 million with no other
13 evidence.

14 THE COURT: Okay.

15 MR. KIRPALANI: Thank you, your
16 Honor.

17 THE COURT: Anything, Mr. Toll?

18 MR. TOLL: I have nothing
19 further, your Honor.

20 THE COURT: I have before me an
21 application by AP Services for allowance
22 and payment under Section 330 of the
23 Bankruptcy Code of a \$4 million success
24 fee. I should note for the record that AP
25 Services' hourly fees have already been

1
2 approved in this case. The true economic
3 party in interest, the Official Creditors
4 Committee, has objected to the
5 application, contending that no success
6 fee should be allowed.

7 Let me start with AP Services'
8 retention order, since that helps to
9 establish the standard by which I should
10 review the application.

11 It is accurate that paragraph 3
12 of the retention order provides that all
13 references to the, quote, "contingent
14 success fee" in the engagement letter upon
15 which AP Services premises its request
16 here shall be deemed stricken from that
17 engagement letter. However, the sentence
18 goes on to say "without prejudice to APS's
19 right to request a success or similar fee
20 as contemplated in paragraph 4 below and
21 subject to the other terms of the order."

22 Paragraph 4 clearly reserves
23 the right to request a success or similar
24 fee in its final fee application. Then
25 paragraphs 5, 6, and 7 put some

1
2 limitations on that right to seek a
3 success fee, none of which I assume are
4 applicable here since the Committee has
5 not raised them.

6 So while the fee itself was not
7 approved under Section 328(A) of the
8 Bankruptcy Code, the implications of which
9 are well described in Judge Gonzalez's
10 recent opinion in the XO Communications
11 case, 205 Bankruptcy Lexis 833, March 9,
12 2005, AP clearly did not waive its right
13 to seek a success fee at the end of the
14 case. And, in fact, Mr. Shaw, the
15 chairman of the Creditors Committee,
16 acknowledged that at the time the order
17 was negotiated, the Committee and AP
18 contemplated some form of good-faith
19 negotiation over a success fee once the
20 outcome of the case could be determined.

21 Given that, in particular given
22 the fact that any success fee would be,
23 under the terms of the order, decided
24 under Section 330 of the Bankruptcy Code,
25 that is the section that governs here, and

1
2 the provisions of that section are clear
3 and generally well-recognized. The Court
4 is supposed to focus on five factors: The
5 time spent on the services, the rates
6 charged for such services, whether the
7 services were necessary to the
8 administration or were beneficial at the
9 time when they were rendered toward the
10 completion of the case, whether the
11 services were performed within a
12 reasonable amount of time commensurate
13 with the complexity and importance and
14 nature of the problem, issue, or task
15 addressed, and, last, whether the
16 compensation is reasonable based on the
17 customary compensation charged by
18 comparably skilled practitioners in cases
19 other than cases in this title, that is,
20 in a nonbankruptcy context.

21 The Committee challenges AP
22 Services' right to a success fee under
23 various provisions of Section 330,
24 including whether the services were
25 necessary and reasonable, as well as the

1
2 applicable market rate for compensation.

3 Let me say at the outset, and I
4 think no one disagrees with this, although
5 there is some notion of disagreement on
6 the Committee's part, that in applying
7 subsection (e) of Section 330, that is,
8 whether the compensation is reasonable
9 based on customary compensation, I
10 certainly am free to consider a success
11 fee as a market-driven compensation
12 measurement, and that is what I will do.
13 I do not believe that simply by labeling
14 it a success fee AP Services is forced to
15 establish that extraordinary circumstances
16 justify the fee. I think the
17 extraordinary circumstances cases have
18 generally been those involving law firms
19 or other types of professionals that do
20 not normally charge a success fee. At
21 least that is how I have applied that
22 terminology. But for firms which normally
23 charge a success fee and whose competitors
24 normally charge a success fee, I do not
25 believe extraordinary circumstances or

1
2 extraordinary efforts or results need to
3 be shown.

4 I also disagree with something
5 AP has said. Quoting from Judge Gonzalez
6 in the XO case, which is when a
7 professional is seeking a transaction fee
8 or a success fee, certain of these
9 considerations set forth in Section 330
10 drop away, such as the time spent or the
11 rates charged, that certainly is true for
12 a firm like Houlihan in the XO case that
13 was charging a flat monthly fee. In that
14 case, the debtor and the other
15 constituents were perfectly happy to have
16 Houlihan work as many hours as possible
17 because there was no hourly charge. Here,
18 AP Services was billing an hourly fee in
19 addition to the success fee, and I believe
20 that that hourly billing and the time
21 spent is appropriate and something I
22 should take into account. Other than
23 that, I believe the parties do agree on
24 the standard, and to the extent they
25 disagree, I've laid out what I believe the

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

applicable standard is.

With regard to the factor of whether the services were necessary to the administration of the case and beneficial at the time that they were rendered, this is an objective inquiry based upon what services are reasonable that a professional would have performed in the same circumstances. It focuses on what a reasonable professional would have done at the time. The Court shouldn't invoke perfect hindsight. Although, on the other hand, the professional is supposed to exercise reasonable billing judgment as it would outside of a bankruptcy case where it has a client looking over the bills. To the extent that the professional does not do that, the Court, assisted by whoever wants to participate, needs to do so.

With regard to AP Services in this case, it appears reasonably clear to me from the record that AP Services was an active and valuable participant as a

1
2 professional in this case and that the
3 case very well could have gone in a
4 different direction if AP Services had not
5 performed the services that it did. I
6 guess I should state something about what
7 I mean when I say "the case." This was a
8 relatively brief Chapter 11 case, at least
9 for a company of this size. I am not just
10 looking at AP Services' activities during
11 the scope of the Chapter 11 case, but
12 rather I'm looking at its activities from
13 the beginning of its engagement with the
14 debtor, which was in February of 2004.

15 There may be circumstances,
16 although they present problems, where a
17 professional's retention is problematic
18 since all of its work has been done
19 prebankruptcy. I don't think that is the
20 case here. I think AP Services did
21 valuable work post-bankruptcy as well.
22 But particularly given the fact that they
23 were acting as interim management or
24 crisis management, I think as supported by
25 Mr. Shaw's testimony, continuity from the

1
2 time of its engagement through the
3 commencement of the bankruptcy case to its
4 conclusion was one of its important
5 functions, and therefore I think it is
6 appropriate to look at the entire span of
7 its engagement.

8 During that entire span, AP
9 Services provided crisis management, which
10 included not only operational management,
11 but management focused on the nuts and
12 bolts, which is not performed by
13 investment bankers, of taking a company
14 through a bankruptcy case, including
15 dealing with claims, SG&A, executory
16 contracts, unexpired leases, and the
17 accounting and numbers aspects of
18 management's efforts to deal with its
19 restructuring. In that regard, I note
20 that the case itself appears to me to have
21 been successful, and that therefore the
22 overall effort ended up with an acceptable
23 and successful result, and that AP
24 Services had a meaningful hand in that.

25 More specifically, I believe

1
2 that the evidence shows that AP Services
3 played a meaningful role, although
4 admittedly not the only role, in the
5 successful refinancing of the secured
6 debt. Obviously Blackstone, as the
7 financial advisors, investment bankers,
8 were retained to canvass the market for
9 that debt and conclude it. However, it
10 was critical for the company to have
11 senior people at the management level to
12 participate in not only due diligence, but
13 also to facilitate syndication and other
14 aspects of the financing. That all
15 required lenders to have someone on the
16 other side of the table that they could
17 reach out to for the actual hard numbers.
18 Although there was some back-and-forth on
19 it, I believe that there was significant
20 SG&A cuts prior to Mr. Aquino's retention
21 that were achieved in large part because
22 of AP Services.

23 In addition, there is no
24 dispute that AP Services did play a role
25 in renegotiating numerous leases, and

1
2 there was unrebutted testimony that there
3 was a \$100 million overall savings as a
4 result of that. While there was, again,
5 some back-and-forth on the renegotiation
6 of relationships and agreements of local
7 franchises, I believe that it was
8 necessary to have AP Services involved in
9 that process as, in effect, the client to
10 give direction to outside regulatory
11 counsel and in-house counsel. And that
12 while RCN did not achieve everything that
13 it wanted in connection with those
14 renegotiations, it also could not be
15 reasonably expected to achieve everything
16 that it wanted, and that the ultimate
17 renegotiations solved very difficult
18 problems at a reasonable cost.

19 Finally, there was some
20 discussion about AP Services' role in
21 connection with the analysis of whether to
22 have operating subsidiaries file and the
23 related determination of whether there
24 would be a substantive consolidation or
25 not. I have observed that this type of

1
2 issue, in particular where there is a long
3 history of a dispute between secured
4 creditors and unsecured creditors, is not
5 one that is smooth, and it doesn't
6 surprise me that the Creditors Committee
7 was at times unhappy with AP Services'
8 activities in connection with this issue.

9 More significantly, however,
10 there was testimony that CTA had to
11 perform analyses that had not been
12 performed by AP Services in connection
13 with the issue. Frankly, at best, for AP
14 Services this is a neutral point and may
15 be a point of some concern.

16 But all told, I do not believe
17 that there is a basis, with one exception,
18 which I will get to, for reducing AP
19 Services' compensation under Section
20 330(A)(3), (C), or (D) based on the
21 reasonableness or difficulty of their
22 activities and their performance. The
23 exception is a significant one, however,
24 which is that in August of 2004, after
25 being informed of the board's concerns,

1
2 the Committee determined that it was
3 necessary to retain Mr. Aquino as a
4 consultant to, in essence, take over on
5 the operational side from AP Services.
6 This led to duplication of effort, and
7 reflected, as expressed by the board,
8 legitimate dissatisfaction with AP
9 Services' efforts on that portion of its
10 engagement.

11 Let me then turn to the last
12 factor of the Section 330(A)(3) analysis,
13 which is the analysis of whether the
14 requested compensation is based on
15 customary compensation in a nonbankruptcy
16 setting for comparable professionals. The
17 Second Circuit has clearly set forth a
18 market test for application of this factor
19 as set forth most clearly in *In Re Ames*
20 *Department Store, Inc.*, 76 F.3d 66, Second
21 Circuit, 1996, but it is followed by a
22 number of cases, including cases in the
23 Third Circuit and elsewhere, *Zolfo Cooper*
24 *& Company versus Sunbeam*, 50 F.3d 253,
25 Third Circuit, 1995.

1
2 Unfortunately for me, and to
3 some extent for the parties, my impression
4 of the market in this area has not been
5 particularly illuminated by the evidence
6 put on today. There is uncontradicted
7 testimony by Mr. Dubbel that in almost all
8 cases Alix Partners or AP Services or one
9 of their affiliates seeks and obtains some
10 form of success fee as part of their
11 engagement for crisis management services
12 as performed here, with the exception of
13 the WorldCom engagement, which I view as
14 truly *suigeneris* and note that the free
15 advertising of being WorldCom's crisis
16 manager probably equals any success fee
17 that they would have attained.

18 I think it is in the record
19 that AP Services normally succeeds in
20 getting a success fee from its clients,
21 although Mr. Dubbel candidly admitted that
22 there are times when it doesn't earn the
23 success fee based on the metrics of the
24 fee. Although it is not clear how often
25 that occurs, his testimony I believe was

1
2 in the vast majority they get the success
3 fee. The testimony also was that on
4 average over the last ten years, the
5 success fee was roughly \$3.2 million,
6 although the range of success fees, that
7 is, \$50,000 to \$11 million, was such a
8 large range that it is hard to fix on an
9 average number when Mr. Dubbel testified
10 that he did not do an arithmetic mean
11 analysis. And it is quite conceivable
12 that one large fee or a number of small
13 fees or -- well, that based on anomalies,
14 the average could be skewed.

15 There also was testimony by
16 Mr. Fasola that the board delegated
17 management and in-house counsel to do some
18 analysis before AP Services' retention on
19 the reasonableness of their \$4 million
20 success fee that was in their prepetition
21 letter. The most that I can derive beyond
22 that from the record, however, is from
23 Mr. Dubbel's testimony that he himself
24 pointed out comparable instances to
25 management as well as focused management

1
2 on public sources of fees for their
3 competitors. I assume that that in fact
4 was done, particularly given the role that
5 outside counsel played in this case as
6 well as my impression of the capabilities
7 of in-house counsel.

8 My ultimate conclusion here, in
9 weighing what evidence there is of the
10 market as well as the cost to the estate
11 of having to retain Mr. Aquino, is that a
12 reasonable compensation here and a market
13 compensation as reduced by the concerns
14 that I previously raised would be a \$2
15 million fee in addition to the hourly
16 charges that have been incurred. I base
17 that on an average of roughly \$3 million
18 as opposed to the 4 that was in the
19 original engagement, plus roughly a \$1
20 million deduction to reflect the cost
21 attributable to Mr. Aquino, which in
22 absolute dollar terms was \$270,000 plus
23 the hourly charges by Mr. Dubbel and
24 Mr. Horvath from September through
25 December, which is roughly \$940,000. A

1
2 large portion, I think, given their
3 seniority and their roles, would overlap
4 with what had originally been expected to
5 be charged on the operational side and
6 ended up being performed by Mr. Aquino.

7 I do believe, therefore, in
8 sum, that AP Services is entitled, based
9 on the market, to a success fee. But
10 based upon the testimony with regard to
11 the role they played in the case, as well
12 as the evidence on what a market success
13 fee is, the appropriate success fee here
14 is \$2 million.

15 So, Mr. Toll, you can submit an
16 order to that effect allowing the fee of
17 \$2 million.

18 MR. KIRPALANI: Thank you, your
19 Honor.

20 MR. TOLL: Thank you.

21
22
23
24
25

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

C E R T I F I C A T I O N

I, TODD DeSIMONE, a Registered
Professional Reporter and a Notary Public,
do hereby certify that the foregoing is a
true and accurate transcription of my
stenographic notes.

I further certify that I am not
employed by nor related to any party to
this action.

TODD DeSIMONE, RPR

A			
ability 38:22 42:12	addition 23:23 30:6	agreed 24:14 58:15	112:22 113:12,21
able 22:10 39:22	50:16 91:16	83:10 111:3,10	114:23 115:4,6,10
89:22 91:11	129:14 132:19	127:24	115:16,24 116:6
103:14	138:19 142:23	agreeing 128:15	118:13 120:3,12
absolute 73:15	148:15	agreement 37:8	120:23 121:7,10
148:22	additional 9:5 18:19	47:17 73:23 81:20	121:15,18,23
absolutely 110:25	18:20 22:22	83:12 92:2 95:3	122:9,15,17
123:7	address 3:21 128:21	110:12 115:18	123:11,18,20
accept 114:8	addressed 105:13	124:20	124:6,18 125:6,13
acceptable 141:22	136:15	agreements 9:15	125:15,17 126:4,9
accomplish 84:23	administration	23:5 47:22 91:2,6	126:14,15 128:6,8
accomplished 90:12	136:8 139:5	118:10 126:7	129:12 132:2,7
account 138:22	admission 21:12	143:6	146:8
accounting 141:17	34:18	Al 101:25 104:4	alleged 124:7
accumulated 97:14	admit 35:15 80:8	105:19 113:2,6	allegedly 128:15
accurate 41:19,25	admitted 35:8 125:3	albeit 121:19	allow 21:6,15 74:12
42:11,13 73:8	146:21	Alfred 5:6,16 101:19	allowance 133:21
75:16 134:11	admittedly 142:4	algorithm 11:10	allowed 34:3 41:24
150:9	advertising 146:15	aligned 117:13	62:21 119:2 134:6
achieve 69:5,8	advised 14:15	Alix 2:5 3:6 8:3,23	allowing 149:16
123:23 143:12,15	advisors 32:12,14	10:9,17 12:4,7	allows 79:8
achieved 142:21	35:6 36:20 38:24	14:11,12,22 17:7	alternative 47:8
acknowledged	44:17 82:14 98:11	17:15 18:7 19:5	Alvarez 13:17
135:16	98:16 104:16	20:15 21:20 23:24	amendment 49:21
acquire 97:5	125:15 127:24	24:7,22 26:3 27:3	amendments 47:18
act 13:3	142:7	27:23 30:8,10,14	48:15 91:2 126:6,8
acting 140:23	advisory 13:14	30:19 31:11 32:19	Ames 145:19
action 89:2,11,14,24	98:12	33:2 36:24 39:2,24	amount 23:15 31:4
150:13	affect 79:10	44:25 56:21 57:2,4	37:2,6 39:10 42:3
active 139:25	affiliate 3:7 21:21	57:13 59:23 60:10	95:5 114:12
activities 140:10,12	affiliates 59:18	61:14,17,19 63:9	118:23 122:3
144:8,22	68:13 69:11 146:9	72:15,17,24 73:10	131:18 136:12
actor 121:21	affiliation 5:21	74:6 77:6 78:9,17	amounts 48:2
actors 121:20	afresh 118:19	79:8 84:12,15 85:7	analyses 144:11
actual 22:6,20 24:5	agencies 28:16,19	85:20 86:6,10,15	analysis 37:15 38:4
24:6 28:21 38:18	agent 71:22 72:20	86:22 87:10,18	40:17 41:5,17
41:20 44:18 49:7	72:21 78:2	90:6,12 92:9,24	42:10 66:13
142:17	aggregate 31:4	93:3,5,9 94:3,3	127:23 143:21
ad 24:4 42:24 46:11	aggressive 69:2	98:4,13,14 99:3,8	145:12,13 147:11
51:10 75:3 97:9	ago 61:22 62:13	99:10,24 100:24	147:18
99:19 100:6,11	88:12	102:21 103:13,24	Andersen 61:15,21
108:16	agree 61:4 85:20	104:18 105:9	61:25 62:5,8,14,19
add 18:18	86:6 87:10,16	106:3,22 107:3,11	63:4,6
added 48:13	88:14 90:11	107:12 108:6,9,14	announcing 19:18
	126:22 129:4,5	110:2,10,12	20:11
	138:23	111:20,22 112:3	annual 15:14 23:16

<p>95:2,6 anomalies 147:13 answer 47:10 58:12 58:14 67:18 75:25 108:7 answers 104:11,12 anticipate 3:13 anticipated 39:25 40:3 56:13 anticipating 40:4 Anybody 45:7 anytime 29:12 anyway 80:7 132:3 AP 1:16,17,20,23 2:4 3:7 6:10,17,20 6:24 7:15 18:4 21:20,25 24:7 37:5 39:5 57:2 64:20 68:12 69:11 133:21,24 134:7 134:15 135:12,17 136:21 137:14 138:5,18 139:22 139:24 140:4,10 140:20 141:8,23 142:2,22,24 143:8 143:20 144:7,12 144:13,18 145:5,8 146:8,19 147:18 149:8 apparently 34:24 appear 77:9 appearing 3:6 appears 139:23 141:20 applicable 4:3 135:4 137:2 139:2 Applicant 1:23 application 1:16,20 3:8 59:9 122:22 123:10 133:21 134:5,10,24 145:18 applied 137:21 applying 137:6 appointed 8:8 9:7</p>	<p>approach 19:22 33:17 35:18 37:17 59:2 64:19,23 97:11 approached 15:16 74:7 97:9 appropriate 8:10 17:20 30:3 65:4 102:21 138:21 141:6 149:13 approval 1:17,20 110:11 approve 6:19 approved 10:18 14:19 52:22 134:2 135:7 approximately 22:8 22:25 30:22 31:6 32:3 39:15 42:5 43:15 47:15,21 48:8 55:16 73:20 92:17 133:4 April 1:11 97:17,23 97:24 101:23 103:11 107:25 APS 59:17 APS's 73:2 134:18 AP's 116:25 Aquino 9:9,17 15:9 15:17 56:11 80:1 80:13,20,22 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1,11 89:1 90:1 90:23 91:1 92:1,7 93:1,25 94:1,19 95:1 105:23 106:10 114:6,11 118:2 127:4,8,14 129:23 145:3 148:11,21 149:6 Aquino's 142:20 arbitrary 108:22 109:8 architect 117:15 area 30:12 53:23</p>	<p>55:3,5 86:5 146:4 areas 91:10 arguably 132:9 argument 119:21 125:20 arithmetic 61:9,11 133:2,9 147:10 Arps 27:16 arranged 50:17 arrangement 16:8 110:11 arranging 45:19 47:7 arrested 102:12 arrival 106:3 arrived 125:17 126:14 Arthur 61:15,20,24 62:4,19 article 20:20 aside 69:14 asked 36:9 47:3 58:10 69:6 73:17 83:9,14,16 84:7 108:12 128:11 asking 12:2 20:21 20:21 68:22 75:19 aspect 84:13 aspects 82:5 83:18 99:22 104:10 141:17 142:14 assess 120:9 assets 76:10 77:20 91:20 assist 14:14 19:12 26:12 assisted 139:19 assume 135:3 148:3 assuming 123:2 assurance 118:24 attained 146:17 attempted 80:4 attended 49:19 attending 126:16 attention 15:2 59:12 60:23 114:2</p>	<p>attorney 58:22 Attorneys 2:4,9 attributable 148:21 attrition 53:13,17 88:13 Audit 6:7 auditor 62:20 August 81:13 84:15 85:12,19 89:9 90:18 94:10 97:10 101:13 116:10 144:24 auspices 126:3 authenticated 34:17 authorities 23:4 avenues 99:16 average 31:7 61:3 93:7 132:25 133:3 133:9,10 147:4,9 147:14 148:17 avoid 91:4 avoided 92:11 111:25 avoiding 127:19 award 122:2 awarded 129:14 131:15 awarding 124:7 aware 14:10,20 52:23 63:17,20 64:2 69:23 86:3 88:24 129:10 awful 25:20 a.m 1:11</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>B 1:13 16:22,22 back 7:6 14:2 25:23 42:18 74:10 89:12 91:10 92:21 106:19 114:3 118:3 back-and-forth 142:18 143:5 bad 103:16 balance 25:18,20</p>
---	--	---	--

<p>29:8 43:12,12 44:5 87:12,14 125:19 125:23 balanced 104:22 ball 100:5 bank 8:15 15:24 26:5,15 27:2,5 28:4,4,5,11 32:13 32:15,16 36:21,21 36:22 39:14 43:23 44:13 50:7 51:3 71:2 73:4 75:24 76:4,22 77:3,8 78:3,25 89:23 101:6 102:14 103:18 106:6 124:25 126:2,2 banker 27:17 46:7 46:22 130:11 131:22 132:18 bankers 63:18 64:25 65:15 87:22 130:23 141:13 142:7 banking 46:4 99:14 bankruptcy 1:2,14 4:17 8:2 11:20 22:7 25:17 26:20 29:3 30:11 39:11 39:20 43:4 52:4,9 52:21 57:6,13 59:19 67:8 71:25 73:11 82:8 88:20 88:22 90:5 96:13 97:2 100:9 107:14 119:3 121:11 122:20,23 123:21 127:21 129:4,16 130:7 132:21 133:23 135:8,11 135:24 139:16 141:3,14 banks 72:5,7,16 73:14,16,20,23,25 74:7,10,11,14 75:17,19,20 77:10</p>	<p>86:2 99:19 base 29:16 95:12 148:16 based 18:20 58:3 63:23 64:10,11 65:5,6 67:5,19,20 68:22 70:7,22 117:19 129:21 136:16 137:9 139:7 144:20 145:14 146:23 147:13 149:8,10 basically 83:9,11,19 84:2,17,19 85:14 87:25 90:4,21 94:10 97:22 100:4 101:25 102:15,19 103:9 104:15 105:8,12,20,25 106:2,3,8 107:17 107:17,22 109:14 113:2 114:7,9 117:12,14,21,25 118:8 121:18 basics 118:20 basis 8:19 10:10 15:14 35:7 57:23 63:3,5,24 94:25 95:2,6,8 117:20,22 118:9 130:25 131:13 132:13 144:17 batting 93:6 beg 74:18 began 72:20 97:5 124:11 beginning 111:3 112:19 118:16 140:13 behalf 3:6 believe 4:18 6:3 7:19 8:15 9:4 10:14 11:24 16:10 29:5 38:12 44:4 57:15 58:13,14 60:18,20 81:14 88:3,5,10</p>	<p>89:21,24 93:5 94:5 97:10 121:2 133:11 137:13,25 138:19,23,25 141:25 142:19 143:7 144:16 146:25 149:7 believed 8:24 116:16 believes 45:7 Bell 118:16 bench 18:19 33:17 35:19 benchmark 7:17 12:16 beneficial 4:12,14 120:5,15 136:8 139:5 Berlin 90:15 126:13 best 9:4,21 42:12 45:9 76:19 124:3 144:13 better 7:21 125:24 beyond 147:21 billing 138:18,20 139:15 billion 43:15 109:2 131:12 billion-dollar 125:21 bills 139:17 bit 42:21 106:17 Blackstone 27:17 34:24 44:22,25 45:11,17 46:5,16 46:20 47:6 50:17 74:13 87:25 88:3,7 98:25 99:2,7,13,18 108:14 117:7 119:7 125:2,3,8 126:3 131:21 142:6 Blackstone's 50:2 100:4 board 5:17 6:18,19 6:23 8:3,7,22 11:12,19,25 12:6</p>	<p>13:6,25 15:23 25:7 83:6 101:8,9 106:16 109:15 113:4,4 128:7,11 145:7 147:16 board's 103:22 144:25 bolts 141:12 bond 98:7 125:10 132:3 bondholders 22:11 73:15,24 75:18,18 75:21 124:11 125:13 132:6 bonds 43:25 96:12 96:15,17,22 97:6 108:25 109:3 bond-for-stock 125:22 bonus 122:15 124:8 bonuses 129:3 borrower 78:5,6 Boston 53:23 54:2 55:3,5 88:21 bottom 38:14 Bowling 1:9 BR 4:6 Bradbury 98:18 bridge 31:23 40:16 40:25 brief 3:10,18,23 119:21 140:8 briefly 3:15 18:12 124:4 128:21 bring 12:24 18:19 85:13 105:22 106:13,17 bringing 118:3 brought 14:25 99:11 99:13 106:7 107:13 114:2 116:5,6,7 budget 82:4 build 91:10,11 109:19 building 93:2</p>
--	---	--	--

<p>build-out 23:2 47:16 47:24 48:2 90:9 91:4 92:4 built 37:10 bullish 75:9 burden 120:4 123:3 123:11 business 13:11,14 22:23 27:20 28:13 29:4,11,23 31:11 56:15 58:3 63:18 64:8 74:10 79:21 80:2 83:18 89:8 92:16 96:6 109:24 127:10 buyer 78:9 B.E 50:22 51:8</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>c 2:2 4:11 104:22 144:20 150:2,2 cable 29:18 calculate 64:2 calculation 64:20 133:3 call 5:4,5 14:3 50:22 56:10 70:13 80:12 104:22 109:3 111:17 118:8 called 5:9 16:23 33:2 71:12 80:16 90:21 93:6 95:23 candidly 146:21 canvass 142:8 capabilities 148:6 capacity 72:3 capital 64:12 82:4 87:8 88:2 care 92:19 careful 126:20 caretaker 123:21 131:8 carried 115:15 carry 85:16 100:5 case 3:10 4:5,8,17 5:19 6:4 7:16,24</p>	<p>9:5 10:11 11:5,20 12:15,21 14:13,23 15:10 21:22 22:2,3 22:13,19,21 23:22 30:5 35:5 45:7 53:14,24 54:7,9 55:8,18,23 57:12 57:13,16,20,25 58:14 60:4 61:2 65:24,25 68:3 72:6 72:22 73:13 74:8 74:20 77:7 78:15 78:17 80:9 82:8,16 83:5 86:17,20,24 87:4,5,9 88:14 91:5,9,22 94:8 96:19,21 100:20 103:10 107:8,13 108:10 110:16 111:4,4,11 112:19 113:7 115:19,25 116:18,23 118:16 119:7 124:9,10,14 124:16,17 128:6 129:16,17,19 130:8,16,19 131:10 134:2 135:11,14,20 136:10 138:6,12 138:14 139:5,16 139:23 140:2,3,7,8 140:11,20 141:3 141:14,20 148:5 149:11 cases 4:23 7:11 30:25 61:3 66:25 75:6 85:8,23 116:19 120:22 123:9,19 129:4 136:18,19 137:17 145:22,22 146:8 cash 31:23 33:15,15 36:12 37:11 39:11 39:15,18 40:2,4,16 40:17,25 41:3,11 42:4 73:21 76:12</p>	<p>77:17 114:18,18 114:22,22 115:2,2 115:8 128:17 cash 76:14 cash-out 76:18 category 16:11 cause 56:5 106:14 caused 44:4 121:18 Center 2:3 cents 109:4 CEO 11:14,17,21 12:4,12 13:5,7,24 15:3 53:22 54:5,12 54:18 66:20 81:3 90:25 94:2 97:17 99:10 108:13 123:16 124:2 126:18 CEO's 102:4 certain 39:10 75:20 100:15 104:9,19 117:9 138:8 certainly 41:14 87:6 87:15 137:10 138:11 Certificate 1:22 certifications 63:8 63:13 certify 150:8,11 chair 35:12 123:25 128:9 chairman 95:19 101:10 103:2 107:9 111:7 116:21 123:17 135:15 challenges 92:3 136:21 change 9:11,23 22:12 84:2 changed 19:10 91:25 125:17 changes 8:13 9:2,6 9:13,25 11:14,22 65:6,6 Channin 119:7</p>	<p>Chapter 5:18 6:4 10:11 18:25 23:14 24:5,6 25:5,15 26:24 28:8,10 29:13,19 30:2 31:17 36:8 39:22 52:11 53:19 54:7 54:11 55:17 56:2 64:16 67:12 71:20 86:20 107:8 109:9 109:13 140:8,11 characterize 85:7 characterizing 17:19 charge 63:19,23 88:24 137:20,23 137:24 138:17 charged 4:2,22 30:7 120:21 136:6,17 138:11 149:5 charges 148:16,23 charging 138:13 Chase 2:8 cheat 34:9 Chicago 47:19,25 48:4,9,16 49:20 91:3,9,12,13,15,17 91:19,21 126:17 chief 17:10,25 19:4 19:7,10,19 27:9 81:5 83:23 85:6 98:18 116:8,13 127:7 chill 103:17 choice 55:13 70:24 127:15 Christmastime 127:13 chunk 23:20 Circuit 145:17,21,23 145:25 circulated 128:18 circumstances 31:15 58:4 64:5 101:15 121:23 137:15,17,25</p>
--	--	---	--

<p>139:10 140:15 cite 4:5 citings 14:18 City 93:2,21 113:12 claim 86:16 90:7 107:4 claims 92:25 141:15 clarify 111:8 clear 77:2 118:17 120:13 121:6 126:23 136:2 139:23 146:24 clearly 75:25 134:22 135:12 145:17,19 client 3:9 75:13 76:2 77:16,24 78:22 139:17 143:9 clients 75:9 76:6 79:11 146:20 close 89:3 closed 76:22 closing 27:24 coaching 33:23 Code 122:20,23 132:21 133:23 135:8,24 collaborative 53:4 127:2 collateral 76:12 column 37:6 combination 7:12 50:20 come 7:5,25 15:17 17:24 29:8 46:4 94:9 101:7 103:11 108:3 111:6,18 118:9,23 comfort 16:4 comfortable 29:9 57:22 58:2,16 129:20 coming 56:11 89:18 90:5 113:3 118:7 commencement 141:3 commensurate</p>	<p>136:12 comment 20:22 commercially 90:24 126:20 commitment 26:4 26:25 27:4,21 28:6 28:6 43:5 73:3 committee 1:19,24 2:9 6:7,8 8:17,21 8:24 15:16 16:3 21:12 24:4 34:9 35:7,12 36:20 38:19 42:24 46:11 50:4,8,10,11,25 51:7,9,10 75:4 80:11 82:21 83:5 84:7 85:3 93:20 95:20 96:24 99:19 100:11 101:5,9,18 103:2,23 104:13 105:7 107:10 108:16 110:6,12 111:7 112:9 113:16 114:24 115:9 116:22,24 117:3,5 121:8 122:6 123:25 125:5 126:4 127:22 128:10,11 128:15 134:4 135:4,15,17 136:21 144:6 145:2 committees 117:3 committee's 25:25 32:14 72:23 86:11 100:7 106:23 113:9,10 123:17 137:6 communicate 46:9 communicated 113:3 communication 25:6 Communications 4:8 82:13 128:23</p>	<p>130:2 135:10 companies 18:23 29:18 86:25 company 7:21 10:19 16:5 18:16 22:10 22:21 23:5,6 26:12 26:15 27:19 28:10 29:6,15 30:2 32:13 33:7 44:5,17 45:23 46:8,19,22 51:7 52:19 54:10,18,19 54:21 56:2,12 65:3 65:7 66:7 68:6,21 69:3 74:3 75:3 76:11,19 77:11 81:11,12,22 82:12 83:9,15,16 84:6,9 85:5 87:11,13,23 88:17 89:6,21 90:14 93:18 94:2 94:20,23 95:10 97:8,21,25 98:17 99:3,10,12 100:7 100:24 102:7,17 103:19 104:14,15 105:4,15,17,24 106:5,6,10,18 107:19 108:24 109:7,11,20 114:10 116:8,9 117:17,24 118:3,9 119:2 121:25 125:15,20 140:9 141:13 142:10 145:24 company's 45:18 47:7 53:5 84:22 86:20 99:17 103:17 105:21 107:8 109:23 117:13 comparable 4:21 7:2 68:5 145:16 147:24 comparables 13:8 13:15 67:21</p>	<p>comparably 4:22 120:21 136:18 compared 124:8 compensated 57:23 58:13 110:17 132:20 compensation 4:20 4:22 6:8 10:24 16:7 30:8 56:22 57:19 58:15 62:24 65:4,14 69:22 81:16 95:2,7 108:13,19 120:21 123:12 129:8,21 136:16,17 137:2,8 137:9,11 144:19 145:14,15 148:12 148:13 competent 133:8 competition 29:17 competitors 30:15 64:21,23 137:23 148:3 complaints 110:7 completed 100:9 completely 65:16 75:15 85:19 113:21 completion 136:10 complex 115:5 127:20 complexity 136:13 complicated 91:7 components 44:4 73:19 124:5 compute 61:8,11 conceivable 147:11 concentrate 83:13 83:15 concept 15:17 125:12 132:5 concern 29:13 144:15 concerned 31:12 53:19 89:10,19 102:19</p>
--	--	---	--

<p>concerns 144:25 148:13</p> <p>concessions 126:22</p> <p>conclude 142:9</p> <p>conclusion 141:4 148:8</p> <p>condition 25:17</p> <p>conduct 7:5</p> <p>conference 14:3</p> <p>confidentiality 38:21</p> <p>configuration 77:12</p> <p>confirmation 7:15 31:10 79:22</p> <p>confirmed 33:7 100:20</p> <p>confirming 85:22</p> <p>conflict 120:6</p> <p>confused 20:20</p> <p>connection 4:4 27:24 46:24 49:21 58:8,23 59:8 61:9 66:13 79:21 81:8 88:8 143:13,21 144:8,12</p> <p>consensually 105:18 106:16 127:24</p> <p>consented 11:12,19</p> <p>consenting 14:11</p> <p>conservative 41:15</p> <p>consider 31:14 78:7 128:7 137:10</p> <p>considerations 138:9</p> <p>considered 64:17 130:15,17</p> <p>considering 23:25</p> <p>consistent 61:2</p> <p>consists 18:13</p> <p>consolidated 112:11</p> <p>consolidation 23:25 24:12,17,21 92:12 111:25 112:24 113:5 118:7 127:17 128:4 143:24</p>	<p>constituency 8:16 112:6</p> <p>constituents 27:12 35:5 36:19 44:16 45:15,22 46:10 48:12 138:15</p> <p>consultant 15:20 16:11 81:13,17,24 82:9,23,24 85:3,4 95:9 102:23 145:4</p> <p>consultants 78:4</p> <p>consulted 49:3 78:16</p> <p>consulting 81:21 82:2</p> <p>consummation 114:5 115:20</p> <p>contact 50:21</p> <p>contacted 72:20 101:18 114:7</p> <p>contemplated 130:14 134:20 135:18</p> <p>contend 21:24</p> <p>contending 134:5</p> <p>contested 4:17 74:4</p> <p>context 136:20</p> <p>contingent 1:17,20 56:20,25 62:19,22 134:13</p> <p>continue 28:12 52:10 56:17</p> <p>continued 28:3 54:10</p> <p>continuing 52:8 54:17</p> <p>continuity 140:25</p> <p>contract 12:2,3 15:14</p> <p>contracts 6:17 118:10,12,21 141:16</p> <p>contrary 121:2 132:24</p> <p>contribute 87:4</p> <p>conversation 11:2</p>	<p>conversations 8:14 8:18 49:5</p> <p>conversion 43:25 98:7 125:22</p> <p>converted 43:16 132:4</p> <p>Converting 125:10</p> <p>conveyed 102:4</p> <p>convincing 120:13</p> <p>COO 53:22 54:21 88:18 116:7</p> <p>Cooper 145:23</p> <p>copies 32:9 36:14 38:8 128:24</p> <p>copy 58:21</p> <p>corner 32:24</p> <p>Corp 33:14</p> <p>corporate 15:21 16:13 83:20</p> <p>Corporation 1:6 18:5 80:25 96:5,7 96:8,12</p> <p>correct 11:18 13:25 17:12,15 20:17 42:20 43:9 52:25 57:11 62:7 75:11 76:7,15 77:17,24 83:2 98:23</p> <p>cost 22:22 51:20 56:17 126:24,25 127:11 143:18 148:10,20</p> <p>costs 41:16,20,23 51:21 92:14</p> <p>cost-cutting 81:25 84:11</p> <p>counsel 11:3 12:13 13:8 20:21 27:16 34:4 48:17,19 49:2 49:3,8,10 66:19 67:11 70:22 71:21 143:11,11 147:17 148:5,7</p> <p>counted 115:12</p> <p>couple 17:17 22:12 68:25 70:9</p>	<p>coupled 7:13</p> <p>course 53:14,23 54:6 55:7,17 59:24 75:16 88:14 124:15</p> <p>court 1:2 3:2,5,12,15 5:3 10:4 15:7,12 16:6,14,18 17:22 19:24 20:23,24 21:6 26:21 33:19 34:19 35:15,20 37:18 39:23 40:9 52:4,22 59:3,16 60:8,15,19,21 63:16,22 64:18 65:17 66:11,21 67:16 68:10 69:9 70:2,6,11,20 74:22 79:8,16 80:5 81:14 94:16,19,24 95:5 95:16 101:14 110:20 116:22 119:17,23 121:4 122:2,23 128:6 129:6,10 130:6 132:16,22 133:14 133:17,20 136:3 139:12,19</p> <p>courts 127:21</p> <p>Court's 74:18</p> <p>court-approved 122:10</p> <p>co-founder 62:5</p> <p>credibility 18:20 90:4 105:9 120:10</p> <p>credit 28:15,18 124:19 125:7 126:18 127:19</p> <p>creditors 1:19,24 2:10 8:17,20 21:13 35:6 36:19 38:18 50:4 51:9 77:22,23 80:11 82:18 83:5 86:2 95:20 96:23 109:21 110:6 126:4 128:10</p>
---	--	---	--

<p>134:3 135:15 144:4,4,6 crisis 17:14 18:9,13 30:12 31:11 51:13 51:17,18,22 52:15 56:4 65:19 69:12 69:18 78:4 116:6 127:14 140:24 141:9 146:11,15 critical 118:4 142:10 cross 10:1,4 11:1 12:1 13:1 14:1 15:1 16:1 40:1,9 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 68:1 69:1 70:1 74:1 75:1 76:1 77:1 78:1 79:1 119:17 cross-examination 10:7 40:12 74:21 74:23 119:19 cross-examined 34:25 CTA 82:17,20,24 83:10 105:23,25 106:11 107:18,19 117:14,23 118:5 118:23 119:8 127:3 144:10 current 123:16,25 currently 80:23 85:5 Custom 1:9 customary 4:21 120:20 136:17 137:9 145:15 customer 29:16 customers 29:22,22 cuts 22:19 142:20</p>	<p>C-Tech 6:3</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d 1:14 4:15 5:8 16:22 95:22 144:20 Daily 67:8 damage 118:25 damaged 105:10 danger 41:22 42:3 Darryl 95:20 date 7:15 14:4 31:5 36:13 38:7 54:13 72:13 85:15 109:13 dated 19:20 37:15 58:21 day 47:12 49:7,7,17 57:18 58:17 82:6,6 89:25,25 105:21 days 105:19 day-to-day 44:18 45:13 83:21 deal 11:6 12:14 26:13,18,25 87:7 91:21 114:11 121:6,14,17,19 141:18 dealing 141:15 deals 18:20 68:21 dealt 117:4 debt 22:15 29:8 38:23 43:16,25 44:8 45:3 46:17 49:25 63:25 98:8 99:17 124:25 125:9,11 126:2 131:2,3,10,13,24 132:3,4,8 142:6,9 debtor 1:7 14:14 57:5 82:9,25 122:21 138:14 140:14 Debtors 39:5 debtor's 13:19 debtor-in-possessi...</p>	<p>81:17 December 28:9 36:6 37:16 56:9 81:7 88:16,23 107:20 107:20 148:25 decide 8:12 decided 51:7 135:23 decision 4:7 58:3 103:5 105:22 106:15 128:23 130:5 declaration 30:4 58:21 59:5,8,13,23 60:24 61:8 decline 102:11,11 103:8 deduction 148:20 deemed 4:3 134:16 deferred 130:13 defined 121:3 definitely 31:13 definitive 117:7 delegated 147:16 deleted 122:11 delevered 125:21 delivered 21:21,25 delivering 20:16 demonstrate 86:16 demonstrates 107:4 denied 131:14 DENNIS 2:11 Department 145:20 depends 26:9 31:15 51:14 64:5 66:5,6 deposed 46:24 71:5 deposition 58:7 depositions 31:22 33:13 37:14 derive 147:21 describe 18:12 30:18 72:5,15 described 135:9 deserve 94:4 deserves 115:24 DeSIMONE 150:6 150:18</p>	<p>desk 78:24 detail 132:10 deteriorate 102:16 determination 68:25 108:21 112:7 143:23 determine 6:24 110:16 129:7 determined 67:4 78:20 135:20 145:2 determining 66:13 Deutsche 26:5,15 27:2,4 28:5,11 36:22 39:14 44:13 51:3 73:4 75:24 76:4,21 77:3,8 89:23 102:13 103:18 126:2 develop 65:3 developed 40:4 107:19 different 11:6 27:12 28:15,19,24 30:23 32:12 44:19,20 45:14,22 46:3,10 47:21 48:12,25 49:6 51:5 54:3 64:24 65:16 74:9 74:14 82:15 140:4 difficult 20:16 103:5 143:17 difficulty 144:21 diligence 12:6,20 15:3 46:2 106:2 117:21 119:4 128:2 142:12 diminished 40:2 direct 5:1,12 6:1 7:1 7:4 8:1 9:1 13:23 17:1,2,18 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1</p>
--	--	--	--

<p>34:1 35:1 36:1 37:1 38:1 39:1 40:14,22 42:22 43:11 44:10,11 51:11 53:12 56:20 71:1,15 72:1,21 73:1 80:1,19 81:1 82:1 83:1 84:1 85:1 86:1 87:1 88:1 89:1 90:1 91:1 92:1 93:1 94:1,15 95:1 96:1 96:2 97:1 98:1 99:1 100:1 101:1 102:1 103:1 104:1 105:1 106:1 107:1 108:1 109:1 110:1 111:1 112:1 113:1 114:1 115:1 116:1 117:1 118:1</p> <p>directing 44:16 direction 36:6,10 38:3 40:19 41:8,9 42:15,16 44:23 45:12 48:22 72:22 74:9 140:4 143:10</p> <p>directly 65:13 83:10 101:5</p> <p>director 5:25 6:8,14 8:9,22 17:6 101:20 101:24 113:3,7 128:10</p> <p>directors 5:18 97:16 106:16</p> <p>direct-style 17:20</p> <p>disagree 138:4,25</p> <p>disagreement 137:5</p> <p>disagrees 137:4</p> <p>disclose 60:8 104:16</p> <p>disclosed 60:15,18 60:21 105:4</p> <p>disclosure 32:8 103:14 112:15 124:22</p> <p>disclosures 104:5,25 105:11</p>	<p>discretion 129:6</p> <p>discuss 3:23</p> <p>discussed 6:13 34:8 125:14 132:5</p> <p>discussing 8:10</p> <p>discussion 46:12 101:15,19 111:5 143:20</p> <p>discussions 6:16 28:23 72:21 75:4 98:9 101:22 105:6 112:23 118:6</p> <p>dismiss 102:21 103:13</p> <p>dispute 120:18 142:24 144:3</p> <p>disruption 106:14</p> <p>dissatisfaction 85:17 103:22 145:8</p> <p>District 1:3 4:6</p> <p>division 99:6</p> <p>Doc 1:19,22</p> <p>document 19:16 20:3,19 31:21,25 32:4,5,10,18,22 33:10,12 35:2,13 35:24 36:15,23 37:3,5,20,25 38:9 38:25 41:4 60:13 60:14 93:16 125:18</p> <p>documents 33:23,25 36:10 40:15,18,24 42:8,10</p> <p>document(s) 1:21</p> <p>doing 13:21 18:22 62:15 69:18 85:15 97:7 104:20,21 125:4</p> <p>dollar 109:4 148:22</p> <p>dollars 23:16 131:12</p> <p>Douglas 98:18</p> <p>dozen 61:22 62:13</p> <p>drafted 20:9</p> <p>DRAIN 1:14</p>	<p>drop 138:10</p> <p>Dubbel 14:16,21 16:20 17:1,5 18:1 19:1,19 20:1 21:1 21:19 22:1 23:1 24:1 25:1,24 26:1 27:1 28:1 29:1 30:1 31:1,24 32:1 33:1 34:1 35:1,23 36:1 37:1,19 38:1 39:1,9 40:1,13 41:1 42:1,17 43:1 43:13 44:1,24 45:1 45:16 46:1,15,23 47:1,5,14 48:1,14 49:1,18 50:1,3 51:1,12 52:1,13 53:1,2,21 54:1 55:1,15 56:1,19 57:1,4,18 58:1,6 58:20 59:1,4 60:1 61:1,5,13 62:1 63:1,7,16 64:1 65:1 66:1 67:1 68:1 69:1 70:1,12 83:23 88:12 101:11 102:22 105:6,8 109:25 111:3,6,17 112:8 112:12,21 113:3 114:17 115:15 125:2 126:9 127:7 127:18 128:12 129:18 132:9,12 132:17 133:11 146:7,21 147:9 148:23</p> <p>Dubbel's 9:10 103:22 105:16 128:3 147:23</p> <p>due 12:6,20 15:2 38:21 45:25 53:18 86:21 107:10 117:20 128:2 142:12</p> <p>duly 5:10 16:24</p>	<p>71:13 80:17 95:24</p> <p>Dunne 2:11 74:19 74:23,25 79:14</p> <p>duplication 145:6</p> <p>duties 6:6</p> <p>D-u-b-b-e-l 17:5</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e 1:13,13 2:2,2 4:20 5:8 16:22 71:11,11 71:11 80:15,15 137:7 150:2</p> <p>earlier 42:9 53:7 72:18 81:15 114:17 117:18</p> <p>early 6:3 61:25 124:14</p> <p>earn 69:14,25 146:22</p> <p>earned 116:15 132:14</p> <p>easy 46:12</p> <p>EBITDA 65:6 68:23</p> <p>economic 79:10 108:24 134:2</p> <p>educate 97:20</p> <p>effect 75:19 143:9 149:16</p> <p>effective 38:6 72:13</p> <p>effectively 129:22</p> <p>effort 24:25 48:21 52:8 53:3,4,4,9 66:4 85:18 88:9 90:14 110:15 127:2,3 141:22 145:6</p> <p>efforts 27:14 28:13 46:2 85:21 92:9 111:23 123:19 128:5 138:2 141:18 145:9</p> <p>either 18:16 25:12 49:20 55:13 105:6 117:2</p> <p>elaborate 12:5</p> <p>eliminate 29:7</p>
--	---	--	--

<p>eliminated 23:10 92:5</p> <p>eliminating 90:8</p> <p>elimination 47:15</p> <p>embraced 107:18</p> <p>emerge 12:18 30:2 36:8 39:22 87:13</p> <p>emerged 28:10 39:19 54:11 87:11</p> <p>emergence 31:17,23 36:13 40:16,25 42:7 54:13,19 64:14,15 65:8 114:18,21 115:8 128:17</p> <p>emerging 36:7 43:11 56:2</p> <p>employed 80:23,24 96:4 150:12</p> <p>employee 24:23 53:13,17 84:18 88:13</p> <p>employees 25:7,10 25:12 29:9 53:6 55:16,20,22,25 84:16 109:23 127:12</p> <p>employment 19:14 54:10</p> <p>empty 92:22</p> <p>endanger 103:18</p> <p>endangered 105:14</p> <p>endangering 102:16</p> <p>ended 141:22 149:6</p> <p>end-all 114:15</p> <p>engage 78:21</p> <p>engaged 9:10 14:13 25:22 42:18 52:3 57:5 65:8,11 98:15 98:17 99:3 108:6</p> <p>engagement 6:11,21 12:8 14:11,20 17:14 18:4,7,13 42:23 57:9 65:9 110:23 122:10,12 123:6,14 130:15</p>	<p>134:14,17 140:13 141:2,7 145:10 146:11,13 148:19</p> <p>engagements 18:23 59:17,24 60:9 67:21 68:11,14 69:10</p> <p>enhance 109:19</p> <p>ensure 41:15</p> <p>enter 85:11 110:14</p> <p>entered 111:9 115:14</p> <p>entire 53:3 105:14 141:6,8</p> <p>entities 83:18</p> <p>entitled 132:18 149:8</p> <p>entries 115:5</p> <p>equals 146:16</p> <p>equity 43:16 44:2 95:13,14 98:8 109:22 125:11 132:5</p> <p>ESQ 2:5,10,11</p> <p>essence 62:18,22 121:5 145:4</p> <p>essentially 122:14 123:14,21 131:7</p> <p>establish 13:21 129:13 134:9 137:15</p> <p>established 120:23</p> <p>estate 23:9 52:14 53:3 92:16,17 113:11 127:10 148:10</p> <p>eventual 109:10</p> <p>eventually 76:16 110:9</p> <p>Evergreen 22:17 132:11</p> <p>everybody 8:7</p> <p>evidence 3:17 4:13 4:24 34:5,14 35:8 41:7 79:18,20 80:3 93:6 122:7 126:8</p>	<p>126:25 127:22 128:2,14 133:8,13 142:2 146:5 148:9 149:12</p> <p>evidentiary 120:3</p> <p>eviscerate 117:21</p> <p>exact 14:4 55:19 62:3</p> <p>exactly 25:8 83:14 122:17</p> <p>EXAMINATION 5:12 17:2 71:15 80:19 96:2</p> <p>examine 124:4</p> <p>examined 5:10 16:24 71:13 80:17 95:24 130:21</p> <p>example 113:19,20 114:14</p> <p>examples 66:24</p> <p>exception 35:14 80:2 144:17,23 146:12</p> <p>excess 22:14 23:17 30:22 42:4</p> <p>exchanged 70:17</p> <p>executed 59:7</p> <p>executing 118:2</p> <p>executive 81:5 85:6</p> <p>executory 141:15</p> <p>exercise 139:15</p> <p>exhibit 19:16,25 31:22 33:14 34:18 35:21,25 36:9,17 37:12,14 39:7 41:2 41:4,6</p> <p>exhibits 34:15 38:2 79:19</p> <p>exist 77:9 79:5</p> <p>existing 124:24 125:10</p> <p>exit 25:16 26:4 27:25 29:2 39:11 39:18 40:2,4 41:12 43:6 44:12 73:3 75:14,20,24 76:22</p>	<p>89:22 90:2 93:13</p> <p>expect 49:8</p> <p>expected 51:21 52:15 54:14 104:11 143:15 149:4</p> <p>expecting 38:6</p> <p>expense 82:4</p> <p>experience 14:17,18 18:21 49:9 106:11 106:12,18 107:25 117:24</p> <p>explain 83:3</p> <p>explained 128:18</p> <p>exposure 82:7</p> <p>expressed 102:2 145:7</p> <p>expressly 122:10</p> <p>extensive 8:14,17 49:5</p> <p>extent 12:6 94:9 100:4 138:24 139:18 146:3</p> <p>extra 128:24</p> <p>extraordinary 85:8 86:7,17 107:5,15 123:23,24 137:15 137:17,25 138:2</p> <p>ex-officio 50:9</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>f 1:13 2:11 5:8,8,16 150:2</p> <p>faced 127:21</p> <p>facilitate 15:22 107:14 142:13</p> <p>facilities 78:3 92:22</p> <p>facility 22:17 26:4 27:25 39:13,17 41:12 43:19,20,23 44:13 50:13,14 73:4 76:4 79:4,12 102:14,14 132:12</p> <p>fact 14:25 23:13 26:24 27:12 34:14 43:14,18 47:5 57:8</p>
---	---	---	---

<p>70:20 73:7 77:2 86:24 87:3 100:18 112:9,20 120:8,9 135:14,22 140:22 148:3 factor 139:3 145:12 145:18 factors 3:21,25 4:10 136:4 facts 58:4 64:5 86:15,19 107:3,7 130:21 131:10 fail 53:11 102:7 116:11,14 failed 93:4 113:12 fair 10:17 75:8 fairly 58:13 97:15 fairness 125:6 faith 111:13 fall 89:7 102:12 falling 112:16 false 46:18 familiar 35:23 130:4 familiarity 67:14 far 12:25 31:11 127:9 Fasola 5:1,6,14,16 6:1 7:1 8:1 9:1 10:1,8,16,23 11:1 11:12 12:1 13:1,6 13:24 14:1,21 15:1 16:1 66:11 81:15 101:19 104:24 105:20 113:6 147:16 Fasola's 112:15 113:2 February 17:10 19:20 20:6 25:23 26:11,18 42:18,23 58:22 72:19 100:23 121:8,12 129:22 140:14 February/March 77:6 Federal 80:3</p>	<p>fee 1:17,21,23 3:9 4:4 6:12,20,25 7:13,16 11:13,19 11:22 14:23 30:5 31:9,18 32:19 33:6 36:24 37:3,10 39:2 39:25 40:5 57:19 57:25 59:9 60:7,11 62:19 64:8,14 65:5 66:9,14,15 68:18 69:8,13,16,21 72:24 81:20 86:12 88:8 94:4 106:24 108:10 110:3,11 110:14,20,22 111:18 114:23 115:11,21,23,25 120:25 122:3,12 125:4 128:14,16 128:19 129:20 130:14,25 131:14 131:23 132:25 133:4,24 134:6,14 134:19,24,24 135:3,6,13,19,22 136:22 137:11,14 137:16,20,23,24 138:7,8,13,18,19 146:10,16,20,23 146:24 147:3,5,12 147:20 148:15 149:9,13,13,16 feel 90:25 92:15 108:23 112:20 116:3 feeling 102:19 feelings 102:4 fees 6:25 7:12 10:17 11:8 30:7,11,19,23 31:4 32:25 39:7 56:20,25 59:19 60:25 62:9,16,21 63:19 64:3,20 66:25 67:7 68:12 68:15 79:9 116:24 116:25 117:6,6</p>	<p>119:6 128:22 129:13,14 130:24 130:24 131:18 132:18 133:25 147:6,13 148:2 felt 12:25 13:2 89:11 97:20 103:11 113:20 127:15 fiber 91:18,18 fight 92:12 file 24:16,20 26:24 143:22 filed 30:4 58:23 86:10 92:8 106:22 112:10 113:9 filing 22:20 24:5,7 28:8 43:5 50:12 54:15 55:21 71:25 72:9 75:6 87:6 92:10 94:25 97:2 100:10,12 111:23 filings 94:21 fill 18:16 final 37:12 134:24 finalized 26:2 73:2 finally 120:19 121:22 125:2 143:19 finance 19:11 financial 96:9 98:12 98:16 99:16,21 100:14 102:15 117:20 118:3 142:7 financier's 99:15 financing 43:6 44:13 44:21 45:20 50:18 75:14 76:22 77:3 79:4 89:23 90:3 142:14 find 78:12 92:23 finder 120:7 finders 120:8 findings 7:6,9,10 13:24 14:6 fine 3:19 74:22</p>	<p>104:20 finished 79:18 fire 101:10 106:13 128:12,12 fired 55:17 99:20 firm 20:12,15 71:21 138:12 firms 30:8 137:18 137:22 first 3:3,25 5:9,24 6:9 14:16 16:23 20:5 32:4 34:3 37:22 38:14 70:18 71:12 80:12,16 82:7 85:11 89:16 95:23 103:7,21 108:8 five 3:25 73:18 136:4 fix 87:25 147:8 fixed 11:7 87:24 flat 81:20 119:12,13 130:11,23 131:18 138:13 flip-flopped 112:13 128:4 flow 31:23 37:15 38:4 40:16,17,17 40:25 41:5,11,17 42:9 114:18,22 flows 37:11 114:18 114:22 115:8 128:17 focus 9:13 16:2 83:16 113:25 136:4 focused 84:3,16 86:2 93:12 141:11 147:25 focuses 139:10 focusing 9:24 folks 25:2 86:23 87:23 94:12 follow 119:3 followed 145:21 following 47:4,9</p>
---	--	---	---

<p>58:11,12 122:9 follows 5:11 16:25 71:14 80:18 95:25 follow-up 28:22 forced 137:14 foregoing 150:8 form 100:19 135:18 146:10 formalized 63:8 formally 21:10 42:17 formed 42:25 former 48:17 formula 64:10,11 65:13,18,22 69:4 69:22 formulaic 64:19 formula-based 66:10 forth 89:4 138:9 145:17,19 forward 28:17 29:6 33:16 40:17 41:3 48:24 49:15 85:16 106:4,8 107:18 117:25 found 78:19 108:20 130:22 foundation 101:3 four 91:10 frame 28:7 29:10 36:7 37:24 56:9 62:3 114:4 frames 124:21 franchise 9:15 47:17 90:8,16 91:2,6,25 126:6 franchises 143:7 franchising 23:4 47:22 Francisco 47:18,25 48:5,7,15 49:20 91:3,22 126:17 frankly 101:16 108:5 144:13 free 137:10 146:14</p>	<p>frequently 63:19 front 34:10 frustration 102:2 full 5:15 17:3 71:16 79:7 full-time 92:15 functions 141:5 fund 28:9 39:16 funding 27:25 funds 37:15 38:4 40:16 41:5,17 42:9 furnish 19:5 further 10:2 15:6 40:7 63:14 74:15 79:14 94:15 119:16 133:19 150:11 future 53:20 75:10 76:20 92:3 109:12 F.3d 145:20,24</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gain 60:11 game 29:7 GC 126:12 general 12:13 13:7 48:17 49:2,8 53:22 55:2,4 64:4 66:19 67:11 72:22 83:20 88:20 90:19 106:19 generally 6:6 30:18 64:3 128:22 136:3 137:18 gentleman 98:17 getting 16:2 17:18 36:7 45:22 77:17 77:18 87:24 146:20 give 103:14 116:14 118:24 143:10 given 32:11 100:15 117:4 128:5 135:21,21 140:22 148:4 149:2 giving 33:23 58:11</p>	<p>91:7 global 43:7 go 3:3 9:22 12:11,22 12:25 25:12 28:12 29:12 45:9 46:16 51:8 63:12 66:21 91:24 102:13 132:10 goes 25:6 134:18 going 9:16 10:20 15:20 18:24 25:8 29:21,23,23 31:20 33:12 64:11 71:2 85:12 88:25 90:23 91:18 102:3,13 108:9 115:2,3 Gonzalez 130:8,21 131:9,14 138:5 Gonzalez's 4:7 135:9 good 3:5 7:17 23:20 40:13 74:24,25 80:20,21 88:4,5 96:3 104:11 110:15 111:12 good-faith 111:5 135:18 gotten 30:25 80:6 governed 122:24 governs 135:25 great 91:3 93:6 Green 1:9 Greenhill 98:15 ground 117:8 grounds 21:16 79:20 group 8:15 15:24 22:11 27:17 28:4,4 32:13,15,16 34:24 36:21,21 38:24 44:22,25 45:11 50:7 51:8 62:6 71:2 81:11 97:9 98:25 101:6 106:6 112:5 groups 44:21 guess 10:20 96:20</p>	<p>140:6 guidance 49:14</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>H 16:22 95:22 HADLEY 2:8 hairs 121:9 half 62:2 95:14,15 half-million 16:10 hand 9:18,25 27:15 39:16 86:23 90:18 128:24 139:14 141:24 handed 40:15 59:5 107:22 handful 93:13,16 handled 48:16 126:12 hands 105:2 109:17 109:18 handshake 111:11 happen 56:14 83:11 happened 25:21 56:7 89:13 113:18 124:14 happening 100:16 happy 138:15 hard 142:17 147:8 head 118:7 health 109:10 118:4 healthy 125:4 hear 114:16 heard 72:18 88:11 103:6,7,21 128:9 128:14 129:15 hearsay 20:19 33:25 34:6,23 35:14 heavily 107:23 heightened 29:13 held 81:4 help 46:7,7 82:15 90:21 94:13 99:17 127:6 helped 25:9 87:6 107:13 helping 99:15</p>
--	--	--	---

<p>helps 134:8 herring 124:10 higher 68:8 highest 9:21 hindsight 139:13 hire 78:9 102:23 hired 46:16 47:10 81:12 82:13,14,23 83:6 84:9 87:25 90:14 100:24 121:7 124:12 127:13 hiring 78:7,17 history 129:16 144:3 hit 73:15 hoc 24:4 42:24 46:11 51:10 75:4 97:9 99:19 100:6,11 108:16 hold 96:12 100:17 holdback 37:6,9 holdco 119:2 holder 96:15,17,22 holders 97:10 109:22 hole 18:17 holes 25:13 homeland 91:19 honest 52:12 104:19 Honestly 78:18 Honor 3:4,11,24 5:2 10:6 15:15 16:17 17:17 19:23 20:19 21:11,14,18 26:7 31:20 33:11,18,21 34:12,13,18 35:9 35:14 37:13,17 40:8,11 58:25 64:23 65:22 70:5,8 70:15,23 71:9 74:17 79:24 94:15 94:18 95:19 119:22,25 120:7 120:19 121:3,5,22 122:5,6 123:3,4 124:5,10,16 125:6</p>	<p>125:20 126:18 127:18 128:8,19 128:25 129:11 131:3,25 132:8,16 133:16,19 149:19 Honor's 124:20 133:6 hopefully 91:19 106:19 Horvath 148:24 Houlihan 13:9,12,17 130:10 131:11 138:12,16 hour 10:13 hourly 6:25 7:12 10:9 11:7 57:24 63:2,4 119:11 122:16 129:7,14 129:21 132:19 133:25 138:17,18 138:20 148:15,23 hours 124:20 138:16 House 1:9 hundreds 113:20</p> <hr/> <p style="text-align: center;">I</p> <p>idea 31:3 70:25 identified 41:2,4,6 illuminated 146:5 imagine 78:10 immediately 61:18 impact 73:10 90:2 implement 127:4 implemented 84:11 implications 135:8 importance 29:3 136:13 important 7:24 8:16 29:16,25 77:10 141:4 impose 74:9 impression 115:18 146:3 148:6 improve 87:16 improved 87:17 incensed 118:15</p>	<p>incentive 68:7 95:11 incents 109:15 inception 119:24 include 59:23 60:3 included 27:16 41:17 83:19 114:23 141:10 including 6:17 13:9 26:3 35:5 73:3 76:12 77:14 136:24 141:14 145:22 inclusive 39:6 incurred 10:17 148:16 independent 127:25 independently 123:17 indicated 119:25 indifferent 77:24 individual 81:11 indulgence 74:11,18 industry 65:19,20 information 25:6 32:7 35:13 38:16 41:11 60:19 90:24 126:21 informed 25:4 144:25 inherited 94:2 initial 19:9 50:21 initially 15:19 20:8 33:5,9 54:16 inquiry 139:7 inserted 113:6 instances 147:24 institutions 46:4 instructed 12:12 instrumental 24:8 25:3 27:10,18 28:21 45:25 85:21 131:6 insufficient 123:15 intensified 9:13 intention 9:20 16:12 interaction 72:16</p>	<p>interest 78:23 79:2 109:23 117:12 134:3 interested 96:21 120:11 interests 9:5 interim 18:10 19:6 51:18 69:19 83:23 121:25 140:23 internally 99:12 118:22 introduced 73:13 97:16 99:9 101:21 101:23 introducing 34:5,14 investigated 112:22 investment 27:17 46:7,22 63:18 64:24 65:14 87:21 96:5,7,8,11 99:14 109:7 130:10,23 131:22 132:18 141:13 142:7 investor 96:9 investors 109:9 invoke 139:12 involve 98:7 involved 11:5 18:15 28:24 53:5 63:17 67:12 68:21 69:12 72:2 77:7 85:24 86:25 87:24 112:7 117:16 130:9 143:8 involvement 96:18 97:3 involves 82:3 involving 137:18 in-house 143:11 147:17 148:7 iota 79:12 ironclad 117:10 irrelevant 76:21 77:4 issue 67:5 91:15 110:8 115:23</p>
--	--	--	---

123:4 130:13 136:14 144:2,8,13 issued 20:9,11 issues 9:14 24:2,11 105:12 112:14,17 112:21 127:21 item 37:5	key 25:10 53:6 88:18,19 90:17,18 116:13 123:4 124:5 kidding 45:8 kind 50:19 103:14 112:17 117:19 KIRPALANI 2:10 10:5,7 15:5 17:16 20:18 21:9 33:20 34:21 35:9 40:10 40:12 58:25 63:14 70:8,15,23 74:17 79:24 80:10,19 94:14 95:18 96:2 119:15,20 122:4 130:7 133:5,15 149:18 knew 52:2,7 56:16 know 10:8 11:9 13:11,13 25:8 36:3 36:15 38:17 52:10 55:19,23 62:12 65:21 67:8 78:11 105:20 130:3 132:25 133:10 knowledge 68:13 74:19 76:5 78:25 79:2 105:24 110:24 115:10 119:10 known 13:18 20:16 54:16 71:6 knows 3:24	149:2 largest 48:2 57:13 57:15 88:21 129:15 lasted 4:17 86:20 107:8 124:16 late 101:24 129:23 latitude 129:6 law 2:3 137:18 lawyer 48:18 124:19 lawyers 44:17 53:5 113:9 lay 89:2 layoffs 56:5 layover 84:19 lead 6:8 8:8,21 17:23 44:12 50:23 101:20,24 113:6 128:10 leading 17:17 27:13 lease 92:25 93:3,22 113:11,14,15,17 113:22 114:9 leases 9:16 23:9,19 52:14 93:10,12 114:2,3 141:16 142:25 leave 25:12 53:18 55:7 leaving 25:14 63:6 69:14 led 24:13 36:22 44:21 51:8 112:17 145:6 left 8:12 18:17 25:14 53:23 54:25 55:9 62:13 84:17 88:17 88:20,22 118:18 127:16 legal 24:10 27:16 126:11 127:21 129:2 legitimate 145:8 lender 32:17 lenders 46:13 71:23 72:8 75:3 76:7	142:15 lending 47:9 length 87:5 124:17 letter 12:8 14:12,20 27:2 122:10,12 123:7 130:15 134:14,17 147:21 Let's 124:4 level 6:18 18:18 66:4 66:9 116:5 118:11 123:23 142:11 levels 25:10 116:4 Lexis 135:11 liability 109:18 lien 22:17 50:14 51:4 76:9 light 8:5 limitations 135:2 line 33:2 37:5 82:3,4 102:8 lineup 8:13 9:3 liquidating 29:24 liquidation 29:15 64:16 74:3 77:15 listed 38:14 94:23 lists 70:17 86:15 107:3 literally 70:18 110:21 litigation 112:2 127:20 little 42:21 48:10 53:13,16 83:7 88:12 126:10 LLC 1:16,17,20,23 2:4,5 37:5 81:11 LLP 2:8 local 23:3 90:19 143:6 logo 41:6 Lokey 13:9,12,17 130:10 long 12:25 76:21 81:4 125:13,15 132:6 144:2 look 12:14 13:8 18:9
J			
J 16:22 January 107:20,21 109:11 job 8:9 15:22 46:6 46:18 51:12,22 52:3,6,15,23 88:4 88:5 92:15 127:7,9 127:16 John 14:16,21 16:20 17:5 83:23 85:18 90:13 101:11 102:22 103:22 105:6 112:21 116:7 128:12 John's 84:3 joined 71:3 84:14 joining 61:13,17,19 JP 71:21 78:2,8 79:5 101:6 Jr 5:16 Judge 1:14 4:7 130:8,21 131:9,13 135:9 138:5 judgment 139:15 July 6:9 101:24 121:13 junction 79:17 June 26:20 101:24 112:25 121:13 junior 132:11 juniors 10:14 justify 137:16			
K			
keep 29:9 keeping 25:3 kept 29:5 79:21			
	L		
	L 5:8,8 16:22 71:11 95:22 labeling 137:13 lackluster 128:5 laid 22:23 89:20 112:21 138:25 landlord 114:6 landlords 52:20 large 25:9 61:3 142:21 147:8,12		

<p>19:25 65:2,22,23 100:15 118:18 141:6 looked 25:22 66:23 looking 68:4 109:9 139:17 140:10,12 losing 73:19 loss 25:10 lot 25:20 29:17 50:20 51:6 62:17 68:20 74:19 86:25 87:23 90:3 106:10 lots 91:17 loud 59:16 low 30:24 117:11 lower 114:9 Lynch 12:18 98:15 98:21,24</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>magic 129:2 magnitude 66:2 main 114:6 maintain 121:20 major 25:13 majority 68:17 101:2 147:2 making 11:22 56:7 manage 92:18 management 7:4 12:23 15:19 17:14 18:10,10,13,15 25:2 31:11 45:24 56:10 65:2,19 66:12 69:12,19,19 90:17 94:3 121:25 129:18 140:23,24 141:9,10,11 142:11 146:11 147:17,25,25 management's 141:18 manager 51:13,17 51:18,19,22 52:16 53:22 55:2,4 56:4 88:21 116:7</p>	<p>127:14 146:16 managers 78:4,7 83:20 90:19 managing 17:6 Manhattan 2:8 manner 13:4 March 6:12 135:11 March/April 108:12 marked 19:16 31:21 33:13 35:24 37:13 market 7:2,5 12:8 12:14 66:12,17,22 88:21 92:21 97:8 102:13,14 103:16 120:20 130:22 137:2 142:8 145:18 146:4 148:10,12 149:9 149:12 marketing 29:20 market-driven 137:11 Marsal 13:17 material 104:10 118:25 matter 21:8 26:23 71:4,7 72:4 112:13 112:20 123:8 matters 30:11,12 May/June 114:4 McCLOY 2:8 mean 11:24 13:13 14:6 26:10 61:9,12 75:23 121:11 133:9 140:7 147:10 meaningful 7:23 141:24 142:3 means 124:18 meant 9:24 108:22 110:16 133:10 measure 102:21 measurement 63:24 137:12 measures 84:11 105:16</p>	<p>meeting 28:14 49:19 126:16 meetings 28:22,23 97:19 member 6:7 101:8 105:23 106:11 108:16 111:19 114:24 115:9,16 members 38:19 45:24 50:4,8,9,24 51:10,10 110:5 117:5 mention 36:24 mentioned 15:9 23:24 32:23 42:5 53:7 68:10 70:19 84:10 88:19 93:15 93:19 103:20 111:2 117:18 mere 4:18 Merrill 12:18 98:15 98:21,24 99:20 met 14:16 80:3 120:3 123:3 metrics 7:22 146:23 Michigan 2:4 mid-December 37:24 MILBANK 2:8 million 3:9 10:19,23 22:15,16 23:2,7,17 31:2,8 33:3,9 37:7 37:9 39:6,6,15,25 40:5 42:6,6 43:18 47:16 48:6,8,10,13 50:13 67:3,4,17,19 72:10 73:20 79:9 90:8 94:4 109:5,7 116:20 122:13 123:5,13 125:4,25 129:25 130:14 131:15,15,17,19 131:20 132:11,14 133:4,12,23 143:3 147:5,7,19 148:15 148:17,20 149:14</p>	<p>149:17 millions 23:16 mind 15:25 87:4 116:12 117:15 minimized 88:13 minor 100:3 missed 113:21 missing 23:21 model 65:4,14 69:23 moment 9:22 money 114:13 month 81:20 95:9 monthly 39:7 117:11 119:12,13 130:11 131:18 138:13 months 74:12 102:10 107:24 108:5 113:25 Morgan 71:22 78:2 78:8 79:5 101:6 morning 3:5 40:13 74:24,25 80:20,21 96:3 Motion 1:23 move 34:17 49:15 79:19 moving 28:17 29:6</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 2:2 16:22 71:11 80:15 150:2 name 5:15 17:3 67:13 71:17 81:11 82:13 98:18 names 13:16 NASDAQ 94:23 nature 92:6 136:14 necessarily 109:19 113:19 necessary 4:12,14 41:11 77:14 120:5 120:14 136:7,25 139:4 143:8 145:3 need 24:19 38:5 128:25 138:2</p>
---	---	--	---

<p>needed 8:13 28:17 38:16 50:6 77:13 needs 36:12 139:20 negotiate 46:9 90:21 99:15 111:12 113:13 115:21 negotiated 6:12 11:13,21,25 12:3 43:8 67:19 99:20 107:23 123:6 135:17 negotiating 44:12 85:22 124:13 negotiation 51:6 111:14 135:19 negotiations 24:4 44:18 45:14 49:12 49:22 73:14 75:17 85:25 90:15 97:4 97:19 98:2,3,6 100:2,7 101:4 110:15 126:12,13 neutral 104:17 112:18 144:14 never 49:19 54:13 62:8 115:16 118:22 128:18 new 1:3,10,10 2:9,9 32:17 36:21 39:16 56:10 93:2,21 106:14 113:12 nicely 87:9 nonbankruptcy 4:23 30:12 59:19 120:22 136:20 145:15 normal 12:21 28:2 30:7 31:10 56:21 57:2 69:22 normally 137:20,22 137:24 146:19 Notary 150:7 note 133:24 141:19 146:14 noteholders 42:25 50:5</p>	<p>notes 150:10 notion 137:5 November 97:6 106:2 number 9:14 22:6 22:18 23:8 33:9 48:6 49:16 55:19 55:20,22,24 60:9 86:15 93:12 107:3 107:24 110:4 123:5 145:22 147:9,12 numbers 115:4 141:17 142:17 numerous 6:15 23:21 53:6 142:25 nuts 141:11</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>o 1:13 5:8 16:22 71:11 80:15 150:2 object 70:16 79:25 objected 34:20 113:4 134:4 objecting 34:22 objection 1:19,23 17:16 20:18 21:10 21:16 25:25 33:20 71:9 72:24 86:11 93:21 106:23 113:9 objectionable 108:20 110:3 objective 139:7 objectives 84:24 obligations 23:7 47:16 90:9 observed 143:25 obtaining 27:4 45:2 obtains 146:9 obvious 125:12 obviously 3:16 9:16 23:10 24:10 26:21 29:12 43:24 46:11 51:6 64:15 65:24 67:25 104:12</p>	<p>109:21 120:5,7,10 142:6 occasions 9:8 110:5 occur 56:5 111:15 occurred 76:19 occurs 146:25 October 118:5 offer 75:13 76:2 offered 55:10 office 2:3 16:13 92:25 93:21 officer 15:21 17:10 18:2 19:5,8,10,13 19:20 27:9 81:6 83:24 85:6 98:19 116:8 127:8 officers 19:6 official 1:19 2:9 21:12 50:9 51:7 80:10 82:21 134:3 okay 3:2,12 5:3 16:14 17:18 70:2 70:11 94:16 95:16 109:12 133:14 once 49:19 135:19 ones 60:6 69:14 93:14 ongoing 8:18 126:14 Onologic 4:5 onus 13:4 open 25:14 93:15,17 112:20,22 opening 3:11 operated 81:10 operating 17:10,25 19:4,20 23:13 24:15,20 27:9 83:24 84:3 104:13 116:8 127:7 143:22 operational 84:13 86:5 106:4,9 107:16 117:15,20 118:11 141:10 145:5 149:5 operationally 102:5</p>	<p>102:6 105:2 operational/finance 24:9 operations 9:18 81:13,23 82:6,16 83:17,21 84:5,16 84:19 85:3,4 86:3 94:10,12 99:11 102:8,10 103:7 105:17 112:16 116:11,13 127:3,5 129:24 operator 85:13 92:13 opine 11:11 opinion 4:8 7:23 8:25 99:24 100:25 109:15 135:10 opponents 120:25 opportunities 67:24 opportunity 55:10 69:25 oppose 125:5 opposed 148:18 opposing 116:25 opposite 129:15 options 12:22 oral 14:8 orally 14:2 order 28:16 39:16 39:23 52:5 63:11 110:20 111:9 115:14 130:12 134:8,12,21 135:16,23 149:16 organization 18:17 82:5 organized 42:25 124:12 organizing 118:21 original 148:19 originally 149:4 outcome 120:11 135:20 outset 137:3 outside 48:18 49:3</p>
--	--	---	--

<p>49:10 104:13 139:16 143:10 148:5 outstanding 39:8 out-of-court 34:2 overall 23:17 85:17 92:4 141:22 143:3 overlap 149:3 owed 72:8 owned 109:5 ownership 22:12</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P 2:2,2 71:11,11 80:15 package 95:2 107:23 page 4:9 37:4 38:14 39:4 paid 7:12 10:18 40:6 59:20 72:11 76:17 77:13 79:7,13 95:8 117:6 122:16 painful 127:11 Pantaleo 70:14,21 71:1,18 72:1 73:1 74:1,24 75:1,2 76:1 77:1 78:1 79:1 117:17 121:16 papers 3:16 paragraph 26:7 59:12,16,22 60:23 60:25 72:23 134:11,20,22 paragraphs 134:25 paraphrasing 61:2 parent 87:7 part 6:20 20:15 22:11 30:7 39:12 41:12 50:6,11 51:21 52:3,6,15,23 56:8,9,14,21 57:2 57:19 60:24 62:23 69:22 87:20 89:25 91:16,20 94:11 98:4 130:12 137:6</p>	<p>142:21 146:10 participant 139:25 participants 50:10 participate 139:20 142:12 participating 28:25 38:13 particular 9:15 12:15 18:6,11 38:12 50:23 51:14 51:24 63:23 135:21 144:2 particularly 3:23 140:22 146:5 148:4 parties 15:24 16:13 26:14 28:24 36:17 38:11,13 44:19 109:22 138:23 146:3 partner 61:14,20,23 61:24 62:4 Partners 2:5 3:7 8:4 8:23 10:9,18 12:4 12:8 14:11,12,22 17:7,15 18:7 19:5 20:15 21:20 23:24 24:7,22 26:3 27:3 27:23 30:9,10,15 30:19 31:12 32:20 33:2 36:24 39:3,24 44:25 56:21 57:2,4 57:14 59:23 60:10 61:14,17,20 63:9 72:15,17,24 74:6 77:6 78:9,17 79:9 84:12,15 85:7,20 86:6,10,15,22 87:10,19 90:6,12 92:9,24 93:4,5,9 94:3,4 98:4,13,14 99:3,8,10,25 100:24 102:22 103:13,24 104:18 105:9 106:3,22 107:3,11,12 108:6</p>	<p>108:9,14 110:2,10 110:13 111:20,23 112:4,22 113:12 113:21 114:23 115:4,6,10,16,24 116:6 118:13 120:3,13,24 121:7 121:10,16,18,24 122:9,15,18 123:11,18,20 124:6,18 125:6,13 125:16,17 126:5 126:10,14,15 128:6,8 129:12 132:2,7 146:8 parts 44:3 91:12 party 12:24 28:5 45:6 46:6,8 50:14 106:14 134:3 150:12 passage 108:23 patently 125:12 path 22:22 patient 74:12 pay 95:10 131:24 payment 1:17,20 39:24 43:21 129:3 133:22 payments 43:22 PDA 81:11 penned 125:18 people 9:21 25:14 45:10 50:20 53:17 88:17 89:3,21 97:7 117:4 142:11 percent 43:14 72:12 77:23 95:11 109:6 percentage 69:9 perfect 139:13 perfectly 138:15 perform 123:22 144:11 performance 95:12 95:15 103:23,24 104:23 124:3 144:22</p>	<p>performed 4:15 120:16 121:24 136:11 139:9 140:5 141:12 144:12 146:12 149:6 period 22:9 23:11 31:7 59:25 105:18 113:23,24 118:13 120:17 permanent 15:18 person 45:6 53:10 54:25 101:17 110:2 personal 107:25 personally 57:8 85:24 132:13 personnel 84:23 perspective 102:6 Pete 15:17 105:23 106:10,17 114:6 127:4,14 Peter 71:18 80:13 petition 93:23 phase 15:20 72:3 phase-in 9:19 phase-out 9:19 piece 50:23 51:4 125:23 place 15:25 22:5,13 23:12 24:21 25:4 26:19,23 27:22 28:7 52:9,11 54:15 56:8 64:6 100:17 100:23 104:12 115:20 plain 117:10 plan 22:23 26:2 27:20 28:13 33:7 38:7 56:15 72:14 72:25 73:17,18 74:10,14 79:22 85:23 89:4,8,15,18 95:11 99:16,22 100:14,19,22 101:3 102:3</p>
--	--	---	--

<p>104:10 106:5,9 107:16,18 108:4 114:5 117:16,25 124:23 127:3,5 plans 117:18 plate 46:21 play 99:25 142:24 played 27:10 100:3 142:3 148:5 149:11 Plaza 2:8 pleading 113:10 pleadings 71:4 129:12 please 3:5 5:15 17:3 59:15 71:16 PLLC 2:3 plus 6:25 10:13 39:7 89:3 93:10 148:19 148:22 pocket 77:17 point 24:9,10 26:13 26:22 32:3 61:19 63:24 73:22,25,25 74:5 75:12 76:24 76:25 83:25 94:21 97:18 98:20 100:15 101:8 103:12,13 105:8 108:25 109:16 110:18 115:7 130:3 144:14,15 pointed 67:6,10 115:3,6,16 147:24 points 66:20 130:25 131:13 132:13 poorly 104:21 portion 37:10 50:12 50:15 145:9 149:2 position 21:19 54:2 54:24 55:12 71:6 72:6 81:2,5 83:10 89:7 97:15 positioned 76:20 77:12 positions 6:5 54:3</p>	<p>88:18 possession 122:21 possible 74:3 76:14 77:14 138:16 post-bankruptcy 140:21 potential 26:16 29:14,22 41:16 75:5 97:11 109:17 109:21 practice 130:22 practitioners 4:23 120:22 136:18 prearranged 124:15 prebankruptcy 11:14,17 43:19,20 97:4 108:15 123:6 140:19 precipitated 113:2 predecessor 54:20 54:23 preexisting 32:16 prefer 70:24 prejudice 134:18 premises 134:15 prenegotiated 87:4 prepared 32:6 36:4 36:5,10 38:3 40:18 41:8 42:2,14 preparing 32:7 41:10 45:25 61:7 74:2 prepetition 36:20 39:13 50:7 71:22 122:11 147:20 present 4:13,24 7:6 140:16 presentation 14:9 presentations 46:3 presented 51:5 106:5 114:25 120:13 presenting 46:2 president 17:9,25 19:4,11,19 27:8 81:3,5 85:5</p>	<p>press 19:17 20:10,14 21:4 presumably 34:6 presume 121:11 pretty 87:8,8 prevented 92:9 111:23 previous 46:12 previously 67:11 70:16 148:14 price 15:13 primarily 45:2,18 47:6 48:16 81:23 83:17 86:3 90:15 99:19 primary 116:5 principal 43:22 63:9 63:11 principally 73:16 principals 71:5 principle 26:25 prior 6:23 11:20 22:20 24:5 26:2 27:20 28:7 50:11 52:7 55:21 61:13 61:16,18,19 67:21 71:24 73:2 75:6 78:17 81:9,10 82:11,12,24 96:13 97:2 98:13,14 105:11,24 106:3 106:12 107:24 108:5 110:10 112:14 115:14 117:24 142:20 privately 105:7 privy 104:14 probably 23:21 54:17 66:3 73:18 146:16 problem 136:14 problematic 140:17 problems 140:16 143:18 proceed 119:21 proceeding 25:15</p>	<p>29:19 46:24 52:12 58:8,24 71:20 74:4 122:18 123:8 proceedings 7:20 8:2 22:7 53:20 122:8 process 13:2 28:12 49:14,15 75:13 92:20 109:10 123:22 143:9 processes 48:25 professional 6:16 112:6 129:3 130:9 131:4,5 138:7 139:9,11,14,18 140:2 150:7 professionals 8:11 8:19 9:3 116:17,18 116:23 119:6,11 124:12 137:19 145:16 professional's 122:14 140:17 profitability 73:22 program 95:13,14 progress 102:3 prohibitions 62:17 project 83:13 projected 42:7 projections 114:19 114:22 properties 92:18 proposal 12:19 51:5 proposals 97:23 prospect 73:21 77:7 prospects 75:10 97:21 provide 18:15 38:3 43:6 50:12 81:22 92:2 provided 19:13 49:13 50:5,15 141:9 provides 134:12 providing 22:4 provision 69:13</p>
---	---	---	--

<p>115:13 123:9 provisions 110:22 136:2,23 public 19:17 94:20 94:20,22 103:15 148:2 150:7 pulled 108:4 purports 19:17 31:22 33:14 37:15 purpose 21:14 34:11 87:15 pursuant 52:4 pursue 99:16 pushing 48:24 put 9:21 11:18 13:4 15:13 26:23 27:19 27:21 28:6 33:5,10 51:4 55:12 56:15 68:6 89:4 106:4,8 107:16,18 117:25 134:25 146:6 putting 3:13 28:5 41:23 69:3</p> <hr/> <p style="text-align: center;">Q</p> <p>question 17:21 21:7 21:18 40:21 45:16 47:4 55:6 58:11,12 81:15 questions 10:3 15:6 15:8 17:17 20:21 34:7 35:10,11,16 40:8 63:15 70:7 74:16 79:15 94:17 117:22 133:7 quicker 7:20 quickly 76:14 77:13 87:8 quite 64:13 91:6 106:17 147:11 quote 134:13 quoting 26:6 138:5</p> <hr/> <p style="text-align: center;">R</p> <p>r 1:13 2:2 5:8 71:11 80:15 95:22,22</p>	<p>150:2 raged 59:20 raise 130:3 raised 135:5 148:14 raising 64:12 ran 83:21 range 30:24 31:2 67:2,20 68:4,6,9 133:11 147:6,8 rate 10:14 12:9 130:11 137:2 rates 4:2 57:24 89:10 119:11,12 119:14 122:16 132:19 136:5 138:11 rating 28:15 RBOCs 29:18 RCN 1:6 3:2,10 5:18 5:22,25 6:5,14 7:16 8:2 9:3,10,11 10:10 17:15 18:4 19:6,17 20:11 21:13,22,25 29:22 33:14 39:10,19 42:25 43:11 45:4 51:22 52:16 53:6 54:6 65:25 71:20 72:4 75:10 78:23 80:11,24 81:2,6,9 81:17 82:16 83:10 83:12,13,24 84:8 85:6 90:5,20,25 92:14 94:19 96:12 96:17,18 97:16 98:11 116:23 119:7 123:16 126:22 143:12 RCN's 17:9,25 19:4 25:18 29:2,3 41:5 48:16,18 51:16 92:10 111:24 123:25 124:5 reach 142:17 reached 73:25 read 3:16 59:15 86:9</p>	<p>106:21 ready 36:7 real 16:2 23:8 29:11 52:14 53:3 90:2 92:16,17 113:11 127:10 really 9:23 10:22 12:16,17 15:22 54:22 101:10 120:24 124:11 131:11 132:3 reason 60:17,20 77:10 116:14 reasonable 4:16 66:14 120:17 128:20 136:12,16 136:25 137:8 139:8,11,15 143:18 148:12 reasonableness 3:21 122:25 131:16 144:21 147:19 reasonably 132:20 139:23 143:15 reasons 38:21 rebuffed 97:13 recall 10:12 15:12 46:23 47:3 55:9 56:22,24 58:6,10 60:16 67:12 81:18 86:14 90:6 93:7 101:16 107:2 110:21 113:8,13 113:15 114:21,25 recap 119:5 receive 14:22 30:10 57:17 88:7 116:18 117:9 129:19 130:24 received 10:9 30:19 30:21 60:7 62:8 67:7 68:18 115:8 116:17,23 119:6 123:12 125:3 131:18,22 recognize 59:4</p>	<p>recognized 65:18 recommend 8:21 78:3,6 recommended 78:8 record 5:15 17:4 19:15 21:11 31:19 71:17 122:8 123:9 132:23 133:24 139:24 146:18 147:22 records 79:21 80:2 recovery 77:22 79:11 red 124:10 redirect 16:15,16 70:3,4 redone 27:20 reduced 131:17 148:13 reducing 144:18 reduction 51:20 127:11 reductions 22:22 56:18 126:24,25 reference 32:19 39:2 122:11 132:24 references 134:13 referred 42:9 43:10 47:14 referring 43:13 47:17 refinance 46:16 refinanced 43:20,23 refinancing 22:14 26:16,19 27:14,21 39:13 44:8 45:3,15 49:24 50:6 99:17 124:24 125:8,24 142:5 reflect 148:20 reflected 145:7 refund 132:15 regard 99:21 139:3 139:22 141:19 149:10 Registered 150:6</p>
---	---	--	--

<p>regular 56:21 regulatory 48:18,19 49:3,9,10 126:11 143:10 related 1:21 28:14 66:8 143:23 150:12 relates 24:11 60:5 relationship 91:13 103:17 relationships 143:6 relative 116:16 relatively 22:9 125:11 140:8 release 19:18 20:10 20:14 21:4 relevance 21:16 123:7 relied 63:2 rely 63:4 remain 129:20 remaining 4:10 remember 13:20 14:3 16:7 33:22 62:3 67:13 remind 55:6 rendered 129:9 136:9 139:6 renegotiate 93:5 renegotiated 23:6,9 renegotiating 52:14 142:25 renegotiation 22:16 23:18 143:5 renegotiations 143:14,17 reorganization 79:23 85:23 89:5 89:15,17 97:22 99:22 100:14 101:3 reorganized 78:23 repeat 40:20 replaced 98:24 116:9 reply 1:23,23 86:9</p>	<p>86:14 92:8,24 106:22 107:2 111:22 report 67:9 83:19 reported 14:2,5,7 Reporter 150:7 represent 79:5 representation 70:22 representatives 90:20 represented 71:3 82:17 request 122:14 128:19 131:14 134:15,19,23 requested 39:24 122:3 145:14 required 41:12 94:12 142:15 requirement 4:19 39:10,14,18 42:4 requirements 23:2,3 47:24 48:3 79:25 91:4 92:5 120:2 reserve 21:15 reserves 134:22 resign 55:11,13 resolved 110:8 resources 27:15 respect 12:7 49:24 respectfully 121:2 122:2,7 response 86:10 106:22 108:18 133:6 responsibilities 99:7 responsibility 84:20 84:22 responsible 13:3 27:13 44:15 45:2 45:13,18,21 47:6 48:24 52:18 56:6 90:7 rest 80:9 restrictions 38:20</p>	<p>restructured 7:21 63:25 114:10 131:2,3,11 132:4,9 restructuring 7:18 9:14 18:24 19:8,10 22:4 32:25 43:7 45:5 62:6,9,15 73:11 75:5 82:15 84:4,13 87:15 90:16 91:5 93:10 97:12 98:2,12,19 100:8 102:17 103:10,19 105:14 124:6,13 131:6,23 141:19 result 15:2 17:13 87:18 125:21 141:23 143:4 resulted 77:21 results 20:16 21:21 21:24 102:15 123:24 138:2 retail 9:16 retain 145:3 148:11 retained 15:10 26:12,17,20 46:19 54:16 60:10,10 72:18 74:6 82:20 122:19 125:14,16 142:8 retainer 117:11 retention 19:18 20:11 26:3,10,11 37:7 52:4,7,22 57:3 73:2 121:10 121:12,12,13 130:12 134:8,12 140:17 142:20 147:18 returned 13:24 reveal 126:20 revenue 82:3 revenues 102:10 review 67:9 118:10 118:21 134:10 reviewed 118:14</p>	<p>reviewing 24:8,18 right 6:2 13:21,22 13:22 17:7,11 32:24 34:20 40:23 41:18 42:19 43:2 46:8 77:3 80:6 82:20 91:14 103:3 123:2 127:10 134:19,23 135:2 135:12 136:22 risk 69:7 74:9 ROBERT 1:14 role 9:10 15:21 17:19 23:24 24:22 27:3,23 50:2 54:18 62:20 66:6,7 71:20 71:24 88:19 99:11 99:15,25 100:3 113:2 116:13 142:3,4,24 143:20 148:4 149:11 roles 19:13 27:9 149:3 roll 33:16 41:3 rolled 114:10 rough 68:3 roughly 10:19 147:5 148:17,19,25 RPR 150:18 rule 4:24 Rules 80:3 run 89:10</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>s 2:2,3,5 5:8 17:5 33:14 95:22 salary 95:8 sale 64:8,9,10 San 47:18,25 48:4,7 48:15 49:20 91:3 91:22 126:16 sat 97:18,25 117:3 124:11 satisfactory 104:9 satisfied 4:19,25 39:19</p>
---	---	---	--

<p>satisfying 120:4 savings 23:16,18 143:3 saying 33:21 53:25 66:22 109:12 122:24 says 60:25 72:25 94:11 127:8 scale 10:13 scene 99:4 132:7 schedule 113:24 schedules 115:2 scheme 56:22 scope 140:11 scores 28:18 se 87:19 second 22:17 37:4 50:14 51:4 145:17 145:20 Secondly 34:7 section 3:22,25 119:25 122:19,22 131:16 132:21 133:22 135:7,24 135:25 136:2,23 137:7 138:9 144:19 145:12 secure 74:11,13 89:22 secured 22:15 44:8 45:3,19 46:13,17 47:8 49:25 71:22 72:7 76:7 78:3 124:25 125:8,25 131:12,24 132:12 142:5 144:3 securities 96:10 security 91:20 see 20:5 21:14 24:18 32:4 34:3 37:22 38:20 53:18 59:13 60:12,14 62:15 117:10 seeing 114:21 seek 58:4 62:21 108:10 132:15</p>	<p>135:2,13 seeking 66:2 128:13 138:7 seeks 146:9 seen 12:18 20:2 31:24 37:19 select 45:9 46:8 selected 45:11 send 103:15 senior 18:18 22:15 25:2 44:8 45:3,19 45:24 46:13,17 47:8 49:25 72:7 76:6 94:3 124:25 125:25 129:18 142:11 seniority 149:3 senior-level 53:16 sense 11:10 51:12 105:7 sensitive 90:24 126:21 sent 38:13 127:6 sentence 134:17 separately 54:4 September 33:8 148:24 series 9:12 97:19 serious 8:6 seriously 74:2 served 85:2 96:23 129:18,22 Service 1:22 services 1:16,17,20 1:23 2:4 3:7 4:11 4:13,15 6:11,17,20 7:16 10:10 18:4,8 18:11,16,23 19:14 21:20,25 24:7 39:5 57:3 62:9 64:20 66:3 69:18 81:22 85:7 86:7,16 107:4 120:4,14,16,19 121:24 123:18 129:9 133:21,25 134:7,15 136:5,6,7</p>	<p>136:11,22,24 137:14 138:18 139:4,8,22,24 140:4,5,10,20 141:9,24 142:2,22 142:24 143:8,20 144:7,12,14,19 145:5,9 146:8,11 146:19 147:18 149:8 servicing 81:16 82:8 set 101:4 138:9 145:17,19 setting 22:21 112:5 145:16 settlement 91:17 settlements 49:4 settling 51:21 seven-year 43:24 severely 105:9 SG&A 22:18 51:21 126:24 141:15 142:20 shared 36:18 Shaw 50:22 51:9 95:20 96:1,3 97:1 98:1 99:1 100:1,6 101:1,7 102:1 103:1,20 104:1 105:1 106:1,21 107:1 108:1 109:1 110:1 111:1,21 112:1 113:1 114:1 114:16 115:1,23 116:1,21 117:1 118:1 135:14 Shaw's 140:25 sheet 24:14 25:18,20 29:9 34:10 43:12 43:13 44:6 87:12 87:14 100:16,18 124:22 125:19,23 Sheldon 2:3,5 3:6 shock 105:3 shop 53:9 short 22:9 23:11</p>	<p>29:10 43:21 118:13,23 short-term 95:10 show 31:20 33:12 58:21 123:11 showed 40:24 126:9 showing 79:25 130:20 shown 32:15 34:8,16 35:4 37:3 39:7 138:3 shows 122:8 126:25 127:22 142:2 side 13:19 45:19 47:7 83:5 85:4 94:12 98:13,16 142:16 145:5 149:5 sides 120:11 signal 103:16 signed 83:12 95:4 significant 23:8,15 47:23 49:9 50:6,12 55:24 56:17 93:17 113:22 114:3,12 121:24 142:19 144:23 significantly 102:16 144:9 signing 61:8 similar 64:19 67:2 76:3 134:19,23 similarly 35:11 simple 125:11 simply 137:13 single 113:16 126:16 sir 13:10 14:24 15:11 16:9,19 71:16 73:5 86:13 sit 111:12 115:20 sitting 61:5 117:2 situation 8:6 18:11 38:12 51:15,16,24 69:24 situations 18:14 19:2 20:17 28:3</p>
--	--	---	---

<p>30:24 51:2 53:8 64:7,25 65:23 67:15,25 68:2,17 68:19 69:6,21 sixth 73:18 six-month 81:19 123:14 sizable 97:15 116:16 size 65:24 66:5 67:2 68:3 140:9 Skadden 27:16 skewed 147:14 skilled 4:22 120:21 136:18 sky 108:3 sliding 10:13 slip 4:8 slotted 93:22 small 66:8 147:12 smaller 65:25 smart 11:9 smarter 11:3 smooth 144:5 sole 121:20 solely 57:23 60:6 83:13 solution 92:23 solved 143:17 somebody 16:4 sorry 40:20 53:25 97:24 sort 65:18 81:21 sought 4:21 60:25 75:20 sources 33:15 41:3 47:8 148:2 south 72:9 SOUTHERN 1:3 Southfield 2:4 span 141:6,8 speak 64:22 speaking 8:25 76:25 special 63:7,13 specialists 127:6 specific 65:10,22 66:8 67:20 76:24</p>	<p>specifically 6:11 13:7 65:12 68:22 73:12 93:20 102:22 108:12 115:3 130:13 141:25 specify 13:15 spectacular 123:20 sped 87:9 speed 124:9 spent 124:20 136:5 138:10,21 splitting 121:9 spoke 66:19 97:7 spring 75:5 spun 6:2 staff 83:21 stakeholders 8:11 108:24 109:20 stakes 117:8 stalemate 73:16 stand 122:23 standard 4:2 57:24 64:14 122:16,25 123:2 134:9 138:24 139:2 standards 129:2 standing 122:21 standpoint 102:8 start 134:7 started 87:17 98:2 102:11 105:25 108:4 116:11 124:13 starting 97:23 101:22 102:7 103:8 107:24,25 state 5:14 17:3 21:10 30:6 71:16 140:6 stated 21:4 48:20 statement 3:11,18 21:2 26:8 32:8 42:2 47:11 61:5,10 73:5,6 75:8 88:15 92:8 111:22</p>	<p>124:23 statements 20:22 34:2 states 1:2,9,14 20:14 129:17 statute 122:17 stenographic 150:10 step 16:18 70:11 79:16 85:14 95:16 stepped 54:6,9 steps 104:7 stone 118:17 Store 145:20 strategic 49:14 strategies 49:6 92:6 strength 18:19 strenuous 91:14 stretch 123:24 stricken 110:25 123:10 134:16 strictly 66:8 strike 110:13,19,21 strong 25:20 43:12 87:11 125:19 stronger 25:21 29:8 43:12 44:5 87:14 125:22 strongly 74:8 structure 11:13,20 11:22 31:9 58:15 62:24 82:5 87:8 88:2 91:25 structures 108:13 stuck 84:4 studied 117:23 study 7:5 12:23 subject 37:8 95:12 95:14,15 134:21 submit 120:2,12 121:22 149:15 submits 122:7 subpar 124:3 subs 24:20 subsection 4:11,14 4:20 137:7 subsequent 9:7,9</p>	<p>24:18 114:5 subsidiaries 23:14 24:16 92:10,14 111:24 112:10 143:22 substantial 96:14,17 substantially 76:3 76:10 substantive 23:25 24:11,17,20 92:11 100:13 111:25 112:24 113:5 118:6 127:17 128:3 143:24 Subtotal 32:25 succeed 76:20 succeeds 146:19 success 1:17,20,23 3:9 4:4 6:12,20,25 7:13,16,17 11:8 14:23 30:5,7,11,19 30:23 31:4,9,18 32:19 33:6 36:24 37:3,10 39:2,25 40:5 56:20,25 57:19,24 59:8,19 60:7,11 62:8,16,21 63:19 64:7,20 65:5 66:9,15,25 67:7 68:12,15,18 69:8 69:13,15,21 72:24 77:16 86:11 88:8 94:4 106:24 108:10,22 109:14 110:14,16,20,22 111:13,18 114:23 115:11,23,25 116:24 117:6,12 119:6 122:3,12 125:4,7 128:13,16 128:22 129:13,20 130:14,24,25 131:14,23,25 132:18,25 133:3 133:23 134:5,14 134:19,23 135:3</p>
---	---	---	---

<p>135:13,19,22 136:22 137:10,14 137:20,23,24 138:8,19 146:10 146:16,20,23 147:2,5,6,20 149:9 149:12,13 successful 22:4 64:15,17 102:17 125:24 141:21,23 142:5 successfully 93:4 sufficient 10:24 42:3 129:8 suggested 74:7 105:22 suigeneris 146:14 Suite 2:3 sum 149:8 summary 33:15 41:2 summer 32:6 102:9 129:23 summertime 83:8 Sunbeam 145:24 supervised 49:12,13 supervision 48:23 supplement 105:16 106:15 supplemented 116:10 support 30:5 supported 74:14 113:10 124:7 140:24 suppose 7:22 supposed 136:4 139:14 sure 36:11 38:15 40:23 41:10 56:7 67:17 73:7 75:15 77:11 82:19 86:23 surprise 144:6 surprised 78:12,14 SUSHEEL 2:10 swat 118:9</p>	<p>Swidler 90:14 126:13 sworn 5:10 16:24 60:23 71:13 80:17 95:24 syndication 28:17 28:21,25 142:13</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 71:11,11 80:15 150:2,2 table 121:7,18 142:16 tag 128:16 take 9:17 13:8 19:12 24:21 49:6 50:7 52:9,11 56:11 69:7 74:8 83:9,17 85:14 89:11,14 94:10 104:6,12 105:15 124:19 125:7 126:17 127:19 138:22 145:4 taken 22:19 46:14 77:8 89:25 92:19 talent 105:17 talk 66:15 111:18 talked 26:15 38:24 49:25 115:14 target 68:19,22 89:3 targeted 93:14 targets 88:25 task 9:25 66:8 136:14 tasks 65:10 team 14:22 24:25 45:9 48:21 53:3,9 56:10 85:18 90:13 118:9 126:10 127:2 technically 73:6,8 Technology 82:14 tedious 13:2 telecom 14:17 telephone 101:17 tell 12:14 16:11 20:2</p>	<p>73:24 101:14 109:25 111:21 112:8 115:10 116:22 telling 29:21 template 100:19,22 temporary 19:13 ten 68:14 69:10 105:19 147:4 ten-year 31:6 59:24 term 24:13 43:24 94:11 99:14 100:16,18 124:22 terminate 8:3,7,22 113:13 terminated 55:11,14 55:21,23,25 98:21 terminating 128:8 termination 93:23 127:12 terminology 137:22 terms 6:10 16:7 18:7 25:25 43:6,21,21 51:20 72:25 75:20 76:3 100:8 125:24 134:21 135:23 148:22 test 114:8 145:18 testified 5:10 13:23 16:24 35:4 36:17 40:14,22 42:21 44:9,11 51:11 53:12 56:19 66:12 71:13 80:17 95:24 112:5 121:17 123:18 124:2 126:19 147:9 testifies 35:12 testify 34:25 70:25 71:8 88:12 testifying 58:7 testimony 43:11 44:14 49:11 53:15 56:23 58:18 70:21 114:17 120:6,14 120:24,25 121:6</p>	<p>124:8 129:11 132:24 140:25 143:2 144:10 146:7,25 147:3,15 147:23 149:10 Texas 4:6 Thank 5:2 10:5 40:10 122:4 133:15 149:18,20 thanks 16:14 thing 7:3 12:17 13:21 66:10 103:3 125:16 things 22:5,13 23:21 26:22 31:14 46:20 48:21 52:17 67:10 100:16 104:14,16 104:19,20 105:5 106:19 107:15 117:9 think 7:14 12:10 16:2 17:19 19:8 26:9 31:7 33:4 34:19 35:7,10 42:4 50:24 54:24 68:16 72:8 73:8 75:16,21 76:23 78:18,19 80:4,5,6 84:17 90:2 93:11 94:7 107:12 108:11 112:25 114:3 115:24 118:11 120:18,23 121:5,8 129:4 133:5,7 137:4,16 140:19 140:20,24 141:5 146:18 149:2 thinking 112:18 third 12:24 39:4 50:14 145:23,25 thought 49:14 77:18 102:20 104:21 106:12 110:3 thousands 118:11 118:12 three 40:15,24 54:2</p>
---	---	---	---

<p>91:11 119:5 three-year 95:13 thrown 13:16 ties 65:12 tight 124:21 time 4:2,16 7:23,25 9:6,17,19 12:17 13:22 14:10,19 19:3 22:9 23:11 25:16,22 26:13,17 26:19,22 28:7 29:10 30:6 32:4 33:4 36:6 37:24 39:8 42:22 43:4 52:21 54:14 55:25 56:9 61:7 62:3,11 65:7 66:20 70:18 72:9,19 73:12 76:8 76:24 77:5 83:12 83:22 84:14 88:23 90:3,18 93:13 95:15 97:12,18 98:20 99:2 100:9 100:12 101:8 102:24 103:4,7,13 103:25 104:4 105:8 108:8,23 109:2,16 110:18 111:9 113:23 114:4 115:7 118:13,15,24 120:17 121:10,15 124:21 135:16 136:5,9,12 138:10 138:20 139:6,12 141:2 times 8:6 68:20 144:7 146:22 time-based 33:6 timing 67:5,20 title 19:9 136:19 today 5:22 20:3 31:25 37:20 61:5 79:6,10 91:11,15 92:15,22 118:2 127:8 146:6</p>	<p>today's 123:8 TODD 150:6,18 told 104:25 108:9 110:4 144:16 Toll 2:3,5 3:3,4,6,14 3:20 5:5,13 10:2 16:16,20 17:2 19:15 21:3,17 26:6 31:19 33:11 34:13 35:3,18,22 37:12 40:7,24 70:4,13 71:15 74:15 79:17 80:9 94:16,17 119:18,24 129:5 133:17,18 149:15 149:20 top 32:24 93:12 102:8 topical 9:22 topped 102:9 top-line 102:10 total 48:11 101:18 Town 2:3 track 89:12 106:20 trade 38:22,22 91:21 91:23 trading 109:3 traditional 99:14 training 63:8 tranche 50:18 transaction 138:7 transcription 150:9 transition 15:18,23 transpire 25:9 treasurer 19:9 treat 132:17 tremendous 22:18 tries 127:19 trigger 7:15 31:10 31:15,17 true 11:23,24 21:5 26:8 30:14 41:24 43:8 44:24 45:17 46:15,18 47:4,11 48:4,14 49:18,23 50:3 51:13 53:2,21</p>	<p>54:5 55:15 57:12 62:6 73:5,7 75:2,7 75:12 98:22 122:9 126:7 134:2 138:11 150:9 truly 146:14 trustee 122:20 truth 20:25 21:7 try 12:13 17:22 53:11 trying 20:24 34:4 92:21 Tudor 96:5,6,8,11 97:3,5 109:5 turn 22:10 59:11 60:22 145:11 turnaround 78:4,7 106:4 turned 124:22 turnover 24:23 TWEED 2:8 twice 131:24 two 4:2 12:22 48:2 62:2 80:12 104:6 two-week 84:18 type 7:11 18:6,8,10 36:9 42:10 62:19 66:10 67:9 143:25 types 18:22,25 53:8 64:25 67:14 69:18 137:19</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U 16:22 80:15 ultimate 29:7 46:6 143:16 148:8 ultimately 24:13 67:4 131:19 unacceptable 75:22 unclear 122:17 127:18 uncommon 31:16 68:5 uncontradicted 146:6 underassesses 73:9</p>	<p>underestimates 73:9 undergo 63:7 understand 33:22 34:11 50:21 54:3 66:16 understanding 30:16 36:11 54:8 69:20 100:13 understands 34:6 understood 67:18 97:8 114:4 118:20 undertook 127:23 underwrite 73:17 75:14,19 76:3 underwriting 75:23 undisputed 123:13 undone 127:16 unexpired 141:16 Unfortunately 146:2 unhappy 144:7 United 1:2,9,14 129:17 unrebutted 143:2 unsecured 1:19,24 2:10 8:20 21:13 22:11 35:6 43:15 50:5 77:22,23 80:11 82:17,20 144:4 untuned 118:18 unusual 7:11 83:8 use 9:21 12:13 20:25 84:22 uses 33:15 41:3 usually 4:3 utilizing 27:14</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>V 71:18 valuable 139:25 140:21 value 15:25 65:7 77:19 94:25 95:6 97:20 109:5,19 114:9 various 6:16 13:16</p>
--	--	---	--

27:11 28:18,23 30:23 32:12 36:19 44:16,19 45:14,22 46:3,10 48:12 49:5 52:19 97:22 136:23 vast 68:17 147:2 vendors 109:24 versus 145:24 vesting 95:13 vice 19:11 victories 126:23 view 10:22 24:9,10 26:10 42:8 86:21 93:25 102:25 103:24 104:2,18 107:9 113:11 146:13 viewed 75:21 views 128:3 Virginia 81:12 voiced 110:6 volition 25:13 vote 6:19 voting 6:23	12:16 13:22 40:2 75:24 91:3 112:18 116:3 120:12 week 6:9 9:23 105:19 weeks 4:18 22:8 68:25 86:21,25 107:9 120:18 124:17 weighing 148:9 well-compensated 94:8 well-recognized 136:3 went 34:22 44:20 83:4 86:24 weren't 9:24 14:20 52:24 57:25 68:15 Western 4:6 we've 11:2 30:21 79:13,18 whatsoever 71:4 wheel 105:3 wide 129:6 willing 51:3 withdraw 21:17 witness 5:4,9 15:11 15:15 16:9,23 19:22 20:22 31:20 33:12,21,24 34:16 35:3 37:13 59:2 63:15,20 64:4,22 65:21 66:18,23 67:23 68:16 69:17 70:14,17 71:12 80:16 94:18,22 95:3,7,19,23 witnesses 3:13 70:9 80:12 120:10 wonder 128:7 word 56:24 133:10 words 83:4 112:6 113:25 115:15 124:2 work 10:24 13:18 28:3,14 45:8,10	48:22 52:18 65:2 69:4 84:3,7,12 85:15 86:4 87:19 91:16 119:11 124:21 138:16 140:18,21 worked 18:21 26:21 28:11 45:12 57:8 57:14,16 90:17 105:19 130:23 working 27:11,19 44:22 69:3 130:11 workout 72:3 WorldCom 14:13 14:17,23 57:5,12 57:20,25 58:14 60:3 129:17 132:23 146:13 WorldCom's 146:15 worldwide 96:9 worth 23:2 wouldn't 41:22 66:9 69:15 written 14:7 34:23 wrong 57:11	Zolfo 145:23 <hr/> \$ <hr/> \$1 148:19 \$1.1 43:15 109:2 \$100 23:17 109:6 143:3 \$11 147:7 \$11,908,000 59:21 \$115 39:15 42:5 \$12 31:2 133:12 \$130,000 132:14 \$140 42:6 \$150 50:13 73:20 \$2 131:19,20 148:14 149:14,17 \$20 130:14 131:15 \$200 10:15 48:8,13 \$270,000 148:22 \$3 67:4 133:4 148:17 \$3.2 31:8 147:5 \$30 22:16 \$32.5 132:11 \$4 3:9 37:7,9 39:6,24 40:5 79:9 94:4 122:13,13 123:5 131:15,17 133:23 147:19 \$400 22:14 125:25 \$45,000 81:20 95:9 \$450 43:18 \$5 33:2,9 67:3,17,18 \$5.150 39:5 \$50,000 30:25 59:20 133:12 147:7 \$500 48:10 72:9 109:4 \$6 10:19,23 116:19 123:13 129:24 132:14 \$650 10:13 \$7.8 125:3 \$720 22:25 23:7 47:15 48:5 90:8 \$940,000 148:25	
<hr/> W <hr/> W 95:22 waiting 34:15 waive 135:12 walking 33:24 want 3:3,18 5:3 40:23 47:23 70:6 101:10 128:21 wanted 8:3,7 13:20 38:20 41:14,19 53:18 68:7 76:13 76:16 80:7 85:13 109:16 130:3 143:13,16 wants 21:15 139:20 wasn't 51:23 54:10 54:22 57:6 62:20 102:12 108:2 132:2 way 7:17 11:19	witness 5:4,9 15:11 15:15 16:9,23 19:22 20:22 31:20 33:12,21,24 34:16 35:3 37:13 59:2 63:15,20 64:4,22 65:21 66:18,23 67:23 68:16 69:17 70:14,17 71:12 80:16 94:18,22 95:3,7,19,23 witnesses 3:13 70:9 80:12 120:10 wonder 128:7 word 56:24 133:10 words 83:4 112:6 113:25 115:15 124:2 work 10:24 13:18 28:3,14 45:8,10	<hr/> X <hr/> x 1:4,8 XO 4:8 128:22 130:2 135:10 138:6,12 X'd 130:17	<hr/> Y <hr/> Y 95:22 year 89:12,16,17 108:5 years 18:22 54:25 61:22 62:2,13 68:15 69:10 73:19 147:4 York 1:3,10,10 2:9,9 93:2,21 113:12	<hr/> Z <hr/> zero 49:16 77:21 79:9

#	36:17 38:2 41:2 79:19	135:24 136:23 137:7 138:9	
#567 1:19	20 6:13 18:22 37:16	330(A)(3) 144:20	
#576 1:22	109:6	145:12	
0	200 89:3	363 64:9 122:19,22	
04 6:13 25:23 37:16	2000 2:3	4	
72:19 75:6 121:8	2002 97:6,10,17	4 37:14 41:6 79:19	
121:12,16	2003 97:23,24	134:20,22 148:18	
04-13638-rdd 1:4	103:11 106:2	4th 58:22	
1	107:20 108:2	40 47:23 130:25	
1 2:8 19:16,25	124:14	131:13 132:13	
10 31:2	2004 17:11 19:21	45 109:3	
10:10 1:11	20:6 32:7 42:18,23	48075 2:4	
100 43:14 72:11	43:5 59:18 77:5	5	
77:22 93:3,10	81:7,13 89:7	5 10:21 134:25	
10005 2:9	100:23 101:13	50 95:11 109:3	
11 5:18 6:4 10:11	107:21 112:25	145:24	
18:25 23:14 24:6,6	118:5 140:14	543 1:21	
25:5,15 26:24 28:8	144:24	559 4:6	
28:10 29:13,19	2005 1:11 58:22	58 59:17 68:10	
30:2 31:2,17 36:8	89:16 109:11	6	
39:22 44:20 52:11	135:12	6 59:12 134:25	
53:19 54:7,11	205 135:11	60 30:22 68:11	
55:17 56:3 67:12	21st 28:9 38:5	66 145:20	
71:20 86:20 107:8	25 48:11	7	
109:10,13 140:8	250 55:16 89:20	7 60:23 64:16 134:25	
140:11	127:12	76 145:20	
11th 20:8	253 145:24	8	
12 1:11 17:11 19:20	2550 2:3	833 135:11	
20:6	26th 24:14	9	
12th 20:9 26:11	28 4:18 22:8 86:20	9 135:11	
13 26:7 72:23	86:25 107:8	97 6:3	
15 4:9	120:17 124:16		
15th 33:8	28-week 29:2		
150 47:21 92:17	3		
188 4:6	3 33:14 35:21,25		
1990 61:25	38:2 39:7 41:5		
1991 61:25	67:17,18 79:19		
1993 62:2	134:11		
1995 30:20 31:5	30 47:23		
59:18 145:25	300 48:9		
1996 145:21	328(A) 135:7		
2	330 3:22,25 120:2		
2 31:22 34:18 36:9	122:25 131:16		
	132:21 133:22		