

Daubert Motion Ex. A

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 CLIFTON W. MARSHALL, et
4 al. Case No:
5 Plaintiffs, 16-cv-6794 AB (JCx)
6 vs.
7 NORTHROP GRUMMAN
8 CORPORATION, ET AL.
9 Defendants.

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11
12 Videotape Deposition of David Witz

13
14 Wednesday, November 7, 2018

15
16 Charlotte, North Carolina

17
18 At 8:35 a.m.

19
20 Reported by LeShaunda Cass-Byrd, CSR, RPR

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22 TSG Job No. 150161
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1 with my attorney. And my attorney, as I
2 understand it, will be addressing that
3 directly with you.

4 BY MS. ROSS:

5 Q. Okay. I want to go back a little bit and
6 explore your background as an expert. You actually
7 have a company that is dedicated, at least in part, to
8 providing expert work, correct?

9 A. Yes, that is correct.

10 Q. And what is the name of that company?

11 A. That would be Fiduciary Risk Assessment.

12 Q. Okay. And has Fiduciary Risk Assessment
13 provided any expert witness reports in which you were
14 not involved?

15 A. I'm not sure I understand the question. If
16 I am providing an expert witness report, I would be
17 involved. So I'm not sure I understand what you --

18 Q. Are you and Fiduciary Risk Assessment one
19 in the same?

20 So I'm asking, is there anybody else at
21 Fiduciary Risk Assessment that provides expert reports
22 other than you?

23 A. No.

24 Q. Okay. And so you have said -- you said you
25 have issued roughly I think -- did you say 10 to 12

1 reports, expert reports?

2 A. No, I said 25 to 30.

3 Q. Okay. All right. So you have given 10 to
4 12 depositions --

5 A. Correct.

6 Q. Or that order of magnitude?

7 Okay. So you've issued 25 to 30 reports.
8 Over what time period?

9 A. That would be since 2008.

10 Q. Have all of those reports been on behalf of
11 the plaintiffs in the lawsuit?

12 A. No.

13 Q. Okay. How many of those reports have been
14 on behalf of defendants in a lawsuit?

15 A. Two.

16 Q. Okay. Can you tell me what those two cases
17 were?

18 A. I'm under- -- I'm under disclosure because
19 those were cases that I was not disclosed in. So I
20 can't discuss the issues pertaining to those
21 particular cases.

22 Q. So you prepared a report that was never
23 used then?

24 A. I would say it was used. I -- I suspect it
25 was used. I am not sure. That would be counsel

1 A. No.

2 Q. Was it a 403(b)?

3 A. It was.

4 Q. Okay. Was it a nongovernmental
5 organization?

6 A. It was.

7 Q. Okay. And how many employees did this
8 particular plan have?

9 A. Over 100,000.

10 Q. And did this plan have more than one record
11 keeper?

12 A. No, it did not.

13 Q. Okay. All right. What is the next largest
14 benefit plan in terms of assets regarding which you
15 have consulted?

16 A. About 400 million.

17 Q. Okay. So 400 million other than the 4.2
18 billion nonprofit 403(b) plan would be the largest
19 plan on which you have consulted?

20 A. That is the one that I can remember right
21 now. When I did a search through my database, I
22 looked for the largest in anticipation of that
23 question. But I -- I did not pay attention to the
24 other plans that we have in our --

25 Q. What was the nature -- I'm sorry.

1 A. -- in our database. I didn't -- so that is
2 -- but the last one that I -- the other one that I can
3 recall is about a 400 million.

4 Actually, it was -- it was more like 330
5 million, I think now that I am thinking about it.

6 Q. Okay. You maintain this database that you
7 refer to?

8 A. Yes. We have about 60,000 plans in our
9 database. We benchmarked close to 5,000 of those
10 plans, recordkeeping, advisor services, custody trust
11 services, administration, communication, education.
12 Pretty much the whole -- whole gambit.

13 Q. And what is the range of the assets held by
14 those plans in the database?

15 A. Well, if you are asking me the total,
16 because we publish this on our client's website when
17 they -- when they log into their account, at this
18 point I think we have benchmarked over \$336 billion of
19 assets.

20 Q. I'm asking something different. I'm
21 talking about individual plans not in the aggregate.

22 A. Okay.

23 Q. So in the database, you said that you have
24 a number of plans. Client plans, I assume, correct?

25 A. That is correct.

1 A. I don't remember. I would have to look at
2 my database.

3 Q. Are your consulting plans generally falling
4 into the 100 million and less?

5 A. I would say that is fair.

6 Q. Okay. Would you say it's fair to say that
7 they fall into the 50 million and less?

8 A. Well, I would say that probably 95 percent
9 of the work that I do is on plans we will say under 20
10 million.

11 Q. Okay. And how many plan participants are
12 in the plans of those 95 percent?

13 A. I don't know offhand. I don't recall
14 offhand what the number is. But you know, smaller
15 plans are typically somewhere between 20 to 2,000
16 employees.

17 Q. And of the 5 percent from the 95 percent,
18 the 5 percent, how many plans does that equate to?

19 A. I -- I don't know.

20 Q. Order of magnitude, would that have been
21 five plans that would be more than 20 million that you
22 have consulted on, less than five, more than five?

23 A. That would be more than five.

24 Q. Would it be more than ten?

25 A. Let's say if you are -- if you are holding

1 deductions from the plan assets.

2 So yeah, it comes up. Is it a specific
3 plan? It's regarding a specific plan. In many cases,
4 they don't know the name of the plan because I'm
5 advising the advisor whose client is their client.

6 Q. In the past ten years, you have not had a
7 client directly that you have advised who has billed
8 its services back to the plan, correct?

9 A. Outside of benchmarking it on the one plan
10 that I just told you about earlier, no, I have not
11 been engaged directly by a PlanSponsor to go through
12 the reimbursement process.

13 Q. And when you said other than benchmarking
14 for the plan you told me about previously, what plan
15 was that?

16 A. The one that I can't mention because I'm
17 subject to a confidentiality order.

18 Q. Okay. Was that the 4.2 billion one?

19 A. That is correct.

20 Q. Okay. Were they billing back their
21 services to the plan?

22 A. They were billing their services back to
23 the plan.

24 Q. Okay. And do they continue to bill their
25 services back to the plan?

1 BY MS. ROSS:

2 Q. Sure. Other than what you've told me here
3 today, have you had any other engagements where you
4 provided consulting services or any services to a
5 PlanSponsor who was charging for their services to
6 their own plan?

7 MR. STRUCKHOFF: The same objection.

8 THE WITNESS: Yes. I have had a
9 couple of others, yes.

10 BY MS. ROSS:

11 Q. And tell me about each of those, please.

12 A. The other one that we did -- that I did
13 specifically was multiple employer plan. And we did
14 benchmarking. We did spot benchmarking. So we did
15 benchmarking, not on the whole plan itself but we did
16 benchmarking on specific size plans so that they could
17 evaluate how those fees were, reasonable or not
18 reasonable, relative to the alternative of their plans
19 going to a single employer plan and going to the
20 market to get their own option, their own benefits
21 directly.

22 . So we -- we did a spot check on a -- a --
23 it's -- it's a billion plus multiple employer plan.

24 Q. What does a spot check mean?

25 A. Well, in -- I feel confident I'm not -- I

1 don't need to educate you on multiple employer plans.
2 You know what those are. I suspect if you don't, I am
3 happy to go into detail. But it's obviously, a group
4 of independent firms that are consolidating and
5 aggregating their assets under one -- one plan. And
6 instead of benchmarking the whole plan, they
7 selectively use -- as we discussed it, they
8 selectively picked different size plans that were
9 common and they were tied primarily to the ranges of
10 plans that we benchmarked. And so we benchmarked the
11 single plan because that -- that single plan employer
12 had -- has an option to either be a participating
13 employer in the MEP where they have the option to go
14 to the marketplace and get their own plan directly.

15 So we were benchmarking not the entire plan
16 but different size plans within the MEP so they can
17 see exactly what the pricing would be if those
18 particular clients went direct to the market. And so
19 that is what they were using as a -- as a gauge.

20 Q. How many single plans under the MEP did you
21 benchmark?

22 A. You know, I only benchmarked one in each of
23 the different ranges that they gave me. They only
24 gave me, as I recall, I think six other ranges.

25 Q. And what were the ranges?

1 participating in their plan. In Northrop Grumman, you
2 have you a variety of different companies. They
3 acquired a lot of different companies. They owned 100
4 percent of those companies. They were charging them
5 to participate in their plan. So --

6 Q. What was the largest plan in terms of
7 participants that were participating in that all-time
8 employer plan that were you benchmarking?

9 A. In that spot check project, I believe the
10 largest plan had about 2500 employees in it, the
11 largest plan.

12 Q. Okay. And what was the -- how many plans
13 were there?

14 A. There were thousands. I don't remember the
15 number offhand.

16 Q. What percentage had more than a thousand
17 employees?

18 A. I -- I don't know because, again, they gave
19 me the plans that they wanted me to benchmark. So I
20 know they had thousands of plans, and they said we're
21 going to select plans at different levels and have
22 those plans benchmarked. So I don't -- I don't know
23 how many plans they had above --

24 Q. How many plans did you benchmark? How many
25 plans did you benchmark?

1 A. As I said earlier, about six.

2 Q. Okay. And tell me the size of each of
3 those six in terms of participants?

4 A. I -- I don't recall offhand. I know one of
5 them was above a thousand employees. The other ones
6 were smaller. They were, you know, two to 10 lives,
7 11 to 25. I think was one in there that was 100 to
8 250. So we were --

9 Q. Participants?

10 A. That is correct.

11 Q. Okay. Any other engagements which in your
12 view involved a PlanSponsor billing for services to
13 its home plan?

14 A. Not that I recall.

15 MS. ROSS: Okay. We can take a
16 break. Do you want to take a break?

17 THE VIDEOGRAPHER: We are pausing the
18 recording at the end of the first tape.
19 Going off the record at 9:43 a.m.

20 (Recess taken.)

21 THE VIDEOGRAPHER: We are back on
22 record at 9:57 a.m. We are beginning the
23 second tape in the deposition of David
24 Witz.

25 BY MS. ROSS:

1 Q. Okay. Mr. Witz, have you ever served as an
2 inhouse fiduciary to an ERISA plan?

3 A. No.

4 Q. Okay. Have you ever been designated a
5 fiduciary of a third-party plan?

6 A. Explain what you mean by that.

7 Q. Have you ever served as a fiduciary to any
8 plan?

9 A. Yes. As a 321, yes.

10 Q. Okay. And as a 321, you mean as an
11 investment advisor?

12 A. That would be correct.

13 Q. Okay. And other than serving as an
14 investment advisor for a plan, did you serve in any
15 other capacity as a fiduciary to a plan?

16 A. No, I have not.

17 Q. How many plans have you served as a 321
18 fiduciary?

19 A. I don't recall.

20 Q. And in that capacity, you had nothing to do
21 with the recordkeeping fees of those plans, correct?

22 A. Not -- not completely true because when I
23 was operating as a 321, I was also operating as the
24 recordkeeping administrator -- TPA, excuse me, not the
25 plan administrator but the TPA. So we -- we did offer

1 multiple services for plans.

2 Q. And for how many plans was that?

3 A. I -- I don't recall. It wasn't all of the
4 plans that I had on the books. At that time we had
5 about 200 plans. And then when I merged with BGS&G, I
6 still continued to service that book and added
7 additional plans. So I don't recall the number of
8 plans, but it wasn't on all of them.

9 Q. Well, okay. Was this back in the 1990s?

10 A. This would have been back in the 1990s,
11 yes, through 2000 -- through 2001, 2002. I then took
12 the position with Geller & Wind, and I took a position
13 after that with Newport Group. And in both cases, I
14 was an IAR of the RIA, which was 321, and we were also
15 selling recordkeeping and administrative services to
16 those clients.

17 Q. Were you a fiduciary?

18 A. I -- I would have been, yes, considered a
19 fiduciary on those plans because I was part of the
20 RIA, and I was delivering the recommendations.

21 Q. Would you be -- have been considered a
22 fiduciary for purposes of recordkeeping?

23 A. No, I would not.

24 Q. And you've never administered a benefit
25 plan from an inhouse perspective, correct?

1 A. That is correct.

2 Q. You have never provided a legal opinion
3 concerning ERISA compliance, correct?

4 MR. STRUCKHOFF: Objection, vague.

5 THE WITNESS: No, I -- I am not
6 eligible to provide legal opinion.

7 BY MS. ROSS:

8 Q. Okay. And you have never provided a legal
9 opinion with respect to a PlanSponsor charging back
10 for services to plan?

11 A. I have never provided a legal opinion on
12 anything.

13 Q. Okay. Have you ever provided a written
14 opinion to a client directly with respect to the
15 reasonableness of the appropriateness of charging back
16 services to the plan?

17 MR. STRUCKHOFF: Objection, compound.

18 THE WITNESS: I have provided written
19 opinion that fees were reasonable on the
20 plans, some of the plans that I was
21 directly involved with benchmarking, yes.

22 BY MS. ROSS:

23 Q. Are you talking about internal fees or
24 external fees?

25 A. I'm talking about fees regardless of where

1 they were. But in -- in the cases that I am -- I
2 think specific to what you are getting, Ms. Ross, is
3 that none of the plans that I provided an opinion on
4 involved a PlanSponsor charging their fees back to the
5 plan itself. They were all utilizing a third party.

6 Q. You are not aware of any rule or provision
7 of ERISA that prevents an employer from charging a
8 benefit plan for its own services that are reasonable
9 and necessary, correct?

10 A. That is correct.

11 Q. Okay. In fact, ERISA permits that,
12 correct?

13 A. That is correct.

14 Q. And ERISA also permits its employees to
15 serve as fiduciaries of the plan, correct?

16 A. That is correct.

17 Q. And you're also not aware of any rule or
18 provision of ERISA that says that a plan and a service
19 provider must have a written contract for services,
20 correct?

21 A. Repeat that question, please.

22 Q. You are not aware of any rule or provision
23 of ERISA that says that a plan and a service provider
24 must have a written contract for services?

25 A. I -- I know of nothing that specifically

1 were acting as the record keeper were fully outsourced
2 in their recordkeeping needs, correct?

3 A. That is correct.

4 Q. Okay. So they -- they were not doing
5 anything inhouse with respect to the benefit plan?

6 A. No, except those plans that we took over
7 that were doing it initially themselves, producing
8 their own statements, balancing the assets, allocating
9 gains and losses, working with their CPA potentially
10 or doing it inhouse, their 5500 forms. I mean, those
11 are plans that we would take over to outsource that
12 responsibility and the liability.

13 Q. And what about the more common situation
14 where a large plan has a record keeper but it doesn't
15 fully outsource everything to that record keeper, you
16 have had no experience with that?

17 A. Well, what is interesting is that there
18 is -- there is no difference between a large and small
19 plan. The -- the application of the ERISA rules
20 applies the same, and the application of the -- of the
21 various services that are being rendered are -- are
22 pretty much the same, just one has more money and
23 more -- more employees. There is not much difference
24 between the two. Unless there is, you know, a -- some
25 complexities that that would demand some additional

1 level of service, and -- and that's very possible that
2 exists in some plan. But when you say typically, I
3 would say no. Typically, there is a lot of plans that
4 outsource -- even large plans -- their entire
5 recordkeeping and administrative responsibilities.
6 It's not much different.

7 Q. That wasn't my question. Let me ask it
8 again.

9 In the situation where a plan,
10 regardless -- regardless its size, outsources -- or
11 strike that -- has a record keeper but does not fully
12 outsource recordkeeping, you have no experience with
13 that, correct?

14 A. I -- I don't -- I don't recall any of my
15 clients not outsourcing all the recordkeeping to us.

16 Q. Okay. Have you ever reviewed the job
17 descriptions of the Northrop employees who serviced
18 the plan?

19 A. I recall a document that outlined names,
20 title and a description of the services.

21 Q. Have you ever reviewed job descriptions of
22 the Northrop employees who serviced the plan?

23 MR. STRUCKHOFF: Objection, asked and
24 answered.

25 THE WITNESS: I -- I believe that

1 document disclosed their job
2 responsibilities.

3 BY MS. ROSS:

4 Q. Okay. Have you ever seen anything that
5 more formally was a job description written up for a
6 particular job at Northrop?

7 MR. STRUCKHOFF: Objection, vague.

8 THE WITNESS: I recall two particular
9 documents. One was some type of review
10 that outlined certain job responsibilities
11 or evaluation, and I also recall there
12 being a document that was maybe seven or
13 eight pages long and that had, like I said,
14 employee names, a job title and then a
15 series of job descriptions or
16 responsibilities that they provided.

17 BY MS. ROSS:

18 Q. How many employees were servicing the
19 Northrop Grumman 401K plan during 2010?

20 A. During 2010, I -- I don't recall. I recall
21 there being somewhere in the neighborhood of 70 to 100
22 employees that were on the plan. That one report that
23 I mentioned to you had about 50 people on it. So it
24 didn't match up specifically with the other -- other
25 documents that I saw.

1 Q. And did you review 50 to 75 -- strike that.
2 Did you review 70 to 100 individual job
3 descriptions?

4 A. No. I -- I looked, but I didn't find job
5 descriptions for that many people. I only found that
6 document that had, like I said, about 50 people on it
7 that were mentioned.

8 Q. How did you look?

9 A. How did I look? Well, they were the
10 documents that were given to me to review. So as I
11 was going through the document, I came upon that
12 document. I also found it I think attached to
13 Marsha's expert opinion. So I think she referenced it
14 as well.

15 Q. Marsha's opinion was written after your
16 opinion, correct?

17 A. That is correct.

18 Q. Okay. So short order, but for the
19 documents that you talked about, the couple of
20 documents that you mentioned here today, you never
21 reviewed any individual job descriptions of any
22 Northrop employees, correct?

23 A. Outside of the documents that I just
24 mentioned, those are the only ones that I've had
25 access to.

1 surveys that Northrop generated?

2 A. Yes. I recall some market studies that
3 were done and some -- I think some third-party surveys
4 that were done on compensation as well.

5 Q. I seem to recall that you stated in your
6 report that you were not provided with the market
7 studies?

8 A. When I went through the -- Marsha's report,
9 I requested all of the identification -- all of the
10 identification documents on hers. So I got a chance
11 to review those last night.

12 Q. But at the time that you wrote your report,
13 you didn't have those, correct?

14 A. I don't recall.

15 Q. Did you identify them in the list of
16 documents that you looked at?

17 A. I did not compare my report to look at the
18 documents in the back list to the documents that I got
19 from Marsha's reports. So I don't know if I have them
20 on there or not.

21 Q. So the truth of the matter is that at the
22 time you wrote your report, you had not reviewed the
23 compensation surveys generated by Northrop, correct?

24 MR. STRUCKHOFF: Objection.

25 Misstates the record.

1 THE WITNESS: I -- I can tell you
2 that the truth of the matter is that what
3 I've reviewed doesn't change my opinion.

4 BY MS. ROSS:

5 Q. That is not my question.

6 MS. ROSS: Could you read back my
7 question, please?

8 (The question was read back.)

9 MR. STRUCKHOFF: The same objection.

10 BY MS. ROSS:

11 Q. It's a yes or no, correct?

12 A. Yeah. I'm not sure I can answer yes to
13 that. I -- I am not sure that I can answer yes to
14 that. I would have to take a look at my document to
15 see if I mentioned that those -- those were in the
16 list, the Bates numbers that I have at the back of my
17 report. I would just have to check it. I don't know.

18 Q. If I provide you with your report, would
19 you be able to help me whether or not you did?

20 A. If you provide me with the report and then
21 the Bates numbers on those particular market studies
22 that you are referencing, the ones that I am
23 visualizing in my head are for the ITA. I can cross
24 and see if they are in there.

25 Q. What is your understanding of the process

1 that Northrop engages in to benchmark the compensation
2 of its employees?

3 A. My understanding -- basically, the
4 understanding is that they are to follow the ASP, the
5 administrative service agreement that they put into
6 effect, which tells them that they should do internal
7 and external reviews. That is -- that is what I
8 recall.

9 Q. My question was explain to me the process
10 that Northrop engages in to benchmark the compensation
11 of its employees.

12 A. Yeah. And what I would say is if you
13 provide me with a copy of the ASA, I can walk through
14 and tell you what they said they were going to do.

15 Q. That is not my question. I'll say it
16 again.

17 Explain to me the process that Northrop
18 engages in to benchmark the compensation of its
19 employees.

20 A. So the compensation, the process that they
21 would utilize, as outlined in those particular
22 documents, the ITA, for example, they would go to
23 Mercer, I think Hewitt. There's a few other firms
24 that were mentioned in there where they would gather
25 some information to make an assessment to whether or

1 not those fees were reasonable or not reasonable.
2 There is also a compensation report. I don't recall
3 the name of the report offhand. It's compensation
4 stats or something that's kind of an explanation of
5 the process that outlines what their process is. I
6 don't remember it verbatim. My memory is not that
7 good. But I recall it outlines, you know, what their
8 process should be. I -- I'd refer you to that
9 document.

10 Q. Is there anything else?

11 A. Yeah, there is one other. There is -- one
12 of the documents had a timekeeping process so that
13 they could track salaries for purposes of providing
14 the information for doing benchmarking. But that is
15 the other report that I remember.

16 Q. Are you aware of the fact that Northrop is
17 a defense contractor?

18 A. I am.

19 Q. Are you the aware of the reporting
20 requirements that Northrop has to the department of
21 defense with respect to the compensation of the
22 employees?

23 A. No, not specifically.

24 Q. Did you do any inquiry into how Northrop
25 benchmarked the compensation of all of its employees?

1 A. Again, I believe that is -- I -- I suspect,
2 I'm not sure, but I suspect that that compensation
3 report is something that they use for everyone. But
4 I -- I'm not sure that is the case.

5 Q. Let me repack my question because that was
6 not responsive.

7 Did you do any inquiry into how Northrop
8 benchmarked the compensation of all of its employees?

9 A. Outside of the materials that I had to
10 review, no, I did nothing in addition to that.

11 Q. So you never looked into how the corporate
12 compensation department of Northrop benchmarks
13 employees' compensation?

14 A. I did nothing more than review the
15 documents that were given me.

16 Q. Okay.

17 (Defendant's Exhibit 212 was marked
18 for identification.)

19 BY MS. ROSS:

20 Q. Let's mark this as the next exhibit,
21 please.

22 Mr. Witz is this one of the documents that
23 you were referring to earlier that you looked at when
24 I asked you whether or not you had ever reviewed job
25 descriptions?

1 services agreement?

2 A. I did.

3 Q. Okay.

4 (Defendant's Exhibit 214 was marked
5 for identification.)

6 BY MS. ROSS:

7 Q. Mr. Witz, is Exhibit 214 the Hewitt
8 administrative services agreement that you looked at
9 in preparing your report?

10 A. I actually looked at the contract. This is
11 a statement of work.

12 Q. It says in the lower right-hand corner
13 administrative services agreement, Exhibit A, correct?

14 A. I see that, and it does.

15 Q. So you didn't look at this part of the
16 administrative services agreement?

17 A. No. I did review this, but I also looked
18 at the -- there was actually a separate contract. So
19 I was just thinking you were going to give me the
20 contract that was actually signed.

21 Q. Well, this is signed, Mr. Witz. If you
22 look at Bates number MGCO-1726 -- 669, do you see that
23 it is signed? It's the second page.

24 A. Yes, I do see that.

25 Q. Did you look at this document?

1 MR. STRUCKHOFF: Objection. Asked
2 and answered.

3 MS. ROSS: He hasn't answered it.

4 MR. STRUCKHOFF: Yes, he has.

5 THE WITNESS: I believe I did. I'm
6 just drawing a blank.

7 BY MS. ROSS:

8 Q. But you are not sure?

9 A. I am not sure.

10 Q. Okay. Well, you would agree that Northrop
11 Grumman did not entirely outsource its recordkeeping,
12 correct?

13 A. No, I wouldn't agree with that.

14 Q. Why wouldn't you agree with that?

15 A. Well, because the recordkeeping services
16 that were outlined that are -- that are being
17 provided -- and I think this -- this has a lot to do
18 with interpretation and definition of -- of
19 recordkeeping. They perform some administrative
20 tasks, but the recordkeeping in terms of calculating
21 the gains and losses identifying contributions,
22 distributions, loan processing, loan repayments, all
23 of those things were done not by -- by Northrop
24 Grumman. They were done by Hewitt. So I think the
25 recordkeeping is primarily done by -- by Hewitt. I

1 his report last time, he's got four pages of things he
2 did that were remiss in terms of the -- of Marsha's
3 report. I mean, it -- it seemed to me that Northrop
4 was claiming they did things that Gissiner is claiming
5 he's doing. So if there is a redundancy, it shouldn't
6 be a reimburseable expense. I mean, if they're paying
7 somebody to do the work --

8 Q. So you're -- you're testifying here today
9 that Gissiner provided services to the Northrop
10 Grumman benefit plan?

11 A. I'm -- I'm providing testimony that I read
12 Gissiner's report. And in his report, he provides
13 about four or five pages of services that Hewitt
14 delivered to Northrop Grumman. Those services, in
15 many cases, are also services claimed by Northrop
16 Grumman employees that they did that work.

17 Q. But you didn't talk to any Northrop Grumman
18 employees about what work they were doing, correct?

19 A. No. That's why I said to you the only way
20 that I would know what they did if they really did
21 what they said they did would be to do a forensic
22 analysis, and I haven't done that. So I don't know if
23 they really delivered that service or if they didn't
24 deliver the service.

25 Q. So you just don't know?

1 A. No, I don't.

2 Q. So you actually don't know anything about
3 the services that Northrop was doing inhouse, correct?

4 MR. STRUCKHOFF: Objection,
5 argumentative.

6 THE WITNESS: I know what they told
7 me, okay? So I can see what they are
8 saying they claimed they did, and I can see
9 Hewitt's claiming they did many of the same
10 things.

11 BY MS. ROSS:

12 Q. They told you? You talked to Northrop
13 employees?

14 MR. STRUCKHOFF: Objection, asked and
15 answered.

16 THE WITNESS: No. I said that I read
17 the report, and in the report it says
18 here's what they do. This one report that
19 you just gave me, this is Exhibit No. 12 --
20 212, it basically lays out here is what we
21 do.

22 BY MS. ROSS:

23 Q. And that's your basis for your whole
24 understanding of what Northrop employees were
25 providing in the way of services to the plan?

1 it for the committee to make a decision on whether or
2 not they should be reimbursed.

3 Q. So you don't have firsthand knowledge of
4 the services that Northrop provided to the plan,
5 correct?

6 A. I don't.

7 Q. How many assets were in the plan in 2010?

8 A. I think somewhere around 14 billion.

9 Q. What about in 2011?

10 A. I don't recall 2011.

11 Q. What about 2012?

12 A. I don't recall.

13 Q. What about 2013?

14 A. I don't recall that offhand either.

15 Q. And how many participants were there in the
16 plan in 2010?

17 A. It was over 100,000, but I don't recall the
18 exact number. I would have to review in my report.

19 Q. What about 2011?

20 A. As I recall through -- 2010 through 2015,
21 it was above 100,000 employees.

22 Q. How many acquisitions did Northrop have
23 between 2000 and 2014?

24 A. Based on the document, there were -- it was
25 over 50. During the time frame that was applicable to

1 to make a decision about investment advice, but they
2 obviously did that. I'm assuming they didn't do it
3 for free. I'm sure they charged for it. In fact, I
4 recall there even being e-mails or -- or -- yeah, I
5 think it would be an e-mail where they said, yes, hire
6 them to go forward and -- and do that particular
7 project.

8 So they -- they relied heavily on Callan,
9 and rightfully so. They are a very good organization.

10 Q. How many employees in ITA billed their time
11 to the plan?

12 A. You know, I couldn't tell. When I looked
13 at the invoicing documents that I had, I could not
14 tell exactly how many. And -- and also, because the
15 reports weren't like monthly where I could see month
16 to month who was being invoiced. You know, there is
17 obviously some turnover, and it was hard to track
18 that.

19 So I -- I can't -- I couldn't really tell
20 the total number that were being charged against the
21 plan.

22 Q. How many external managers in a given year
23 did Northrop utilize for their investments?

24 A. I -- I don't recall the total number.

25 Q. Did you know the total number and you just

1 don't recall it here, or did you never know?

2 A. I -- what I recall as I looked through
3 various reports is a list of different managers, some
4 of which they just applied to the DC plan because they
5 were using them on the DB side. I don't remember the
6 number, but I recall there being a report page that
7 listed like a number of different managers. So I know
8 on the DB side they had many more managers that they
9 were overseeing than they did on the DC side, but I
10 don't recall the total number.

11 Q. Did you ever review any job descriptions
12 for the employees in ITA?

13 A. Yes.

14 Q. Is that on that one document that you
15 referred to earlier?

16 A. That has -- that has descriptions.

17 Q. And what is the exhibit number, just for
18 reference?

19 A. It's -- it's 213.

20 Q. And did you review any other job
21 descriptions for ITA?

22 A. I can't visualize another document in my
23 mind. But I -- I -- I would have to look back at the
24 Bates numbers that I reviewed to see, but I -- I
25 suspect there is something in there. I just don't

1 remember.

2 Q. Did all the people in ITA bill their time
3 to the plan?

4 A. I could not tell because, like I said, I --
5 I could not identify all of the IT people on the
6 invoices. So I could not tell if all of them billed
7 a -- an amount of time. Some of the invoice sheets
8 for given periods would identify that, you know,
9 individuals billed 25 hours, you know, or -- or zero
10 hours to the DC plan. But I -- I don't recall if --
11 if everyone billed time. I don't think they all did,
12 but I don't recall.

13 Q. And did you review any time sheets for the
14 ITA employees?

15 A. The time sheets that I have reviewed, I
16 don't recall if they include -- well, the one -- the
17 one invoice -- there is an invoice that I reviewed,
18 but I'm not sure I reviewed a time sheet for a
19 specific employee of ITA. I don't recall.

20 Q. Did you review any time sheets for a
21 specific employee of the benefits divisions?

22 A. Yeah. As -- as I mentioned, I think -- I
23 think there were a couple of individuals where I saw
24 some individual time sheets that were laid out.

25 Q. Okay. I don't recall you mentioning that

1 Q. Do you know how the benefits administration
2 group was structured as far as a breakdown of the
3 different organizations working on the plan?

4 A. I -- no, not specifically. I am more
5 familiar with the people in terms of the layout of the
6 people. The question you're asking -- are you
7 suggesting that they worked at different companies but
8 worked together on those committees, is that what you
9 are asking?

10 Q. I'm not suggesting anything. I'm asking
11 what is your understanding of how Northrop structured
12 the benefits administration different divisions.

13 A. Yeah. I -- I couldn't write out a report
14 for you to give you that.

15 Q. So you don't know?

16 A. I don't know.

17 Q. In your report, which we are going to take
18 a look at in a bit, you maintain that no more than
19 four full-time employees, if any, would be needed to
20 provide non-recordkeeping services to the plans. Do
21 you recall that opinion?

22 A. I do.

23 Q. What are non-recordkeeping services,
24 Mr. Witz?

25 A. Well, again, as I explained earlier,

1 beneficial calc, what's his benefit, what's present
2 value, accrued benefit, when's he allowed to get it,
3 what if he did it now, is there a lump sum provision
4 built into it?

5 Q. All right. But before we -- we veer off
6 too much down an irrelevant road, I want to stay
7 focused on I had asked you about your encounters with
8 employers who were charging the plans for their
9 services.

10 A. Right.

11 Q. And I want to narrow that even more to
12 encounters with employers who were charging their
13 defined contribution plans for their services. So
14 tell me about those encounters.

15 A. And again, back in the -- in the early days
16 of my career, it was not unusual to find a define
17 contribution plan where the PlanSponsor was actually
18 doing the admin inhouse including the recordkeeping,
19 not just the admin but the recordkeeping as well. In
20 my position I was --

21 Q. And charging it to the plan?

22 A. And charging it to the plan. Not all of
23 them, but there were plans that were being charged.
24 There was a deduction coming out of the plan assets to
25 cover a reimbursement of cost associated with the work

1 that was being done.

2 Q. Okay. So in -- at that time, in any of
3 your roles, did you provide advice, consultation to
4 those employers who were charging back to their
5 defined contribution plan back then?

6 A. Actually, the -- the consultation that I
7 gave them was that they needed to stop doing it and
8 outsource it, and I would go through what I felt were
9 the issues. Now, back then we didn't have the
10 advisory opinions that we had that came out in the
11 '90s. So -- so I was operating with a little bit
12 different perspective than I did in the '90s when the
13 other operating advisory opinions came out.

14 Q. How many plans did you provide this advice
15 to?

16 A. I don't remember.

17 Q. Was it more than one?

18 A. Oh, yes.

19 Q. Was it 10?

20 A. I would suspect it was probably more than
21 10, but I don't remember how many total.

22 Q. That were actually billing back their
23 services to the plan, in a defined contribution plan.
24 So it was that prevalent?

25 A. It -- back in those days, people -- like I

1 said, they were using Lotus Notes. They were charging
2 back fees. Doing a lot of -- it was kind of the Wild
3 West. They were doing a lot of things. What helped
4 move the -- what helped them move the needle was the
5 401K plan because at that point they needed something
6 that they couldn't do.

7 Q. But you were not providing -- you were not
8 going in reviewing the services that they were
9 charging for, were you?

10 A. No, I was not looking at the services that
11 they were -- I mean, it didn't make a difference to me
12 what services they were providing.

13 Q. And you weren't looking at the
14 reasonableness of the fees?

15 A. No, I was not looking at the reasonableness
16 of the fees.

17 MS. ROSS: Tape? I'm getting the
18 word.

19 THE VIDEOGRAPHER: We are pausing the
20 recording at the end of the third tape.
21 Going off the record at 12:34 p.m.

22 (Lunch recess taken.)

23 THE VIDEOGRAPHER: We are back on
24 record after a lunch break. The time is
25 1:15 p.m. We are beginning the fourth tape

1 same thing with respect to community involvement. I
2 can't imagine that participating in the, you know, ADF
3 and the Rotary and the Southern Evangelical Seminary
4 had anything to do with your opinion in this case?

5 A. No.

6 Q. Okay. And I guess the same thing, custom
7 development accomplishments, right?

8 A. That would be correct.

9 Q. Okay. So then let me ask the same question
10 about the speaking engagements and the publications,
11 because obviously, over your span of 36 years, you
12 have given a tremendous number of speeches and
13 published a lot.

14 Are any of these speaking engagements or
15 publications listed in this section, do any of them
16 specifically address the issue on which you are
17 opining here regarding the charge-back of fees?

18 A. Not regarding the charge-back of fees. I
19 mean, I've made some comments about RFPs and
20 benchmarking in the report, and of course there are
21 presentations that I've done, articles that are
22 written regarding that. But nothing regarding the
23 reimbursement of fees.

24 Q. Okay. Okay. Okay, that will help.

25 All right. So now I am going to ask you to

1 You are not making that legal conclusion,
2 correct? You can't, you are not a lawyer, right?

3 A. I'm not a lawyer. I'm just telling you,
4 based on my understanding and my experience, that
5 408(b)(2) requires it be in writing. 408(b)(2)
6 requires it to be understood who the parties are and
7 what they are delivering. And if it's not --

8 Q. Well, we are talking about the ASA, not
9 408(b)(2).

10 A. But 408(b)(2) deals with the idea, it's the
11 exemption. You know that. It's the exemption for the
12 services being provided. So if you are providing
13 services to a plan -- you can't provide services to a
14 plan unless you are under that exemption.

15 Q. Are you opining on whether or not Northrop
16 complied with 408(b)(2) in this case?

17 A. I'm suggesting to you that they did not
18 provide me with the evidence, what I read.

19 Q. Are you opining -- are you giving an
20 opinion in this case --

21 A. In my opinion, in my opinion, I did not see
22 Northrop Grumman comply with 408(b)(2) in terms of
23 complying with the rules, dealing with their contract,
24 the services that they render and in providing that
25 information. I didn't see anything that would support

1 ability to charge for internal services to the plan?

2 A. I answered that before. I don't -- I don't
3 know the total number.

4 Q. In fact, you don't really have any clients
5 that have asked that exact question, right?

6 A. No, that is not true.

7 MR. STRUCKHOFF: Objection.

8 Misstates his testimony.

9 BY MS. ROSS:

10 Q. And who are these clients that you've
11 advised to get an Advisory Opinion on the issue of
12 charging their services back to the plan?

13 A. Who -- what specific clients?

14 Q. Uh-huh (affirmative).

15 A. As I shared with you before, we've got
16 confidentiality agreements with our clients. I can't
17 divulge that.

18 Q. Well, you are making a statement that is
19 integral to your opinion here.

20 A. That is correct.

21 Q. And you are telling me that you are not
22 going to tell me who those clients are?

23 A. I cannot tell you if I'm subject to a
24 confidentiality agreement.

25 Q. Well, that is not going to stand up with

1 the Court. You are under subpoena here to testify.

2 A. I am.

3 Q. Do you understand that?

4 A. I do.

5 Q. And do you understand that that subpoena
6 requires you to answer the questions that I am asking?

7 A. And I am.

8 Q. And that a private confidentiality
9 agreement doesn't give you license not to tell me who
10 those clients are that you have advised?

11 MR. STRUCKHOFF: Objection.

12 THE WITNESS: I'll have to review
13 that with my -- with my attorney then.

14 BY MS. ROSS:

15 Q. Well --

16 A. I'm telling you that I have talked to
17 clients regarding the decision to either or not,
18 deduct fees from the plans. That is a fact. I am
19 telling you that when people talk to me about that
20 particular issue, I have told them you should seek an
21 opinion from an attorney. And when we have a
22 discussion about whether or not to seek it from an
23 attorney, I have told them that you most likely would
24 -- should get either a PTE, or an Advisory Opinion, or
25 something to document it before you do it so that you

1 don't get yourself into a problem.

2 Q. Do you have any clients that have sought
3 such an opinion or an exemption from the Department of
4 Labor?

5 A. No.

6 THE VIDEOGRAPHER: Three minutes
7 remaining on tape.

8 BY MS. ROSS:

9 Q. Because you don't have any clients who are
10 charging back to the plans, correct?

11 MR. STRUCKHOFF: Objection. Asked
12 and answered.

13 THE WITNESS: I have answered that.
14 As I've shared with you, right now I
15 have -- outside of the couple of clients
16 that I have done our benchmarking on, no,
17 right now I don't have any clients that are
18 actually charging to the plan.

19 BY MS. ROSS:

20 Q. And in the past, remind me, how many
21 clients have you had that are charging to the plan?

22 A. I -- as you and I talked earlier, my number
23 of plans is very small. My personal client plans, I
24 think which is what you are referencing, I don't have
25 any right now that are charging outside of the plans

1 services?

2 A. Well, they were charging it against the
3 plans assets that they were plan administrator on and
4 the trustee -- and the sponsor of. So, yes. So 316
5 is now a service that they are providing.

6 Q. And could you have used an RFP, or were the
7 services too unusual?

8 A. No. No, we could have used an RFP. That
9 is not what they hired us to do though. They wanted
10 to go through a benchmarking service first to see what
11 the results were to determine if they should go
12 through another one. So we -- we did the
13 benchmarking.

14 Q. And so that was that one-time assignment
15 that you talked about, correct?

16 A. That is correct.

17 Q. Okay. Were there any other occasions that
18 you were asked to opine on the reasonableness of fees
19 being charged back to a client?

20 A. There were -- there was -- there was the --
21 yeah, there was another plan that -- that I did have
22 to -- well, that we were engaged. If you recall I was
23 telling you about the spot checking.

24 Q. Right.

25 A. And part of that engagement was for me to

1 tell them whether or not I felt the fees were
2 reasonable given the service platform. So that was
3 another one that -- that I did that on.

4 Q. Wasn't the spot checking for the little
5 plans within the MIP -- MEP?

6 A. MEP. That is correct.

7 Q. So was it the same -- it's the same client,
8 essentially?

9 A. It -- yeah, that is -- that is the one
10 client. The other client that I am referencing that I
11 was talking about initially was also a MEP.

12 Q. So you had -- both of your --

13 A. There were two MEPs.

14 Q. -- encounters with reviewing an arrangement
15 where services are charged back to the plan intend for
16 MEPs, correct?

17 A. That is correct.

18 Q. Okay. And with respect to those MEPs, did
19 you give them an opinion as to whether or not the
20 arrangement was reasonable, charging back, or did you
21 just look at whether the fees were reasonable?

22 A. We looked at --

23 MR. STRUCKHOFF: Objection.

24 Compound.

25 Go ahead.

1 suspect that you could spend 20 percent of your time
2 elsewhere. Maybe -- maybe more. I don't know. The
3 Advisory Opinions only go down to 80. But, no, I
4 would not say that you have to spend a hundred percent
5 of your time on it. I don't see any guidance that
6 would dictate that that is the requirement.

7 Q. Are you aware of the fact that it was ITA
8 that had the authority to instruct the trustee to pay
9 the plan expenses?

10 MR. STRUCKHOFF: Objection. Assumes
11 facts.

12 THE WITNESS: What I recall is that
13 it was the BPAC group that had the primary
14 authority to make -- or approve payments.
15 There is one document I recall where it
16 said that the -- ITA -- or the investment
17 committee, excuse me, could also do it.
18 But I recall -- most what I recall is that
19 it was the BPAC that had authority to make
20 any payments from the plan assets.

21 BY MS. ROSS:

22 Q. And the plan also provided that the BPAC
23 could delegate its duties, correct?

24 A. Yeah, that is true.

25 Q. Okay. And are you aware of the fact that

1 the BPAC delegated to others to interface with the
2 trustee?

3 MR. STRUCKHOFF: Objection. Assumes
4 facts.

5 THE WITNESS: I -- I recall that the
6 BPAC delegated responsibility to other
7 directors, managers, delegates, a variety
8 of different words that were used,
9 supervisors, to collect data. I don't
10 recall that they were -- that they
11 delegated some of the process, the payments
12 direct to -- you know, from the plan
13 assets. I don't recall that. I don't
14 recall anything that indicated that.

15 BY MS. ROSS:

16 Q. But you are not giving an opinion in this
17 case as to whether or not the delegations issued were
18 proper, correct?

19 A. No. I -- I am not offering an opinion on
20 that. It appears to me there needs to be, you know,
21 approvals and resolutions in place that support
22 whatever they are doing or procedures in place. I
23 didn't see a lot of that, but, you know, it doesn't
24 mean that they can't delegate.

25 Q. So in your report, you identify in

1 was missing. It was just aggregated for the whole
2 group. If you have a copy of that, I would be happy
3 to point that out to you.

4 Q. How did you go about -- strike that.

5 In Paragraph 99, you state that the
6 expenses paid to Northrop for performing services --
7 inhouse services exceeded a reasonable fee for similar
8 services.

9 Did you actually benchmark each of the
10 services that Northrop provided?

11 A. No.

12 Q. Okay. Did you do anything to determine
13 what you believed would be a reasonable fee for that
14 service?

15 A. No.

16 Q. When you were at BGS&G, you state in your
17 report that you had 2500 defined contribution plans
18 and 50,000 participants.

19 Do you see that?

20 A. That is correct.

21 Q. And you state that you had a staff of 12 to
22 15?

23 A. That is correct.

24 Q. And you recognized earlier today, that
25 Northrop plan is in excess of a hundred thousand

1 as a result they'd have to go to their law firm, which
2 has nothing to do with the company outside of the fact
3 that, hey, the law has changed, and this is the new
4 amendment that you have got to add to your plan. It's
5 going to require changing the summary plan
6 description. In my experience, if it's a custom
7 designed plan, the law firm ends up providing the new
8 summary description.

9 Q. Who is going to draft the 5500s?

10 A. The 5500s were prepared in house by us when
11 we did 5500. Again, that is a once-a-year thing. It
12 happens -- if we did it right, we got most of them
13 done because most of our plans were 1231. We'd get
14 them done, you know, before we had to do 630 quarter
15 ends so that they were going out quicker unless --
16 unless they were a plan that needed an audit, then of
17 course we finished our part and had to turn
18 information over to the auditor to do their part.

19 So I mean, we handle 200 plans with four
20 people in my office, three people in my office. I
21 don't -- you know, this is one plan with the
22 technology. You know, I don't see why they would need
23 more than four people internally, especially with all
24 of the horsepower that Hewitt it has.

25 Q. In fact, Mr. Witz, you don't have a clue

1 how Northrop administers its plan, do you?

2 MR. STRUCKHOFF: Objection.

3 Argumentative.

4 THE WITNESS: From the standpoint of
5 understanding how they administer their
6 plan, unless I did a forensic analysis, no.
7 The information that was provided to me
8 doesn't provide me with the absolute
9 details of how they actually administer the
10 plan.

11 BY MS. ROSS:

12 Q. And you didn't do a forensic analysis,
13 correct?

14 A. No, I did not.

15 Q. You opined that ITA should have no more
16 than one full-time employee.

17 Do you see that?

18 A. I do.

19 Q. And you don't have any idea of all of the
20 services that ITA provides, do you?

21 A. No, I don't have an idea of all the
22 services that they provide. No, I don't.

23 Q. Okay. And you don't even know how ITA
24 structures their oversight of investment managers, do
25 you?

1 Q. Did they tell you to use the S&P?

2 A. It was agreed to.

3 Q. What do you mean "it was agreed to"?

4 A. It was agreed to. I felt it was
5 appropriate to use a -- an investable index as opposed
6 to a non-investable index. The S&P is pretty --
7 pretty common. I cited the ABB case because I was
8 part of that case as well, and it seemed to be
9 something that was acceptable. It's been used in a
10 couple of other cases that I have been involved in as
11 well. So it seemed like that made sense to utilize
12 the S&P as a general guideline.

13 Q. You are not providing a legal opinion as to
14 what the right alternative is to use, are you?

15 A. No.

16 Q. Do you have a belief or an opinion as to
17 whether or not it's more appropriate to use the S&P
18 500 or the plan of returns to determine the losses?

19 A. No, I don't have an opinion on it.

20 Q. And when you -- you state that you looked
21 at the median annual salaries and concluded that for
22 the benefit staff it would be less than 50 percent --
23 I'm sorry -- 50,000 hours in 2002?

24 A. Yes. I used median, I think I even when --
25 I guess it was the investment -- the IT side, I

1 averaged them.

2 Q. Did you compare the services that are
3 provided by the -- I guess you looked at compensation
4 benefits and job analysis specialists.

5 Did you compare the services that they
6 provide to the services that the Northrop benefit
7 staff provides?

8 A. No, I didn't compare the services. I
9 looked at the job titles. I looked at the Bureau of
10 Labor Statistics and...

11 Q. So you don't know if you were comparing
12 apples to apples?

13 A. I was looking at titles.

14 Q. So you don't know if you were comparing
15 apples --

16 A. I don't -- I don't -- I can't say for
17 certain that the job description of one matched the
18 other or not.

19 Q. And that is true with respect to the
20 pension officer and those jobs for ITA?

21 A. Again, I looked at the statistics that were
22 available for the ITA. I was utilizing stats that
23 come from the CFA Institute for people that are in
24 similar job positions. To what extent their job
25 responsibilities were identical, I -- I can't attest

1 to that.

2 Q. What did you have that provided the job
3 descriptions for the ITA people that you were
4 comparing to these job descriptions from third-party
5 sources?

6 MR. STRUCKHOFF: Objection. Vague.

7 THE WITNESS: In other words, what --
8 what document I did review from ITA --

9 BY MS. ROSS:

10 Q. Yeah. What did you have --

11 A. -- versus --

12 Q. -- that told you what the ITA person was
13 doing so that you could tell that it was the same job
14 description as the jobs that you were comparing them
15 to?

16 A. The documents that I had had some level of
17 description about services that some of the ITA folks
18 were delivering.

19 Q. What documents were those?

20 A. I don't recall them offhand. I mean, one
21 of them -- let's see. Well, I don't know if this one
22 has it in here or not. Here you go.

23 Q. You can just give me the exhibit number.

24 A. It's 213.

25 Q. And what are you looking at, what page?

1 report.

2 Q. Did you identify your report among the
3 documents reviewed?

4 A. I believe I referenced it in a footnote.
5 That is when I referenced Gilmer I think.

6 Q. Did you look at your -- did you review your
7 deposition in the Gray Beck case for this report?

8 MR. STRUCKHOFF: Objection. Asked
9 and answered.

10 THE WITNESS: No, I did not.

11 BY MS. ROSS:

12 Q. Did you look at the trial transcript in the
13 earlier Northrop case for this report?

14 A. I did not.

15 Q. Have you ever published any material
16 related to plan sponsors billing for their services to
17 the plan?

18 A. I have not.

19 Q. You have never spoken at any conferences of
20 that issue either, right?

21 A. No, I have not.

22 Q. And you have never been quoted by any
23 publications on that issue?

24 A. I have not.

25 Q. Have you ever discussed the issue with

1 anybody at the DOL?

2 A. No, I have not.

3 Q. Or the IRS?

4 A. I have not.

5 Q. Have you ever served as an expert for the
6 DOL?

7 A. No.

8 Q. Have you ever served as an expert for the
9 IRS?

10 A. No.

11 Q. Have you ever served as a consultant for
12 the DOL?

13 A. No.

14 Q. And the IRS?

15 A. No.

16 Q. Have you ever served as a consultant for
17 any regulator on ERISA topics?

18 A. No.

19 THE VIDEOGRAPHER: Five minutes
20 remaining on the tape.

21 MS. ROSS: I think we can take a
22 break.

23 THE VIDEOGRAPHER: We are pausing the
24 recording at the end of the fifth tape.

25 Going off record at 4:05 p.m.

1 Q. Did you ever perform a calculation based
2 upon the total hours that was billed to the defined
3 contribution plan in a year to determine how many
4 full-time employees that equated to?

5 A. No. There were -- there were reports that
6 had aggregate numbers on it, and it had numbers of
7 people. I think that was in the ITA. There was --
8 there was a -- there wasn't enough information for me
9 to really identify that.

10 Q. Okay. So you don't know the full-time
11 equivalent -- full-time employee equivalent that was
12 working on the savings plan --

13 A. No.

14 Q. -- in any given year?

15 A. No. There wasn't enough information in
16 there to draw that conclusion.

17 Q. Okay.

18 MS. ROSS: I have no further
19 questions. Thank you.

20 EXAMINATION

21 BY MR. STRUCKHOFF:

22 Q. Mr. Witz, I just have a few follow-up
23 questions. If you could pull out your report. I
24 guess it's right front of you, Exhibit 215.

25 A. (Witness complies.)

1 redundant services that -- or services that you
2 believe were redundant, are there any additional
3 services other than the ones that you have just
4 refreshed your recollection with that you are claiming
5 are redundant?

6 A. Well, the Gissiner report I think had four
7 or five pages of service outlined by Hewitt provided
8 by Hewitt or that he's claiming Hewitt provides, and
9 so the list is pretty exhaustive. Again, that is why
10 I started to make my own notes on that and compare it
11 to what Marsha was saying and trying to compare it to
12 my own notes. So I -- I -- as I recall, in putting
13 that together for my own purposes, it seems like there
14 was a lot more services that were mentioned in more
15 detail than what I had available to me and what I
16 included in my report.

17 Q. So are you answering my question in the
18 affirmative, that there are additional services that
19 you believe that are redundant?

20 A. Yes.

21 Q. Okay. So I am still going to ask you to
22 outline for us and provide a list of the services that
23 you feel are redundant. Okay. So my request stands.

24 Okay. Now I want to refer to some of the
25 services that you have identified in Paragraph 100.

1 And you say that the benefits department performed
2 general day-to-day administrative functions, and then
3 you say such as. So from that, I assume that you are
4 not stating all of them, all of the day-to-day
5 administrative functions that they provided here?

6 A. Yeah. I'm just referencing the ones that I
7 found in documents that I reviewed.

8 Q. Okay. And you state that that includes
9 coordinating the delivery of participant
10 communications?

11 A. Correct.

12 Q. What does that mean to you?

13 A. Participant communication is a pretty broad
14 category. It can cover a lot of things. It can cover
15 information about the investments, about the plan,
16 about benefits. It could be newsletters. I don't
17 know what all is involved in terms of the
18 communications that were provided by Northrop Grumman,
19 but that was one of the items that was listed.

20 Q. So you don't know exactly what
21 communications were provided?

22 A. No. There wasn't -- there wasn't enough
23 information provided to define here is what all the
24 communication materials were.

25 Q. What does "coordinating the delivery of"

1 mean to you?

2 A. Coordinating the delivery, that is
3 terminology that I pulled from the reports.
4 Coordination of the delivery I suspect deals with
5 making sure that the proper communication materials
6 are sent to the right -- to the participants, meaning
7 that they have updated addresses if it's mailed or
8 they've got their e-mail addresses or they are
9 distributing it through their online, the daily
10 evaluation system that the participants can access it
11 through that process.

12 Q. But you are assuming, you don't know,
13 correct?

14 A. You asked me what the definition was. I'm
15 telling you what I think it is.

16 Q. I asked what it means to you.

17 A. Yeah, that is right.

18 Q. Okay. But you don't know what that means
19 with respect to Northrop, correct?

20 A. The documents did not define it.

21 Q. So you don't know?

22 A. So I don't know.

23 Q. Okay. And responding to participant
24 inquiries, what does that include?

25 A. It was --

1 Q. Again, with respect to the Northrop plan.

2 A. Right.

3 Q. Not in general.

4 A. Right. It was not specifically defined.

5 Q. So you don't know?

6 A. I don't know the specifics.

7 Q. And what about the providing education to
8 employees, what does that include?

9 A. It was not specifically defined.

10 Q. So you don't know?

11 A. That is correct.

12 Q. And supporting planned enrollment and new
13 hires, what does that include?

14 A. It was not defined.

15 Q. So you don't know?

16 A. That is correct.

17 Q. Managing the relationship with service
18 providers, what does that include?

19 A. It was not defined.

20 Q. So you don't know?

21 A. That is correct.

22 Q. And supporting plan audits, you don't know
23 what that includes either?

24 A. It was not defined.

25 Q. So you don't know that?

1 A. That is correct.

2 Q. So notwithstanding the fact that you don't
3 know what was included in each of these categories,
4 you are opining that these services are overwhelmingly
5 provided by the plan's record keeper?

6 A. That is correct.

7 Q. Turning to Paragraph 105, you are outlining
8 the services -- some of the services that ITA
9 performed.

10 Do you see that?

11 A. I do.

12 Q. Okay. And you say: They were tasked with
13 general oversight of plan investments.

14 What does that include?

15 A. It was not defined.

16 Q. So you don't know?

17 A. Correct.

18 Q. And you say that ITA was responsible for
19 recommending and implementing investment objectives.

20 What does that include?

21 A. It was not defined in the IPS.

22 Q. So you don't know; is that correct?

23 A. That would be correct.

24 Q. Okay. Selecting or removing investment
25 managers, what did that include?

1 A. I think it's pretty evident, but it wasn't
2 specifically defined in the IPS. So I can't say for
3 sure what all of that means to Northrop Grumman. I
4 can only tell you what it means to me in a sense of
5 what I see on a practical basis, as with all of these
6 that you've asked me about.

7 Q. So you don't know what was involved in the
8 selection process by ITA, correct?

9 A. Yeah. Northrop Grumman did not provide the
10 details to be able to give us an idea of specifically
11 everything they did within each of these categories.

12 Q. So you don't know?

13 A. That is correct.

14 Q. And the same thing with the process for
15 removing investment managers?

16 A. Yes, that would be the same case.

17 Q. You don't know?

18 A. I don't know how they -- how they actually
19 processed it. It was not defined.

20 Q. Do you know if Northrop Grumman had a watch
21 list for its investment managers?

22 A. I don't recall that. I would be surprised
23 if they didn't, but I don't recall.

24 Q. But you say you don't know?

25 A. I don't recall it.

1 Q. Okay. What about monitoring investment
2 performance and related fees, what did that include?

3 A. In terms of Northrop Grumman?

4 Q. Correct.

5 A. I -- I can tell you that I don't know.
6 In -- what's a little bit unique about this paragraph,
7 though, Ms. Ross, is that the paragraph that follows,
8 these items were provided by Callan. So I can assume
9 and I will assume that monitoring investment
10 performance related fees was tied to the reports that
11 were provided by Callan on a monthly basis, so they
12 were monitoring the work that Callan did for them.
13 That -- there wasn't specific definitions in the IPS
14 statement, but it's pretty clear to me in my
15 familiarity with the 60,000 plans that are using our
16 investment management system that -- that that is what
17 they do, they provide quarterly reports, monthly
18 performance reports, fun fact sheets.

19 Q. But you don't know what ITA was doing -- or
20 is meant by monitoring investment performance and
21 related fees?

22 A. No, they --

23 MR. STRUCKHOFF: Objection.

24 Compound.

25 MS. ROSS: It's stated in his report.

1 It's not compound.

2 MR. STRUCKHOFF: No, it is because
3 you changed -- you changed your question.
4 But I understand. You may answer.

5 THE WITNESS: Northrop Grumman did
6 not define each of these in detail in terms
7 of what it meant to them, so I can only
8 give you what it means to me based on my
9 experience.

10 BY MS. ROSS:

11 Q. So you don't know the scope of --

12 A. I don't know -- I don't know the scope of
13 it, based on Northrop Grumman's definition. I have no
14 idea. They didn't define it.

15 Q. And what about reporting the results to the
16 investment committee, what did that involve?

17 A. Never attended one of their meetings.
18 There wasn't anything in their reports that defined
19 exactly what it was. I did read the minutes. They
20 did provide -- the minutes were so vague, but they did
21 provide the report. And I assume they reviewed it and
22 discussed it, but there was no clarification on what
23 they discussed. So I don't know what went on behind
24 closed doors. I just know that they make these
25 recommendations, and they give it to the investment

1 committee, and then they make decisions.

2 Q. So you don't know the scope of the
3 reporting to the investment committee, correct?

4 A. Yeah. Outside of being able to draw
5 analogies to what I am familiar with in the industry
6 as a whole, I don't know specifically what they did
7 behind closed doors.

8 Q. Okay. Did you review any PowerPoint
9 presentations that were put together by ITA for the
10 committee?

11 A. I did.

12 Q. Okay. And about how many of those did you
13 review?

14 A. I don't recall.

15 Q. Order of magnitude --

16 A. I don't recall.

17 Q. -- less than a dozen?

18 A. Don't recall.

19 Q. More than a dozen?

20 A. Don't recall.

21 Q. Are they identified in your documents that
22 you've listed here?

23 A. They would be.

24 Q. Okay. And in Paragraph 106, you say: The
25 investment committee retained Callan to provide