

1 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CLIFTON W. MARSHALL, et al.,

3 Plaintiffs,

Case No. 16-CV-6794

4 AB(JCx)

v.

5 NORTHRUP GRUMMAN CORPORATION,

6 et al.,

Defendants.

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8
9 VIDEOTAPED DEPOSITION OF STEVE POMERANTZ, Ph.D.

10
11 New York, New York

12 Monday, October 29, 2018

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22 Reported by:

23 JEFFREY BENZ, CRR, RMR

24 JOB NO. 150159

1 A. No. But I have managed portfolios,
2 and I have performed research to support
3 portfolios that invested in emerging markets
4 assets.

5 Q. And when was the most recent time when
6 you performed research to support portfolios
7 invested in emerging markets assets?

8 A. I worked as an RIA as -- most recently
9 probably 2002 or -3. And then for several years
10 after that. I have performed research on a
11 variety of different investments that invested
12 in the emerging markets.

13 Q. And when you say you've performed
14 research, what do you mean by that?

15 A. Primarily due diligence on --
16 performing due diligence on managers who are
17 invested in, amongst other things, emerging
18 markets, being involved in the performance
19 attribution, analysis of managers who invested
20 in, amongst other things, emerging markets.

21 Q. And when you are doing this due
22 diligence, who are your clients?

23 A. Mainly fund of funds.

24 Q. And are these funds of funds
25 themselves registered investment companies?

1 A. I think some of them were. Some of
2 them weren't.

3 Q. And when did you -- this sounds like
4 this is in the past tense; is that right?

5 A. Yeah, I would say all of that work
6 terminated around 2009.

7 Q. Now, was this work done in your
8 capacity as investment management consultant for
9 Steve Pomerantz LLC?

10 A. Yes.

11 Q. According to your CV, the -- the last
12 time you worked for what I'll call an
13 institution was in 2000. Is that right?

14 A. That was my last -- I guess -- I
15 guess -- I guess you would call it a formal
16 affiliation, either through a W2 or a K-1.

17 Q. Now, when you have provided -- strike
18 that. When you've served as investment
19 management consultant, have you been required to
20 evaluate the attributes of emerging markets
21 portfolios?

22 A. In some case, yes.

23 Q. Have you evaluated any active emerging
24 markets portfolios?

25 A. Yes.

1 Q. Have you had any consulting
2 engagements that pertain specifically to
3 emerging markets?

4 A. I addressed earlier, the due diligence
5 of emerging markets fund managers for fund of
6 funds that I was employed by.

7 Q. Can you identify any particular fund
8 of funds that you advised on their emerging
9 markets portfolios?

10 A. The -- the fund of funds I worked for
11 were Gordon Asset Management, Hunt Asset
12 Management, and Galileo Asset Management.

13 Q. Do you know if those funds are still
14 in existence today?

15 A. Gordon, no. Hunt has restructured
16 several times, so it has a different name. But
17 it still exists.

18 And Galileo still exists.

19 Q. And do you know if the -- the
20 portfolios that you did due diligence for are
21 still a part of the Galileo fund?

22 A. I don't know.

23 Q. Same question for Hunt.

24 A. I don't know.

25 Q. Have you had any consulting

1 engagements that pertained to the distinctions
2 between active and passive investment vehicles?

3 A. I -- I wouldn't -- I wouldn't say that
4 I was hired to do that type of analysis. There
5 are people that I've worked for whose assets I
6 have directed either into active or passively
7 managed strategies, depending upon what those
8 assets were.

9 Q. Okay. Can you give me an example of a
10 client for whom you have determined whether to
11 direct money into actively or passively managed
12 strategies?

13 A. And insurance company called IFIC.

14 Q. And what was -- and when were you
15 engaged by IFIC?

16 A. I would say '06 to '14.

17 Or '15, '06 to '15, in that range.

18 Q. And what assets were you engaged to
19 assist with?

20 A. Most of the assets of the insurance
21 company, the -- the surplus portfolio.

22 And I guess the -- the general
23 account.

24 Q. Were you the only consultant assisting
25 IFIC with the investment of its general account

1 and surplus portfolio?

2 A. At the time that I was there I was the
3 sole consultant. I mean, I could tell you right
4 now, those responsibilities are managed in
5 house.

6 Q. Okay. So you were assisting the
7 in-house managers at IFIC with their investment
8 decisions?

9 A. Well, I was assisting the CEO. There
10 was no investment manager per se to deal with
11 that.

12 Q. Approximately how large is IFIC in
13 terms of assets?

14 A. Could be close to a billion dollars.

15 Q. And did you assist IFIC with
16 developing a diversified portfolio for its
17 approximately billion dollars in assets?

18 A. I -- I wouldn't -- I mean, for parts
19 of it, yes. For parts of it there were other
20 registered investment advisors that were hired
21 to manage specific parts of it.

22 So most -- I wouldn't say that I was
23 involved in the management of the money. The
24 fixed income components were mainly handled by
25 Dwight Asset Management, and the equity

1 components were mainly handled by Goldman Sachs.

2 Q. Do you know if IFIC invested in
3 emerging markets?

4 A. There was emerging market exposure in
5 the equity portfolio.

6 Q. And did IFIC's exposure to emerging
7 markets in the equity portfolio come through a
8 passive or actively managed strategy?

9 A. I -- I sort of want to say neither.
10 It was basically through structured notes that
11 were linked to emerging market indices.

12 Q. And what is a structured note?

13 A. A structured note is basically a bond
14 whose coupon and/or principal is linked to the
15 return of an index.

16 Q. So what you're describing is,
17 basically, a synthetic index product, right?

18 A. It's a synthetic product, and it's
19 linked to the index. But I would differentiate
20 that from a synthetic index product.

21 Q. Dr. Pomerantz, what expertise are you
22 offering as a witness in this case?

23 A. Primarily in the area of investments
24 and due diligence of investments, and damages.

25 Q. And how did you acquire expertise in

1 due diligence of investments?

2 A. It's a large part of my professional
3 career has been involved in the due diligence
4 evaluation of a wide array of investments.

5 Q. Do you have a standard process for
6 conducting due diligence of investments?

7 A. Well, I think it's very situational.
8 I mean, it definitely depends on what your --
9 depends on the problem that you're dealing with,
10 the type of investment, that you're dealing
11 with.

12 I think there's sort of a -- a general
13 framework that I think the industry would
14 embrace rather uniformly. But the
15 implementation of that framework is very
16 situational.

17 Q. And what is the general framework that
18 the industry would embrace rather uniformly?

19 A. I think a long time ago Russell put
20 forth this notion of what they call the five Ps,
21 which is basically how one would approach an
22 investment -- if you had no information, if you
23 were kind of starting from the ground zero,
24 they're sort of the areas of analysis that you
25 would pursue.

1 performance. But I think everybody would agree
2 that performance is something that needs to be
3 examined.

4 Q. Dr. Pomerantz, have you ever assisted
5 as fiduciary of a 401(k) plan?

6 A. No.

7 Q. Have you ever served as fiduciary of
8 any retirement plan?

9 A. I've worked as an IRA, and in that
10 capacity I believe I was a fiduciary for the
11 plans. But I was not hired by the plan.

12 Q. Have you ever been hired to provide
13 advice to fiduciaries of a 401(k) plan?

14 A. I -- I was an advisor to IFIC's 401(k)
15 plan.

16 Q. And what was your role as an advisor
17 to IFIC's 401(k) plan?

18 A. To help make the decision on -- on
19 selecting a menu.

20 Q. Do you know how many investment
21 options IFIC's 401(k) plan offered?

22 A. It was not that different than the
23 current -- than the subject plan, in terms of
24 what it looked like.

25 Q. Did the IFIC plan offer an emerging

1 of a balanced portfolio?

2 MR. STRUCKHOFF: Same objection.

3 A. Not really something that I've thought
4 about.

5 As I said, I think most international
6 portfolios do have an emerging markets component
7 to them. The Vanguard total international
8 market fund is enormous, is ubiquitous, and it
9 has a significant emerging market exposure.
10 There is significant emerging markets exposure
11 in most international funds.

12 Q. But you aren't taking the opinion
13 today that Northrup Grumman should not have
14 offered any emerging markets fund; is that
15 right?

16 A. It's not something I've thought about.

17 I think -- I think Russell offered an
18 opinion that it wasn't a necessary option to
19 offer. But I'm not -- I have no opinion on it.

20 Q. Dr. Pomerantz, I think you alluded to
21 this, but is there an index that measures the
22 performance of emerging markets?

23 A. There are many.

24 Q. There are many indices. Why is there
25 more than one?

1 you would have underperformed an index fund.

2 And I've similarly calculated that --
3 well, I haven't calculated it, just illustrated
4 it for five years, three years and one year. So
5 if we point to, let's say, the three-year
6 numbers, the emerging market number is the
7 lowest of the numbers in the column. For the
8 five-year numbers, it is the fourth lowest of
9 the five numbers that are listed.

10 So, on a -- what's -- what would --
11 what one could say is that on a three-year
12 basis, Vanguard's emerging market index fund
13 performed better than more of the mutual funds
14 in its category, relative to all of these other
15 categories.

16 Q. Now, this process of determining where
17 the Vanguard index fund ranks in its peer group,
18 is this a process that you've used for any of
19 your clients in your professional business?

20 A. This -- this is how -- yeah, this is
21 how -- this is very publicly available
22 information. This is -- Vanguard puts this
23 information out there. It's publicly available.
24 It's available for free.

25 Q. That's not the question I asked.

1 A. Yeah, and in fact, Morningstar rank
2 is -- is a very important number. As an IRA, we
3 were always aware of what our Morningstar rank
4 was for mutual funds that we managed.

5 Q. Have you ever used the Morningstar
6 rank of the Vanguard index fund to advise a
7 client whether a passive or active management
8 strategy was warranted?

9 A. I -- as I -- well -- I think to the
10 extent that I've been involved in that decision,
11 it was driven by a number of -- of other
12 factors. As I -- as I alluded to earlier with
13 IFIC, where we did have an emerging market
14 exposure, it was actually a structured note
15 targeted to the index, which is different than
16 an actively managed fund. It's not an actively
17 managed fund.

18 But it's not really passive, either.
19 It's passive in the sense that it's not making
20 an active bet about sectors or countries or
21 securities within the emerging market industry,
22 but that was a specific decision. That was not
23 a decision to look at mutual funds.

24 If I was interested in investing in a
25 mutual fund, this is certainly relevant

1 information. But I don't -- I don't think I've
2 ever been in the position of having to advise
3 someone to invest in an emerging market mutual
4 fund.

5 Q. Well, even setting aside the question
6 of whether emerging markets were elsewhere, have
7 you ever used the Morningstar rank of Vanguard
8 index funds to advise a client as to whether
9 active or passive management was the better
10 strategy for an asset class?

11 A. I did not have the opportunity to need
12 to use Morningstar rankings, because the
13 decision was being driven by something much --
14 much more fundamental.

15 Q. So in your professional career, you
16 have never used the Morningstar rank of Vanguard
17 index funds to advise a client as to whether
18 active or passive management was the better
19 strategy for an asset class?

20 MR. STRUCKHOFF: Objection. Asked and
21 answered.

22 A. Yeah, I think I answered this, and
23 again, I'm not using this chart to illustrate
24 that emerging markets is an appropriate class
25 for active or passive management. I'm merely

1 MR. STRUCKHOFF: Objection. Vague.

2 A. I -- I don't know. I mean, there's a
3 lot of analysis in the production. I can't
4 recall.

5 Q. Okay. But what I understand you to be
6 doing is you've picked a couple of instances in
7 which you think that international and emerging
8 markets are similarly situated. Right?

9 A. I -- I have tried to -- to do an
10 apples-to-apples comparison to -- to basically
11 illustrate that a decision made in international
12 would apply in emerging markets. I have not
13 seen anything in the production that would
14 support a decision counter to that.

15 Q. And I guess my question is whether you
16 have seen an evaluation of passive management
17 conducted by Northrop that evaluates across all
18 the factors that were being considered, the
19 desirability and passive management for emerging
20 markets compared to developed markets.

21 MR. STRUCKHOFF: Objection. Vague.

22 Compound.

23 A. I don't know what you mean by
24 "desirability." As I said, I'm interested in an
25 apples-to-apples comparison. I haven't seen

C E R T I F I C A T E

[illegible]

I JEFFREY BENZ, a Certified Realtime Reporter, Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify:

That STEVE POMERANTZ, Ph.D., the witness whose examination is hereinbefore set forth, was duly sworn by me and that this transcript of such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 31st of October, 2018.

JEFFREY BENZ, CRR, RMR