

6 THE VIDEOGRAPHER: Would the court reporter
7 please swear in the witness.

8 (Whereupon the witness was sworn)

9 CHARLES PHILLIPS,

10 having been first duly sworn, testified as follows:

11

12 EXAMINATION

13 BY MR. SCOTT:

14 Q. All right, Mr. Phillips, could you state your
15 name for the record, please.

16 A. Charles Phillips.

16 Q. All right, sir, your current position with
17 Oracle I understand has changed since the last time your
18 deposition was taken.

19 A. Yes, current title is now president.

20 Q. All right, sir, how long have you held the title
21 of president of Oracle?

22 A. Since, I think, January of this year.

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1 Q. All right, sir, and with the title change, did

2 you accumulate any additional duties and

3 responsibilities?

4 A. Yes.

5 Q. What are they?

6 A. I have the responsibility for field operations,

7 so global consulting, global sales, global marketing, and

8 alliances and channels.

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21 Q. All right, sir.

22 MR. SCOTT: Let's get that marked.

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1 (Marked Deposition Exhibit No. 895)

2 MR. SCOTT: Q. All right, sir, before you
3 joined Oracle, you worked at Morgan Stanley; correct?

4 A. That's correct.

5 Q. What was your position there?

6 A. I was an analyst.

7 Q. And were you -- did you have any designation
8 beyond that? Were you a senior analyst, executive --

9 A. Managing director.

10 Q. And what does managing director mean? What were
11 your duties and responsibilities as such?

12 A. Well, I was responsible for research coverage of
13 the enterprise software industry and also for training
14 some junior analysts and various other management
15 committees.

16 Q. Did you have an equity position with Morgan
17 Stanley?

18 A. Yes.

19 Q. Were you a partner with Morgan Stanley?

20 A. Well, it was a public company so you don't use
21 the term "partner" any longer. I guess the term really
22 didn't apply.

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1 Q. But what was the nature of your equity position
2 at Morgan Stanley while you were there?

3 A. Just stock and options.

4 Q. All right, sir, how long were you a managing
5 director with Morgan Stanley, from when to when?

6 A. I think from -- became a managing director in
7 '95 I believe through 2003.

8 Q. All right, sir, was there an equity research
9 group at Morgan Stanley?

10 A. Yes.

11 Q. Were you a member of that group?

12 A. Yes.

13 Q. What was the -- could you describe what the
14 equity research group consists of, consisted of while you
15 were there?

16 A. Okay. The research group consisted of analysts,
17 several hundred analysts around the world, following
18 various industries and companies.

19 Q. Now, when you use the term "analysts" in the
20 context of what you did at Morgan Stanley, what does that
21 involve? What type of activities were you involved in?

22 A. Provided investment advice to institutional

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1 investors was the primary job, and based on research on
2 which companies were more attractive for investment.

3 Q. So you would track companies, watch companies'
4 performance, watch the companies -- the markets those
5 companies were performing in and give research advice to
6 investors?

7 A. That's correct.

8 Q. Now, did that research advice include oral
9 advice as well as written advice?

10 A. Yes.

11 Q. So you might have investors call you up and ask
12 individualized questions about a company or a particular
13 industry as well as you issuing periodically written
14 advice about companies and markets; correct?

15 A. That's correct.

16 Q. Now, you have in front of you what's been marked
17 as Exhibit 895 to your deposition. It's a multi-page
18 document bearing identification numbers M.S. 00912
19 through M.S. 00920, and I'll ask you if this is one of
20 the written pieces of information that was prepared at
21 Morgan Stanley and issued to investors?

22 A. This was prepared at Morgan Stanley and issued

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1 to investors.

2 Q. Now, this particular one was issued under your
3 name; correct?

4 A. That's correct, as the supervisory analyst, yes.

5 Q. And Evan Bloomberg, who is also listed here
6 under you, was who?

7 A. He was a research associate and in many of the
8 routine reports like this one, which was just writing up
9 a quarter, the research associates would write those as
10 part of the training.

13 You said that you were the supervising analyst;
14 correct?

15 A. Yes.

16 Q. So Mr. Bloomberg would have been acting under
17 your direction and control with relation to the work he
18 did on Exhibit 895?

19 A. Yes, I would have been responsible for reviewing
20 anything that went out.

21 Q. And was it -- does Morgan Stanley have any
22 internalized or did when you were there, any internalized

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1 rules regarding being as accurate as possible when they
2 issue advice, either oral or written, to investors?

3 A. Yes.

4 Q. What did those rules consist of?

5 A. Should be accurate as much as possible and to
6 the best of your knowledge, and should have done research
7 to have a view.

8 Q. As a supervising analyst, did you follow those
9 guidelines while you were with Morgan Stanley?

10 A. Yes.

11 Q. Now, did Morgan Stanley also have any, to your
12 knowledge, responsibilities regarding, you know, the
13 accuracy of the information it issued to investors such
14 as exhibit 895 to any governmental agencies? For
15 example, did the SEC have any rules you had to follow
16 regarding analysts advice?

17 A. Well, yes. You'd have to -- this came later. I
18 don't know if these rules were in place for this
19 report -- but certify that to the best of your knowledge,
20 you know, the information was accurate. But it's the
21 future -- and a lot of the things that are in these
22 reports are talking about future developments or opinions

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1 and all you can do is reflect your opinion at that point
2 in time.

3 Q. Based on the research that you did as accurately
4 as you can do it?

5 A. Based partially on that, but a lot of its based
6 also on experience and extrapolation from that research
7 and analysis.

8 Q. Now, the reports such as Exhibit 895, to your
9 deposition, those would be issued to investors; correct?

10 A. Well, this -- make sure this is what I think it
11 is.

12 This particular report was issued to investors
13 but because it's an earnings report after the earnings
14 are already out and everyone's already seen the
15 information, very few people actually read these reports.

16 Q. How do you know who read it and who didn't? Is
17 there some way that they sent it back to you and
18 confirmed whether they read the report or not?

19 A. Because normally I've already talked to the
20 investors. They don't need to read it and they've heard
21 the same conference call I heard and so they get tons of
22 these from every research house, the same quarter, not

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1 much differentiation, reporting what happened, so there's
2 no need to read them.

3 A. And I started in the business on the other side
4 of the fence in the buy side so I know that because I was
5 basically a client.

6 Q. Let me ask you this, how many investors would a
7 report such as Exhibit 895 have been sent to?

8 A. I don't have the exact number, but thousands --
9 but electronically anyway.

10 Q. All right, sir, would they also have been sent
11 it in hard copies as well as electronic to some
12 customers?

13 A. I stopped sending them out in hard copy because
14 it's a waste of money, they weren't getting read and
15 nobody noticed.

16 Q. You still sent them to your investors by
17 electronic version?

18 A. They were available electronically and you
19 could -- some investors subscribed to them and had all
20 reports automatically sent to them, other ones it was on
21 a demand basis. They would come get the reports if they
22 needed to see it.

7 Q. In issuing reports such as, and including
8 Exhibit 895, to the best of your ability, you followed
9 the guidelines of Morgan Stanley in determining that the
10 information that you were sending to investors was
11 accurate as possible?

12 A. Well, most of the interaction with the investors
13 wasn't by means of reports and so what they paid for was
14 not just a report, but access to the analysts and to have
15 discussions with them and the verbal advice was more
16 important than the written.

17 MR. ROSCH: The question is did you try to be
18 accurate in this report.

19 A. Oh, yes.

20 MR. SCOTT: Q. From your perspective, whether
21 you were giving the investors advice in written form,
22 such as Exhibit 895, or in oral form, you tried to be as

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1 accurate and thorough as possible?

2 A. Yes.

5 MR. TOBEY: May I just for the say for the
6 record. You've been referring to Exhibit 15. Are there
7 two exhibits?

8 MR. SCOTT: I'm sorry. We've got it wrong. I'm
9 doing the one with the sticker that I had here. The
10 question's I have here, we can either do one of two
11 things. I can go through all of them again or we can
12 just have her reflect in the record that I'm talking
13 about Exhibit 895.

14 MR. ROSCH: As far as I'm concerned, it can
15 reflect Exhibit 895. The record should simply also
16 reflect that 15, which is also on the document means that
17 it was also an exhibit in his CID deposition.

18 MR. SCOTT: I have no problem reflecting that.
19 So go back and we'll just fix the questions and answers
20 so we're talking about Exhibit 895.

3 Q. Are you an economist?

4 A. No, I'm not.

5 Q. Have you ever purported in any of the reports of
6 that kind, that is to say, referring to Exhibit 895, have
7 you ever purported to give investors an economic analysis
8 of any market?

11 A. I've never purported to be an economist or
12 present this information as a formal economic analysis,
13 especially since it's a quarterly report and that's not
14 the place any one would do economic analysis for any
15 broad market. It's just a quarterly write-up.

16 Q. What did you mean then when you said -- when you
17 used the word oligopoly in that sentence?

18 A. I used it as a colloquial term, the term
19 oligopoly, and to describe the leading companies with the
20 most recognized brand names and who were public.

21 So I was speaking to people who only cared about
22 public companies and at the time I only cared about

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1 public companies, as well, since it's an investment
2 document. And it's more of a marketing term used to
3 describe the leading brand names in that particular area.
4 Q. Have you ever attempted to define a market in
5 the sense that that term, the term "market" is used by
6 economists?

8 A. No, I haven't attempted to do that.

9 MR. ROSCH: Q. Have you ever tried to determine
10 whether any firm or group of firms collectively had
11 market power, as that term is used by economists?

14 A. No, I've never tried to do that.

15 MR. ROSCH: Q. Have you ever tried to analyze
16 the barriers to entry into a market in the sense that
17 entry barriers are defined by economists?

19 A. No, I've never tried to do that.

20 MR. ROSCH: Q. Do you even know how economists
21 define entry barriers?

22 A. No, I don't.

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1 Q. Do you know how economists define market power?

2 A. No, I don't. I understand the concept but I

3 don't know how they define it.

7 Q. Just a couple, Mr. Phillips.

8 Now, in the document here it says, "Stepping

9 back a bit, the back office applications market for

10 global companies is dominated by an oligopoly comprised

11 of SAP, PeopleSoft and Oracle. The market is down to

12 three viable suppliers who will help reautomate the back

13 office business processes for global enterprises for

14 years to come. These are critical functions, and while

15 most companies had begun implementing these products, few

16 have completely rolled out a suite across all locations

17 in countries on the latest version of technology."

18 Do you see that language?

19 A. Yes.

20 Q. That was issued by Morgan Stanley under your

21 name; correct?

22 A. That's correct.

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1 Q. And under Morgan Stanley's practices, you
2 believe that to have been true and accurate as possible
3 when you issued it; correct?

4 A. I believed that it was accurate in the context
5 of how we used those words in the investment community
6 and how I was presenting it in the context of a short
7 quarterly earnings report and not an economic analysis.

8 Q. These reports such as Exhibit 895, you said were
9 issued on a quarterly basis by Morgan Stanley when you
10 were there?

11 A. Yeah, quarterly reports obviously are issued
12 quarterly for earnings reports which is a separate
13 category of reports. The ones I described are not widely
14 read, mostly written by associates because of that, and
15 are commoditized because they restate the quarter that
16 just came out so it's the least important of the reports
17 that were published.

18 Q. But even with these reports, though, you're now
19 referring to them as being the least important, you would
20 try to make them accurate under the guidelines of Morgan
21 Stanley because you were providing them to investors that
22 did business with Morgan Stanley?

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1 A. Yes. Try to make all reports accurate, but the
2 terms used in the investment community differ from the
3 way those terms may be used in other circles.

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