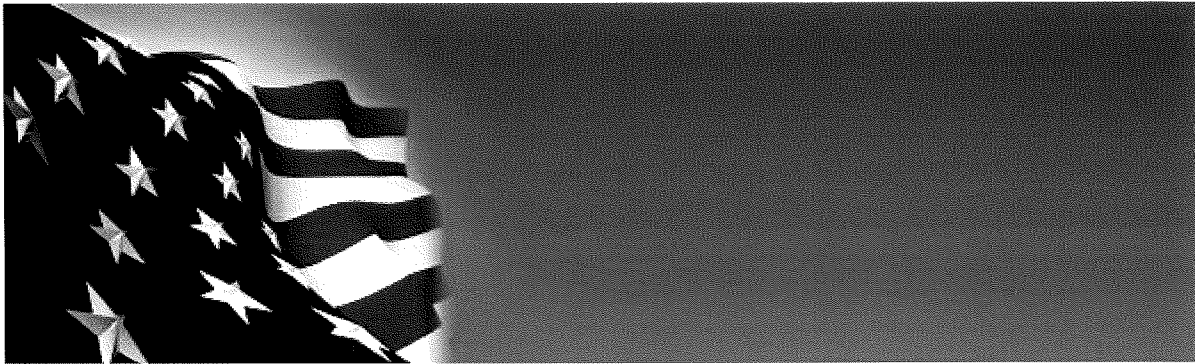


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CYPEN & CYPEN NEWSLETTER for FEBRUARY 19, 2015

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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

1. ACTIVE INVESTING VERSUS PASSIVE: Financial research and benchmarking provider CEM Benchmarking, as reported in plansponsor.com, says its new report contains enough data to prove active investing is worthwhile for pension funds, if executed efficiently and effectively. "Value Added by Large Institutional Investors Between 1992-2013" confirms a widely held academic and investment industry belief that active investors have, on average, no real advantage over passive investors in the long term, and can even see worse performance over time due to higher fees. This view on investing strategy is rooted in the efficient market hypothesis. Historically, a problem with testing the benefits of active versus passive investing was that the separation between alpha (market outperformance) and beta (market attributable returns) is not always clear. But while some say the question of active versus passive cannot be definitively answered, CEM Benchmarking believes the answer can be made clear by looking at enough information. To that end, the firm

conducted extensive analysis on its pension performance data set, composed of more than 6,600 data points drawn from a global set of defined benefit plans, spanning the 1992 to 2013 time frame. The results are eye opening: gross of investment management expenses, pension funds have secured 58 basis points of value added returns through alpha-seeking opportunities. Net of investment management fees and expenses, the outperformance is much more muted, at 16 basis points of returns added. The result is nuanced further: the standard deviation of the gross and net value-added populations, at about 267 and 265 basis points, are large in comparison with the averages at 58 and 16 basis points, respectively, gross and net. For any single pension fund, this result is likely just as important as the non-zero average. The standard deviation indicates the range that a typical plan, with typical active versus passive management ratio of 4:1, can expect its value added to stray from the average. So, while the long-term average gross and net value included are decidedly non-zero, in any given year many funds will trail their benchmarks, often by substantial margins. Here are some of CEM's specific findings:

- Pension funds increased their net value added by +7.6 basis points for every 10-fold increase in holdings due to lower investment management costs;
- Funds increased their net value added by +22.1 basis points by managing their assets in-house due to lower investment management costs;
- Funds increased their net value added by +38.7 basis points by actively managing their assets in an attempt to beat the market (note, this figure is less than the +71.7 basis points gross due to investment management costs); and
- The regression constants, themselves, are also reduced going from gross to net value added because indexed investing, while inexpensive relative to active management, also has associated investment management costs.

The general conclusion is, contrary to the efficient market hypothesis, pension funds have been able to beat the market consistently using elements of active management. However, fees associated with active management consistently eat up nearly 75% of the 58 basis points of gross value added, leaving only 16 basis points of net value added for stakeholders.

2. ERISA TELEPHONIC BENEFICIARY CHANGE PASSES LEGAL MUSTER: A panel of U.S. Ninth Circuit Court of Appeals has reversed a district court's summary judgment in an ERISA interpleader action seeking a determination as to the proper beneficiary of proceeds under two employee benefit plans. The plan participant formally designated his wife as his beneficiary. After their divorce, he designated his son as beneficiary over the telephone, but did not sign and return beneficiary designation forms. The panel held that the beneficiary designation forms were not "plan documents" governing the plan administrator's award of benefits. The panel concluded that there was a triable issue as to whether, under state law, the plan participant strictly or substantially complied with the governing plan documents' requirements for changing his beneficiary designation. Nothing of the governing plan documents prevents unmarried participants from designating beneficiaries by telephone call. They even provided that unmarried participants may change the designation of beneficiary from time-to-time. In clarifying the requirements of the underlying Plan Agreements, both SPDs instruct unmarried participants to call the company benefits center or to visit the company website in order to change or to complete a beneficiary designation. And while the plan documents require written designations for married participants, they do not impose any sort of writing requirement on unmarried participants. Thus, a reasonable trier of fact could determine that the participant intended to change his beneficiary and that his telephone calls to the company constituted substantial compliance with the governing plan documents' requirements for changing his beneficiary designation. Thus, summary judgment in favor of the ex-wife cannot be sustained, and the case was remanded for further proceedings consistent with the opinion. *Becker v. Mays-Williams*, Case No. 13-35069 (U.S. 9th Cir. January 28, 2015).

3. TOP TEN JOBS IN AMERICA FOR 2015: While mobile developers and physical therapists made it into the top 25 list of best jobs, the following 10 are the crème de la crème. Glassdoor has put together the list, using scores based on three factors: earning potential based on average annual base salary, career opportunities and number of job openings:

- Physician assistant

- Software engineer
- Business development manager
- Human resources manager
- Finance manager
- Marketing manager
- Database administrator
- Product manager
- Data scientist
- Sales manager

4. TEN MOST EXPENSIVE CARS IN THE WORLD: A new car can be pricy these days. If you want a very special sports car with a bigger, more powerful engine and more luxury, the price tag can be out of sight. These beauties can cost you an arm and a leg. Here are the top ten most expensive sports cars in the world:

- Porsche 918 Spyder. With only 918 in production, this limited edition Porsche is also a hybrid. Price tag: \$850,000.
- Hennessey Venom GT. Modified the frame of a Lotus, giving it a 7 liter twin turbo V8 engine that produces 1,200 horsepower. Price tag: \$1 million.
- McLaren P1. As a successor to the legendary McLaren F1, this hybrid comes with a 3.8 liter twin turbo V8 engine that unleashes 727 horsepower. Price tag: \$1.3 million.
- Pagani Huayra. Named after the South American god of winds, and rightly so. Incredibly light, weighing only 2,980 pounds. Price tag: \$1.3 million.
- Ferrari LaFerrari. The most expensive and powerful car ever built by Ferrari Motors. Known also as the F150. Price tag: \$1.4 million.
- Lamborghini Reventón. Redesign of the Murciélago, using the frame and engine. Price tag: \$1.6 million.
- Koeniggsegg One:1. Fastest production car in the world, has a verified top speed of 280 miles per hour. Price tag: \$2 million.
- Bugatti Veyron Super Sport. The previous holder of the title as the world's fastest production car. Price tag: \$2.5 million.
- Lykan Hypersport. Considered to be the most luxurious vehicle ever made, this Lebanese-produced (???) car earns its title thanks to the 15-carat diamonds that line its headlights. Price tag: \$3.4 million.
- Lamborghini Venenos. There are only 4 Venenos in existence.

They were made to celebrate Lamborghini's 50th anniversary.
Price tag: \$4 million.

5. MOST BIZARRE EXCUSES FOR BEING LATE TO WORK:

Getting to work on time can be hard enough without added obstacles such as a snowstorm. Traffic is the most common cause of tardiness among employees (50%), followed by lack of sleep (30%) and bad weather (26%). But according to a list put together by CareerBuilder for EBN Benefit News, those are just the tip of the iceberg. Here are some of the most bizarre reasons employees actually said they were late to work. Although items like these are generally space fillers, you will have to admit that this particular bunch is great:

- I knocked myself out in the shower.
- I was drunk and forgot which Waffle House I parked my car next to.
- I discovered my spouse was having an affair, so I followed him this morning to find out who he was having an affair with.
- Someone robbed the gas station I was at, and I did not have enough gas to get to another station.
- I had to wait for the judge to set my bail.
- There was a stranger sleeping in my car.
- A deer herd that was moving through town made me late.
- I was not late. I was thinking about work on the way in.
- I dreamed that I got fired. (Be careful what you wish for.)
- I went out to my car to drive to work, and the trunk had been stolen out of it.

6. POLICE HARASSMENT: Recently, the Chula Vista, California, Police Department ran an e-mail forum with the local community (a question and answer exchange), with the topic being, "Community Policing." One of the civilian e-mail participants posed the following question:

I would like to know how it is possible for police officers to continually harass people and get away with it?

From the law enforcement side, Sgt. Bennett, obviously a cop with a sense of humor, replied:

First of all, let me tell you this...it is not easy. In Chula Vista, we average one cop for every 600 people. Only about 60% of those cops are on general duty (or what you might refer to as "patrol"), where we do most of our harassing. The rest are in non-harassing departments

that do not allow them contact with the day-to-day innocents. At any given moment, only one-fifth of the 60% patrollers are on duty and available for harassing people, while the rest are off duty. So, roughly, one cop is responsible for harassing about 5,000 residents.

When you toss in the commercial business and tourist locations that attract people from other areas, sometimes you have a situation where a single cop is responsible for harassing 10,000 or more people a day.

Now, your average ten-hour shift runs 36,000 seconds long. This gives a cop one second to harass a person, and then only three-fourths of a second to eat a donut and then find a new person to harass. This is not an easy task. To be honest, most cops are not up to this challenge day in and day out. It is just too tiring. What we do is utilize some tools to help us narrow down those people which we can realistically harass.

The tools available to us are as follow:

PHONE: People will call us up and point out things that cause us to focus on a person for special harassment. "My neighbor is beating his wife" is a code phrase used often. This means we will come out and give somebody some special harassment. Another popular one: "There is a guy breaking into a house." The harassment team is then put into action.

CARS: We have special cops assigned to harass people who drive. They like to harass the drivers of fast cars, cars with no insurance or no driver's licenses and the like. It is lots of fun when you pick them out of traffic for nothing more obvious than running a red light. Sometimes you get to really heap the harassment on when you find they have drugs in the car, they are drunk or have an outstanding warrant on file.

RUNNERS: Some people take off running just at the sight of a police officer. Nothing is quite as satisfying as running after them like a beagle on the scent of a bunny. When you catch them you can harass them for hours to determine why they didn't want to talk to us.

STATUTES: When we do not have PHONES or CARS and have nothing better to do, there are actually books that give us ideas for reasons to harass folks. They are called "Statutes"; Criminal Codes, Motor Vehicle Codes, *etc...* They all spell out all sorts of things for which you can really mess with people. After you read the statute, you can just drive around for a while until you find someone violating one of these listed offenses and harass them. Just last week I saw a guy

trying to steal a car. Well, there is this book we have that says that is not allowed. That meant I got permission to harass this guy. It is a really cool system that we have set up, and it works pretty well. We seem to have a never-ending supply of folks to harass. And we get away with it. Why? Because for the good citizens who pay the tab, we try to keep the streets safe for them, and they pay us to "harass" some people. Next time you are in my town, give me the old "single finger wave." That is another one of those codes. It means, "You cannot harass me." It is one of our favorites.

Hopefully, Sir, this has clarified to you a little bit better how we harass the good citizens of Chula Vista.

7. NEWS IQ TEST: This little test is brought to us by the Pew Research Center. It surely indicates that a majority of Americans do not know what is going on in the world today. The results show that 80% of the (voting) public does not have a clue, and that is pretty scary. There are no tricks here -- just a simple test to see if you are up-to-date on current affairs. Test your knowledge with the challenge of 13 questions, then be ready to shudder when you see how others did: if you get less than half correct, please cancel your voter registration. Here is the link for the IQ test: <http://www.pewresearch.org/quiz/the-news-iq-quiz/>

8. DILLERISMS: My photographs do not do me justice - they look just like me. Phyllis Diller

9. YOU KNOW YOU ARE LIVING IN 2015 when...: You have a list of 15 phone numbers to reach your family of three.

10. TODAY IN HISTORY: In 1968, 1st U.S. Teachers strike (Florida).

11. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

12. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter

a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

13. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.

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