

Federal Court Rejects Mutual Fund Excessive-Fee Claims

In a setback for plaintiffs taking aim at mutual fund fees, the federal trial court for the District of Minnesota on July 6, 2007 rejected shareholders' claims of excessive management and 12b-1 fees under Section 36(b) of the Investment Company Act against mutual fund adviser and distributor Ameriprise Financial. This decision marks only the second time a court has granted summary judgment in a Section 36(b) excessive fee case, rejecting the plaintiffs' claims on the merits without a trial following discovery. The previous instance of such a ruling came earlier this year, when Harris Associates achieved a similar victory in the Northern District of Illinois. That decision is currently on appeal to the Seventh Circuit Court of Appeals.

The plaintiffs' primary theory of liability in these cases is that mutual fund managers achieve significant economies of scale as funds grow in size, and that these cost savings are not adequately passed along to shareholders through break-points or other fee reductions. As evidence of this, plaintiffs rely heavily on differences between the fees that advisers charge to mutual funds and what they charge to institutional and sub-advisory clients.

In rejecting these claims, the District of Minnesota applied reasoning similar to that used by the Northern District of Illinois to a different set of facts and dismissed the shareholders' claims in their entirety. Significantly, the judge last week also rejected the plaintiffs' central theory that an excessive-fee claim can be proven by showing that the adviser charges higher fees to manage a mutual fund than it charges to manage institutional or sub-advisory accounts.

This suit is one of a dozen virtually identical cases brought by a consortium of plaintiffs' firms against various fund advisers around the country. Three of those cases have settled; the rest remain pending. Ropes & Gray litigators John Donovan and Rob Skinner led the teams that achieved the summary judgment victories on behalf of Ameriprise and Harris.

For the full text of the court's July 6, 2007 decision in *Gallus v. Ameriprise Financial, Inc.*, please [click here](#). For the full text of the February 27, 2007 decision in *Jones v. Harris Associates L.P.*, please [click here](#); and for Ropes & Gray's client alert on the *Harris* decision, please [click here](#).

Contact Information

If you have any questions or would like to learn more about the issues raised in the court's decision, please contact the Ropes & Gray lawyer who normally represents you or one of the following Ropes & Gray litigators involved in the case:

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