Allegations of Excessive Mutual Fund Fees

Cornerstone Research worked with three experts in the first excessive fee case to proceed to trial since the U.S. Supreme Court’s 2010 decision in *Jones v. Harris.*

_Sivolella et al. v. AXA Equitable Life Insurance Company et al._

Retained by Milbank, Tweed, Hadley & McCloy

Defense counsel retained Cornerstone Research and three experts in the first excessive fee case to proceed to trial since the U.S. Supreme Court’s 2010 decision in *Jones v. Harris.* Cornerstone Research worked with experts on cost accounting, industry economics, and fund performance issues.

“The court finds defendants’ experts to be credible, in that they provided direct answers, and relied on comprehensive and reliable materials in reaching their conclusions.”

The trial in the U.S. District Court for the District of New Jersey focused on the plaintiffs’ claim that AXA Equitable violated the Investment Company Act of 1940 by charging investors excessive fees for investment advisory and administrative services, and then delegated those same services to sub-advisors and sub-administrators. Six months after the twenty-five-day trial concluded, Judge Peter G. Sheridan issued his decision, dismissing all the plaintiffs’ claims with prejudice and awarding no damages.

Expert testimony played a key role in this case, with the judge commenting extensively in his opinion on the experts’ work. Our firm worked with three experts:

- Professor William Holder of the University of Southern California opined on cost accounting.
- Professor Russell Wermers of the University of Maryland served as an expert on fund performance.
- Professor Christopher James of the University of Florida addressed industry economics.
Professor Holder testified at trial on the methodology used to allocate costs for the purposes of estimating fund profits, finding that it was reasonable. He further testified that AXA Equitable’s sub-advisory and sub-administrative fees should be categorized as expenses rather than reductions in revenue. Regarding his testimony, the judge stated, “Holder was also a reliable and credible witness. After presenting his findings on the eight indicator factors for gross revenue reporting, Holder persuasively argued that sub-advisory and sub-administrative fees should be categorized as expenses rather than reductions in revenue.”

Professor Wermers testified on mutual fund performance and investment management services. The judge praised his testimony: “The Court finds that Wermers provided thorough descriptions of the individual funds... Wermers also pointed out flaws in the testimony provided by Plaintiffs’ expert... Thanks to Wermers, the Court found that [the plaintiffs’ expert’s] findings suffered from incorrect dates, untimely benchmarks, and calculation errors.”

Professor James testified on economies of scale, comparative fees, and investment manager risk. The judge quoted Professor James extensively in his opinion, concluding that “the Court finds James’ testimony to be credible... [T]he Court gives more weight to James than to [the plaintiffs’ expert].”

The judge ruled that the trustees had not breached their fiduciary duties and that the plaintiffs had not incurred damages.