

Axa Decision Has Tips, Warnings for Others Facing Fee Suits

By Beagan Wilcox Volz, *Ignites*, August 30, 2016 [subscription required]

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After a 25-day trial earlier this year, a federal judge ruled last week that the plaintiffs in a lawsuit against Axa Equitable failed to prove the firm charged excessive fees on about a dozen mutual funds offered within variable annuities and show actual damages.

The [decision](#) is a win for the broader asset management industry if for no other reason than that it upholds the status quo: Plaintiffs have never won a trial involving alleged excessive fees under the Investment Company Act of 1940.

But the recent decision is particularly significant for the industry because it was the first of a spate of more than a dozen cases filed in recent year to go all the way to trial. In the cases, plaintiffs have focused on the relationship between advisors and subadvisors, and the fees charged and services provided by each.

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The court also found that the plaintiffs did not provide the evidence necessary to meet the legal standard for proving excessive fees: that the fees charged by the advisors were so disproportionate to the services rendered that they could not be the result of arm's-length bargaining.

The judge notes, for example, that the plaintiffs did not give a “comprehensive breakdown” of the fees that the advisor retained compared to those paid to the subadvisors and sub-administrators.

“[T]he court notes that while it is clear how much the [subadvisors and sub-administrators] were paid for all years in question, it remains unknown how much [the advisor] retained in fees. This makes the Court’s ultimate decision in this case nearly impossible,” the decision states.

The fact that the judge was not impressed with the witnesses and data presented to him raises the bar for other plaintiffs, says Niels Holch, executive director of the Coalition of Mutual Fund Investors, who has been tracking the '40 Act fee suits.

“That to me doesn’t close the door on all these other cases,” says Holch. “The plaintiffs have to do a better job of proving their case.”