

Cheaper Fee-Suit Settlements Likely After Hartford, Axa Wins

By Beagan Wilcox Volz, *Ignites*, March 16, 2017 [subscription required]

http://www.ignites.com/c/1588273/185003/cheaper_suit_settlements_likely_after_hartford_wins?referrer_module=issueHeadline&module_order=1

The Hartford's victory last month in an excessive-fee case represents the second post-trial triumph in the past year for an asset manager facing such claims — and both wins bode well for the more than a dozen other firms fighting similar cases, industry attorneys say.

Only nine cases alleging excessive fees under the Investment Company Act of 1940 have gone to trial since the provision allowing fund shareholders to bring such suits was adopted in 1970, and the defendants have always prevailed.

The industry kept particularly close tabs on the trials of the suits against Axa **Equitable** and Hartford over the past year because they were the first of a spate of cases brought since 2010 to reach trial. In contrast to excessive-fee suits filed in previous decades that focused solely on advisory fees, the more recent cases test new areas of liability stemming from the discrepancy between subadvisory and advisory fees and related services.

“We’re getting close to a trend here, since we had both the Axa and Hartford case after trial get decided for the advisor,” says Michael Isenman, partner at Goodwin. “[W]e’re likely to see more settlements, and I think the settlement value ... will have gone down,” he adds, speaking about the subset of recent fee cases that industry attorneys refer to as “manager of managers” suits.

* * * * *

But at least one industry observer says it's too early to tell whether the Axa and Hartford decisions portend future victories for other firms.

“Despite the Axa and Hartford decisions, I think it is too early to conclude anything of significance about the overall health of these subadvisory cases,” writes Niels Holch, partner at Holch & Erickson and executive director of the Coalition of Mutual Fund Investors, in an e-mail response to questions. “These subadvisory cases are going to go through a ‘trial and error’ process and they are far from over.”