

Judge Deals MetWest Another Setback in '40 Act Fee Case

By Beagan Wilcox Volz, *Ignites*, October 2, 2017 [subscription required]

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A federal judge in California has dealt **Metropolitan West** another setback in its fight to defeat a '40 Act fee suit involving the firm's \$80.1 billion Total Return Bond Fund.

The plaintiff sued MetWest in October 2015 for allegedly charging much higher fees to manage Total Return Bond than it does for the subadvisory work it conducts on third-party funds, which the plaintiff claims involve nearly the same services.

The case survived MetWest's motion to dismiss in June 2016, and District Judge George Wu in the Central District of California ruled that discovery would occur in phases. The first phase focused on "whether the services provided to the Fund and Subadvised Funds are substantially similar," according to court documents.

When that phase concluded last year, MetWest sought summary judgment, asking the court to rule that the plaintiff's proposed comparison of advisory and subadvisory fees is "inapt," court documents show.

MetWest argued that such a comparison should not be permitted at trial because the shop provides services to the Total Return Bond Fund beyond those it provides to funds for which it acts only as a subadvisor.

The court was not convinced.

Wu [ruled](#) last month that the plaintiff can compare the fees the shop charged for running the Total Return Bond with those it levied on unaffiliated funds for which it was a subadvisor.

"[T]here does not appear to be any authority for issuing summary adjudication on the narrow issue of the fee comparison alone," the court stated in a Sept. 22 ruling.

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"This case bears watching, as the judge seems more sympathetic to the plaintiff than the judges in the New Jersey subadvisory cases," says Niels Holch, executive director of the Coalition of Mutual Fund Investors. Holch is tracking a spate of '40 Act cases filed in recent years that focus on differences between advisory and subadvisory fees and related services.