

Plaintiffs Quit on Prudential Fee Case Without Settlement

By Beagan Wilcox Volz, *Ignites*, February 3, 2017 [subscription required]

http://www.ignites.com/c/1558223/180553/plaintiffs_quit_prudential_case_without_settlement?referrer_module=issueHeadline&module_order=2

The plaintiffs in a '40 Act excessive-fee case against Prudential **Investments** have dropped their claims, according to a Feb. 1 [court filing](#) that includes some unusual language.

After reviewing materials from the fund board as part of the discovery process, the plaintiffs “concluded that it is appropriate to dismiss the action,” the filing states.

But it goes on to state, “Plaintiff and Prudential further stipulate that this dismissal is not the result of a settlement or compromise or the payment of any consideration to Plaintiffs.”

* * * * *

While plaintiffs have voluntarily dropped claims in numerous such excessive-fee cases, the move often signals a confidential settlement. The fact that the filing states explicitly that there was no such agreement in the case against Prudential is what makes this case somewhat different.

“One fear when settling a 36(b) case is that it will encourage other plaintiff firms to file a new complaint,” says a '40 Act litigator, who requested anonymity because of client sensitivities. “Making public that there was no payment [as part of a settlement] would help counteract that.”

Many defendants would want to include such a provision “if they could,” says the lawyer.

* * * * *

“It’s hard to know exactly what transpired, but I expect the plaintiffs decided after discovery started ... that they didn’t have a strong case, and so they moved to dismiss it,” says Niels Holch, partner at Holch & Erickson and executive director of the Coalition of Mutual Fund Investors, referring to the recent dismissal of the Prudential case.