

# Axa Excessive-Fee Suit: Next Stop, Settlement or Trial

By Beagan Wilcox Volz, *Ignites*, August 11, 2015 [subscription required]

A New Jersey federal judge has nixed Axa **Equitable**'s last chance to avoid a trial or settlement of the excessive-fee lawsuit it has been fighting since 2011.

The judge hearing the case denied the firm's motion for summary judgment last week, meaning the next step is either trial — set for Jan. 11, 2016 — or settlement.

Judge Peter Sheridan likewise denied the plaintiffs' motion for partial summary judgment as well as their motions to exclude certain evidence from the record, thus serving blows to both sides in his August 6 [order](#).

The recent order, which followed a three-hour hearing on Aug 5, does not lay out the judge's reasoning for denying the parties' motions. But the case is one of more than a dozen that focus on the difference in fees charged by a fund's advisor and subadvisors.

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Niels Holch, executive director of the Coalition of Mutual Fund Investors, says the Axa case is particularly interesting because the firm retained substantially more than 50% of the total advisory fee, whereas in other cases the advisor usually retained between 40% and 60%.

For example, the firm was paid \$111 million in 2011 for managing eight of the subadvised funds and kept \$81 million of that, or about 72% of the total, while paying the subadvisors \$30 million for their work, notes Holch, who has been tracking the subadvisor excessive-fee cases.

But an industry attorney says the board's process in approving the advisory fees is what matters under the law. As long as the fund board followed the so-called Gartenberg protocols — or the standards for determining whether a fee is reasonable — “then the chance of success [for the plaintiffs] at trial ... is pretty remote,” says Jay Gould, partner at **Winston & Strawn**.