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Urges Court to Endorse Well-Tested Legal Framework for Assessing Excessive Fee Claims

Washington, DC, September 3, 2009 - Today, the Investment Company Institute filed a friend-of-the-court brief urging the U.S. Supreme Court to endorse the longstanding legal framework that most courts have used since the 1980s to evaluate claims that a mutual fund's investment adviser has received excessive compensation. ICI filed its brief in support of the respondent in Jones v. Harris Associates, a case challenging the well-tested legal framework dating from the 1982 Gartenberg decision in the Second Circuit Court of Appeals.

In its [brief](#), ICI asserts that the Gartenberg framework provides “real and substantial protection to investors.” Mutual fund independent directors, charged with protecting investor interests, rely on this established framework in their annual review and approval of fund advisory fees. Under Gartenberg, a court evaluating an excessive fee claim weighs those factors most relevant to the particular case and gives appropriate weight to the independent directors' approval of the fee, as Congress directed in the Investment Company Act.

“For nearly three decades, the Gartenberg framework has provided fund boards and advisers with useful guidance, ensured investor protection, and served judicial economy by not embroiling the courts in technical disputes over business judgment,” the ICI brief says, noting that the Securities and Exchange Commission has adopted elements of Gartenberg in its regulations.

ICI's brief also highlights for the Court the highly competitive nature of the fund industry, with fees falling even as investors have received more and better services.

“Brisk competition among advisers for investors’ business has supported a decades-long decline in the overall cost of investing in a mutual fund,” the brief says, noting that the total cost of investing in both stock and bond mutual funds fell by around 60 percent from 1980 to 2008. The vibrancy of the industry and the significant benefits it offers to investors are “demonstrated by the enormous growth in popularity of mutual fund investing over the last four decades,” the ICI brief notes.

The Supreme Court is slated to hear oral arguments in the case on November 2.

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