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ICI Responds to Supreme Court Decision in Jones v. Harris

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Stevens Hails 'Stability and Certainty' for Funds, Directors, and Investors

Washington, DC, March 30, 2010 - Today the U.S. Supreme Court announced its unanimous ruling in *Jones v. Harris Associates LP*. ICI President and CEO Paul Schott Stevens issued the following statement:

"The Supreme Court's unanimous decision brings stability and certainty for mutual funds, their directors, and almost 90 million investors, by endorsing the *Gartenberg* standard under which courts have long considered claims of excessive fund advisory fees. This standard has well served the interests of funds and fund shareholders, who have seen their cost of investing fall by half in the last 20 years."

Below are excerpts from the Court's opinion.

Key Excerpts from the Supreme Court Opinion

Jones v. Harris Associates LP

"Gartenberg's approach fully incorporates this understanding, insisting that all relevant circumstances be taken into account and using the range of fees that might result from arm's-length bargaining as the benchmark for reviewing challenged fees." (p. 2)

- "[T]he standard for fiduciary breach under §36(b) does not call for judicial second guessing of informed board decisions." (p. 16)
- "Congress' approach recognizes that courts are not well suited to make such precise calculations." (p. 16)
- "Where a board's process for negotiating and reviewing investment-adviser compensation is robust, a reviewing court should afford commensurate deference to the outcome of the bargaining process…. Thus, if the disinterested directors considered the relevant factors, their decision to approve a particular fee agreement is entitled to considerable weight, even if a court might weigh the factors differently." (p. 15)
- "[T]he Court must be wary of inapt comparisons based on significant differences between those services and must be mindful that the Act does not necessarily ensure fee parity between the two types of clients." (p. 2)
- "Where disinterested directors consider all of the relevant factors, their decision to approve a particular fee agreement is entitled to considerable weight, even if the court might weigh the factors differently." (p. 2)
- "[W]e conclude that *Gartenberg* was correct in its basic formulation of what §36(b) requires: to face liability under §36(b), an investment adviser must charge a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's length bargaining." (p. 9)
- "*Gartenberg* insists that all relevant circumstances be taken into account… And *Gartenberg* uses the range of fees that might result from arm's-length bargaining as the benchmark for reviewing challenged fees." (p. 11)
- "Since the Act requires consideration of all relevant factors…, we do not think that there can be any categorical rule regarding the comparisons of the fees charged different types of clients." (p. 13)
- "[T]here may be significant differences between the services provided by an investment adviser to a mutual fund and those it provides to a pension fund which are attributable to the greater frequency of shareholder redemptions in a mutual fund, the higher turnover of mutual fund assets, the more burdensome regulatory and legal obligations, and higher marketing costs…. If the services rendered are sufficiently different that a comparison is not probative, then courts must reject such a comparison. Even if the services provided and fees charged to an independent fund are relevant, courts should be mindful that the Act does not necessarily ensure fee parity between mutual funds and institutional clients contrary to petitioners' contentions." (pp. 13-14)
- "[C]ourts should not rely too heavily on comparisons with fees charged to mutual funds by other advisers. These comparisons

are problematic because these fees, like those challenged, may not be the product of negotiations conducted at arm's length." (p. 14)

Visit ICI's Jones v. Harris resource center for more information on this important decision.
