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BIG SUITS

In re American Funds Fee Litigation

On December 28 a judge dismissed a suit brought by investors who challenged more than \$15 billion in fees charged by one of the world's largest investment firms and its U.S. mutual fund subsidiary.

It was the first securities case to go to trial in the mutual fund industry in 20 years, as well as the largest claim ever against an industry participant, say the two companies' lead lawyers, **James Benedict** and **Sean Murphy** of Milbank, Tweed, Hadley & McCloy. The two represented the investment management firm Capital Research and Management Company, and its mutual fund subsidiary, American Funds Distributors, Inc., in the suit, which was filed in 2004.

Los Angeles federal district court judge Gary Feess dismissed claims before trial against the independent directors, leaving only the mutual fund defendants. In a two-week bench trial last July, investors alleged that management fees were excessive, because they did not benefit investors, and because economies of scale were never passed on to investors. They also claimed that the funds were outperformed by comparable funds with lower fees. The mutual fund companies' lawyers argued that the fees on a per-shareholder basis were among the lowest in the industry, and the performance of the funds was excellent.

In a 105-page opinion, Feess wrote that investors failed to reach the high standard of proof set in a 1982 ruling by the U.S. Court of Appeals for the Second Circuit, *Gartenberg v. Merrill Lynch Asset Mgmt.*

Three other class actions against CRMC are pending. Lawyers for the investors said they would appeal.

FOR PLAINTIFF RODNEY T. JELINEK ET AL.

Milberg: Jerome Congress, Anna Dover, Janine Pollack, and associates John McFarlane and Joseph Muzingo. (They are in New York.) The firm was appointed co-lead plaintiffs counsel.

Weiss & Lurie: Richard Acocelli, Joseph Weiss, and associate Julia Sun. (They are in New York.) The firm was appointed co-lead plaintiffs counsel.

FOR DEFENDANTS CAPITAL RESEARCH AND MANAGEMENT COMPANY ET AL. (LOS ANGELES)

Milbank, Tweed, Hadley & McCloy: James Benedict, James Cavoli, Sean Murphy, and associates Eric Fishman, C. Neil Gray, William Gross, L. Anthony Pellegrino, Rachel Penski, Krista Smokowski, and Michael Weiner. (All are in New York.) Milbank has represented CRMC since 2003.

Gibson, Dunn & Crutcher: Gareth Evans and associates Andrew Demko and Andrew Edelstein. (Evans and Edelstein are in Los Angeles; Demko is in Century City, California.) The firm was local counsel.

FOR DEFENDANTS THE INDEPENDENT DIRECTORS OF CAPITAL RESEARCH AND MANAGEMENT COMPANY

Paul, Hastings, Janofsky & Walker: Thomas Zaccaro. (He is in Los Angeles.) Zaccaro was selected in part because of his experience as chief trial counsel for the Securities and Exchange Commission.



JAMES BENEDICT
Milbank

—Tosin Sulaiman

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