

IDC Files Supreme Court Brief Detailing Unique Role of Independent Directors in Fee Determinations

IDC Files Supreme Court Brief Detailing Unique Role of Independent Directors in Fee Determinations

Washington, DC, September 3, 2009 - Today, the Independent Directors Council (IDC) filed a friend-of-the-court brief with the U.S. Supreme Court discussing the important role and responsibilities of independent directors and the rigorous process they follow in evaluating and approving fund advisory fees. IDC filed its brief in support of the respondent in *Jones v. Harris Associates*, a case that challenges the well-established legal framework, dating from the 1982 *Gartenberg* decision in the Second Circuit Court of Appeals. Courts have used this framework for almost 30 years to review excessive fee claims under Section 36(b) of the Investment Company Act.

The [IDC brief](#) describes the high standards of fund governance, citing: "...that modern-day fund boards are robustly independent. In fact, the vast majority of fund boards have at least 75 percent independent directors, and an independent chair or independent lead director."

It also outlines the role of the independent directors, explaining: "One of the independent directors' most important responsibilities is to annually evaluate and approve the advisory contract, including the amount of compensation provided to the adviser... The annual contract approval process involves substantial time commitment and deliberations, and careful consideration of significant amounts of information."

In light of the role served by the independent directors in evaluating advisory fees and the clear language of the Investment Company Act, the IDC brief argues that courts should defer to the business judgment of the fund directors, absent a fundamental deficiency in the approval process. The brief further explains that if fundamental deficiencies are found, then a court should review the advisory fees applying the *Gartenberg* standard.

The Supreme Court is slated to hear oral arguments in Jones v. Harris on November 2.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete.

Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.