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# District Court Grants Partial Summary Judgment in Section 36(b) Excessive Fee Suit

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On October 3, 2018, the U.S. District Court for the Southern District of New York issued an opinion and order granting in part and denying in part defendant Calamos Advisors LLC's motion for summary judgment in an excessive fee suit brought under Section 36(b) of the Investment Company Act of 1940. In the suit, the plaintiffs, shareholders of the Calamos Growth Fund, alleged that Calamos charged excessive advisory fees to the Fund in light of the firm providing substantially similar services for a lower fee as a sub-adviser to unaffiliated funds.

The Court granted summary judgment with respect to two of the Gartenberg factors—economies of scale and fall-out benefits. Regarding economies of scale, the Court held that the plaintiffs had failed to provide evidence that the Fund's actual transaction costs per investor decreased as the Fund's assets grew, stating that "economies of scale cannot be inferred solely from the fact that operating expenses declined at a time when the at-issue fund's assets grew." Regarding fall-out benefits, although the plaintiffs pointed to other fees received by Calamos for services rendered, the Court noted that the plaintiffs offered no evidence that such fees constituted a fall-out benefit to Calamos. However, the Court denied summary judgment on the other four Gartenberg factors—the conscientiousness of the trustees' review process, nature and quality of services, profitability and comparative fee structures—concluding that there were relevant issues of fact on these points to be determined at trial.

The opinion and order were issued under the caption Chill v. Calamos Advisors LLC, Case No. 15 Civ. 1014.



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