



GARTENBERG: SETTLED LAW FOR EXCESSIVE FEES



What is meant by "Reasonable"?

The term is used as a requirement for ERISA and IRA exemptions in recent years:

- **Best Interest Contract** requires adviser compensation not to exceed what is "Reasonable".
- **408(b)(2)** requires plans to pay only "Reasonable" fees.
- **408(g)** requires fiduciary advisers fees to be "Reasonable"

"Reasonable" is not being "Excessive"

According to the Gartenberg Standard (1982), "Excessive" requires considering:

- The adviser's cost in providing its service, the nature and quality of the service, to what extent an adviser achieves economies of scale and the volume of orders that must be processed.

According to the Supreme Court (2010):

- Gartenberg is right
- Comparative benchmarks *"are problematic because these fees, like those challenged, may not be the product of negotiations conducted at arm's length."*

According to virtually every excessive fee case since Gartenberg:

- Gartenberg is right

What is the safe bet?

- Gartenberg and the Supreme Court
- or
- Another idea?

What is the best bet?