

dispute that, but a very large part of the work of the courts consists not in evolving new rules of law but in applying well-known and conceded legal standards to the many complexities of life, whether those be determinations of the fair value of property or the reasonableness of a restraint of trade or what constitutes due care in driving an automobile or in navigating a tanker.

Coming closer to the problem at hand, there are many instances in which courts now have to decide, and for a long time have had to decide, what constitutes reasonable compensation for personal services. One instance is their role in passing on the fairness of arrangements between a fiduciary and his beneficiaries, a standard of fairness that might well apply to this very problem but for the effect that has been given to the ratification of management contracts by stockholders or unaffiliated directors.

Another instance is where a contract for personal services cannot be carried out according to its terms, either because it lacked required formalization, or for failure on some other account, and the court then has to step in and determine the fair value of what has been done.

Still another instance is where no price for the service ever was fixed, as often occurs, for example, in relations between lawyer and client. The standards that courts have used in fixing the value of legal work, the nature and extent of the services performed, the cost to the lawyer of performing them, the novelty of the problem, the amount involved, the results achieved, his professional standing, the contingent or uncontingent character of the reward, the customary charge for comparable services, are quite reminiscent of the standards of section 15(d) (2) of the bill that is before you.

A further area, perhaps even closer to that with which you are here concerned, is the work of the courts in fixing fees of attorneys and others in derivative suits, in decedents' estates, and in bankruptcy and reorganization. Such fees can sometimes be very large, often running into six or seven figures, and the criteria that the courts have applied in fixing those fees are quite similar to those that are here proposed.

I should also point out what may be most relevant of all, namely, that the courts already have responsibilities as to the size of the fees of investment advisers. There is a common law liability of directors for waste, and while a plaintiff who seeks to prevail on that score may have to show that the fee is not merely unreasonable but unreasonably unreasonable, a court still has the job of comparing what has been done with what has been received, just as it would have under section 15(d). I might add that the existing situation here affords great possibilities of lack of uniformity, in view of the differences among the States as to just how much a plaintiff has to prove in cases of that sort.

In addition to these tasks arising out of the common law, the Investment Company Act itself imposes various liabilities in the determination of which the reasonableness of fees of investment advisers may have to be considered. Our court held 6 years ago in *Brown against Bullock*, a case which, as the chairman was kind enough to mention, I was privileged to write the opinion for the court sitting en banc, that a Federal claim against directors existed under section 37 of the act for willful conversion, which could be accomplished by the payment of a