

I think there are a good many safeguards against unjustified suits under section 15(d). First of all, the funds are given a year to bring their houses into what they conceive to be order, and they would be well advised in my view to reduce advisory fees at least to the level that have been marked out by settlements in the suits brought under existing law.

Funds that had not done that, particularly the large ones, would be the prime targets for private action.

Mr. KEITH. Mr. Chairman.

Mr. MOSS. Mr. Keith.

Mr. KEITH. I wish that you would go back to the start of that paragraph that you are now reading.

Judge FRIENDLY. About the safeguards?

Mr. KEITH. Yes. Would you read that again?

Judge FRIENDLY. Yes, I will be glad to. Of course, again I don't mean by saying this to say that Congress ought to do one thing or the other. It does seem to me, however, that some fears have been voiced which, while I wouldn't say they were wholly without substance, I think have been considerably exaggerated. What I was saying was that I think that there are a good many safeguards against the bringing of unjustified suits under section 15(d).

Mr. KEITH. I thought I heard you say "It seems to me that would be reasonable for the Congress to enact some legislation that would require them to be more reasonable in their fees, more closely paralleling those of comparable situations in this area." Did I not hear you say something to that effect?

Judge FRIENDLY. No. I would put it rather that I don't think Congress should be deterred from doing it by fear of litigation, if it thinks it is a good idea generally. Now whether the problem calls for action is something I don't want to speak to.

Mr. MOSS. Would the gentleman yield?

Mr. KEITH. Yes.

Mr. MOSS. I believe the reference to the statement on page 13, I have been following it rather closely, would provide this language which was read by Judge Friendly:

First of all, the funds are given a year to bring their houses into what they conceive to be order—section 28. They would be well advised to reduce advisory fees at least to the level marked out by settlement in the suits brought under existing law. Funds that had not done this—

and at that point the interjection of the question.

Judge FRIENDLY. All I really meant by that remark was that if I were advising one of these funds, I would certainly tell them to get down that low, which isn't of course very low, but I should think a fund that continued to keep its fees above the level that had been marked out by settlements would be asking for a place as a defendant. That doesn't mean necessarily it would lose the case, but I should think it would be signaling itself out as a target.

Mr. KEITH. Judge, I was not following as closely as was the Chairman, and I missed the word "suits" as it pertains to this particular discussion, and I was thinking of suits in connection with the settlement of estates rather than suits in the cases before courts in this isolated area.