

because a bird in the hand is considerably more valuable than one in the bush, and there is also a law of diminishing returns. A judgment that would be worth \$10 or \$15 million won't produce two or three times as much fees as a settlement of five, and I think it is just as simple as that. I don't mean the——

Mr. KEITH. I have been amazed at the protestations of these attorneys who have brought these suits. One in particular has bragged about the fact that he got a half million dollars for a certain suit that he won, and there is no thought in his mind but what that was a reasonable fee for him to charge for the few hours of work that he spent before the bench or even the many hours of work.

Judge FRIENDLY. Many I would say.

Mr. KEITH. In the large amount of these decisions do you feel that the judges were of the opinion that management companies were fiduciaries in the Massachusetts legal sense of the word?

Judge FRIENDLY. Well, I get the impression they did, but they ascribed great significance to the stockholder ratification. Also of course they ascribed a great deal of significance to the general level of charges in the industry. It is very hard to say that defendants were doing something outrageous when they were doing what everybody else was doing.

Mr. KEITH. For example, in the case of Dreyfus Management Co., they are still charging one-half of 1 percent fee, and the stockholders of that management company are entitled to a return; I believe the stock is valued at something like \$44 million. They have paid that price for it. In the scheme of things today, in the free enterprise economy, many of these management companies feeling that they are the ones who set up the mutual funds as a vehicle for bringing more funds on which they could get additional advisory fees, it seems to me the whole climate historically has favored the creation of mutual funds as a means for getting additional funds over which the management companies could exercise their judgment and receive their just reward, and if we get them into a strictly fiduciary position, the mutual funds will by custom and common law and statutory law too then be bound to bargain for the best and cheapest that they could, and exercise a truly independent judgment.

Judge FRIENDLY. I think the theory of the existing law was that they would do that, but it hasn't worked out that way, for understandable reasons.

Mr. KEITH. I don't think that the theory of existing law is that way. I think that the law developed to govern the conglomerates that grew in order to successfully operate this industry.

Judge FRIENDLY. What I was referring to were all the elaborate provisions about the length of the contract and the need of annual review and votes of the unaffiliated directors. I think those showed an intention by Congress that these matters should really be looked at. My impression is that that hasn't worked out as intended, and that because it hasn't, this proposal has been made.

Mr. KEITH. Our question of course is what is in the best interest in the long run for our constituents and our country, as to whether or not curtailment of the present legal fabric would diminish interest in the establishment of mutual funds which some of us feel contribute greatly to the economy in the way of providing capital, and an oppor-