

## U.S. Supreme Court Rules Against Plan Fiduciaries in ERISA Statute of Limitations Case

FEBRUARY 27, 2020

In a decision with wide-ranging implications, the U.S. Supreme Court unanimously ruled that for purposes of applying the three-year statute of limitations for filing fiduciary breach claims, a plaintiff (in this case a participant in an employee benefit plan) does not necessarily have “actual knowledge” of information contained in disclosures that he or she receives but does not read or cannot recall reading.

The Employee Retirement Income Security Act of 1974 (ERISA) establishes a two-part statute of limitations. Plaintiffs must file a fiduciary breach suit within six years of “the date of the last action which constituted a part of the breach or violation” or, in cases of breach by omission, “the latest date on which the fiduciary could have cured the breach or violation.” This timeframe is shortened to three years if the plaintiff has “actual knowledge” of an alleged fiduciary breach. In the case of fraud or concealment, the period runs for six years from the date of discovery.

*Intel Corporation Investment Policy Committee, et al., v. Sulyma* is a putative class action suit alleging that plan fiduciaries breached their fiduciary duties by including certain alternative investments in the retirement plan’s investment lineup. Although the suit was initiated within six-years of the alleged breaches, plan fiduciaries defendants countered that the suit was untimely because it was filed more than three years after fiduciaries had disclosed their investment lineup decisions to the plan participant.

Plan fiduciaries were able to show that the participant received numerous disclosures related to the alternative investments while working for the plan sponsor, including:

- Emails directing the participant to notices and annual disclosures on the plan recordkeeper’s platform that broke down the percentages at which the particular fund was invested in stocks, bonds, hedge funds, and commodities.
- A summary plan description explaining that the funds were invested in stocks and alternative assets and that referred the participant to fund fact sheets with percentages in graphical form.

Plan fiduciaries also submitted records showing that the participant visited the plan’s website repeatedly during his employment. However, the participant testified in his deposition that he did not remember reviewing the above disclosures during his tenure and that he was unaware that he had invested in hedge funds or private equity investments. He testified only to recalling having reviewed account statements sent to him by mail.

The Court found that ERISA does not define the phrase “actual knowledge,” but that its meaning is plain—to meet the three-year statute of limitation “actual knowledge” requirement, the participant must in fact have become aware of the relevant information. Thus, the Court rejected an interpretation of “actual knowledge” that would encompass some form of imputed or constructive knowledge whereby a person who receives disclosures is assumed have acquired actual knowledge of the content, even if a reasonably diligent person would have acquired actual knowledge.

The Court did indicate that evidence of disclosure could be relevant in judging whether a person did in fact gain knowledge of the disclosed information. It clarified that it did not intend to foreclose the “usual ways” to prove “actual knowledge” and provided the following examples:

- Where participants are able to recall reading particular disclosures, they are bound by oath to say so in their depositions.
- Actual knowledge can be proved through “inference from circumstantial evidence.” The Court noted that confirmation of disclosure and electronic records showing that a participant viewed the relevant disclosures and evidence suggesting that the plaintiff took action in response to the information contained in them could all be used to demonstrate actual knowledge.

Finally, the Court noted that its decision does not preclude plan fiduciaries from arguing that “willful blindness” supports a finding of “actual knowledge.” However, the Court failed to elaborate on the concept.

#### **Winston Takeaway:**

The Court’s decision is likely to increase plan sponsor and plan fiduciary exposure to ERISA litigation. Even if sponsors and fiduciaries diligently provide participants with relevant disclosures, the difficulty of proving that participants have obtained “actual knowledge” of the information in the disclosures significantly narrows their ability to invoke ERISA’s three-year statute of limitations. Plan sponsors and fiduciaries should explore available tools to develop an electronic record demonstrating that particular disclosures have been at least opened and viewed, particularly disclosures relating to plan investments and plan fees, as these are common targets of ERISA litigation.

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