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# Supreme Court: Disclosing Information Does Not Result in "Actual Knowledge"

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In a unanimous decision, the Supreme Court has found that disclosing information regarding benefit plans to participants does not necessarily shorten the statute of limitations for filing a fiduciary breach claim under ERISA. *Intel Corporation Investment Policy Committee v. Sulyma*, 589 U.S. ____ (February 26, 2020).

ERISA Statute of Limitations. The statute of limitations for fiduciary breach claims under Section 413 of ERISA is six years from the last date of the action that is a part of the breach, or in the case of a failure to take an action, six years from the last date that breach could have been cured. However, this period is limited to three years from the date that the plaintiff had "actual knowledge" of the breach. The statute of limitations can also be extended in cases of fraud or concealment to six years from the date of discovery of the breach.

Note that Section 413 of ERISA applies only to fiduciary breach claims under ERISA, and not to other types of claims, such as claims for benefits.

Case Background. Sulyma, a former Intel employee, brought a fiduciary breach action against Intel's Investment Policy Committee alleging that Intel's 401(k) plans were overinvested in alternative investments, such as hedge funds, private equity, and commodities, which carry relatively higher fees than other available investments. Sulyma's action was filed within the six-year period from the date of the alleged breach, but more than three years after he had received disclosures of these investments. The record showed that Sulyma had actually received disclosures of the alternative investments, including through a summary plan description and annual fee disclosures. The record also showed that he frequently visited the 401(k) plans' website during his employment. However, he testified that he did not recall seeing these disclosures and that he was not aware of the alternative investments while he was employed at Intel.

Analysis. The Court found that providing information regarding the plans' investments to Sulyma was not sufficient to show that Sulyma had "actual knowledge" of the investments, which would have limited the statute of limitations to three years. To find otherwise would be to substitute "constructive knowledge" – that is, a standard that the employee *should have known* – for "actual knowledge." The Court noted that the original version of Section 413 included a clause that would have shortened the statute of limitations when a plaintiff "could reasonably be expected to obtain knowledge" based on the report filed with the DOL. However, Congress amended the statute in 1987 to remove this "constructive knowledge" requirement. As a result, the Court found that the "actual knowledge" requirement could not be satisfied merely by showing that the information had been provided to the plaintiff.

The Court noted that defendants may still be able to prove "actual knowledge." For example, a plaintiff under oath would be bound to say if he or she had actual knowledge. Circumstantial evidence may also

be used to show "actual knowledge." Finally, the defendants may be able to invoke the "willful blindness" doctrine depending upon the circumstances. But the Court's holding makes it very difficult for defendants to establish "actual knowledge" at the summary judgment stage absent an admission from the plaintiff because the facts must be viewed in the light most favorable to the plaintiffs.

Other Considerations

- Disclosures. While the Supreme Court's holding effectively means that disclosing additional information to participants will not shorten the statute of limitations for fiduciary breach claims, other considerations may warrant disclosing information beyond what is specifically required by law. First, the general fiduciary principles of ERISA may warrant disclosing additional information in some circumstances so that participants are sufficiently informed regarding their plan benefits. Second, disclosing additional information to participants can help establish that there has been no fraud or concealment, which would extend the statute of limitations beyond six years from the date of the breach.
- DOL Examinations. The DOL can also bring actions against fiduciaries on behalf of plan participants and beneficiaries. The Court recognized that its holding means that the DOL will not be presumed to have "actual knowledge" of disclosures made to it through a plan's annual report filing. Accordingly, the six-year statute of limitations may effectively apply to the DOL, even with respect to matters that are sufficiently disclosed in a Form 5500 filing.