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Supreme Court Holds That Unread ERISA Plan Disclosures Do Not Give Participants Actual Knowledge Of The Information Disclosed

Client Alert | February 26, 2020

Decided February 26, 2020

Intel Corp. Investment Policy Committee v. Sulyma, No. 18-1116

Today, the Supreme Court unanimously held that a fiduciary's disclosure of plan information alone does not trigger ERISA's three-year limitations period in fiduciary breach cases. "Actual knowledge" sufficient to trigger this limitations period requires participants be "aware of" the disclosed information.

Background:
Section 413(2) of the Employee Retirement Income Security Act of 1974 (ERISA) requires that claims for breach of fiduciary duty be brought no later than "three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation." 29 U.S.C. § 1113(2). Absent "actual knowledge," breach of fiduciary duty claims under ERISA must be brought within six years of the breach or violation. In 2015, Christopher Sulyma, a former Intel employee, sued multiple retirement plans, claiming that his retirement plans improperly overinvested in alternative investments. More than three years, but less than six years, before that suit was filed, Sulyma received disclosures that explained the investments Sulyma claimed were imprudent. The Ninth Circuit held that the disclosures did not trigger the three-year bar because Sulyma testified he had not read the disclosures and Intel had not established Sulyma had subjective awareness of what was disclosed. The United States filed an *amicus* brief in support of Sulyma defending that position and participated in oral argument.

Issue:
Whether the ERISA three-year limitations period in Section 413(2), which runs from "the earliest date on which the plaintiff had actual knowledge of the breach or violation," bars suit when all relevant information was disclosed to the plaintiff more than three years before the plaintiff filed the complaint, but the plaintiff chose not to read, or could not recall having read, the information.

Court's Holding:
No. A plan participant has "actual knowledge of the breach" only if the participant was "aware of" the relevant plan information. Disclosure of plan information alone does not trigger the three-year limitations period in Section 413(2).

"[T]o have 'actual knowledge' of a piece of information, one must in fact be aware of it."

Justice Alito, writing for the unanimous Court

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Gibson Dunn submitted an *amicus* brief on behalf of the National Association of Manufacturers, the Chamber of Commerce of the United States, the Securities Industry and Financial Markets Association, the American Benefits Counsel, the ERISA Industry Committee, and the American Retirement Association in support of petitioner: Intel Corp. Investment Policy Committee

What It Means:

- Applying the ordinary meaning of "actual knowledge," the Court reasoned that a plaintiff cannot have "actual knowledge" of materials he has not read, "however close at hand the fact might be." The Court acknowledged that the plain meaning of "actual knowledge" would substantially diminish protections for ERISA fiduciaries, but held that this policy consideration was best left to Congress.
- As a result of the Court's opinion, retirement plans and employers may now be subject to more lawsuits and greater litigation costs because participants need only allege that they did not read plan documents to expand the ERISA statute of limitations from three to six years.
- The Court emphasized that today's opinion does not preclude a showing of "actual knowledge" through inference from circumstantial evidence, nor does it preclude defendants from contending that evidence of "willful blindness" supports a finding of "actual knowledge." Litigating these issues will require individualized factual inquiries that may pose an obstacle to class certification.
- The Court left open what a plaintiff must "actually know" about a defendant's conduct to trigger the three-year limitations period.
- This "actual knowledge" standard may be helpful to corporations and other defendants in securities and fraud cases. Relying on this holding, defendants may argue that a plaintiff must establish awareness of relevant information to prove scienter.

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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