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The Supreme Court Interprets the Statute of Limitations for ERISA Cases

What is the Meaning of "Actual Knowledge"?

By Daniel Aronowitz, Kimberly Maher | March 3, 2020 | Fiduciary Liability

ERISA contains a unique – and often confusing – statute of limitations provision. Someone suing the plan has six years in which to bring the lawsuit, but only three years if they have "actual knowledge" of the alleged breach. Plans often attempt to dismiss fiduciary breach claims under the shorter three-year statute of limitations, particularly for benefit claims that are deemed untimely. The question raised to the Supreme Court in *Intel Corporation Investment Policy Committee v. Sulyma*, is what constitutes "actual knowledge," specifically whether the actual knowledge standard is met if the plan has sent adequate disclosures to participants that have been ignored or not read by the participant.

The Supreme Court ruled on February 26 that "actual knowledge" means subjective knowledge, not imputed knowledge from plan disclosures: that the shorter three-year actual knowledge limitations period does not apply if the participant has not read – even if they have received – plan disclosures. While the decision is unremarkable to the extent that the court enforced the plain meaning of the statute, the likely implication of this decision is that many benefit cases will now be more expensive to defend without the ability to enforce the shorter statute of limitations.

ERISA's Statute of Limitations

Lawsuits under ERISA must be filed within one of three time periods, each with different triggering events. The first begins when the breach occurs. Specifically, under §1113(1) – considered a statute of repose – suit must be filed 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." The second period – a statute of limitations – accelerates the filing deadline, beginning when the plaintiff gains "actual knowledge" of the breach. Under §1113(2), suit must be filed within three years of "the earliest date on which the plaintiff had actual knowledge of the breach or violation." The third period, which applies "in the case of fraud or concealment," begins when the plaintiff discovers the alleged breach. In such cases, suit must be filed within six years of "the date of discovery."

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The Intel Imprudent Investment Lawsuit

Sulyma was a participant in two Intel defined contribution plans maintained for employees of the company. Plan assets were invested by the Intel Corporation Investment Policy Committee. The participant filed on behalf of a putative class in October 2015, alleging primarily that the Intel committee and other plan administrators had breached their fiduciary duties by overinvesting in alternative assets, such as hedge funds, private equity, and commodities. These alternative investments carried higher fees, and the returns lagged the general stock market.

Sulyma received numerous disclosures while working at Intel, some explaining the extent to which his retirement plans were invested in alternative assets. These included emails from his employer, and the ERISA-required summary plan description – all of which described the alternative investments in the plan. Intel even submitted evidence that the Plaintiff had visited the plan website which was referred to in the various disclosures. Based on these disclosures, Intel moved to dismiss the lawsuit on the grounds that it was untimely under the three-year statute of limitations period in ERISA §1113(2). Although Sulyma filed it within six years of the alleged breaches, he filed it more than three years after the company had disclosed their investment decisions to him. Sulyma did not dispute the disclosure evidence, but stated that he still did not know about the alternative investments.

The District Court granted summary judgment to Intel under §1113(2), reasoning that "[i]t would be improper to allow Sulyma's claims to survive merely because he did not look further into the disclosures made to him."[i] The Ninth Circuit reversed. The court construed "actual knowledge" to mean "what it says: knowledge that is actual, not merely a possible inference from ambiguous circumstances."[ii] Although Sulyma "had sufficient information available to him to know about the allegedly imprudent investments" more than three years before filing suit, the court held that his testimony created a dispute as to when he actually gained that knowledge.[iii] Several Circuits have likewise construed §1113(2) to require "knowledge that is actual," but one circuit (the Sixth Circuit) has construed it to require only proof of sufficient disclosure.[iv] The Supreme Court granted certiorari to resolve whether the phrase "actual knowledge" can be imputed based on the receipt of disclosures, or whether it requires actual subjective knowledge of the participant.

The Intel Supreme Court Decision

Before the Supreme Court, Intel argued that a participant has the knowledge required under ERISA §1113(2) once they have disclosures of the plan investments. In other words, participants should be deemed to have the requisite knowledge if they could acquire the knowledge with reasonable effort.

Like the Ninth Circuit, the Court rejected Intel's position. The Court held that the three-year shortened statute of limitations period in §1113(2) requires more than evidence of disclosure alone. That all relevant information was disclosed to the plaintiff is relevant in judging whether he gained knowledge of that information. But to meet §1113(2)'s "actual knowledge" requirement, however, the plaintiff must in fact have become aware of that information. The Court stated that "[i]f policy considerations suggest that the current scheme should be altered, Congress must be the one to do it." Consequently, the Court ruled that, §1113(2) "actual knowledge" begins only when a plaintiff actually is aware of the relevant facts, not when he should be.

The Euclid Perspective

Given that the conservative majority of the Supreme Court prides itself on enforcing the plain text of governing statutes, the opinion holding that "actual knowledge" requires actual subjective knowledge of the

plan participant is not surprising or remarkable. But it does have likely implications for ERISA litigation if Congress does not clarify ERISA's three-year/six-year split statute of limitations.

The most obvious result of the Sulyma decision is that it will now be almost impossible to dismiss a claim on statute of limitations grounds at the motion to dismiss stage. The most effective defense weapon to shorten and dismiss ERISA benefit lawsuits is now gone. Employers can longer rely on comprehensive disclosures of plan investments and fees to shorten the ERISA statute of limitations. This will lead to expensive discovery, including depositions of every plaintiff, to learn whether they have read and comprehended the disclosures from the plan. The cost of ERISA benefit litigation is now higher.

It will also further complicate class action certification for cases that fall in second half of the six-year statute of limitations. Plaintiffs will have to establish that every member of the class is in the same position as to whether they read required plan disclosures. While making it harder for plaintiffs to certify a class, it will make it more fact intensive, and further increase the cost of ERISA litigation. Class action certification will now be even more fact intensive, complicated, and expensive to defend. The court did indicate that plans should consider technology to prove whether participants have received and opened plan summary plan descriptions and other disclosures. But even opening a document will not prove subjective knowledge, so plans may need to consider requiring participants to acknowledge that they received and read disclosures.

In conclusion, the Intel decision has closed the common way to dismiss ERISA benefit lawsuits as untimely. The defense bar may find more silver linings in the opinion, but we think that ERISA benefit litigation just got more expensive. The decision may also lead to more excessive fee and imprudent investment litigation, which has already seen signs of increased frequency in the last three months.

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i 2017 WL 1217185, *9 (ND Cal., Mar. 31, 2017).
ii 909 F. 3d 1069, 1076 (2018) (internal quotation marks omitted).
iii Id., at 1077.
iv *Brown v. Owens Corning Inv. Review Committee*, 622 F.3d 564 (6th Cir. 2010).