Brownstein Hyatt Farber Schreck

Employee Benefits News

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"Actual Knowledge" Required to Apply ERISA'S Three-Year Statute of Limitations to Fiduciary Breach Claims

Yesterday, the U.S. Supreme Court issued its decision in ***Intel Corp. Investment Policy Committee et al. v. Sulyma*** (case number 18-1116). The decision requires a participant to have "actual knowledge" in order to apply ERISA's three-year statute of limitations, rather than the six-year statute of limitations, to an alleged breach of fiduciary duty claim.

Background. Mr. Sulyma worked at Intel Corporation between 2010 and 2012 and, while there, he participated in two of Intel's retirement plans. In October 2015, he sued the plan administrators alleging that they had managed the plans imprudently with respect to investment of plan assets. Despite visiting the plans' websites many times, he testified that he did not remember viewing the relevant disclosures and that he was unaware of the allegedly imprudent investments by the plan fiduciaries while working at Intel. The District Court granted summary judgment to the plan fiduciaries, holding that the three-year statute of limitations applied because Sulyma could have known about the investments from the disclosures, but held that his testimony created a dispute as to when he gained "actual knowledge" within the meaning of 29 U.S.C. § 1113(2). On appeal, the Ninth Circuit reversed, holding that the six-year statute of limitations should be applied.

Key Points Made by the Court

The U.S. Supreme Court rejected defendant Intel Investment Committee's argument that Mr. Sulyma should be considered to have "actual knowledge" of misconduct when it is proved he received financial disclosures, regardless of whether he read and understood the disclosures. In reaching its decision that a participant does not necessarily have "actual knowledge" (within the meaning of the ERISA statute of limitation provision) of the information contained in disclosures that the participant receives but does not read or cannot recall reading, the Court noted the following:

- ERISA requires a participant-plaintiff to have "actual knowledge" of an alleged fiduciary breach before the time frame within which the participant can file suit would be limited to three years of the date of gaining knowledge of the breach. Without actual knowledge of the breach, the six-year limitations period would apply.
- The law will sometimes impute knowledge (often referred to as "constructive" knowledge) to a person who fails to learn something that a reasonably diligent person would have learned. However, the addition of the word "actual" in 29 U.S.C. § 1113(2) (which contains the limitations periods) signals that the participant's knowledge must be more than hypothetical or imputed knowledge.

- Congress has repeatedly drawn linguistic distinctions between what a participant actually knows and what a participant actually should know, and where Congress has included both types of knowledge, it has done so explicitly. Here, the statute states "actual knowledge."
- Justice Alito, writing for the Court, noted: "Although ERISA does not define the phrase 'actual knowledge,' its meaning is plain. Dictionaries are hardly necessary to confirm the point, but they do. When Congress passed ERISA, the word 'actual' meant what it means today: 'existing in fact or reality.'" (page 6)
- To meet the "actual knowledge" requirement, the participant must in fact have become aware of the information contained in the disclosures received by the participant.
- Most importantly, the Court's decision does not foreclose any of the "usual ways" to prove actual knowledge at any stage in the litigation. For example, participants who recall reading particular disclosures will be bound by oath to say so in their depositions. Actual knowledge also can be proved through "inference from circumstantial evidence." Defendant fiduciaries are not precluded from contending that evidence of "willful blindness" supports a finding of "actual knowledge."

What This Decision Means to Plan Fiduciaries

Clearly, this decision by the U.S. Supreme Court significantly diminishes the applicability of the three-year statute of limitations. Unless plan fiduciaries are able to prove a participant's actual knowledge of an alleged breach, fiduciaries are looking at a six-year period of exposure for claims of breach of fiduciary duty. In what has become a cottage industry for class action plaintiff lawyers, this decision certainly gives them a longer period in which to find and file fiduciary breach lawsuits, particularly with respect to fiduciary decisions regarding plan investments.

For their own protection, ERISA plan fiduciaries will need to develop and implement ways to be able to easily and effectively demonstrate that a participant has in fact read a disclosure. In addition to the methods of proving actual knowledge specifically described in the Court's opinion, this decision may encourage wider use of electronic delivery of plan disclosure materials, particularly if the software for such delivery method can record whether an attachment has been opened by the participant recipient and for how long it remained open (to demonstrate it was read). Could requiring an acknowledgement that a participant has read an opened document before being able to close it be helpful?

Aside from being able to demonstrate that a participant has read a plan disclosure, we believe there remains the other major ongoing challenge—demonstrating that participants understood the disclosure. To combat this, we can envision a trend where employers mandate that their employee participants attend plan educational sessions.

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