Supreme Court Ruling in Intel ERISA Statute of Limitations Suit Could Have Far-Reaching Implications

PUBLISHED: December 12, 2019
AUTHORS: Mark Bieter, Lars Golumbic, Lena Kettering

Whether or not plan participants read their mail could impact the future of ERISA class action litigation, as Groom attorneys learned at oral argument in the Supreme Court case *Intel v. Sulyma*. The case involves the statute of limitations period for ERISA breach of fiduciary claims. Section 413(1) imposes a six-year period, but section 413(2) reduces that to three years when plan participants have "actual knowledge" of the breach. The issue in *Intel* centered on the meaning of "actual knowledge."

The "actual knowledge" question is an important one because it concerns a critical threshold issue in ERISA fiduciary duty claims. Of the near 80,000 ERISA cases filed in the past decade, a major share of the litigation has included suits against plan fiduciaries for allegedly breaching their fiduciary duties, and the statute of limitations is potentially implicated in many such cases. Given the importance of this issue, Groom attorneys attended oral argument, which we summarize below.

Background

This case was brought by Christopher Sulyma, a former employee of Intel, who alleged the plan fiduciaries violated their duty of prudence and caused plan losses when they increased the plan's investment allocation in hedge funds and private equity. Sulyma brought the suit in 2015, more than three years after Intel disclosed the allocation to investment alternatives on its plan participant website, which Sulyma himself visited on multiple occasions. Nevertheless, Sulyma testified he was not actually aware of these investments three years before filing the suit.

Intel moved to dismiss the complaint as time-barred under ERISA 413(2). The district court dismissed the case, finding the "actual knowledge" requirement was satisfied because Sulyma had access to Intel's online disclosures three years prior to filing the complaint. The Ninth Circuit reversed, holding "actual knowledge" requires the plaintiff be "actually aware of the facts constituting the breach, not merely that those facts were available to the plaintiff." The Ninth Circuit's holding created a conflict

among circuits, as the Sixth Circuit had recently held "actual knowledge" does not require that participants actually have read the disclosures. Intel petitioned the Supreme Court to review the case in light of this conflict among the circuits. Specifically, Intel argued that the Ninth Circuit's holding would reward participants who purposefully ignore disclosure materials in order to give them greater enforcement rights under ERISA.

Oral Argument

The Supreme Court heard argument on December 4, on behalf of Intel, on behalf of the Plaintiff Sulyma, and on behalf of the United States in support of Sulyma's position. The anticipation in the press seats was high as benefits reporters and lawyers all agreed this was the most important ERISA case of the term.

Intel's counsel started by arguing that "under Section [413(2)], plan participants have actual knowledge of facts that are actually given to them in mandatory ERISA disclosures . . . the Ninth Circuit's reading upends that balance." Intel's counsel fielded questions from justices across the ideological spectrum who seemed to agree on at least one point: participants rarely read such disclosures.

- Justice Brett Kavanaugh began questioning by asserting, "many people don't read [these disclosures], so how do you have actual knowledge if you haven't read it?
- Justice Ruth Bader Ginsburg added, "I must say I don't read all the mailings that I get about my investments."
- Justices Sonia Sotomayor and Stephen Breyer agreed, with Justice Sotomayor chiming in, "I know plenty of people who never open emails," and Breyer asserting "these are ordinary workers across the country. They don't read everything."

Intel's counsel warned that a strict reading of "actual knowledge" would effectively remove the three-year protection for defendants under ERISA. He argued that Sulyma's interpretation "doubles from three to six years the period in which plaintiffs can exploit hindsight bias to second-guess investments, even when plans have fully disclosed the basis for those investments, and it introduces arbitrariness and intractable proof problems."

Nevertheless, the justices continued to appear skeptical of Intel's position.

- Justice Ginsburg agreed that Intel's argument would make sense if ERISA said plaintiffs "should have had knowledge." But ERISA "doesn't say 'should have had knowledge,'" Justice Ginsburg said, "it says 'actual knowledge.'"
- Justice Kavanaugh opined that Intel's reading of "actual knowledge" could cause problems for other statutory interpretation. "If we were to say . . . actual knowledge is, in effect, a form of constructive knowledge," he explained, "that could open up all sorts of problems in other statutes down the road that we can't even foresee here . . ."
- Justices Breyer and Neil Gorsuch pointed out that ERISA has the six-year statute of limitations to account for situations where participants don't have actual knowledge. "These are very good

policy arguments for maybe making [the six year limit] shorter," Justice Gorsuch told Intel's counsel. But, Justice Gorsuch reminded Intel's counsel that the Supreme Court does not decide policy. "That's not our province. That belongs across the street," he said.

The Assistant to the Solicitor General and Plaintiff's counsel urged the Court to look at the plain language of the text. "The case can begin and end with the plain language of [413(2)]," the Assistant to the Solicitor General started, "to have actual knowledge, the plaintiff's knowledge must exist as a matter of fact." Both asserted that "constructive knowledge is not sufficient."

Justices did express some concern about making the actual knowledge requirement too difficult to satisfy.

- Justice Ginsburg, for example, posited, "the problem" with a literal construction of "actual knowledge" is "how easy one can say, 'I didn't read [the disclosure].'"
- Justice Samuel Alito in particular was troubled about the impact of a stringent actual knowledge requirement on motions for summary judgment. "Why would Congress add to the six-year statute of repose this requirement of actual knowledge, which is very unusual," he questioned, when the factual determination of who has actual knowledge "will almost always prevent summary judgment?"

In addition, both conservative and liberal justices were apprehensive of the effect on certifying class actions–particularly, when courts have to determine whether each individual plaintiff read and understood investment disclosures, as opposed to determining if they all had access to such disclosures.

- "You styled this case as a class action," Justice Ginsburg stated, in questioning Sulyma's lawyer. "How does the Court determine who are the members . . . of the class? That is, some will have read the disclosures, some will have not."
- Justices Kavanaugh and Roberts echoed Justice Ginsburg's hesitation, with Justice Roberts noting that if Sulyma wins this case, "there'd be few[er] members of a purported class action because most people are not going to have actual knowledge."
- Justice Elena Kagan also alluded to the potential difficulty plaintiffs may have when they try to certify ERISA class actions, asking, "It is a little bit like *be careful what you wish for*, isn't it?"

Intel's counsel seized on this class action argument in closing, asking the Court to "just think of what a catastrophe" adopting the Plaintiff's rule is "going to be in the class action context."

Implications

After oral argument, it remains unclear exactly where the Court will land on the "actual knowledge" issue. However, if the Court rules against Intel, it may undermine the significance of ERISA's robust disclosure requirements.

Ultimately, even if Sulyma wins on this issue, plaintiffs as a whole might lose out in the long run. Specifically, courts may be stuck determining whether each plan participant in a class read and understood each mailing sent out by their plans. Individualized questions regarding each plan participant's actual knowledge of investment decisions would certainly threaten future class certification in ERISA cases, which to this point has been granted in most cases. Thus, the importance of the decision to ERISA breach of fiduciary duty cases cannot be overstated.