

Supreme Court: “Actual Knowledge” Requirement for the Three-Year Statute of Limitations for ERISA Breach of Fiduciary Duty Claims Is Not Satisfied Merely by the Plaintiff’s Receipt of the Relevant Disclosures

03.30.20



(Article from *Securities Law Alert*, February/March 2020)

For more information, please visit the [Securities Law Alert Resource Center](#)

ERISA breach of fiduciary duty claims are subject to a six-year statute of limitations unless the plaintiff “had actual knowledge of the breach or violation,” in which case a three-year statute of limitations applies. 29 U.S.C. § 1113(2). On February 26, 2020, the Supreme Court held that an ERISA plaintiff does not necessarily have “actual knowledge” of information contained in disclosures that he received but did not read or recall reading. *Intel Corp. Inv. Policy Comm. v. Sulyma*, 2020 WL 908881 (2020) (Alito, J.). The Court found that in order to satisfy Section 1113(2)’s “actual knowledge” requirement, “the plaintiff must in fact have become aware of that information.”

Background

In the case before the Court, plaintiff alleged that an investment plan committee and other plan administrators “breached their fiduciary duties by overinvesting in alternative assets.” Plaintiff brought suit “within six years of the alleged breaches,” but “more than three years after [defendants] had disclosed their investment decisions to him.” Plaintiff “testified in his deposition that he did not ‘remember reviewing’” the relevant disclosures.

The district court granted summary judgment to defendants because plaintiff failed to bring suit within three years of the receipt of the disclosures. The district court reasoned that “[i]t would be improper to allow [plaintiff’s] claims to survive merely because he did not look further into the disclosures made to him.” 2017 WL 1217185 (N.D. Cal. Mar. 31, 2017). The Ninth Circuit reversed the district court’s decision. 909 F.3d 1069 (9th Cir. 2018). The court held that Section 1113(2)’s “actual knowledge” requirement demands “knowledge that is actual, not merely a possible inference from ambiguous circumstances.” The Ninth Circuit’s interpretation was in accord with prior rulings from the Second, Third, Fifth, Seventh and Eleventh Circuits. Only the Sixth Circuit has held that “[a]ctual knowledge does not require proof that the individual [p]laintiffs actually saw or read the documents that disclosed the allegedly harmful investments.” *Brown v. Owens Corning Inv. Review Comm.*, 622 F.3d 564 (6th Cir. 2010).

Defendants petitioned the Court for certiorari to consider whether Section 1113(2) “bars suit where all of the relevant information was

disclosed to the plaintiff by the defendants 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.” The Court granted the petition on June 10, 2019.

Court Interprets the Phrase “Actual Knowledge” to Require Awareness of the Relevant Information

In a unanimous decision authored by Justice Alito, the Court held that Section 1113(2)’s “actual knowledge” requirement demands “more than evidence of disclosure alone.” The Court determined that “§ 1113(2) begins only when a plaintiff actually is aware of the relevant facts, not when he should be” based on the receipt of the relevant disclosures. The Court explained that “a given plaintiff will not necessarily be aware of all facts disclosed to him; even a reasonably diligent plaintiff would not know those facts immediately upon receiving the disclosure.”

The Court rested its decision on the plain meaning of the phrase “actual knowledge.” The Court found that the phrase “actual knowledge” refers to “[r]eal knowledge as distinguished from presumed knowledge or knowledge imputed to one.” The Court explained that in order “to have ‘actual knowledge’ of a piece of information, one must in fact be aware of it.” The Court found that “if a plaintiff is not aware of a fact, he does not have ‘actual knowledge’ of that fact however close at hand the fact might be.”

In interpreting Section 1113(2), the Court found it significant that “Congress has repeatedly drawn a linguistic distinction between what an ERISA plaintiff actually knows and what he should actually know.” The Court noted that “when Congress has included both forms of knowledge in a provision limiting ERISA actions, it has done so explicitly.” The Court explained that it could not “assume that [Congress] meant to do so by implication in § 1113(2),” particularly since the 1987 Congress repealed the constructive knowledge clause included in the original version of Section 1113(2). The Court determined that “Section 1113(2)’s history thus more readily suggests that the current version does in fact require actual knowledge.”

Court Leaves Open the Possibility That Defendants Can Show “Actual Knowledge” Through Willful Blindness

The Court clarified that “[n]othing in [its] opinion forecloses any of the usual ways to prove actual knowledge at any stage in the litigation.” The Court explained that in addition to relying on direct evidence, defendants may prove “actual knowledge” “through inference from circumstantial evidence.” The Court noted that “[e]vidence of disclosure would no doubt be relevant, as would electronic records showing that a plaintiff viewed the relevant disclosures and evidence suggesting that the plaintiff took action in response to the information contained in them.” Significantly, the Court stated that its “opinion also does not preclude defendants from contending that evidence of ‘willful blindness’ supports a finding of ‘actual knowledge.’”

Authors and
Contacts

Lynn Neuner

Partner

lneuner@stblaw.com

+1-212-455-2696

George Wang

Partner

gwang@stblaw.com

+1-212-455-2228

Cheryl Scarboro

Of Counsel

cscarboro@stblaw.com

+1-202-636-5529



