

## Publications

### Supreme Court's Decision in *Intel Corporation Investment Policy Committee v. Sulyma* - Disclosure Alone Does Not Beget Actual Knowledge

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*This is the second part of our three-part series reviewing ERISA cases decided this term by the U.S. Supreme Court. Part 1 of the series reviewed *Thole v. U.S. Bank*. That ruling held that participants in defined benefit pension plans cannot bring breach of fiduciary duty claims under ERISA unless and until their own benefit has actually been impacted. [Click here](#) to read that alert.*

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Earlier this term, in *Intel Corporation Investment Policy Committee v. Sulyma*, the Supreme Court unanimously affirmed the Ninth Circuit's decision and resolved a split among the circuits as to whether "actual knowledge" requires a plaintiff to be aware of information giving rise to an alleged fiduciary breach or whether a plan's disclosure of information is enough for the shortened three-year statute of limitations under ERISA to apply. The Court declared that "actual knowledge" means what it says and held that a plaintiff does not necessarily have "actual knowledge" of the information contained in disclosures that a plaintiff receives but not does read or cannot recall reading. To meet ERISA's actual knowledge requirement, a plaintiff "must, in fact, become aware of that information", the Court held.

Under ERISA Section 413(1), the limitations period to bring a breach of fiduciary duty claim is six years after "the date of the last action which constituted part of the breach or violation, or in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation." Under ERISA Section 413(2), however, the time to file a claim is shortened to three years "after the earliest date on which the plaintiff had *actual knowledge* of the breach or violation except in the case of fraud or concealment when such action may be commenced not later than six years after the date of discovery of such breach or violation."

Sulyma brought suit against Intel's Investment Management Committee for breach of fiduciary duty within six years but more than three years after the alleged breach of imprudent management

occurred. The Court did not opine on the merits of the case—whether Intel’s Investment Management Committee breached its fiduciary duty by overinvesting plan funds in alternative assets such as hedge funds, private equity and commodities. Instead, the Court addressed whether the three-year or six-year limitations period applied when bringing a breach of fiduciary duty action.

No dispute existed that Sulyma received numerous investment disclosures and a summary plan description from Intel disclosing that the funds were invested in stocks and alternative assets, that these disclosures referred participants to fund fact sheets available on the plan’s website, and that Sulyma had visited the plan’s website numerous times during his employment where such disclosures were available. Sulyma, however, testified that he did not remember reviewing the disclosures and that he was unaware that the Intel retirement plans had been invested in hedge funds or private equity. Based on this evidence, the Court found that the three-year limitations period did not apply.

### **What does this mean for plan sponsors and fiduciaries?**

Plan sponsors and administrators will not be able to rely only on proper and timely disclosures to participants as being sufficient to establish “actual knowledge” by a participant to avail themselves of the shortened three-year limitations period when defending against breach of fiduciary duty claims. Nevertheless, such disclosures (many of which are statutorily required) are still necessary to establish actual knowledge by a participant. Indeed, at the end of its opinion, the Court cites case law to support the proposition that “actual knowledge” may be proved through “inference from circumstantial evidence” and through “evidence of willful blindness.” To that end, plan sponsors and administrators will be wise to document more closely how they deliver plan information, including how and when such information is accessed by participants, and to document any communications with participants to demonstrate that a participant had actual knowledge of relevant plan information.