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# Opinion analysis: Justices unanimously side with retirement-plan participant in plain reading of “actual knowledge”

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By [Natalya Shnitser](#) on Feb 26, 2020 at 6:42 pm



In October of 2015, after Christopher Sulyma, a former Intel employee, sued Intel’s plan fiduciaries for imprudently managing the retirement plans sponsored by the company, Intel moved to dismiss the complaint as time-barred under Section 413(2) of the Employee Retirement Income Security Act of 1974.

Section 413(2) of ERISA imposes a three-year limitations period from the earliest date on which the plaintiff “had actual knowledge” of the alleged fiduciary breach. The three-year window under Section 413(2) shortens the six-year period that otherwise runs from the end of the fiduciary breach, violation or omission.

During the years that Sulyma was a participant in the Intel plans, Intel (used here to refer to the petitioners, which include Intel’s investment committee, administrative committee and finance committee) provided directly, or made available on a website, various disclosures about its retirement plans. These disclosures included information about fund investment allocations, including the allegedly imprudent allocation to “alternative” investments in hedge funds and private equity. Sulyma accessed some of the materials, but testified that he was not actually aware three years before filing suit that his retirement accounts were invested in hedge funds and private equity.

The district court ruled that based on the disclosure documents provided by Intel, Sulyma had actual knowledge of the relevant facts more than three years before filing suit. The U.S. Court of Appeals for the 9th Circuit reversed, holding that the phrase “actual knowledge” means that “the plaintiff is actually aware of the facts constituting the breach, not merely that those facts were available to the plaintiff.”

In a unanimous decision written by Justice Samuel Alito, the Supreme Court agreed, holding that a plaintiff does not necessarily have actual knowledge of the information contained in disclosures that he receives but does not read or cannot recall reading. To satisfy the actual knowledge requirement, the plaintiff must “in fact have become aware of that information.”

To reach its holding, the court turned to the plain reading of the actual knowledge requirement, concluding that dictionary definitions of “actual” and “knowledge” confirm that to have “actual knowledge” of some information, one must “in fact be aware of it.” The court also emphasized that the qualifier “actual” distinguishes the knowledge requirement in Section 413(2) from a constructive knowledge requirement that Congress has used explicitly in other ERISA limitations periods to encompass knowledge that the plaintiff should have acquired.

The opinion proceeds to review—and reject—Intel’s various arguments for a broader reading of Section 413(2), finding that Congress’ use of the word “actual” undermines each of the petitioner’s claims. The court finds that Intel’s text-based argument – which focuses on the meaning of the word “had” in the “had actual knowledge” requirement – would transform Section 413(2) into a constructive knowledge requirement. Intel had argued that once a participant receives the relevant plan disclosure, the participant effectively “holds” the knowledge “in his hand” and thus satisfies the “had actual knowledge” requirement. The court noted that under that reading, the participant has the requisite knowledge “because he could acquire it with reasonable effort,” which is not the same as having actual knowledge.

Turning to Intel’s contextual arguments, the court looks to the plain language of the statute to reject the suggestion that the actual knowledge requirement is satisfied once the plan fiduciaries meet their ERISA disclosure requirements, even if the ERISA disclosure regime is meant to ensure that plan participants know where they “stand with respect to the plan.”

The court also rejects Intel’s argument that a plain reading of the actual knowledge requirement in Section 413(2) undermines the provision’s purpose of “protecting plan administrators over bygone investment decisions.” Intel and its amici had warned that plan participants could simply deny knowledge, thus limiting the benefit of Section 413(2). Even if this were true, the court suggests, it does not compel reading the word “actual” out of the statute. Notably, the court points out that Secretary of Labor, who may also bring suits against plan fiduciaries, would have “a hard time” operating within the Section 413(2) timeframe if the secretary were deemed to have actual knowledge of the facts contained in all of the reports that the Department of Labor receives from ERISA plans each year.

The court acknowledges that its plain meaning interpretation of actual knowledge may limit the protection for plan fiduciaries, but contends that Intel’s interpretation would, conversely, limit the value of Section 413(2) for plan participants and beneficiaries. Assuming that the statutory language reflects Congress’ choice, the court points to Congress for any alternative balancing of interests and policy considerations.

Intel’s efforts to draw on legislative history are likewise unsuccessful. Noting that only the current version of the statute is at issue, the court declines to consider how its interpretation of actual knowledge might render incoherent an earlier version of Section 413(2).

While siding with the plan participant on the meaning of actual knowledge, the court concludes its opinion by clarifying that nothing in the opinion precludes any of the “usual ways” of proving actual knowledge. Not only are plaintiffs who recall reading particular disclosures bound by oath during depositions, but because actual knowledge can be established through “inference from circumstantial evidence,” electronic records showing plaintiffs’ engagement with particular materials could be relevant in future cases. For purposes of ruling on a motion for summary judgment, a court should not adopt a plaintiff’s version of the facts if the record “blatantly” contradicts the plaintiff’s denial of knowledge. Finally, the court emphasizes that the opinion does not preclude defendants from arguing that evidence of “willful blindness” supports a finding of actual knowledge.

Although Intel did not argue that actual knowledge was established in the case, the opinion lays out a roadmap – including strategies that rely on data collected when participants engage with electronic disclosures – for how Intel and other plan fiduciaries may try to establish actual knowledge in the future. Plan fiduciaries and plan participants may also look to the courts for further guidance on what exactly a plaintiff must actually know about the relevant conduct and law in order for Section 413(2) to apply.

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