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HIGH COURT WILL HEAR INTEL'S FIDUCIARY BREACH STATUTE-OF-LIMITATIONS CASE

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The US Supreme Court has [agreed](#) to review the appellate decision finding Intel's disclosure of allegedly imprudent investment decisions for its retirement plans did not start ERISA's three-year statute of limitations if the plaintiff hadn't read the disclosures ([Sulyma v. Intel Corp. Inv. Policy Comm.](#), 909 F.3d 1069 (9th Cir. 2018)).

FACTUAL BACKGROUND

A former employee and participant in two of Intel's retirement plans who invested in two custom Intel investment funds filed the fiduciary breach case. To reduce investment risk through diversification, Intel's retirement plan committee had increased the funds' holdings in alternative investments (such as hedge funds and private equity). But those investments had higher fees and, during periods of strong equity-market returns, underperformed relative to index funds and comparable portfolios.

Intel disclosed its investment decisions in several documents — including summary plan descriptions, qualified default investment alternative notices and “fund fact sheets” — posted on two websites. However, the plaintiff testified that he didn't know about these disclosures, despite admitting he might have accessed Intel's benefits website 68 times while working for the company.

INTEL'S STATUTE-OF-LIMITATIONS DEFENSE

Intel argued ERISA's statute of limitations barred the participant's claim because disclosures about the alternative investments were available for more than three years before he filed his complaint. The district court agreed and granted summary judgment for Intel.

But the 9th US Circuit Court of Appeals found that merely making the disclosures available doesn't start the statute of limitations because ERISA requires actual knowledge of a breach to trigger the limitations period. The court said that the plaintiff's claim that he never read the disclosures and didn't know about the alternative investments creates a factual dispute as to his actual knowledge of the alleged breach.

SPLIT IN CIRCUIT COURTS

The 9th Circuit's opinion conflicts with a 2010 6th Circuit decision holding that "[w]hen a plan participant is given specific instructions on how to access plan documents, their failure to read the documents will not shield them from having actual knowledge of the documents' terms" ([Brown v. Owens Corning Inv. Review Comm.](#), 622 F.3d 564 (6th Cir. 2010)). The 9th Circuit acknowledged the 6th Circuit's opinion but disagreed, saying access to plan documents amounts to constructive, but not actual, knowledge.

RELATED RESOURCES

Non-Mercer Resources

- [Intel Corp. Inv. Policy Comm. v. Sulyma](#), cert. granted, No. 18-1116 (US June 10, 2019)
- [Sulyma v. Intel Corp. Inv. Policy Comm.](#), 909 F.3d 1069 (9th Cir. 2018)
- [Brown v. Owens Corning Inv. Review Comm.](#), 622 F.3d 564 (6th Cir. 2010)

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- [9th Circuit Rewards Ignorance in ERISA Fiduciary Breach Statute-of-Limitations Case](#) (Feb. 13, 2019)

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