

June 27, 2019

Supreme Court Agrees to Hear Intel Case with Potentially Significant Implications for 401(k) Plan Fiduciaries

On June 10, 2019, the U.S. Supreme Court agreed to hear *Intel Corp. Investment Policy Committee et al. v. Sulyma* (No. 18-1116), and the outcome of this decision may have major ramifications for 401(k) investment menu design. The Court will resolve the issue of when plan participants have “actual knowledge” of a fiduciary violation under the Employee Retirement Income Security Act (“ERISA”) for purposes of starting the statute of limitations. If the Court finds that the statute of limitations has not run, then the case will be remanded to the lower courts who will need to determine whether Intel’s 401(k) plan investment menu (which included exposure to private funds) was appropriate under ERISA.

Background

In 2008, Intel changed its 401(k) investment menu to offer participants exposure to alternative assets, including private funds. Sulyma, a former Intel employee, filed suit in October 2015, alleging the Intel Retirement Plans Investment Policy Committee (the “Intel Committee”) breached its fiduciary duty to plan participants by, among other things, altering its investment strategy to offer private funds, which allegedly increased the risk profile of the plan. In April 2017, a federal district court judge found that claims against Intel Committee were time-barred under ERISA’s three-year statute of limitations, finding that a participant has “actual knowledge” at the time the participant received financial disclosure describing this investment strategy, regardless of whether the defendant actually understood the nature of the breach at the time the disclosure was received.

However, in December 2018, the Ninth Circuit Court of Appeals overturned the decision, finding that the lower court incorrectly interpreted the meaning of “actual knowledge.” The Ninth Circuit Court held that the defendant must show that the plaintiff was actually aware of the nature of the alleged breach more than three years before the plaintiff’s action is filed. The exact knowledge required will vary depending on the plaintiff’s claim. This position differs from the Sixth Circuit Court of Appeal’s decision in *Brown v. Owens Corning Investment Review Committee*, 622 F.3d 564 (6th Cir. 2010), and as a result there is a circuit split that the Supreme Court will have the opportunity to resolve.

Supreme Court Review

The issue to be decided by the Supreme Court is whether the receipt by a plan participant of investment disclosures is enough for that participant to have “actual knowledge” of a potential claim, which would start the statute of limitations. In light of such a pending decision, retirement plan fiduciaries may be left wondering what actions need to be taken to ensure plan participants have “actual knowledge” of information contained in the various ERISA-required disclosures. Further guidance as to what, if any, actions plan fiduciaries should consider must await the Supreme Court’s decision this coming fall.

A decision by the Supreme Court that enables the case to proceed on the merits may have significant ramifications for retirement plan fiduciaries. If the lower courts determine that the Intel Committee’s investment menu design was not consistent with its fiduciary duties under ERISA, then this could have a chilling effect on other companies who are considering adding alternative assets to their 401(k) plans. Conversely, if Intel prevails on the merits, then this type of investment menu design could become more common.

If you have any questions regarding the content of this alert, please reach out to Benefits/ERISA partner [Josh Lichtenstein](#), litigation & enforcement partner [Dan Ward](#), benefits principal [David Kirchner](#) or benefits associate [Madeline Cooper](#).