No. 18-1116

In the Supreme Court of the United States

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, ET AL., PETITIONERS

v.

CHRISTOPHER M. SULYMA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

The Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (29 U.S.C. 1001 *et seq.*), imposes a duty on fiduciaries of an employee benefit plan to administer the plan prudently. 29 U.S.C. 1104(a). Plan participants and beneficiaries, fiduciaries, and the Secretary of Labor may sue on behalf of the plan to remedy a breach of fiduciary duty. 29 U.S.C. 1109, 1132(a)(2). To be timely, a claim for breach of fiduciary duty generally must be brought by the earlier of "(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation," or "(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation." 29 U.S.C. 1113(1) and (2). The question presented is as follows:

Whether respondent should be deemed to have "actual knowledge," 29 U.S.C. 1113(2), of the contents of the written disclosures that petitioners made available to him more than three years before he filed suit, even if he did not read those disclosures.

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INTEREST OF THE UNITED STATES

This case concerns the limitations period specified in 29 U.S.C. 1113 for bringing certain claims under the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 93-406, 88 Stat. 829 (29 U.S.C. 1001 *et seq.*). The Secretary of Labor has primary authority for administering ERISA, including the authority to file civil actions that are subject to Section 1113. 29 U.S.C 1002(13), 1132(a)(2), 1136(b). The United States therefore has a substantial interest in this Court's resolution of the question presented.

STATEMENT

1. ERISA is designed to "protect * * * the interests of participants in employee benefit plans and their beneficiaries * * * by establishing standards of conduct,

responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. 1001(b). ERISA requires every employee benefit plan to have one or more named fiduciaries, who have the authority to control and manage the administration of the plan and its assets. 29 U.S.C. 1102(a)(1). A person is a fiduciary if "he exercises any discretionary authority or discretionary control respecting management of [an ERISA] plan * * * or control respecting management or disposition of its assets," if "he renders investment advice * * * with respect to any moneys or other property of such plan," or if "he has any discretionary authority or discretionary responsibility in the administration of such plan." 29 U.S.C. 1002(21)(A). All plan fiduciaries must abide by duties of loyalty and prudence, set forth in Part 4 of Title I of ERISA, and may not engage in certain prohibited transactions. 29 U.S.C. 1104(a), 1106(a) and (b). If a fiduciary breaches those duties or otherwise violates Title I, ERISA authorizes plan participants and their beneficiaries, other plan fiduciaries, and the Secretary of Labor to bring a civil action against the fiduciary on behalf of the plan. 29 U.S.C. 1132(a)(2), (3), and (5).

The provision at issue here, 29 U.S.C. 1113, specifies the limitations period for civil actions to redress fiduciary breaches or other violations of Part 4 of Title I of ERISA. In general, the statute provides for a six-year period for bringing suit, running from "(A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation." 29 U.S.C. 1113(1). But the statute also provides two alternative limitations periods. First, no civil action may be brought more than "three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation." 29 U.S.C. 1113(2). Second, "in the case of fraud or concealment," the action "may be commenced not later than six years after the date of discovery of such breach or violation." 29 U.S.C. 1113.

2. Respondent worked for the Intel Corporation from 2010 to 2012 and participated in two ERISA-covered employee benefit plans: the Intel Retirement Contribution Plan (Retirement Plan) and the Intel 401(k) Savings Plan (401(k) Plan). Pet. App. 2a, 22a. Contributions to the Retirement Plan were automatically invested in the Intel Global Diversified Fund. J.A. 25, 32, 53-55. The 401(k) Plan permitted participants to select from a menu of investment options; respondent elected to invest his contributions in the Intel Target Date 2045 Fund. J.A. 25, 48, 57-58. The Intel Retirement Plans Investment Policy Committee (Investment Policy Committee) was responsible for selecting and managing the investments in each Plan. J.A. 26, 36.

The Investment Policy Committee was also responsible for determining the relative allocation of different types of assets in the funds. Pet. App. 3a; see J.A. 26, 63, 65-66. After the 2008 financial crisis, the Investment Policy Committee increased the relative amount of "alternative investments," such as hedge funds, private equity funds, and commodities, in each fund's investment portfolio. Pet. App. 3a; see J.A. 94.

As required by ERISA, see 29 U.S.C. 1024(b)(1)(A), a summary plan description for the plans was made available to participants upon enrollment—in this case, via a website called "NetBenefits." Pet. App. 24a; see 29 C.F.R. 2520.104b-1(c) (permitting disclosure through electronic media in some circumstances). The 2012 summary plan description stated that the funds held alternative assets, such as "hedge funds," "private equity," and "commodities." Pet. App. 35a (citation omitted). It did not, however, set forth dollar amounts or percentage allocations for any of those types of assets, nor did it provide any information about the process by which they were chosen. See J.A. 224-227.

The 2012 summary plan description directed participants to "fund fact sheets" on the NetBenefits website for more information about the investments in each fund. J.A. 227. The fact sheets disclosed the amount (in dollars and percentage terms) allocated in each fund to various types of assets, including hedge funds, private equity, and commodities. Pet. App. 36a; see, *e.g.*, J.A. 301-303. The fact sheets also described "the basic strategy behind the decision to invest" in those asset classes, Pet. App. 3a—stating, for example, that "[t]he addition of hedge funds and commodities provide[s] diversification benefits and reduce[s] investment risk by investing in assets whose returns are less correlated to equity markets," J.A. 301.

3. In 2015, respondent brought this putative class action against petitioners—the Investment Policy Committee, its members, and related Intel committees and individuals—as ERISA fiduciaries for the plans. J.A. 6, 43-44. The gravamen of the complaint was that petitioners' decision to increase the allocation of alternative investments in the funds violated ERISA's duty of prudence, 29 U.S.C. 1104(a), and resulted in higher fees and lower investment returns. Pet. App. 21a; see J.A. 27-30, 113. The complaint also alleged that petitioners failed to adequately disclose the risks, fees, and expenses associated with the alternative investments. J.A. 30-31.

Although the complaint was filed within six years of the alleged breach, see 29 U.S.C. 1113(1), petitioners moved to dismiss it as untimely on the theory that respondent "had actual knowledge of the breach or violation," 29 U.S.C. 1113(2), more than three years before filing suit. Pet. App. 4a. The district court converted that motion into one for summary judgment and permitted discovery on the limitations issue. *Ibid.*

Respondent accessed the NetBenefits website numerous times. Pet. App. 24a. He testified, however, that he did not review the fund fact sheets referred to in the summary plan description and posted on the NetBenefits website. J.A. 173-174, 182-183. Respondent also testified that he did not recall receiving or reviewing the summary plan descriptions and that he "was unaware that the monies that [he] had invested through the Intel retirement plans had been invested in hedge funds or private equity" until consulting with counsel before filing suit. J.A. 212; see J.A. 196-197. Respondent recalled reviewing certain periodic account statements, but those statements said "nothing about investments in private equity or hedge funds." Pet. App. 25a. Respondent also testified that, "while he worked at Intel, he had little experience with financial issues, and didn't know what 'hedge funds,' 'alternative investments,' and 'private equity' were." *Id.* at 23a (citation omitted).

The district court granted summary judgment to petitioners on the basis of Section 1113(2). Pet. App. 19a-49a. The court held that, more than three years before filing suit, respondent had "actual knowledge" of the relevant facts based on "the financial disclosures provided" to him, including the summary plan descriptions and fund fact sheets. *Id.* at 34a; see *id.* at 34a-38a. The court observed that respondent had, by his own account, read some periodic account statements during his time at Intel. *Id.* at 40a. In the court's view, "[e]ven making all inferences in [respondent's] favor that he only ever reviewed the statements" and did not review the fund fact sheets or summary plan descriptions, "those statements repeatedly directed him to the NetBenefits website," and "[i]t would be improper to allow [his] claims to survive merely because he did not look further into the disclosures made to him." *Id.* at 40a-41a.

4. The court of appeals reversed. Pet. App. 1a-18a. The court first held that, "[i]n light of the statutory text" and circuit precedent, the three-year limitations period in 29 U.S.C. 1113(2) begins to run only when "the plaintiff [is] actually aware of the nature of the alleged breach." Pet. App. 12a. The court explained that the showing a defendant must make to meet that standard "depend[s] on the plaintiff's claim." *Ibid.* As an example, the court explained that the Section 1113(2) limitations period would not begin to run on a claim asserting a breach of fiduciary duty, 29 U.S.C. 1104, until the plaintiff is "aware that the defendant has acted and that those acts were imprudent." Pet. App. 12a. By contrast, the court stated that the Section 1113(2) limitations period on a claim asserting that the defendant engaged in a transaction prohibited by 29 U.S.C. 1106 could begin to run as soon as the plaintiff is aware of the transaction, "because knowledge of the transaction is all that is necessary to know" that a breach or violation has occurred. Pet. App. 12a.

The court of appeals further held that, "for a plaintiff to have sufficient knowledge to be alerted to his or her claim, the plaintiff must have *actual* knowledge, rather than constructive knowledge." Pet. App. 13a. In its view, "the statutory phrase 'actual knowledge' means what it says: knowledge that is actual, not merely a possible inference from ambiguous circumstances." *Ibid.* (brackets and citation omitted). The court reasoned that reading "actual knowledge" to exclude constructive or imputed knowledge was particularly warranted in light of the statutory history. *Ibid.* It explained that, "when Congress first enacted ERISA in 1974, section 1113 contained two kinds of knowledge requirement[s], actual knowledge and constructive knowledge," and Congress "repealed the constructive knowledge provision in 1987." *Id.* at 6a-7a. The court viewed those amendments as "strongly suggest[ing] that Congress intended for only an actual knowledge standard to apply." *Id.* at 13a. Thus, the court concluded "that the phrase 'actual knowledge' means the plaintiff is actually aware of the facts constituting the breach, not merely that those facts were available to the plaintiff." *Ibid.*

Applying those standards here, the court of appeals determined that respondent's testimony—in which he stated that he was unaware three years before filing suit that his retirement savings in the plans had been significantly invested in alternative investments, and that he did not review or could not recall reading the documents that, according to petitioners, made the relevant information available to him—"created a dispute of material fact that precluded summary judgment." Pet. App. 16a-17a. The court remanded the case for the district court to determine whether respondent "had the requisite 'actual knowledge of the breach' for section 1113(2) to bar the action." *Id.* at 17a.

SUMMARY OF ARGUMENT

A. To be timely under 29 U.S.C. 1113(2), an action asserting a fiduciary breach or other violation of Part 4 of Title I of ERISA must be brought within three years of the plaintiff's "actual knowledge of the breach or violation." The court of appeals was correct that the statute "means what it says." Pet. App. 13a (citation omitted). To trigger Section 1113(2), the plaintiff must have actual knowledge of the breach or violation, not constructive knowledge. That is the plain meaning of the term "actual" in this context: existing in fact, rather than imputed by law.

The statutory history confirms as much. In the original 1974 version of ERISA, the three-year limitations period in what is now Section 1113(2) ran from the earlier of the plaintiff's "actual knowledge of the breach or violation" or the date on which a report was filed with the Secretary of Labor from which the plaintiff "could reasonably be expected to have obtained knowledge of [the] breach or violation." ERISA, Tit. I, Pt. 4, § 413(a)(2)(A) and (B), 88 Stat. 889. Congress eliminated the constructive knowledge provision in 1987. That history confirms that "actual knowledge" does not import a constructive knowledge standard into the statute.

Reading "actual knowledge" in Section 1113(2) to include constructive or imputed knowledge would also be inconsistent with the statutory structure and context. Congress provided for various constructive knowledge provisions elsewhere, but not in Section 1113(2). Section 1113 itself contains a discovery rule, applicable in "case[s] of fraud or concealment," which has been interpreted to run from the date the plaintiff either discovered or should have discovered the breach or violation. 29 U.S.C. 1113. Other limitations periods in ERISA expressly turn on what the plaintiff "should" have known. *E.g.*, 29 U.S.C. 1303(e)(6)(B)(i). And numerous other statutes distinguish between "actual knowledge" and implied, presumed, or constructive knowledge.

B. Petitioners contend (Br. 20-33) that a plaintiff should be deemed to have "actual knowledge" of the contents of the disclosures that ERISA requires be provided to the plaintiff, even if the plaintiff does not read those disclosures. Petitioners liken that approach to the doctrine of willful blindness. But willful blindness is not a form of actual knowledge, and it applies only when a person takes deliberate steps to avoid acquiring knowledge. Petitioners, by contrast, seek a conclusive legal presumption that plan participants actually know all the information in the mandatory disclosures made available to them, no matter what. That is at best a form of constructive knowledge, and constructive knowledge is not enough.

Petitioners rely principally on an inference from another feature of the statute—in particular, the mandatory disclosure regime in Part 1 of Title I of ERISA. But nothing in the text of Section 1113(2) suggests that it should be tied to the receipt of mandatory disclosures. Indeed, Section 1113 does not even provide the limitations period for actions asserting a violation of Part 1 of Title I. Petitioners' reading is also not supported by the text of the disclosure statutes and would disserve the purposes of the disclosure regime.

Moreover, petitioners' reading threatens to frustrate the enforcement of the statute by other fiduciaries and the Secretary of Labor, all of whom can bring actions that are subject to Section 1113. Petitioners do not address the application of Section 1113(2) to such suits. If other fiduciaries or the Secretary were deemed to have actual knowledge of all the mandatory ERISA disclosures they receive or possess, they could regularly have only three years, rather than six years, to investigate potential misconduct and decide whether to bring a civil action.

Finally, petitioners' policy concerns are unfounded. Congress already struck a balance between safeguarding employees' rights and limiting fiduciaries' liability by providing the six-year period in Section 1113(1). And petitioners offer no reason to think that actual knowledge is more difficult to discern in this context than in the other contexts in which federal law requires actual, not merely constructive, knowledge.

ARGUMENT

THE THREE-YEAR LIMITATIONS PERIOD IN 29 U.S.C. 1113(2) BEGINS TO RUN ONLY WHEN A PLAINTIFF IS ACTUALLY AWARE OF THE BREACH OR VIOLATION

A. "Actual Knowledge" Means Actual, Not Constructive, Knowledge

The court of appeals was plainly correct to conclude that the three-year limitations period in 29 U.S.C. 1113(2) begins to run only when the plaintiff has "*actual* knowledge, rather than constructive knowledge." Pet. App. 13a. Claims asserting a breach of fiduciary duty or other violation of Part 4 of Title I of ERISA are timely if brought within six years of the breach or violation, 29 U.S.C. 1113(1), unless the plaintiff "had actual knowledge of the breach or violation" more than three years before filing suit, 29 U.S.C. 1113(2). The text, history, and structure of ERISA demonstrate that Section 1113(2) "means what it says," Pet. App. 13a (citation omitted), and that it requires actual knowledge, not merely constructive, imputed, or implied knowledge.

1. The plain meaning of "actual knowledge" is knowledge a person in fact has or acquires

To resolve a question of statutory interpretation, this Court ordinarily begins "by analyzing the statutory language, 'assuming that the ordinary meaning of that language accurately expresses the legislative purpose.'" *Hardt* v. *Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010) (quoting *Gross* v. *FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009)) (brackets omitted).

Here, the critical statutory language is the phrase "actual knowledge" in Section 1113(2), which operates alongside the six-year period otherwise specified in Section 1113(1) for filing a suit asserting a fiduciary breach or other violation of Part 4 of Title I of ERISA. Section 1113(2)'s shorter three-year period comes into play only when the plaintiff has "actual knowledge":

> No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—
>
> (1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or
>
> (2) three years after the earliest date on which the plaintiff had *actual knowledge* of the breach or violation;
>
> except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

29 U.S.C. 1113 (emphasis added).

The plain meaning of "actual knowledge" is knowledge a person in fact has or acquires. The term "actual" means "[e]xisting in reality and not potential, possible, simulated, or false." *The American Heritage Dictionary of the English Language* 18 (5th ed. 2016); see also *Webster's New World College Dictionary* 15 (5th ed. 2014) ("existing in reality or in fact; not merely possible, but real; as it really is"). The term is used in legal contexts in contradistinction to "constructive," to signify the difference between things that exist and things that the law presumes to exist for policy reasons—for example, "*constructive* as against *actual possession*." Bryan A. Garner, *Garner's Dictionary of Legal Usage* 210 (3d ed. 2011). Thus, the distinctive feature of knowledge that is "actual" is that it exists as a matter of fact rather than being imputed as a matter of law. See *Ballentine's Law Dictionary* 24 (3d ed. 1969) (defining "actual knowledge" to mean "[r]eal knowledge as distinguished from * * * knowledge imputed to one because of his having had information which should have put him on inquiry that would have led to real knowledge") (emphasis omitted).

This Court's case law reflects that common-sense understanding of the term "actual." In a variety of contexts, the Court has distinguished between actual and constructive knowledge, discovery, or notice. See, *e.g.*, *Universal Health Servs.* v. *United States ex rel. Escobar*, 136 S. Ct. 1989, 2001-2002 (2016) (offering examples of a defendant's "actual knowledge," as distinct from "deliberate ignorance or reckless disregard of the truth or falsity of the information") (internal quotation marks omitted); *Merck & Co.* v. *Reynolds*, 559 U.S. 633, 644 (2010) (distinguishing between "a plaintiff's *actual* discovery of certain facts" and "the facts that a reasonably diligent plaintiff would have discovered"); *Gebser* v.

Lago Vista Indep. Sch. Dist., 524 U.S. 274, 285 (1998) (concluding that a school district may be held liable under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, for a teacher's sexual harassment of a student only if the district has "actual notice," not "constructive notice," of the misconduct). Indeed, in *Merck & Co.*, this Court identified Section 1113(2)—the provision at issue here—as an example of a provision that "make[s] the linguistic distinction" between *actual* and *constructive*, which the concurring Justices in that case had emphasized in a different statute. 559 U.S. at 647 (citing 29 U.S.C. 1113(2)); cf. *id.* at 655-657, 661 (Scalia, J., concurring in part and concurring in the judgment) (discussing "actual" and "constructive" notice under 15 U.S.C. 77m).

The courts of appeals have likewise understood the term "actual knowledge" in Section 1113(2) to exclude constructive knowledge. As the Third Circuit has explained, "a plaintiff may have *constructive* knowledge of a breach before he actually knows of the breach," but the three-year period in Section 1113(2) "calls for *actual* knowledge." *Gluck* v. *Unisys Corp.*, 960 F.2d 1168, 1176 (1992) (emphases added); see *Radiology Ctr.* v. *Stifel, Nicolaus & Co.*, 919 F.2d 1216, 1222 (7th Cir. 1990) ("Only actual knowledge will do."); see also Pet. App. 13a-14a; *Caputo* v. *Pfizer, Inc.*, 267 F.3d 181, 194 (2d Cir. 2001); *Reich* v. *Lancaster*, 55 F.3d 1034, 1056-1057 (5th Cir. 1995); *Brock* v. *Nellis*, 809 F.2d 753, 754-755 (11th Cir.), cert. dismissed, 483 U.S. 1057 (1987); cf. *Mitchell* v. *Commissioner*, 292 F.3d 800, 806 (D.C. Cir. 2002) (observing outside the ERISA context that mere "reason to know" would not satisfy a statutory requirement of "actual knowledge").[1]

Petitioners cite (Br. 23) a broader definition of "actual knowledge," postdating ERISA's 1974 enactment. See *Black's Law Dictionary* 950 (9th ed. 2009) (defining "actual knowledge" to mean, in a secondary sense, "[k]nowledge of information that would lead a reasonable person to inquire further," "[a]lso termed * * * *implied actual knowledge*"). The phrase "implied actual knowledge," however, borders on being an oxymoron, and even petitioners do not contend that "actual knowledge" in Section 1113(2) bears that meaning. Likewise, the state cases that petitioners cite (Br. 23)—none of which interpreted "actual knowledge" as a statutory term—appear to be outliers. Other state courts have distinguished between actual knowledge on the one hand and implied, imputed, or constructive knowledge on the other. *E.g.*, *Travis* v. *Dreis & Krump Mfg. Co.*, 551 N.W.2d 132, 143 (Mich. 1996) ("Because the Legislature was careful to use the term 'actual knowledge,' and not the less specific word 'knowledge,' we determine that the Legislature meant that constructive, implied, or imputed knowledge is not enough."); *City of Corsicana* v. *Stewart*, 249 S.W.3d 412, 414-416 (Tex. 2008) (per curiam) (similar).

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[1] The Sixth Circuit's decision in *Brown* v. *Owens Corning Investment Review Committee*, 622 F.3d 564 (2010), is a notable exception. The court of appeals stated there that, when ERISA plan participants are "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." *Id.* at 571; see Pet. App. 14a (acknowledging disagreement with *Brown*). The Sixth Circuit did not attempt to reconcile that interpretation of Section 1113(2) with the plain meaning of "actual knowledge."

Under the statute's plain meaning then, a plaintiff has "actual knowledge of the breach or violation," 29 U.S.C. 1113(2), only when the plaintiff is in fact aware of the breach or violation, not merely when the plaintiff "receive[s] * * * disclosures" (Pet. Br. 18) from which the plaintiff could or should have learned the relevant information. That is what "actual" means—existing in fact. The court of appeals was thus correct to reverse the district court's judgment, which wrongly imputed to respondent actual knowledge of what he supposedly would have learned had he "look[ed] further into the disclosures made to him." Pet. App. 41a.

2. The history of the statute confirms that "actual knowledge" does not encompass constructive knowledge

The history of 29 U.S.C. 1113 makes clear that "actual knowledge" does not include implied, imputed, or constructive knowledge. See Pet. App. 13a. When Congress enacted ERISA in 1974, the statute contained the same six-year limitations period now found in Section 1113(1). ERISA § 413(a)(1), 88 Stat. 889. It also contained an alternative three-year period, running from the earlier of either the plaintiff's "actual knowledge of the breach or violation," § 413(a)(2)(A), 88 Stat. 889, or "the earliest date * * * on which a report from which [the plaintiff] could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary," § 413(a)(2)(B), 88 Stat. 889. The latter provision applied without regard to whether the plaintiff had in fact read the publicly filed reports. See, *e.g.*, *Fink* v. *National Sav. & Trust Co.*, 772 F.2d 951, 956 (D.C. Cir. 1985) (observing that "[t]he statute provides that constructive knowledge is obtained through reports filed with the Secretary of Labor"). In 1987, however, Congress amended the statute to eliminate the constructive knowledge provision and retain only "actual knowledge" as the trigger for the three-year limitations period. See Pension Protection Act, Pub. L. No. 100-203, Tit. IX, Subtit. D, Pt. II, Subpt. D, § 9342(b), 101 Stat. 1330-371.

Petitioners contend (Br. 39) that the 1974 version of the statute would not have foreclosed imputing "actual knowledge" to a plaintiff of the information in disclosures he personally received, even if he did not read them. To the contrary, the 1974 version shows that Congress understood "actual knowledge" to be distinct from knowledge a plaintiff "could reasonably be expected to have obtained," ERISA § 413(a)(2)(B), 88 Stat. 889. And the 1987 amendments demonstrate that Congress deliberately eliminated the prior constructive knowledge standard as a basis for triggering the three-year limitations period in Section 1113(2). "When Congress amends legislation, courts must 'presume it intends the change to have real and substantial effect.'" *Ross* v. *Blake*, 136 S. Ct. 1850, 1858 (2016) (quoting *Stone* v. *INS*, 514 U.S. 386, 397 (1995)) (brackets omitted). The statute should not now be read "as though the amendment * * * had not taken place." *Ibid.*

Indeed, the reading of Section 1113(2) that petitioners propose would be *broader* in some respects than the since-removed constructive knowledge standard. The prior version of Section 1113(2) imputed to a plaintiff only knowledge of specific reports filed with the Secretary. See *Fink*, 772 F.2d at 956. Petitioners would now read into the statute a standard that would charge a plan participant with "actual knowledge" of *any* mandatory disclosure the plaintiff received, either in hard copy or through directions to a posting on a website—

including annual reports but also summary plan descriptions and other disclosures. See Pet. Br. 9-11. What petitioners effectively seek then "is not a construction of [the] statute," but rather "an enlargement of it by the court, so that what was omitted * * * may be included within its scope." *West Va. Univ. Hosps., Inc.* v. *Casey*, 499 U.S. 83, 101 (1991) (citation omitted). That request should be rejected.

3. The structure and context of the statute confirm that "actual knowledge" excludes constructive knowledge

The plain meaning of "actual knowledge" in Section 1113(2) is further confirmed by the language of surrounding provisions and other federal laws. Congress knew how to provide for a limitations period that turns on what the plaintiff *should have* known, and it included such provisions elsewhere in ERISA. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello* v. *United States*, 464 U.S. 16, 23 (1983) (brackets and citation omitted). Petitioners' contrary reading would violate that principle.

a. The six-year period for bringing a suit for a fiduciary breach or other violation of Part 4 of Title I of ERISA, and the alternative three-year period triggered by "actual knowledge of the breach or violation," are both subject to an exception in "the case of fraud or concealment." 29 U.S.C. 1113. In such a case, the action "may be commenced not later than six years after the date of discovery of [the] breach or violation." *Ibid.*

The statute thus provides for a "'discovery rule,' a doctrine that delays accrual of a cause of action until the plaintiff has 'discovered' it." *Merck & Co.*, 559 U.S. at

644. Under the traditional judge-made discovery rule, "where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is *discovered*." *Id.* at 644-645 (quoting *Holmberg* v. *Armbrecht*, 327 U.S. 392, 397 (1946)). In *Merck & Co.*, this Court held that the term "discovery" in the limitations provision in 28 U.S.C. 1658(b)(1) should be interpreted in conformity with that traditional rule and therefore refers "not only to a plaintiff's *actual* discovery of certain facts, but also to the facts that a reasonably diligent plaintiff would have discovered." 559 U.S. at 644; see *id.* at 645-648. Although this Court has not directly addressed the analogous question for Section 1113's discovery rule, the lower courts have uniformly interpreted it to "encompass[] both actual and constructive discovery." *J. Geils Band Emp. Benefit Plan* v. *Smith Barney Shearson, Inc.*, 76 F.3d 1245, 1254 (1st Cir.) (collecting cases), cert. denied, 519 U.S. 823 (1996); cf. *Merck & Co.*, 559 U.S. at 645 (citing *J. Geils*, 76 F.3d at 1254).

Section 1113's discovery rule therefore provides an additional reason to read "actual knowledge" to mean what it says. Section 1113 already contains a provision that turns on the facts a plaintiff either actually discovers or should have discovered in the exercise of reasonable diligence, and that provision gives the plaintiff up to six years to bring suit. Had Congress wished the shorter three-year period in Section 1113(2) also to turn on facts the plaintiff should have discovered based on the disclosures available at the time, Congress would have said so—as it did with respect to one specified category of information in the since-repealed constructive knowledge provision that had been enacted as part of ERISA in 1974. See pp. 15-17, *supra*.

b. The conclusion that "actual knowledge" for purposes of Section 1113(2) does not include constructive knowledge is further strengthened when that provision is read in the context of ERISA as a whole. Section 1113 specifies the limitations period for bringing an action for a fiduciary breach or other violation of Part 4 of Title I of ERISA. But ERISA contains distinct limitations periods for other remedies, and several of those provisions turn on when the plaintiff "acquired *or should have acquired* actual knowledge" of the relevant facts. 29 U.S.C. 1303(e)(6)(B)(i) and (f)(5)(B)(i) (emphasis added) (limitations period for actions brought for or against the Pension Benefit Guaranty Corporation); see 29 U.S.C. 1370(f)(2)(A) (certain suits to challenge the termination of single-employer plans must be brought within three years of the "date on which the plaintiff acquired or *should have acquired* actual knowledge of the existence of such cause of action") (emphasis added); 29 U.S.C. 1085(e)(9)(I)(iv) (Supp. V 2017) (similar); 29 U.S.C. 1451(f)(2) (similar).[2]

Those provisions underscore that, in the context of ERISA, Congress has not understood the term "actual knowledge" to encompass facts the plaintiff should have

[2] Congress added these provisions to ERISA at various times after 1974. See Multiemployer Pension Reform Act of 2014, Pub. L. No. 113-235, Div. O, Tit. II, § 201(a)(6), 128 Stat. 2809; Single-Employer Pension Plan Amendments Act of 1986, Pub. L. No. 99-272, Tit. XI, § 11014(a), (b)(1) and (2), 100 Stat. 261-264; Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, Tit. I, § 104(2), 94 Stat. 1263. But in making those changes, Congress left the "actual knowledge" provision in Section 1113(2) undisturbed.

acquired; otherwise, the "should have acquired" language in each of the provisions cited above would be superfluous. And in light of Congress's inclusion of the "should have acquired" language elsewhere in ERISA, the absence of such language in Section 1113(2) was presumably deliberate and should be given effect. See *Russello*, 464 U.S. at 23; *Gluck*, 960 F.2d at 1176.

c. Finally, many other federal statutes distinguish expressly between "actual knowledge" and "implied," "presumed," or "constructive" knowledge. See, *e.g.*, 15 U.S.C. 7704(a)(2) (prohibiting certain deceptive emails if the sender has "*actual knowledge*, or knowledge *fairly implied* on the basis of objective circumstances," that the subject-heading of the email is likely to mislead the recipient) (emphases added); see also 15 U.S.C. 45(m)(1)(A) (similar); 15 U.S.C. 1264(c)(5) ("actual knowledge, or * * * the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances"); 15 U.S.C. 3414(b)(6)(B) ("actual knowledge; or * * * constructive knowledge deemed to be possessed by a reasonable individual"); 21 U.S.C. 387t(d)(2) ("actual knowledge" or "the knowledge which a reasonable person would have had under like circumstances"); 42 U.S.C. 6303(b) (similar). Congress's use of the term "actual knowledge" in those other statutes confirms that the term generally excludes implied, imputed, or constructive knowledge.

B. Petitioners' Contrary View Is Inconsistent With The Statute And Should Be Rejected

Petitioners contend (Br. 20-33) that a plaintiff should be deemed to have "actual knowledge" of the information made available to the plaintiff in disclosures that ERISA requires a plan fiduciary to make. That approach has no sound basis in the statutory text or structure, and adopting it would frustrate the ability of the Secretary and fiduciaries to enforce Title I of ERISA. Petitioners' policy arguments are also unavailing.

1. Petitioners' reliance on the doctrine of willful blindness is misplaced

As explained above (see pp. 11-15, *supra*), the plain meaning of "actual knowledge" is knowledge that a party in fact has or acquires. Petitioners nonetheless contend (Br. 22-24) that the term could be read to include facts a party is deemed to know under the doctrine of willful blindness, and petitioners liken (Br. 35) their reading of Section 1113(2) to that doctrine. But petitioners are mistaken in both respects.

First, willful blindness is not a form of "actual knowledge." Indeed, the very premise of the doctrine is that parties who "deliberately shield[] themselves" from acquiring knowledge will nonetheless be held "just as culpable as those who have *actual* knowledge." *Global-Tech Appliances, Inc.* v. *SEB S.A.*, 563 U.S. 754, 766 (2011) (emphasis added); see *Bullock* v. *BankChampaign, N.A.*, 569 U.S. 267, 273-274 (2013) (invoking willful blindness and related concepts "[w]here actual knowledge of wrongdoing is lacking"); cf. *Universal Health Servs.*, 136 S. Ct. at 1996 (discussing the distinction in the False Claims Act, 31 U.S.C. 3729(b)(1)(A), between "actual knowledge," "deliberate ignorance of the truth or falsity of the information," and "reckless disregard of the truth or falsity of the information"). As a matter of plain language, an ostrich that buries its head in the sand does not have "actual knowledge" of what it has deliberately prevented itself from seeing. So too a plaintiff who willfully blinds himself to knowledge of a breach does not have "actual knowledge of the breach." 29 U.S.C. 1113(2).

Petitioners' own cases (Br. 23) demonstrate this distinction. In *United States* v. *Zayyad,* 741 F.3d 452 (4th Cir. 2014), for example, the defendant argued that insufficient evidence existed for the jury to conclude that he knowingly sold counterfeit drugs because he did not know the drugs to be counterfeit, *id.* at 462-463. The court of appeals rejected that argument, explaining that proof of "actual knowledge [was] not necessary" in light of the evidence that "the defendant was willfully blind" to the relevant facts. *Id.* at 463 (quoting *United States* v. *Wells*, 163 F.3d 889, 898 (4th Cir. 1998), cert. denied, 528 U.S. 841 (1999)). The court thus understood willful blindness to be a *substitute* for actual knowledge, not a form of actual knowledge.

Second, in any event, petitioners do not ask the Court to apply the doctrine of willful blindness to Section 1113(2). A finding of willful blindness generally requires proof that a person "subjectively believe[s] that there is a high probability that a fact exists" and that the person "take[s] deliberate actions to avoid learning of that fact." *Global-Tech*, 563 U.S. at 769. By contrast, petitioners seek a conclusive legal presumption that a plaintiff has "actual knowledge" of the contents of all the mandatory ERISA disclosures the plaintiff receives, even if the plaintiff does not read them. That rule would not require any finding that the plaintiff took any "deliberate steps to avoid knowing" the relevant information, *id.* at 771, and thus it would *not* be "akin to * * * willful blindness," Pet. Br. 35. Here, for example, the district court made no finding that respondent took any deliberate steps to shield himself from acquiring actual knowledge of petitioners' allegedly imprudent conduct, yet petitioners would still charge him with actual knowledge.

What petitioners propose—presuming in all cases that a plan participant knows the information in the mandatory ERISA disclosures that the participant receives—is at best a form of constructive knowledge. And constructive knowledge is not enough.

2. ERISA's disclosure regime does not support reading "actual knowledge" in Section 1113(2) to include constructive knowledge of the content of plan disclosures

Petitioners contend (Br. 22, 24-28) that Section 1113(2) should be read in light of the provisions in ERISA requiring plan fiduciaries to provide certain disclosures to plan participants—disclosures that, according to petitioners, should be deemed to "confer knowledge of the information they contain on plan participants." ERISA requires plan administrators to distribute various documents to participants, including summary plan descriptions, modifications to the plans, and participant statements. See 29 U.S.C. 1021-1026 (2012 & Supp. V 2017); see also Emp. Benefits Sec. Admin., U.S. Dep't of Labor, *Reporting and Disclosure Guide for Employee Benefit Plans* 2-14 (Sept. 2017) (overview of Title I disclosure requirements for retirement plans).[3] But that mandatory disclosure regime does not support petitioners' effort to read a constructive knowledge standard into Section 1113(2).

To start, petitioners identify nothing in the text of Section 1113(2) to support their view. Petitioners observe (Br. 25-26) that fiduciaries have a duty of "disclosure" under Section 1021 and that the disclosures must "apprise" plan participants of certain information, 29 U.S.C. 1022(a). But the words "disclosure," "disclose," and

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[3] https://go.usa.gov/xVzqS.

"apprise" appear nowhere in Section 1113(2), and nothing in the text of that provision incorporates or refers to the mandatory disclosure regime.

The statutory structure also refutes petitioners' view. Section 1113 applies only to suits for breach of the fiduciary duties imposed "under this part, or with respect to a violation of this part," 29 U.S.C. 1113—*i.e.*, to suits under Part 4 of Title I of ERISA, 29 U.S.C. 1101-1114 (2012 & Supp. V 2017). The mandatory disclosure regime, however, is set forth in Part 1 of Title I, 29 U.S.C. 1021-1026 (2012 & Supp. V 2017). Section 1113 does not provide the limitations period for actions asserting a violation of those provisions; instead, courts have borrowed an analogous state-law limitations period for such actions. See, *e.g.*, *Pressley* v. *Tupperware Long Term Disability Plan*, 553 F.3d 334, 337, 339 (4th Cir. 2009) (borrowing three-year state-law limitations period for an action under Section 1132(c) asserting a violation of a plan administrator's disclosure obligations); *Stone* v. *Travelers Corp.*, 58 F.3d 434, 437-439 (9th Cir. 1995) (similar). Petitioners would thus tie together two parts of ERISA that Congress did not link.

The language of the disclosure provisions likewise cuts against petitioners. ERISA imposes specific disclosure obligations on *plan administrators*. See, *e.g.*, 29 U.S.C. 1021(a)(1) ("The administrator of each employee benefit plan shall cause to be furnished * * * to each participant * * * a summary plan description."); 29 U.S.C. 1024(b)(1) ("The administrator shall furnish to each participant * * * a copy of the summary plan description, and all modifications and changes referred to in section 1022(a) of this title."). Nothing in the text of those provisions suggests that *plan participants*, such as respondent, will be presumed or obligated to know and understand all the information the disclosures contain.

Petitioners are correct (Br. 24-25) that a purpose of the disclosure regime is to make certain information available to plan participants so that they can monitor their investments and police fiduciary misconduct. But petitioners' reading would subvert that purpose, turning disclosures intended to benefit and protect recipients into a sword to be used against them. Moreover, ERISA does not require that the disclosures it mandates convey a complete picture of the plan or of a fiduciary's actions. See *CIGNA Corp.* v. *Amara*, 563 U.S. 421, 437-438 (2011); *Varity Corp.* v. *Howe*, 516 U.S. 489, 502-503 (1996). Petitioners' interpretation of Section 1113(2), however, would encourage extensive and confusing disclosures, designed to bury questionable decisions while triggering the three-year limitations period. Cf. *CIGNA Corp.*, 563 U.S. at 437-438 (rejecting an interpretation of ERISA that "might bring about complexity that would defeat the fundamental purpose" of summary plan descriptions, *i.e.*, "clear, simple communication").

Finally, the disclosure regime and its implementing regulations reflect careful consideration of the fact that ERISA plan participants have varying degrees of education, financial experience, and English fluency. See, *e.g.*, 29 U.S.C. 1021(f)(4)(B) and (i)(2)(A) (requiring that certain notices be written so as "to be understood by the average plan participant"); 29 C.F.R. 2520.102-2(a) (requiring that the summary plan description "be written in a manner calculated to be understood by the average plan participant," and that the plan administrator "tak[e] into account * * * the level of comprehension and education of typical participants in the plan");

29 C.F.R. 2520.102-2(c) (requiring foreign-language disclosures for some plans). Some plan participants will read the disclosures they receive without fully understanding them. Indeed, the ERISA Advisory Council, established under 29 U.S.C. 1142, recently observed that "many" plan participants "have difficulty navigating and understanding the paper disclosures" they receive. Advisory Council on Emp. Welfare & Pension Benefit Plans, *Mandated Disclosure for Retirement Plans—Enhancing Effectiveness for Participants and Sponsors* 34 (Nov. 2017).[4]

Petitioners would nonetheless deem all plan participants to have "actual knowledge" of the contents of the mandatory ERISA disclosures they receive, thus potentially triggering Section 1113(2)'s three-year limitations period and cutting short the time that participants may need to consult with others—family members, colleagues, financial professionals—to understand the disclosures and to evaluate the fiduciary's conduct. Here, for example, respondent testified that he would not have understood the terms "alternative investments," "hedge funds," or "private equity" even if he had read the relevant disclosures. Pet. App. 23a (citation omitted).[5]

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[4] https://go.usa.gov/xp37j.

[5] Respondent also maintains (Br. 23 n.2) that he would not have had "actual knowledge of the breach," 29 U.S.C. 1113(2), even if he had read and understood the disclosures, because they did not reveal the facts necessary to appreciate that petitioners' investment allocations were imprudent. The question of which facts a plaintiff must actually know in order to trigger Section 1113(2), as distinct from what it means to have actual knowledge of those facts, has generated some disagreement in the lower courts. See Pet. App. 12a; *Fish* v. *GreatBanc Trust Co.*, 749 F.3d 671, 678-679 (7th Cir. 2014); *International Union of Elec., Elec., Salaried, Mach. & Furniture Workers* v. *Murata Erie N. Am., Inc.*, 980 F.2d 889, 900 (3d Cir.

3. Petitioners' reading would frustrate enforcement of ERISA by fiduciaries and the Secretary

Section 1113 specifies the limitations period for any plaintiff bringing an action for a breach of duty by a fiduciary or other violation of Part 4 of Title I of ERISA—including actions by other plan fiduciaries and the Secretary of Labor. Petitioners' interpretation of Section 1113(2) would apply equally in those suits. Deeming other plan fiduciaries or the Secretary to have "actual knowledge" of all the contents of the disclosures that ERISA requires be provided to them would significantly frustrate their ability to enforce the statute.

ERISA and its implementing regulations require that a substantial volume of information be filed with the Secretary annually. See *Gobeille* v. *Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 944-945 (2016) (discussing ERISA's extensive reporting requirements). Last year, for example, ERISA plans filed more than 800,000 annual reports with the Secretary.[6] In addition, as this Court has noted, the Secretary may "'require any information or data from any plan where he finds such data or information is necessary to carry out the purposes of' the statute." *Id.* at 944 (quoting 29 U.S.C. 1024(a)(2)(B)) (brackets omitted). The Secretary regularly requests information from plans as part of compliance audits, as

1992). The Court need not address that separate issue here. Petitioners framed the question presented (Br. i) on the premise that all the relevant information was contained in the mandatory ERISA disclosures that petitioners made available to respondent more than three years before he filed suit.

[6] Emp. Benefits Sec. Admin., U.S. Dep't of Labor, *Form 5500 Datasets*, https://go.usa.gov/xVHE9 (last visited Oct. 28, 2019); see 29 U.S.C. 1021(b), 1023(b), 1024 (annual report requirements).

well as for research and regulatory efforts and in response to participant inquiries. ERISA also requires that the Secretary be served a copy of any complaint asserting a breach of fiduciary duty, 29 U.S.C. 1132(h), and it authorizes him to coordinate enforcement efforts with other federal agencies and state agencies, 29 U.S.C. 1136, in which the Secretary can receive or have access to yet more information.

Petitioners do not address the application of Section 1113(2) to the Secretary and thus leave unclear how the interpretation they propose would apply to the disclosures that the Secretary receives under ERISA. Reading Section 1113(2) to mean that the Secretary is deemed to have "actual knowledge" of all the disclosures that ERISA requires be provided to him would threaten to shorten dramatically the amount of time the Secretary has to investigate potential fiduciary breaches or other violations of Title I and to determine whether to pursue a civil action. Such a reading would also effectively recreate, under the guise of "actual knowledge," the constructive knowledge standard based on reports filed with the Secretary that Congress eliminated from Section 1113(2), see pp. 15-17, *supra*, which in some cases had resulted in barring meritorious actions by the Secretary. See, *e.g.*, *Brock* v. *TIC Int'l Corp.*, 785 F.2d 168, 172-173 (7th Cir. 1986). Cutting short the Secretary's time to investigate potential misconduct would disserve plan participants and their beneficiaries.

Petitioners' interpretation would similarly disadvantage other plan fiduciaries who might bring an action against a co-fiduciary for a breach of fiduciary duty. ERISA fiduciaries have a duty to remedy breaches by co-fiduciaries, including by filing a civil action subject to Section 1113, when they know or should know of a breach or violation. 29 U.S.C. 1105(a)(3), 1132(a)(2) and (3). A fiduciary who fails to remedy a co-fiduciary's breach or violation may be personally liable to plan participants. 29 U.S.C. 1109(a). As with suits by the Secretary, petitioners do not spell out how their interpretation of Section 1113(2) would apply in suits by fiduciaries. But if plan participants are deemed to have "actual knowledge" of all the disclosures they receive, it is not clear why plan fiduciaries would not equally be deemed to have "actual knowledge" of all the information that ERISA requires them to possess. Under petitioners' concept of "actual knowledge," fiduciaries could routinely have three years, rather than six, to bring a civil action to remedy a co-fiduciary's breach—or face personal liability.

4. Petitioners' policy arguments are unfounded

Because the statutory text is clear, the Court need not consider petitioners' policy disagreements with the "actual knowledge" standard in Section 1113(2). See, *e.g.*, *Azar* v. *Allina Health Servs.*, 139 S. Ct. 1804, 1815 (2019) ("[C]ourts aren't free to rewrite clear statutes under the banner of * * * policy concerns."). But petitioners' policy arguments are also unpersuasive.

Petitioners argue (Br. 40-42) that the decision below exposes defendants to undue liability. Fundamentally, however, Congress struck a balance between "protecting employees' rights and avoiding undue burdens on employers" (Pet. Br. 41) by providing for the six-year period in Section 1113(1). See *California Pub. Employees' Ret. Sys.* v. *ANZ Secs., Inc.*, 137 S. Ct. 2042, 2050 (2017) (describing Section 1113(1) as a "statute of repose," subject to a discovery rule in cases of fraud or concealment); cf. *Secretary* v. *Preston,* 873 F.3d 877, 886 (11th Cir. 2017) (similarly describing Section 1113(1) as a "statute of repose" and holding that it can be waived), cert. denied, 138 S. Ct. 2680 (2018). The six-year period already reflects "a legislative judgment" about when defendants "should 'be free from liability.'" *CTS Corp.* v. *Waldburger*, 573 U.S. 1, 9 (2014) (citation omitted). And by setting that period at six years rather than three, Congress sought to "impress upon those vested with the control of pension funds the importance of the trust they hold" and "evidently did not desire that those who violate [plan participants'] trust could easily find refuge in a time bar." *Brock*, 809 F.2d at 754. Petitioners' expansive reading of "actual knowledge" threatens to upend that congressional judgment.

Petitioners further argue (Br. 29-31, 42-44) that "actual knowledge" is easy for plaintiffs to disclaim and difficult for defendants to prove. But courts have ample experience in determining whether a party has "actual knowledge" in other contexts, and petitioners identify no reason to think that such an inquiry is particularly onerous in this context. See, *e.g.*, *Farmer* v. *Brennan*, 511 U.S. 825, 842-843 (1994) (adopting a subjective standard for deliberate-indifference claims and explaining that "the requisite [subjective] knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence"); see also, *e.g.*, *Caputo*, 267 F.3d at 187, 193-194 & n.6 (holding that summary judgment on Section 1113(2) grounds was improper, given the chronology of events established in a prior trial and the plaintiffs' affidavits). Contrary to petitioners' suggestion, the question whether a plaintiff had actual knowledge of the breach or violation will not necessarily turn solely on the plaintiff's own recollection. Objective, circumstantial evidence may well bear on that question.

See *Farmer*, 511 U.S. at 842-844 (discussing examples in which objective facts warranted an inference of subjective knowledge); cf. *Scott* v. *Harris*, 550 U.S. 372, 380 (2007) (explaining that "facts must be viewed in the light most favorable to the nonmoving party [at summary judgment] only if there is a 'genuine' dispute as to those facts," and a court need not accept a version of the facts "blatantly contradicted by the record") (quoting Fed. R. Civ. P. 56(c)).

In this case, the court of appeals concluded, on the basis of respondent's sworn testimony, that a genuine issue of material fact about respondent's "actual knowledge of the breach," 29 U.S.C. 1113(2), precluded summary judgment. Pet. App. 16a-17a. Petitioners may still attempt to prove respondent's actual knowledge on remand. But this Court should reject petitioners' plea to relieve them of that burden in favor of a legal presumption that has no basis in the statutory text, structure, or history.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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