

IN THE SUPREME COURT OF THE UNITED STATES

---

No. 18-1116

INTEL CORP. 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

---

MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

---

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in oral argument in this case as amicus curiae supporting respondent and that the United States be allowed ten minutes of argument time. Respondent has consented to the allocation of ten minutes of argument time to the United States.

This case concerns the limitations period specified in 29 U.S.C. 1113 for bringing certain civil actions 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.). ERISA 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 or other violation of Part 4 of Title I of ERISA 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 in this case is whether a plaintiff bringing such a suit should be deemed to have "actual knowledge," 29 U.S.C. 1113(2), of the contents of the written disclosures made available to the plaintiff under ERISA, even if the plaintiff did not read those disclosures.

The United States has a substantial interest in the resolution of that question. 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). Accordingly, the Court's resolution of the

question presented may bear on the Secretary's ability to administer and enforce ERISA.

The United States has participated in oral argument as amicus curiae in prior cases involving the interpretation of ERISA. E.g., Gobeille v. Liberty Mut. Ins. Co., 136 S. Ct. 936 (2016); Montanile v. Board of Trustees of Nat'l Elevator Indus. Health Benefit Plan, 136 S. Ct. 651 (2016); Tibble v. Edison Int'l, 135 S. Ct. 1823 (2015); Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409 (2014); Heimeshoff v. Hartford Life & Accident Ins. Co., 571 U.S. 99 (2013); CIGNA Corp. v. Amara, 563 U.S. 421 (2011). Oral presentation of the views of the United States is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

OCTOBER 2019