

RECENT CASE ADDRESSES STATUTE OF LIMITATIONS PROVISION AND THE DOL

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A recent case in the U.S. District Court for Hawaii involved a claim of breach of fiduciary duty with respect to the valuation of an ESOP company. Under ERISA, participants and the Department of Labor (DOL) may bring actions against plan fiduciaries who breach their fiduciary duty. ERISA contains a statute of limitation for commencing an action for breach of fiduciary duty which is generally the earlier of (i) six years after the date of the last action that constituted the breach or in the case of omission of an act, the latest date which a fiduciary could have cured the breach or (ii) three years after the earliest date on which the plaintiff had actual knowledge of the breach.

In 2020, the United States Supreme Court issued a decision regarding the actual knowledge requirement of ERISA's statute of limitations. In that case, a participant testified that he did not remember reading a disclosure or being aware of the contents of the materials presented to him regarding the Plan's investments. The Supreme Court held that it was not appropriate to apply the shorter three year statute of limitation in the situation where delivery of materials which were not reviewed would have commenced the shorter three year statute of limitation period.

In this ESOP valuation case an issue that was present was the "actual knowledge" requirement and its application to governmental agencies, in this case, the DOL. The defendants argued that the filing of the Form 5500 in October 2013 commenced the three year period as the DOL had actual knowledge of the filing and the contents of the filing. The DOL stated that no one in the government actually reviewed that 5500 filing until December 2014. The District Court for Hawaii extended the ruling in the Supreme Court case to the governmental agencies and required not merely providing materials that would have made the party aware of a breach but that actual knowledge requires review of the materials. Both the District Court and the Supreme Court acknowledged that actual knowledge could be attributed to a party if it was "willfully blind" to the information presented regarding a fiduciary breach. In this case, there was no evidence establishing that the DOL chose to be willfully blind to the materials included in the Form 5500 filing. *Walsh v. Bowers*, D. Haw., 2021.

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