

No. 24-1223

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Tiara Yachts, Inc.,

Plaintiff-Appellant,

v.

Blue Cross Blue Shield of Michigan,

Defendant-Appellee.

On Appeal from the United States District Court for the
Western District of Michigan
Case No. 1:22-cv-603

**THE ACTING SECRETARY OF LABOR'S MOTION FOR LEAVE
TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
IN SUPPORT OF PLAINTIFF-APPELLANT**

SEEMA NANDA
Solicitor of Labor

Sarah Karchunas
Trial Attorney

WAYNE R. BERRY
Associate Solicitor
for Plan Benefits Security

U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
200 Constitution Ave. NW, N4611
Washington, DC 20210
202.693.5411 (t) | 202.693.5610 (f)

JEFFREY M. HAHN
Counsel for Appellate and
Special Litigation

Pursuant to Federal Rule of Appellate Procedure 29(a)(8), Julie A. Su, Acting Secretary of the United States Department of Labor (“Secretary”), respectfully moves this Court for leave to participate in oral argument as amicus curiae in support of Plaintiff-Appellant on five minutes of time ceded by Plaintiff-Appellant. In support of this motion, the Secretary states as follows:

1. The Secretary has primary regulatory and enforcement authority for Title I of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 et seq.
2. On June 12, 2024, the Secretary filed an amicus brief in support of Plaintiff-Appellant addressing whether Plaintiff-Appellant adequately pleads that a third-party administrator that overpaid claims with funds remitted by an ERISA plan is a fiduciary under 29 U.S.C. § 1002(21)(A)(i).
3. The Secretary believes that presentation of her views at oral argument will be helpful to the Court in deciding this issue. Thus, the Secretary requests that the Court grant her leave to participate in oral argument on five minutes of time ceded by Plaintiff-Appellant.

4. Counsel for the Secretary has contacted counsel for both sides in this matter. Counsel for Plaintiff-Appellant indicated that they consent to this motion and agreed to cede five minutes of time to the Secretary. Counsel for Defendant-Appellee indicated that they oppose this motion.

WHEREFORE, the Secretary respectfully requests that the Court grant her leave to participate in oral argument as amicus curiae in support of Plaintiff-Appellant on five minutes of time ceded by Plaintiff-Appellant.

Dated: December 20, 2024

Respectfully submitted,

SEEMA NANDA
Solicitor of Labor

WAYNE R. BERRY
Associate Solicitor
for Plan Benefits Security

JEFFREY M. HAHN
Counsel for Appellate and Special
Litigation

/s/ Sarah Karchunas
SARAH KARCHUNAS
Trial Attorney
U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
200 Constitution Ave. NW, N4611
Washington, DC 20210
202.693.5411 (t) | 202.693.5610 (f)
Karchunas.Sarah.M@dol.gov

CERTIFICATE OF SERVICE

I hereby certify that on this day, December 20, 2024, I electronically filed the foregoing Secretary of Labor's Motion for Leave to Participate in Oral Argument as Amicus Curiae in Support of Plaintiff-Appellant with the Clerk of the Court for the U.S. Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: December 20, 2024

/s/ Sarah Karchunas
Sarah Karchunas
Trial Attorney