

No. 24-1223

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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TIARA YACHTS, INC.,

*Plaintiff-Appellant,*

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

*Defendant-Appellee.*

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On Appeal from the United States District Court for the  
Western District of Michigan, Southern Division  
Case No. 1:22-cv-00603

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**RESPONSE OF APPELLEE BLUE CROSS BLUE SHIELD OF MICHIGAN  
TO MOTION OF *AMICUS CURIAE* FOR LEAVE  
TO PARTICIPATE IN ORAL ARGUMENT**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to 6th Cir. R. 26.1, Blue Cross Blue Shield of Michigan, makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

Defendant-Appellee Blue Cross Blue Shield of Michigan (“BCBSM”) respectfully opposes the motion of *amicus curiae* the Acting Secretary of the United States Department of Labor (“Secretary”) for leave to participate in oral argument.

This case stems from a private lawsuit by Plaintiff-Appellant Tiara Yachts, Inc. against BCBSM, contending that BCBSM made various purported errors when it processed healthcare claims for participants in the self-funded health benefit plan that Tiara Yachts sponsored for its employees. The relationship between BCBSM and Tiara Yachts was governed by an Administrative Services Contract, which terminated in 2018. Because there is no ongoing relationship between Tiara Yachts and BCBSM—and thus no possibility for prospective relief—the only issue at stake here is whether Tiara Yachts can establish an entitlement under ERISA to a money judgment from BCBSM based on its purported claims processing errors.

The Secretary seeks to participate in oral argument because she “has primary regulatory and enforcement authority for Title I” of ERISA. *See* Mot. ¶ 1. But this private commercial dispute between two parties to a contract does not implicate the Secretary’s regulatory or enforcement authority. There is no enforcement action at issue here, nor is any Department of Labor regulation relevant to this dispute.

Indeed, none of the parties' three briefs nor the Secretary's brief so much as *cites* any regulation promulgated by the Secretary.

Instead, the only questions presented arise under the statutory text and the Federal Rules of Civil Procedure. *See* Tiara Yachts Br. at xi (Statement of Issues Presented for Review); BCBSM Br. at 3 (same). These are not areas in which the Secretary offers any "special competence." *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2266 (2024). To the contrary, it is the Court—not the Secretary—that possesses the relevant expertise, and the Court must accordingly "exercise independent judgment in determining the meaning of" the relevant "statutory provisions." *Id.* at 2262, 2266.

To the extent the Court desires to take the Secretary's views on these matters into consideration, those views are adequately presented in the Secretary's brief *amicus curiae*. Indeed, although Federal Rule of Appellate Procedure 29(a)(2) authorized the Secretary to submit a brief *amicus curiae* as of right, she is not authorized to participate in oral argument unless this Court grants her leave. *See* Fed. R. App. P. 29(a)(8). This private dispute does not present the unusual circumstances that would support granting such leave here.

## CONCLUSION

For the foregoing reasons, the motion should be denied.

Dated: December 30, 2024

Respectfully submitted,

/s/ Tacy F. Flint

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## CERTIFICATE OF COMPLIANCE

1. This motion response complies with the type-volume limitations of Fed. R. App. P. 27(d)(2)(A) because, according to the word-count feature of Microsoft Word, this motion response contains 411 words.

2. This motion response complies with the typeface and type style requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in Times New Roman 14 point font.

Dated: December 30, 2024

Respectfully submitted,

*/s/ Tacy F. Flint*

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 30, 2024, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to all counsel of record.

Respectfully submitted,

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