

Case No. 24-1223

**United States Court of Appeals
for the Sixth Circuit**

TIARA YACHTS, INC.

Plaintiff-Appellant,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant-Appellee.

Appeal from the United States District Court
Western District of Michigan, Southern Division
Honorable Robert J. Jonker
Case No. 1:22-cv-603

**RESPONSE OF TIARA YACHTS, INC. TO MOTION OF
AMICUS CURIAE FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT**

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 24-1223

Case Name: Tiara Yachts v. Blue Cross

Name of counsel: Herman D. Hofman

Pursuant to 6th Cir. R. 26.1, Tiara Yachts, Inc.

Name of Party

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.

Julie A. Su, Acting Secretary of the United States Department of Labor, (the "Secretary"), filed a motion for leave to participate in oral argument as *amicus curiae* in support of Plaintiff-Appellant Tiara Yachts, Inc. ("Tiara Yachts"). As stated in the Secretary's motion, counsel for the Secretary contacted counsel for Tiara Yachts regarding the Secretary's motion, and Tiara Yachts concurs in the relief requested in the Secretary's motion. Additionally, Tiara Yachts agrees to cede five minutes of its oral argument time to the Secretary.

In its response, Defendant/Appellee Blue Cross Blue Shield of Michigan ("BCBSM") indicates it opposes the Secretary's motion, arguing "this [is a] private commercial dispute between two parties to a contract does not implicate the Secretary's regulatory or enforcement authority." Resp. of BCBSM to Mtn. of *Amicus Curiae* for Leave to Participate in Oral Argument, at 1-2. BCBSM's latest description of this appeal is incorrect. Instead, as BCBSM previously stated, "[t]his appeal presents important legal issues relating to pleading a breach of fiduciary duty claim under the Employee Retirement Income Security Act ('ERISA')" and "[t]his appeal also presents important legal issues regarding ERISA's remedies for cases brought by Plan Sponsors." Corrected Br of Appellee BCBSM Br, at viii.

This Court will benefit from hearing the Secretary's views on these "important legal issues regarding ERISA." *Id.* "The Acting Secretary of Labor . . . has primary

regulatory and enforcement authority for Title I of ERISA, 29 U.S.C. §§ 1134, 1135, which includes the statute's stringent fiduciary standards." Brief of the Secretary as *Amicus Curiae* Supporting Plaintiff-Appellant, at 1. The Secretary therefore has substantial expertise and interest "in ensuring that those who exercise control over plan assets are subject to ERISA's strict fiduciary obligations." *Id.* Although "an agency's interpretation of a statute cannot bind a court, it may be especially informative" where, as here, "it rests on factual premises within [the agency's] expertise." *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 2267 (2024) (citation and internal quotation marks omitted). And "[s]uch expertise has always been one of the factors which may give an Executive Branch interpretation particular power to persuade, if lacking power to control." *Id.* at 2267 (citation and internal quotation marks omitted).

This Court will therefore benefit from hearing the Secretary's views at oral argument.

CONCLUSION

For the foregoing reasons, Tiara Yachts requests that this Court grant the Secretary's motion to participate in oral argument on the five minutes of time ceded by Tiara Yachts.

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Respectfully Submitted,

VARNUM LLP

Dated: January 2, 2025

/s/ Herman D. Hofman

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 411 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using 14-point type.

Date: January 2, 2025

By: /s/ Herman D. Hofman
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CERTIFICATE OF SERVICE

I certify that on January 2, 2025, I electronically filed this document with the Clerk of the Court using the ECF system, which will send notification of the filing to all ECF filing participants.

Date: January 2, 2025

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