UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIARA YACHTS, INC.,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.

Case No. 1:22-cv-603

Honorable Robert J. Jonker
Magistrate Judge Ray Kent

JOINT STATUS REPORT

A Rule 16 Scheduling Conference is scheduled for August 11, 2025, at 4:00 p.m. before the Honorable Robert J. Jonker. Appearing for the parties as counsel will be:

Counsel for Plaintiff: Perrin Rynders (P38221)
Aaron M. Phelps (P64790)
Herman D. Hofman (P81297)

Counsel for Defendant: Mark J. Zausmer (P31721)
Daniel Lewis (Adm. in W.D. MI, NY Reg. 4084810)

1. Jurisdiction: The bases for the Court's jurisdiction are 28 U.S.C. § 1331 and 29 U.S.C. § 1132 (federal question under ERISA). Personal jurisdiction is not contested. Defendant contests subject matter jurisdiction because, before initiating this litigation, Defendant alleges Plaintiff signed an agreement releasing Defendant from any and all claims, whether known or unknown. This case does not include any state law claims.

2. Jury or Non-Jury: Plaintiff's position is that this case should be tried before a jury as a trier of law and fact. Defendant's position is that a jury trial is not available for the claims asserted.

3. Judicial Availability: The parties do not agree to have a United States Magistrate Judge conduct any further proceedings in the case, including trial, or to order the entry of final judgment.

4. Statement of the Case:

Plaintiff's Statement of the Case: This case involves a dispute between a self-funded plan sponsor (Tiara Yachts, Inc.) on behalf of its ERISA welfare benefit plan, and the third-party claims administrator (Blue Cross Blue Shield of Michigan or BCBSM) of that ERISA welfare benefit plan. Tiara Yachts alleges that BCBSM has intentionally overpaid (and continues to intentionally overpay) healthcare claims by (1) imposing its "flip logic" approach to paying out-of-network or non-par claims at highly inflated billed amounts and (2) negligently, against known standards of care in the industry, paying duplicate, unbundled, up-coded, and other excessive claims. The result is that BCBSM has squandered (and continues to squander) plan assets of the Tiara Yachts ERISA welfare benefit plan. Further, BCBSM has engaged (and continues to engage) in self-dealing by imposing a so-called "Shared Savings Program" fee. This fee is never legal. Moreover, it generally consists of BCBSM paying itself for mistakes it has made but should not have made.

Defendant's Position: Plaintiff's claims against Defendant lack merit. Substantively, Plaintiff cannot show that Defendant was acting as an ERISA fiduciary in implementing the Shared Savings Program—a program that was fully disclosed to Plaintiff in its contractual documents with Defendant—because Defendant never exercised control over plan funds. And even if Defendant were Plaintiff's ERISA fiduciary, Plaintiff cannot prove a breach of Defendant's duties or that it performed prohibited transactions. Defendant exercised its business judgment in implementing the Shared Savings Program as a means of saving money for the Plan, not as a nefarious kickback

scheme. But the Court does not even need to reach the merits here. As shown in Defendant's pending motion to dismiss under Rule 12(b)(6), Plaintiff has failed to plead any non-speculative claim against Defendant. Additionally, all of Plaintiff's claims against Defendant are time-barred. Finally, on April 16, 2021, in final settlement of the parties' Administrative Services Contract, Plaintiff signed a release that absolved Defendant of all claims Plaintiff had against it, whether known or unknown.

In short, Plaintiff's claims face both substantive and procedural hurdles that Plaintiff cannot overcome.

5. Joinder of Parties and Amendment of Pleadings: The parties request leave to file amended pleadings no more than thirty (30) days after Defendant's pending Rule 12(b) motion (ECF Nos. 65, 66) is decided. Further, the parties agree to file all motions for joinder of parties to this action and to file all motions to amend the pleadings no more than ninety (90) days after Defendant's pending Rule 12(b) motion (ECF Nos. 65, 66) is decided.

6. Disclosures and Exchanges: Rule 26(a) mandates particular disclosures that apply on a self-executing timetable in the absence of a contrary court order. In addition, the Court requires a preliminary disclosure of potential lay witnesses earlier than Rule 26(a)(3) would otherwise require. The parties acknowledge that Rule 26(e) provides the duty to supplement applicable disclosures and discovery responses. The parties propose the following regarding these categories of disclosure:

(i) Fed. R. Civ. P. 26(a)(1): Plaintiff proposes that the parties make their Initial Disclosures on or before September 26, 2025. Defendant proposes that the parties make their Initial Disclosures thirty (30) days after the Court has decided both Defendant's pending Rule

12(b) motion (ECF Nos. 65, 66) and its anticipated motion for judgment on the pleadings under Rule 12(c).

(ii) Fed. R. Civ. P. 26(a)(2): The parties propose making their Disclosures of Expert Testimony at least ninety (90) days before the close of discovery, except for any rebuttal experts they propose doing so forty-five (45) days before the close of discovery. For clarity, Defendant proposes that these timelines be tied to the second phase of discovery that it proposes below in Paragraph 7.

(iii) Fed. R. Civ. P. 26(a)(3): The parties propose making their Pretrial Disclosures and Objections as required by Fed. R. Civ. P. 26(a)(3)(B).

(iv) Initial disclosure of potential lay and expert witnesses: The parties agree to identify all potential lay witnesses known to them at least ninety (90) days before the close of discovery, and seasonably thereafter for all newly discovered potential lay witnesses. The parties further agree to identify expert witnesses as set forth above regarding Rule 26(a)(2) Disclosures of Expert Testimony. For clarity, Defendant proposes that these timelines be tied to the second phase of discovery that it proposes below in Paragraph 7.

7. Discovery: Plaintiff believes that all discovery proceedings can be completed within nine months after Defendant's pending Rule 12(b) motion (ECF Nos. 65, 66) is decided.

Defendant proposes two bifurcated discovery phases. The first phase of discovery would commence after the Court decides both Defendant's motion to dismiss under Rule 12(b)(6) and its anticipated motion for judgment on the pleadings under Rule 12(c). The scope would be limited to information relevant to (1) the release of all claims against Defendant that Plaintiff signed before initiating this litigation and (2) the statute of limitations. Defendant anticipates that three months of discovery would suffice for this phase, after which the parties could file dispositive motions.

If any motions filed after the first phase of discovery are not ultimately dispositive, the parties would move into the second phase of discovery. This second phase of discovery would encompass any remaining information within the scope of Rule 26(b). Defendant anticipates that twelve months would be needed for this second phase of discovery.

Further, the parties will use the time between now and the start of discovery to (1) negotiate a stipulated protective order governing the confidentiality of trade secrets or other confidential research, development, or commercial information; (2) identify Electronically Stored Information (ESI) Liaisons, who will work together to manage the exchange of electronic data; and (3) negotiate a stipulated order regarding ESI protocols. ESI will be produced in a standard Concordance format, including a load file set that ties together the native file, text and metadata consisting of the following: (i) a .DAT file (metadata load file) using Concordance delimiters; (ii) an .OPT file (image load file) for linking images; (iii) Single-page TIFF (or JPEG for color images) format at 300 x 300 dpi resolution; (iv) extracted text files (for electronic documents) or OCR text files (for scanned documents) provided separately as .TXT files; and (v) the native files. For *paper documents*, including notes or spreadsheets in paper form, those shall be produced as Single-page Group IV TIFF images at 300 x 300 dpi resolution for black and white pages, or single-page JPEG images at 300 x 300 dpi resolution for color pages. For all productions, the production will be searchable and will include the appropriate Load/Utilization files that, at a minimum, contain the following fields:

a. Production: Begin Bates
b. Production: End Bates
c. Production: Begin Attachment
d. Production: End Attachment
e. Production: Has Redactions
f. Custodian
g. Record/File Type
h. File Name

i. Sort Date/Time
j. Author
k. Unified Title
l. Confidential
m. Page Count
n. Last Modified Date
o. Last Modified Time
p. Created Date
q. Created Time
r. File Extension
s. Email From
t. Email To
u. Email CC
v. Email BCC
w. Email Subject
x. Email Sent Date
y. Email Sent Time
z. MD5 Hash

The parties recommend the following discovery plan:

i. Subjects of Discovery: Plaintiff proposes one phase of discovery that would include the full range of subjects allowed by the Federal Rules of Civil Procedure.

Defendant proposes a bifurcated approach to discovery, as described in Paragraph 7.

ii. Timing of Discovery: Plaintiff proposes that discovery commence immediately. Defendant proposes the bifurcated approach to discovery described in Paragraph 7 to begin after the Court decides both Defendant's motion to dismiss under Rule 12(b)(6) and its anticipated motion for judgment on the pleadings under Rule 12(c).

iii. Limitations on Discovery: Plaintiff proposes there be no presumptive limit of ten depositions by any party (see Fed. R. Civ. P. 30(a)(2)(A)(i)). Defendant proposes the bifurcated approach to discovery described in Paragraph 7 and believes that the presumptive ten-deposition limit described in Rule 30(a)(2)(A)(i) should remain in place.

8. Motions: Plaintiff anticipates that under its proposed approach, all dispositive motions will be filed no more than thirty (30) days after the close of discovery.

Defendant also believes a thirty (30) day window for filing dispositive motions is appropriate. Under Defendant's proposed approach, the parties would have thirty (30) days after the close of the first phase of discovery to file dispositive motions related to the statute of limitations and Plaintiff's release. If there is a second phase of discovery, the parties would have thirty (30) days after the close of that period to file any additional dispositive motions.

The parties acknowledge that it is the policy of this Court to prohibit the consideration of non-dispositive discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

9. Alternative Dispute Resolution: The parties recommend that this case be submitted to facilitative mediation with a private facilitative mediator with experience in ERISA law selected by the parties no later than four (4) months after Defendant's pending Rule 12(b) motion (ECF Nos. 65, 66) is decided. Facilitative mediation will occur at least sixty (60) days before the close of discovery.

10. Length of Trial: Counsel estimate the trial will last approximately ten days total, allocated as follows: five to six (5-6) days for Plaintiff's case and three to four (3-4) days for Defendant's case.

11. Prospects of Settlement: The status of settlement negotiations is: No settlement discussions have occurred, and it is too early for such to occur.

12. Electronic Document Filing System: Counsel for the parties acknowledge that Local Civil Rule 5.7(a) requires that attorneys file and serve all documents electronically, by means of the Court's CM/ECF system, unless the attorney has been specifically exempted by the Court for cause or a particular document is not eligible for electronic filing under the rule.

13. Other: The parties note that the number of days needed for trial will depend on the format of any presentations on data analyses. This case involves many thousands, if not millions, of healthcare claims; the extent to which the Court allows sampling and extrapolation will affect how much trial time is required, though Defendants believe it is premature to assess whether sampling and extrapolation is appropriate.

Respectfully submitted,

VARNUM LLP
Attorneys for Plaintiff

Dated: August 4, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send the notification of such filing to counsel of record.

By: */s/ Perrin Rynders*
Perrin Rynders (P38221)