

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WESCO, INC. and WESCO, INC.
CAFETERIA PLAN AND EMPLOYEE
BENEFIT PLAN, on behalf of themselves
and a class of all others similarly situated,
Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF
MICHIGAN
Defendant.

Civil Action No.: 2:25-cv-11712

Judge: Hon. Susan K. DeClercq

Magistrate Judge: David R. Grand

CLASS ACTION

DEFENDANT'S MOTION TO TRANSFER

Defendant Blue Cross Blue Shield of Michigan (“BCBSM”), through its undersigned counsel, hereby moves, pursuant to 28 U.S.C. § 1404(a), to transfer this case, as filed by Plaintiffs Wesco, Inc. and Wesco, Inc. Cafeteria Plan and Employee Benefit Plan (“Plaintiffs”), to the U.S. District Court for the Western District of Michigan. BCBSM respectfully requests that the Court grant this Motion for the reasons set forth in the accompanying brief.

In accordance with Local Rule 7.1(a), BCBSM’s counsel, Mark J. Zausmer, in good faith sought concurrence in the relief requested in this motion from counsel for Plaintiffs, Perrin Rynders, via e-mail during the week of July 7, 2025 and a teleconference on July 14, 2025. BCBSM’s counsel explained the nature of the motion and the legal basis for the motion. Plaintiffs’ counsel opposed the requested relief.

Dated: July 14, 2025

Respectfully submitted,

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CLASS ACTION

DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION TO TRANSFER

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STATEMENT OF ISSUES PRESENTED

Whether the Court should transfer this action to the Western District of Michigan where a first-filed action is pending because (i) the actions feature similar legal issues between similar parties arising out of the same alleged business practices and (ii) the Western District of Michigan is the more convenient forum under 28 U.S.C. § 1404(a).

Answer: Yes.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

28 U.S.C. § 1404(a)

Baatz v. Columbia Gas Transmission, LLC, 814 F.3d 785 (6th Cir. 2016)

INTRODUCTION

This ERISA class action should be transferred to the Western District of Michigan, where the attorneys who filed this case already have an ERISA lawsuit based on the same alleged business practices of Blue Cross Blue Shield of Michigan (“BCBSM”), in the interest of judicial efficiency.

Plaintiffs in both cases contend that BCBSM, in its capacity as an administrative services provider of two self-funded health benefits plans, violated ERISA. Not surprisingly given that the same attorneys filed both lawsuits against BCBSM, the complaints both assert claims arising from BCBSM’s administration of a “Shared Savings Program” that is used to reduce the group health benefit plan’s overall cost of claims and address excessive charges submitted by providers not contracted with BCBSM for health services rendered to plaintiffs’ employees.

The first case was filed on July 1, 2022 by Tiara Yachts, Inc. (“Tiara Yachts”) in the Western District of Michigan. *See* Complaint, *Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan*, No. 1:22-cv-00603, ECF No. 1 (W.D. Mich. July 1, 2022) (attached hereto as **Exhibit A**).¹ Tiara Yachts is headquartered in the Western District of Michigan. Although the district court granted BCBSM’s

¹ This Court may take judicial notice of the *Tiara Yachts* action. *See Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980) (“Federal courts may take judicial notice of proceedings in other courts of record.”) (quotations omitted).

motion to dismiss, the Sixth Circuit, on May 21, 2025, reversed the district court's decision. *See Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan*, 138 F.4th 457 (6th Cir. 2025). Nineteen days later, Tiara Yachts' attorneys filed a putative class action in this Court on behalf of Wesco, Inc. ("Wesco") and Wesco, Inc., Cafeteria Plan and Employee Benefit Plan ("Plan") (together, the "Wesco Plaintiffs"), ECF No. 1, PageID.1, even though Wesco is headquartered in the Western District of Michigan. BCBSM has offices in the Western District and has not contested venue in the *Tiara Yachts* case.

Because the *Tiara Yachts* lawsuit was filed first, the Court should transfer this case to the Western District of Michigan in the interests of judicial efficiency and to avoid duplicative discovery and the risk of inconsistent decisions. Alternatively, the Court should transfer the case pursuant to 28 U.S.C. § 1404(a) because proceeding in a single forum would also be more convenient for witnesses and transfer would avoid the appearance of venue shopping and thus serve the interests of justice.²

² BCBSM is filing concurrently with this motion Defendant's Motion to Dismiss. BCBSM respectfully requests that the Court first resolve this motion to transfer.

BACKGROUND

BCBSM is a Michigan mutual insurance company that also provides administrative services to self-funded health benefits plans throughout Michigan.³ ECF No.1, PageID.5 ¶¶ 21–23. Wesco and Tiara Yachts contracted with BCBSM as the claims administrator of their self-funded employee health benefits plan. *Id.* at PageID.4-5, 9 ¶¶ 13–15, 19, 27, 39; Ex. A at PageID.3 ¶¶ 11–12, 15. Although the *Tiara Yachts* lawsuit is broader, both plaintiffs allege that BCBSM knowingly used its internal claims-processing systems to mismanage the claims for its self-funded plan customers. ECF No. 1, PageID.18 ¶ 79; Ex. A at PageID.11 ¶ 84. Specifically, both plaintiffs allege that BCBSM and its management were aware of an alleged processing function known as “flip logic” that “would allow healthcare providers to bill and get fully reimbursed for highly inflated costs of services.” ECF No. 1, PageID.19 ¶¶ 81–82; *see* Ex. A at PageID.7 ¶¶ 49–50. BCBSM allegedly enrolled all self-funded plan customers in its “Shared Savings Program” (“SSP”). ECF No. 1, PageID.21 ¶ 89; Ex. A at PageID.10 ¶ 71. The SSP provided additional claim processing services to customers that sought to detect and prevent future overpayments or retract overpayments. ECF No. 1, PageID.22 ¶ 94; Ex. A

³ For purposes of this motion only, BCBSM cites the allegations in Plaintiffs’ Complaint. Such citations are not an admission that the allegations are true. Indeed, BCBSM contests the allegations in the Complaint and will address the falsity of such allegations when appropriate.

at PageID.10-11 ¶¶ 72, 77–79. According to both complaints, BCBSM allegedly profited from its supposed mismanagement of claims because it would catch errors in authorizing payments and retain 30% for itself. ECF No. 1, PageID.22 ¶¶ 93–95; Ex. A at PageID.11-12 ¶¶ 80, 84, 86.

Through this conduct, BCBSM allegedly engaged in prohibited transactions in violation of ERISA and breached fiduciary duties. ECF No. 1, PageID.34-40 ¶¶ 139–58; Ex. A at PageID.18-21 ¶¶ 105–15. Although *Tiara Yachts* brings claims on its own behalf, the Wesco Plaintiffs seek to bring claims on behalf of a putative class of “[a]ll Self-Funded Plans and their Plan Sponsors from whom BCBSM has collected any SSP fees.” ECF No. 1, PageID.29 ¶ 122.

ARGUMENT

Given the long-standing pendency of the *Tiara Yachts* case asserting claims based on the SSP, the Court should transfer this case to the Western District of Michigan under the first-to-file rule or pursuant to 28 U.S.C. § 1404(a) because it would be more convenient to litigate in one forum and better serve the interests of justice.

I. The Court Should Apply the First-to-File Rule

The first-to-file rule “provides that, when actions involving nearly identical parties and issues have been filed in two different district courts, the court in which the first suit was filed should generally proceed to judgment.” *Baatz v. Columbia*

Gas Transmission, LLC, 814 F.3d 785, 789 (6th Cir. 2016) (internal quotations and emphasis omitted). Under the first-to-file rule, the Court can transfer this case to the forum where the first case was filed. *Steavens v. Elec. Data Sys. Corp.*, No. 07-14536, 2008 WL 5062847, at *1, *3 (E.D. Mich. Nov. 25, 2008); *see, e.g., Aero Advanced Paint Tech., Inc. v. Int’l Aero Prods., LLC*, 351 F. Supp. 3d 1067, 1071–72 (S.D. Ohio 2018) (transferring suit involving same plaintiffs and same alleged misconduct to California under first-to-file rule); *Levang v. Kappa Kappa Gamma Fraternity*, No. 2:24-cv-316, 2024 WL 6048247, at *6–10 (S.D. Ohio Dec. 19, 2024) (transferring suit to Wyoming under first-to-file rule where claims involved the same core issues).

In considering whether to apply this rule, courts evaluate three factors: “(1) the chronology of events, (2) the similarity of the parties involved, and (3) the similarity of the issues or claims at stake.” *Baatz*, 814 F.3d at 789. If these three factors support applying the rule, “the court must also determine whether any equitable considerations, such as evidence of inequitable conduct, bad faith, anticipatory suits, or forum shopping,” weigh against applying the rule. *Id.* (citation modified). Here, all of these considerations weigh in favor of transfer.

A. The *Tiara Yachts* complaint was filed first in the Western District

The *Tiara Yachts* case was filed first. *McConville v. Power Home Solar, LLC*, No. 5:22-cv-01277, 2023 WL 4663045, at *4 (N.D. Ohio July 20, 2023) (“[T]he date of the plaintiffs’ original complaint controls for the first-to-file chronology.”).

B. The actions involve similar parties

The second factor is similarity of parties and is satisfied when the parties to the actions “substantially overlap[.]” *Baatz*, 814 F.3d at 790 (alterations in original omitted). The parties need not be identical. *See City of Columbus v. Hotels.com, L.P.*, No. 2:06-cv-677, 2007 WL 2029036, at *5 (S.D. Ohio July 10, 2007). Here, BCBSM is the defendant in both actions and *Tiara Yachts*, as a sponsor of a self-funded plan that contracted with BCBSM, would be a member of the putative class on whose behalf the Wesco Plaintiffs bring their claims (unless one of the exclusions applies). This has been considered sufficient to satisfy the similarity-of-parties factor in the context of pre-certification class actions. *See, e.g., Baatz*, 814 F.3d at 791 (similarity of parties satisfied where parties in second action were members of the putative class in an earlier filed lawsuit).

C. The actions involve similar claims

Actions are similar for purposes of the first-to-file rule when “they [arise] from the same factual circumstances, over the same period, and seek similar relief.” *McConville*, 2023 WL 4663045, at *4. This condition is satisfied here

because the Tiara Yachts and Wesco complaints are almost identical, and plaintiffs assert similar claims based on BCBSM's administration of the SSP. *See supra* Background.

Further, the Wesco Plaintiffs acknowledge this similarity by citing and referencing the Sixth Circuit's *Tiara Yachts* decision throughout their complaint and contend that it is preclusive on multiple issues. *See* ECF No.1, PageID.11, 21, 32 ¶¶ 49, 87–88, 132; *see also Hotels.com L.P.*, 2007 WL 2029036, at *4–5 (agreeing that judicial economy weighed in favor of applying first-to-file rule where separate district courts would otherwise consider defendants' same business practices). Indeed, if these actions proceed separately, it is easy to imagine the Wesco Plaintiffs and Tiara Yachts seeking to use rulings in one case to advance their interests in the other. Transferring the case under the first-to-file rule would eliminate that potential for abuse and better “conserve resources.” *Baatz*, 814 F.3d at 791; *see also In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1088 (6th Cir. 1996) (“Although there is no precise rule that, as between federal district courts, one court should defer to another, the general principle is to avoid duplicative litigation.”) (internal quotations omitted).

D. Equitable considerations do not weigh against applying the first-to-file rule

Given the earlier filing in the *Tiara Yachts* action and the similarity of both parties and issues, the first-to-file rule presumptively applies. And because

“declining to apply the first-to-file rule should be done rarely,” “deviations from the rule should be the exception, rather than the norm” and done only when equitable considerations would merit not applying the rule. *Baatz*, 814 F.3d at 792–93. No such concerns weigh against applying the rule here.

BCBSM, as the defendant, did not choose either forum and thus cannot “appear to have engaged in forum shopping” by seeking to “ensure that all the issues are litigated” in one forum. *Id.* at 792. If there is any specter of forum-shopping, it is on the part of the Wesco Plaintiffs. Their attorneys chose to file in this forum despite BCBSM having multiple offices in Grand Rapids, Wesco having its principal place of business in Muskegon, and Tiara Yachts having its headquarters and operations in Holland—all in the Western District of Michigan⁴—and despite representing Tiara Yachts in the action already in the Western District of Michigan.

⁴ Wesco is based in Muskegon, Michigan. *Wesco, Inc., Michigan Business Registry Business Search*, <https://mibusinessregistry.lara.state.mi.us/search/business> (last visited July 10, 2025) (attached hereto as **Exhibit B**). Tiara Yachts is based in Holland. *See* Ex. A at PageID.2 ¶ 4. BCBSM operates in Grand Rapids. *Blue Care Network HMO Contacts*, BLUE CROSS BLUE SHIELD BLUE CARE NETWORK OF MICHIGAN, <https://www.bcbsm.com/individuals/help/contact-us/blue-care-network-contacts/> (last visited July 6, 2025) (attached hereto as **Exhibit C**). This Court may take judicial notice of public records and information on corporate websites. *See Perez-Garcia v. Woods*, Case No. 2:13-cv-14603, 2018 WL 731931, at *3 n.3 (E.D. Mich. Feb. 6, 2018) (“Public records and government documents, including those available from reliable sources on the Internet, are subject to judicial notice.”); *SPD Swiss Precision Diagnostics GmbH v. Church & Dwight Co., Inc.*,

II. The Court Should Transfer the Case to the Western District of Michigan Under 28 U.S.C. § 1404(a)

Even if the Court decides that the first-to-file rule does not apply, the Court should transfer the case under § 1404(a), which provides that “a district court may transfer any civil action to any other district or division where it might have been brought” “[f]or the convenience of parties and witnesses” and “in the interest of justice.” 28 U.S.C. § 1404(a).

This action should be transferred to the Western District of Michigan because the Wesco Plaintiffs could have filed in that district and the private and public interest considerations favor transfer. *Cincinnati Ins. Co. v. O’Leary Paint Co., Inc.*, 676 F. Supp. 2d 623, 631, 637–38 (W.D. Mich. 2009) (finding transfer of venue appropriate to a district where the action could have been filed and transfer would promote efficiency and the interest of justice); *see, e.g., Helder v. Hitachi Power Tools, USA Ltd.*, 764 F. Supp. 93, 95–96 (E.D. Mich. 1991) (transferring case from Eastern District to Western District under 28 U.S.C. § 1404(a)).

No. CV 09-0291 JSW, 2009 WL 981233, at *2 n.1 (N.D. Cal. Apr. 13, 2009) (taking judicial notice of information from the defendant’s website listing its office locations). The Court may also take judicial notice of the geographical fact that these locations are in the Western District of Michigan. *See, e.g., Meinhart v. United States*, Civil Action No. 3:16-cv-00171-TBR, 2016 WL 6272391, at *2 n.1 (W.D. Ky. Oct. 25, 2016) (taking judicial notice of the fact “that Butler, North Carolina is located in the Eastern District of North Carolina”).

Although a plaintiff ordinarily is entitled to some deference in the choice of forum, that this is “a class action weakens [plaintiffs’] claim for deference to [their] choice of venue[.]” *Wayne Cnty. Emps.’ Ret. Sys. v. MGIC Inv. Corp.*, 604 F. Supp. 2d 969, 976 (E.D. Mich. 2009). Moreover, as illustrated by the pendency of *Tiara Yachts*, there can be no reasonable dispute that (i) the Western District of Michigan could exercise original jurisdiction over this suit; (ii) there is personal jurisdiction over the parties there, as the Wesco Plaintiffs are resident in the Western District (*see supra* n.4); and (iii) venue is proper there for the same reason. *See McConville*, 2023 WL 4663045, at *5–6 (addressing the threshold requirements for transfer under § 1404(a)). And “[t]he most critical interest in this case is avoiding duplicative, parallel litigation in different districts.” *See id.* at *6.

A. The Wesco Plaintiffs could have filed in the Western District of Michigan

When considering whether to transfer under § 1404(a), a court first considers whether (1) the second court could exercise original jurisdiction, (2) the second court would have personal jurisdiction over the defendants, and (3) venue would be proper in that court. *Id.* at *5. Here, the answer to each question is yes as shown by the pendency of the *Tiara Yachts* case in the Western District, which arises out of the same legal issues and statutory bases for venue and jurisdiction that apply here.

B. Private interest factors strongly favor transfer

Courts typically consider seven non-exhaustive factors to determine whether transfer is appropriate:

(1) the convenience of the parties; (2) the convenience of the witnesses; (3) the relative ease of access to sources of proof; (4) the availability of process to compel attendance of unwilling witnesses; (5) the cost of obtaining willing witnesses; (6) the practical problems associated with trying the case most expeditiously and inexpensively; and (7) the interest of justice.

Helder, 764 F. Supp. at 96. The “[c]ourt may consider any factor that may make any eventual trial easy, expeditious, and inexpensive.” *Id.* (internal quotations omitted). The relevant factors favor transfer to the Western District of Michigan.⁵

Convenience of witnesses: Transferring this action to the Western District of Michigan would be more convenient for Wesco employees because it is headquartered there. It would be similarly convenient for BCBSM employees, given that (i) BCBSM has offices in Grand Rapids and (ii) employees at BCBSM, even if in the Eastern District, already are subject to potential involvement through the *Tiara Yachts* case. Moreover, proceeding in the Western District would be more convenient for BCBSM’s witnesses because that court, at a minimum, can

⁵ BCBSM focuses on the factors that are relevant to the analysis in this case. *McConville*, 2023 WL 4663045, at *6. The convenience of the parties, the relative ease of access to sources of proof, the cost of obtaining willing witnesses, and the practical problems associated with trying this case are neutral to the determination of whether to transfer venue.

coordinate the actions, meaning witnesses would only have to participate in a single discovery process.

Availability of process to compel attendance of unwilling witnesses:

Transfer would likely not affect the availability of process to compel attendance of unwilling witnesses. The Western and Eastern Districts face similar constraints in seeking to extend their subpoena power to witnesses located throughout Michigan or in other jurisdictions, depending on the identity and location of witnesses. *See* Fed. R. Civ. P. 45(c)(1) (“A subpoena may command a person to attend a trial, hearing, or deposition only as follows: . . . within 100 miles of the where the person resides, is employed, or regularly transacts business in person[.]”). Because BCBSM and Wesco conduct business throughout Michigan, and putative class members would be other self-funded plan customers throughout Michigan or elsewhere—without geographical limit to the Eastern District—proceeding in the Western District is unlikely to result in increased difficulties with compelling attendance of unwilling witnesses.

The interest of justice: Transfer would eliminate the risk of inconsistent rulings. The Wesco Plaintiffs themselves recognize the “risk of inconsistent rulings and contradictory judgments” if individuals were to bring separate lawsuits against BCBSM because they rely on these risks to justify the certification of a class. ECF No.1, PageID.33-34 ¶ 136. Moreover, the attorneys’ decision to file on

behalf of the Wesco Plaintiffs outside of Wesco's home district despite the pendency of a case the same attorneys filed in that district raises the appearance of venue-shopping. Transferring the case eliminates that risk.

C. Public interest factors favor transfer

Courts also consider the effect of transfer on public interest factors, such as:

(1) administrative difficulties of courts with congested dockets; (2) the burden of jury duty on members of a community with no connection to the litigation; (3) the local interest in having local controversies decided at home; and (4) the appropriateness of having diversity cases tried in a forum which is familiar with the governing law.

McConville, 2023 WL 4663045, at *6 (internal citation omitted). Here, relevant public interest considerations are largely neutral but generally support transfer.⁶

Though the time intervals from filing to disposition are roughly the same for the Eastern and Western Districts, the familiarity of the *Tiara Yachts* court with the factual allegations will allow it to move the proceedings along more efficiently, as will having the cases proceed in a single forum.⁷ Transfer would similarly ease the

⁶ BCBSM again focuses on the factors that are relevant to the analysis. *McConville*, 2023 WL 4663045, at *6. Here, transfer would not impose any burden on the community given the transfer would be within Michigan and retain a connection to the community where the Wesco Plaintiffs are based. Nor would there be any difference with respect to either forum's familiarity with governing law.

⁷ See Table C-5—U.S. District Courts—Civil Federal Judicial Caseload Statistics, UNITED STATES COURTS (Mar. 31, 2025), <https://www.uscourts.gov/data-news/data-tables/2025/03/31/federal-judicial-caseload-statistics/c-5> (attached hereto as **Exhibit D**). This Court may take judicial notice of information on

unnecessary administrative burdens associated with two courts adjudicating the same issues arising out of the same alleged business practices. *Hotels.com, L.P.*, 2007 WL 2029036 at *5 (transferring where “litigat[ing] the same dispute in two different forums” would be “a waste of judicial resources”).

Transfer would also not disturb any local interest in deciding local controversies because BCBSM and Wesco conduct business throughout Michigan. The Wesco Plaintiffs also allege that other self-funded plan customers in Michigan or elsewhere were affected by BCBSM’s alleged conduct. Thus, no single district is likely to have a stronger interest in adjudicating this action.

CONCLUSION

For the foregoing reasons, BCBSM respectfully requests that the Court transfer this case to the U.S. District Court for the Western District of Michigan.

Dated: July 14, 2025

Respectfully submitted,

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government websites. *See, e.g., Mays v. Wal-Mart Stores, Inc.*, Case No. 17-CV-07174-LHK, 2018 WL 1400468, at *6 n.2 (N.D. Cal. Mar. 19, 2018) (taking judicial notice of “the statistics published on the website of the Administrative Office of the U.S. Courts”).

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EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIARA YACHTS, INC.,

Case No. 1:22-cv-603

Plaintiff,

Honorable _____

v.

BLUE CROSS BLUE SHIELD OF
MICHIGAN,

Defendant.

COMPLAINT

Plaintiff, Tiara Yachts, Inc., formerly S2 Yachts, Inc. ("Tiara Yachts"), by and through its counsel, Varnum LLP, hereby states for its Complaint against Defendant Blue Cross Blue Shield of Michigan ("BCBSM") as follows:

NATURE OF ACTION

1. Tiara Yachts hired BCBSM to administer its self-funded health benefits plan (the "Plan") that Tiara Yachts offers to its employees and their dependents. This arrangement is governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.*, and the terms of the Plan.

2. Tiara Yachts recently discovered that BCBSM is aware of flaws in its claims processing system that caused it to overpay for claims with Tiara Yachts' money. Instead of fixing the system failures, BCBSM concealed them from Tiara Yachts for reasons that appear to advance BCBSM's own interests. BCBSM continues to conceal its misconduct, in part, by maintaining exclusive control of Tiara Yachts' complete claims data and other information, which is necessary to comprehensively identify all improper payments and other wrongdoing.

3. BCBSM's mismanagement of Plan Assets clearly constitutes a breach of BCBSM's fiduciary duty of care under ERISA. Tiara Yachts brings this suit to recover the misappropriated funds and obtain all other relief to which it is entitled.

PARTIES, JURISDICTION AND VENUE

4. Tiara Yachts is a Michigan corporation, with its principal location in Holland, Michigan.

5. BCBSM is a Michigan non-profit health care corporation organized under the Nonprofit Health Care Corporation Reform Act, MCL 550.1101, *et seq.*

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132 because Tiara Yachts' claims arise under ERISA.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because BCBSM resides in the Western District of Michigan and a substantial part of the events or omissions giving rise to the claim occurred in the Western District of Michigan. Venue is also proper pursuant to 29 U.S.C. § 1132(e)(2).

GENERAL ALLEGATIONS

8. Tiara Yachts hereby incorporates by reference the allegations contained in the preceding paragraphs.

9. Tiara Yachts, formally S2 Yachts, Inc., is in the business of designing and manufacturing boats.

10. Tiara Yachts offers health care benefits through the Plan. Rather than buy health insurance to cover employee health care claims under the Plan, during the relevant time period Tiara Yachts opted to self-insure. As such, Tiara Yachts paid the actual employee health care costs covered by the Plan, up to a large threshold. Tiara Yachts bought "stop loss" insurance to cover claims that exceeded that threshold.

11. Years ago, BCBSM began providing administrative services to Tiara Yachts and Tiara Yachts' self-funded health benefits Plan.

12. A self-funded arrangement is one in which the company (Tiara Yachts in this case) self-insures the health care claims of its employees instead of buying an insurance policy. Generally speaking, for every dollar of claims incurred by an employee, the self-funded entity pays that dollar. In order to self-fund, the company contracts with an administrator to process and pay the claims in exchange for a disclosed fee.

A. TIARA YACHTS HIRED BCBSM TO SERVE AS THE PLAN'S ADMINISTRATOR.

15. Tiara Yachts hired BCBSM to provide administrative services for the Plan.

16. In exchange, BCBSM charged Tiara Yachts a monthly administrative fee.

17. BCBSM and Tiara Yachts first executed an Administrative Services Contract ("ASC") on January 1, 2006. They renewed the ASC annually, until Tiara Yachts terminated the relationship in or about December of 2018.

18. The ASC delegates to BCBSM certain Plan administration responsibilities that Tiara Yachts would otherwise retain, including but not limited to interpreting Plan terms, calculating benefits, and using Tiara Yachts' Plan assets to pay for health care services.

19. BCBSM's administrative fee included a host of services, including but not limited to claims processing, check writing, case management, anti-fraud services, and cost containment.

20. BCBSM was to perform its administrative services in accordance with the health care benefits selected by Tiara Yachts.

21. In essence, BCBSM would process and pay claims on behalf of Tiara Yachts using Tiara Yachts' Plan assets.

22. Tiara Yachts sent the required prepayments to a BCBSM-owned bank account, on a periodic basis, in order for BCBSM to pay claims on Tiara Yachts' behalf.

23. The prepayments sent to BCBSM's bank account were "Plan Assets" as defined by ERISA. *See* Findings of Fact & Conclusions of Law in *Hi-Lex Controls, Inc. v. BCBSM*, No. 11-cv-12557, 2013 WL 3773364 (E.D. Mich. July 17, 2013), and *aff'd sub nom. Hi-Lex Controls, Inc. v. BCBSM*, 751 F.3d 740 (6th Cir. 2014), (the "*Hi-Lex* FFCL") at ¶¶ 5, 6, & 180; *Hi-Lex*, 751 F.3d at 745-46.

24. BCBSM had complete authority and control over the bank account and the Plan assets sent to it by Tiara Yachts.

25. BCBSM (a) exercised discretionary authority and control with respect to management of the Plan; (b) exercised authority and control with respect to management and disposition of Plan Assets; or (c) had discretionary authority and responsibility in the administration of the Plan. *Hi-Lex* FFCL, at ¶¶ 180-82; *Hi-Lex*, 751 F.3d at 744-47.

26. BCBSM functioned as a fiduciary in its administration of the Plan. *See* 751 F.3d at 747 ("common law supports the conclusion that BCBSM was holding the funds wired by Hi-Lex 'in trust' for the purpose of paying plan beneficiaries' health claims and administrative costs. Accordingly, the district court did not err in finding that BCBSM held plan assets of the Hi-Lex Health Plan and, in doing so, functioned as an ERISA fiduciary").

B. CLAIMS ASSOCIATED WITH OUT-OF-STATE PROVIDERS.

27. BCBSM was also responsible for administering the plan with respect to claims submitted by out-of-state providers.

28. BCBSM is an independent licensee of the Blue Cross and Blue Shield Association ("Association").

29. The Association is a national federation comprised of 38 independently licensed, community-based and locally operated Blue Cross Blue Shield Companies. These companies are colloquially known as "The Blues."

30. BCBSM and other Blues participate in the BlueCard Program. The BlueCard Program is a national program that enables members of one Blue Plan to obtain health care service benefits while traveling or living in another Blue Plan's service area (the "Host Blue").

31. The BlueCard Program links participating health care providers with the independent Blue Plans operating throughout the world through a single electronic network for claims processing and reimbursement.

32. This program allows BCBSM to instantly transfer and receive claim and member-eligibility information between the Blues when processing out-of-state claims.

33. BCBSM remains responsible to the Group for fulfilling BCBSM's contractual obligations when members access covered health care services within the geographic area served by a Host Blue.

34. The Group's liability on claims submitted by participating providers is based on the negotiated price made available to BCBSM by the Host Blue.

35. BCBSM charged Tiara Yachts host fees for claims processed through the BlueCard Program, including but not limited to fees and compensation BCBSM pays to the Host Blues, the Association, and other vendors, an additional administrative service fee, and, if applicable, a network access fee.

C. BCBSM'S PRACTICE OF PAYING IMPROPER CLAIMS COMES TO LIGHT.

37. Dennis Wegner was a senior account manager at BCBSM. He worked at BCBSM for 18 years, serving many customers, and is now credited for bringing BCBSM's prolific mismanagement of customers' assets to light.

38. While serving as an account manager, Dennis Wegner was alerted by a BCBSM customer about a significant medical claim the customer received in excess of \$250,000.

39. Dennis Wegner investigated the customer's complaint and discovered that BCBSM was overpaying for routine medical testing.

40. In that particular customer's case, BCBSM had overpaid more than \$600,000 within a two-year period.

41. Dennis Wegner brought the issue to BCBSM's attention, and to Dennis Wegner's surprise BCBSM's management confirmed that BCBSM's payment of improper claims are known to happen in the BCBSM billing system, but BCBSM has done nothing to stop them.

42. Alarmed that BCBSM's payment of improper claims may not be isolated to one customer, Dennis Wegner researched claims and billings for two other BCBSM customers and found similar overpayments, totaling \$125,000 in one case, and \$75,000 in another case.

43. Again, Dennis Wegner brought his concerns about overpayments to BCBSM's attention, but was told to cease researching the issue, to "stand down," and to refrain from alerting any BCBSM customers of improper payments made by BCBSM.

44. The improper charges were known by many key employees and executives within BCBSM, including Rod Begosa, David Malik, Lori Shannon, Gary Gavin, Ken Dallafior, Carol Gawronski, Robert Hopper, Dianne Malmgren, Nadiya Delaney, Kimberly Jones-Schneider, Teresa Henry, Pamela A. Braund, Sandra Fester, Aaron Friedkin, Jason M. Hover, Michael McKay

Jr., Paul E. Ragos, Robert Rizzo, Diane VanEck, and Jeffrey Connolly. Yet no one at BCBSM took any action to stop the payment of improper claims.

45. After Dennis Wegner sounded the alarm, BCBSM's executives held a meeting to discuss the issue and afterwards sent a recap revealing troubling details. 9/14/2017 BCBSM Email Chain, **Exhibit A**.

46. BCBSM knew that the majority, if not all, of self-funded, non-auto customers on its NASCO platform, including Tiara Yachts, were impacted by this systems flaw. *Id.*

47. BCBSM maintained lists of customers that were affected by this problem. *See e.g., id.*, with 2017 List of Customers Impacted by Flip Logic, **Exhibit B**.

48. BCBSM attributed this problem to an intentional design in its programming called "flip logic." Ex. A, 9/14/2017 BCBSM Email Chain.

49. BCBSM implemented flip logic in 1997. Under the logic, when a claim is submitted associated with a non-participating provider, BCBSM's system "flips" the non-participating provider's status and processes the claim at charge. 9/19/2017 BCBSM Email Chain, **Exhibit C**.

50. Thus, by using the flip logic, BCBSM allowed "providers [to] bill and get fully reimbursed for highly inflated cost of services." Ex. A, 9/14/2017 BCBSM Email Chain. Essentially, BCBSM would pay whatever was charged for a service, regardless of whether the claim was proper under the plan terms or other applicable reimbursement guidelines and policies. *Id.*

51. To be clear, this problem was not isolated to claims associated with laboratory services. The improper payments were not only associated with laboratories, but also with, for

example, hospitals, x-rays, and office visits. In reality, anyone could take advantage of BCBSM's flawed system logic.

52. BCBSM knew that this "ha[d] been an issue within the company for a number of years." Ex. C, 9/19/2017 BCBSM Email Chain. But, "[i]n the absence of controls in the system logic that would flag suspicious claim activity, claims continue to be processed as '*pay sub at charge*,' often many times over and above the customary amount for such services." *Id.*

53. Compounding the issue, BCBSM identified at least 201 customers which had "elected to pay at the Host-allowed rate for non-par claims." Ex. C, 9/19/2017 BCBSM Email Chain, *with* Ex. B, 2017 List of Customers Impacted by Flip Logic.

54. Thus, according to Tiara Yachts' Plan, Tiara Yachts should have been paying for out-of-state, non-par claims at a lower rate set by the applicable Host Blue plan. BCBSM knew this, stating "'Flipping' logic is in direct contradiction with the group-elected benefit." Ex. C, 9/19/2017 BCBSM Email Chain.

55. In 2016 alone, "BCBSM processed 30,000 non-par claims at charge when Host pricing was available. The sum of those [flip] charges was \$30.5M and resulted in a payment amount of \$26.7M." Had BCBSM applied the Host plan pricing as it was required to do, "the total allowed amount for these claims would have been \$7.1M; a potential savings of \$23.0M in benefit costs." *Id.* (emphasis added).

56. It gets worse. BCBSM expressly recognized that it had a "fiduciary responsibility to [its] ASC customers" and that its "lack of control over the issue [would be] viewed as a failure to fulfill this responsibility." *Id.*

57. However, instead of accepting responsibility as fiduciary for a flawed logic that it created over four decades ago and failed to correct, BCBSM worked to conceal the issue.

58. BCBSM acknowledged that its "customers may not be fully aware of the implications of the 'flipping' system logic," and took active steps to conceal the problem from its customers, including Tiara Yachts. Ex. A, 9/14/2017 BCBSM Email Chain.

59. BCBSM was worried that a "Provider pursuing [a] member for [a] large balance may cause a spike in member inquires and groups' dissatisfaction." *Id.* Thus, BCBSM would temporarily assume liability for any inconspicuous overcharges that resulted from the flip logic, in order to keep its mismanagement of its customers' plans hidden. *Id.*

60. Some BCBSM employees suggested that BCBSM "make a global change to discontinue the logic and pay at Host allowed." *Id.* Essentially, the suggestion was to process claims in compliance with customers' selected benefit plans—what BCBSM should have been doing all along. Additionally, the BCBSM employees suggested making impacted customers "aware, educated, and their concurrence be documented." *Id.* These suggestions were ignored.

64. BCBSM continued to conceal its misconduct, and on November 14, 2018, BCBSM terminated Dennis Wegner's employment after he refused to cease investigating and pressing the issue.

65. On February 5, 2019, Dennis Wegner filed a lawsuit against BCBSM, alleging violations of the Michigan Whistleblowers' Protection Act and Michigan Bullard-Plawecki Employee Right-to-Know-Act. *See Dennis Wegner v. BCBSM*, No 19-001808-CD (Wayne Cnty. Cir. Ct.), attached as **Exhibit D**.

D. BCBSM CAPITALIZES ON ITS MISCONDUCT AND MISMANAGEMENT OF ITS CUSTOMERS' PLAN ASSETS.

70. Around the time BCBSM's practice of reimbursing claims at charge was being called into question, BCBSM formulated a plan to capitalize on its misconduct.

71. Effective January 1, 2018, BCBSM implemented a package of Payment Integrity Services for all of its self-funded customers using a shared savings arrangement (collectively called the shared savings program ("SSP")). SSP Internal Memo, **Exhibit E**.

72. The SSP includes four primary services: a pre-pay forensic bill review, advanced payment analytics, subrogation, and credit balance recovery. *Id.*

73. "Pre-pay Forensic Bill Review provides a review of high cost inpatient claims to detect and resolve billing errors *after* adjudication, but prior to payment." These services are performed by a third-party vendor called Equian. *Id.*

74. Equian reviews "all claims meeting [a] \$25,000 threshold that are inpatient and are paid as outliers to current diagnostic edit process, OR are paid under a percent charge reimbursement methodology. This includes both in and out-of-state claims, and Par and Non-par providers." *Id.*

75. Subrogation generally "involves the detection and recovery of 3rd-party liability claims where a 3rd party is accountable for the expense." *Id.*

76. Credit Balance Recovery entails the detection and recovery of credit balances on hospital patient accounting systems due to ASC customers, such as Tiara Yachts. *Id.*

77. Last, Advanced Payment Analytics works to identify "claim overpayments not previously detected and recover the overpayment from providers after payment is rendered." These services are performed by a third-party vendor called Cotiviti. *Id.*

78. Prior to implementing Advanced Payment Analytics, BCBSM purportedly performed several post-pay claim review services, included as part of its administrative services fee. These included data mining for provider billing errors, coordination of benefits, and

overpayment identification. Cotiviti differs from these services in that it offers a "2nd pass" review for improper payments. *Id.*

79. BCBSM's engagement with Cotiviti was not new. BCBSM had previously engaged Cotiviti to provide improper payment detection services for BCBSM's own fully insured book of business, and had realized savings of \$12–15 million per year. BCBSM, however, did not engage Cotiviti for its self-insured groups until 2018. *Id.*

80. The SSP came with a catch. For any improper payments detected and recovered in connection with these programs, *but only as they applied to BCBSM's self-funded customers*, BCBSM would retain 30 percent of the avoided or recovered payment. BCBSM marketed its compensation as "administrative compensation." *Id.*

81. BCBSM also made it mandatory for its self-insured customers to participate and automatically opted all self-funded customers into the program. *Id.*

82. Cotiviti's review in particular would apply retroactively to improper payments extending back to January 1, 2016. *Id.*

83. In effect, for any improper payments Cotiviti detected and recovered—including the improper payments BCBSM knew existed as a result of its flip logic and beyond—BCBSM would take a 30 percent cut.

84. Essentially, BCBSM devised a scheme that would allow it to profit on its own mismanagement of plan assets. The more improper payments BCBSM let slide through its system, the more money it would make on the back end. Unfortunately, this came at the expense of BCBSM's self-insured customers, including Tiara Yachts.

85. As an ERISA fiduciary, BCBSM must avoid any conflicts of interest concerning the manner in which it performs its fiduciary duty. The SSP creates an impermissible conflict of interest.

E. BCBSM FURTHER CONCEALS ITS MISCONDUCT BY GATEKEEPING INFORMATION NECESSARY TO IDENTIFY IMPROPER CHARGES.

86. BCBSM has designed a system in which it knowingly and improperly pays claims, later corrects the claim charge to what it should have been in the first place, at its discretion, and then collects a recovery fee for "catching" the error.

87. BCBSM impedes its self-funded customers, including Tiara Yachts', ability to evaluate whether BCBSM is properly paying claims by significantly limiting access to each customers' claims data and other documents that set forth the guidelines and rules for claims processing and pricing.

88. Claims data is incredibly in-depth electronic information gathered from medical bills or claims submitted to BCBSM. For example, claims data identifies who rendered a service, the rendering provider(s) specialties and credentials, what service(s) was performed, what amount was billed for the service, what amount BCBSM allowed to be paid out of what was charged, who BCBSM paid, when and where the service was provided, the patient's identity and age, and diagnoses.

89. Claims data also shows the line-item detail associated with each claim. For example, when a provider submits a claim for orthopedic surgery, the claim will have each associated cost and service broken down by service line showing the total the provider charged, the amount BCBSM allowed, and what was ultimately paid.

90. Claims data is essential to identifying improper claims and payments.

91. Throughout the parties' relationship, BCBSM maintained exclusive control and access to Tiara Yachts claims data. Tiara Yachts never had and still does not have access to its own *complete* claims data. BCBSM's exclusive control and access to its customers' claims data is yet another tool BCBSM utilizes to conceal its misconduct.

92. Tiara Yachts' claims data should reflect all information necessary to ascertain whether a claim was properly processed and/or paid. To the extent it does not, BCBSM's failure to collect and/or maintain such data would itself be a breach of fiduciary duty.

93. Such data deficiencies may include, for example: missing provider information, missing payee information, rolled-up financials, financials that do not reconcile, claims showing as rejected but still paid, fields compromised by BCBSM's flip logic, or even claims that are altogether missing.

94. **Missing Provider Information.** An NPI is a unique government ID number issued to medical professionals and businesses and is required to be used in health care transactions by the Health Insurance Portability and Accountability Act ("HIPAA"). Claims without provider information, such as an NPI, are incapable of being analyzed for the identification of improper payments. BCBSM requires an NPI on every claim prior to reimbursement. *See, e.g.*, BCBSM Provider Manual¹ ("If NPI is missing or illegible, claim will be rejected."). It is the responsibility of BCBSM, as the Plan fiduciary, to provide industry standard oversight, such as confirming that the health care service provider is a covered entity as described within the plan document.

¹<https://www.bcbsm.com/content/dam/public/Providers/Documents/help/medicare-plus-blue-ppo-manual.pdf>.

95. **Missing Payee Information.** Claims missing payee information fail to disclose where or to whom plan funds were spent. As the fiduciary, BCBSM was responsible for tracking to whom and where plan assets are distributed.

96. **Rolled-Up Financial Details.** Claims should reflect a line-by-line detail of each claim's associated costs and reimbursements. For example, each item within a claim should have itemized details regarding the amounts billed and paid. A consolidation, or "roll-up", of a claim's line-by-line detail makes it impossible to verify whether a claim was properly made and/or paid.

97. **Claim Financials Do Not Add Up.** The maximum reimbursement for health care service is determined by the contracted rate applicable to each service billed. The maximum reimbursement is paid by the Plan after member liability (deductible, co-insurance, and co-pays) has been applied. Thus, the combination of plan paid amount and member liability should represent maximum reimbursement to a network health care provider. When this combination does not reconcile with BCBSM's allowable amount (also called the approved amount), the claim financials do not add up and this raises fiduciary concerns.

98. **Rejected Claims that Report as Paid.** Claims that are rejected should be denied with no payable amount. If rejected claims showing a paid amount were in actually paid, these claims are a fiduciary violation and would be considered improper payments.

99. **Systematic Pricing Failure of Out-of-Network Claims – Flip Logic.** Due to BCBSM's flip logic, many claims may be labeled as in-network in the data and allowed at 100 percent, when in fact they were out-of-network and should have been reduced according to Tiara Yacht's elected Plan benefits.

100. **Missing Claims Data.** Tiara Yacht's claims data should reconcile with the financial transactions BCBSM reported to Tiara Yacht's. A gap between the paid amounts in the

claims data and financial reports, means that either claims data is missing or Tiara Yachts was overcharged.

101. BCBSM processes all claims for all non-auto NASCO customers, such as Tiara Yachts, on the same claims processing system. Thus, errors or deficiencies identified in claims associated with one customer can reasonably be expected to exist for other customers using the same system.

102. BCBSM's NASCO claims processing system has been found to consistently result in improper payments of claims. These processing errors result in wasted Plan assets in breach of BCBSM's fiduciary duty.

103. Common errors associated with BCBSM's NASCO claims processing system include, for example: unbundling, upcoding, medically unlikely claims, non-adherence to payment guidelines, and BCBSM's flip logic.

104. **Unbundling.** Unbundling is when a health care service provider uses the billing codes for two or more separate procedures when the procedures were actually performed together and only one code should be paid. Within the health care industry, procedure-to-procedure ("PTP") edits are used to identify various types of unbundling. These edits work by defining pairs of Healthcare Common Procedure Coding System ("HCPCS") and Current Procedural Terminology ("CPT") codes that should not be reported together on a claim for a variety of reasons, such as a provider performing several laboratory tests for a patient that are commonly grouped as a panel and fall under a single billing code. The provider may try to increase their reimbursement by submitting claim codes for each individual test in the panel. The purpose of the PTP edits is to prevent improper payments when incorrect code combinations are reported. As the Plan

administrator tasked with responsibility of processing claims, BCBSM should allow and pay unbundled claims.

105. **Medically Unlikely Edits (MUE).** An MUE for a code is the maximum units of service that a provider would report under most circumstances for a single patient on a single date of service. In other words, MUEs represent an upper limit that unquestionably requires further documentation to support. These edits are designed to limit fraud and/or coding errors. As the Plan administrator tasked with responsibility of processing claims, BCBSM should not allow and pay claims that exceed the maximum number of units allowed.

106. **Upcoding.** Upcoding occurs when health care providers submit inaccurate billing codes to insurance companies in order to receive inflated reimbursements. As the Plan administrator, BCBSM should not allow and pay upcoded claims.

107. **Non-Adherence to Payment Guidelines.** Payment guidelines are established to determine the appropriate reimbursement amounts when processing a claim. In general, Payment Guidelines dictate the reimbursement methodology used to determine the maximum allowable for any given service and provider type. As the Plan administrator, BCBSM must adhere to payment guidelines when processing and paying claims.

108. The aforementioned improper payments are non-exclusive examples of improper payments BCBSM regularly makes when processing claims for NASCO customers, and therefore also made when processing claims for Tiara Yachts. This Complaint is intended to cover all further improper payments and misuses of plan assets discovered hereafter once Tiara Yachts has the opportunity to analyze its own complete claims data.

F. BCBSM'S PRACTICE OF KNOWINGLY PAYING IMPROPER CLAIMS IS INCONSISTENT WITH INDUSTRY STANDARDS, INCONSISTENT WITH HOW BCBSM HOLDS ITSELF OUT TO THE PUBLIC, AND INCONSISTENT WITH REPRESENTATIONS IT MAKES TO CUSTOMERS.

95. BCBSM's practice of paying Providers' improper claims is contrary to standards and norms in the health insurance industry, contrary to how BCBSM markets itself to the public, and is contrary to representations it makes to customers.

96. BCBSM represents that its "claims processing practices consistently deliver industry-leading outcomes with respect to claim payments, and average above 99% accuracy." Payment Integrity Presentation, **Exhibit F**.

97. BCBSM says that it "takes actions to ensure health claims are submitted, and paid accurately, proactively and correctly, by the responsible party, for eligible members, according to medical, benefit and reimbursement policies and contractual term. Not in error or duplicate and free of wasteful or abusive practices." *Id.*

98. Indeed, BCBSM charges its customers for its investigation, detection, and recovery of improper claims.

99. BCBSM's practice of knowingly paying improper claims is entirely inconsistent with such representations, and with industry standards.

100. Likewise, BCBSM's payment of claims that lack basic information, such as the provider's identity and qualifications that is essential to avoiding improper payments, is inconsistent with industry standards and BCBSM's own policies.

101. Tiara Yachts never imagined, nor had reason to imagine based on BCBSM's own representations, that BCBSM knowingly paid Providers' improper claims or that BCBSM knew of flaws in its system affecting Tiara Yachts and failed to disclose and correct the issue.

102. The limited reporting information BCBSM provided to Tiara Yachts contained no information about BCBSM's practice of paying Providers' improper claims or its flawed systems.

103. Based on BCBSM's own representations – that BCBSM is as an industry expert in fraud prevention – and the fact that information BCBSM provided Tiara Yachts contained no information about its practice of paying Providers' improper claims, Tiara Yachts trusted and believed that BCBSM was acting in Tiara Yachts' best interest. As explained above, Tiara Yachts was wrong.

104. BCBSM, as a fiduciary to Tiara Yachts, had a duty to disclose all material facts related to its claims processing, including all Plan assets that had been mis-mismanaged. BCBSM failed to do so.

COUNT I
Breach of Fiduciary Duty – ERISA

105. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs.

106. At all times relevant, BCBSM was a fiduciary pursuant to 29 U.S.C. § 1002(21)(A) with respect to Tiara Yachts' Plan because (a) it exercised discretionary authority and control over management of the Plan; (b) it exercised authority and control over management and disposition of the Plan's assets; or (c) it had discretionary authority and responsibility in the administration of the Plan.

107. As a fiduciary, BCBSM was required, among other things, to discharge its duties solely in the interest of the employees and beneficiaries of the Plan, preserve Plan assets, fully disclose its actions, avoid making false or misleading statements, avoid conflicts of interest, and abide by any statutory obligations or restrictions imposed on it. BCBSM also held a duty to act in accordance with the documents and instruments governing the Plan.

108. BCBSM breached its fiduciary duties in numerous ways, including, but not limited to:

(a) Knowingly using Tiara Yachts' Plan assets to pay claims impacted by BCBSM's systems flip logic, fully aware such flip logic had been flawed for decades and was causing Tiara Yachts' Plan to overpay for benefits;

(b) Failing to implement or correct controls in its systems logic that would flag suspicious claim activity, when BCBSM knew that its systems logic was flawed and causing claims to be processed at charges in contradiction with Tiara Yachts' elected Plan benefits;

(c) Concealing from, and otherwise failing to disclose to Tiara Yachts, the full implications of and flaws associated with its systems logic and the overpayments BCBSM made as a result;

(d) Misleading and deceiving Tiara Yachts by implementing a Shared Savings Program when it knew Tiara Yachts' Plan assets were being used to overpay for benefits, allowing BCBSM to capitalize on its own misconduct and mismanagement, which was a clear conflict of interest;

(e) Using its considerable discretionary authority to advance interests other than those of Tiara Yachts' Plan or its members;

(f) Failing to implement and exercise sufficient quality control and oversight of BCBSM's claims processing systems and discretionary review of claims pre- and post-payment;

(g) Consistently paying claims suffering from a range of coding and billing issues, including but not limited to unbundling, upcoding, medically unlikely services, and

reimbursing claims in non-adherence to its own and/or industry standard reimbursement guidelines;

(h) Failing to implement industry standard claims processing edits to prevent Tiara Yachts' Plan assets from being used to pay improper charges;

(i) Concealing from, and otherwise failing to disclose to Tiara Yachts the payment of improper claims;

(j) Concealing from, and otherwise failing to disclose to Tiara Yachts all documents and information that govern BCBSM's methodology for determining covered charges under Tiara Yachts' Plan and amounts to be paid to providers, affording BCBSM complete discretionary control and preventing Tiara Yachts from verifying whether reimbursements made by BCBSM using its Plan assets were calculated and made in accordance with the Plan's terms, operative pricing rates, rules, policies, and contracts;

(k) Paying claims lacking standard information necessary to properly adjudicate claims in accordance with industry standards and BCBSM's own policies and procedures, or otherwise failing to maintain claims data necessary to identify and recover incorrectly paid amounts and identify the full scope of BCBSM's misconduct and mismanagement;

(l) Failing to exercise the care, skill, prudence, and diligence under the circumstances that a prudent fiduciary acting in a like capacity and familiar with such matters would use in paying for health care claims, and otherwise administering Tiara Yachts' ERISA-governed Plan.

109. BCBSM's breach of its fiduciary duty has proximately caused substantial damages to Tiara Yachts.

COUNT II
Engaging in Prohibited Transactions

110. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs.

111. At all times relevant, and with respect to the actions described above, BCBSM was an ERISA fiduciary. Therefore, under 29 U.S.C. § 1106, BCBSM was prohibited from dealing with the assets of Tiara Yachts' Plan in its own interest or for its own account.

112. As described above, BCBSM instituted a mandatory Shared Savings Program whereby it was paid 30 percent of certain recoveries.

113. Whether Tiara Yachts agreed to pay 30 percent is immaterial, because the amount of the "recoveries" were in the unilateral control of BCBSM.

114. The more improper claims that BCBSM failed to detect on the front end, the higher the recoveries on the back end, and the more it got paid.

115. By instituting a system that allowed it to unilaterally control the amount of its own compensation, BCBSM dealt with Tiara Yachts' Plan assets in its own interest and for its own account in violation of Section 1106.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court enter judgment in its favor and against BCBSM as follows:

A. Order BCBSM to provide a full and complete accounting of all payments and uses of Tiara Yachts' Plan assets;

B. Order BCBSM to provide a full and complete accounting of all monies taken or charged by BCBSM to Tiara Yachts;

C. Declare that BCBSM breached its fiduciary duty owed to Tiara Yachts and otherwise violated federal law by (1) mismanaging Tiara Yachts' Plan assets; (2) not exercising the care, skill, prudence, and diligence under the circumstances that a prudent fiduciary acting in a like capacity and familiar with the such matters would use in paying for health care claims, or otherwise administering Tiara Yachts' Plan; (3) not making decisions, regarding Plan assets, with an eye single to the interests of Tiara Yachts' Plan participants and beneficiaries; (4) concealing and failing to implement or correct controls in its claims processing system known to cause Tiara Yachts to overpay for elected benefits; (5) using its considerable discretionary authority to advance interests other than those of Tiara Yachts' Plan or its members; (6) failing to disclose its mistakes, overpayments, improper payments or other mismanagement of Plan assets; (7) capitalizing on its own mismanagement and misconduct, at the expense of Tiara Yachts' Plan; (8) failing to implement and exercise sufficient quality control and oversight of claims progressing, review, and payment; (9) consistently reimbursing improper claims causing Tiara Yachts' plan to overpay for benefits; (10) failing to implement standard claims processing edits to avoid overcharges to Tiara Yachts' Plan; (11) concealing from Tiara Yachts all documents and information necessary to verify whether reimbursements made by BCBSM with Tiara Yachts' Plan assets were calculated and made in accordance with the Plan's terms, operative pricing rates, rules, policies, and controls; and (12) paying claims lacking information necessary to properly adjudicate and reimburse claims in accordance with industry standards and BCBSM's own policies and procedures, or otherwise failing to maintain claims data necessary to identify and recover overpaid amounts and/or identify the full scope of BCBSM's misconduct or mismanagement;

D. Awarding restitution to Tiara Yachts for all improper misuses of Tiara Yachts' Plan assets;

E. Awarding restitution to Tiara Yachts for all administrative compensation collected by BCBSM under its Shared Savings Program;

F. Awarding monetary damages, costs, interest, disgorgement of BCBSM's profits, and attorneys' fees (including statutory attorneys' fees under ERISA) to the fullest extent of the law; and

G. Awarding all other relief to which Tiara Yachts may be entitled.

Respectfully submitted,

VARNUM LLP
Attorneys for Plaintiff

Dated: July 1, 2022

By: /s/ Aaron M. Phelps
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19294942.4

EXHIBIT B



Home

Search

Forms

Business Search

As of 7/10/2025 we have processed all business filings received in our office through 07/01/2025.

To file a document or annual report/statement for an existing entity, search for the entity, select Request Access from the slide-out drawer, complete the questions, refresh the webpage, and select File Subsequent Document or File Annual Report/Statement.

The same process applies to order certificates and copies.

You must be logged in to file documents or order certificates and copies. Click on the Login button in the top right. If you do not have an account, create one. The credentials from the previous system did not transfer to this system.

Business Search Info: ▼

*

Advanced ▼

Results: 2

Name	Filing Date	Status	AR Standing	Entity
WESCO INC. >	05/15/1981	Dissolved - Operation of Law	Good	Dome: Profit Corpor
WESCO, INC. >	01/13/1978	Active	Good	Dome: Profit Corpor

WESCO, INC.

Entity Name	WESCO, INC.
Prior Names	WESTGATE OIL CO., WESTGATE CONSOLIDATED COMPANY
Identification #	800093014
Jurisdiction	Michigan
Entity Type	Domestic Profit Corporation
Entity Status	Active
AR Standing	Good
Common Shares	60000
! AR Due Date	05/15/2025
Initial Filing Date	01/13/1978
Last Report with Officers and Directors	2018
Resident Agent Name	GERALD Z WESTGATE
Registered Office Street Address	1460 WHITEHALL RD, MUSKEGON, MI 49445
President Name & Address	GERALD Z WESTGATE 1460 WHITEHALL RD, MUSKEGON, MI 49445
Secretary Name & Address	GERALD Z WESTGATE 1460 WHITEHALL RD, MUSKEGON, MI 49445
Treasurer Name & Address	NANCY Z WESTGATE SYTSEMA 1460 WHITEHALL RD, MUSKEGON, MI 49445
Directors Names & Addresses	GERALD Z WESTGATE 1460 WHITEHALL RD, MUSKEGON, MI 49445 NANCY Z WESTGATE SYTSEMA 1460 WHITEHALL RD, MUSKEGON, MI 49445



View History & Filings



Assumed Names

EXHIBIT C

[← CONTACT US](#)

Blue Care Network HMO Contacts

The best way to reach us by phone is to call the Customer Service number on the back of your Blue Cross ID card or on your Explanation of Benefits statement. You can also contact us using the information here.

Blue Care Network Customer Service

[I have individual coverage](#) 

Customer Service

Call [1-888-227-2345](tel:1-888-227-2345)

8 a.m. to 8 p.m.

Monday through Friday

Blue Care Network

P.O. Box 68767

Grand Rapids, MI

49516-8767

[I have coverage through my employer](#) 

Are you a BCN AdvantageSM member?

You'll find the contact information you need on [our Medicare site](#).

Shopping for health insurance?

We'll help you find the right plan for you and your family.

[1-877-469-2583](tel:1-877-469-2583)

Connect with a health plan advisor

Our insurance experts will call when it's convenient for you. All you have to do is fill out a short form.

REQUEST A CALLBACK

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- A Healthier Michigan
- MI Blue Daily
- Media Resources
- Site Map

Language Assistance

Espanol العربية 中文 العربية الشامية Tiếng Việt Shqip 한국어 বাংলা Polski Deutsch
 Italiano 日本語 Русский српскохрватски Filipino

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EXHIBIT D

Table C-5—U.S. District Courts—Civil Federal Judicial Caseload Statistics (March 31, 2025)

U.S. District Courts—Median Time From Filing to Disposition of Civil Cases, by Action Taken—During the 12-Month Period Ending March 31, 2025

Download
XLSX, 19.48 KB

Reporting Period End Date: March 31, 2025

Publication Name: Federal Judicial Caseload Statistics

Topic(s): Civil Trials

Current Table Number: C-5

Publication Table Number: C-5

Table C-5. □
U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, □
During the 12-Month Period Ending March 31, 2025

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		During Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
Total	457,111	23.9	68,824	8.6	363,568	31.2	23,197	14.4	1,522	31.3
DC	3,266	7.3	937	6.1	2,302	7.9	13	53.2	14	51.5
1st	5,657	13.1	1,661	4.9	3,212	23.4	727	19.3	57	36.2
ME	421	7.4	125	5.3	271	7.9	23	22.6	2	-
MA	2,572	7.4	1,141	4.4	782	6.0	614	19.4	35	34.5
NH	1,536	50.1	64	4.2	1,407	52.2	62	15.7	3	-
RI	473	8.6	243	9.2	213	7.1	11	26.7	6	-
PR	655	14.3	88	7.6	539	14.5	17	20.7	11	38.0
2nd	23,019	5.9	5,235	2.7	14,729	6.2	2,885	14.2	170	51.8
CT	1,548	7.4	270	3.7	836	5.8	426	14.4	16	36.2
NY,N	1,405	8.3	251	4.8	879	7.3	261	16.8	14	49.9
NY,E	7,933	6.1	1,838	2.7	5,214	6.7	835	13.4	46	47.2
NY,S	8,937	5.9	1,581	3.3	5,975	5.4	1,302	13.5	79	61.0
NY,W	1,697	8.3	102	7.3	1,531	8.0	51	20.6	13	59.7
VT	1,499	2.4	1,193	2.3	294	5.6	10	27.0	2	-
3rd	19,319	7.0	3,959	3.7	11,142	6.0	4,061	12.0	157	31.0
DE	1,353	10.0	287	2.9	961	11.1	53	21.4	52	41.6
NJ	8,551	8.6	360	3.5	5,819	5.8	2,349	14.1	23	38.2
PA,E	5,778	4.9	1,920	3.0	2,877	4.4	923	9.6	58	14.0
PA,M	1,531	8.3	678	6.0	824	10.6	20	39.4	9	-
PA,W	1,969	6.9	625	4.2	647	5.7	686	8.7	11	39.8
VI	137	12.7	89	9.9	14	15.7	30	23.8	4	-

4th	16,156	8.1	6,363	9.4	8,373	6.8	1,323	11.2	97	25.2
MD	3,241	7.1	151	6.3	2,570	6.1	495	14.3	25	29.2
NC,E	1,169	8.2	620	8.0	539	8.4	5	-	5	-
NC,M	648	7.4	438	5.9	192	10.2	14	15.7	4	-
NC,W	1,029	6.5	196	2.9	541	5.6	280	12.5	12	24.9
SC	5,882	12.0	3,770	14.0	2,056	8.5	38	8.2	18	35.4
VA,E	2,885	5.3	1,098	5.0	1,314	4.5	455	8.7	18	13.5
VA,W	524	9.3	50	4.3	458	9.7	8	-	8	-
WV,N	283	9.7	12	4.5	251	9.7	19	15.2	1	-
WV,S	495	11.1	28	2.6	452	11.3	9	-	6	-
5th	28,907	11.0	9,345	9.8	15,526	10.0	3,819	18.5	217	27.8
LA,E	8,460	18.4	2,524	82.2	3,979	12.5	1,937	74.6	20	20.7
LA,M	1,226	11.6	303	8.9	906	12.2	13	26.0	4	-
LA,W	2,283	19.9	356	11.4	1,447	20.5	458	20.0	22	27.0
MS,N	676	6.0	141	2.6	299	3.6	232	12.0	4	-
MS,S	1,025	9.3	580	9.2	421	9.0	16	18.8	8	-
TX,N	3,932	5.5	787	4.0	3,100	5.9	14	14.4	31	19.3
TX,E	2,523	7.4	934	5.3	1,534	8.5	19	52.3	36	26.2
TX,S	5,360	7.8	2,573	6.0	1,927	7.7	807	11.9	53	33.0
TX,W	3,422	7.6	1,147	6.2	1,913	7.4	323	12.8	39	37.9
6th	12,263	8.2	2,998	4.9	6,647	7.3	2,526	14.2	92	31.1
KY,E	664	8.2	119	7.0	532	8.2	9	-	4	-
KY,W	986	8.5	161	4.5	807	9.7	16	18.9	2	-
MI,E	2,641	7.9	364	2.9	1,130	4.4	1,132	14.6	15	41.8
MI,W	979	7.3	97	2.7	657	6.4	219	13.5	6	-
OH,N	1,944	7.7	354	3.2	964	6.7	616	12.6	10	23.5
OH,S	2,139	8.5	878	5.5	881	9.0	367	15.5	13	47.4
TN,E	915	9.7	158	7.8	668	9.4	68	22.1	21	29.8
TN,M	1,210	7.4	564	6.5	547	7.7	91	13.0	8	-
TN,W	785	9.0	303	8.4	461	9.0	8	-	13	27.0
7th	19,088	8.3	6,483	8.7	10,333	6.2	2,177	18.2	95	40.9
IL,N	11,856	7.6	4,975	8.7	6,536	5.7	298	13.3	47	61.7
IL,C	716	7.7	327	6.1	377	9.3	5	-	7	-
IL,S	1,188	13.4	788	13.5	387	12.3	5	-	8	-
IN,N	1,288	8.5	59	2.6	910	7.6	312	14.6	7	-
IN,S	2,483	12.3	55	2.3	1,090	5.6	1,333	33.6	5	-

WI,E	1,034	6.5	137	3.1	853	7.0	33	12.5	11	21.4
WI,W	523	7.3	142	2.9	180	5.5	191	13.4	10	26.5
8th	8,330	8.0	3,125	5.8	4,500	8.5	627	13.0	78	30.0
AR,E	757	10.9	387	13.3	357	8.1	1	-	12	29.8
AR,W	473	8.9	39	3.4	382	8.5	47	11.4	5	-
IA,N	256	7.2	80	8.4	172	5.9	0	-	4	-
IA,S	385	8.3	172	9.7	202	7.0	2	-	9	-
MN	2,553	8.7	1,276	5.1	724	12.1	543	12.9	10	41.2
MO,E	1,524	6.9	441	4.0	1,067	8.0	7	-	9	-
MO,W	1,427	7.0	498	5.5	897	7.7	18	50.6	14	26.0
NE	519	8.3	140	4.0	364	9.4	9	-	6	-
ND	185	9.9	4	-	178	10.0	0	-	3	-
SD	251	10.3	88	9.7	157	9.9	0	-	6	-
9th	40,915	7.0	14,694	7.6	23,754	6.1	2,156	14.7	311	30.5
AK	229	11.0	31	10.3	194	11.0	2	-	2	-
AZ	2,438	6.4	101	2.1	1,960	5.3	353	14.6	24	25.8
CA,N	9,739	20.5	7,003	23.0	1,758	8.3	945	14.7	33	45.9
CA,E	2,683	8.3	946	6.0	1,668	9.2	47	29.4	22	56.1
CA,C	15,108	3.9	4,304	3.0	10,594	4.4	82	19.4	128	26.0
CA,S	2,145	5.8	604	3.1	1,021	5.8	500	11.8	20	38.3
HI	607	5.4	206	3.9	376	6.0	13	33.0	12	31.7
ID	388	10.3	54	4.8	289	10.1	42	24.0	3	-
MT	400	9.8	159	5.3	114	7.9	122	13.9	5	-
NV	2,177	8.3	298	6.7	1,841	8.5	25	8.0	13	51.4
OR	1,671	9.6	332	4.8	1,310	10.4	9	-	20	33.2
WA,E	617	6.2	92	5.9	519	6.2	2	-	4	-
WA,W	2,667	6.3	550	3.4	2,081	7.0	12	25.7	24	26.3
GU	35	34.9	6	-	26	60.0	2	-	1	-
NMI	11	8.3	8	-	3	-	0	-	0	-
10th	7,666	7.5	1,776	5.9	5,162	7.1	647	16.0	81	29.1
CO	2,655	7.4	521	8.3	2,029	6.5	67	26.2	38	38.2
KS	925	7.0	218	4.7	621	7.0	71	18.6	15	20.1
NM	917	7.8	162	4.8	512	6.9	239	14.0	4	-
OK,N	507	6.6	61	3.7	435	7.0	7	-	4	-
OK,E	320	7.9	6	-	306	7.3	6	-	2	-
OK,W	1,023	6.7	399	5.0	438	7.1	183	11.4	3	-

UT	1,110	9.1	333	6.9	762	9.4	4	-	11	34.7
WY	209	8.7	76	4.6	59	5.3	70	16.0	4	-
11th	272,525	44.6	12,248	39.9	257,888	45.5	2,236	11.7	153	23.5
AL,N	1,371	8.7	111	2.3	1,235	9.2	8	-	17	33.5
AL,M	487	8.3	39	3.2	437	8.9	11	27.7	0	-
AL,S	366	8.6	95	6.9	255	8.5	8	-	8	-
FL,N	248,047	47.8	10,116	43.0	237,919	48.0	4	-	8	-
FL,M	6,947	5.7	70	5.2	6,510	5.4	336	14.4	31	24.9
FL,S	7,980	3.5	874	3.0	7,037	3.5	23	14.4	46	16.4
GA,N	6,155	4.8	692	3.0	3,600	2.6	1,829	11.2	34	29.4
GA,M	658	8.0	235	7.3	400	7.7	16	34.5	7	-
GA,S	514	6.5	16	7.0	495	6.5	1	-	2	-

NOTE: Median time intervals are not computed when fewer than 10 cases reported. This table excludes land condemnations, prisoner petitions, deportation reviews, recovery of overpayments, and enforcement of judgments. Includes cases filed in previous years as consolidated cases that thereafter were severed into individual cases. For fiscal years prior to 2001, this table included data on recovery of overpayments and enforcement of judgments.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WESCO, INC. and WESCO, INC.
CAFETERIA PLAN AND EMPLOYEE
BENEFIT PLAN, on behalf of themselves
and a class of all others similarly situated,
Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF
MICHIGAN
Defendant.

Civil Action No.: 2:25-cv-11712

Judge: Hon. Susan K. DeClercq

Magistrate Judge: David R. Grand

CLASS ACTION

**INDEX OF EXHIBITS TO DEFENDANT’S BRIEF IN SUPPORT OF ITS
MOTION TO TRANSFER**

Exhibit No.	Description
A	Complaint, <i>Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan</i> , No. 1:22-cv-00603, ECF No. 1 (W.D. Mich. July 1, 2022)
B	Wesco, Inc., <i>Michigan Business Registry Business Search</i> , https://mibusinessregistry.lara.state.mi.us/search/business
C	<i>Blue Care Network HMO Contacts</i> , Blue Cross Blue Shield Blue Care Network of Michigan, https://www.bcbsm.com/individuals/help/contact-us/blue-care-network-contacts/
D	Table C-5—U.S. District Courts—Civil Federal Judicial Caseload Statistics, United States Courts (Mar. 31, 2025),

	https://www.uscourts.gov/data-news/data-tables/2025/03/31/federal-judicial-caseload-statistics/c-5
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