UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WESCO, INC., WESCO, INC. CAFETERIA PLAN AND EMPLOYEE BENEFIT PLAN, FRANKENMUTH BAVARIAN INN, INC., FRANKENMUTH BAVARIAN INN, INC. EMPLOYEE HEALTH BENEFIT PLAN & TRUST, OPUS PACKAGING GROUP INC., and OPUS PACKAGING GROUP HEALTH INSURANCE PLAN, on behalf of themselves and a class of all others similarly situated,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.

Case No. 1:26-cv-00895

Hon. Robert J. Jonker

Magistrate Judge: Ray Kent

JOINT STATUS REPORT

A Rule 16 Scheduling Conference is scheduled for June 30, 2026, at 3:00 p.m. before the Honorable Robert J. Jonker. Appearing for the parties as counsel will be:

Counsel for Plaintiffs: Perrin Rynders (P38221)
Herman D. Hofman (P81297)

Counsel for Defendant: Mark J. Zausmer (P31721)
Jason Schneider (P79296)
Daniel Lewis (Adm. in W.D. MI, NY Reg. 4084190)

1. Jurisdiction: The basis 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 over the Wesco Plaintiffs' claims because, before initiating these proceedings, Defendant alleges the Wesco Plaintiffs signed an agreement that released Defendant of any and all claims. Plaintiffs disagree, for the reasons set forth in Plaintiffs' response

brief to Defendant's motion to dismiss. Defendant does not otherwise contest subject matter jurisdiction. This case does not include any state law claims.

2. Jury or Non-Jury: Plaintiffs' position is that this case should be tried before a jury. 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:

Plaintiffs' Statement of the Case: This case is a putative class action concerning a dispute between self-funded plan sponsors (Wesco, Inc., Frankenmuth Bavarian Inn, Inc., and Opus Packaging, Inc.) of ERISA welfare benefit plans and the third-party claims administrator (Blue Cross Blue Shield of Michigan or "BCBSM") of those ERISA welfare benefit plans. Plaintiffs' claims are brought on behalf of all self-funded plan customers BCBSM subjected to its so-called Shared Savings Program ("SSP"). Plaintiffs allege that BCBSM breached ERISA fiduciary duties and engaged in *per se* prohibited transactions by implementing the SSP and collecting variable fees therefrom.

BCBSM, as a Plan fiduciary and claims administrator, has a duty to use reasonable care when adjudicating and paying claims. Under the SSP, BCBSM endeavors to find mistakes it made when adjudicating claims in the first instance. If it finds and corrects those mistakes, it pays itself a fee of up to 30% of what it purportedly recovers or prevents from being improperly paid. As an example, BCBSM pays an inflated or fraudulent claim of $1,000. Later, BCBSM denies the claim in full, which it should have done in the first place. But since the denial was after its original approval, it can collect a 30% fee for catching its own error. In other words, BCBSM created a structural conflict of interest. BCBSM controls both the "front end" (claims processing) and the "back end" (SSP fee collection). The more errors it makes—or allows—on the front end, the more fees it collects on the back end. This is a systemic, structural design intended to enrich BCBSM at the expense of plan assets.

BCBSM's misconduct is a *per se* violation of ERISA's rules against fiduciaries, like BCBSM, engaging in self-dealing and prohibited transactions. *Tiara Yachts, Inc. v. BCBSM*, 138 F.4th 457, 466-70 (6th Cir. 2025). BCBSM's misconduct is also a violation of its ERISA fiduciary duties to charge and receive only reasonable fees, to act prudently and refrain from self-dealing, and to disclose and inform. *See id.* Plaintiffs seek to recover the losses suffered, and to obtain restitution and disgorgement of SSP fees, among other relief.

Defendant's Position: Plaintiffs' claims lack merit. Plaintiffs cannot show that Defendant acted as a fiduciary when it operated the Shared Savings Program because Defendant did not exercise discretionary authority over plan administration or control over plan funds. Even if Plaintiffs could prove this threshold element, Defendant's operation of the Shared Savings Program is neither a *per se* prohibited transaction nor in breach of any fiduciary duties. As Defendant disclosed to Plaintiffs in their respective contractual documents, Defendant implemented the Shared Savings Program to enhance the savings available to its self-funded group customers, not to enrich itself. Plaintiffs' contrived "example" simply assumes the conflict and causation they cannot otherwise establish.

Additionally, Plaintiffs' claims are released or untimely. In final settlement of their Administrative Services Contract with Defendant, the Wesco Plaintiffs signed a release that released all claims the Wesco Plaintiffs had against Defendant. In any event, Defendant disclosed the Shared Savings Program to Plaintiffs more than three years before Plaintiffs commenced this action, thereby barring their claims under the applicable statute of limitations.

Finally, Plaintiffs' claims are inappropriate for class certification on behalf of "All Self-Funded Plans and their Plan Sponsors from whom BCBSM has collected any SSP fees." FAC ¶ 147. Plaintiffs cannot prove that issues common to the class predominate over individual ones and that a class action would be the superior form of adjudication, as Federal Rule of Civil Procedure 23(b)(3) requires.

5. Joinder of Parties and Amendment of Pleadings: If Defendant's Rule 12(b) motion is denied, 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. 39, 40) 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(a) mandates particular disclosures and 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): Plaintiffs propose that the parties make their Initial Disclosures on or before August 31, 2026. Defendant proposes that the parties make their Initial Disclosures no sooner than August 31, 2026 or thirty (30) days after the Court has decided Defendant's pending Rule 12(b) motion (ECF Nos. 39, 40), whichever is later.

(ii) Fed. R. Civ. P. 26(a)(2): The parties propose making their disclosures of experts and expert reports at least ninety (90) days before the close of all discovery, except for any rebuttal experts they propose doing so forty-five (45) days after the initial disclosures of experts and expert reports.

(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 one hundred and twenty (120) days before the close of all 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.

7. Discovery: Plaintiff believes that all discovery proceedings can be completed within twelve (12) months after Defendant's pending Rule 12(b) motion (ECF Nos. 39, 40) is decided.

BCBSM proposes a bifurcated discovery schedule. The first phase of discovery would commence immediately after the Court's decision on BCBSM's pending motion to dismiss. It would be limited to information relevant to Plaintiffs' forthcoming motion for class certification. Merits discovery for Plaintiffs' proposed class will be complex and burdensome, and Defendant believes a certification-only stage of discovery would advance the interests of judicial economy. Defendant proposes a total of two hundred and seventy (270) days for the first stage of discovery. The second stage of discovery, which would encompass general merits-related discovery, would commence after the Court's decision on any motions related to class certification, under a schedule to be agreed upon at that time. BCBSM also notes that Plaintiffs originally proposed bifurcated discovery, but tied it to their improper request for the re-production of documents from two prior cases, which is described more fully below.

Further, in the event the Court does not agree to bifurcated discovery, BCBSM proposes that Plaintiffs should be required to file their motion for class certification within 4-6 months of the Court's decision on BCBSM's pending motion to dismiss.

Plaintiffs state that BCBSM has previously produced numerous documents in two related actions: (1) *Comau LLC v. BCBSM*, Case No. 2:19-cv-12623-SFC-RSW, pending in the United States District Court for the Eastern District of Michigan (the "Comau Action"), which is now closed; and (2) *Tiara Yachts, Inc. v. BCBSM*, Case No. 1:22-cv-00603, pending in the United States District Court for the Western District of Michigan, Southern Division (the "Tiara Yachts Action"), which remains pending before this Court. The documents produced by BCBSM in the Comau Action and the Tiara Yachts Action are subject to protective orders entered in those respective cases. In the interest of efficiency and to avoid the unnecessary burden and expense of re-production, Plaintiffs propose that all documents previously produced by BCBSM in the Comau Action and the Tiara Yachts Action need not be reproduced in this action, *Wesco, Inc. and Wesco, Inc. Cafeteria Plan and Employee Benefit Plan, et al. v. BCBSM*, Case No. 2:25-cv-11712-SKD-DRG (E.D. Mich.) (the "Wesco Action"). Instead, such documents are hereby designated as available for use by all parties in the Wesco Action as if they had been originally produced herein, subject to the terms and limitations to be agreed upon by the parties in a forthcoming stipulated protective order to be entered in this case. The prior confidentiality designations assigned to such documents in the Comau Action and the Tiara Yachts Action are hereby de-designated for purposes of their use in this action, and any re-designation of such documents shall be governed exclusively by the terms of the stipulated protective order to be entered in the Wesco Action.

BCBSM maintains that Plaintiffs' proposal with respect to the *Comau* and *Tiara Yachts* documents would not add any efficiency to this matter and would result in the effective "re-production" or availability of documents that are not within the scope of discovery here. Neither plaintiff in *Comau* or *Tiara Yachts* is part of the proposed class; Plaintiffs are not yet class representatives and therefore are not entitled to discovery related to non-parties; the issues among the three cases only overlap partially, making the vast majority of documents from *Tiara* and *Comau* irrelevant here; and there are HIPAA and other confidentiality concerns that must be accounted for. BCBSM also notes that Plaintiffs' counsel recently filed a motion in *Tiara Yachts* for the removal of all redactions related to other BCBSM customers' information, despite that the information is unrelated to the *Tiara Yachts'* claims. BCBSM views Plaintiffs' counsel's efforts in that motion as an attempt to recruit additional clients, and BCBSM is skeptical of Plaintiffs' counsel's continuing efforts to obtain information that is unrelated to the case at hand.

All of that said, BCBSM would be willing to produce a limited set of relevant documents from *Tiara Yachts* and *Comau*, and to work with Plaintiffs' counsel to determine which documents to produce. But, given the considerations identified above, BCBSM does not agree that total reproduction is appropriate.

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 purely technical aspects regarding 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. <u>Subjects of Discovery</u>: Plaintiff proposes one phase of discovery that would include the full range of subjects allowed by the Federal Rules of Civil Procedure. BCBSM proposes the bifurcated discovery phases described above in Paragraph 7.

ii. Timing of Discovery: Plaintiffs propose that discovery commence immediately. Defendant proposes that the first phase of discovery described in Paragraph 7 commence after the Court has decided Defendant's pending Rule 12(b) motion (ECF Nos. 39, 40).

iii. Limitations on Discovery: Plaintiffs propose there be no presumptive limit of ten depositions by any party (see Fed. R. Civ. P. 30(a)(2)(A)(i)), and that there be no limit on document production requests, consistent with the Federal Rules of Civil Procedure. Defendant opposes the lifting of the presumptive limitation of 10 depositions and further proposes a limitation of 25 document requests in the first stage of discovery.

8. Motions: Plaintiffs propose that all dispositive motions and Plaintiffs' forthcoming motion for class certification be filed no more than thirty (30) days after the close of discovery. BCBSM proposes that any class-certification motions would be filed no more than thirty (30) days after the close of the first phase of discovery.

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 selected by the parties no later than July 30. Plaintiffs propose that facilitative mediation will occur no later than thirty (30) days after the close of discovery. BCBSM proposes that ADR would occur no later than the filing of summary judgment motions during the second phase of discovery.

10. Length of Trial: Counsel estimate the trial will last approximately ten to twelve (10 to 12) days total, allocated as follows: five to six (5-6) days for Plaintiffs' 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.

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: There are no other discovery issues that the parties need to address at this time.

Respectfully submitted,

VARNUM LLP
Attorneys for Plaintiffs

Dated: June 23, 2026

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