

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,

Case No. 1:26-cv-00895

Hon. Robert J. Jonker

Magistrate Judge: Ray Kent

Plaintiffs/Counter-Defendants,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant/Counter-Plaintiff.

PLAINTIFFS/COUNTER-DEFENDANTS' ANSWER TO COUNTERCLAIMS
AGAINST WESCO, BAVARIAN INN, AND OPUS

Plaintiffs/Counter-Defendants, through their attorneys, Varnum LLP, Answers
Defendant/Counter-Plaintiff Blue Cross Blue Shield of Michigan's ("Defendant") Counterclaims
as follows:

Plaintiffs/Counter-Defendants adopt the headings set forth in the Defendant's
Counterclaims for organizational purposes only. Plaintiffs/Counter-Defendant do not admit any
allegations or requests for relief set forth therein.

Count I

Co-Fiduciary Liability under ERISA

1. Wesco, the Bavarian Inn, and Opus were each the Plan Sponsor and Administrator
of their respective self-funded health benefits plan (the "Plans").

ANSWER: Admitted only that Wesco, the Bavarian Inn, and Opus are the Plan Sponsors of their respective Plans. The remaining allegations in Paragraph 1 are denied; BCBSM was the administrator for the Plans. In further response, regarding the Plans, BCBSM was a fiduciary of the Plans because it had responsibility and discretionary authority as claims administrator to make final benefit determinations and plan interpretations.

2. Wesco and Blue Cross Blue Shield of Michigan (“BCBSM”) entered into an Administrative Services Contract (the “ASC”) in 2003. ECF No. 23 at PageID.260.

ANSWER: Admitted that Wesco and BCBSM entered into an initial ASC in 2003. The referenced ASC speaks for itself, and Plaintiffs/Counter-Defendants deny any characterization of the ASC that is inconsistent with its actual terms. To the extent this paragraph contains allegations beyond the terms of the ASC, they are denied.

3. Bavarian Inn and BCBSM entered into an ASC in 2016. ECF No. 40-2.

ANSWER: Admitted that the Bavarian Inn and BCBSM entered into an initial ASC in 2016. The referenced ASC speaks for itself, and Plaintiffs/Counter-Defendants deny any characterization of the ASC that is inconsistent with its actual terms. To the extent this paragraph contains allegations beyond the terms of the ASC, they are denied.

4. Opus and BCBSM entered into an ASC in 2022. ECF No. 40-9.

ANSWER: Admitted that Opus and BCBSM entered into an initial ASC in 2022. The referenced ASC speaks for itself, and Plaintiffs/Counter-Defendants deny any characterization of the ASC that is inconsistent with its actual terms. To the extent this paragraph contains allegations beyond the terms of the ASC, they are denied.

5. Under the ASCs, the Plans delegated to BCBSM the responsibility and authority to make final benefit determinations. Wesco, Bavarian Inn, and Opus “retain[ed] all other fiduciary

responsibilities and duties under ERISA not specifically delegated to BCBSM” under the ASCs. ECF No. 40-2 at PageID.50 (Bavarian Inn ASC), ECF No. 40-3 at PageID.68 (Wesco ASC), ECF No. 40-9 at PageID.138 (Opus ASC), Art. II § A.

ANSWER: Admitted that the Plans delegated to BCBSM, and BCBSM accepted, responsibility and discretionary authority as claims administrator to make final benefit determinations and plan interpretations, making BCBSM a fiduciary of the Plans. Plaintiffs further state that each ASC is a written document that speaks for itself. To the extent the allegations in Paragraph 5 are inconsistent with that document, Plaintiffs deny those allegations as untrue. In further response, Plaintiffs retained no fiduciary responsibilities that relate in any way to BCBSM's misconduct as set forth in the First Amended Complaint.

6. BCBSM provided Wesco, Bavarian Inn, and Opus with access to claims data for the claims that BCBSM processed each month.

ANSWER: Denied as untrue.

7. The ASC provided Wesco, Bavarian Inn, and Opus with the right to dispute any claim within 60 days of receiving access to a paid claims listing. ECF No. 40-2 at PageID.50 (Bavarian Inn ASC), ECF No. 40-3 at PageID.68 (Wesco ASC), ECF No. 40-9 at PageID.138 (Opus ASC), Art. II § D.

ANSWER: The ASCs are written documents that speak for themselves. Paragraph D of Article II of the ASCs is void because it purports to limit the right of the Plans and Plan Sponsors to dispute a claim. In further response, the ASCs say nothing about disputing BCBSM's payment of a claim or other administrative actions, but instead gave BCBSM responsibility and discretionary authority as claims administrator to make final benefit

determinations and plan interpretations, and to the extent the allegations in Paragraph 7 are inconsistent therewith Plaintiffs deny them as untrue.

8. The ASC also provided Wesco, Bavarian Inn, and Opus with the right to audit claims incurred under the ASC. ECF No. 40-2 at PageID.52 (Bavarian Inn ASC), ECF No. 40-3 at PageID.70 (Wesco ASC), ECF No. 40-9 at PageID.140 (Opus ASC), Art. Art. II § G.

ANSWER: Denied as untrue. The ASCs are written documents that speak for themselves. There is nothing in the ASCs that gave Plaintiffs true audit rights, but rather the ASCs attempted to curtail the rights of Plaintiffs to fully audit BCBSM's administration of healthcare claims, in violation of federal law and public policy. In further response, Paragraph G of Article II of each ASC is void as violative of federal law and public policy.

9. Over the course of their relationship with BCBSM, Wesco, Bavarian Inn, and Opus repeatedly signed either an addendum to the ASC, a Schedule A that renewed and amended the ASC, or a new ASC.

ANSWER: Admitted only that BCBSM, Wesco, Bavarian Inn, and Opus executed Schedules A roughly annually. The remaining allegations in Paragraph 9 are neither admitted nor denied because Plaintiffs lack sufficient information to do so.

10. In 2018, Wesco and Bavarian Inn each signed a Schedule A that included a provision regarding BCBSM's implementation of its Shared Savings Program ("SSP"). ECF No. 40-4 (Wesco 2018 Schedule A), No. 40-7 (Bavarian Inn 2018 Schedule A). Opus did the same when it entered its ASC in February 2022. ECF No. 40-10 (Opus 2022 Schedule A). This Schedule A provided that BCBSM was implementing the SSP "to enhance the savings realized by its customers through additional pre-payment and post-payment recovery efforts." ECF No.40-4 at

PageID.84 (Wesco 2018 Schedule A), ECF 40-7 at PageID.101 (Bavarian Inn 2018 Schedule A), ECF No.40-10 at PageID.150 (Opus 2022 Schedule A).

ANSWER: Wesco and Bavarian Inn admit that they signed the Schedule As for 2018. Those Schedule As are written documents that speaks for themselves. To the extent the allegations in Paragraph 10 are inconsistent with those documents, Plaintiffs deny those allegations. In further response, Plaintiffs deny that the SSP "enhanced" any "savings" realized by Plaintiffs, but rather did the opposite.

11. By signing this Schedule A, Wesco, Bavarian Inn, and Opus expressly agreed and acknowledged that BCBSM would “retain as administrative compensation 30% of the recoveries or cost avoidance” as part of the SSP, including relating to advanced payment analytics, subrogation, and provider credit balance recovery. The SSP also applied pre-payment forensic billing review. ECF No. 40-4 at PageID.84 (Wesco 2018 Schedule A), ECF No. 40-7 at PageID.101 (Bavarian Inn 2018 Schedule A), ECF No. 40-10 at PageID.150 (Opus 2022 Schedule A).

ANSWER: Admitted that the quoted terms are contained in the referenced Schedule As. Those Schedule As are written documents that speaks for themselves. To the extent the allegations in Paragraph 11 are inconsistent with or mischaracterize those documents, Plaintiffs deny those allegations. In further response, BCBSM used the SSP to collect more in fees when its fiduciary responsibilities required it to avoid the need for any "recoveries or cost avoidance," and any agreement by BCBSM to avoid its fiduciary responsibilities is void as against public policy.

12. Wesco, Bavarian Inn, and Opus each did not dispute the implementation, validity, or intent of the SSP, either upon its introduction or throughout its application to BCBSM's

processing of claims. To the contrary, each acknowledged and agreed to the implementation of the SSP.

ANSWER: Denied as characterized. In further response, to the extent Plaintiffs did not previously dispute BCBSM's implementation, validity, or intent of the SSP, it was because BCBSM breached its fiduciary duties by concealing, when it should have disclosed to Plaintiffs, material facts regarding the SSP; the SSP violated federal law and consists of prohibited self-dealing transaction under ERISA.

13. During their respective relationships with BCBSM, Wesco, Bavarian Inn, and Opus, never exercised any of their audit rights under the ASC.

ANSWER: Denied as characterized. There is nothing in the ASCs that gave Plaintiffs true audit rights, but rather the ASCs attempted to curtail the rights of Plaintiffs to fully audit BCBSM's administration of healthcare claims in violation of federal law and public policy. In further response, BCBSM failed to provide Plaintiffs with their claims data; any limitation on audit rights in the ASCs, including in Paragraph G of Article II of the ASCs, is void as violative of federal law and public policy.

14. At all relevant times, Wesco, Bavarian Inn, and Opus were fiduciaries for their respective Plans under ERISA because they were the Plan Sponsors and Administrators, as well as the named fiduciaries.

ANSWER: The allegations in Paragraph 14 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Plaintiffs admit only that Wesco, Bavarian Inn, and Opus are the Plan Sponsors of their respective Plans.

15. Wesco, Bavarian Inn, and Opus each owed fiduciary duties to the respective Plans including, without limitation, with respect to transactions involving Plan assets and in engaging and monitoring third parties to provide services to the Plans.

ANSWER: This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations are denied.

16. Wesco, Bavarian Inn, and Opus had fiduciary duties under ERISA to exercise care, skill, prudence, and diligence exclusively in the best interests of the respective Plans when they negotiated, executed, and monitored their contractual relationship with BCBSM. These duties included the duty to take reasonable steps to monitor BCBSM's processing of claims to ensure proper treatment under ERISA.

ANSWER: This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations are denied. In further response, to the extent Plaintiffs did not previously dispute BCBSM's implementation, validity, or intent of the SSP, it was because BCBSM breached its fiduciary duties by concealing, when it should have disclosed to Plaintiffs, material facts regarding the SSP; the SSP violated federal law and consists of prohibited self-dealing transaction under ERISA.

17. At all relevant times as a Plan fiduciary, Wesco, Bavarian Inn, and Opus each knew that BCBSM received 30% of fees recovered through the SSP.

ANSWER: The allegations in Paragraph 17 purport to state conclusions of law to which no response is required. Any allegation BCBSM makes of wrongdoing by Plaintiffs is denied as untrue. In further response, to the extent Plaintiffs did not previously dispute BCBSM's implementation, validity, or intent of the SSP, it was because BCBSM breached its fiduciary duties by concealing, when it should have disclosed to Plaintiffs, material facts regarding the

SSP; the SSP violated federal law and consists of prohibited self-dealing transaction under ERISA.

18. At all relevant times as a Plan fiduciary, Wesco, Bavarian Inn, and Opus each had access to claims data on a periodic basis.

ANSWER: Denied as untrue.

19. If the Court concludes that BCBSM breached its fiduciary duties through its processing of claims for the Plans and its implementation of the SSP, BCBSM is entitled to contribution from Wesco, Bavarian Inn, and Opus under ERISA and federal ERISA common law for any harm to the Plans because Wesco, Bavarian Inn, and Opus failed to exercise care, skill, prudence, and diligence and otherwise breached their fiduciary duties in their respective oversight of BCBSM in connection with its provision of services under the ASC.

ANSWER: The allegations in Paragraph 19 purport to state conclusions of law to which no response is required. Plaintiffs further deny any responsibility for BCBSM's alleged misconduct and deny that BCBSM is entitled to any relief whatsoever. Any other allegation BCBSM makes of wrongdoing by Plaintiffs is denied as untrue.

Count II

Indemnification

20. BCBSM incorporates by reference Paragraphs 1–19.

ANSWER: Plaintiffs/Counter-Defendants incorporate by reference the answers to the subject paragraphs.

21. Under Article V § B of the ASC, Wesco, Bavarian Inn, and Opus each agreed to “indemnify, defend and hold BCBSM harmless from any claims resulting from [Wesco’s / Bavarian Inn’s / Opus’] breach of any term of [the ASC] and/or breach of any obligation or duty

not expressly delegated to BCBSM in [the ASC], including, but not limited to, [Wesco's / Bavarian Inn's / Opus'] obligation . . . to read and understand the terms of this Contract.” ECF No. 40-2 at PageID.59 (Bavarian Inn ASC), No. 40-3 at PageID.77 (Wesco ASC), No. 40-9 at PageID.144 (Opus ASC).

ANSWER: The allegations in Paragraph 21 purport to state conclusions of law to which no response is required. Admitted that the quoted terms are contained in the ASCs. Plaintiffs further state that the ASCs are written documents that speak for themselves. To the extent the allegations in Paragraph 21 are inconsistent with those documents or mischaracterize those documents, Plaintiffs deny those allegations as untrue. In further response, Plaintiffs did not breach any term of the ASCs or any other obligation they had to the Plans or Plan participants. Moreover, any purported indemnity obligation that BCBSM is attempting to rely upon from the ASC, or any other agreement, to relieve BCBSM from responsibility or liability for its own fiduciary breaches and violations of ERISA is void as violative of federal law and public policy.

22. This indemnification provision expressly survived termination of the ASC.

ANSWER: This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations are denied.

23. Wesco, Bavarian Inn, and Opus are obligated to “indemnify” BCBSM to the extent the claims against BCBSM are a result of Wesco, Bavarian Inn, and Opus not understanding the terms of the ASC, including with respect to claims payments and the SSP.

ANSWER: The allegations in Paragraph 23 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Plaintiffs deny the allegations contained in Paragraph 23 as untrue. In further response, BCBSM cannot state

a claim for indemnity; any purported indemnity obligation that BCBSM is attempting to rely upon from the ASCs, or any other agreements, to relieve BCBSM from responsibility or liability for its own fiduciary breaches and violations of ERISA is void as violative of law and public policy.

24. Wesco, Bavarian Inn, and Opus are each obligated to indemnify BCBSM to the extent the alleged losses are a result of their own breaches of the ASC, including, for example, their obligation pursuant to Article II § D of the ASC, ECF No. 40-2 at PageID.50 (Bavarian Inn ASC), No. 40-3 at PageID.68 (Wesco ASC), No. 40-9 at PageID.138 (Opus ASC), to “notify BCBSM in writing of any Claim that [Wesco / Bavarian Inn / Opus] disputes within 60 days of [its] access to a paid Claims listing.”

ANSWER: The allegations in Paragraph 24 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Plaintiffs deny the allegations contained in Paragraph 24 as untrue. In further response, BCBSM cannot state a claim for indemnity; any purported indemnity obligation that BCBSM is attempting to rely upon from the ASCs, or any other agreements, to relieve BCBSM from responsibility or liability for its own fiduciary breaches and violations of ERISA is void as violative of law and public policy.

25. On information and belief, Wesco, Bavarian Inn, and Opus did not review claims data provided by BCBSM as it was provided.

ANSWER: Denied as untrue. The allegations in this paragraph presume that claims data was provided by BCBSM to Plaintiffs, which is not true

26. Wesco, Bavarian Inn, and Opus never exercised their respective audit rights to review claims data.

ANSWER: Denied as untrue. The allegations in this paragraph presume that true audit rights existed under the ASCs (as opposed to federal law), which is not true. In further response, there is nothing in the ASC that gave Plaintiffs true audit rights, but rather the ASCs attempted to curtail the rights of Plaintiffs to fully audit BCBSM's administration of healthcare claims; BCBSM failed to provide Plaintiffs with their claims data and any limits on purported audit rights BCBSM claims existed in the ASCs, including in Paragraph G of Article II of the ASCs, are void as violative of federal law and public policy.

27. Moreover, to the extent Wesco, Bavarian Inn, and Opus now claim they did not understand the SSP or otherwise failed to understand the import of the terms of the ASC, then they are required under the ASCs to hold BCBSM harmless from any recovery by the Plans, if any.

ANSWER: The allegations in Paragraph 27 purport to state conclusions of law to which no response is required. Plaintiffs deny responsibility for BCBSM's misconduct and deny that BCBSM is entitled to any relief whatsoever. Any other allegation BCBSM makes of wrongdoing by Plaintiffs is denied as untrue.

Count III

Wesco's Breach of the ASC Release

28. BCBSM incorporates by reference Paragraphs 1–27.

ANSWER: Plaintiffs/Counter-Defendants incorporate by reference the answers to the subject paragraphs.

29. Wesco and BCBSM terminated their relationship in December 2022.

ANSWER: Admitted.

30. Under the ASC, upon notice of termination and expiration of a Transition Assistance Period, BCBSM would prepare a final settlement that refunded any positive balance to Wesco. *See* ECF No. 40-3 at PageID.75-76 Art. IV § B.

ANSWER: The allegations in Paragraph 30 purport to state conclusions of law to which no response is required. The ASC is a written document that speaks for itself. To the extent the allegations in Paragraph 30 are inconsistent with that document, Plaintiffs deny those allegations as untrue. In further response, denied as untrue that BCBSM has refunded what is due to Wesco and its Plan.

31. The parties expressly agreed in the ASC that this final settlement payment would “fully and finally settle, release, and discharge each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported, adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other forms of money due and owing between the parties and arising under” the ASC. *Id.* at PageID.76 Art. IV § B.6.

ANSWER: The allegations in Paragraph 31 purport to state conclusions of law to which no response is required. The ASC is a written document that speaks for itself. To the extent the allegations in Paragraph 31 are inconsistent with or mischaracterize that document, Plaintiffs deny those allegations as untrue. In further response, denied as untrue that BCBSM refunded what Wesco or its Plan is due. Moreover, any purported release or waiver provision that would relieve BCBSM from responsibility or liability for its own fiduciary breaches or violations of ERISA is void as violative of federal law and public policy.

32. Under that provision of the ASC, in May 2025, BCBSM issued a final settlement and refund in the amount of \$81,853 to Wesco (the “Settlement Refund”). *See* ECF No. 40-12 (Wesco ASC Refund Summary).

ANSWER: Plaintiffs deny the allegations in Paragraph 32 as stated. In further response, BCBSM's characterization of the May 2025 payment is untrue, and any allegation that BCBSM refunded what Wesco or its Plan is due is also untrue.

33. By signing the ASC, Wesco agreed that the Settlement Refund “fully and finally settles, releases and discharges each party from any and all claims that are known, unknown, liquidated, non-liquidated, incurred-but-not-reported, adjustments, recoupments, receivables, recoveries, rebates, hospital settlements, and other sums of money due and owing between the parties and arising under” the ASC. *Id.* at PageID.76 Art. IV § B.6.

ANSWER: The allegations in Paragraph 33 purport to state conclusions of law to which no response is required. The ASC is a written document that speaks for itself. To the extent the allegations in Paragraph 33 are inconsistent with or mischaracterize that document, Plaintiffs deny those allegations as untrue. In further response, Plaintiffs denies as untrue that Wesco or its Plan has settled, released, or discharged its claims against BCBSM at issue in this case. Moreover, any purported release or waiver provision that would relieve BCBSM from responsibility or liability for its own fiduciary breaches or violations of ERISA is void as violative of law and public policy.

34. In furtherance of this agreement and in exchange for its release of any such claims, Wesco accepted the Settlement Refund. *See* ECF No. 40-25.

ANSWER: The allegations in Paragraph 34 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Plaintiffs deny the allegations contained in Paragraph 34 as untrue. Further responding, denied as untrue that BCBSM has refunded what Wesco or its Plan is due.

35. The ASC constituted a valid and enforceable contract between BCBSM and Wesco.

ANSWER: The allegations in Paragraph 35 purport to state conclusions of law to which no response is required. Any allegation BCBSM purports to make of wrongdoing by Wesco is denied as untrue.

36. On account of the Settlement Refund, BCBSM fully performed its obligations under Article IV Section B.6 of the ASC with respect to the final settlement of claims.

ANSWER: This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations are denied.

37. Wesco's claims of breaches of fiduciary duty and prohibited transactions arise under the ASC because they are based on BCBSM's processing of claims and the SSP.

ANSWER: This paragraph states a legal conclusion to which no response is required. To the extent a response is deemed required, the allegations are denied.

38. The release under Article IV Section B.6 of the ASC therefore extends to Wesco's claims against BCBSM.

ANSWER: The allegations in Paragraph 38 purport to state conclusions of law to which no response is required. Any other allegation BCBSM makes of wrongdoing by Wesco is denied as untrue. In further response, Wesco and its Plan's claims of breaches of fiduciary duty and prohibited transactions arise under ERISA, including BCBSM's statutory and fiduciary obligations stated therein or derived therefrom. Whether BCBSM broke its promises in the ASC, among other breaches, does not transform Wesco's claim into one under contract rather than ERISA specifically and federal law more generally.

39. By bringing these claims, Wesco breached the terms of the valid and enforceable release under the ASC and caused BCBSM to incur unnecessary and avoidable costs, expenses, and other harms.

ANSWER: The allegations in Paragraph 39 purport to state conclusions of law to which no response is required. To the extent a response is otherwise required, Plaintiffs deny the allegations contained in Paragraph 39 as untrue. Moreover, Plaintiffs deny that BCBSM is entitled to any relief whatsoever. In further response, Plaintiffs' claims of breaches of fiduciary duty and prohibited transactions arise under ERISA, including BCBSM's statutory and fiduciary obligations stated therein or derived therefrom. Whether BCBSM broke its promises in the ASC, among other breaches, does not transform Plaintiffs' claims into ones under contract rather than ERISA specifically and federal law more generally.

WHEREFORE, Plaintiffs respectfully request that this Court dismiss Defendant's Counterclaims or otherwise enter Judgment of No Cause of Action in favor of Plaintiffs and award all other relief to which they are entitled.

Respectfully submitted,

VARNUM LLP
Attorneys for Plaintiffs

Dated: September 16, 2026

By: /s/

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ADDITIONAL DEFENSES

By asserting the defenses as set forth below, Plaintiffs do not allege or admit they have the burden of proof or the burden of persuasion regarding any of them. Without admitting any wrongful conduct and while reserving its right to assert other defenses as this action proceeds, Plaintiffs hereby state the following additional defenses:

First Additional Defense

BCBSM's claims for relief under Count I (Co-Fiduciary Liability under ERISA) and Count II (Indemnification) of its Counterclaims are barred, in whole or in part, because they fail to state claims upon which relief can be granted against Plaintiffs. In support of this additional defense, Plaintiffs state that such causes of action—co-fiduciary liability (i.e., contribution) and indemnification—are not cognizable claims under ERISA or federal common law. In particular, claims for contribution and indemnification are not available for many reasons, including, but not limited to: (a) when a breaching party is a fiduciary under ERISA, as BCBSM is; (b) where the proposed contributor is not a joint tortfeasor, or otherwise did not cause the alleged injury; and (c) when the alleged wrongdoer, in this case BCBSM, breached its fiduciary duties in bad faith and is substantially more at fault for the plaintiff's losses. Furthermore, courts in the Sixth Circuit routinely decline to recognize such causes of action in ERISA actions and have explicitly held that ERISA does not provide for the remedy of contribution or indemnification by alleged co-fiduciaries.

Second Additional Defense

BCBSM's claim for relief under Count III (Breach of ASC Release) of its Counterclaims is barred, in whole or in part, because BCBSM fails to state a claim upon which relief can be granted against Wesco. In support of this additional defense, Wesco states that such cause of

action fails to state a claim upon which relief can be granted because any purported contractual waiver or release is void as a matter of law; is inapplicable to Wesco's ERISA claims; does not represent the intent of the parties, as both parties did not intend for a release to cover claims arising from ERISA's statutory obligations; and such release is otherwise invalid as a matter of law.

Third Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because any purported release, indemnity, or contribution obligation that would relieve BCBSM from responsibility or liability for its own fiduciary breaches or violations of ERISA is void under 29 U.S.C. § 1110(a) (ERISA § 410(a)) and contrary to public policy.

Fourth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because such claims fail for lack of causation and/or because of superseding misconduct. BCBSM's alleged acts or omissions, including its own breaches of its fiduciary obligations and abuse of its discretionary control over Plaintiffs' Plan assets and administration, are the sole or superseding cause of harm to the Plan.

Fifth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because BCBSM has suffered no injury in fact because of acts or omissions by Plaintiffs.

Sixth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, by the doctrines of unclean hands and/or equitable estoppel by reason of BCBSM's own acts, admissions, representations, and courses of conduct, which Plaintiffs were led to rely upon, and did rely upon, to its detriment.

Seventh Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because Plaintiffs' performance of any contractual provisions, if any, was excused or prevented by BCBSM's failure to perform one or more conditions precedent under the ASC, including, but not limited to, providing Plaintiffs with accurate and complete information.

Eighth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because Plaintiffs' performance of any contractual provisions, if any, was excused or prevented by BCBSM's conduct and/or prior material breaches of its obligations.

Ninth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because BCBSM suffered no harm or damages for which Plaintiffs are or could be liable.

Tenth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because any damages BCBSM is seeking under its Counterclaims, which are denied as factually and legally deficient, would be subject to set-off by Plaintiffs' claims (made on behalf of the Plans).

Eleventh Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because any ambiguity in the ASC, Schedules, or purported release/indemnity provisions must be construed against BCBSM as drafter, and being strictly construed they do not extend to an indemnitee's own negligence or misconduct.

Twelfth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, by the doctrines of *in pari delicto*, estoppel, and/or greater fault. BCBSM, as the party with discretionary control over claims adjudication and SSP implementation, bears far greater (indeed, exclusive) fault; no equitable contribution or indemnity is available.

Thirteenth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because BCBSM failed to mitigate any alleged damages or costs arising from its own conduct, barring or reducing any recovery.

Fourteenth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, by the applicable laches, and statutes of limitations and/or repose under Michigan or federal law, to the extent they accrued prior to the limitations period and are not saved by any tolling doctrine.

Fifteenth Additional Defense

BCBSM's claims for relief under its Counterclaims (Counts I-III) are barred, in whole or in part, because BCBSM's alleged damages are speculative, unrecoverable, or not cognizable as a matter of law.

Plaintiffs reserve the right to add additional defenses made known to them through discovery in this matter.

Plaintiffs respectfully seek judgment regarding BCBSM's Counterclaims (Counts I-III) as follows:

- A. That BCBSM is not entitled to any relief or recovery for its Counterclaims;

- B. That BCBSM's Counterclaims against Plaintiffs are dismissed in their entirety with prejudice;
- C. That Plaintiffs are awarded all costs and attorney's fees to which they are entitled in defending against BCBSM's Counterclaims; and
- D. That Plaintiffs are awarded such other and further relief, whether legal or equitable, as this Court may deem just and proper.

Respectfully submitted,

VARNUM LLP
Attorneys for Plaintiffs

Dated: September 16, 2026

By: /s/ Herman D. Hofman

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CERTIFICATE OF SERVICE

I, Herman D. Hofman, of the law firm of Varnum LLP, hereby certify that on the 16th day of September, 2026, I served a copy of Plaintiffs/Counter-Defendants' Answer to Counterclaims against Wesco, Bavarian Inn, and Opus electronically through Pacer's CM/ECF filing system, upon the following parties:

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