# Group Health Plan Awarded $5 million from Third-Party Administrator that Charged Hidden Fees

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In the case of *Hi-Lex Controls, Inc. v. Blue Cross Blue Shield of Michigan*, the U.S. Court of Appeals for the Sixth Circuit ruled that Blue Cross Blue Shield of Michigan (?ÃÂ£***BCBSM***?ÃÂ¥), in its role as third-party administrator for the Hi-Lex Health and Welfare Benefit Plan (the ?ÃÂ£***Plan***?ÃÂ¥), breached a fiduciary duty to the Plan by adding undisclosed surcharges to hospital claims that BCBSM processed for the Plan.?Ã¡ The court determined that the employee and employer contributions that Hi-Lex remitted to BCBSM were ?ÃÂ£plan assets?ÃÂ¥ for purposes of the Employee Retirement Income Security Act (?ÃÂ£***ERISA***?ÃÂ¥), and as such, BCBSM functioned as an ERISA plan fiduciary because it exercised discretionary control over the Plan?ÃÃs assets.?Ã¡ The court ruled that BCBSM violated its ERISA-imposed fiduciary duty by using the Plan?ÃÃs assets for its own benefit.?Ã¡ The Sixth Circuit affirmed the district court?ÃÃs award of more than $5 million in damages, plus pre-judgment interest, against BCBSM.?Ã¡ Plan sponsors of self-funded group health plans should review fee arrangements with their third-party administrators to determine whether all fees are authorized under the services agreement.?Ã¡ It is also important to note that the court rejected BCBSM?ÃÃs argument that the funds over which it had control were the employer?ÃÃs corporate assets, and not the Plan?ÃÃs assets, because such funds were not held in a trust or other segregated account. ?Ã¡If plan assets were not involved, there would have been no breach of an ERISA fiduciary duty.?Ã¡ For employers, if the third-party administrator is holding plan assets, then ERISA requires the use of a trust fund, thus this case could have unintended negative implications for self-funded plans if this court?ÃÃs ERISA analysis is relied on by other courts.?Ã¡ *Hi-Lex Controls, Inc. v. Blue Cross Blue Shield of Michigan*, Nos. 13-1773, 13-1859 (6th Cir. May 14, 2014).

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