

Have You Monitored Your TPA Lately?

June 10, 2025

PRACTICES Employee Benefits and Executive Compensation

A recent case serves as a reminder to employers that they may have a fiduciary duty under ERISA to monitor their third party administrators (“**TPA**”). A TPA could be breaching fiduciary duties with respect to how the TPA adjudicates benefit claims and pursues overpayments.

In *Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan*, an employer, Tiara Yachts, alleged that the TPA for its self-funded group health plan (“**Plan**”), Blue Cross Blue Shield of Michigan (“**BCBSM**”), violated its ERISA fiduciary duties by both overpaying benefit claims in violation of the administrative services agreement between the parties (“**ASA**”) and also compensating itself for recovering those overpayments (which could constitute self-dealing) through its Shared Savings Program under the ASA. The court looked at whether each of those actions involved either control over plan assets or discretionary authority over plan management or administration, which would confer fiduciary status on BCBSM.

Pursuant to the ASA, BCBSM was responsible for interpreting the terms of the Plan, calculating benefits, deciding whether to grant or deny claims on the employer’s behalf, and paying healthcare providers. Tiara Yachts periodically deposited money into a BCBSM-owned account from which BCBSM paid claims. The court found that Tiara Yachts plausibly alleged that BCBSM controlled the disposition of Plan assets when it was overpaying claims to providers and thus plausibly demonstrated that BCBSM was acting in the capacity of an ERISA fiduciary. Although the ASA provided that BCBSM received a specified 30% of prevented and recovered overpayments, BCBSM’s control over claims processing meant it exercised discretion in setting its total compensation. As a result, the court found Tiara Yachts plausibly alleged that BCBSM exercised discretion as to its own compensation through the Shared Savings Program, thus giving rise to fiduciary duties under ERISA. Finally, the court found that Tiara Yachts plausibly alleged that it sought recovery on behalf of the Plan. Accordingly, the U.S. Court of Appeals for the Sixth Circuit reversed the district court’s order which had granted BCBSM’s motion to dismiss and remanded the case back to the district court for further proceedings.

An employer, as plan administrator of its own self-funded group health plan, has a duty to monitor service providers to the plan, as well as the responsibility to ensure that their compensation is reasonable. Recent litigation has heightened awareness of the need for employers to understand and monitor the various ways in which service providers may be earning compensation relating to the employer’s plan. This case also highlights the actions an employer may need to take, on behalf of the plan, if it becomes aware of a potential fiduciary breach by a service provider. Failure to stop or mitigate any such fiduciary breach could result in additional liability to the employer as the designated plan administrator under the Plan and ERISA.

The case is *Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan*, No. 24-1223, 2025 WL 1453273 (6th Cir. May 21, 2025) and can be found [here](#).