

Publications

June 20, 2025 • Updates

Sixth Circuit Holds TPAs Do Not Get a Free Pass from ERISA's Fiduciary Duties

In a decision about ERISA's fiduciary duties and transparency, the Sixth Circuit in *Tiara Yachts, Inc. v. Blue Cross Blue Shield of Michigan* held that Blue Cross Blue Shield of Michigan (BCBSM), a third-party administrator (TPA) for the Tiara Yachts, Inc. (Tiara Yachts) self-insured plan, acted as an ERISA fiduciary when it made decisions about pricing and the payment of claims and therefore must abide by ERISA's fiduciary standards. The decision may also help to pave the way for employers seeking greater access to pricing and payment information from TPAs for their own self-insured group health plans.

Background:

Tiara Yachts claimed that BCBSM overpaid health claims submitted by out-of-state medical providers and then clawed back the overpayments through a shared savings program (SSP). As compensation for the recovery services provided by the SSP, BCBSM kept 30% of the clawed back amounts. Tiara Yachts claimed that by making the overpayments and then paying itself to administer the SSP, BCBSM acted as an ERISA fiduciary for the Tiara Yachts plan, breached its fiduciary duties and engaged in self-dealing.

The District Court for the Western District of Michigan granted BCBSM's motion to dismiss, but the United States Court of Appeals for the Sixth Circuit overturned the dismissal finding that Tiara Yachts reasonably alleged BCBSM acted as an ERISA fiduciary by exercising discretion over plan assets and its own compensation.

Implications of the Sixth Circuit's Holdings:

The Sixth Circuit's decision in *Tiara Yachts* highlights that TPAs can be deemed fiduciaries if they exercise control over plan assets and their own compensation, or discretionary authority over plan management, regardless of contractual terms. This ruling has significant implications for employers negotiating TPA agreements.

Employers overseeing the day-to-day management of their plans should also be able to use the ruling to seek disclosure of information about the pricing and payment of claims,

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which in the past TPAs have been unwilling to share. In their role as an ERISA fiduciaries, TPAs will be obligated to disclose this information when requested by a plan administrator looking to properly administer its plan.

What Should Employers Do:

In response to this decision, employers should review their TPA agreements and ensure they clarify fiduciary roles and responsibilities, particularly concerning plan asset management. Employers should also review agreements for compensation structures that may incentivize self-dealing and request additional information from TPAs about pricing structures and the payments of claims.

Employers with questions about this decision or how it may impact their group health plan or relationships with TPAs are encouraged to reach out to their Polsinelli representative to discuss.