

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

TIARA YACHTS, INC.,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant.

Civil Action No.: 1:22-cv-603

Judge: Hon. Robert J. Jonker

Magistrate Judge: Hon. Ray Kent

ORAL ARGUMENT REQUESTED

**SUPPLEMENTAL BRIEF SUPPORTING DEFENDANT’S
RESPONSES TO VARIOUS DISCOVERY MOTIONS (ECF NOS. 150, 154, 170)**

Plaintiff Tiara Yachts, Inc. filed several discovery motions—ECF Nos. 150, 154, 170—against Defendant Blue Cross Blue Shield of Michigan (“BCBSM”) in June and July 2026. The parties appeared in-person for a hearing on those motions on August 17, 2026. At the hearing, the Court recognized that Plaintiff’s discovery motions pertain to its claims related to “flip logic” and BCBSM’s Shared Savings Program (“SSP”), the total value of which is around \$21,000 at most. Plaintiff’s counsel acknowledged on the record the scope and limitation of these claims and admitted that the value of the claims is \$21,000. The Court then asked counsel for both parties if they would propose a \$21,000 settlement of those two claims to their clients, and counsel for both parties agreed to do so.

BCBSM’s counsel immediately followed through with its on-the-record commitment, and BCBSM accepted the settlement proposal—not because the claims are meritorious, but rather because on an economic basis, it makes no sense to waste the Court’s or the parties’ resources. Plaintiff’s counsel, however, sent an email to BCBSM’s counsel two days after the hearing, reversing their earlier position by stating that they “do not see a path to settling just part of the

case.” (**Exhibit A**, 08.19.26 Varnum Email). Plaintiff’s counsel ultimately agreed to present the settlement proposal to Plaintiff, as it had committed to do on the record at the August 17 hearing. Then on August 21, 2026, Plaintiff’s counsel stated that they had (finally) communicated the settlement proposal to their client, but that Plaintiff would only agree to settlement of the flip logic and SSP claims if BCBSM would open the door for Plaintiff to recover attorney fees. (**Exhibit B**, 08.21.26 Varnum Email).

The issue of attorney fees was never discussed on the record, would materially alter the economics of any settlement, and appears to be motivated by Plaintiff’s counsel to block settlement and keep two *de minimis* claims alive for the purpose of abusing the discovery process. Notably, BCBSM explored the idea of paying a contingent fee to Plaintiff based on the \$21,000 settlement amount. This was rejected, and it became apparent that Plaintiff’s counsel wants to seek a fee grossly disproportionate to the settlement amount.

It is wholly inappropriate for Plaintiff’s counsel to impede the Court’s settlement proposal by injecting a dispute over attorney fees that was never contemplated at the time the Court proposed its settlement framework—which Plaintiff’s counsel committed to recommending—and that would be utterly disproportionate to the settlement amount. Indeed, as the Sixth Circuit’s recent decision in *Sinclair v. Meisner* highlights, “[n]o paying client would pay—and no counsel would properly bill” an egregiously disproportionate amount in fees, and unreasonable fees “are not properly shifted to one’s adversary either.” 185 F.4th 651, 657-59 (6th Cir. 2026). Of course, Plaintiff itself would never incur significant legal fees to litigate the flip logic and SSP issues when the amount of the claims is clearly nominal.

BCBSM maintains what it has said throughout its briefing on Plaintiff’s discovery motions: Plaintiff’s counsel is not prosecuting the flip logic and SSP claims primarily for the purpose of

resolving those claims as to Plaintiff. Rather, its main interest is in obtaining new clients and manufacturing new claims against BCBSM. Plaintiff's counsel has highlighted its self-interest with its unjustified attorney-fee request, and that self-interest pervades their discovery practices. BCBSM submits that the Court should take Plaintiff's counsel's actions after the August 17, 2026 hearing into account in examining Plaintiff's pending discovery motions, as these issues go directly to the proportionality of the discovery Plaintiff seeks.

Respectfully submitted,

ALLEN OVERY SHEARMAN STERLING US LLP

By: s/ Daniel Lewis

Daniel Lewis (Adm. in W.D. MI, NY Reg. 4084810)

Jeffrey D. Hoschander (Adm. in W.D. MI, NY Reg. 4496337)

599 Lexington Avenue

New York, NY 10022

Telephone: +1.212.848.4000

Facsimile: +1.202.508.8100

daniel.lewis@aoshearman.com

jeff.hoschander@aoshearman.com

Todd M. Stenerson (P51953)

1101 New York Avenue, NW

Washington, DC 20005

Telephone: +1.202.508.8093

Facsimile: +1.202.661.7484

todd.stenerson@aoshearman.com

ZAUSMER, P.C.

By: s/ Mark J. Zausmer

Mark J. Zausmer (P31721)

Michael A. Schwartz (P74361)

Nathan S. Scherbarth (P75647)

Jason M. Schneider (P79296)

32255 Northwestern Hwy., Ste. 225

Farmington Hills, MI 48334

Telephone: +1.248.851.4111

Facsimile: +1.248.851.0100

mzausmer@zausmer.com
mschwartz@zausmer.com
nscherbarth@zausmer.com
jschneider@zausmer.com

Dated: September 15, 2026

Attorneys for Defendant

EXHIBIT A

Jason M. Schneider

From: Phelps, Aaron M. <amphelps@varnumlaw.com>
Sent: Wednesday, August 19, 2026 4:56 PM
To: Jason M. Schneider; Rynders, Perrin; Mark J. Zausmer
Cc: Lewis, Daniel; Selvius, Gage M.; Hofman, Herman D.
Subject: RE: Follow up to meet/confer

[EXTERNAL EMAIL]

Jason-

We appreciate the agreements we have reached so far. Can you confirm a date by which we will receive the agreed fee schedules and relevant provider manuals (we understand these manuals will relate to any type of provider – lab, physician, facility, etc.).

However, we cannot accept BCBSM's refusal to provide EDI files. Your stated basis for objecting relates to the burden of manually producing these records. To be clear, the "E" in EDI stands for "electronic." These are electronic records easily identified by reference to the claim numbers. Our request is not burdensome. Indeed, the whole point of limiting our interim request to 50 claims was to make this a very easy process. We suspect it would take BCBSM less than a day to manually enter 50 claim numbers into its systems and pull the EDI files. Further, you have not agreed that BCBSM will not rely on these files (or their contents), underscoring their relevance.

Similarly, we cannot accept BCBSM's objection to producing the facility agreements. We believe, based on the existing record, that BCBSM paid providers excessive amounts on certain claims. We do not believe these amounts (sometimes many multiples of the Medicare benchmark), were consistent with BCBSM's own facility agreements. In other words, the basis of our claim (in part) is that BCBSM didn't pay according to its agreements and BCBSM's defense is that it did, making the facility agreements themselves unquestionably relevant.

Absent some immediate breakthrough on these two issues, we plan to file a motion to compel this week.

Related to above, we cannot complete our expert reports under the current schedule. We plan to file a motion to amend the scheduling order to move all dates out three months. Please let us know if you concur.

Finally, regarding Mark's request to discuss "partial settlement," we do not see a path to settling just part of the case. Obviously, BCBSM can stipulate to liability as to the flip-logic and SSP claims, rendering further discovery on those matters moot. If BCBSM wishes to discuss settlement of all claims at issue, we are open to that and also open to moving the mediation to earlier date if that would be useful.

Thanks-

VARNUM

Varnum LLP
333 Bridge Street NW, Suite 1700

Aaron M. Phelps
Partner

Direct: 616-336-6257
Cell: 616-915-2198
Email: amphelps@varnumlaw.com

Grand Rapids, Michigan 49504
varnumlaw.com



CONFIDENTIAL

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is only for viewing and use of the intended recipients. If you are not an intended recipient, you are hereby notified that any use, disclosure, or copying is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender at 616-336-6000.

From: Jason M. Schneider <JSchneider@zausmer.com>

Sent: Thursday, August 13, 2026 5:14 PM

To: Rynders, Perrin <prynders@varnumlaw.com>; Mark J. Zausmer <MZausmer@zausmer.com>

Cc: Lewis, Daniel <daniel.lewis@aoshearman.com>; Phelps, Aaron M. <amphelps@varnumlaw.com>; Selvius, Gage M. <gmselvius@varnumlaw.com>

Subject: RE: Follow up to meet/confer

Perrin,

Ahead of our call tomorrow, here is our point-by-point response to Tiara Yachts' proposal on the discovery issues we discussed last week:

- 1) RFP No. 3: BCBSM can confirm that it is not withholding any documents responsive to this request. The document search it conducted did not result in any relevant results. That said, BCBSM has agreed to search files within its Corporate Fraud Investigation unit for potentially responsive documents. If that expansion of our search results in any responsive documents, we will produce them. Otherwise, we will supplement BCBSM's responses to state that it does not have any responsive documents based on the searches it conducted.
- 2) RFP No. 15: BCBSM agrees to produce provider fee schedules from 2016 through the end of Tiara Yachts' contractual relationship with BCBSM. That timeframe aligns with the Tiara Yachts claims data. BCBSM's production will not include negotiated agreements with facilities. We anticipate having the provider fee schedules to you before the depositions that are scheduled to occur the week of August 24.
- 3) RFP No. 14: The phrase "annual and quarterly settlements" in BCBSM's initial disclosures refers to the Administrative Service Annual Summaries that were included in BCBSM's first production. The terminology in the initial disclosures was based on file extension names rather than the title on the Excel files' cover sheets. BCBSM has produced any documents it has located that fit within the categories identified in its initial disclosures.
- 4) RFP Nos. 4, 5, 9 (out of order from your email): BCBSM agrees to produce its provider manuals from 2016 through the end of Tiara Yachts' contractual relationship with BCBSM. Technically, this is not stored as a single "manual" and includes documents/information from disparate sources. We are determining the best way to produce the information, and we will follow-up as soon as we have that figured out.
- 5) RFP Nos. 16, 23: BCBSM agrees with your proposal on the EOBs and PIRs. Once you identify 50 claims (if we need to adjust timing on your list based on the date of this response, we can do that), we will locate the relevant documents and produce them within 30 days. On the EOBs, this should be a straightforward, albeit time-consuming, manual process.

On the PIRs, BCBSM will need to identify sources for relevant documents based on the providers that correspond to your list of 50 claims. We want to make clear that we are not certain without conducting these searches that responsive documents exist. If we identify responsive, non-privileged documents, we will produce them.

- 6) RFP No. 24: BCBSM does not agree to include EDIs in this process. As we have discussed, gathering EDIs will be prohibitively time-consuming and expensive, particularly in proportion to the scope of Tiara Yachts' claims. BCBSM maintains that the EOBs it has agreed to produce will be sufficient to corroborate Tiara Yachts' claims data.
- 7) BCBSM's RFPs: Thank you for stating your positions on BCBSM's RFPs. Please let us know as soon as you can confirm your position on Tiara Yachts' bank account information.

Talk to you tomorrow morning.

Best,

Jason M. Schneider

Shareholder

Zausmer 

ATTORNEYS & COUNSELORS

32255 Northwestern Highway, Suite 225

Farmington Hills, MI 48334

Direct: (248) 254-4849

This email and any attachments may be privileged or confidential. If you are not the intended recipient, please delete the email and any attachments and notify us immediately.

From: Rynders, Perrin <prynders@varnumlaw.com>

Sent: Tuesday, August 4, 2026 3:04 PM

To: Jason M. Schneider <JSchneider@zausmer.com>; Mark J. Zausmer <MZausmer@zausmer.com>

Cc: Lewis, Daniel <daniel.lewis@aoshearman.com>; Phelps, Aaron M. <amphelps@varnumlaw.com>; Selvius, Gage M. <gmselvius@varnumlaw.com>

Subject: Follow up to meet/confer

[EXTERNAL EMAIL]

Jason, thanks to you and Mark for your time yesterday afternoon. As we discussed, I think it's good for us to memorialize what we discussed/agreed to, to avoid any misunderstandings. Let me know if I missed anything or got anything wrong. And I look forward to your response regarding my suggestions—as mentioned, I'm eager to resolve these issues or tee up another motion to compel.

I'd like to start with the areas of agreement:

- Our RFP #3: you believe that all communications between BCBSM and a provider about a dispute over a claim involving a Tiara Yachts participant/beneficiary were captured by your search terms. BCBSM isn't refusing to produce all responsive documents; rather, BCBSM thinks it has done so already. Nevertheless, you will confer with your client about whether other search terms might yield additional responsive documents, and BCBSM will produce anything else that it finds. Because BCBSM has stated objections to this request, we would like a formal statement that all responsive documents have been produced and nothing has been withheld based on objections or otherwise.

- Our RFP #15: BCBSM will produce the responsive documents. We did not discuss a deadline to produce those documents. I would like that to happen quickly, and before the next set of depositions in a few weeks.
- Our RFP #14: You think BCBSM has produced all annual and quarterly settlements, but you are going to double-check and produce anything that wasn't already produced. This is not an issue of disagreement—if the requested documents exist and have not been produced, BCBSM will do so.
- Your request for all communications between our clients: I confirmed yesterday that our client has produced everything that it has. We have gone back to confirm this. Nevertheless, as with all discovery obligations, if anything else is identified we will produce it. Relatedly, I confirmed that we do not represent the broker, and you are permitted to contact them directly about responding to your subpoena.

We also discussed potential resolutions to avoid discovery motion practice:

- Our RFP ## 16, 23, and 24: There might be some distinctions between different documents (EOBs less complicated than EDIs), but in general my suggestion was that I could identify fewer than the roughly 2,300 claims on the spreadsheet (e.g., 50—although I note that in another matter we discussed 50 per year) for which BCBSM would produce everything it has. These would include Provider Investigation Requests, EOBs, and EDIs. The goal would be to ascertain how those materials corroborate or refute the claims data that has been produced before insisting on that information for all the claims identified by *fin*Health as involving overcharges. Upon further reflection, this would be a process that requires adjustments to the current case management order, such as the following:
 - Tiara identifies 50 claims by August 15.
 - BCBSM produced the requested information by September 15.
 - The parties meet and confer thereafter. We would use this process to narrow or resolve disputes. For example, if the materials supplied prove that the 50 claims were properly processed, then we would not need the same materials for the other 2,300 plus claims. To the extent the materials prove that some of the 50 claims were improperly paid, we could likely narrow the scope of the requests to a subset of necessary documents. Obviously, we could also use this information to inform ADR as well – whether in full or as to certain categories.
 - Expert reports would have to be held open pending final agreement/court order regarding completion of whatever further discovery is necessary from this process.
- Our RFP ## 4, 5, and 9: I suggested proposing additional search terms to capture these documents. With respect to 4 and 5, I think the better approach is to narrow our request to: all BCBSM Provider Manuals, Provider Handbooks, and equivalent provider-facing reference guides, including but not limited to those published or made available through web-DENIS, amendments, bulletins, updates, supplements, throughout the Contractual Period, that describe billing requirements, covered and non-covered services, CPT/HCPCS code requirements, revenue code requirements, claim submission procedures, and/or the criteria, conditions, edits, or codes applied by BCBSM to approve, deny, pend, or reject claims submitted by providers for enrollees of Tiara Yachts' Plan (you may have guessed that these are the literal procedures BCBSM always says it follows per the ASC, so are obviously relevant and readily available). While we believe these materials are within the scope of the existing document requests 4 and 5, to avoid any doubt, we served a more specific request yesterday. If we can't reach agreement on production of these materials, they are what we would seek in a new motion to compel.

Regarding our RFP #14, I didn't specifically talk to you about other documents identified in BCBSM's initial disclosures besides the annual and quarterly settlements, but my hope is that BCBSM would produce those documents too (if it hasn't done so already). I suspect this is not an area of contention, but because I was not specific about documents other than the settlements, I want to note it now.

Lastly, I promised to take another look at your interrogatories 15, 20, and 21 to see if we would be willing to back off our objections on relevance grounds. I do not expect to change my mind on that, but I have not had an opportunity to take another look, and I will do so. Your position is that the requested documents would go to defenses and the counterclaim, revolving around Tiara Yachts' status as a co-fiduciary.



Varnum LLP
333 Bridge Street NW, Suite 1700
Grand Rapids, Michigan 49504
varnumlaw.com

Perrin Rynders
Partner

Direct: 616-336-6734
Email: prynders@varnumlaw.com



CONFIDENTIAL

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is only for viewing and use of the intended recipients. If you are not an intended recipient, you are hereby notified that any use, disclosure, or copying is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender at 616-336-6000.

EXHIBIT B

Jason M. Schneider

From: Rynders, Perrin <prynders@varnumlaw.com>
Sent: Friday, August 21, 2026 3:35 PM
To: Mark J. Zausmer
Cc: Jason M. Schneider; Lewis, Daniel; Phelps, Aaron M.
Subject: Tiara Yachts/BCBSM--settling flip logic and SSP

[EXTERNAL EMAIL]

Mark,

We have conferred with our client, and Tiara Yachts is willing to resolve its damages claim related to flip logic and SSP for \$21,000, provided two things: (1) BCBSM warrants and represents that the number is materially correct (not necessarily exact), because that's where we got that information; and (2) we acknowledge that prevailing plaintiffs in ERISA cases are entitled to recover reasonable attorneys' fees. This case has been litigated since July 2022, and at any time during the past four years BCBSM could have admitted what the Sixth Circuit unanimously decided: that the claims, if true, are ERISA violations. We now have consensus that BCBSM did, in fact, collect SSP fees and impose flip logic on Tiara Yachts. Thus, Tiara Yachts is entitled to recover its reasonable attorneys' fees in getting to this point. I see two ways to handle that: (1) settle and include an additional amount for attorneys' fees; or (2) stipulate to the entry of a judgment in favor of Tiara Yachts, which would allow Tiara Yachts to file a motion seeking an award of attorneys' fees as the prevailing party. (Note that BCBSM filed its own motion for attorneys' fees after it got Judge Jonker's ruling, although that went nowhere because the Sixth Circuit reversed.)

As for the release language that you provided, a couple comments:

- The list of what goes into the Preserved Claims ("claims, demands, actions...") should be identical to the list included in the Released Claims. Right now, the latter is longer than the former.
- To fix that and a later ambiguity, I would re-word the last sentence as follows:
"This release does not extend to, and Plaintiff expressly preserves, any and all claims, demands, actions, causes of action, suits, debts, expenses, promises, variances, trespasses, damages, judgments, executions, obligations, liabilities, costs, expenses, and losses of every kind and nature whatsoever, whether at law or in equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent that are not Released Claims (the "Preserved Claims"). The Preserved Claims include anything arising out of or relating to BCBSM's alleged overpayment, improper payment, or misprocessing of claims from Plan assets independent of the flip logic or any incentive created by the SSP, including but not limited to claims based on unbundling, upcoding, medically unlikely edits, non-adherence to payment guidelines, missing or deficient claims data, or any other claims-processing errors or deficiencies, whether arising under ERISA, federal common law, Michigan statutory or common law, contract, tort, or otherwise."

Let me know how your client would like to proceed.



Varnum LLP
333 Bridge Street NW, Suite 1700
Grand Rapids, Michigan 49504
varnumlaw.com

Perrin Rynders
Partner

Direct: 616-336-6734
Email: prynders@varnumlaw.com



CONFIDENTIAL

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is only for viewing and use of the intended recipients. If you are not an intended recipient, you are hereby notified that any use, disclosure, or copying is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender at 616-336-6000.
