

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIARA YACHTS, INC.,

Case No.1:22-cv-603

Plaintiff/Counter-Defendant,

Honorable Robert J. Jonker

v.

Magistrate Judge Ray Kent

BLUE CROSS BLUE SHIELD OF MICHIGAN,

Defendant/Counter-Plaintiff.

PLAINTIFF/COUNTER-DEFENDANT'S RESPONSE IN OPPOSITION TO
DEFENDANT/COUNTER-PLAINTIFF'S EMERGENCY MOTION FOR PROTECTIVE
ORDER REGARDING PLAINTIFF/COUNTER-DEFENDANT'S PREMATURE
DEPOSITION NOTICES

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I. INTRODUCTION

BCBSM's "fishing expedition" refrain is the epitome of disingenuity. The witnesses Tiara Yachts wants to depose are BCBSM's current Director of Payment Integrity Operations & Recoveries, who verified and signed BCBSM's interrogatory responses, and former Director of Payment Integrity Prospective Editing. Considering the issues in this case, there may be no better persons to start with. Maybe that is why BCBSM is not identifying more knowledgeable witnesses. BCBSM just does not want discovery to happen.

Under Federal Rule of Civil Procedure 26(d)(3), discovery may proceed "in any sequence." BCBSM concedes this point in its briefing, yet it seeks to impose conditions on Tiara Yachts' right to sequence discovery. And whereas the Federal Rules of Civil Procedure permit the seeking of a protective order only in good faith based on a particularized showing of good cause, *Nix v. Sword*, 11 F. App'x 498, 500 (6th Cir. 2001); Fed. R. Civ. P. 26(c), BCBSM merely offers vague assertions of "prematurity" and "inefficiency." That failure alone warrants denial of BCBSM's emergency motion.

II. RELEVANT BACKGROUND

The Sixth Circuit reversed this Court's dismissal of Tiara Yachts' Complaint and remanded the case for discovery. *Tiara Yachts, Inc. v. BCBSM*, 138 F.4th 457 (6th Cir. 2025). Upon remand, this Court denied BCBSM's renewed motion to dismiss and motion to stay, directing the parties to proceed with discovery to develop a factual record. *See* Order, (ECF No. 79, PageID.1295); Transcript at 13:13-16, (ECF No. 81, PageID.1310).¹

¹ The background sections of Tiara Yachts' Motion to Compel Discovery Responses (ECF No. 87, PageID.1432-37), Motion to Compel Depositions (ECF No. 92, PageID.1644-47), and Response to BCBSM's Motion for Protective Order (ECF No. 96, PageID.1697-1716) recite more fully the nature and basis of its claims against BCBSM, its discovery efforts thus far, and BCBSM's efforts to obstruct those discovery efforts.

BCBSM wants nothing to do with discovery. Sunshine, so to speak, is not its friend. Thus, BCBSM is thwarting discovery in every way it can. It ignored a letter from Tiara Yachts' counsel offering to streamline the discovery process; then it responded to Tiara Yachts' first set of discovery requests on September 3, 2025, with zero documents and generalized, unsubstantiated objections. Tiara Yachts' Mtn. to Compel Disc., (ECF No. 87-6, PageID.1530-1589). Then, BCBSM moved for a blanket protective order—which merely refashioned BCBSM's objections and did not articulate good cause—seeking to avoid written discovery wholesale. BCBSM's Mtn. for PO, (ECF No. 82, PageID.1319-1363).

To blunt BCBSM's efforts to frustrate written discovery, Tiara Yachts opted to proceed with depositions of director-level witnesses able to answer big-picture questions. On September 8, 2025, Tiara Yachts noticed the depositions of Kimberly Jones-Schneider and Jeff Baker. Tiara Yachts' Mtn. to Compel Dep., Exs. A and B (ECF No. 92-1, PageID.1659; ECF No. 92-2, PageID.1662). Ms. Jones-Schneider is BCBSM's current Director of Payment Integrity Operations & Recoveries, who signed and verified BCBSM's discovery responses and is referenced in BCBSM internal emails attached to the Complaint. *See* Compl., Ex. A (ECF No. 1-2, PageID.26-29); Tiara Yachts' Mtn. to Compel Dep., Ex. C (ECF No. 92-3, PageID. 1679). Mr. Baker is BCBSM's former Director of Payment Integrity Prospective Editing, who touts in a public profile that his job was to ensure claim payment accuracy through pre-payment claim edits, policies, and rules. Mtn. to Compel Dep., Ex. D (ECF No. 92-4, PageID.1681-82).

BCBSM filed an emergency motion to block these depositions until "document discovery is complete" (ECF No. 89, PageID.1625)—ironic given its simultaneous efforts to resist document discovery (ECF No. 82, PageID.1319). There is no basis to block depositions; BCBSM's goal is to obstruct all discovery efforts and delay the factual development this Court wants to occur.

Such actions are sanctionable. This Court undoubtedly resolves disputes on a regular basis where the parties need help navigating the push and pull of what is discoverable and proportional to the needs of the case. This dispute is different. There is nothing reasonable about BCBSM refusing to make its witnesses available until "document discovery is complete" and, at the same time, thwarting the document discovery process. Sanctions are unusually appropriate here.

III. GOVERNING LEGAL STANDARD

Parties may obtain discovery on any nonprivileged matter relevant to any claim or defense and proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). The relevancy threshold is "extremely liberal." *See United States v. Hamilton*, 574 F. Supp. 3d 461, 466 (E.D. Mich. 2021).

To obtain a protective order, the movant bears the burden to show "good cause" with specific facts demonstrating a clearly defined and serious injury. Fed. R. Civ. P. 26(c)(1); *Nix*, 11 F. App'x at 500 (6th Cir. 2001); *Nemir v. Mitsubishi Motors*, 381 F.3d 540, 550 (6th Cir. 2004). Conclusory assertions or generalized burden claims are insufficient because there is a strong presumption in favor of disclosure. *See id.*; *In re Nat'l Prescription Opiate Litig.*, 927 F.3d 919, 931 (6th Cir. 2019).

Open, broad discovery is the preference and promotes a "fair contest." *U.S. v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958). When the movant fails to meet its burden, discovery should proceed. Fed. R. Civ. P. 26(c)(3).

IV. ARGUMENT

A. THE NOTICED DEPOSITIONS ARE RELEVANT AND PROPORTIONAL.

A "fishing expedition" is an unfocused, wide-ranging foray detached from the claims at issue in the case. *See Anwar v. Dow Chem. Co.*, 876 F.3d 841, 854 (6th Cir. 2017). This is the opposite. Tiara Yachts has noticed **two** depositions tailored to the relevant issues.

First, Ms. Jones-Schneider is BCBSM's Director of Payment Integrity Operations & Recoveries—i.e., the director of the systems and programs at issue in this case. Not only does she appear on BCBSM internal emails attached to the Complaint discussing BCBSM's fiduciary obligations and system failures, she verified BCBSM's interrogatory responses, confirming her personal knowledge of the topics central to this case. *See* Compl., Ex. A (ECF No. 1-2, PageID.26-29); Tiara Yachts' Mtn. to Compel Dep., Ex. C (ECF No. 92-3, PageID.1679).

Second, Mr. Baker is BCBSM's former Director of Payment Integrity Prospective Editing. He identifies on his public LinkedIn profile that his responsibilities while employed at BCBSM included "ensuring claim payment accuracy via pre-payment edits, policies, and rules"—core topics for Tiara Yachts' ERISA fiduciary and prohibited-transaction claims. *See* Mtn. to Compel Dep., Ex. D (ECF No. 92-4, PageID.1681-82).

Both witnesses have relevant information to share, and deposing them is proportional under Rule 26(b)(1). They can explain how BCBSM's claims-processing systems work; what "payment integrity" functions BCBSM performs; how the Shared Savings Program was conceived and how it operates; how BCBSM maintains claims data; how BCBSM's Payment Integrity/Shared Savings Program are coordinated (or not); and how improper claims were detected, handled, and monetized—all subjects the Sixth Circuit identified as central to this case and which both of these witnesses have ***personal knowledge*** of. *See Tiara Yachts*, 138 F.4th at 460, 466–71; *see also cf. Anwar*, 876 F.3d at 854 ("Regarding protective orders, we have stated that prohibiting the deposition of a witness who 'ha[s] no personal knowledge of the events or investigation underlying the case' and who '[cannot] provide relevant testimony' is appropriate.").

BCBSM tacitly concedes such relevance; it does not claim these witnesses lack personal knowledge of the claims or issues in this case. *See* BCBSM's Emergency Mtn. for PO, (ECF No.

89, PageID.1612-1625). Instead, BCBSM broadly and vaguely asserts—without any legal support—that Tiara Yachts is on an "impermissible fishing expedition" and such witnesses should not be produced until "written discovery is completed." *Id.* (ECF No. 89, 1623-1625).

Such arguments fall short of BCBSM carrying its burden. Fed. R. Civ. P. 26(c)(1); *Nix*, 11 F. App'x at 500 (6th Cir. 2001). Two depositions of the directors who run or ran the programs at issue are neither wide-ranging nor abusive; they are useful for defining the system architecture, terminology, data, policies, edits, and workflows of BCBSM's operations so discovery can be focused where appropriate. Far from a "fishing expedition," these depositions are an efficient way to start.

B. BCBSM HAS NOT—AND CANNOT—MEET ITS BURDEN OF ESTABLISHING GOOD CAUSE FOR PROTECTION.

BCBSM offers no affidavit, and no particularized showing of oppression, burden, or expense tied to these two witnesses. Generalized assertions of "prematurity," "inefficiency," or "harassment" are legally insufficient. *See Nix*, 11 F. App'x at 500; *Nemir*, 381 F.3d at 550; *Nolan LLC v. TDC Int'l Corp.*, No. CIV.A. 06-CV-14907, 2007 WL 2983633, at *4 (E.D. Mich. Oct. 11, 2007) ("An objecting party must specifically establish the nature of any alleged burden, usually by affidavit or other reliable evidence.") (internal quotation omitted); *Jordan v. Caruso*, No. 2:08-CV-261, 2011 WL 2174429, at *1 (W.D. Mich. June 2, 2011) (same).

This failure alone defeats BCBSM's motion. If BCBSM had real concerns, it would not be seeking a blanket prohibition on depositions until "document discovery is complete." It is using its own refusal to produce documents as a weapon to block further discovery that the Rules allow in any sequence. These two depositions should be compelled. *See Alta Constr. Equip. Illinois, LLC v. Constar Servs., LLC*, 2021 WL 120852, at *1-2 (E.D. Mich. Jan. 13, 2021) (compelling depositions and awarding motion-related fees where party improperly conditioned depositions).

C. FEDERAL RULE 26 LEAVES THE SEQUENCING OF TIARA YACHTS' DISCOVERY TO TIARA YACHTS—NOT BCBSM.

Rule 26(d)(3)(A) permits discovery "in any sequence." Courts routinely reject efforts by parties to unilaterally block depositions pending written discovery. *Stockwell v. Hamilton*, No. CV 15-11609, 2018 WL 10279116, at *2 (E.D. Mich. May 3, 2018) ("Thus, while it might be true that Plaintiffs *could* proceeding by first obtaining information [] through written discovery, there is no requirement that they do so before taking [] deposition[s]."); *Sexual Sin De Un Adbul Blue v. River Rouge, City of*, No. 16-CV-10526, 2017 WL 2438789, at *2 (E.D. Mich. June 6, 2017) ("The Federal Rules of Civil Procedure do not permit one party to make unilateral decisions regarding the timing and sequence of depositions during the discovery phase of civil litigation."); *Hightower-Mathis v. Nextcare Michigan Providers, PLLC*, No. 23-13310, 2024 WL 4535444, at *3 (E.D. Mich. Oct. 21, 2024) (same).

Moreover, this Court rejected BCBSM's motion to stay discovery and directed the parties to proceed with discovery. *See* Order, (ECF No. 79, PageID.1295); Transcript at 13:13-16, (ECF No. 81, PageID.1310). Tiara Yachts is entitled to sequence and move forward with discovery in the manner it chooses. *See e.g., Alta Constr. Equip. Illinois, LLC v. Constar Servs., LLC*, No. 2:20-CV-10789, 2021 WL 120852, at *1 (E.D. Mich. Jan. 13, 2021) ("[T]he Court intends to permit defendant to take depositions of its own choosing and in the sequence it prefers, per Fed. R. Civ. P. 26(d)(3)."). Having chosen to produce no documents and to move for a protective order against written discovery, BCBSM cannot leverage its own delay to bar depositions. That is gamesmanship Rule 26 disallows.

D. BCBSM'S STANDING ARGUMENT IS MOOT.

On September 16, 2025, after BCBSM filed the present motion, its counsel informed Tiara Yachts' counsel that he would be representing Jeff Baker. **Exhibit A.** The standing issue is moot.

Regardless, BCBSM's motion as it pertains to Mr. Baker (a non-party witness) fails for the reasons set forth above. Additionally, BCBSM fails to identify any specific burden or injury to Mr. Baker should he be compelled to attend the deposition. Fed. R. Civ. P. 26(c); *See Nix*, 11 F. App'x at 500; *Nemir*, 381 F.3d at 550. That lack of particularized showing is dispositive.

V. CONCLUSION

BCBSM's request for a sweeping order prohibiting these and future depositions until document production is complete is meritless. Such a ruling would invert Rule 26(d)(3), disregard the Court's directive to proceed with discovery, and reward BCBSM's ongoing refusal to produce documents. BCBSM has not attempted to demonstrate "good cause"—let alone a clearly defined and serious injury—to bar the targeted depositions of key witnesses. Its motion plainly seeks to impose a unilateral stay while it simultaneously refuses to engage in written discovery.

Accordingly, Tiara Yachts respectfully requests that the Court deny BCBSM's motion for protective order, compel BCBSM to produce Kimberly Jones-Schneider and Jeff Baker for deposition on the noticed dates or within 14 days of the Court's order at mutually convenient times, and award Tiara Yachts its reasonable fees and costs incurred in responding to the motion.

Respectfully submitted,

VARNUM LLP
Attorneys for Tiara Yachts, Inc.

Dated: September 18, 2025

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CERTIFICATE OF COMPLIANCE

Pursuant to L. Civ. R. 7.3(b)(i), I hereby certify that this document complies with L. Civ. R. 7.3(b)(ii) because this document, generated using Microsoft Word 2010, contains 2,048 words.

/s/ Aaron M. Phelps

Aaron M. Phelps (P64790)

EXHIBIT A

From: Rynders, Perrin <prynders@varnumlaw.com>
Sent: Tuesday, September 16, 2025 9:07:12 PM
To: Mark J. Zausmer <MZausmer@zausmer.com>
Subject: Re: Tiara

Ok, thanks.

Get [Outlook for iOS](#)

From: Mark J. Zausmer <MZausmer@zausmer.com>
Sent: Tuesday, September 16, 2025 5:39:41 PM
To: Rynders, Perrin <prynders@varnumlaw.com>
Subject: Tiara

Perrin, we will represent Baker and I can accept a subpoena on his behalf.

Mark J. Zausmer
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