UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-22236-CIV-GOLD/GOODMAN

HOWARD ADELMAN and
JUDITY SCLAWY, as
Co-Personal Representatives of THE
ESTATE OF MICHAEL SCLAWY-ADELMEN,

Plaintiffs,

vs.

BOY SCOUTS OF AMERICA, et al

Defendants.
_____/

ORDER ON DEFENDANT'S MOTION FOR PROTECITVE ORDER

This Cause is before the Court in connection with Defendant South Florida Council's Motion for Protective Order (DE 277). For the reasons outlined below, the motion is **denied**. However, the corporate representative deposition which Plaintiffs have noticed for the four issues shall be limited to those four issues. Plaintiffs have already taken a significant amount of discovery and shall not use another corporate representative's deposition as a springboard to take additional discovery not encompassed by the list of the four issues in the notice.

The Council's motion contends that it has already produced three corporate representatives for deposition in this case. After reviewing Plaintiffs' Response, the Court concludes that the Council's representation is incorrect. Actually, Plaintiffs have only taken the deposition of one corporate representative. The mere fact that Plaintiffs also took depositions of specifically named fact witnesses and those witnesses happen to

be hold a supervisory or official role with a defendant does not transform those depositions into corporate representative depositions.

Plaintiffs do not seek to take the deposition of a Council corporate representative merely to see whether Codefendant Howard Crompton was qualified to wear a patch. Rather, Plaintiffs wish to take a corporate representative deposition on issues relating to Crompton's training, which may or may not be reflected in the issuance of a patch.

To be sure, Plaintiffs have asked questions about Crompton's training at other depositions but they are entitled to obtain a corporate representative deposition – which is binding on the corporate defendant – on the four issues listed in the notice (DE 277-1).

The Court notes that the exhibits attached to Plaintiffs' Response demonstrate that Plaintiffs are not simply seeking to harass the Council with a second corporate representative deposition. To the contrary, Plaintiffs offered to cancel the corporate representative deposition if the Council timely produced documents concerning Crompton's training and whether he took the Leadership Specific Training (DE 283-5). Because that documentation was not forthcoming, Plaintiffs continued their efforts to obtain information about Crompton's training from a Council corporate representative.

Crompton's training, or the lack of it, is an issue in the case. Plaintiffs are entitled to obtain discovery about it and are entitled to obtain binding deposition testimony from a corporate representative.

Nevertheless, the Court understands that Plaintiffs have already obtained both deposition testimony and interrogatory answers about Crompton's training and that the Council believes it is being harassed. Therefore, Plaintiffs may take the corporate representative deposition but it shall be limited to the four issues listed in the notice (DE

277-1) and questions logically flowing from answers to questions about those four specific issues.

The Council, of course, may designate whom it wishes as the corporate representative. Although it may be unlikely, the Council could conceivably designate more than one person in response to the notice.

Therefore, the Court **denies** the Council's motion for protective order but Plaintiffs must follow the limits outlined in this Order when taking the corporate representative's deposition. If the Council produces more than one corporate representative to address the four issues, then the limits imposed on Plaintiffs shall apply to all depositions taken under the notice.[1]

DONE AND ORDERED in Chambers, at Miami, Florida, this 17th day of August, 2011.

Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Hon. Alan S. Gold
Counsel of Record

[1] Federal Rule of Civil Procedure 26(c)(3)("Protective Orders") provides that "Rule 37(a)(5) applies to the award of expenses." Rule 37(a)(5), in turn, requires the entry of an expense award in favor of the party who prevailed in connection with a discovery motion, unless one (or more) of three limited exceptions apply. Given the wide discretion the court has for this type of issue and the uncertainty inherent in this category of motion, the Court finds that an expense award should not be entered. *See* Fed. R. Civ. P. 37(a)(5)(A)(ii) and (iii).