

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 13-23881-CIV-MARTINEZ/GOODMAN

GUARANTEE INSURANCE CO.,

Plaintiff,

v.

HEFFERNAN INSURANCE BROKERS,
INC., et al.,

Defendants.

**ORDER DENYING MOTION TO COMPEL DEPOSITION AND REQUIRING
SUPPLEMENTAL AFFIDAVIT**

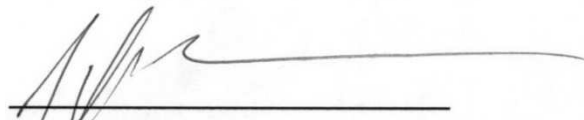
This Cause is before the Undersigned on Defendants' Heffernan Insurance Brokers, Inc. ("Heffernan") and Socius Insurance Services, Inc. ("Socius," and, together with Heffernan, "Defendants") Motion (the "Motion") to Compel Deposition of Steven Mariano, Chairman of the Board and Chief Executive Officer of Patriot National Insurance Group, Inc. [ECF No. 185]. Pursuant to the Undersigned's instructions, Plaintiff Guarantee Insurance Co. ("Guarantee") filed a response in opposition to the Motion. [ECF No. 188]. A hearing (the "Hearing") was held on the Motion on October 28, 2014. For the reasons outlined at the Hearing and described below, it is **Ordered and Adjudged** as follows:

The Motion is **DENIED**. As outlined at the Hearing, Defendants have not met their burden of showing that an Apex deposition is necessary here. *Carnival Corp. v. Rolls-Royce PLC*, No. 08-23318-CIV, 2010 WL 1644959, at *1 (S.D. Fla. Apr. 22, 2010). In addition, Defendants have already exceeded the number of depositions allowable absent leave of court. Fed. R. Civ. P. 30(a)(2)(A)(i).

However, also as outlined at the Hearing, the Undersigned will provide Defendants some **limited relief** in the form of a requirement that Mr. Mariano provide a supplemental affidavit to Defendants. That supplemental affidavit will address whether Mr. Mariano saw specific documents before he signed the April 10, 2009 Warranty and Representation Letter, and, if so, the supplemental affidavit must describe what significance, if any, Mr. Mariano attached to each of those documents or the developments described therein before signing the Warranty and Representation Letter. Defendants shall, **no later than October 30, 2014**, provide a list to Plaintiff of those specific documents that Mr. Mariano shall address in the supplemental affidavit. Plaintiff shall then provide the supplemental affidavit to Defendants **within five business days** of receiving that list.

While it is the Undersigned's practice to routinely award fees in connection with motions brought pursuant to Rule 37 of the Federal Rules of Civil Procedure, in this case, no fees shall be awarded because each party's position was substantially justified.

DONE AND ORDERED in Chambers, in Miami, Florida, October 29, 2014.



Jonathan Goodman
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Honorable Jose E. Martinez
All Counsel of Record