

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-21091-CIV-MOORE/MCALILEY

DFEF PROPERTIES, LLC,

Plaintiff,

v.

SCOTTSDALE INDEMNITY COMPANY,

Defendant.

ORDER GRANTING IN PART DEFENDANT'S MOTION TO COMPEL

Pending before the Court is Defendant's Motion to Compel, which the Honorable K. Michael Moore referred to me. [DE 6, 28]. Defendant asks the Court to enter an order requiring that: (i) Plaintiff and non-parties Daniel S. Feder, Erin G. Feder, Florida Spine and Joint Institute, LLC and South Florida Pain and Rehabilitation of West Broward, Inc. (collectively, the "Feder Group") produce a copy of the settlement agreement entered into between Catlin Specialty Insurance Company, the Feder Group and Mallah Furman & Company, P.A. (the "Catlin Settlement Agreement"), which is responsive to written discovery served upon them; (ii) Plaintiff supplement its response to Interrogatory number 20 with information regarding the Catlin Settlement Agreement; (iii) Plaintiff produce a witness to testify regarding categories 1, 5, 6, 7 and 8 of Defendant's Amended Notice of Rule 30(b)(6) Depositions of Plaintiff, Florida Spine and Joint Institute, LLC and South Florida Pain and Rehabilitation of West Broward, Inc.; and (iv) Plaintiff and Feder Group pay Defendant's costs, expenses and attorney's fees incurred in connection with its Motion to Compel. [DE 28]. Neither Plaintiff nor Feder Group has filed a response to the Motion, and

the time to do so has passed. [See DE 6, ordering the parties to comply with the Discovery Procedures for Magistrate Judge Chris McAliley]. Although this is sufficient reason to grant the Motion, *see* Local Rule 7.1(c), the Court will resolve it on the merits.

According to the discovery responses and correspondence attached to the Motion, Plaintiff withheld the Catlin Settlement Agreement to avoid violating its confidentiality provision. [DE 28-4 at p. 9; DE 28-5]. The Catlin Settlement Agreement is relevant to the claims and defenses in this action, and its confidentiality can be preserved pursuant to this Court's Confidentiality Stipulation and Protective Order. [See DE 21].


With respect to Amended Notice of Rule 30(b)(6) deposition, Plaintiff and Feder Group have not identified a corporate representative to testify regarding categories 1, 5, 6, 7 and 8 listed therein. They do not object to those topics but, rather, are apparently waiting for the potential witness to confirm his/her acceptance of the designation. [DE 28-13]. It is the obligation of Plaintiff and Feder Group to locate one or more witnesses who can knowledgably testify on the noticed topics. *McPherson v. Wells Fargo Bank, N.A.*, 292 F.R.D. 695, 698 (S.D. Fla. 2013).

For the foregoing reasons, it is hereby **ORDERED** that Defendant's Motion to Compel [DE 28], is **GRANTED IN PART**. Plaintiff and Feder Group shall produce a copy of the Catlin Settlement Agreement, and Plaintiff shall supplement its response to Interrogatory number 20 to address that Agreement, both of which shall be subject to the Confidentiality Stipulation and Protective Order. Plaintiff and Feder Group shall also designate one or more witnesses to testify at deposition regarding categories 1, 5, 6, 7 and 8 of the Amended Notice.

Discovery in this case closed on January 9, 2017 and the dispositive motion deadline is fast approaching. [DE 18]. As such, Plaintiff and Feder Group shall produce the Catlin Settlement Agreement and designate their corporate representative(s) regarding topics 1, 5, 6, 7 and 8 of the Amended Notice **no later than January 20, 2017**. Plaintiff shall serve its supplemental response to Interrogatory number 20 by the same date.

IT IS FURTHER ORDERED that Defendant's request for costs, expenses and attorneys' fees incurred in connection with its Motion is **DENIED**.

DONE and ORDERED in chambers at Miami, Florida, this 17th day of January, 2017.


CHRIS MCALILEY
UNITED STATES MAGISTRATE JUDGE

cc: The Honorable K. Michael Moore
Counsel of record