

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

HELEN POLITZ

PLAINTIFF

VERSUS

CIVIL ACTION NO.:1:08CV18-LTS-RHW

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, ET AL

DEFENDANTS

**PLAINTIFF'S REPLY TO [267] NATIONWIDE MUTUAL FIRE  
INSURANCE COMPANY'S RESPONSE TO PLAINTIFF'S  
MOTION FOR CLARIFICATION AND/OR RECONSIDERATION**

COMES NOW Plaintiff, by and through counsel of record, and files this her *Reply To [267] Nationwide Mutual Fire Insurance Company's Response To Plaintiff's Motion For Clarification And/Or Reconsideration* would show unto the Court the following, to wit:

1. Plaintiff will briefly respond to Nationwide's *Reply To [267] Nationwide Mutual Fire Insurance Company's Response To Plaintiff's Motion For Clarification And/Or Reconsideration*, though Nationwide has done nothing to rebut the legal arguments and authority set forth by Plaintiff in her Motion for Clarification and/or Reconsideration. Clearly, even Nationwide cannot present any authority to dispute Plaintiffs' arguments that no corroborating medical testimony is required for Mrs. Politz to testify as to how Nationwide's conduct made her feel. Nationwide instead seeks to enflame the Court's sensibilities by continually mentioning what it refers to as Plaintiff's "discovery abuses," referring it its previous Motion to Strike, which the Court has already ruled upon. Primarily, Nationwide contends that Mrs. Politz was somehow being sneaky or acting in bad faith by not divulging to Nationwide that she had been prescribed anti-depressants until her first deposition on November 3, 2008. Mrs. Politz is an honest and pleasant, sixty-seven year old woman who lost everything she owned, had her claim basically denied in full for two years, had to come out of retirement to go back to work to make ends meet,

subsequently lost her husband, and underwent open heart surgery in early 2007. Needless to say, she has been through a lot, and can be absentminded at times. That does not tarnish the fact that she is an honest and intelligent woman. She did not and would not purposefully withhold any information from Nationwide that it would clearly be entitled to in discovery; nor would her attorneys, as it does not make any sense, and potentially subjects Mrs. Politz's case to prejudice. Mrs. Politz simply did not inform her attorneys that she had been prescribed antidepressants (prescribed for the first time in February 2008). There was no intentional failure to comply with any deadlines, nor was there a lack of diligence on Plaintiff's counsel's part. Mrs. Politz's attorneys were completely unaware of the fact that she had been prescribed antidepressants until the very same deposition (on November 3, 2008) where Nationwide learned of such, despite her attorneys sitting down and discussing her interrogatory responses with her at length and asking her specifically about whether she had sought treatment for her mental health. Clearly, there was no "strategic" reason for her not to divulge this information, which could actually help her case. If the Court has any doubt as to the veracity of Plaintiff or her counsel, it is ardently requested that a hearing be held as to same, as there has been no bad faith whatsoever on the parts of Mrs. Politz or her counsel, and it would be of great benefit to be able to clear the air with the Court. There is no intentional abuse, and Mrs. Politz should not be punished for failure to divulge this information any more than she already has. The Court has fully remedied any complained of "prejudice" to Nationwide by allowing Nationwide several additional months in which to explore this information, while disallowing Plaintiffs from simultaneously engaging in further discovery. Nationwide did so, and deposed Mrs. Politz's physicians ad nauseum, as well as deposing Mrs. Politz for a second time. Nationwide even deposed Plaintiff's primary physician, Dr. Babo, on *three* separate occasions in Slidell, Louisiana. Surely, any potential prejudice from

Mrs. Politz's failure to divulge that she was taking anti-depressants until November 3, 2008, has been cured. Nationwide is simply seeking to use this tardy disclosure as a tactical weapon to gut Plaintiff's emotional distress claim, despite its inability to identify any prejudice it will suffer at trial as a result of same.

2. Mrs. Politz did something similar in neglecting to divulge the name of her gynecologist, Dr. Greico, until her second deposition on March 24, 2009. Plaintiff's counsel asked Mrs. Politz to divulge **every doctor she had seen**, no matter for what purpose, but she apparently forgot to include her gynecologist. When *directly asked*, during her second deposition by Nationwide's counsel, Elizabeth Locke, Mrs. Politz remembered that she had also seen a gynecologist. The following exchange took place, which Nationwide only cites part of in its Response:

Q. Do you see a gynecologist regularly?

A. Yes, I do.

Q. Does your gynecologist ever prescribe anti-depressant medications for you?

A. I think possibly one time he might have prescribed something. Because I think Dr. Babo was out of the country or something and I saw him and I was having a problem. Seems like maybe once he did.

Q. And who is your gynecologist –

A. But not -- not as a habit.

Q. -- Who is your gynecologist, name?

A. Dr. Grecio.

Q. Can you spell that?

A. G-R-E-C-I-O, I think. Something like that.

Q. Do you recall when this might have occurred?

A. I don't remember.

Q. Would it have been after Hurricane Katrina?

A. Oh, yes.

Q. Would it have been in 2008?

A. Possibly.

Q. At this point again we – this name wasn't revealed to us in supplemental disclosures and so—

A. I hadn't thought about it.

Q. Well, just to –

A. And I'm not even sure it happened.

Q. -- Just to make the record clear. If there is a possibility that you were prescribed antidepressants by your gynecologist, and that's something that we have requested and are allowed to know under the rules. We would reserve our right to request those documents and reopen this deposition if need be.

MR. CARTER: Again, as Mrs. Politz just stated, that's the first time we've ever heard that name either, so.

THE WITNESS: What's that, Dr. Grecio?

MR. CARTER: (Nodded head affirmatively).

THE WITNESS: Well, I use him as a gynecologist. I never used him as a heart doctor or anything like that. But – and I don't remember for sure if it happened with him. I've been depressed for a long time. I've seen a lot of doctors for different reasons. I've been sick, been through heart surgery and a lot of stuff and I can't remember every little detail.

Q. (By Mrs. Locke) I – I completely understand. I'm not asking you to remember every little detail. Just recall what you can as you're sitting here today.

.....

MRS. LOCKE: So we would request that after the deposition you work with Mrs. Politz to get Mr. Grecio – Dr. Grecio's contact information so that we can secure medical records from him?

MR. CARTER: Certainly. Is it Grego? How do you spell that?

THE WITNESS: I think it's like G-R-E-A-C-I-O or something like that.

MR. CARTER: G-R-E-A-C-I-O?

THE WITNESS: He was in Slidell and moved to Covington.

MR. CARTER: Do you know his first name, Mrs. Politz?

THE WITNESS: I really don't.

MR. CARTER: Okay. Sorry, I didn't mean to jump in with questions.

....

EXAMINATION BY MR. CARTER:

Q. I'm just going to ask you one for my own--

A. Me?

Q. -- peace of mind, because we talked about it many times before. Other than Dr. Greico, any other doctors in the world that you can think of other than the ones we've already told to them?

A. No. And I would have turned him in if I had even thought about him. At the time, he was a gynecologist, had nothing to do with my heart and all that. So I was just thinking the line of my primary physician and the doctors that I used for heart conditions and stuff. I was thinking more of that. And I'm sorry about Dr. Grecio. I realize that that was like throwing a briar in there.

Q. That's all right, we understand you've been through a lot.

A. Yeah. It's been stressful for a long time.

Q. That's all I've got.

A. Okay, I'll try not to throw another one on you.

Q. Okay.

See Exhibit "A," Transcript excerpts from Second Deposition of Mrs. Politz, pp. 35-39, 140-141.

Because she forgot to divulge this earlier, however, Plaintiff has no objection whatsoever if Nationwide wants to exclude any testimony or evidence of treatment by Mrs. Politz's

gynecologist. If Nationwide would rather conduct an out-of-time deposition of Dr. Greico, Plaintiff certainly would have no objection to that either.

3. It should be clearly stated that **Mrs. Politz has always made clear that she was seeking damages for emotional distress, mental anguish, anxiety and stress caused by Nationwide's conduct.** Nationwide has known this from the start. The *only* thing that Mrs. Politz failed to divulge until her first deposition in November 2008 is the fact that she had been prescribed anti-depressants. Mrs. Politz did not divulge even to her attorneys that she was taking anti-depressants. Can Nationwide attempt to use that information to impeach her credibility at trial? Certainly it can. However, Mrs. Politz should not be subject to the severe sanctions sought by Nationwide simply because she forgot something in her interrogatory responses and remembered it during her deposition. Nationwide has fully explored the issues at this point, and it has now had this information in hand for almost **six months**.

4. As to the remaining issues raised in Plaintiff's Motion for Reconsideration and/or Clarification, the arguments are fully expressed within that Motion, with the indisputable authority cited therein making clear that corroborating medical testimony is *not required* in order for a plaintiff to recover for mental anguish and emotional distress damages.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests the Court to reconsider and/or clarify its [252] Memorandum Opinion on Defendant's Motions For Summary Judgment and to Strike Plaintiffs' Claims for Emotional Distress and [253] Order with reference to same in accordance with the arguments set forth by the Plaintiff.

Plaintiff prays for such other and further relief as may be deemed appropriate.

Respectfully submitted,  
HELEN J. POLITZ  
BY: DENHAM LAW FIRM

BY: s/Kristopher W. Carter  
KRISTOPHER W. CARTER  
MS Bar No. 101963

CERTIFICATE

I, KRISTOPHER W. CARTER, do hereby certify that I electronically filed the above and foregoing document with the Clerk of the Court utilizing the ECF system, which provides notification of said filing to the following:

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SO CERTIFIED on this the 28<sup>th</sup> day of April, 2009.

s/Kristopher W. Carter  
KRISTOPHER W. CARTER

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1 Q. Do you recall the name of the first  
2 antidepressant medication that you took?

3 A. No, I don't.

4 Q. Could it have been Prozac?

5 A. Prozac is what I'm on now. That's when  
6 they made a change. When the first one wasn't  
7 helping then they made it to Prozac.

8 Q. What about a drug named Klonopin?

9 A. That might have been the first one. I'm  
10 not sure.

11 Q. So you're currently taking Prozac?

12 A. It comes under a different name, but it's  
13 Prozac in a generic. I take everything in generics.

14 Q. How frequently do you currently take  
15 Prozac?

16 A. I take one pill a day.

17 Q. Do you know the dosage?

18 A. No, I don't.

19 Q. Celexa, does that antidepressant name mean  
20 anything to you?

21 A. That could have been the first one. I'm  
22 not sure.

23 Q. Do you still take a medication called  
24 Celexa?

25 A. No. I don't believe I do. I take quite a

1 A. Dr. Grecio.

2 Q. Can you spell that?

3 A. G-R-E-C-I-O, I think. Something like  
4 that.

5 Q. Do you recall when this might have  
6 occurred?

7 A. I don't remember.

8 Q. Would it have been after Hurricane  
9 Katrina?

10 A. Oh, yes.

11 Q. Would it have been in 2008?

12 A. Possibly.

13 Q. At this point again we -- this name wasn't  
14 revealed to us in supplemental disclosures and so --

15 A. I hadn't thought about it.

16 Q. Well, just to --

17 A. And I'm not even sure it happened.

18 Q. -- Just to make the record clear. If  
19 there's a possibility that you were prescribed  
20 antidepressants by your gynecologist, and that's  
21 something that we have requested and are allowed to  
22 know under the rules. We would reserve our right to  
23 request those documents and reopen this deposition  
24 if need be.  
25

1 few medications, but I don't think I'm taking that  
2 one.

3 Q. Let me hand you -- aside from Dr. Babo, is  
4 this any other doctor who would have prescribed you  
5 antidepressants?

6 A. No.

7 Q. So he would have been the only physician  
8 to prescribe you antidepressant medication?

9 A. As far as I know, yes. As far as I can  
10 remember. He was -- he's my primary physician.

11 Q. Do you see a gynecologist regularly?

12 A. Yes, I do.

13 Q. Does your gynecologist prescribe  
14 antidepressant medications for you?

15 A. Not normally.

16 Q. Do you have any recollection of your  
17 gynecologist ever prescribing antidepressant  
18 medications for you?

19 A. I think possibly one time he might have  
20 prescribed something. Because I think Dr. Babo was  
21 out of the country or something and I saw him and I  
22 was having a problem. Seems like maybe once he did.

23 Q. And who is your gynecologist --

24 A. But not -- not as a habit.

25 Q. -- Who is your gynecologist, name?

1 MR. CARTER: Again, as Mrs. Politz just  
2 stated, that's the first time we've ever heard that  
3 name either, so.

4 THE WITNESS: What's that, Dr. Grecio?

5 MR. CARTER: (Nodded head affirmatively).

6 THE WITNESS: Well, I use him as  
7 gynecologist. I never used him as a heart doctor or  
8 anything like that. But -- and I don't remember for  
9 sure if it happened with him. I've been depressed  
10 for a long time. I've seen a lot of doctors for  
11 different reasons. I've been sick, been through  
12 heart surgery and lot of stuff and I can't remember  
13 every little detail.

14 Q. (By Mrs. Locke) I -- I completely  
15 understand. I'm not asking you to remember every  
16 detail. Just recall what you can as you're sitting  
17 here today.

18 A. It seems like possibly I may have talked  
19 to him one time, I'm not sure. And it seems like he  
20 said, yeah, I could help you out with that until  
21 your doctor comes back or something to that. But  
22 I'm not sure and I don't remember what medication it  
23 was. I don't even remember if it was for  
24 depression.

25 Q. How regularly do you see your

gynecologist?

A. Once or twice a year whenever I need to. As a routine once a year. And if I have a problem I see him.

Q. Thinking back, when was the last time you saw Dr. Grecio?

A. I would say probably about six months ago, probably. Give or take a month either way.

Q. During this last encounter is that when this occurrence might have happened?

A. I don't remember.

MRS. LOCKE: So we would request that after the deposition you work with Mrs. Politz to get Mr. Grecio -- Dr. Grecio's contact information so that we can secure medical records from him?

MR. CARTER: Certainly. Is it Grego? How do you spell that?

THE WITNESS: I think it's like G-R-E-A-C-I-O or something like that.

MR. CARTER: G-R-E-A-C-I-O?

THE WITNESS: He was in Slidell and he moved to Covington.

MR. CARTER: Do you know his first name, Mrs. Politz?

THE WITNESS: I really don't.

MR. CARTER: Okay. Sorry I didn't mean to jump in with questions.

MRS. LOCKE: That's okay. I'm just trying to get this --

THE WITNESS: I'm sure it's on my medicine bottle at home.

MRS. LOCKE: -- information.

Q. (By Mrs. Locke) Is he with Ochsner?

A. Yes, he is.

Q. I'm going to hand you what's been marked as Defense Exhibit 226.

(Exhibit 226 marked for identification.)

Q. If you could flip through this and tell me if you recognize it?

A. I do.

Q. And could you tell me what it is?

A. Yeah. It's things that I lost in my house, the contents when the storm hit.

Q. Did you prepare this list?

A. Yes, I did.

Q. Is this your handwriting?

A. Yes.

Q. Can you tell me when you prepared this

list?

A. I don't have a date on it? It was sometime in 2008, because I couldn't find the original one.

Q. The front page of Defense Exhibit 226 says list of contents \$100,000. Can you tell me what the \$100,000 reflects?

A. Everything in the house. My furniture, my clothes, all appliances.

Q. So the \$100,000 --

A. Beddings, everything.

Q. -- this would be the total amount that you're claiming Nationwide owes you for contents in your home?

A. Even my medicines. I had a few with me, but I have a lot that I lost. I was in Alabama and I had to reestablish everything. So I lost everything, except a couple pair of cutoffs and a pair a thongs that I took with me.

Q. Just as a reminder, we did this in November during the first part of this deposition. At the very bottom of the page you'll see a number that says Politz and on the first page of Defense Exhibit 266 it says 1195. That's what we refer to as Bates numbers.

A. Okay.

Q. So I'm going to refer Bates number 1195, for example, to identify certain pages. Okay?

A. Okay.

Q. So if you could turn to Bates number 1196, it's actually the second page of Defense Exhibit 226.

A. Okay.

Q. It's kind of hard to read. And the top of the page is entitled, sun room used as dining room; do you see that?

A. Yes.

Q. So is this your list of the items located in your sun room?

A. To the best of my knowledge, yes.

Q. At the bottom you have \$15,000; do you see that?

A. Uh-huh (Affirmative Response).

Q. How did you arrive at that number?

A. Trying to -- just figuring out how much I paid for different things, each one of those things and it roughly -- it come to about that. I have no receipts, no nothing to go by, so.

Q. Did you take any other notes to scratch out, to add up to \$15,000?

1 understanding is after Hurricane Katrina?

2 A. Anything after August 29th is a portion.  
3 I mean, before was mine. Whatever. I'm really not  
4 expecting them to pay this one. It's a little hard  
5 to define that.

6 Q. So you would agree with me that on both  
7 Defense Exhibit 223 and Defense Exhibit 225 we've  
8 looked at a lot of different examples of bills that  
9 you're not expecting Nationwide to pay for?

10 A. You got a lot in here that I don't expect  
11 them to pay for, right.

12 Q. And based on this submission, how should  
13 we determine which of these receipts we should  
14 consider and which receipts we should not consider?

15 MR. CARTER: Objection to form,  
16 foundation, to the extent it calls for a legal  
17 conclusion. And the extent it asks her to tell  
18 Nationwide how to do its job.

19 A. Repeat your question again please?

20 Q. (By Mrs. Locke) Do you think it's fair to  
21 ask Nationwide to hold it to trying to figure out  
22 which of these receipts you're expecting us to pay?

23 MR. CARTER: Same objections.

24 A. I can go through that book and highlight  
25 what I expect them to pay and then you go over it

1 (Off the record.)

2  
3 VIDEOGRAPHER: We're back on record at  
4 12:28.

5 Q. (By Mrs. Locke) Mrs. Politz, I thank you  
6 for your patience. At this time I don't have any  
7 further questions for you.

8 A. You're welcome.

9  
10 EXAMINATION BY MR. CARTER:

11 Q. I'm just going to ask you one for my own

12 --

13 A. Me?

14 Q. -- peace of mind, because we talked about  
15 it many times before. Other than Dr. Greico, any  
16 other doctors in the world that you can think of  
17 other than the ones we've already told to them?

18 A. No. And I would have turned him in if I  
19 had even thought about him. At the time he was a  
20 gynecologist, had nothing to do with my heart and  
21 all that. So I was just thinking the line of my  
22 primary physician and the doctors that I used for  
23 heart conditions and stuff. I was thinking more of  
24 that. And I'm sorry about Dr. Greico. I realize  
25 that that was like throwing a briar in there.

1 again with me if you'd like.

2 Q. But based on what we have before us, do  
3 you think it's fair for Nationwide to --

4 A. To pay all of them in there? No.

5 Q. Do you think it's fair for Nationwide to  
6 try and figure out what you're expecting us to pay.

7 MR. CARTER: Same objections.

8 A. I don't know what Nationwide's got on  
9 their mind.

10 Q. (By Mrs. Locke) Do you think it's fair?

11 MR. CARTER: Same objections.

12 A. Sometimes.

13 Q. (By Mrs. Locke) So you think that these  
14 hundreds of pages of receipts, many of which you've  
15 said as we sit here today that you're not expecting  
16 us to pay, yet have been submitted to Nationwide,  
17 you think it's fair for us to --

18 A. I think if Nationwide using common sense  
19 they can look at it and tell the different of what  
20 need to pay and what they don't need to pay.

21 MR. CARTER: Same objections.

22 MRS. LOCKE: Okay. I'm going to take --  
23 let's go off the record for a second.

24 VIDEOGRAPHER: Off record at 12:20.

1 Q. That's all right. We understand you've  
2 been through a lot.

3 A. Yeah. It's been stressful for a long  
4 time.

5 Q. That's all I've got.

6 A. Okay. I'll try not to throw another one  
7 on you.

8 Q. Okay.

9 VIDEOGRAPHER: We're going off record at  
10 12:29. This completes the deposition for today.

11  
12 (Off the record at 12:29)