

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 DEFENDANT'S RESPONSE TO PLAINTIFF'S [398]
MOTION FOR REVIEW OF MAGISTRATE JUDGE'S ORDER**

COMES NOW the Plaintiff, HELEN J. POLITZ, by and through her attorneys of record, DENHAM LAW FIRM, and would file this her Plaintiff's Reply to Defendant's Response to Plaintiff's [398] Motion for Review of Magistrate Judge's Order, and in support thereof would show as follows:

I.

Plaintiff apologizes in advance for the lengthy response, but prays that the Court bear with her in order to clear the air as to the issues discussed herein. Counsel for Nationwide on July 21, 2009 questioned Mrs. Politz regarding her emotional claims against Nationwide to which Mrs. Politz responded truthfully and factually as follows:

Q (By Ms. Locke) Regarding your claim for emotional distress, can you tell me specifically what symptoms you've had and the time periods in which you suffered those symptoms for which you're claiming Nationwide is responsible for?

A. I became stressed the minute I found out my home was gone. I saw it on the -- on TV in Alabama. And they had an up-in-the-air shot, and they went over Long Beach Oaks. And I seen that every house there was gone in that little area. So, I knew mine was gone too. And that was upsetting. But, you know, we still thought Nationwide was going to take care of us. So, I really didn't get that depressed over it. It was stuff. It wasn't our life. I was happy that John and I and my little dog had gotten out okay. But once Nationwide started messing around, I got a suspicion that they were trying

to get out of it because of the way I was being treated by them. I asked them when they went out to review it to -- when they sent people out, I asked them to let me know in advance, and they never did. They would call me after it was done. It looked like they were avoiding me. And that was upsetting. But when I got the letter of denial, I went into depression. And my husband, he was worse, and he -- I felt terrible, and then I would see him and how he was reacting to it, and it was just very depressing for me for myself. I didn't know what we was going to do. I didn't have the answers. I cried. I had a lot of headaches. I went around crying all the time. I didn't know what I was going to do. We was living for the moment. We had no future, no plans, no anything. And we kept hoping that Nationwide would reconsider. We kept hearing on the news that some of the insurance companies was reconsidering here and there. We hoped they would. But after a couple of years, we finally -- I did, I got the feeling that, hey, they are not going to do anything unless we sue them and go through a court of law, and do what we got to do. So, that's -- I felt like they owed us, and I was very depressed. I had no future at all. I still don't know where I'm going, four years later. And I feel they owe me. And it was very depressing. And I was crying all the time and had severe headaches from crying. And it just made me very nervous and tense and short-tempered with people that I loved. And I didn't like the way it reacted on me.

Q. Do you still have crying spells today?

A. Sometimes. They're more controlled.

Q. What about headaches?

A. I still have a lot of headaches.

Q. So, aside from the crying and headaches, is there anything else that you can tell me?

A. I have anger because I keep wondering why that happened. I have anger because of what they put my husband through. Us living in that little FEMA trailer for six months was like a torture chamber. To him it was like a jail cell. He was claustrophobic, and it was just -- it was horrible to watch a man his age and in his health condition have to live the last few months of his life in the conditions he lived in. And I feel like that Nationwide was -- they may have not hurt his health as much as his depression, but they took enjoyment away from him. We couldn't enjoy anything. We didn't even feel like going to see a movie. We was just too depressed to enjoy life at all. And he died like that. And I feel like that was Nationwide's fault for not taking care of us the way they should have. I think if we had money to work with, we could have went on with our life. We could have planned, we could have worked at it, and he would have been happier. At least he

had a goal, something to look forward to. But the way it all happened, all he had was more depression ahead of him. And then his health started failing him on top of all that. And I don't know if it was due to the depression or just his health conditions, but it sure didn't help. And seeing him go through that, and then losing him depressed me terribly. And I had a lot of tightness in my chest over months before my surgery. I thought it was just nerves. I don't know if it was nerves or since I had to have a heart problem, whether it was from my heart, but it was a lot of tightness and aching in the chest. And I just felt bad. I couldn't sleep at night. I cried all the time. And like I said, headaches. I got a headache right now just from going through this today. But when you've worked hard all your life, and you have a spouse that's done the same, and you've got goals that you're working for and you think you're covered, then you find out that it's not happening, you're not covered, or so to say. The help that you were planning on that you were paying for all those times, it's not there. It's very depressing. And I cried a lot. I couldn't stop crying. That's why I got help from the doctors, so that I could talk to the doctors to make sense with them when they were trying to tell me something about my husband's condition and that type of thing.

Q. At this point I don't think I have any further questions for you. I tender the witness.

(Exhibit "A," Deposition excerpts from Mrs. Politz's 7/21/09 deposition, pp. 195-200.)

II.

Dr. Webb cannot rebut Mrs. Politz's real life testimony.¹ Notably, his report does not state that Mrs. Politz did not suffer emotional distress, mental anguish or depression (non-clinical depression) as a result of Nationwide's conduct. In fact, Mrs. Politz's own testimony makes clear that she did suffer symptoms ranging from persistent crying and anxiousness to severe headaches from the crying. Further, Dr. Webb has not lived through her ordeal and he cannot place himself in her shoes. Dr. Webb was not there during the time Plaintiff was living through

¹ Notably, Dr. Ginsburg certainly corroborated Mrs. Politz's testimony in his report, and states as follows in his report (which was provided to Nationwide approximately seventeen days before Nationwide provided Webb's report to Plaintiff's counsel): "[Mrs. Politz] believes that her life has been out of her control since Hurricane Katrina. She believes that the insurance company's failure to pay for the damages to her home contributed to her husband's depression and her depression and present financial and emotional difficulties. These are data driven rationally based feelings which directly contribute to her depression and anxiety. A separate diagnosis of an anxiety disorder [300.02] can be rendered based upon this clinical evaluation and the MMPI-2 findings." Also notable is the fact that Nationwide's counsel represented to Plaintiff's counsel that she did not even *want* a copy of Dr. Ginsburg's report. Nationwide employs a strategy of "ball-hiding" and willful blindness in this litigation.

Nationwide's actions nor is Dr. Webb suffering as Mrs. Politz continues to suffer now as a result of Nationwide's actions. Dr. Webb cannot rebut facts. Dr. Webb can only offer his opinion as to diagnoses of *medical* conditions, which certainly are not necessary elements of proof for a mental anguish/emotional distress claim under Mississippi law. However, there is a substantial likelihood that the jury, without the benefit of Dr. Ginzburg's testimony regarding Mrs. Politz's mental condition as a result of Nationwide's conduct, will be prejudiced/biased by an unopposed *expert* opinion. With Nationwide's late designation of a mental health expert, good cause has unquestionably arisen for Plaintiff to be allowed to designate a mental health expert of her own: Dr. Ginzburg.

III.

Plaintiff did **not** fail to timely designate a mental health expert. Plaintiff has very timely responded to *Nationwide's* untimely request for a mental health expert, which Nationwide only requested after it fully knew, through deposition testimony and pleadings, that Dr. Babo **did not have an opinion**² on Mrs. Politz's mental and emotional claims against Nationwide.

This Honorable Court stated in its [293] Memorandum Opinion and Order granting Plaintiff's Motion for Clarification and/or Reconsideration in this cause:

Under applicable Mississippi substantive law, evidence of mental anguish and emotional distress is admissible in an action for breach of contract if two criteria are met. These criteria were established in *University of Southern Mississippi v. Williams*, 891 So.2d 160, 172-73 (Miss. 2004):

We take this opportunity to clarify the burden for recovery of mental anguish and emotional distress in breach of contract actions. Plaintiffs may recover such damages without proof of a physical manifestation. Furthermore, expert testimony showing actual harm to prove mental injury is not always required.

² Nationwide misrepresents that Dr. Babo was of the opinion that Nationwide's conduct did not adversely affect Mrs. Politz, when a review of his complete testimony makes crystal clear that he had no opinion whatsoever on the issue. In fact, he testified that he would *expect* a person in Mrs. Politz's circumstances with Nationwide to suffer mental anguish. See Exhibit "B," Excerpt from April 1, 2009, deposition of Dr. Babo pp. 46 and 51.

However, the plaintiff must show (1) that mental anguish was a foreseeable consequence of the particular breach of contract, and (2) that he or she actually suffered mental anguish. Such generalizations as “it made me feel bad,” or “it upset me” are not sufficient. A plaintiff must show specific suffering during a specific time frame. These requirements are not different from the requirements to establish physical pain and suffering.

Dr. Babo did not offer any opinion on Plaintiff’s mental and emotional claims against Nationwide. As previously stated in Plaintiff’s prior motions and responses, Dr. Babo will **not be rendering an expert opinion**, and has **not been designated as an expert witness** by the Plaintiff. Plaintiff really does not need to call Dr. Mark Babo as a witness at all, as Mrs. Politz herself can testify as to why she asked him for antidepressants. Plaintiff has previously fully explained why she did not designate a medical expert in that she never originally intended to call a medical expert. She intended to use her own factual recollection of how Nationwide has made her feel in the past and continues to make her feel. Under Mississippi law, Plaintiff is not required to call an expert witness to prove her burden that she has suffered mental and emotional harm at the hands of Nationwide. However, this new designation of an expert witness by Nationwide creates good cause for Plaintiff to move for leave to designate her own. The Magistrate erred by implicitly finding that no such good cause existed. Further, the Order establishing the new discovery period made no mention at all of whether new expert deadlines would be put into place, but Nationwide was allowed to designate one anyway, even if it was through the “back door” of Rule 35. There simply should not be a double standard disallowing Plaintiff from doing what she could have done had Nationwide timely designated Webb: moving for leave to designate an expert of her own in the same field.

IV.

Nationwide has known from the inception of this litigation Plaintiff will be providing her own lay testimony regarding her mental and emotional claims against Nationwide. There is no “if” Mrs. Politz opens the door and claims that it was Nationwide’s partial denial of her insurance claim that caused her alleged emotional distress, the door is now and has always been open and will continue to be open through the conclusion of this matter, as Plaintiff made such claims in her Complaint. Plaintiff should be allowed to fully utilize the professional medical opinion of Dr. Ginzburg³ during her case in chief.

V.

Mrs. Politz’s counsel did not approach Dr. Ginzburg regarding performing an independent psychological evaluation on Mrs. Politz until after Nationwide filed its Motion for Mental Examination of Plaintiff Pursuant to Federal Rule of Civil Procedure 35. Dr. Ginzburg was able to perform an evaluation of Mrs. Politz expeditiously and provide his evaluation to counsel within days of completing the evaluation and in less time than was required by Dr. Webb to provide his evaluation to counsel. Dr. Ginzburg performed an independent evaluation on Mrs. Politzes’ mental health and the effect of Nationwide’s conduct on her mental health. Interestingly, Dr. Ginzburg’s report conflicts with Dr. Webb’s as to whether Mrs. Politz suffered any ill effects from Nationwide’s conduct.

³ Contrary to Nationwide’s assertion that Dr. Ginzburg is not a treating physician, he has become so. When he first saw Mrs. Politz and learned the extent of her mental and emotional issues, he recommended that she continue to see him if she needed to. After her most recent deposition, Mrs. Politz made another appointment with Dr. Ginzburg to continue treatment due to the fact that she ran out of medication and her crying spells increased to the point of becoming unbearable. Dr. Ginzburg prescribed Celexa to Mrs. Politz and left her instructions to follow up with him in the near future.

VI.

Nationwide makes another misrepresentation to this Court that should be cleared up, concerning the ruling of the Magistrate Judge. Magistrate Judge Walker's June 1, 2009, [348] ruling states, "The Court has reviewed prior proceedings, particularly the orders of the District Judge ruling that although Mrs. Politz will not be allowed to 'venture her opinion that she suffered the medical condition of clinical depression,' she would not be precluded from testifying 'about the effect the defendant's conduct had on her emotionally and mentally.'" [293] It therefore appears that Plaintiff's mental distress claim remains viable, although **unsupported by expert medical evidence.**" [emphasis added]. Nowhere in the Magistrate Judge's [348] ruling does it state "that Nationwide was entitled to conduct an independent mental evaluation of Plaintiff in light of the fact that Nationwide has repeatedly sought, but had been denied access, to a complete picture of Plaintiff's mental health." as incorrectly alleged by Nationwide. (June 1, 2009, [348] ruling is attached hereto as Exhibit "C".) Judge Walker's ruling also makes clear that there was never any expert opinion to rebut, which Nationwide purportedly "needed" Dr. Webb to do. Nationwide claims that it never had a "complete picture" of Plaintiff's mental health. *Mrs. Politz* did not even have a complete picture of her mental health, as she is not a mental health professional, but simply an elderly woman who has been through a lot. Until Dr. Ginzburg evaluated her, *Mrs. Politz had never been evaluated by a medical mental health professional.* She had always known how Nationwide's conduct made her *feel* (and readily responded to questions about that in her initial depositions; which again, Nationwide did not appear to want to delve into too deeply), but she had *never* consulted a mental health professional about it beyond asking Dr. Babo (who is only a general practitioner) for medication

when her husband's illness and death made her stress levels unbearable. Nationwide's arguments are a farce, and it simply seems to want to continue harassing Mrs. Politz.

VII.

Nationwide's strategy for the past several months has been to try and turn the Court against Mrs. Politz, and curb favor for itself, by painting her as a "discovery abuser." In fact, Nationwide mentions this in pretty much every pleading it has filed in the past several months (and repeats the same examples every time). This is purely gamesmanship, brought on by Nationwide's smelling of "blood in the water" with the issue. Surely, not even Nationwide's counsel actually believes that Mrs. Politz has intentionally done anything wrong at all in the discovery process. Nationwide's motion is yet another incidence of Nationwide attempting to have Plaintiff punished for using the good faith "abundance of caution" approach to fully and thoroughly responding to discovery. All the while, as pointed out to the Court herein, Nationwide has persisted in across-the-board obstruction and blatant *material* discovery abuses of its own. Every time Mrs. Politz has brought any new information to her attorneys, be it the name of someone who may have even a marginally remote chance of relevant knowledge or the name of a pharmacy where she may have purchased her prescriptions, her attorneys have immediately provided the information to Nationwide. Plaintiff's counsel have gone out of their way to provide supplements to Mrs. Politz's disclosures in this matter.

Nationwide, on the other hand, has uninhibitedly and wholeheartedly engaged in outright obfuscation and stonewalling, and **has never even once during this litigation supplemented its initial disclosures as to witnesses.** Nationwide named the following *seven* persons on **May 7, 2008**: Martin Gatte, Pat Hagan, John French, Duane Collins, John Kitch, Bryan Phillips, Pressley Campbell. Nationwide has **never** supplemented its disclosures since May 7, 2008, with new

witnesses, despite the fact that *dozens* of witnesses were subsequently discovered during depositions and other parts of this litigation. According to the Court’s docket, Nationwide’s efforts at “good faith disclosure” are as follows:

- May 7, 2008 – Nationwide submits prediscovery disclosures, which name only seven witnesses: Martin Gatte, Pat Hagan, John French, Duane Collins, John Kitch, Bryan Phillips, Pressley Campbell.
- August 8, 2008 – Nationwide serves responses to Plaintiff’s First Set of Interrogatories and Requests for Production,⁴ which is composed of virtually nothing but objections.
- July 6, 2009 – Nationwide serves responses to Second Set of Interrogatories and Requests for Production, which are again far from complete and composed primarily of objections.

That’s it. No supplemental disclosures of witnesses, ever. Basically the only thing Nationwide ever supplemented with (aside from the recent production of twelve pages of “confidential” documents Nationwide should have produced two years ago in response to Plaintiff’s originally propounded discovery) is repetitive documents from the claims file. Nevertheless, Nationwide shouts from the rooftops about *Plaintiff’s* discovery abuses.

Which fact witnesses did *Plaintiff* have to discover on her own, because Nationwide ***never actually disclosed them*** as such? The following fact witnesses, among numerous others, were never actually disclosed by Nationwide:

1. Charles Higley, the storm manager for Hurricane Katrina, in charge of the activities post-Katrina in the Coastal Counties of Mississippi;
2. Roger Woods, the “claims coverage committee,” who is the *very person* who decided to deny Mrs. Politz’s specific claim;
3. Doug Theiss, Roger Wood’s superior, who we still know little to nothing about, but who was apparently heavily involved in the Katrina slab strategy (he is apparently a lawyer, and Nationwide chose not to disclose him apparently for this reason, which is not its prerogative to do);

⁴ On approximately four other occasions, Nationwide provided supplemental document production which, with the exception of the newly produced “confidential documents” on July 24, 2009, contained virtually nothing new of substance whatsoever. Nationwide never filed notices of same with the Court, so they do not appear on the docket.

4. Mike Wehrli, the person who *created* (and was in charge of) the reevaluation process leading to a partial payment on Mrs. Politz's claim in 2007;
5. Ken Ensco, who was in charge of organizing and planning the Hurricane Katrina response on behalf of Nationwide;
6. The members of the ten-person team working under Wehrli responsible for generating the estimate upon which Mrs. Politz's partial payment was based;
7. George Spedding, who conducted the Hurricane Katrina planning meeting;
8. Jeff Gilbert and Mary Mundt, management personnel who also attended said planning meeting;
9. Bob Stayton, who is management personnel with knowledge of the only slab claim upon which Nationwide initially paid policy limits;
10. Tim Marshall of Haag Engineering, who conducted Nationwide's "Is it Wind or Is it Water" training seminar for Hurricane Katrina;
11. Phil Klenkel and Steve Songe, the site managers for the Mississippi coastal counties during Hurricane Katrina;
12. Tom Madjar, the team lead presiding over the Politz claim;
13. Carlos Payne, the individual who sent the denial letter to Mrs. Politz;
14. Richard Dougherty, Roger Woods' counterpart who conducted the interviews to and selected the engineers to evaluate Hurricane Katrina claims.

These are at least twenty-three material fact witnesses *never disclosed* by Nationwide. Nationwide *still* has not completed a privilege log in accordance with the Local Rules.⁵ This is just a small sampling. Nationwide merrily hides material witnesses while simultaneously complaining about Plaintiff forgetting to name her gynecologist, who records indicate knows nothing at all about this case, in her own disclosures. The irony and injustice could not be greater.

⁵ Plaintiff recently filed a Motion to Compel with regard to some of Nationwide's discovery abuses.

Plaintiff, on the other hand, has done her very best to comply with all of the Federal Rules of Civil Procedure in the utmost good faith, despite her occasional absent-mindedness.⁶ She has responded to Nationwide's broad and tedious discovery in a timely manner, without hiding behind absurd objections as Nationwide does.⁷ Nationwide has continually mentioned what it refers to as Plaintiff's "discovery abuses," and made false and misleading statements in its motions all of which are aimed at putting up a smokescreen to pull the attention away from the real issues in this litigation. All the while, Nationwide has been heartily and intentionally abusing the discovery process, and hiding valuable information which should have been disclosed to Plaintiff long ago. If anyone should be punished for discovery abuses, it is Nationwide.

Nationwide somehow believes it is acceptable for Nationwide to continue to gather documents it may or may not produce to Plaintiff in response to Plaintiff's discovery requests after the end of discovery deadline in this cause which ended on July 17, 2009, while simultaneously complaining about Plaintiff producing documents *within* the discovery deadline. In response to Plaintiff's good faith letter Nationwide's counsel responded on July 22, 2009, via email,

As we noted in our initial discovery responses, we reserved the right to supplement our discovery responses. We are working diligently on putting together a privilege log, as well as producing additional documents that are responsive to Plaintiff's request for documents. When they are ready, I will be

⁶ And forgivable, in light of the terrible ordeals she has been through since August 28, 2005, including the total destruction of everything she owned, being paid virtually nothing for almost two years, being forced to move several times (including several months living in a FEMA trailer she described as a "torture chamber"), watching her husband become depressed and slowly decline in health until he ultimately died during this litigation, undergoing open-heart surgery, going back to work full time, undergoing bladder surgery, and so forth. And yet Nationwide wants to paint her as somehow dishonest or nonforthright. Nationwide engages in gamesmanship at its most despicable, and this to a policyholder that has paid its premiums faithfully for years and years.

⁷ See, for example, Exhibit "D," Nationwide's responses to Requests for Admission (peppered with objections), in which Nationwide objects to ambiguity and vagueness of its own policy language. Its objections are ridiculous, and typical of its behavior in this litigation.

happy to send them to you electronically, so that there will not be the additional delay for the mail.

(See email attached hereto as Exhibit “E”) Nationwide’s counsel later on July 24, 2009, agreed to produce “additional documents that relate to the directives and guidelines Nationwide adjusters used in calculating the alternative wind estimate (“AWE”) payment for Mrs. Politz’s property” if Plaintiff would agree to Defendants requests for confidentiality relating to the documents. Nationwide did produce some very few documents pursuant to the confidentiality agreement to Plaintiff on Friday, July 24, 2009 (again, after the close of discovery). Nationwide happily and uninhibitedly engages in discovery abuses while Plaintiff continues to act in good faith to get information to Nationwide in as timely a manner as possible.

Plaintiff, throughout the course of this litigation, every time she has discovered additional evidence or the name of a potential witness who had even a remote chance of having relevant information, has disclosed same to Nationwide. Plaintiff’s discovery and disclosures are as follows:

- June 18, 2008, Plaintiff provided her initial Pre-Discovery Disclosures, Answers to Interrogatories and Responses to Requests for Production to Defendant.
- July 16, 2008, Plaintiff supplemented her disclosures providing Plaintiff’s expert reports and supporting documents as required by Federal Rules of Civil Procedure and the names and addresses of potential witnesses Mike Purvis and Daniel Schroeder appraisers. (Appraisals were provided to Defendant with Plaintiff’s initial Pre-Discovery Disclosures)
- October 29, 2008, Plaintiff supplemented her disclosures providing names of potential witnesses recently learned about from the October 28, 2008, Nationwide’s designated 30(b)(6) deposition of Charles Higley: Roger Woods, Bob Stayton and Charles Higley⁸; and the names of other potential witnesses recently discovered who may have potential relevant information: Ann Faulk, MWUA and Audubon Insurance (Mrs. Politz spoke to Ms. Faulk and found out her wind claim had been paid). Plaintiff also provided the name of a potential witness, Butch Loper, who Plaintiff notified Defendant she would not be calling as a witness at the trial.

⁸ These individuals also were **never** disclosed by Nationwide in its discovery responses as fact witnesses with knowledge of discoverable information.

- Plaintiff filed her Notice of Issuance of Subpoena Duces Tecum to MWUA and Audubon on October 29, 2008. Nationwide filed Motion to Quash the Subpoena Duces Tecum on November 11, 2008. The Court denied Nationwide's motion on December 8, 2008.
- November 14, 2008, Plaintiff supplemented her Pre-Discovery Disclosures providing names of potential witnesses Carl Hamilton and Kevin Taylor and the letters written by these witnesses recently learned about from the November 7, 2008 deposition of Ted L. Bidy (which Nationwide already had in its possession from previous litigation). Plaintiff also produced receipts and other documents she has recently located due to her numerous moves of her residence. Plaintiff supplemented her responses to Interrogatories and Requests for Production on this date.
- The Court granted Plaintiff's motion to allow supplement to designation of experts to include the letters authored by Carl Hamilton and Kevin Taylor (whom Nationwide was well aware of from at least the time of Ted Bidy's deposition, and before that, in reality, due to the names having come up in previous litigation).
- December 9, 2008, Plaintiff supplemented her disclosures, providing additional receipts and other documents including subpoena response documents recently received from MWUA. Plaintiff also listed names of potential witnesses she had gotten from her neighbor's claim: Chance Brandt adjuster for MWUA, three witnesses who had provided statements to MWUA, and Terry Gandour (a Coldwell Banker real estate agent as requested by Defendant during Plaintiff's November 2008 deposition).
- In its [166] Order the Court continued the trial of this matter. Nationwide received a significant extension of the discovery deadline, and conducted several depositions during that period, including a second deposition of Mrs. Politz (while Plaintiff was simultaneously forbidden from engaging in discovery). In the Court's Order, Mrs. Politz was to provide the names of her treating physicians to Nationwide. Immediately upon Mrs. Politz turning over these names to her attorneys, Plaintiff's counsel immediately turned the materials over to Nationwide, and simultaneously moved the Court to allow them to supplement their discovery responses with same. The Court ultimately allowed the supplement, as was fully within its discretion, and gave Nationwide plenty of time to explore the newly disclosed items.
- January 30, 2009, Plaintiff supplemented her disclosures with the names of her medical providers and physicians since August 29, 2005. Plaintiff also supplemented her responses to Interrogatories with this same information.
- June 8, 2009, Plaintiff provided Defendant with responses to the Interrogatories and Requests for Production newly propounded by Defendant.
- June 12, 2009, Plaintiff supplemented her disclosures providing documents in response to Defendant's new discovery propounded on May 22, 2009, photographs of the interior of Plaintiff's home prior to August 29, 2005, home loan statements, contents list with

additional detailed information requested by Defendants, warranty deed, tax returns, list of personal property purchases, Plaintiff's employment offer, and documents in Plaintiff's possession regarding the purchase of her home in Gulfport. Plaintiff also produced a copy of the check to Cheryl Magandy (a woman she rented a lot from at some point after the storm) and an invoice for DMD Services that Plaintiff located while searching for financial documents requested by Defendant's new discovery; Plaintiff also produced an updated, itemized statement of the cost of litigation through June 1, 2009. Plaintiff provided Defendant with responses to the Interrogatories and Requests for Production newly propounded by Defendant.

- June 18, 2009, Plaintiff supplemented her disclosures providing additional documents in response to defendant's new discovery, including documents from Plaintiff's financial institutions, Walgreen's and borrower's copies of documents for the purchase of Plaintiff's home in Gulfport. Plaintiff also supplemented her responses to the Requests for Production newly propounded by Defendant.
- June 24, 2009, Plaintiff supplemented her disclosures providing the name of a potential witness, Mike Wehrli,⁹ employed by Nationwide and requested dates for Mr. Wehrli's deposition from Nationwide's counsel. Plaintiff's counsel discovered Mr. Wehrli's possible knowledge of relevant facts in the February 6, 2009, deposition of Roger Woods,¹⁰ however at that time discovery was closed for Plaintiff. Again, it turns out that not only was Wehrli instrumental in creating the claims reevaluation process, he was the *architect and creator* of that process.
- June 30, 2009, Plaintiff supplemented her Answers to Interrogatories 22, 25 and 26.
- July 8, 2009, Plaintiff supplemented her disclosures listing the names of potential witnesses: Cheryl Magandy (a lady she rented a lot from), Sabrina Redmon (a real estate agent who sold Plaintiff the Huntington Circle home in Gulfport) and Plaintiff's pharmacies as explained hereinabove. She further produced financial documents, documents from Winn-Dixie Pharmacy and Rite Aid Pharmacy and a listing of the prescriptions responsive to Defendant's new discovery request.
- July 10, 2009, Plaintiff supplemented her responses to Defendant's newly propounded Interrogatories in part listing information contained in the documents produced with Plaintiff's June 30, 2009 and July 8, 2009 supplement to disclosures.

⁹ Again, whom Nationwide should have disclosed long ago, but purposely failed to.

¹⁰ Incidentally, Nationwide never disclosed Woods himself as a fact witness. Plaintiffs have been forced to figure out on their own the individuals working for Nationwide who have discoverable information, since Nationwide has persisted in hiding them.

In light of these good faith, continual supplements by Plaintiff, and Nationwide's utter failure to supplement its own disclosures as to witnesses (**ever**), Nationwide's arguments as to this issue could not be more ridiculous.

VIII.

Nationwide's argument that Plaintiff is in no worse position not being allowed to designate a medical expert now with Nationwide being allowed to utilize a medical expert to rebut the testimony of that of a 67 year old with no medical training whatsoever is absolutely contrary to reality. Nationwide should not be allowed to have this unfair expert advantage over Mrs. Politz. Mrs. Politz should be allowed to fully utilize a medical expert of her own. Just as defendant has been given permission to have a mental health expert, Plaintiff should be given the same opportunity to have a mental health expert. Had Nationwide designated a mental health expert over a year ago, when its original designation for experts expired, Plaintiff would have at that time had good cause to move for leave to designate her own (as she has good cause to so move at this juncture).

IX.

Nationwide's argument that it will incur additional time and expense holds no weight. Whether the expense had already been incurred or is incurred now does not prejudice Nationwide in the least. It certainly did not take these considerations on Plaintiff's behalf into account when designating Webb.

XI.

Nationwide has successfully twisted the facts in this case, with its tactical games, to cause Plaintiff to be on the defense on the issue of her mental and emotional suffering claim. During the entire months that Nationwide deposed Plaintiff's physicians, Nationwide never once

requested to perform an independent Rule 35 independent psychological evaluation. Nationwide will attempt to attack Plaintiff's firsthand, lay testimony with that of a trained psychologist -- an expert, and not a layperson with firsthand knowledge. Plaintiff simply asks that this Court give her the opportunity to utilize a psychiatric expert of her own: Dr. Ginzburg. Nationwide had his report three weeks prior to producing the report of its own expert, Dr. Webb (which *Nationwide* did not produce until the last day of the discovery deadline at 4:00 p.m., no less). Nationwide planned as of late June, after having Dr. Ginzburg's report, to depose Dr. Ginzburg, but later decided not to (apparently as part of its continuing "willful blindness equals manufactured prejudice" theory). There is **no** prejudice to Nationwide whatsoever, and Mrs. Politz simply asks to be put on equal footing with the insurance company that has been treating her so badly. The Magistrate's decision not to allow Mrs. Politz to use her own mental health expert is accordingly erroneous, and Plaintiff respectfully and sincerely requests that this Court grant her request.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests that this Honorable Court will Review the [386] Order of the United States Magistrate Judge, and enter its Order allowing Mrs. Politz to designate Dr. Ginzburg for use in her case-in-chief; together with such other relief as may be deemed appropriate by this Honorable Court.

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 6th day of August, 2009.

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[REDACTED]

16 (Off the record.)
17 VIDEOGRAPHER: On the record at 3:12.
18 Q (By Ms. Locke) Regarding your claim for
19 emotional distress, can you tell me specifically
20 what symptoms you've had and the time periods in
21 which you suffered those symptoms for which you're
22 claiming Nationwide is responsible for?
23 A. I became stressed the minute I found out
24 my home was gone. I saw it on the -- on TV in
25 Alabama. And they had an up-in-the-air shot, and

1 they went over Long Beach Oaks. And I seen that
2 every house there was gone in that little area. So,
3 I knew mine was gone too. And that was upsetting.
4 But, you know, we still thought Nationwide was going
5 to take care of us. So, I really didn't get that
6 depressed over it. It was stuff. It wasn't our
7 life. I was happy that John and I and my little dog
8 had gotten out okay.

9 But once Nationwide started messing
10 around, I got a suspicion that they were trying to
11 get out of it because of the way I was being treated
12 by them. I asked them when they went out to review
13 it to -- when they sent people out, I asked them to
14 let me know in advance, and they never did. They
15 would call me after it was done. It looked like
16 they were avoiding me. And that was upsetting.

17 But when I got the letter of denial, I
18 went into depression. And my husband, he was worse,
19 and he -- I felt terrible, and then I would see him
20 and how he was reacting to it, and it was just very
21 depressing for me for myself. I didn't know what we
22 was going to do. I didn't have the answers. I
23 cried. I had a lot of headaches. I went around
24 crying all the time. I didn't know what I was going
25 to do.

1 We was living for the moment. We had no
2 future, no plans, no anything. And we kept hoping
3 that Nationwide would reconsider. We kept hearing
4 on the news that some of the insurance companies was
5 reconsidering here and there. We hoped they would.
6 But after a couple of years, we finally -- I did, I
7 got the feeling that, hey, they are not going to do
8 anything unless we sue them and go through a court
9 of law, and do what we got to do.

10 So, that's -- I felt like they owed us,
11 and I was very depressed. I had no future at all.
12 I still don't know where I'm going, four years
13 later. And I feel they owe me. And it was very
14 depressing. And I was crying all the time and had
15 severe headaches from crying. And it just made me
16 very nervous and tense and short-tempered with
17 people that I loved. And I didn't like the way it
18 reacted on me.

19 Q. Do you still have crying spells today?

20 A. Sometimes. They're more controlled.

21 Q. What about headaches?

22 A. I still have a lot of headaches.

23 Q. So, aside from the crying and headaches,
24 is there anything else that you can tell me?

25 A. I have anger because I keep wondering why

1 that happened. I have anger because of what they
2 put my husband through. Us living in that little
3 FEMA trailer for six months was like a torture
4 chamber. To him it was like a jail cell. He was
5 claustrophobic, and it was just -- it was horrible
6 to watch a man his age and in his health condition
7 have to live the last few months of his life in the
8 conditions he lived in.

9 And I feel like that Nationwide was --
10 they may have not hurt his health as much as his
11 depression, but they took enjoyment away from him.
12 We couldn't enjoy anything. We didn't even feel
13 like going to see a movie. We was just too
14 depressed to enjoy life at all. And he died like
15 that. And I feel like that was Nationwide's fault
16 for not taking care of us the way they should have.

17 I think if we had money to work with, we
18 could have went on with our life. We could have
19 planned, we could have worked at it, and he would
20 have been happier. At least he had a goal,
21 something to look forward to. But the way it all
22 happened, all he had was more depression ahead of
23 him. And then his health started failing him on top
24 of all that. And I don't know if it was due to the
25 depression or just his health conditions, but it

1 sure didn't help. And seeing him go through that,
2 and then losing him depressed me terribly.

3 And I had a lot of tightness in my chest
4 over months before my surgery. I thought it was
5 just nerves. I don't know if it was nerves or since
6 I had to have a heart problem, whether it was from
7 my heart, but it was a lot of tightness and aching
8 in the chest. And I just felt bad. I couldn't
9 sleep at night. I cried all the time. And like I
10 said, headaches. I got a headache right now just
11 from going through this today.

12 But when you've worked hard all your life,
13 and you have a spouse that's done the same, and
14 you've got goals that you're working for and you
15 think you're covered, then you find out that it's
16 not happening, you're not covered, or so to say.
17 The help that you were planning on that you were
18 paying for all those times, it's not there. It's
19 very depressing. And I cried a lot. I couldn't
20 stop crying. That's why I got help from the
21 doctors, so that I could talk to the doctors to make
22 sense with them when they were trying to tell me
23 something about my husband's condition and that type
24 of thing.

25 MS. LOCKE: At this point I don't think I

1 have any further questions for you. I tender the
2 witness.

3 MR. DENHAM: I don't have any questions.

4 VIDEOGRAPHER: Off the record at 3:20.

5 End of deposition.

6 Original: Ms. Politz, Esq.

7 Copy: Mr. Denham, Esq.

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1 Q. (By Mrs. Locke) Well, it's fair to say
2 that the only indication that Mrs. Politz suffered
3 symptoms of anxiety in the medical records are
4 result of Mr. Politz's death, correct?

5 A. Correct.

6 MR. CARTER: Object to form.

7 Q. (By Mrs. Locke) Is it fair to say that
8 you developed no professional opinion that
9 Nationwide's partial denial of Mrs. Politz's
10 insurance claim caused her anxiety?

11 A. Correct.

12 Q. I'm going hand you what's been marked as
13 Defense Exhibit 216.

14

15 (Exhibit 216 marked for identification.)

16

17 Q. I'll represent that this is fax we
18 received from Ochsner Clinic related to your
19 deposition and the fees that you charge for being
20 here today and sitting for a deposition. Do you
21 recognize -- have you seen one of these documents
22 before that states how much --

23 A. No.

24 VIDEOGRAPHER: It's three minutes.

25 Q. (By Mrs. Locke) Do you know how much your

1 Q. Doctor, to pose you a hypothetical. It's
2 not so hypothetical in this case, but suppose it is
3 a hypothetical. If a woman between 60, 70-years-old
4 living with her husband, retired on the Mississippi
5 gulf coast. They lose everything that they own to a
6 hurricane. Insurance company pays them nothing.
7 Would you expect that to cause some degree of
8 depression?

9 MRS. LOCKE: Objection to form. Calls for
10 speculation.

11 A. Yes.

12 MR. CARTER: No further questions.

13

14 FURTHER EXAMINATION BY MRS. LOCKE:

15 Q. Sorry, just a few more questions in
16 response. As you sit here today based on the
17 medical records that we've looked at, can you say
18 that Mrs. Politz suffered from undiagnosed anxiety?

19 MR. CARTER: Object to form and
20 foundation.

21 A. I -- I don't quite understand. She was,
22 according to the medical records, she self-reported
23 symptoms of anxiety and depression in regards to her
24 husband's death.

25 Q. (By Mrs. Locke) Do you believe you

**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

ORDER

Before the Court is [344] Nationwide's May 26, 2009 motion for mental examination of plaintiff pursuant to Fed. R. Civ. P. 35. Pursuant to the Court's order expediting time for response to the motion, Plaintiff filed [347] her response on June 1, 2009. The Court has reviewed prior proceedings, particularly the orders of the District Judge ruling that although Mrs. Politz will not be allowed to "venture her opinion that she suffered the medical condition of clinical depression," she would not be precluded from testifying "about the effect the defendant's conduct had on her emotionally and mentally." [293] It therefore appears that Plaintiff's mental distress claim remains viable, although unsupported by expert medical evidence. That being the case, the Court finds that Nationwide's motion for mental examination should be granted. It is therefore,

ORDERED, that Plaintiff shall present herself at the offices of Watkins Ludlam Winters and Stennis, 2510 14th Street, Suite 1125, Gulfport, MS, at 10:00 a.m. on June 25, 2009, for mental examination by Dr. Mark Webb of the Mississippi Neuropsychiatric Clinic.

SO ORDERED, this the 1st day of June, 2009.

/s/ Robert H. Walker

ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE

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

JOHN POLITZ AND HELEN POLITZ

PLAINTIFFS

V.

CIVIL ACTION NO. 1:08cv18-LTS-RHW

**NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY, U.S. SMALL BUSINESS
ADMINISTRATION, AND
JOHN DOES 1 THROUGH 10**

DEFENDANTS

**RESPONSE OF NATIONWIDE MUTUAL FIRE INSURANCE COMPANY
TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, Nationwide Mutual Fire Insurance Company ("Nationwide") responds to Plaintiff's First Set of Requests for Admission as follows:

GENERAL OBJECTIONS

1. Information contained in these Responses is provided in accordance with the provisions and intent of the Federal Rules of Civil Procedure, which require the disclosure of non-privileged information within the recipient's knowledge that may be relevant or lead to the discovery of relevant information.

2. By providing the information requested, Nationwide does not waive any objections to its admission into evidence on the grounds of relevance, materiality, or on any other proper grounds for objection.

3. Nationwide objects to these Requests for Admission to the extent they seek information that is protected from disclosure by the attorney-client privilege, work product

doctrine, or other applicable privilege. Nationwide does not waive any protection, rights, or privileges by responding to these discovery requests.

4. Nationwide objects to these Requests for Admission to the extent they seek information which is not relevant to the issues raised by the claims and defenses asserted in this litigation or are not reasonably calculated to lead to the discovery of relevant or admissible information.

5. Nationwide objects to these Requests for Admission to the extent they are unreasonably vague, broad, repetitious, unduly burdensome, or purport to require the disclosure of information beyond the scope of admissible discovery under the Federal Rules of Civil Procedure.

6. Nationwide's objections and responses to Plaintiff's discovery requests are based on information now available to it. Nationwide reserves its right to amend, modify, or supplement its objections and responses if it obtains additional responsive information during the course of investigation or discovery.

7. All responses stated below incorporate the above stated objections and are provided subject to and without waiving any of the objections stated above. The fact that Nationwide has not repeated each of the foregoing objections for each specific request shall not waive any of the above-stated objections.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that the destruction of Plaintiff's insured dwelling located at 116 Winters Lane, Long Beach, Mississippi, during Hurricane Katrina was an accidental, direct, physical loss.

RESPONSE: Nationwide objects to Request No. 1 on the basis that it is vague and ambiguous, since it contains indefinite terms that Plaintiff has not defined as part of her Request. Nationwide also objects on the basis that this Request is beyond the scope of permissible discovery pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure. Subject to and without waiving these objections or the General Objections, Request No. 1 is denied as stated as it relates to Plaintiff's Hurricane Katrina claim.

REQUEST FOR ADMISSION NO. 2: Admit that the destruction of Plaintiff's insured contents located at 116 Winters Lane, Long Beach, Mississippi, during Hurricane Katrina was an accidental, direct, physical loss.

RESPONSE: Nationwide objects to Request No. 2 on the basis that it is vague and ambiguous, since it contains indefinite terms that Plaintiff has not defined as part of her Request. Nationwide also objects on the basis that this Request is beyond the scope of permissible discovery pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure. Subject to and without waiving these objections or the General Objections, Request No. 2 is denied as stated as it relates to Plaintiff's Hurricane Katrina claim.

REQUEST FOR ADMISSION NO. 3: Admit that covered wind damage occurred to Plaintiff's insured dwelling located at 116 Winters Lane, Long Beach, Mississippi, during Hurricane Katrina.

RESPONSE: Nationwide objects to Request No. 3 on the basis that it is vague and ambiguous, since it contains indefinite terms that Plaintiff has not defined as part of her Request. Nationwide also objects on the basis that this Request is beyond the scope of permissible

discovery pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure. Subject to and without waiving these objections or the General Objections, Request No. 3 is denied as stated as it relates to Plaintiff's Hurricane Katrina claim.

REQUEST FOR ADMISSION NO. 4: Admit that under the Nationwide Homeowners Policy, policy number 63-23-HO164506, a "loss" may include both covered and excluded elements.

RESPONSE: Nationwide objects to Request No. 4 on the basis that it is vague and ambiguous, since it contains indefinite terms that Plaintiff has not defined as part of her Request. Nationwide also objects on the basis that this Request is beyond the scope of permissible discovery pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure. Subject to and without waiving these objections or the General Objections, Request No. 4 is denied as stated as it relates to Plaintiff's Hurricane Katrina claim.

REQUEST FOR ADMISSION NO. 5: Admit that on or about July 19, 2007, Nationwide tendered to Plaintiff \$30,339.57 (\$30,839.57 minus a \$500.00 deductible) for damages caused by Hurricane Katrina to Plaintiff's dwelling at 116 Winters Lane, Long Beach, Mississippi, which Nationwide believed were owed under the Nationwide Homeowners Policy, policy number 63-23-HO164506.

RESPONSE: Nationwide objects to Request No. 5 on the basis that it is vague and ambiguous, since it contains indefinite terms that Plaintiff has not defined as part of her Request. Nationwide also objects on the basis that this Request is beyond the scope of permissible discovery pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure. Subject to and without waiving these objections or the General Objections, Request No. 5 is denied as stated as it relates to Plaintiff's Hurricane Katrina claim.

This, the 6th day of July, 2009.

Respectfully submitted,

NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY

By Its Attorneys
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By: /s/ Laura Limerick Gibbes
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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Kristopher W. Carter, Esq.
Earl Denham, Esq.
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This, the 6th day of July, 2009.

/s/ Laura Limerick Gibbes
LAURA LIMERICK GIBBES
lgibbes@watkinsludlam.com

From: Elizabeth Locke [elocke@kirkland.com]

Sent: Wednesday, July 22, 2009 5:02 PM

To: Kristopher W. Carter

Cc: Yvonne D. Ray

Subject: Politz v. Nationwide

Kris --

It was good seeing you yesterday at your offices. I hope your hearing and depositions went well. I have received your letter dated July 17 regarding Nationwide's discovery responses. As we noted in our initial discovery responses, we reserved the right to supplement our discovery responses. We are working diligently on putting together a privilege log, as well as producing additional documents that are responsive to Plaintiff's request for documents. When they are ready, I will be happy to send them to you electronically, so that there will not be the additional delay for the mail.

All the best,
Libby

Libby Locke | Associate

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