

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

JOHN POLITZ & 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

MOTION TO STRIKE PLAINTIFF’S CLAIM FOR EMOTIONAL DISTRESS

Pursuant to Federal Rule of Civil Procedure 37, Defendant Nationwide Mutual Fire Insurance Company (“Nationwide”) files this Motion To Strike Plaintiff’s Claim for Emotional Distress. In support of this Motion, Nationwide states the following:

1. For months now, Nationwide has made persistent, good-faith efforts to conduct discovery in this case, particularly with respect to any alleged claim by Mrs. Politz for emotional distress. Throughout discovery, Mrs. Politz affirmatively represented that she never sought or received treatment for emotional distress. *Now—on the day before the close of discovery in this case—Mrs. Politz revealed in her deposition that she had sought and received treatment for emotional distress.* This eleventh-hour disclosure has effectively prevented Nationwide from discovering the complete factual basis for Mrs. Politz’s emotional distress claim.

2. On May 19, 2008, Nationwide served on Plaintiff its Interrogatories and Requests for Production of Documents. As part of that discovery, Nationwide specifically asked Plaintiff to “[e]xplain in detail any mental anguish, emotional distress, and/or pain and suffering for which you seek compensation in this lawsuit, including but not limited to all symptoms, manifestations, and causes thereof, and identify all witnesses and documents referring or relating

thereto.” (See May 19, 2008 First Set of Interrogs Propounded by Def. Nationwide Mut. Fire Ins. Co. to Pls., Interrog. No. 25 (Ex. 1).) Additionally, Nationwide requested that Plaintiff “[i]dentify all medical personnel, mental health professionals, and/or any other counselor from whom you have sought advice and/or treatment for any emotional distress and/or mental anguish at any time from August 29, 2003 to the present, and describe any related diagnoses and/or prognoses.” (*Id.* at Interrog. No. 26.) Similarly, Nationwide requested that Plaintiff “[p]roduce all medical records and/or any other documents and/or tangible evidence relating to or substantiating any mental anguish, emotional distress, or pain and suffering you allege to have suffered as a result of Nationwide’s actions following Hurricane Katrina on August 29, 2005.” (See May 19, 2008 First Set of Req. for Prod. of Docs. Propounded by Def. Nationwide Mut. Fire Ins. Co. to Pls., Req. No. 23 (Ex. 2).)

3. In Plaintiff’s discovery responses, however, Mrs. Politz never disclosed that she sought treatment for emotional distress. Indeed, precisely the opposite is true. She affirmatively represented that she “did not seek mental health treatment” (See June 18, 2008 Pl.’s Answers to First Set of Interrogs. Propounded by Nationwide Mut. Fire Ins. Co., Resp. to No. 26 (Ex. 3).) Moreover, although Mrs. Politz disclosed that she had heart surgery, she did not identify or disclose the names of any treating physicians. (See *id.* at Req. No. 25.) Mrs. Politz personally verified and swore to the accuracy of these interrogatory responses. (See *id.* at Verification Page.)

4. In light of Plaintiff’s disclosure that she suffered heart-related problems, and in light of the fact that none of Mrs. Politz’s treating physicians were identified in Plaintiff’s discovery responses, Nationwide sought clarification that Mrs. Politz was indeed claiming that Nationwide’s partial denial of her insurance claim contributed to her heart problems (including,

but not limited to, her heart surgery). (See Oct. 30, 2008 Letter E. Locke to K. Carter (Ex. 4).) Counsel for Nationwide put Plaintiff on notice that “[i]f the answer to this questions is yes, then Mrs. Politz has failed to identified [sic] any of the medical health professionals from which she sought treatment for these stress-related health issues, as Nationwide requested in its interrogatory requests 25 and 26.” (*Id.*) Accordingly, Nationwide “request[ed] that Mrs. Politz provide this information so that we may secure her medical records and depose her treating physicians related to this case.” (*Id.*) Plaintiff’s counsel neither responded to this request nor supplemented their discovery responses in this regard.

5. Nationwide also diligently sought to clarify this information through depositions. Beginning in early September through the first week of November, counsel for Nationwide made at least eight separate requests for deposition dates for Mrs. Politz. (See Nov. 5, 2008 Motion to Extend Discovery and Reset Motions Deadline (Dkt. 71) (detailing counsel’s efforts); Nov. 6 - Nov. 10, 1008 Email Chain Between E. Locke and K. Carter (Ex. 5) (requesting repeatedly mutually-agreeable deposition dates and explaining that Nationwide would be forced to notice unilaterally Mrs. Politz’s deposition to preserve its rights before the close of discovery).) Because counsel for Plaintiff refused to provide mutually-agreeable dates, Nationwide was forced to notice unilaterally Mrs. Politz’s deposition for November 13, 2008.

6. On November 13, 2008, Mrs. Politz was deposed. During that deposition, she revealed—*in direct conflict with her sworn interrogatory responses*—that she had sought treatment for depression and anxiety from Dr. Mark Babo, who practices medicine in Slidell, Louisiana. (See Nov. 13, 2008 Deposition of Helen Politz at 243-48 (Ex. 6).)

7. In light of this disclosure, Nationwide made its best efforts to discover the treatment and medical history regarding Mrs. Politz’s emotional distress. During Mrs. Politz’s

deposition, counsel for Nationwide sought information about Mrs. Politz's treating physicians, prescription medications, and course of treatment for her depression. (*Id.*) In addition, the next day at the deposition of Dr. Mark Babo (which was noticed solely for the purpose to seek information concerning **Mr. Politz's** claim for emotional distress), counsel for Nationwide asked Dr. Babo questions regarding his treatment of Mrs. Politz. Without access to her medical records, however, he was able to provide little information. (*See* Nov. 14, 2008 Deposition of Mark Babo at 101-103 (Ex. 7); *see also* June 18, 2008 Pl.'s Resp. to Nationwide's First Set of Interrogs., Resp. No. 26 (Ex. 3) (disclosing that "John Politz did see Dr. Mark Babo for depression").)

8. Because Mrs. Politz affirmatively represented that she did not seek treatment for emotional distress and wholly failed to disclose her treating physicians for health problems she claims were caused by Nationwide's partial denial of her insurance claim, Nationwide has effectively been precluded from discovering the complete factual basis for this claim. Accordingly, Nationwide respectfully requests that the Court strike Mrs. Politz's claim for emotional distress and preclude her from recovering any damages for any mental or physical health problem for which she claims Nationwide's partial denial of her insurance claim is a cause or contributing factor.

9. In the alternative, Nationwide respectfully requests an order compelling Plaintiff to identify all of her treating physicians, as well as an extension of discovery to seek access to Mrs. Politz's medical records, to reopen Mrs. Politz's and Dr. Babo's depositions, and to depose all of Mrs. Politz's treating physicians.

10. Because the facts and legal principles contained in this Motion have been fully discussed and developed, Nationwide respectfully requests that it be excused from submitting a

separate memorandum brief in support of this Response under Uniform District Court Rule 7.2(D).

This, the 20th day of November, 2008.

Respectfully submitted,

NATIONWIDE MUTUAL FIRE INSURANCE
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CERTIFICATE OF SERVICE

I certify that I have this day electronically filed the foregoing using the Court's ECF System, which sent electronic notification of such filing to the following:

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This, the 20th day of November, 2008.

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