

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 RESPONSE TO DEFENDANT'S [258] SUPPLEMENTAL MOTION FOR  
SUMMARY JUDGMENT AND [259] MEMORANDUM OF AUTHORITIES IN  
SUPPORT OF NATIONWIDE MUTUAL INSURANCE COMPANY'S  
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Plaintiff, HELEN POLITZ, by and through her attorneys of record, DENHAM LAW FIRM, and would file this her Response to Defendant's [258] Supplemental Motion for Summary Judgment and [259] Memorandum of Authorities in Support of Nationwide Mutual Insurance Company's Supplemental Motion for Summary Judgment, and in support thereof would show as follows:

**I. Nationwide's claims of prejudice with regard to Mrs. Politz's contents and ALE claims**

As an initial matter, it appears that Defendant's argument surrounding the personal property (contents) and additional living expenses are moot or have been waived based on the Court's [252] Order and [253] Memorandum opinion. Defendant did not timely move the Court to reconsider such rulings, nor did it move to alter or amend them. Accordingly, Nationwide cannot attempt now to "collaterally" move the Court, through its Supplemental Motion for Summary Judgment, to reconsider, alter or amend said rulings. Additionally, Nationwide did not timely (or at all, for that matter) move the Court to reconsider and/or file an objection or appeal of the Court's [166] Order of January 26, 2009, continuing the trial of this cause and granting

Plaintiff's Motion [136] Motion for Extension of Time to Complete Discovery and Supplement Pre-discovery Disclosures. Nationwide received a significant extension of the discovery deadline, and has conducted several depositions during that period, including a second deposition of Mrs. Politz. Nationwide has conducted **months** of additional discovery, from January 26, 2009, through April 7, 2009. The materials Nationwide is now complaining about having received outside the original discovery deadline (e.g., the receipts and contents list submitted by Mrs. Politz on December 9, 2008) have now been in Nationwide's possession for approximately **four months**. Plaintiff would state for the record that she and her counsel have never engaged in any "change in strategy" or "gamesmanship" in this litigation by supplementing certain items of discovery outside the original deadline, but Mrs. Politz, who is sixty-seven years old, has lost everything she owned, has moved three times since Hurricane Katrina, undergone open-heart surgery, taken care of her terminally ill husband until he ultimately died during this litigation, and has had to come out of retirement and go back to work to make ends meet due to Nationwide's denial of her claim, simply did not turn these items over to her attorneys until that time. Certainly, her preoccupation was understandable. Immediately upon her turning over these receipts to her attorneys, it was their duty to immediately supplement such items. 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. Nationwide now complains about having to go through the receipts provided by Mrs. Politz, but its arguments are without merit. It is Nationwide's responsibility, under its policy, to review such receipts when submitted, and to determine whether the expenses submitted are covered by the policy. Further, Nationwide

cannot claim that it did not have a chance to review the receipts during the four months it has had them. It did so. In fact, Mrs. Politz was questioned at length about the receipts in her second deposition, and was asked very specific questions about many specific receipts, hence proving that Nationwide not only had an *opportunity* to review the receipts, but that it actually did so. See Exhibit "A," Second Deposition of Mrs. Politz, pp. 69-140. Nevertheless, Plaintiff is taking the further step, pursuant to the instructions of the Court, to provide an affidavit as to the precise expenses she is claiming. Plaintiffs are additionally, pursuant to the Court's instructions, preparing a more detailed contents list than the one previously provided. Again, as Nationwide has always maintained the position that Mrs. Politz's contents claim was being denied in its entirety, it can hardly claim prejudice. Furthermore, Nationwide had ample opportunity during Mrs. Politz's second deposition to fully question Mrs. Politz about the contents list she submitted. Instead, Nationwide's counsel chose to ask only a very few questions about a few pages of the list, even after prompting by Plaintiffs counsel to exercise its opportunity to more fully question Mrs. Politz at that time. See Exhibit "A," Second Deposition of Mrs. Politz, pp. 39-69. On two different occasions, Plaintiff's counsel encouraged Nationwide's lawyer to thoroughly question the witness on the issue, but Nationwide's counsel chose not to do so. The following exchanges took place:

**Q. Is it fair to say that Nationwide would have no way to verify the dollar estimate in this list?**

**MR. CARTER: Objection to form and foundation.**

**A. No, it's not fair to say that.**

**MR. CARTER: And counsel, now is your chance. You got all the time in the world to ask her about this stuff.**

See Exhibit "A," Second Deposition of Mrs. Politz, p. 48-49.

**Q. You can set your -- this list aside for now.**

**A. Okay.**

**MR. CARTER: Counsel, I just want to state for the record that you've only been through a couple of pages here. And now is your chance to exhaust this list. If you fail to do so, I don't want you trying to claim prejudice with that later.**

**MRS. LOCKE: Kris, this is neither the time or the place to start arguing motions. This is a deposition that we have the, you know, ability to run as -- and ask questions as we see fit.**

**MR. CARTER: All right. I'm not trying to argue a motion. I'm just telling you, don't go tell the judge you didn't have a chance to ask about all of this.**

See Exhibit "A," Second Deposition of Mrs. Politz, p. 69. The same is true of the receipts. While Nationwide's counsel asked several questions about specific receipts, she certainly did not take advantage of her opportunity to question Mrs. Politz in depth regarding her living expenses. Rather, she sought only to build Nationwide's argument for its Motion to exclude the receipts. It is more than obvious that Nationwide is attempting, through gamesmanship of its own, to manufacture prejudice in order to bolster its legal position and to pull the wool over the Court's eyes as to that fact. As Defendant had ample opportunity to thoroughly examine the Plaintiff during her deposition on March 24, 2009, regarding all of the receipts produced by Plaintiff, was in possession of all of the receipts for months prior to this deposition of Mrs. Politz (and therefore had sufficient time to review each statement, invoice and receipt), and chose instead only to cover what it saw fit to support its Supplemental Motion for Summary Judgment, its arguments as to this issue are without merit.

Defendant failed to timely request relief from the Court in a Motion to Alter or Amend the Court's [252] Order and [253] Memorandum Opinion and/or file a timely objection or ask for reconsideration of the Court's ruling. Instead Nationwide took advantage of the court's ruling

and conducted further discovery. Therefore, all of Defendant's arguments regarding the personal property claim are moot and/or have been waived. Nationwide is apparently attempting to file a motion to alter or amend the Court's prior ruling via their Supplemental Motion for Summary Judgment.

Nationwide has not and, it is believed, cannot point to any written request for an itemized list of personal property or a written request for a sworn proof of loss from Plaintiff. Nationwide's October 8, 2006, letter to Plaintiff's counsel states "Nationwide has not requested a proof of loss from your client". Exhibit "B" attached hereto.<sup>1</sup> This letter is in response to Plaintiff's counsel's letter to Nationwide of August 9, 2006, specifically asking if Nationwide had requested a sworn proof of loss, if Nationwide is requesting a sworn proof of loss, and if so when one would be due. (See attached Exhibit "C")

During the April 26, 2007, meeting between Plaintiff's counsel and representatives from Nationwide, it was made clear that Plaintiff was pursuing full coverage under the policy. At that time, Nationwide's representatives stated that they were only willing to pay at that time for the roof. They were not willing to pay any contents claims whatsoever. The meeting was actually nothing more than an informal settlement conference. Nationwide's representatives did not ask for additional materials during the meeting, but simply made an offer to settle, which was insufficient. Certainly, there has never been any dispute that Plaintiff lost contents in excess of the policy limits and is seeking therefore seeking policy limits on her contents claim.

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<sup>1</sup> As the Court correctly pointed out in its [253] Memorandum Opinion, Nationwide denied the plaintiffs' claim for personal property in its entirety. Based on this denial the Court additionally stated that the Court did not believe Nationwide would be prejudiced by Plaintiff providing an itemization of damaged personal property by April 24, 2009, (30 days after the Court's ruling).

The credit card statements were submitted along with the receipts because they substantiate and corroborate that the exact receipts produced are actually receipts for purchases incurred by the Plaintiff. The statements clarify the dates, category of purchase and amounts in the instances where some receipts due to age have faded. While it is true that the August 2005, credit card statements, in some instances, show charges prior to Hurricane Katrina, Plaintiff certainly is not seeking living expenses from prior to Katrina. Further, Plaintiff's itemization will be limited to those additional living expenses incurred *as a result of* Hurricane Katrina. Under the subject policy Plaintiff is entitled to Additional Living Expenses up to one year – a year's worth of receipts naturally will be voluminous. As previously stated by Plaintiff due to her many moves since Hurricane Katrina the receipts for personal property replacement and Additional Living Expenses were misplaced, and when found and produced to her attorneys, were immediately produced to Defendant. Plaintiff admits that some receipts were inadvertently produced for which she does not seek compensation.

Defendant incorrectly states Plaintiff has not proffered any evidence to support her claims for loss to personal property from Hurricane Katrina and losses in excess of the loans paid by Nationwide for additional living expenses. During the discovery phase of this litigation Plaintiff has provided Defendant with substantial material evidence that Plaintiff's personal property was damaged during Hurricane Katrina including but not limited to expert engineering report, meteorological report, accurate weather data, photographs and lay testimony. It is undisputed that the Plaintiff's home was a slab after Hurricane Katrina. The home and personal property were gone. Nationwide has known all along that Mrs. Politz seeks limits on her contents claim. It has deposed Mrs. Politz twice, but simply decided that "willful blindness" would be the best strategy for its motion practice.

Defendant's assertion that the list of personal property provided it is not totally accurate simply because Mrs. Politz admitted there are more personal property items that should be on the list but she simply could not recollect every single thing she had in her home prior to Hurricane Katrina is absurd. Mrs. Politz lost everything, she is sixty-seven years old, and she has been through an awfully tough time in the wake of Hurricane Katrina and Nationwide's denial of her claims, including heart surgery and the death of her spouse. Nationwide paid virtually nothing during the first two years after the Hurricane. Quite likely, Nationwide's refusal to make any material payment until July 2007, was part of its strategy. Obviously, if Nationwide had indicated within the first six months after the storm that it had even a remote interest in making a contents payment, Mrs. Politz would have had a much better memory of exactly what she had lost, and could have provided a much more thorough contents list than she is capable of producing today. Further, any inaccuracies in her valuation of items on the contents list go towards the weight of such evidence rather than its admissibility. Nationwide should not be complaining that Mrs. Politz actually *lowered* the total on certain pages of her contents list during her deposition. This seems quite a ludicrous position for Nationwide to take. Added to this, Nationwide never actually asked for a contents list until after litigation was initiated. Additionally, pursuant to the Court's orders, Mrs. Politz is compiling to the best of her recollection a more detailed itemization of personal property, including values.

Plaintiff and her counsel certainly have not engaged in any bad faith discovery practices. As soon as Mrs. Politz has ever brought anything non-privileged to her attorneys, it has been produced to Nationwide. If the Court is under the impression that Mrs. Politz or her counsel have engaged in any manner in bad faith discovery practices, and if the Court is further inclined to punish Mrs. Politz for such, Plaintiff requests a hearing as to the same, as that simply is not the

case, and the air needs to be cleared. The exclusion of evidence is an “extreme sanction” that is not normally imposed “absent a showing of willful deception or ‘flagrant disregard’ of a court order by the proponent of the evidence.” [\*Dudley v. South Jersey Metal, Inc.\*, 555 F.2d 96, 99 \(3d Cir.1977\)](#). In the current Motion, Nationwide is moving for summary judgment on certain claims. This is not the proper channel to move to exclude evidence under Rule 37 or otherwise. Again, this Supplemental Motion for Summary Judgment and accompanying Memorandum are apparently but a guise for other relief for which Nationwide seeks, but for which it has not properly petitioned the Court. It is simply attempting, through gamesmanship and bad faith litigation practices, to manufacture prejudice and to put Plaintiff and her attorneys in a bad light. The Court has already ruled on the previous motions filed by Nationwide, and Nationwide failed to object to or challenge those rulings. Nationwide’s Supplemental Motion for Summary Judgment should be denied in its entirety.

## **II. Claims for Mental Anguish, Emotional Distress, Anxiety and other such extracontractual damages.**

Nationwide again takes the mistaken position that medical testimony is required to prove emotional distress, mental anguish, anxiety, stress and other such damages. This is simply not the law. All that a Plaintiff is required to show in order to be entitled to these damages is that the conduct of the insurer in wrongly denying her claim caused **foreseeable, demonstrable harm**.<sup>2</sup> It is common sense that a person such as Mrs. Politz who lost everything she owned in Hurricane Katrina, would suffer depression, anxiety, mental anguish and emotional distress as a result of her insurer, whom she has faithfully paid premiums for many years, denying her valid homeowners claim. It would be shocking if she did not suffer from any of those things in the

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<sup>2</sup> This issue is the subject of a [257] Motion for Clarification and/or Reconsideration filed by Plaintiffs, now pending before the Court. Accordingly, much of the argument in this section is repetitious of the arguments presented in that Motion.



wake of Nationwide's conduct. She is entitled to give her lay testimony as to how Nationwide's conduct made her feel. This includes the ability to testify that it depressed her, caused her mental anguish, caused her stress, and caused her other such similar emotional and mental issues. Any layperson can testify as to the effect of the conduct of another on the way that they feel mentally and emotionally. If someone's dog gets run over by a tortfeasor driver, that person can testify that it made them feel depressed and caused them to suffer mental anguish. Medical expertise simply is not needed to testify to such an obvious lay conclusion. Indeed, such damages are similar to pain and suffering damages in a personal injury suit; no medical testimony is necessary for a plaintiff to testify that being in a wreck caused them to suffer pain.

As this Court has previously ruled, damages such as mental anguish and emotional distress are recoverable upon a showing of simple negligence if they were foreseeable to an insurer as a result of its negligent conduct. *See Sanders v. Nationwide Mutual Fire Ins. Co.*, 1:07-cv-00988-LTS-RHW, [211] Opinion and Order, denying Nationwide's Motion in Limine to Exclude Evidence of Emotional Distress. Exhibit "D" attached hereto. A plaintiff is not required to seek medical treatment or have any medically diagnosed condition whatsoever in order to recover such damages.<sup>3</sup> She need show only "**demonstrable harm**" stemming from the negligent conduct of the insurer.

Mrs. Politz should certainly be able to testify as to the suffering, anxiety, anguish, stress and depression she has experienced as a result of Nationwide's negligent denial of her valid insurance claim. Corroborating medical testimony is not required.

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<sup>3</sup> As a side issue, disallowing a person from recovering damages for a harm because they did not take medication or seek medical treatment would quite likely be unconstitutional. Consider, for instance, if a person believed only in spiritual healing. The Equal Protection Clause would disallow prohibiting that person from recovering the same damages in a civil suit for the harms done unto them as a person that did not share those beliefs.

The Mississippi Supreme Court, in *Adams v. U.S. Homecrafters, Inc.*, 744 So. 2d 736, 743 (¶21) (Miss. 1999)<sup>4</sup> (cited by this Court in its [252] Memorandum Opinion), held:

It is undisputed that under Mississippi law, a plaintiff asserting a claim for mental anguish, whether as a result of simple negligence or an intentional tort, must always prove that the emotional distress was a reasonably foreseeable result of the defendant's conduct. In cases of intentional infliction of emotional distress, where the defendant's conduct was "malicious, intentional or outrageous," the plaintiff need present no further proof of physical injury. **Where, as here, the defendant's conduct amounts to simple negligence, we take this opportunity to clarify that we have moved away from the requirement of proving some physical injury in addition to the proof of reasonable foreseeability. Our language in the previously cited cases, adopting the term "demonstrable harm" in place of "physical injury," indicates that the proof may solely consist of evidence of a mental injury without physical manifestation.**

(emphasis added).

Further, the Mississippi Court unanimously reasserted the law on this issue in *United American Ins. Co. v. Merrill* in 2007, wherein it explained:

This Court traditionally held that emotional distress and mental anguish damages are not recoverable in a breach of contract case in the absence of a finding of a separate independent intentional tort. (citations omitted).

In recent years this Court has moved away from this requirement.

...

In *Universal Life Ins. Co. v. Veasley*, 610 So.2d 290 (Miss.1992), we applied this rule to **breach of contract** cases stating:

Some justices on this court have suggested that extra-contractual damages ought be awarded in cases involving a failure to pay on an insurance contract without an arguable reason even where the circumstances are not such that punitive damages are proper.

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<sup>4</sup> Plaintiff has incorporated supporting law and authorities in this response and therefore respectfully requests that the Court waive the requirement of filing a separate memorandum brief in support of this Motion, and that the Court will consider this to be Plaintiff's Motion with supporting memorandum brief.

[citations omitted]. **Applying the familiar tort law principle that one is liable for the full measure of the reasonably foreseeable consequences of her actions, it is entirely foreseeable by an insurer that the failure to pay a valid claim through the negligence of its employees should cause some adverse result to the one entitled to payment. Some anxiety and emotional distress would ordinarily follow, especially in the area of life insurance where the loss of a loved one is exacerbated by the attendant financial effects of that loss. Additional inconvenience and expense, attorneys fees and the like should be expected in an effort to have the oversight corrected. It is no more than just that the injured party be compensated for these injuries. *Veasley*, 610 So.2d at 295.**

*Merrill*, 978 So. 2d 613, 630 (¶84)(Miss.,2007) (citation omitted) (emphasis added); *see also Stewart v. Gulf Guar. Life Ins. Co.*, 846 So.2d 192, 200 (Miss.,2002) (“Clearly, Stewart demonstrated **compensable** damages for **mental anguish and emotional distress.** *See Universal Life Ins. Co. v. Veasley*, 610 So.2d 290 (Miss.1992) (**worry, anxiety, insomnia, depression, difficulty coping with daily life as compensable damages**”) (emphasis added).

In *Merrill*, the plaintiff was allowed to recover for such damages based simply upon her testimony that she was “**under great stress**” and had “‘seen’ a doctor” because of “**stress**” and “**nervousness**”; that she had “further **suffered anxiety** when [the defendant insurer] sent two agents to her home *after her claim had been denied* to tell her that her policy had lapsed due to unpaid premiums.” *Merrill*, 978 So. 2d at 624 (¶51) (emphasis in original). She was further allowed to testify in support of such damages that the *lawsuit itself* “was **upsetting** her.” *Id.* (emphasis added.) There was **no corroborating medical testimony whatsoever** in *Merrill* and the plaintiff’s testimony itself was sufficient to support her damages. The Mississippi Supreme Court in *Merill* found such testimony constituted proper evidence for compensation for emotional distress. *Id.* at 630 (¶85). Again, this was a unanimous decision by the Mississippi Supreme Court, so there is no ambiguity in the law as to this issue.

Certainly she cannot diagnose herself with the medical condition of “clinical” depression, but that does not discount the fact that she can offer her lay testimony that she was depressed, anxious and so on. Anyone can testify that something made them feel depressed or sad. Certainly these are foreseeable damages, and the lack of mention of Nationwide in her medical records does not foreclose the existence of these damages.

Nationwide deposed several doctors asking them, essentially, to prove a negative; i.e., that Mrs. Politz did not suffer from emotional distress, mental anguish, anxiety and other such damages. None of the doctors that Nationwide deposed had *any* opinion as to this issue, so their testimony is for the most part completely irrelevant. However, the simple fact that Mrs. Politz may not have talked about her emotional problems with her doctors does not mean they did not exist. Dr. Mark Babo, Mrs. Politz’s primary physician, testified:

**CROSS-EXAMINATION BY MR. CARTER:**

**Q. Dr. Babo, I'm not going to keep you very long, if I can help it. But I just have a few questions for you. Is it possible for a person to suffer from depression without having it medically diagnosed?**

**A. Yes.**

**Q. Okay. How about anxiety?**

**A. Yes.**

**Q. Even significant anxiety or depression?**

**A. Yes.**

**Q. Is it possible to be depressed or anxious without being prescribed medication?**

**A. Yes.**

**Q. And these terms kind of mean the same thing to me, but is it possible for a person to suffer from mental anguish or emotional distress without having it medically diagnosed?**

**A. Yes.**

**Q. How about Mrs. Politz? Is it possible that she suffered from any of those things without having them medically diagnosed?**

**A. It is possible.**

....

**Q. Let me ask you this question, Doctor. In order for anyone to diagnose depression, must they rely on subjective reporting from the patient?**

**A. Yes.**

**Q. So isn't it true, Doctor, that the best person in the world to tell us whether or not Mrs. Politz was depressed or anxious is Mrs. Politz?**

**A. Yes.**

**Q. And as far as the causes of Mrs. Politz's mental anguish, emotional distress, anxiety or depression, is there anyone better than Mrs. Politz to tell us the causes of those, if indeed she suffered from any of those things?**

**A. She would have a very good idea, yes.**

**Q. So if she -- if Mrs. Politz testified or if she testifies that she suffered depression or anxiety as a result of Nationwide's denial of her homeowner's insurance claim, would you have any reason to disagree with her?**

**A. I would not.**

**Q. And just because something like that doesn't appear in medical records does not mean it's not so; isn't that true, Doctor?**

**MRS. LOCKE: Objection to form.**

**A. Yes.**

**Q. (By Mr. Carter) And, Doctor, have you formulated an opinion as to Mrs. Politz's emotional condition prior to her husband's death as we sit here today?**

**A. No.**

**Q. Is it possible that Mrs. Politz's -- the death of her husband was a**

**proverbial straw that broke the camel's back for her emotionally?**

**MRS. LOCKE: Objection to form.**

**A. It's possible.**

**Q. (By Mr. Carter) And you spoke with Mrs. Politz on numerous occasions, have you not?**

**A. Yes.**

**Q. Did you find her to be an honest woman?**

**A. Yes.**

**Q. No reason to believe that she would be untruthful?**

**A. I have no reason.**

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

**MRS. LOCKE: Objection to form. Calls for speculation.**

**A. Yes.**

See Exhibit "E," Third Deposition of Dr. Mark Babo, pp. 48-51.

Nationwide has known since day one (at least since the date of the expert designation) that Plaintiff did not intend to call any of her treating physicians as expert witnesses. Nevertheless, Nationwide's lawyers insisted on deposing every one of these physicians.

As this Court has previously ruled, damages such as mental anguish and emotional distress are recoverable upon a showing of simple negligence if they were foreseeable to an insurer as a result of its negligent conduct. *See Sanders v. Nationwide Mutual Fire Ins. Co.*, 1:07-cv-00988-LTS-RHW, [211] Opinion and Order, denying Nationwide's Motion in Limine to Exclude Evidence of Emotional Distress. Exhibit "D" attached hereto. A plaintiff is not required

to seek medical treatment or have any medically diagnosed condition whatsoever in order to recover such damages. She need show only “**demonstrable harm**” stemming from the negligent conduct of the insurer.

Mrs. Politz should certainly be able to testify as to the suffering, anxiety, anguish, stress and depression she has experienced as a result of Nationwide’s negligent denial of her valid insurance claim. Corroborating medical testimony is not required.

The Mississippi Supreme Court, in *Adams v. U.S. Homecrafters, Inc.*, 744 So. 2d 736, 743 (¶21) (Miss. 1999)<sup>5</sup> (cited by this Court in its [252] Memorandum Opinion), held:

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(emphasis added).

Further, the Mississippi Court unanimously reasserted the law on this issue in *United American Ins. Co. v. Merrill* in 2007, wherein it explained:

This Court traditionally held that emotional distress and mental anguish damages are not recoverable in a breach of contract case in the absence of a finding of a separate independent intentional tort. (citations omitted).

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<sup>5</sup> Plaintiff has incorporated supporting law and authorities in this response and therefore respectfully requests that the Court waive the requirement of filing a separate memorandum brief in support of this Motion, and that the Court will consider this to be Plaintiff’s Motion with supporting memorandum brief.

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Some justices on this court have suggested that extra-contractual damages ought be awarded in cases involving a failure to pay on an insurance contract without an arguable reason even where the circumstances are not such that punitive damages are proper. [citations omitted]. **Applying the familiar tort law principle that one is liable for the full measure of the reasonably foreseeable consequences of her actions, it is entirely foreseeable by an insurer that the failure to pay a valid claim through the negligence of its employees should cause some adverse result to the one entitled to payment. Some anxiety and emotional distress would ordinarily follow,** especially in the area of life insurance where the loss of a loved one is exacerbated by the attendant financial effects of that loss. Additional inconvenience and expense, attorneys fees and the like should be expected in an effort to have the oversight corrected. It is no more than just that the injured party be compensated for these injuries. *Veasley*, 610 So.2d at 295.

*Merrill*, 978 So. 2d 613, 630 (¶84)(Miss.,2007) (citation omitted) (emphasis added); *see also Stewart v. Gulf Guar. Life Ins. Co.*, 846 So.2d 192, 200 (Miss.,2002) (“Clearly, Stewart demonstrated **compensable** damages for **mental anguish and emotional distress**. *See Universal Life Ins. Co. v. Veasley*, 610 So.2d 290 (Miss.1992) (**worry, anxiety, insomnia, depression, difficulty coping with daily life as compensable damages**)”) (emphasis added).

In *Merrill*, the plaintiff was allowed to recover for such damages based simply upon her testimony that she was “**under great stress**” and had “‘seen’ a doctor” because of “**stress**” and “**nervousness**”; that she had “further **suffered anxiety** when [the defendant insurer] sent two agents to her home *after her claim had been denied* to tell her that her policy had lapsed due to unpaid premiums.” *Merrill*, 978 So. 2d at 624 (¶51) (emphasis in original). She was further



allowed to testify in support of such damages that the *lawsuit itself* “was **upsetting** her.” *Id.* (emphasis added.) There was **no corroborating medical testimony whatsoever** in *Merrill* and the plaintiff’s testimony itself was sufficient to support her damages. The Mississippi Supreme Court in *Merill* found such testimony constituted proper evidence for compensation for emotional distress. *Id.* at 630 (¶85). Again, this was a unanimous decision by the Mississippi Supreme Court, so there is no ambiguity in the law as to this issue.

While Plaintiff certainly will not be giving expert medical opinions regarding her beliefs as to the causation of her physical and mental conditions following Hurricane Katrina, she is entitled to give her lay opinions as to how she felt because of Nationwide’s conduct, and why. Any person is certainly capable of telling a jury how the actions of another made them feel. If Nationwide’s conduct made Mrs. Politz feel depressed, stressed out and anxious, as she contends, certainly she may testify to that whether she sought medical treatment for it or not. While Mrs. Politz may not be able to testify that she suffered from the medical condition of “clinical depression,” she can certainly testify as to her *subjective* feelings of depression, anxiety and stress as a result of Nationwide’s denial of her claim. As the Court in *Merrill* stated, emotional distress and anxiety would even be *expected* in the wake of an insurance company’s denial of a valid claim. *Merrill*, 978 So. 2d at 630 (¶84). Lack of medical corroboration as to depression or anxiety goes only to the weight of the testimony rather than its admissibility. If the Court deems it necessary, the jury can certainly be instructed that Mrs. Politz’s opinion and subjective testimony that she was “depressed” or “anxious” is not a clinical diagnosis or expert opinion. Common sense dictates that conduct such as Nationwide’s would cause in an insured some degree of depression, stress, anxiety or mental anguish.

Prior to Hurricane Katrina, Mrs. Politz and her husband were retired, living on the Mississippi Gulf Coast. When Hurricane Katrina hit, they lost everything they owned. Even then, they would have been able to move on, had Nationwide acted in good faith and paid their claim. It paid them virtually nothing for two years. As a result of its conduct, Mr. and Mrs. Politz were forced to take out two SBA loans (one for the slab where their home used to be, one for the house they had to purchase many months later to get them out of the FEMA trailer). They were eventually forced to file suit against Nationwide to pursue their claim, and fought vehemently for almost three years. Mr. Politz then died not knowing whether Nationwide would ever pay what it owed, and without knowing whether his wife would ever be taken care of. Mrs. Politz, still stuck with Nationwide refusing to pay her claim, even after suit had been filed, even after her husband died, had to go back to work to make ends meet at sixty-seven years of age. All the while, she has continued to fight Nationwide to get what she is duly owed. It would be an absolute shock to any layperson if Nationwide's conduct *did not* cause her some degree of anxiety, depression, mental anguish, stress and emotional distress. It did, however, and Mrs. Politz should be allowed to testify to such.

Mrs. Politz can testify to her own experiences and what she experienced first hand. Pursuant to Federal Rule of Evidence Rule 701, a lay witness may give an opinion based upon the witness's personal observations or knowledge.

Because Mrs. Politz's position that her emotional distress was caused, in part, by Nationwide's conduct is based on her rational perceptions, and such testimony is not by any means an expert opinion, Nationwide's Supplemental Motion for Summary Judgment should be denied in its entirety.

## **CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests the Court to deny Defendant's Motion and Supplemental Motion for Summary Judgment. Any issue in Nationwide's Motion or accompanying Memorandum not specifically addressed herein is, out of an abundance of caution, denied.

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:

Laura Limerick Gibbes, Esquire  
Laura Louise Hill, Esquire  
Watkins, Ludlam, Winter & Stennis, P.A.  
Post Office Drawer 160  
Gulfport, MS 39502-0160

Elizabeth Locke, Esquire  
Daniel F. Attridge, P.C.  
Thomas A. Clare, P.C.  
Christian D.H. Schultz  
Robert B. Gilmore, Esquire  
Sean M. McEldowney, Esquire  
Kirkland & Ellis LLP  
655 15th Street, N.W., Suite 1200  
Washington, DC 20005

Crockett Lindsey  
U.S. Attorney's Office  
1575 20th Ave.  
Gulfport, MS 39501  
email: crockett.lindsey@usdoj.gov

SO CERTIFIED on this the 9<sup>th</sup> day of April, 2009.

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

KRISTOPHER W. CARTER, MS Bar No. 101963  
DENHAM LAW FIRM  
424 Washington Avenue (39564), Post Office Drawer 580  
Ocean Springs, MS 39566-0580  
228.875.1234 Telephone, 228.875.4553 Facsimile