

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

**MOTION TO STAY PROCEEDING**

COMES NOW the Plaintiff, HELEN J. POLITZ, by and through her attorneys of record, DENHAM LAW FIRM, and would file this, her Motion to Stay Proceedings, and in support thereof would show as follows:

I.

Currently *Margaret and Dr. Magruder S. Corban v. United Services Automobile Association, et al*, No. 2008-IA-00645-SCT, on appeal from the Harrison County, Mississippi, First Judicial District, Case No. A2401-06-404, is pending before the Mississippi Supreme Court. Oral argument will be held before the Mississippi Supreme Court on June 9, 2009. Nationwide has been granted leave to participate in the oral argument and has filed an Amicus Brief in that case. It is anticipated that the Mississippi Supreme Court will issue an opinion within a very short time after the June 9, 2009 oral arguments regarding the validity, enforceability and application of the **anti concurrent causation** (“ACC”) clause in Mississippi homeowners insurance policies. The ACC clause in Nationwide’s policy of insurance is virtually identical to the one being reviewed by the Mississippi Supreme Court in the *Corban* case. Because the issue of whether the ACC clause is applicable to and/or excludes coverage on Plaintiff’s loss constitutes Nationwide’s **entire argument** as to why it failed to pay Plaintiff’s claim, the decision of the Mississippi Supreme Court’s decision on this issue is vital to the

proper adjudication of this action. This Motion is not filed for the purposes of delay, but is filed solely for the purpose of proper adjudication of this action, avoidance of confusion regarding the legal issues involved, and to prevent the potential necessity of the retrial of this case in the event that the Mississippi Supreme Court disagrees with the Fifth Circuit on this issue. The Mississippi Supreme Court's ruling on this issue could mean a 180 degree difference in the outcome of this trial. Plaintiff respectfully requests the Court to stay these proceedings pending a ruling from the Mississippi Supreme Court in *Corban v. United Services Automobile Association, et al* No. 2008-IA-00645-SCT. In *Landis v. North American Co.*, the United States Supreme Court stated:

[t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance. *Kansas City Southern R. Co. v. United States*, 282 U.S. 760, 763, 51 S.Ct. 304, 305, 306, 75 L.Ed. 684; *Enelow v. New York Life Ins. Co.*, 293 U.S. 379, 382, 55 S.Ct. 310, 311, 79 L.Ed. 440. True, the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else. Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both. Considerations such as these, however, are counsels of moderation rather than limitations upon power.

*Landis v. North American Co.*, 299 U.S. 248, 254-255, 57 S.Ct. 163, 166 (U.S. 1936). The situation facing the Court in this action falls squarely into one of those “rare instances” where the resolution of an issue of law in a contemporaneously pending action in state court will unquestionably define the rights of both parties, and will take the “guesswork” out of the hands of this Court and the Fifth Circuit Court of Appeals.<sup>1</sup>

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<sup>1</sup> For instance, in *Leonard v. Nationwide Mutual Ins. Co.*, 499 F.3d 419, 431 (5th Cir. 2007), the Fifth Circuit Court of Appeals was forced to rely on an “Erie guess” on this very same issue. The decision of the Mississippi Supreme Court in the *Corban* case will render such “guesswork” unnecessary, and we will definitively know what the law is on the ACC clause in Mississippi.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests the Court to stay these proceedings pending a ruling from the Mississippi Supreme Court in *Corban v. United Services Automobile Association, et al.* No. 2008-IA-00645-SCT. Plaintiff prays for such other and further relief as may be deemed appropriate.

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

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

CERTIFICATE

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

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SO CERTIFIED on this the 8<sup>th</sup> day of May, 2009.

*s/Kristopher W. Carter*  
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