

UNITED STATES DISTRICT COURT
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, ET AL.

DEFENDANTS

**MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFF'S MOTION
FOR CLARIFICATION AND/OR RECONSIDERATION**

_____ The Court has before it the motion [257] of Helen Politz (Politz) for "Clarification and/or Reconsideration" of the portions of the March 27, 2009, Memorandum Opinion [252] and Order [253] addressing the evidence that will be admitted in support of Politz's claim for mental anguish and emotional distress attributable to Nationwide's alleged breach of its property insurance contract. In accordance with the discussion below, this motion for clarification will be granted.

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. 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.

As I understand the evidence that has been developed during the discovery process, there is no medical testimony that would establish a connection between the alleged breach of contract and Politz's heart condition. Likewise, I understand that there is no medical testimony that would establish a diagnosis that Politz suffered from clinical depression, a serious medical condition, as a result of the alleged breach of contract.

My earlier ruling was intended to indicate that, in the absence of this medical evidence, I would not permit Politz to venture her subjective opinion that the events in question caused or contributed to cause or worsen her heart ailment, and I would not permit Politz to venture her opinion that she suffered the medical condition of clinical depression. This does not imply that Politz will be unable to testify about the effect the defendant's conduct had on her emotionally and mentally. While she will not be permitted to testify to any medical diagnosis not established by competent medical evidence, she will be permitted to express the subjective experiences she had as a result of the events at issue. If Politz's testimony and other evidence submitted in support of her claim for emotional distress and mental anguish meet the two criteria established in *University of Southern Mississippi v. Williams*, 891 So.2d 160, 172-73 (Miss. 2004), she will be entitled to submit this claim for the consideration of the jury under proper instructions.

Politz is correct in that the death of her husband renders any testimony concerning his alleged emotional distress and mental anguish irrelevant and inadmissible.

Accordingly, it is

ORDERED

The plaintiff's motion [257] for clarification is **GRANTED** as set out above.

SO ORDERED this 11th day of May, 2009.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE