

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MARK WATSON and KAREN WATSON

PLAINTIFFS

V.

CIVIL ACTION NO.1:08CV669 LTS-RHW

**NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,
FLETCHER SONGE AGENCY, FLETCHER SONGE, and
WARREN GOFF, INDIVIDUALLY**

DEFENDANTS

ORDER DENYING

**NATIONWIDE MUTUAL FIRE INSURANCE COMPANY'S MOTION [44]
FOR AN EXTENSION OF TIME TO REPLY TO PLAINTIFFS' MOTION [39]
TO REMAND IN ORDER TO TAKE REMAND-RELATED DISCOVERY**

_____The Court has before it Nationwide Mutual Fire Insurance Company's (Nationwide) motion [44] requesting a forty-five day extension of time to respond to Plaintiffs' motion [39] to remand. As grounds for its motion, Nationwide asserts that it is necessary to take remand-related discovery in order to properly respond to the plaintiffs' motion. More specifically, Nationwide asserts that additional discovery is necessary to prove that the plaintiffs' claims against the non-diverse defendants are time-barred. Nationwide does not specify the form this discovery would take.

This action was filed in the Circuit Court of Jackson County, Mississippi, before the third anniversary of Hurricane Katrina. Because this lawsuit seeks damages for losses sustained during that storm, it is difficult for the Court to see how the plaintiffs could conceivably have been "on notice" of their claims against the non-diverse defendants before the storm struck.

Nationwide has asserted that the non-diverse defendants in this action were fraudulently joined to defeat this Court's diversity jurisdiction. This is an issue upon which Nationwide, as the removing party, has the burden of proof, and an issue on which Nationwide expected to prevail at the time this case was removed. Yet in the ten months that have elapsed since removal, none of the non-diverse defendants has sought a ruling on the merits of the plaintiffs' claims against them. Nor have the defendants taken the discovery they now contend is crucial to establishing this Court's diversity jurisdiction.

In these circumstances, and in light of the very specific allegations reflected in Karen Wilson's affidavit (attached to the motion to remand [39] as Exhibit 2), I do not believe it is necessary to delay a decision on the plaintiffs' motion for an additional forty-five days, as Nationwide requests. I will therefore deny Nationwide's motion.

Since I am making this ruling near the defendants' deadline to respond to the motion [44] to remand, I will extend that deadline for an additional ten days. Nationwide's response shall be due on or before July 15, 2009.

Accordingly it is

ORDERED

That the motion [44] of Nationwide Mutual Fire Insurance Company for an extension of time to respond to the plaintiffs' motion to remand [39] in order to conduct remand-related discovery is hereby **DENIED**; and

That a ten-day extension of the current deadline for Nationwide's response to the plaintiffs' motion to remand is hereby **GRANTED**; and

That Nationwide's response to the plaintiffs' motion to remand shall be filed on or before July 15, 2009.

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