

**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**

**ORDER**

Before the Court is [352] Plaintiff's motion for leave to designate a mental health expert filed June 5, 2009. Plaintiff and her now deceased husband<sup>1</sup> filed this lawsuit January 17, 2008, seeking recovery under their Nationwide homeowner's policy for Hurricane Katrina losses [1], claiming their home was reduced to a slab by Katrina, and that Nationwide has failed to meet its obligations under the insurance policy. The complaint mentions mental anguish and emotional distress in Paragraph 75, alleging Nationwide's delay in investigating/paying the claim resulted in severe depression, mental anguish and emotional distress to the plaintiffs, and in Paragraph 84, alleging plaintiffs are entitled to recover damages for emotional distress and mental anguish.

The Court conducted a telephonic case management conference on April 2, 2008, establishing a scheduling order [7] which set the case for trial March 9, 2009, and required Plaintiffs to designate their experts by June 16, 2008. The Court extended the Plaintiff's expert deadline to July 16, 2008, and on that date, Plaintiff Helen Politz designated as experts an engineer, a meteorologist, and a contractor [20]. Defendant Nationwide designated its experts September 10, 2008. The Court subsequently extended discovery to November 14, 2008.

---

<sup>1</sup>Plaintiff filed [17] a suggestion of death June 18, 2008, advising that Mr. Politz died April 22, 2008.

On November 5, 2008, Nationwide moved the Court to extend the discovery and motions deadlines, based in part on its inability to secure from Plaintiff's counsel agreeable dates for depositions of Plaintiff and her fact and expert witnesses [71], and in part on Plaintiff's supplemental disclosures filed October 29, 2008 which identified even more witnesses. By separate motion filed November 3, 2008, Nationwide had sought an order compelling Plaintiff to sign a privacy act release so that Nationwide could obtain information from the SBA [66]. Because of the impending discovery deadline, the Court entered text orders reducing the time for response and reply to these motions, and by order [123] entered November 26, 2008, the Court granted the motion to compel Plaintiff to sign the privacy act waiver, and extended the discovery and motions deadlines to allow Nationwide until December 29, 2008 to conduct out-of-time depositions of Daniel Schroeder and "necessary witnesses who may be revealed in the SBA documents." The Court also stated that any further deposition of Dr. Babo would be contingent on the District Judge's ruling on Nationwide's [110] motion to dismiss Mrs. Politz's emotional distress claim. Mrs. Politz failed to reveal that she had sought and received treatment for emotional/mental problems until during her deposition on November 13, 2008,<sup>2</sup> the day before discovery was to end.

By notice of hearing entered on December 24, 2008, the case was set for final pretrial conference February 10, 2009. By order [166] entered January 26, 2009, the District Judge allowed Plaintiff to supplement the report of her expert Ted Bidy, and to supplement her disclosures, but held that Plaintiff would not be able to conduct further discovery in the case.

---

<sup>2</sup>In her June 18, 2008 response to Nationwide's interrogatory number 26, Mrs. Politz stated she "did not seek mental health treatment although she has had a tremendous amount of emotional and mental anguish," but that her husband saw Dr. Mark Babo for depression.

The Court reset the final pretrial conference for May 18, 2009, and trial on June 8, 2009. In keeping with this ruling, the undersigned promptly entered [170] an order regarding discovery on January 27, 2009, setting out the discovery which Nationwide would be allowed and fixing March 31, 2009 as the date by which such discovery was to be accomplished. The Court later granted Nationwide leave to take some depositions out of time [220] due to unavailability of the deponents prior to the March 31, 2009 deadline.

On March 27, 2009, the District Judge entered order [252], again noting that Plaintiff failed “to timely disclose her medical records concerning her treatment for depression or for her heart condition,” and ruling with respect to Plaintiff’s claims for mental/emotional distress that:

While Mrs. Politz may, in good faith, have the subjective belief that Nationwide’s refusal of her claim for storm damage contributed to her heart condition and to her “depression,” I will not permit her to express that belief in the absence of corroborating medical testimony.

Plaintiff moved for reconsideration or clarification [257] of the order, conceding that Mrs. Politz cannot provide a medical opinion that her heart troubles resulted from Nationwide’s conduct, but urging that:

... Mrs. Politz can most assuredly testify regarding her damages for mental anguish, stress, anxiety and emotional distress stemming from Nationwide’s conduct, and corroborating medical testimony as to those damages is not required under Mississippi law. Any layperson can testify as to the effect of the conduct of another on the way that they feel mentally and emotionally. ... Medical expertise simply is not needed to testify to such an obvious lay conclusion.

The District Judge ruled on the motion to clarify on May 11, 2009 in order [293], which stated that Plaintiff would be “permitted to express the subjective experiences she had as a result of the events at issue,” although she would not be permitted “to testify to any medical diagnosis not established by competent medical evidence...,” and if her testimony and other evidence submitted

in support of her claim for emotional distress and mental anguish show that mental anguish was a foreseeable consequence of the particular breach of contract she alleges in this lawsuit, and that she actually suffered mental anguish, she would be allowed to submit this claim for jury consideration.

On the May 18, 2009 pretrial date, the District Judge decided to reschedule the pretrial conference and trial for later dates, and re-opened discovery for both parties for 60 days followed by 15 days in which to file any further motions. Nationwide promptly filed [344] a motion for an order for mental examination of the Plaintiff on May 26, 2009. Plaintiff opposed the motion, claiming it was nothing more than an attempt by Nationwide to designate a mental health expert long after its expert deadline expired;<sup>3</sup> that Plaintiff did not intend to call her treating physician Dr. Babo as a witness; and that Dr. Babo had made clear in his depositions that he had no expert opinion with respect to Mrs. Politz's mental health issues in relation to Nationwide, so Defendant had no need to rebut any such evidence. [344, pp. 2-3] Among other things, Plaintiff argued:

...no physician or other expert witness could even conceivably rebut Mrs. Politz's testimony as to how Nationwide's conduct made her feel.

\*\*\*

... such "expert" testimony [would] be completely speculative and completely incapable of disproving Mrs. Politz's claim for mental anguish...

\*\*\*

It would be impossible for Mr. Webb<sup>4</sup> to disprove Mrs. Politz's claim, as it is a **subjective** claim of emotional distress, mental anguish, anxiety and stress. Mr. Webb's testimony will add nothing whatsoever, and will merely serve to confuse the issues in this cause, as well as adding significant expense. Mr. Webb's testimony has no probative value to the issues in this cause, and would be prejudicial because it would tend to confuse the jury, and would be completely

---

<sup>3</sup>Nationwide's expert deadline was September 10, 2009; Plaintiff's expert deadline was July 16, 2008.

<sup>4</sup>Dr. Mark Webb of the of the Mississippi Neuropsychiatric Clinic conducted the court ordered psychiatric examination of Plaintiff.

speculative. There is absolutely no way that Mr. Webb could rebut Mrs. Politz's **lay** testimony as to what she subjectively felt when Nationwide denied her claim.

*Id.*, pp. 3-5.

Although the additional discovery period was scheduled to expire July 17, 2009, the docket reflects no effort by Plaintiff to secure her own mental health expert until after Nationwide's motion for mental health examination of Plaintiff was granted on June 1, 2009. The gist of Plaintiff's present motion [352] is that if Nationwide is going to have a mental health expert to impeach or rebut her testimony, then Plaintiff should be allowed to have one to support her claim. Plaintiff cites no authority whatsoever to support this contention, and she fails to give any reason for her failure to timely designate such an expert. It is therefore,

**ORDERED** that Plaintiff's motion for leave to designate a mental health expert is denied, this the 10<sup>th</sup> day of July, 2009.

*/s/ Robert H. Walker*

---

ROBERT H. WALKER  
UNITED STATES MAGISTRATE JUDGE