

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 FOR REVIEW OF AND OBJECTION TO  
THE UNITED STATES MAGISTRATE JUDGE'S [386] ORDER**

**(Expedited Briefing Schedule Respectfully Requested)**

**(Hearing Requested)**

COMES NOW the Plaintiff, HELEN J. POLITZ, by and through her attorneys of record, DENHAM LAW FIRM, pursuant to Rule 72(a) of the Federal Rules of Civil Procedure and Rule 72.1 of the Uniform Local Rules of the United States District Courts for the Northern District of Mississippi and the Southern District of Mississippi, and submit herewith her Application for Review of and Objection to the United States Magistrate Judge's [386] Order, and, in support thereof, show the following:

I.

Plaintiff respectfully requests that the Honorable District Court Judge vacate, reverse and/or modify the United States Magistrate Judge's [386] Order because the findings upon which it is based are clearly erroneous, and/or because the United States Magistrate's Ruling is clearly erroneous or contrary to the law. Plaintiff is filing this Application for Review and Objection in a timely manner, within ten (10) days of service of the Honorable Magistrate Judge's Order. Plaintiff respectfully requests that the Court to expedite the briefing schedule for this Motion and respectfully requests the Court to grant Plaintiff's **Motion for Hearing** regarding this Motion filed separately in this cause.

## II.

This Court, after the pretrial conference, reopened discovery for an additional sixty days. However, there was no mention of new expert deadlines or any other deadlines aside from those pertaining to Motions. Nationwide moved for, and the Court allowed during this period, leave to conduct a defense medical examination by its own expert, Dr. Mark Webb. Plaintiff accordingly merely asked to be put on even footing with Nationwide by seeking leave to designate her own mental health expert, Dr. Harold Ginzburg. See Exhibit "A," curriculum vitae of Dr. Harold Ginzburg.

Dr. Ginzburg, Mrs. Politz's proposed mental health expert, has at this point **already evaluated** Mrs. Politz, and has additionally **rendered a diagnosis and expert report**. Against Nationwide's objection,<sup>1</sup> Plaintiff's counsel sent this to Nationwide's counsel both in e-mail on June 30, 2009, and a hard copy was sent via Federal Express on July 6, 2009, despite Nationwide's protests that it *did not want* the report. There is no prejudice to Nationwide, as it has already received Dr. Ginzburg's full report. Plaintiff, on the other hand, did not receive Dr. Webb's report until the last day of the reopened discovery period, July 17, 2009, at approximately 4:00 p.m..

## III.

Certainly Plaintiff will be entitled to call Dr. Ginzburg as a rebuttal witness to the extent that Dr. Webb's testimony conflicts with his opinion and diagnosis, but there is no reason why Plaintiff should not be allowed to call Dr. Ginzburg in her case in chief. Nationwide has already

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<sup>1</sup> As soon as Plaintiff received Dr. Ginzburg's report, her counsel offered to send it to Nationwide. Nationwide's counsel, Elizabeth Locke, repeatedly told Plaintiff's counsel that she did not want the report. See Exhibit "B," and Exhibit "C," e-mails between Locke and Carter. Plaintiff's counsel sent it to her anyway, knowing Nationwide's penchant for attempting to manufacture prejudice to put Plaintiff in a bad light. See Exhibit "D." In fact, that appears to be Nationwide's primary strategy at this point in the litigation.

received his report, and has already stated that it was contacting his office for deposition dates as of the end of June.

#### IV.

Allowing Nationwide's expert Dr. Webb to provide a medical diagnosis, while at the same time prohibiting Mrs. Politz from offering an expert to provide a medical diagnosis, squarely places Mrs. Politz in a severely prejudicial position from that of Nationwide. Nationwide claims that Mrs. Politz always had the information about her mental condition, from a medical standpoint, while it did not. This is not true, as Mrs. Politz is not a medical doctor and had never previously been diagnosed by a mental health specialist, specifically with regard to her feelings of depression, stress and anxiety in the wake of Hurricane Katrina and Nationwide's denial of her claim. Further, as previously pointed out to the Court, Mrs. Politz has gone through an awful lot since this litigation began, including several moves, the death of her husband, and her own open heart surgery. She additionally comes from a generation which stigmatizes mental health issues, making her doubly wary of seeking any such diagnoses.

Nationwide certainly was aware from the day Plaintiff filed her Complaint that she was seeking damages for mental anguish and emotional distress. It tries to come up with several reasons it did not need to designate a mental health expert at that time, but those reasons ring hollow.

Now that Nationwide *has* been allowed to designate its own mental health expert, Dr. Mark Webb, Plaintiff certainly has good cause to move for leave to designate her own psychiatrist, Dr. Harold Ginzburg, to testify on her behalf. Not only has she already been evaluated by Dr. Ginzburg, but he has already issued his report on his findings, and Nationwide has it. **Plaintiff did not receive Dr. Webb's report until 4:00 p.m. on the last day of the**

**discovery deadline.** Accordingly, Nationwide is in a much better position at this point with regard to Plaintiff's mental health expert than Mrs. Politz is with regard to Nationwide's. Dr. Webb very likely wrote his own report with the benefit of Dr. Ginzburg's report in hand.

“Juries are often in awe of expert witnesses because, when the expert witness is qualified by the court, they hear impressive lists of honors, education and experience. An expert witness has more experience and knowledge in a certain area than the average person. Therefore, juries usually place greater weight on the testimony of an expert witness than that of a lay witness.” *Edmonds v. Stat*, 955 So.2d 787 (Miss. 2007). See also *Watts v. Radiator Specialty Co.*, 990 So.2d 143 (Miss. 2008).

The purpose of Rule 35 is to put the defense on equal footing with the Plaintiff. See *Lahr v. Fulbright & Jaworski, LLP*, 164 F.R.D. 196, 200 (N.D. Tex. 1999). The denial of Plaintiff's Motion for Leave to Designate Dr. Ginzburg as an expert witness does exactly the opposite. Plaintiff accordingly respectfully requests that this Court allow her to call Dr. Ginzburg as a mental health expert in her case in chief at the trial of this matter.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests that this Honorable Court will Review the [386] Order of the United States Magistrate Judge, and enter its Order setting aside and reversing the Honorable Magistrate Judge's Order as clearly erroneous and/or contrary to the law; together with such other relief as may be deemed appropriate by this Honorable Court.

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

SO CERTIFIED on this the 27<sup>th</sup> day of July, 2009.

*s/Kristopher W. Carter*  
KRISTOPHER W. CARTER

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