IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS A. EAMES, ROBERTA L. EAMES, and TAMMY EAMES, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 04-1324-KAJ
NATIONWIDE MUTUAL INSURANCE COMPANY,	)	
Defendant.	)	

MEMORANDUM ORDER

Before me is a motion (Docket Item ["D.I."] 186; the "Motion") by the Plaintiffs for "Clarification or Reconsideration" of my April 6, 2006 Order adopting the January 4, 2006 Report and Recommendation (D.I. 132; the "R&R") of the Special Discovery Master ("SDM") appointed in this case. In that R&R, the SDM determined that Nationwide had engaged in a "hyper technical interpretation of Plaintiffs' requests and overly narrow interpretation of the scope of discovery" (*id.* at 8), and that Nationwide had provided delayed, incomplete, and evasive answers to discovery, despite the plaintiffs' good faith effort to acquire evidence. (*Id.* at 8-10.) The SDM therefore recommended, among other things, that Nationwide should be sanctioned and should pay the Plaintiffs' expenses in bringing the motion to compel discovery, which led to the R&R. (*Id.* at 10.)

In my April 6 Order, I noted that "the Recommendations [of the SDM] are well-founded and should be adopted in their entirety." (D.I. 184 at 2.) The Plaintiffs rightly

seek clarification or modification of that Order to make it clear that Nationwide is responsible for paying the full costs of the SDM's services with respect to the motion to compel that was resolved by the R&R. (D.I. 186 at 4.) I did not note in my Order, though I should have, that I place the burden of the SDM's fees on Nationwide. To permit that cost to be equally apportioned would be inconsistent with the SDM's findings and recommendations and with my independent determination both that the R&R was sound in all respects (*see* D.I. 184 at 2) and that the SDM's fees should not be equally apportioned if a party were found to have been at fault in creating this particular discovery impasse. (*See* D.I. 186 at 1 (quoting Sept. 13, 2005 teleconference transcript).) After a very thorough process, Nationwide has been found to be the party clearly in the wrong. Thus, it is right and proper that Nationwide bear the unnecessary costs that its actions have added to the case.

Accordingly, the Plaintiffs' Motion (D.I. 186) is GRANTED and the April 6, 2006 Order (D.I. 184) is clarified and modified as follows: Defendant Nationwide shall bear the entire cost of the SDM's services in connection with the issues resolved by the R&R.

UNITED STATES DISTRICT JUDGE

Dated: May 8, 2006
Wilmington, Delaware