

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

JAMSHIB JAMSHAB,
as Personal Representative of the Estate of
Azita Jamshab,

Plaintiff

v.

Civil No. 04-50-P-C

NATIONWIDE INSURANCE
COMPANY,

Defendant

Gene Carter, Senior District Judge

**ORDER AFFIRMING IN PART THE RECOMMENDED DECISION OF THE
MAGISTRATE JUDGE AND GRANTING IN PART DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

The United States Magistrate Judge filed with the Court on December 29, 2004, his Recommended Decision (Docket Item No. 44) on Defendant's Motion for Summary Judgment (Docket Item No. 24). Defendant filed an objection to the Recommended Decision (Docket Item No. 46) on January 18, 2005, and Plaintiff also filed an objection on the same date (Docket Item No. 47).

After a full *de novo* review of the Recommended Decision and the record made by the parties on Defendant's Motion for Summary Judgment, the Court will accept the recommendations as to Counts I-II and IV-IX of the Amended Complaint.

With respect to Count III, the Magistrate Judge recommended that this Court deny Defendant's Motion for Summary Judgment because "Count III appears to be simply a means of stating the plaintiff's entitlement to bring [Counts VI and VII]." Recommended Decision at 24. In light of the fact that Defendant does not now dispute Plaintiff's ability to assert Counts VI and VII¹ if judgment is entered for Defendant on Count III, and there being no claims remaining in this case which invoke 18-A M.R.S.A. § 3-817, the Court will grant summary judgment against Plaintiff on Count III.

Accordingly, the Court **ACCEPTS, AFFIRMS, and ADOPTS** the recommendations of the Magistrate Judge as to Counts I-II and IV-IX of the Amended Complaint. It is **ORDERED** that Defendant's Motion for Summary Judgment on Counts I-II, IV-V, and VIII-IX be, and it is hereby, **GRANTED**. It is **FURTHER ORDERED** that Defendant's Motion for Summary Judgment as to Counts VI-VII be, and it is hereby, **DENIED**.

For the reasons set forth above, it is **FURTHER ORDERED** that Defendant's Motion for Summary Judgment on Count III be, and it is hereby, **GRANTED**.

Remaining for trial are Counts VI and VII only.

/s/ Gene Carter
GENE CARTER
United States Senior District Judge

Dated at Portland, Maine this 22nd day of February, 2005.

¹ See Defendant's Objection to the Magistrate Judge's Recommended Decision (Docket Item No. 46) at 2 ("Nationwide agrees that granting it summary judgment as to Count III would not foreclose the Estate from presenting claims related to the payment of the insurance policy proceeds.").

JAMSHIB JAMSHAB
*as Personal Representative of the
Estate of Azita Jamshab*

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V.

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COMPANY**

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