

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

---

<b>AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY,</b>	)
	)
<i>Plaintiff, Counter-Defendant,</i>	)
	)
<b>v.</b>	)
	)
	<b>CIVIL ACTION</b>
	<b>NO. 3:11-CV-219</b>
<b>CAROL ANN STUTTE; LAURA JEAN STUTTE,</b>	)
	)
<i>Defendants, Counter-Plaintiffs,</i>	)
	)
<b>and</b>	)
	)
<b>CHASE HOME FINANCE, LLC,</b>	)
	)
<i>Defendant.</i>	)
	)

---

**MEMORANDUM IN OPPOSITION TO ANPAC'S MOTION TO DISMISS  
COUNT THREE OF THE STUTTES' COUNTERCLAIM**

Defendants and Counter-Plaintiffs, Carol Ann Stutte and Laura Jean Stutte (collectively, the “Stuttes”), by and through counsel, submit this Memorandum in Opposition to Plaintiff and Counter-Defendant American National Property and Casualty Company’s (“ANPAC’s”) Motion to Dismiss Count Three of the Stuttes’ Counterclaim. Contrary to ANPAC’s contention in its motion, Count Three does not rest on the allegation that ANPAC violated the Tennessee Consumer Protection Act (“TCPA”) by a simple denial of the Stuttes’ insurance claim. Rather, Count Three alleges that ANPAC accused the Stuttes of committing arson and fraud *even though ANPAC knew its accusations were false*, because ANPAC had clear evidence proving that the Stuttes did not cause the fire that destroyed their home. The Stuttes’ allegations state a claim under the TCPA, and ANPAC’s motion to dismiss should therefore be DENIED.

## **Background**

On September 4, 2010, the Stuttes’ home and its contents were completely destroyed by fire. The property, located at 2715 Highway 360, Vonore, Monroe County, Tennessee, was insured by ANPAC under Special Homeowners Policy No. 41-H-V66-965-7 (the “Policy”). The Stuttes timely noticed an insurance claim under the Policy.

The Stuttes provided ANPAC with documentary and testimonial evidence from multiple sources and witnesses, all of which confirm that the Stuttes were present in Nashville, Tennessee, approximately 200 miles away from their home, at the time of the fire.<sup>1</sup> The Stuttes also furnished ANPAC with a copy of an Incident Report from the Monroe County Sheriff’s Office dated August 9, 2010, which describes an incident in which the Stuttes’ neighbor threatened, among other things, to burn down the Stuttes’ home.

ANPAC denied the Stuttes’ claim by letter and the next day filed the present lawsuit, both of which falsely accuse the Stuttes of intentionally causing the fire and of committing concealment or fraud relating to their claim. Instead of “provid[ing] a reasonable and accurate explanation of the basis” for its coverage denial, as required by Tenn. Code Ann. § 56-8-105(12), ANPAC’s denial letter and lawsuit offered only a boilerplate and conclusory statement that “[i]t has been determined through investigation that the preponderance of the evidence” supports ANPAC’s accusations. ANPAC never disputed the fact that the Stuttes were 200 miles away from their home when it burned down, nor did ANPAC ever explain how – despite this fact – the Stuttes managed to intentionally cause the fire.

---

<sup>1</sup> The evidence provided to ANPAC included a parking receipt from NCB Garage dated “SEP 4” and time-stamped “19:30” (7:30 p.m.), receipts for admission to the Wildhorse Saloon dated “9/4/2010” and time-stamped “19:48” (7:48 p.m.) and “19:49” (7:49 p.m.), and a dinner receipt from the Wildhorse Saloon dated “9/4/2010” and time-stamped “20:25” (8:25 p.m.). The NCB Garage and the Wildhorse Saloon are both located in downtown Nashville. (Countercl. ¶ 12.)

## **Standard of Review**

To survive ANPAC's motion to dismiss Count Three for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), the Stuttes' counterclaim "need contain only 'a short and plain statement of the claim showing that the [Stuttes are] entitled to relief, in order to give [ANPAC] fair notice of what the . . . claim is and the grounds upon which it rests.'" *E.g., Riggs Drug Co. v. Amerisourcebergen Drug Corp.*, No. 3:09-CV-538, 2010 WL 3619951, at \*3 (E.D. Tenn. Sept. 13, 2010) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The Court must construe the counterclaim in the light most favorable to the Stuttes, accept all well-pleaded factual allegations as true, and determine whether Count Three states a plausible claim for relief. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009).

## **Argument**

The Stuttes' counterclaim sets forth a plausible claim for relief under the TCPA, because Count Three contends that ANPAC committed unfair or deceptive acts when it denied coverage, filed a groundless lawsuit, and accused the Stuttes of arson and fraud, all *based on allegations ANPAC knew to be false*.<sup>2</sup> As this court has held, "[w]hen an insurance company denies a claim

---

<sup>2</sup> In relevant part, Count Three states:

35. ANPAC has engaged in unfair or deceptive acts or practices by denying coverage for the Stuttes' claim, cancelling the Policy, and filing this coverage action based on allegations ANPAC knows, or should know, to be false, in an effort to avoid its obligations under the Policy.

36. Specifically, ANPAC accused the Stuttes of destroying their home and contents, and of committing concealment or fraud relating to their claim, even though ANPAC knew, or should have known, that these allegations were false based on evidence in its possession concerning the Stuttes whereabouts at the time of the fire.

(Countercl. ¶¶ 35-36.)

based on information it knows to be false, that supports a claim under the TCPA.” *Rothberg v. Cincinnati Ins. Co.*, No. 1:06-CV-111, 2008 WL 833201, at \*8 (E.D. Tenn. Mar. 27, 2008).<sup>3</sup>

ANPAC’s motion to dismiss attempts to minimize and mischaracterize Count Three by claiming that it alleges a TCPA violation based only on “the mere denial of an insurance claim.” (ANPAC’s Mem. of Law in Supp. of Mot. to Dismiss 3.) However, courts in Tennessee have repeatedly held that allegations similar to the Stuttes’ state a claim for relief under the TCPA because they entail much more than a routine coverage denial. *See, e.g., Nat'l Union Fire Ins. Co. of Pittsburg, Pa. v. Small Smiles Holding Co.*, No. 3:10-00742, 2011 WL 662687, at \*5 (M.D. Tenn. Feb. 14, 2011) (denying the insurer’s motion to dismiss a TCPA claim where the policyholder alleged that the insurer “fil[ed] a lawsuit which [it] knew was based upon facts which are simply untrue”); *Rothberg*, 2008 WL 833201, at \*8 (denying the insurer’s motion for summary judgment on a TCPA claim where the policyholder alleged that the insurer’s stated reason for denying coverage was contrary to evidence in its possession); *Cowie v. State Farm Fire & Cas. Co.*, No. 1:07-CV-63, 2007 WL 2238272, at \*7 (E.D. Tenn. Aug. 1, 2007) (granting leave to amend because the policyholder’s allegation that the insurer “had knowledge that its arson theory was untrue” stated a claim for relief under the TCPA); *Sparks v. Allstate Ins. Co.*, 98 F. Supp. 2d 933, 938 (W.D. Tenn. 2000) (denying the insurer’s motion to dismiss a TCPA claim where the policyholder alleged “that Allstate had clear evidence when it denied [the] claim” that the policyholder did not commit arson).

---

<sup>3</sup> The Tennessee Supreme Court has held that the TCPA applies to the actions of insurance companies, *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 925-26 (Tenn. 1998), including the handling of a claim, *Gaston v. Tenn. Farmers Mut. Ins. Co.*, 120 S.W.3d 815, 822 (Tenn. 2003).

Like the policyholders in the above-cited cases, the Stuttles, in their TCPA claim, allege that ANPAC “knew” its lawsuit “was based upon facts which are simply untrue,” *Small Smiles*, 2011 WL 662687, at \*5, that ANPAC’s stated reason for denying coverage was contrary to evidence in its possession, *Rothberg*, 2008 WL 833201, at \*8, that ANPAC “had knowledge that its arson theory was untrue,” *Cowie*, 2007 WL 2238272, at \*7, and that ANPAC “had clear evidence when it denied [the] claim” that the Stuttles did not burn down their home, *Sparks*, 98 F. Supp. 2d at 938. Thus, construing the counterclaim in the light most favorable to the Stuttles, and accepting the Stuttles’ factual allegations as true, Count Three plainly states a plausible claim for relief under the TCPA.

### **Conclusion**

For the foregoing reasons, ANPAC’s motion to dismiss Count Three of the Stuttles’ counterclaim should be DENIED.

Dated: July 5, 2011

Respectfully submitted,

/s/ Peter J. Alliman  
Peter J. Alliman (BPR No. 5984)  
WHITE, CARSON & ALLIMAN, P.C.  
135 College Street  
Madisonville, TN 37354  
Tel: (423) 442-9000  
Fax: (423) 442-3949  
Email: allimanp@aol.com

*Attorney for Defendants Carol Ann Stutte  
and Laura Jean Stutte*

Seth A. Tucker  
Scott J. Levitt  
Jonathan G. Hardin  
COVINGTON & BURLING LLP  
1201 Pennsylvania Avenue NW  
Washington, DC 20004-2401

Tel: (202) 662-6000  
Fax: (202) 662-6291  
Email: stucker@cov.com  
slevitt@cov.com  
jhardin@cov.com

(*Pro Hac Vice Motions to be Filed*)

*Of Counsel for Defendants Carol Ann Stutte  
and Laura Jean Stutte*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th day of July, 2011, a copy of the foregoing  
**MEMORANDUM IN OPPOSITION TO ANPAC'S MOTION TO DISMISS COUNT  
THREE OF THE STUTTES' COUNTERCLAIM** was filed electronically using the Court's  
Electronic Filing System. Notice of this filing will be served through the Electronic Filing  
System to parties or counsel who are Filing Users, and by first-class mail to any party or counsel  
who is not served through the Electronic Filing System.

/s/ Peter J. Alliman

Peter J. Alliman (BPR No. 5984)  
WHITE, CARSON & ALLIMAN, P.C.  
135 College Street  
Madisonville, TN 37354  
Tel: (423) 442-9000  
Fax: (423) 442-3949  
Email: allimanp@aol.com

*Attorney for Defendants Carol Ann Stutte  
and Laura Jean Stutte*