

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

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

**THE STUTTES’ MOTION FOR LEAVE TO FILE SUPPLEMENTAL PLEADING
ASSERTING BAD FAITH COUNTERCLAIM AGAINST ANPAC**

Defendants and Counter-Plaintiffs, Carol Ann Stutte and Laura Jean Stutte (collectively, the “Stuttes”), by and through counsel, move pursuant to Federal Rule of Civil Procedure 13(e) for leave to file the attached supplemental pleading asserting a counterclaim against Plaintiff and Counter-Defendant American National Property and Casualty Company (“ANPAC”) for “bad faith refusal to pay” the Stuttes’ insurance claim under Tennessee Code Annotated § 56-7-105. Rule 13(e) provides: “The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.”

The Stuttes’ counterclaim for bad faith matured *after* the Stuttes served their Answer and Counterclaim on June 6, 2011 (Doc. No. 6). An insurer may be found liable under Tennessee’s bad faith statute if it “refuse[s] to pay the loss within sixty (60) days after a demand has been

made by the holder of the policy” Tenn. Code Ann. § 56-7-105(a). For such a claim to mature, the policyholder must (1) make a “formal demand for payment” that “provid[es] the insurer with notice of the bad faith claim,” and (2) “wait 60 days after making [the] demand before filing suit.” *E.g., PacTech, Inc. v. Auto-Owners Ins. Co.*, 292 S.W.3d 1, 9 (Tenn. Ct. App. 2008); *Catherwood v. Nationwide Prop. & Cas. Ins. Co.*, No. 1:06-cv-167, 2007 WL 4208964, at *4 (E.D. Tenn. Nov. 26, 2007). As set forth in the attached supplemental pleading,¹ by letter dated May 19, 2011, the Stuttes made a formal demand for payment and gave ANPAC notice of their intent to assert a claim under the bad faith statute. ANPAC did not respond. Thus, the Stuttes’ counterclaim matured on July 18, 2011—sixty days after the formal demand.

In addition, the Stuttes’ bad faith claim arose out of the same transaction or occurrence that is the subject matter of ANPAC’s claim for declaratory judgment. Further, this litigation has not progressed so far that it would be inconvenient or confusing to allow this additional claim to be pleaded; no discovery has been requested or taken; and the parties have not yet appeared in person before the Court.

Based on the foregoing reasons, the Stuttes respectfully request that the Court GRANT this Motion.

¹ For the convenience of the Court and the parties, the Stuttes also provide a redline version comparing the attached supplemental pleading to their original Answer and Counterclaim (Doc. No. 6, filed June 6, 2011).

Dated: July 20, 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 (*pro hac vice*)
Scott J. Levitt (*pro hac vice*)
Jonathan G. Hardin (*pro hac vice* to be filed)
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

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

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2011, a copy of the foregoing **MOTION FOR LEAVE TO FILE SUPPLEMENTAL PLEADING ASSERTING BAD FAITH COUNTERCLAIM AGAINST ANPAC** 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*