

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>)	CIVIL ACTION
)	
v.)	NO. 3:11-CV-219
)	
CAROL ANN STUTTE; LAURA JEAN)	
STUTTE,)	
)	
<i>Defendants, Counter-Plaintiffs,</i>)	ANSWER AND AMENDED
)	COUNTERCLAIM
and)	
)	JURY TRIAL DEMANDED
CHASE HOME FINANCE, LLC,)	
)	
<i>Defendant.</i>)	
_____)	

Defendants Carol Ann Stutte and Laura Jean Stutte (collectively, the “Stuttes”), by their attorneys, hereby answer the Complaint for Declaratory Judgment of Plaintiff American National Property And Casualty Company (“ANPAC”), and assert a counterclaim against ANPAC.

**THE STUTTES’ ANSWER TO ANPAC’S COMPLAINT FOR
DECLARATORY JUDGMENT**

The Stuttes answer ANPAC’s Complaint for Declaratory Judgment as follows:

1. Admitted.
2. The Stuttes lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

3. Admitted.¹

3. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes admit only that ANPAC is a Missouri corporation with its principal place of business in Springfield, Missouri; the Stuttes are residents of Knoxville, Tennessee; and the amount in controversy exceeds \$75,000.00. The Stuttes lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

4. The Stuttes deny that the total amount of their insurance claim is \$276,275.46. The Stuttes admit the remaining allegations in this paragraph.

5. The Stuttes admit that their insurance claim was denied by correspondence from ANPAC dated May 12, 2011. The remaining allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes deny the remaining allegations in this paragraph.

6. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes deny the allegations in this paragraph.

7. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

8. The Stuttes lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

¹ Because the Complaint inadvertently contains two paragraphs numbered “3,” this Answer also contains two paragraphs numbered “3.”

9. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes deny the allegations in this paragraph.

10. This paragraph contains no allegations to which a response is required. To the extent a response is required, the Stuttes deny that ANPAC is entitled to any of the relief that it seeks.

The remainder of the Complaint consists of ANPAC's request for relief, to which no response is required. To the extent a response is required, the Stuttes deny that ANPAC is entitled to any of the relief that it seeks.

Each and every allegation of the Complaint not heretofore expressly admitted or denied is hereby denied.

THE STUTTES' AFFIRMATIVE DEFENSES

The Stuttes assert the following affirmative defenses pursuant to Fed. R. Civ. P. 8(c):

First Affirmative Defense

ANPAC's Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

ANPAC cannot assert claims against the Stuttes based on the terms, conditions, and other provisions of the policy at issue because ANPAC has breached its obligations under that policy.

Third Affirmative Defense

ANPAC's Complaint is barred under the doctrine of unclean hands.

Fourth Affirmative Defense

ANPAC's Complaint is barred under the doctrine of laches.

Fifth Affirmative Defense

ANPAC's Complaint is barred under the doctrines of waiver and estoppel.

Sixth Affirmative Defense

To the extent that ANPAC relies on ambiguous contractual provisions, those provisions must be construed against ANPAC, thus requiring denial of ANPAC's Complaint.

Seventh Affirmative Defense

ANPAC's Complaint may be barred or limited by the terms and conditions of the policy at issue, or by ANPAC's conduct.

Eighth Affirmative Defense

To the extent that ANPAC relies on vague, unidentified, or undefined policy terms, conditions, or exclusions, the Stuttes reserve the right to supplement their affirmative defenses and to raise additional defenses.

Prayer for Relief from ANPAC's Complaint

WHEREFORE, the Stuttes respectfully request that the Court enter judgment:

- (a) Denying ANPAC's requested relief against the Stuttes, and entering judgment in favor of the Stuttes and against ANPAC;
- (b) Dismissing ANPAC's Complaint with prejudice; and
- (c) Granting the Stuttes such other and further relief as the Court may deem just and proper, including costs and fees incurred in defense of ANPAC's Complaint.

THE STUTES' AMENDED COUNTERCLAIM AGAINST ANPAC

The Stuttes bring this amended counterclaim against ANPAC pursuant to Fed. R. Civ. P. 13(a) and 13(e), and in support thereof, state as follows:

Nature of Action

1. This is a civil action for damages and declaratory relief arising from ANPAC's refusal to pay the Stuttes' claim under a homeowners insurance policy for losses and additional living expenses resulting from the destruction of the Stuttes' home and its contents by fire at approximately 8:00 p.m. on September 4, 2010.

The ANPAC Homeowners Policy

2. The Stuttes purchased Tennessee Special Homeowners Policy No. 41-H-V66-965-7 (the "Policy") from ANPAC. The Policy is attached hereto as Exhibit A.

3. The Policy insures, among other things, the Stuttes' home, other structures, and personal property located at 2715 Highway 360, Vonore, Monroe County, Tennessee ("home" or "home and contents") for the period from June 10, 2010 to June 10, 2011.

4. Under the terms of the Policy, ANPAC is obligated to pay for "accidental direct physical loss" – including loss caused by fire – to the Stuttes' home and contents, subject to the applicable coverage limits set forth in the Policy.

5. Under the terms of the Policy, ANPAC is also obligated to reimburse the Stuttes' "additional living expenses" for a period of up to 36 months if a covered loss renders their home uninhabitable, subject to the applicable coverage limits set forth in the Policy.

The Fire and the Stuttes' Claim

6. At approximately 3:00 p.m. on September 4, 2010, the Stuttes, their daughter, and a family friend departed the Stuttes' home for a planned vacation to Nashville, Tennessee.

7. Upon arriving in Nashville that same day, the Stuttes and their travel companions checked into the Holiday Inn Express Hotel and Suites at 714 Spence Lane in the southeast part of town.

8. That same evening, the Stuttes and their travel companions drove into downtown Nashville, parked their car at the NCB Garage, and went to dinner at the Wildhorse Saloon.

9. At approximately 8:00 p.m., while at the restaurant, the Stuttes were informed by telephone that their home was on fire. Carol Ann Stutte then spoke by telephone with a member of the Monroe County Sheriff's Office, who confirmed that the Stuttes' home was fully engulfed in flames.

10. The fire completely destroyed the Stuttes' home and contents and rendered their home uninhabitable.

11. The Stuttes timely noticed an insurance claim under the Policy for approximately \$300,000.

12. The Stuttes provided ANPAC with documentary and testimonial evidence from multiple sources and witnesses, all of which confirmed that the Stuttes and all other members of their household were physically present in Nashville, Tennessee, approximately 200 miles away from their home, at the time of the fire. 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.).

13. The Stuttes also provided ANPAC with a copy of an Incident Report from the Monroe County Sherriff's Office dated August 9, 2010. The report describes an incident that

occurred on August 6, 2010 – approximately one month before the fire – in which the Stuttes’ neighbor, Janice Millsaps, threatened, among other things, to burn down the Stuttes’ home. The Stuttes have filed a civil lawsuit against Ms. Millsaps in the Chancery Court for Monroe County, Tennessee, a copy of which is attached hereto as Exhibit B.

14. The Stuttes also provided ANPAC with documentary evidence showing that, at the time of the fire, the Stuttes had good credit, they were not suffering any financial distress, and that they had no motive – financial or otherwise – to cause the destruction of their home and contents.

15. Since the fire rendered their home uninhabitable, the Stuttes have incurred, and continue to incur, additional living expenses as defined by the Policy. The Stuttes have timely provided, and continue to provide, ANPAC with documentation of these expenses. As of June 1, 2011, the Stuttes’ unreimbursed additional living expenses totaled approximately \$5,000.

16. At ANPAC’s request, the Stuttes have paid, and continue to pay, for electricity and security lights at the site where their home used to stand.

17. The Stuttes have timely paid, and continue to pay, all mortgage payments due on their home to Defendant Chase Home Finance, LLC, and all insurance payments due on their home and contents to ANPAC.

The Coverage Dispute

18. ANPAC denied the Stuttes’ insurance claim by letter dated May 12, 2011. That same day, ANPAC filed its Complaint for Declaratory Judgment in this Court.

19. ANPAC’s denial letter and Complaint falsely accused the Stuttes of intentionally causing the fire that destroyed their home and contents, and of committing concealment or fraud

relating to their insurance claim. ANPAC did not cite any other basis for refusing to honor its obligations under the Policy.

20. ANPAC did not cite or plead any specific facts in support of its coverage denial. The denial letter and Complaint stated only that “[i]t was determined through investigation that the preponderance of the evidence” supported ANPAC’s allegations. ANPAC therefore failed to explain how and why it determined that the Stuttes intentionally caused the fire, despite the fact that ANPAC had evidence in its possession proving that the Stuttes were about 200 miles away from their home when it burned down, and identifying a suspect who had harassed the Stuttes and specifically threatened to burn down their home in the months leading up to the fire.

21. By letter dated May 19, 2011, the Stuttes requested copies of the information on which ANPAC based its denial of their insurance claim. ANPAC did not respond to the Stuttes’ request.

22. Instead, on May 20, 2011, the Stuttes received a two-sentence letter from ANPAC stating that the Policy had been cancelled, effective on September 4, 2010 at 12:01 a.m., which is approximately 20 hours before the Stuttes’ home and contents were destroyed by fire.

23. Two weeks earlier, on May 6, 2011, ANPAC had sent the Stuttes a “Notice of Premium Due” on their destroyed home and contents for the period from June 10, 2011 to June 10, 2012. By this notice, ANPAC had attempted to renew the Policy and increase the Stuttes’ premium by nearly 30 percent due to a recent negative entry on their credit report, which was a direct result of the financial strain on the Stuttes caused by ANPAC’s failure to pay their claim.

24. The Stuttes dispute ANPAC’s denial of coverage and cancellation of the Policy.

25. The Stuttes have timely paid all premiums due and have complied or substantially complied with all other pertinent terms and conditions of the Policy.

COUNT ONE
(Breach of Contract)

26. The Stuttes hereby incorporate paragraphs 1 through 25 of this counterclaim, as if fully set forth herein.

27. ANPAC has breached its contractual duties under the Policy to pay for the loss to the Stuttes' home and contents, and for the unreimbursed additional living expenses already incurred by the Stuttes.

28. As a direct result of this breach of contract, the Stuttes have been and will be deprived of the benefits of the insurance coverage for which the Stuttes paid premiums.

29. As a further direct result of this breach of contract, the Stuttes have been forced to incur and will continue to incur additional consequential damages, including, without limitation, attorneys' fees and other expenses in defending this litigation and attempting to obtain coverage under the Policy, lost earnings on amounts wrongfully withheld by ANPAC, and damage to their credit due to the financial strain caused by ANPAC's breach, which damages are not subject to the Policy's limits of liability.

COUNT TWO
(Declaratory Judgment)

30. The Stuttes hereby incorporate paragraphs 1 through 29 of this counterclaim, as if fully set forth herein.

31. ANPAC has denied the Stuttes' insurance claim and cancelled the Policy, thereby disclaiming ANPAC's ongoing obligation to reimburse the Stuttes' additional living expenses as they accrue for up to 36 months after the date of the loss.

32. The Stuttes will continue to incur additional living expenses as defined by the Policy.

33. An actual controversy of a justiciable nature presently exists between the Stuttes and ANPAC concerning the existence of the Policy and the ongoing rights and obligations of the parties with respect to coverage for additional living expenses. Accordingly, the Stuttes request a declaratory judgment pursuant to 28 U.S.C. § 2201 *et seq.* and Rule 57 of the Federal Rules of Civil Procedure, declaring such rights and obligations. The issuance of declaratory relief by this Court will terminate some or all of the existing controversy among the parties.

COUNT THREE

(Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*)

34. The Stuttes hereby incorporate paragraphs 1 through 33 of this counterclaim, as if fully set forth herein.

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.

37. As a direct result of these unfair or deceptive acts or practices, the Stuttes have suffered and continue to suffer the ascertainable loss of money, property, and/or other things of value, including, without limitation, insurance proceeds for the loss to their home and contents and additional living expenses, attorneys' fees and other expenses in defending this litigation and attempting to obtain coverage under the Policy, lost earnings on the amounts wrongfully withheld by ANPAC, and damage to their credit. In addition, the Stuttes are entitled to recover

treble damages, up to three times the actual damages they have sustained, pursuant to Tenn. Code Ann. § 47-18-109(a)(3).

COUNT FOUR
(Bad Faith Refusal to Pay, Tenn. Code Ann. § 56-7-105)

38. The Stuttes hereby incorporate paragraphs 1 through 37 of this Counterclaim, as if fully set forth herein.

39. After a fire completely destroyed their home and contents on September 4, 2010, the Stuttes timely noticed an insurance claim for the loss under ANPAC Special Homeowners Policy No. 41-H-V66-965-7, at which point the Policy, by its terms, became due and payable.

40. By letter to ANPAC dated May 19, 2011, the Stuttes made a formal demand for payment under the Policy and provided notice that, if ANPAC did not pay the Stuttes' claim for the loss and their additional living expenses within sixty (60) days, the Stuttes would pursue a bad faith penalty claim under Tennessee Code Annotated § 56-7-105. This formal demand letter is attached hereto as Exhibit C.

41. The Stuttes waited more than sixty (60) days before filing this counterclaim for bad faith, during which time ANPAC did not respond to the Stuttes' formal demand or pay the Stuttes' claim.

42. ANPAC's refusal to pay the Stuttes' insurance claim was not in good faith. The only bases for ANPAC's refusal were its allegations that the Stuttes intentionally caused the fire and committed concealment or fraud relating to their claim. Upon information and belief, ANPAC's investigation and claims handling did not yield sufficient legitimate grounds to support its conclusory allegations. To the contrary, ANPAC discovered documentary and testimonial evidence from multiple sources confirming that the Stuttes were approximately 200 miles away from their home at the time of the fire and, therefore, they could not have set the fire.

The Stuttes also provided ANPAC with documentary evidence showing that, at the time of the fire, the Stuttes had good credit, they were not suffering any financial distress, and they had no motive – financial or otherwise – to cause the destruction of their home and contents.

43. ANPAC acted in bad faith by, *inter alia*, delaying for months after discovering evidence that exonerated the Stuttes, failing to reimburse the Stuttes’ in full for their additional living expenses, denying the Stuttes’ claim and cancelling the Policy, and by filing the present litigation—all without sufficient legitimate grounds, and without providing any specific factual support for these actions. Because ANPAC has failed to provide any specific factual support for its refusal to pay, the Stuttes reserve their right, based on facts discovered during the course of this litigation, to assert that additional actions taken by ANPAC constitute bad faith under Tenn. Code Ann. § 56-5-107.

44. As a direct result of ANPAC’s bad faith refusal to pay, the Stuttes have suffered additional expenses, losses, and injuries, including, without limitation, attorneys’ fees and other expenses in attempting to obtain coverage under the Policy and in defending this litigation, lost earnings on the amounts wrongfully withheld by ANPAC, damage to their credit, and emotional distress.

Prayer for Relief

WHEREFORE, the Stuttes respectfully request that the Court enter judgment:

- (a) Awarding the Stuttes actual compensatory and consequential damages sustained as a result of ANPAC’s breach of contract and ANPAC’s unfair or deceptive acts or practices;
- (b) Declaring that ANPAC has a continuing obligation under the Policy to provide coverage for the Stuttes’ additional living expenses as they accrue;
- (c) Awarding the Stuttes treble damages equal to three times the amount of the actual compensatory and consequential damages suffered as a result of ANPAC’s unfair or deceptive acts or practices;

- (d) Awarding the Stuttes a sum not to exceed twenty-five percent (25%) of the liability for the loss, in accordance with Tenn. Code Ann. § 56-7-105;
- (e) Awarding reasonable attorneys' fees and other expenses and costs incurred by the Stuttes in defending and prosecuting this litigation; and
- (f) Such other and further relief as the Court deems just and proper.²

JURY TRIAL DEMANDED

The Stuttes request a trial by jury on all issues so triable.

Dated: August 10, 2011

Respectfully submitted,

/s/ Peter J. Alliman
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² The Stuttes also reserve their right to bring additional claims, including, without limitation, for defamation, fraud, and intentional infliction of emotional distress, against ANPAC based on facts discovered in the course of this litigation.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2011, a copy of the foregoing **ANSWER AND AMENDED 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 and 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/ Seth A. Tucker
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