

02802-71561 (RER)

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

AMERICAN NATIONAL PROPERTY)	
AND CASUALTY COMPANY,)	
)	
Plaintiff, Counterclaim-Defendant,)	CIVIL ACTION
)	
V.)	NO. 3:11-CV-219
)	
CAROL ANN STUTTE; LAURA JEAN)	JURY TRIAL DEMANDED
STUTTE,)	
)	
Defendants, Counterclaim-Plaintiffs,)	
)	
and)	
)	
CHASE HOME FINANCE, LLC,)	
)	
Defendant.)	

**ANPAC’S STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT
REGARDING PLAINTIFFS’ CLAIMS OF BAD FAITH AND VIOLATION OF THE
TENNESSEE CONSUMER PROTECTION ACT**

Comes now American National Property and Casualty Company (“ANPAC”), by and through counsel, pursuant to Federal Rule of Civil Procedure 56 and in support of its Motion for Partial Summary Judgment regarding Carol Ann Stutte and Lauran Jean Stutte’s claims for the statutory bad-faith penalty and violation of the Tennessee Consumer Protection Act, would state that the following facts are undisputed in this matter:

1. On September 4, 2010, the insured premises located at 2715 Highway 360,

Vonore, Tennessee 37885, owned by Carol Anne Stutte and Laura Jean Stutte was destroyed by fire. *Monroe County Sheriff's Office Incident Report.*

RESPONSE:

2. Someone spray painted the word "QUEERS" on the garage at some point in between the afternoon of the day of the fire and when the fire occurred. *Carol Stutte EUO, p. 45; Laura Stutte EUO, p. 90; Photo.*

RESPONSE:

3. The Stuttes claim this was a "hate crime" directed against them. *Publicly available news media reports.*

RESPONSE:

4. As a result of the fire, the Stuttes submitted a fire insurance claim to ANPAC requesting \$206,000.00 for the dwelling, \$69,133.31 for destroyed personal property, and \$1,142.15 for damage to other structures. *Sworn Statement in Proof of Loss.*

RESPONSE:

5. In addition, the Stuttes have claimed additional living expenses under the policy. *Stuttes' Answer and Counterclaim.*

RESPONSE:

6. Upon being notified of the fire, ANPAC began to handle the insurance claim. *Complaint; Answer and Counterclaim.*

RESPONSE:

7. Within days of being notified of the fire, ANPAC had explained to the Stuttes the

loss process, had mailed them claim reporting forms, had engaged an independent adjuster to scope the loss, had engaged a company called Bright Claims to help the Stuttes prepare their personal property inventory forms, and began the process of obtaining temporary housing for the Stuttes. *Affidavit of Stacey Jennings*, ¶6; *Laura Stutte EUO*. P. 83.

RESPONSE:

8. ANPAC located and paid for temporary housing for the Stuttes. *Laura Stutte EUO*, p. 13; *Affidavit of Stacey Jennings*, ¶ 6-9.

RESPONSE:

9. ANPAC hired a private investigator, Gary Noland, to assist in its investigation of the fire loss. *Affidavit of Stacey Jennings*, ¶11; *Affidavit of Gary Noland*, ¶3-5.

RESPONSE:

10. Gary Noland provided regular updates to ANPAC concerning the results of his investigation work and regarding the witness interviews he conducted. *Affidavit of Stacey Jennings*, ¶12; *Affidavit of Gary Noland*, ¶4-5.

RESPONSE:

11. ANPAC hired an origin and cause expert, Gary Young with EFI Global, to conduct an origin and cause investigation. *Young Report*.

RESPONSE:

12. While performing his debris examination and removal process, Mr. Young observed faint odors of gasoline. *Young Report*, p. 6-7.

RESPONSE:

13. As part of this investigation, Mr. Young collected debris samples and sent the samples to a laboratory, AK Analytical Services, Inc., for analysis. *Young Report*, p. 8.

RESPONSE:

14. AK Analytical Services, Inc. determined that there were ignitable liquids, identified as gasoline, in two of the debris samples. *AK Lab Report; Young Report*, p. 6, 8.

RESPONSE:

15. After ruling out other possible causes, Mr. Young opined that the fire was incendiary, caused by the intentional application of a large amount of gasoline which was then ignited. *Young Report*, p. 7-8, 11.

RESPONSE:

16. The fire was also classified as incendiary by the Tennessee State Bomb and Arson Investigator, Gary Elliott. *Young Report*, p. 10.

RESPONSE:

17. ANPAC requested that the Stuttes and Kimberly Holloway, also a resident of the insured premises, submit to Examinations Under Oath, and they did so on December 21, 2010. *EUOs of Laura Stutte, Carol Stutte, and Kimberly Holloway*.

RESPONSE:

18. The Stuttes reported that at the time of the fire, they were in Nashville with Kimberly Holloway and Lora Black celebrating the fact that the Stuttes had been in the subject home for five years and had completed remodeling it. *Carol Stutte EUO*, p. 6; *Laura Stutte EUO*, p. 94.

RESPONSE:

19. The Stuttes reported that while at the Wildhorse Saloon in Nashville, Lora Black's daughter called and said that the Stuttes' house was on fire. *Carol Stutte EUO*, p. 11; *Laura Stutte EUO*, p. 99-100.

RESPONSE:

20. The Stuttes reported that the group stayed at the bar for a while, returned to the hotel, and then Carol Stutte decided to drive home later that night. *Carol Stutte EUO*, p. 13-14; *Holloway EUO* p. 22-23.

RESPONSE:

21. The Stuttes' house was listed for sale at the time of the fire. *Carol Stutte EUO*, p. 40-41.

RESPONSE:

22. Lora Black reported that the Stutte house was going to be shown by a realtor two or three times that weekend while the group was away in Nashville. *Affidavit of Gary Noland*, ¶26.

RESPONSE:

23. Lora Black reported that this was the reason the vehicles were parked away from the house at the time of the fire. *Affidavit of Gary Noland*, ¶26.

RESPONSE:

24. Realtor Dan Watson told ANPAC that the house was not scheduled to be shown on the weekend of the fire. *Affidavit of Gary Noland*, ¶62.

RESPONSE:

25. The Stuttes had recently removed important papers and belongings from the subject property, including their insurance policy, titles to vehicles, tax returns, real estate contract, living wills, divorce papers, family photos, clothing, guns, books, tools, landscaping supplies, office supplies, furniture and other items. *Laura Stutte EUO*, p. 60-61, 85-86, 109-110; *Carol Stutte EUO*, p. 51-53, 63.

RESPONSE:

26. Some of the removed items were taken to another house owned by the Stuttes, located at 216 Depot Street, while others were taken to a storage unit. *Carol Stutte EUO*, p. 53-55.

RESPONSE:

27. Carol Stutte reported that any gasoline containers on the property were empty before the fire and that there were no other flammable liquids around. *Carol Stutte EUO*, p. 75-78.

RESPONSE:

28. Kimberly Holloway is the biological adult daughter of Carol Stutte and was reported as living with the Stuttes at the time of the fire.

RESPONSE:

29. Holloway was never involved with and never had any trouble with neighbor Janice Millsaps, nor did she observe any threats being made against the Stuttes by Janie Millsaps. *Holloway EUO*, p. 9-10.

RESPONSE:

30. The Stuttes reported that Carol Stutte decided to drive home alone on the night of

the fire. *Holloway EUO*, p. 22-23.

RESPONSE:

31. The Stuttes reported that the next day, Kimberly Holloway, Laura Stutte, and Lora Black got a rental car, continued to explore Nashville, and eventually drove back to Vonore. *Holloway EUO*, p. 24-25.

RESPONSE:

32. ANPAC interviewed several witnesses, including Eddie Hammondtree, Larry Bookout, Carl Self, Pam Self, Catherine Daughtery, Gerald Daughtery, Jack Welch, Jade Black, Lora Black, Kimberly Holloway, Janice Millsaps, Realtor Dan Watson, Fire Marshall Gary Elliott, and Postmaster Mark Smith, Agent Eric Kurtz, Detective Travis Jones, Tommy Self, and Rick Harris. *Affidavit of Gary Noland*, ¶ 9, 11, 14, 18, 20, 44, 61, 64.

RESPONSE:

33. Witnesses Larry Bookout and Eddie Hammondtree reported that they had been fishing near the Stutte house on the day of the fire. *Affidavit of Gary Noland*, ¶10.

RESPONSE:

34. Their attention was drawn to the house when they heard a large explosion, so they went to the house to make sure no one was inside or injured. *Affidavit of Gary Noland*, ¶10.

RESPONSE:

35. Larry Bookout reported that after he heard the explosion, he smelled what appeared to be an odor of kerosene. *Affidavit of Gary Noland*, ¶12.

RESPONSE:

36. Neither Bookout nor Hammondtree recalls anyone coming or going from the Stutte driveway on the day of the fire. *Affidavit of Gary Noland*, ¶13.

RESPONSE:

37. Carl Self reported that he went to the fire scene and was able to see into the house due to the light provided by the flames. *Affidavit of Gary Noland*, ¶15,17.

RESPONSE:

38. Carl Self reported that he could see into the kitchen, sunroom, front bedroom, and back bedroom, and that he did not see any furniture or pictures on the wall in those rooms. *Affidavit of Gary Noland*, ¶17.

RESPONSE:

39. The Stuttes blame neighbor Janice Millsaps for the fire. *Carol Stutte EUO*, p. 22, 35-36, 39; *Laura Stutte EUO*, p. 63-64; *Complaint and Answer in Stutte v. Millsaps case*.

RESPONSE:

40. Janice Millsaps has denied the Stuttes' accusations. *Answer of Janice Millsaps files in Stuttes' lawsuit against her*; *Affidavit of Gary Noland*, ¶30.

RESPONSE:

41. Janice Millsaps voluntarily underwent and passed a polygraph test. *Affidavit of Gary Noland*, ¶31, 46.

RESPONSE:

42. Monroe County Detective Travis Jones examined Janice Millsaps' fingers after

the fire. *Affidavit of Gary Noland*, ¶47, 65.

RESPONSE:

43. Monroe County Detective Travis Jones found no evidence of paint on Janice Millsaps' hands. *Affidavit of Gary Noland*, ¶47, 65.

RESPONSE:

44. Neighbors gave a different description of Janice Millsaps than did the Stuttes. *Affidavit of Gary Noland*, ¶48-55; 67, 70-71.

RESPONSE:

45. Neighbors indicated that the Stuttes and their friend, Joe Neubert, had exhibited hostile behavior to neighbors and others who came near their property. *Affidavit of Gary Noland*, ¶67-71.

RESPONSE:

46. The receipt provided by the Stuttes from the Wildhorse Saloon states that there were five (5) guests and that the ticket for (2) two sandwiches was paid for with Lora Black's credit card. *Holloway EUO*, p. 21; *Carol Stutte EUO*, p. 9; *Laura Stutte EUO*, p. 103-104; *Wildhorse Saloon Receipt*.

RESPONSE:

47. National Car Rental opened for business at 6:00 a.m. the day after the fire. *Affidavit of Gary Noland*, ¶63.

RESPONSE:

48. The Stuttes provided their cell phone records to ANPAC or otherwise allowed ANPAC to obtain them. *Laura Stutte EUO*, p. 101.

RESPONSE:

49. ANPAC hired a forensic expert, Kevin Levy with TKR Technologies, to analyze the Stuttes' cell phone records, as well as the corresponding cell tower records. *Levy Forensic Report, dated May 3, 2011.*

RESPONSE:

50. Mr. Levy's analysis of the cell tower records indicated that Carol Stutte was in an area northeast of Vonore, towards Knoxville, Tennessee during the time period of midnight to 2:00 a.m. on September 5, 2010. *Levy Forensic Report, dated May 3, 2011.*

RESPONSE:

51. Mr. Levy's analysis of the cell tower records indicated that Laura Stutte was in the Vonore area at approximately 3:00 a.m. on September 5, 2010. *Levy Forensic Report; Laura Stutte EUO, p. 113.*

RESPONSE:

52. Mr. Levy's analysis indicated that there was no conclusive evidence of travel to Nashville by either of the Stuttes and that the records indicated northerly or northeast travel away from the direction of reported travel to Nashville. *Levy Forensic Report.*

RESPONSE:

53. ANPAC denied the Stuttes' insurance claim by letter dated May 12, 2011. *Denial Letter.*

RESPONSE:

54. Before the insurance claim was denied, ANPAC paid \$2,847.00 on or about September 20, 2010 for temporary housing from September 15, 2010 through October 15, 2010. *Affidavit of Stacey Jennings*, ¶7.

RESPONSE:

55. Before the insurance claim was denied, ANPAC paid \$610.17 directly to the Stuttes on February 11, 2011 for gas, water and sewer for the time period of October 19, 2010 through January 26, 2011. *Affidavit of Stacey Jennings*, ¶8.

RESPONSE:

56. Before the insurance claim was denied, ANPAC further paid \$3,500.00 directly to the Stuttes on April 15, 2011 for a pet deposit, security deposit and rent from November 1, 2010 through January 19, 2011. *Affidavit of Stacey Jennings*, ¶9.

RESPONSE:

57. At the time of the fire, the Stuttes' owned two pieces of real property, with three mortgages and had a monthly car payment. *Laura Stutte EUO*, p. 40-48, 51-53, 57.

RESPONSE:

58. At the time of the fire, the Stuttes had credit cards, one of which had a balance of approximately \$7,000.00, another which had a balance of approximately \$2,000.00, and they owed Lumber Liquidators approximately \$4,000.00. *Laura Stutte EUO*, p. 40-48, 51-53, 57.

RESPONSE:

59. At the time of the fire, the Stuttes owed approximately \$3,0000.00 to the IRS.

Laura Stutte EUO, p. 40-48, 51-53, 57.

RESPONSE:

60. The Stuttes' home was for sale at the time of the fire and Dan Watson was the real estate agent who listed the property on or about August 4, 2010. *Laura Stutte EUO*, p. 58-59; *Carol Stutte EUO*, p. 40; *Affidavit of Gary Noland*, ¶61.

RESPONSE:

61. At the time of the fire, the Stuttes wanted to move away from where they lived and had wanted to sell the house for some time. *Holloway EUO*, p. 27-28-29; *Laura Stutte EUO*, p. 62.

RESPONSE:

62. Only Laura Stutte, Carol Stutte, and Kimberly Holloway had keys to the property. *Laura Stutte EUO*, p. 68.

RESPONSE:

63. The Stuttes described their dogs as their "alarm system." *Carol Stutte EUO*, p. 60-61; *Laura Stutte EUO*, p. 108.

RESPONSE:

64. Neighbors reported that the Stuttes removed a large amount of furniture from the house during the two weeks before the fire. *Affidavit of Gary Noland*, ¶ 21.

RESPONSE:

65. Before the fire, the Stuttes changed their mailing address at the post office and electric company. *Carol Stutte EUO*, p. 83-84; *Laura Stutte EUO*, p. 88-90; *Affidavit of Gary Noland*, ¶40-41.

RESPONSE:

66. Before the fire, the Stuttes increased their insurance coverage on the house and the contents. *Laura Stutte EUO*, p. 80; *Affidavit of Gary Noland*, ¶43.

RESPONSE:

67. The Stuttes own another house located at 216 Depot Street in Vonore. *Laura Stutte EUO*, p. 27.

RESPONSE:

68. ANPAC retained a handwriting expert, Theresa F. Dean, to analyze and compare the handwriting used to write on the plywood at the Stuttes' 216 Depot Street house with the handwriting used to spray paint the word "QUEERS" on the Stuttes' garage. *June 6, 2011 Letter from Theresa F. Dean*.

RESPONSE:

69. Ms. Dean opined, based on a reasonable degree of certainty, that the person who spray painted the word "QUEERS" on the Stuttes' garage was probably the same person who spraypainted on the plywood at the Stuttes' 216 Depot Street House. *June 6, 2011 Letter from Theresa F. Dean*.

RESPONSE:

70. In its Complaint for Declaratory Judgment, ANPAC asserted the defense of arson as well as the intentional act exclusion and the concealment of fraud provision contained in the policy. *Complaint*.

RESPONSE:

71. In response to the Complaint for Declaratory Judgment, the Stuttes

counterclaimed against ANPAC, alleging breach of contract, violation of the Tennessee Consumer Protection Act, and statutory bad faith. *Answer and Counterclaim.*

RESPONSE:

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this pleading or document was served via the Court's ECF filing system upon:

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This the 25th day of October, 2011.

___s/ N. Mark Kinsman_____