

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
)	NO. 3:11-CV-219
CAROL ANN STUTTE; LAURA JEAN)	
STUTTE,)	
)	
<i>Defendants, Counter-Plaintiffs,</i>)	
)	
and)	
)	
CHASE HOME FINANCE, LLC,)	
)	
<i>Defendant.</i>)	
_____)	

FED. R. CIV. P. 56(d) DECLARATION OF SCOTT J. LEVITT

I, Scott J. Levitt, am one of the attorneys of record for Defendants and Counter-Plaintiffs Carol Ann Stutte and Laura Jean Stutte (collectively, the “Stuttes”) in the above-captioned matter. I make this declaration pursuant to Fed. R. Civ. P. 56(d), based on personal knowledge of the facts contained herein and on my personal experience.

1. By letter dated May 12, 2011, Plaintiff and Counter-Defendant, the American National Property and Casualty Company (“ANPAC”), denied the Stuttes’ insurance claim under ANPAC Special Homeowners Policy No. 41-H-V66-965-7. (See Ltr. from Stacey Jennings to Carol Ann & Laura Stutte (May 12, 2011), attached hereto as Exhibit A.) The bases stated in the letter for ANPAC’s refusal to pay were allegations that the Stuttes “intentionally caused” the fire that destroyed their home and “have committed concealment or fraud relating to the claim.” (See *id.* at 1-2.) ANPAC’s letter did not contain any facts to support these allegations. (See *id.*)

2. On behalf of the Stuttes, I responded to ANPAC via letter dated May 19, 2011. (See Ltr. from Scott J. Levitt to Stacey Jennings & N. Mark Kinsman (May 19, 2011), attached hereto as Exhibit B.) I requested that ANPAC “disclose a complete copy of its investigation file, as well as copies of any and all other information that ANPAC believes supports or relates in any way to the allegations in its denial letter” (See *id.* at 2.) ANPAC has never responded to my request, nor has ANPAC produced its investigation file.

3. On September 21, 2011, I contacted N. Mark Kinsman and J. Graham Matherne, counsel for ANPAC and Defendant Chase Home Finance, LLC, respectively, and proposed that we convene a conference call to discuss a discovery plan under Rule 26(f). (See E-Mail from Scott J. Levitt to N. Mark Kinsman & J. Graham Matherne (Sept. 21, 2011), attached hereto as Exhibit C.)

4. On September 26, 2011, I received a phone call from Mr. Kinsman and his co-counsel, Rusty Reviere. They advised me that ANPAC would soon be filing a motion for partial summary judgment on the Stuttes’ claims of bad faith and violation of the Tennessee Consumer Protection Act. ANPAC’s counsel further stated that the motion would include affidavits laying out ANPAC’s reasons for denying coverage. Based on the suggestion of ANPAC’s counsel, it was agreed that the Rule 26(f) conference should be deferred until the Stuttes had the benefit of reviewing ANPAC’s motion and supporting documents.

5. On October 25, 2011, ANPAC filed a “Motion for Partial Summary Judgment Regarding Plaintiffs’ Claims of Bad Faith and Violation of the Tennessee Consumer Protection Act,” a Memorandum of Law in support of said motion, and a Statement of Undisputed Facts. (See Dkt. Nos. 27-29.)

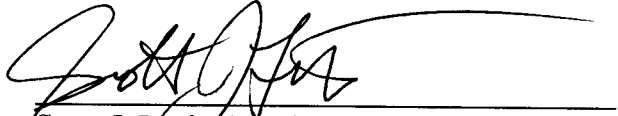
6. ANPAC's motion and supporting materials cite and rely on two affidavits and fourteen exhibits, all of which fall wholly outside of the pleadings. These documents contain numerous factual allegations that are vigorously disputed by the Stuttes.

7. The Stuttes have not had the opportunity to depose the two affiants, the authors of the five reports included among the exhibits, the ANPAC employees and investigators involved in the case, or the persons who were interviewed as part of ANPAC's investigation. The Stuttes must be afforded an opportunity to discover the basis for the material assertions and conclusions of these individuals in order to present facts essential to their opposition to ANPAC's motion.

8. Furthermore, ANPAC has disclosed only the selected portions of its investigation file that it claims support its Motion for Partial Summary Judgment. These documents present an incomplete picture of ANPAC's investigation and do not establish as a matter of law that ANPAC acted in good faith. The information contained in ANPAC's complete investigation file is indispensable to the Stuttes' opposition to ANPAC's motion.

9. Much of the evidence that is critical to the Stuttes' ability to present facts essential to justify their opposition is within ANPAC's exclusive possession and control, including the scope, quality, and results of ANPAC's investigation, as well as whether ANPAC's employees and investigators acted diligently and in good faith during the course of ANPAC's investigation. Depositions of these individuals and the production of ANPAC's complete investigation file – including internal ANPAC communications exclusively within ANPAC's control – are required before the Stuttes can obtain the facts essential to justify their opposition. This discovery may, in turn, lead to other depositions and sources of information that are similarly essential.

I declare, under penalty of perjury that this declaration is true and correct and that I have signed below on this 15th day of November, 2011.



Scott J. Levitt (*pro hac vice*)
 COVINGTON & BURLING LLP
 1201 Pennsylvania Avenue NW
 Washington, DC 20004-2401
 Tel: (202) 662-6000
 Fax: (202) 662-6291
 Email: slevitt@cov.com

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

WASHINGTON,)
) SS.
 DISTRICT OF COLUMBIA)

On this 15 th day of November in the year 2011, before me, Maria P. Chavez, a Notary Public in and for the District of Columbia, personally appeared Scott J. Levitt, known to me to be the person who executed the within Declaration, and acknowledged to me that she executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the jurisdiction aforesaid, the day and year first above written.



 Notary Public

My Commission Expires:

MARIA P. CHAVEZ
 Notary Public, District of Columbia
 My Commission Expires January 14, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2011, a copy of the foregoing **Fed. R. Civ. P. 56(d) Declaration of Scott J. Levitt** 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/ Jonathan G. Hardin
Jonathan G. Hardin (*pro hac vice*)
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401
Tel: (202) 662-6000
Fax: (202) 662-6291
Email: jhardin@cov.com