

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

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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>)	
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**THE STUTTES’ MOTION FOR LEAVE TO FILE
SECOND AMENDED COUNTERCLAIM**

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 15(a) for leave to file the attached amended pleading in order to assert additional counterclaims against Plaintiff and Counter-Defendant American National Property & Casualty Company (“ANPAC”) for negligent and intentional infliction of emotional distress, and to provide additional support for the Stuttes’ existing counterclaims for bad faith refusal to pay and violation of the Tennessee Consumer Protection Act (“TCPA”).

Leave to amend the Stuttes’ pleading should be granted. Federal Rule of Civil Procedure 15(a) states that the “court should freely give leave when justice so requires.” Leave to amend should be denied only in such extreme cases as “undue delay, bad faith or dilatory motive on the

part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Wade v. Knoxville Utils. Bd.*, 259 F.3d 452, 458 (6th Cir. 2001); *Scheib v. Boderk*, No. 07-446, 2011 WL 208341, at *2 (E.D. Tenn. Jan. 21, 2011). No such circumstance is present here.

The Stuttes have timely and in good faith sought leave to amend based on developments occurring after the filing of their Answer and First Amended Counterclaim (Dkt. No. 20). These developments include the discovery that (i) ANPAC intends to base its case against the Stuttes on its shoddy and incomplete investigation and analysis of the Stuttes’ cell phone records, (ii) ANPAC has refused and continues to refuse to consider evidence exonerating the Stuttes, even when directly confronted with such evidence as recently as January 30, 2012, and (iii) such behavior appears to be part of a pattern of extreme and outrageous conduct exhibited throughout the course of ANPAC’s willfully biased and one-sided investigation. For example, and as set forth more fully in the Stuttes’ Supplemental Memorandum in Opposition to ANPAC’s Motion for Partial Summary Judgment (Dkt. No. 36), an investigator retained by ANPAC repeatedly refused a witness’s offer to provide highly relevant photographs and documents, and otherwise ignored evidence that contradicted ANPAC’s theory concerning who caused the fire. These developments give rise to additional counterclaims and provide further support for the Stuttes’ existing claims for bad faith refusal to pay and violation of the TCPA, as set forth more fully in the proposed amended pleading attached as Exhibit 1 hereto.

ANPAC will suffer no prejudice as a result of the timing of this proposed amendment. No discovery has been requested or taken, despite the Stuttes’ repeated attempts to schedule a Rule 26(f) discovery conference with ANPAC, and no trial date has yet been set. *See De Lage*

Landen Fin. Servs., Inc. v. Jefferson Cnty. Bd. of Educ., No. 10-145, 2011 WL 122041, at *2 (E.D. Tenn. Jan. 14, 2011) (finding that no undue delay resulted where trial date had not been scheduled and parties had not met for a Rule 26(f) conference); *Tefft v. Seward*, 689 F.2d 637, 639 n. 2 (6th Cir.1982) (“Delay that is neither intended to harass nor causes any ascertainable prejudice is not a permissible reason, in and of itself to disallow an amendment of a pleading.”).

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

Dated: February 15, 2012

Respectfully submitted,

/s/ Seth A. Tucker
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*Attorneys for Defendants Carol Ann Stutte
and Laura Jean Stutte*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2012, a copy of the foregoing **MOTION FOR LEAVE TO FILE SECOND 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 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

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