

EXHIBIT 2

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

AMERICAN NATIONAL PROPERTY
AND CASUALTY COMPANY,

Plaintiff, Counter-Defendant,

v.

CAROL ANN STUTTE; LAURA JEAN
STUTTE,

Defendants, Counter-Plaintiffs,

and

CHASE HOME FINANCE, LLC,

Defendant.

CIVIL ACTION

NO. 3:11-CV-219

~~ANSWER AND~~ **SECOND AMENDED
COUNTERCLAIM**

JURY TRIAL DEMANDED

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 Plaintiff American National Property And Casualty Company (“ANPAC”).¹

THE STUTTES’ SECOND AMENDED COUNTERCLAIM AGAINST ANPAC

The Stuttes bring this second amended counterclaim against ANPAC pursuant to Fed. R. Civ. P. 1315 (a) ~~and 13(e)~~, and in support thereof, state as follows:

¹ The Stuttes have already submitted an answer to ANPAC’s Complaint (Dkt. No. 20), and to the extent required, the Stuttes incorporate their prior answer as if fully set forth herein.

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.

ANPAC’s Shoddy and One-Sided Claims Investigation

26. ANPAC purports to have conducted an “extensive and thorough” investigation of the Stuttes’ insurance claim. See ANPAC’s Mem. 12 (Dkt. No. 28). ANPAC, however, showed a

lack of diligence and care in conducting its investigation, which ultimately concluded that the Stuttes had committed arson and insurance fraud.

A. ANPAC's Failure to Consider Cell Phone Records Establishing the Stuttes' Whereabouts at the Time of the Fire.

27. In response to ANPAC's requests during its claims investigation, Carol Ann and Laura Stutte provided ANPAC with, among other things, written authorization to obtain any and all of the their cellular phone, telephone and toll-call records in order to investigate the Stuttes' insurance claim.

28. On October 25, 2011, ANPAC filed a Motion for Partial Summary Judgment in this Court. In the accompanying documents, ANPAC claimed that Carol Ann and Laura Stutte had lied to ANPAC about their whereabouts on the night of the fire. The sole evidence offered by ANPAC in support of this assertion was the analysis of its purported expert in "Historic Cellular Reconstruction" named Kevin Levy. Mr. Levy stated that he had examined the Stuttes' cell phone data and concluded that "there is no conclusive evidence supported by Netwrok [sic] Connectivity Records to demonstare [sic] that eith [sic] Carol Ann Stutte or Laura Stutte ever travelled to Nashville, TN on 09/04/10 or returned from Nashville, TN on 09/05/10." See Dkt. No. 28-10, p. 5.

29. The October 8, 2010 cellular phone records of both Carol Ann and Laura Stutte, however, are consistent with the other documentary and testimonial evidence provided to ANPAC and clearly demonstrate that Carol Ann and Laura Stutte were in Nashville at the time of the fire. The October 8, 2010 cellular phone records, which were available to ANPAC but which ANPAC apparently declined or neglected to obtain, fatally undermine the conclusion of ANPAC's purported expert.

30. On January 30, 2012, the Stuttes' counsel contacted ANPAC's counsel of record, Messrs. N. Mark Kinsman and Russell E. Reviere, to bring the October 8, 2010 phone records to

ANPAC's attention and to request that ANPAC therefore acknowledge its coverage obligations to the Stuttes by February 10, 2012. At the time of this filing, ANPAC has failed, neglected, or refused to respond to this letter, and ANPAC continues to refuse to pay the Stuttes' claim and continues to accuse the Stuttes of arson and insurance fraud.

B. ANPAC's Private Investigator Only Looked for Information Fitting with ANPAC's Theory that the Stuttes Committed Arson and Were Liars.

31. During its claims investigation, ANPAC retained a private investigator named Gary Noland.

32. Mr. Noland conducted a slanted investigation. Rather than seeking the truth, he sought only to find evidence to support ANPAC's theory that the Stuttes lied about going to Nashville and about having no involvement in the fire. He ignored and did not want to see any evidence that contradicted that unfounded theory. For example, when Mr. Noland was presented with a collection of documents pertinent to his investigation, including cell phone records which would not have been otherwise available to him, he paged through them for less than a minute and then declined a witness's offer to make him copies.

33. Likewise, when Mr. Noland was offered the opportunity to review time-stamped photos of the Stuttes in Nashville around the time of the fire, he declined to even look at them and did not request copies.

34. On information and belief, there are other examples of ANPAC's shoddy and one-sided investigation.

COUNT ONE

(Breach of Contract – asserted by Carol Ann and Laura Stutte)

35. ~~26.~~ The Stuttes hereby incorporate paragraphs 1 through ~~25~~34 of this counterclaim, as if fully set forth herein.

36. ~~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.

37. ~~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.

38. ~~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 – asserted by Carol Ann and Laura Stutte)

39. ~~30.~~ The Stuttes hereby incorporate paragraphs 1 through ~~29~~38 of this counterclaim, as if fully set forth herein.

40. ~~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.

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

42. ~~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.* — asserted by Carol Ann and Laura Stutte)

43. ~~34.~~—The Stuttes hereby incorporate paragraphs 1 through ~~3342~~ of this counterclaim, as if fully set forth herein.

44. ~~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.

45. ~~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.

46. ~~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 – asserted by Carol Ann and Laura Stutte)

47. ~~38.~~ The Stuttes hereby incorporate paragraphs 1 through ~~3746~~ of this Counterclaim, as if fully set forth herein.

48. ~~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.

49. ~~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.

50. ~~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.

51. ~~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. Upon information and belief, ANPAC’s investigator also ignored or refused to view additional documentary and testimonial evidence that tended to refute ANPAC’s belief that the Stuttes were responsible for the fire.

52. ~~43.~~ ANPAC acted in bad faith by, *inter alia*, delaying for months after discovering evidence that exonerated the Stuttes, refusing to consider evidence supporting the Stuttes’ innocence, 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~~ Furthermore, ANPAC also acted in bad faith by continuing to refuse to pay the Stuttes’ claim even after it was provided with cellular phone records categorically disproving ANPAC’s allegation that the Stuttes lied about their whereabouts on the night of the fire. Because ANPAC has refused to disclose the full scope of its investigation, including any additional defects in its alleged evidence, 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. § 56-7-105.

53. ~~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.

COUNT FIVE

(Negligent Infliction of Emotional Distress – asserted by Carol Ann Stutte)

54. The Stuttes hereby incorporate paragraphs 1 through 53 of this Counterclaim, as if fully set forth herein.

55. Under applicable law, ANPAC had a duty to Defendant Carol Ann Stutte to exercise ordinary care and diligence while conducting its investigation. This duty was independent of ANPAC's contractual duties and included the obligation to perform a complete, diligent, and good faith investigation before accusing her of criminal activity.

56. Given the sensitivity of ANPAC's ultimate conclusion reached, i.e., that she had committed arson and insurance fraud, ANPAC had a heightened duty of care to Defendant Carol Ann Stutte while conducting its investigation.

57. ANPAC breached its duty of care by conducting an incomplete and biased investigation and by continuing to accuse the Carol Ann Stutte of arson and insurance fraud even when directly confronted with evidence proving that the Stuttes were in Nashville at the time of the fire, as further alleged above.

58. Defendant Carol Ann Stutte has suffered and continues to suffer physical and serious or severe mental injuries as a result of ANPAC's breach of duty, including emotional distress, high blood pressure, depression, and sleeping problems. ANPAC's breach of duty was the cause in fact and proximate cause of these injuries.

59. Given the severity of ANPAC's accusations against Carol Ann Stutte and ANPAC's egregious mishandling of its investigation over the course of nearly one and half years, the injuries to Carol Ann Stutte were reasonably foreseeable. ANPAC knew or should have known that its conduct would inflict serious or severe mental and physical injuries upon Carol Ann Stutte.

COUNT SIX
(Negligent Infliction of Emotional Distress – asserted by Laura Stutte)

60. The Stuttes hereby incorporate paragraphs 1 through 59 of this Counterclaim, as if fully set forth herein.

61. Under applicable law, ANPAC had a duty to Defendant Laura Stutte to exercise ordinary care and diligence while conducting its investigation. This duty was independent of ANPAC's contractual duties and included the obligation to perform a complete, diligent, and good faith investigation before accusing her of criminal activity.

62. Given the sensitivity of ANPAC's ultimate conclusion reached, i.e., that she had committed arson and insurance fraud, ANPAC had a heightened duty of care to Defendant Laura Stutte while conducting its investigation.

63. ANPAC breached its duty of care by conducting an incomplete and biased investigation and by continuing to accuse Laura Stutte of arson and insurance fraud even when directly confronted with evidence proving that the Stuttes were in Nashville at the time of the fire, as further alleged above.

64. Defendant Laura Stutte has suffered and continues to suffer physical and serious or severe mental injuries as a result of ANPAC's breach of duty, including emotional distress, depression, and anxiety. ANPAC's breach of duty was the cause in fact and proximate cause of these injuries.

65. Given the severity of ANPAC's accusations against Laura Stutte and ANPAC's egregious mishandling of its investigation over the course of nearly one and half years, the injuries to Laura Stutte were reasonably foreseeable. ANPAC knew or should have known that its conduct would inflict serious or severe mental and physical injuries upon Laura Stutte.

COUNT SEVEN

(Intentional Infliction of Emotional Distress – asserted by Carol Ann Stutte)

66. The Stuttes hereby incorporate paragraphs 1 through 65 of this Counterclaim, as if fully set forth herein.

67. ANPAC acted as described herein in an intentional or reckless manner and in deliberate disregard of the high degree of probability that Defendant Carol Ann Stutte would suffer serious or severe mental and physical injuries due to such conduct.

68. The actions and omissions of ANPAC were so outrageous that such conduct is not tolerated by civilized society. Among other things, publicly accusing Carol Ann Stutte of arson and insurance fraud despite ANPAC's knowledge of specific evidence exonerating her of such charges is conduct so extreme and outrageous that is beyond the bounds of decency in our society.

69. As a direct and proximate result of ANPAC's outrageous conduct, Defendant Carol Ann Stutte has suffered and continues to suffer serious or severe mental and physical injuries, including emotional distress, high blood pressure, depression, and sleeping problems.

COUNT EIGHT

(Intentional Infliction of Emotional Distress – asserted by Laura Stutte)

70. The Stuttes hereby incorporate paragraphs 1 through 69 of this Counterclaim, as if fully set forth herein.

71. ANPAC acted as described herein in an intentional or reckless manner and in deliberate disregard of the high degree of probability that Defendant Laura Stutte would suffer serious or severe mental and physical injuries due to such conduct.

72. The actions and omissions of ANPAC were so outrageous that such conduct is not tolerated by civilized society. Among other things, publicly accusing Laura Stutte of arson and insurance fraud despite ANPAC's knowledge of specific evidence exonerating her of such charges is conduct so extreme and outrageous that is beyond the bounds of decency in our society.

73. As a direct and proximate result of ANPAC's outrageous conduct, Defendant Laura Stutte has suffered and continues to suffer serious or severe mental and physical injuries, including emotional distress, depression, and anxiety.

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, and ANPAC's negligent and intentional infliction of emotional distress on Carol Ann Stutte and Laura Stutte;
- (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 Carol Ann Stutte and Laura Stutte punitive damages in amounts to be determined at trial;
- (ef) Awarding reasonable attorneys' fees and other expenses and costs incurred by the Stuttes in defending and prosecuting this litigation; and
- (fg) Such other and further relief as the Court deems just and proper.²

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

JURY TRIAL DEMANDED

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

Dated: ~~August 10, 2011~~ February 15, 2012

Respectfully submitted,

 /s/ Seth A. Tucker

Seth A. Tucker (*pro hac vice*)

Scott J. Levitt (*pro hac vice*)

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: stucker@cov.com

 slevitt@cov.com

 jhardin@cov.com

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

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