

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.)	

REPLY TO DEFENDANTS’ SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO ANPAC’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Comes now American National Property and Casualty Company (“ANPAC”), in reply to the “Supplemental Memorandum” that Defendants have filed in response to Plaintiff’s Motion for Partial Summary Judgment, in which they would state and show the Court as follows:

Respectfully, Defendants’ Supplemental Memorandum misses the point of the motion that ANPAC has filed seeking a summary disposition of all of the extra-contractual claims brought against it for the simple reason that ANPAC possessed at the time of denial and, for that matter, still possesses, information that provides a good faith basis for its claims decision. In essence, Defendants are challenging the validity of information that was provided to ANPAC

interpreting the cellular phone records which was conducted by Kevin Levy of TKR Technologies which provide part, but certainly not all, of the basis for the denial of the claim. While ANPAC is aware that this Court is not going to resolve the issue of whether Defendants' argument in their Supplemental Memorandum represents any valid substantive response to the analysis done by the forensic expert, Kevin Levy (noted above), what is important and significant for the purposes of the present motion is that Mr. Levy's analysis, as provided to ANPAC, directly contradicted the alleged location of Carol Stutte at a critical time in relation to the fire loss in question. While ANPAC is certainly planning on showing this Court that the argument that the cellular records contradict Mr. Levy's conclusion is wholly inaccurate, it also is not relevant to the question at hand, that being whether ANPAC could reasonably rely upon the report of this expert in interpreting these records as part of the information upon which it based its decision denying Defendants' claim for the fire loss in question.

ANPAC has cited a great deal of legal authority to this Court which ANPAC believes fully supports the position that it has taken that the information upon which it was relying at the time of its claims decision, as a matter of law, constitutes a good faith basis for denial. This is a conclusion reached on much less incriminating evidence by other courts as has been shown and nothing Defendants have filed changes that or shows, in any way, that ANPAC was guilty of "deceit or other misleading conduct" or was guilty of "deception or unfairness" in the way that it handles this claim. (*Hamer v. Harris*, 2002 WL 31469213 (Tenn. Ct. App. Feb. 18, 2002)). As this Court has been reminded, "a penalty is not appropriate when the insurer's refusal to pay rests on legitimate and substantial legal ground". (*Tyber v. Great Central Insurance Company*, 572 F.2d 562, 564 (6th Cir. 1978). In the interest of brevity, ANPAC

refers the Court back to its original memorandum filed in support of the present motion for a more full statement of the applicable law in this area. However, it is certainly worth reiterating, at this point, that ANPAC is merely seeking to have this case proceed where the actual valid dispute is, that being whether the evidence ultimately supports the conclusion that the Defendants caused or procured the burning of the insured property, which is a complete and absolute defense. For the parties to needlessly engage in expensive and unnecessary discovery and expend efforts on extra-contractual matters, given the factual basis for the decision of which this Court is now aware, does not serve the interest of either side and is also an unnecessary drain on this Court's time and resources.

Respectfully submitted,

s/ N. Mark Kinsman

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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 24th day of February, 2012.

____s/ Russell E. Reviere_____