

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,)

V.)

CAROL ANN STUTTE; LAURA JEAN)
STUTTE,)

Defendants, Counterclaim-Plaintiffs,)

and)

CHASE HOME FINANCE, LLC,)

Defendant.)

CIVIL ACTION

NO. 3:11-CV-219

JURY TRIAL DEMANDED

**ANPAC'S COMBINED MOTION AND MEMORANDUM
FOR STAY ON DISCOVERY RELATING TO EXTRA-CONTRACTUAL CLAIMS, OR IN
THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER**

Comes now American National Property and Casualty Company ("ANPAC"), by and through counsel, pursuant to Federal Rule of Civil Procedure 26(c) and moves this Honorable Court for a stay, or in the alternative for a protective order, regarding discovery relating to the Stuttes' extra-contractual claims against ANPAC. In support of this motion, ANPAC states as follows:

BACKGROUND

On June 24, 2011, ANPAC filed a motion to dismiss the Stuttes' Tennessee Consumer Protection Act claim. See Document No. 10. On October 25, 2011, ANPAC filed a motion for partial summary judgment as to the Stuttes' extra-contractual claims, including the Tennessee Consumer Protection Act claim and bad faith. See Document No. 27. Both motions remain pending as of the filing of this motion.

In response to ANPAC's motion for partial summary judgment, the Stuttes responded in part by asking this Court to allow discovery to see if they can find a basis for the extra-contractual allegations they had already made. The Stuttes have now issued interrogatories and requests for production of documents, some of which seek discovery of material which does not relate to the insurance coverage question, but is designed to fish for evidence relating to the Stuttes' extra-contractual claims. See attached Collective Exhibit A.

LAW AND ARGUMENT

Rule 26(c) allows a party to move for a protective order to protect the party from annoyance, embarrassment, oppression, or undue burden or expense. Fed. R. Civ. P. 26(c). The Court may forbid the disclosure or discovery, or may forbid inquiry into certain matters or limit the scope of disclosure or discovery to certain matters. *Id.* If this Honorable Court rules in favor of ANPAC on its pending motion for partial summary judgment, then there is no reason for the parties to waste resources conducting discovery relating to extra-contractual claims. For this reason, and for good cause, ANPAC moves this Honorable Court for a stay on discovery of extra-contractual issues, or in the alternative, for a protective order protecting

it from the discovery of information which is not relevant to the insurance coverage issue, but is instead aimed at fishing for evidence to support the extra-contractual claims.

In *Hardy Oil Co., Inc. v. Nationwide Agribusiness Ins. Co.*, 2011 WL 6056599 (E.D. Ky. Dec. 6, 2011), the Court bifurcated the alleged issues of bad faith and negligence from the underlying insurance coverage issue. The court found that bifurcating the trials would allow the parties to engage in limited discovery for litigation of the coverage claim while narrowing the other claims, thus reducing the time and money the parties would expend to litigate them. *Id.* The Court issued a stay on discovery on the bad faith claim pending the resolution of the coverage claim, finding that a stay on bad faith discovery would promote judicial economy and prevention of prejudice to parties. *Id.* at *2. In that case, Nationwide also moved the court for a protective order under Rule 26(c) arguing that information sought in a requested deposition of a Nationwide employee was irrelevant to the contract claim and would violate a bifurcation order. *Id.* Nationwide also argued that a protective order was appropriate because information sought to be discovered in the deposition was protected by the work-product doctrine and/or attorney-client privilege. *Id.* According to the court, none of those arguments met the “good cause” standard because the discovery deposition, **when limited by the stay on discovery and evidentiary privileges**, did not constitute a serious injury or undue burden. *Id.* (Emphasis added). Since the court bifurcated the action and stayed discovery on the bad faith claim, **discovery was appropriate only on the coverage claim.** *Id.* (Emphasis added). Because several of the deposition topics described related to the coverage claim, the court found that a protective order against the deposition in its entirety would be overreaching and prejudicial to the

insured. *Id.*

ANPAC relies upon, and incorporates by reference as if fully set forth here verbatim, the arguments made in its two pending motions and accompanying memoranda. While the Stuttes are free to conduct discovery to defend ANPAC's affirmative defenses to their breach of contract claim, they should not be permitted to make baseless allegations and then ask to conduct discovery when those allegations are challenged. A party opposing a motion for summary judgment possesses no absolute right to additional time for discovery under Rule 56. *Emmons v. McLaughlin*, 874 F.2d 351, 356 (6th Cir. 1989). In this case, the Stuttes want to conduct a fishing expedition and hope they find something that might support their conclusory extra-contractual claims. Conducting discovery on the extra-contractual claims is not necessary at this point in the litigation because of the nature of ANPAC's motion for partial summary judgment and the basis upon which it is filed. ANPAC's motion for partial summary judgment is based on other federal cases in Tennessee in which judges have, as a matter of law, eliminated extra-contractual claims in arson cases just like the current one so that the issues are properly narrowed to the real dispute: did the insureds commit fraud or are the insureds responsible for the fire or are they not?

ANPAC is not questioning the Stuttes' ability to conduct discovery on their breach of insurance contract claim. Like the court in *Hardy*, and for good cause, ANPAC wishes to eliminate potentially unnecessary and cumbersome discovery in this case. *Hardy*, 2011 WL 6056599 at *1. The insurance coverage issue in this case is whether or not the Stuttes committed fraud or caused or procured the burning of their own home. However, the discovery requests issued to ANPAC by the Stuttes is overly broad and seeks to discover

information which is not relevant to whether or not the Stuttes committed fraud or caused or procured the burning of their own home.

For example, Request for Production (“RPD”) No. 1 asks for “All Claim Files.” This request is overly broad and, as phrased, seeks discovery of internal communications including discussions that ANPAC had within the company and/or with its consulting experts or investigators concerning the investigation of the instant suspected insurance fraud. While ANPAC agrees that some of the information contained in the “claim file” will be relevant to the contract claim (such as letters to and from the Stuttes concerning their insurance claim and other items which ANPAC agrees to produce), the request, as phrased, also calls for the production of information that would only be relevant, if at all, to the Stuttes’ extra-contractual claims. The same goes for RPD No. 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, and 16. The Requests are worded so broadly that, as phrased, they call for information beyond that which is relevant to the insurance coverage issue. Further, RPD No. 8 requests claims manuals, claims handling guidelines, and instructional manuals of ANPAC. These items are not relevant to whether or not the Stuttes committed fraud or caused or procured the burning of their own home.

Conclusion

Conducting discovery on the extra-contractual issues in this case would be a waste of time and resources if ANPAC is successful on its two (2) pending motions. Therefore, this Honorable Court should issue a stay on all discovery relating to the extra-contractual claims in this litigation, or should enter a Protective Order preventing such discovery, at least until rulings on ANPAC’s pending motions are issued.

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 8th day of May, 2012.

s/ N. Mark Kinsman