

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

NATIONWIDE INSURANCE COMPANY

PLAINTIFF

VS.

CIVIL ACTION NO. 3:10CV388DPJ-FXB

THOMAS DOOLITTLE AND  
DANIELLE DOOLITTLE

DEFENDANTS

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**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

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**Jury Trial Demanded**

COME NOW the Defendants, Thomas Doolittle and Danielle Doolittle, by and through counsel, and file this their Answer and Affirmative Defenses to the Complaint filed by the Plaintiff, and for said response would state unto the Court as follows:

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted and should therefore be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, with all costs taxed to the Plaintiff herein.

**SECOND DEFENSE**

**ANSWER**

Defendants answer the allegations of the Complaint paragraph by paragraph as follows:

**PARTIES**

1.

Defendants admit upon information and belief the allegations of paragraph 1 of the Complaint.

2.

Defendants admit the allegations contained in paragraph 2 of the Complaint.

3.

Defendants admit the allegations contained in paragraph 3 of the Complaint.

**FACTS**

4.

Defendants deny the allegations contained in paragraph 4 of the Complaint.

5.

Defendants admit the allegations contained in paragraph 5 of the Complaint.

6.

Upon information and belief, Defendants admit the allegations contained in paragraph 6 of the Complaint.

7.

Defendants deny the allegations contained in paragraph 7 of the Complaint and demand strict proof of same.

8.

Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 8 of the Complaint and therefore deny same.

9.

Defendants deny the allegations contained in paragraph 9 of the Complaint and demand strict proof of same.

**DECLARATORY ACTION**

10.

Defendants deny the allegations contained in paragraph 10 of the Complaint and demand strict proof of same.

11.

To the extent this paragraph elicits a response from the Defendants, Defendants deny the allegations contained within paragraph 11 of the Complaint and demand strict proof of same.

12.

To the extent paragraph 12 elicits a response from the Defendants, Defendants agree with the request that this matter be granted a speedy hearing and advance on the Court's docket.

13.

Defendants deny each and every allegations of the unnumbered ad damnum clause following paragraph 13 of the Complaint and specifically deny that the Plaintiff is entitled to any of the requested declarations.

**THIRD DEFENSE**

\_\_\_\_\_ Defendants, by way of affirmative defense, have fully complied with all terms and conditions of the subject Nationwide policy of insurance and all reasonable requests made by Nationwide.

**FOURTH DEFENSE**

Defendants, as affirmative defenses, raise any and all applicable defenses under Rule

8(c)(1): accord and satisfaction; arbitration and award; assumption of risk; contributory negligence; discharge in bankruptcy; duress; estoppel; failure of consideration; fraud; illegality; injury to fellow servant; laches; license; payment; release; res judicata; statute of frauds; statute of limitations; and waiver.

### **FIFTH DEFENSE**

Defendants gives notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserve the right to amend this Answer to assert such defenses.

### **COUNTERCLAIM**

Pursuant to Rules 13, 14 and 15 of the Federal Rules of Civil Procedure, Thomas Doolittle and Danielle Doolittle aver as follows in support of their Counterclaim against Nationwide Insurance Company:

#### **Parties**

1.

Thomas Doolittle and Danielle Doolittle are adult residents of Hinds County, Mississippi.

2.

Nationwide Insurance Company is a foreign corporation doing business in Mississippi, with its principal place of business in Columbus, Ohio.

#### **Jurisdiction**

3.

This Court has jurisdiction pursuant to the provisions of 28 U.S.C. § 1332(a) as this action is between citizens of different States and the amount in controversy exceeds \$75,000.00.

**Facts**

4.

On November 10, 2009, fire consumed the home of Thomas Doolittle and Danielle Doolittle.

5.

Thomas Doolittle and Danielle Doolittle's home and contents were insured through a policy of insurance issued by Nationwide Insurance Company ("Nationwide"). Subsequent to the subject fire, the Doolittles submitted a claim to Nationwide.

6.

**COUNT I: BAD FAITH**

Nationwide wrongfully, intentionally, recklessly and/or willfully refused and continues to refuse to pay the benefits due to the Doolittles under the policy of insurance covering the subject home without a legitimate or arguable reason. Nationwide has breached duties owed to its insureds to investigate *all relevant* information and make a realistic evaluation of the claim. Furthermore, Nationwide has willfully and in bad faith used the fact of unequal wealth and bargaining position of the parties to affect gain for Nationwide.

7.

**COUNT II: BREACH OF CONTRACT**

Nationwide breached its contractual obligations to the Doolittles by wrongfully, intentionally, recklessly, and/or willfully refusing to pay the benefits due the under the policy of insurance covering the subject home and its contents. The failure to pay the benefits due to the Doolittles constitutes a breach of the terms and conditions of the subject homeowner's policy.

8.

**COUNT III: NEGLIGENCE**

Nationwide acted with negligence by denying payment of the Doolittles' claim more than six (6) months after the subject fire occurred. Nationwide further acted with negligence by failing to conduct an adequate and timely investigation. Nationwide acted with negligence by failing to secure the scene of the fire and allowed the area to be pillaged, plundered, and otherwise vandalized after the fire.

9.

**COUNT IV: GROSS NEGLIGENCE**

Nationwide has acted with gross negligence and has exhibited a reckless disregard for the Doolittles' rights by denying payment of the Doolittles' claim more than six months after the subject fire occurred. Nationwide further acted with gross negligence and has exhibited a reckless disregard for the Doolittles' rights by failing to conduct an adequate, timely, and sufficient investigation. Nationwide acted with gross negligence and has exhibited a reckless disregard for the Doolittles' rights by failing to secure the scene of the fire and allowing the area to be pillaged, plundered, and otherwise vandalized after the fire.

10.

**COUNT V: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

Nationwide failed to timely or adequately investigate the subject claim and then proceeded to require more than what is reasonable or relevant in conducting its investigation into the Doolittles' claim. Knowing that the Doolittles' claim was wholly valid and should be paid, Nationwide began requesting information and documents not relevant to the claim in an effort to

avoid making payment under the claim. Nationwide's actions have breached the covenant of good faith and fair dealing.

11.

**DAMAGES**

As a proximate result of Nationwide's actions and/or inactions, the Doolittles have experienced, suffered and/or sustained pain and suffering, severe emotional distress, property damage, and other damages which will be proven at trial. Furthermore, the Doolittles seeks all other damages, including extra-contractual damages, to which they may be entitled.

12.

Nationwide's actions have been so reckless and grossly negligent as to warrant the award of punitive and/or exemplary damages. Since Nationwide had no arguable basis for denying the insureds' claim and Nationwide's conduct evinced malice or gross negligence in disregard of the insureds' rights, Defendant/Counter-Plaintiff seeks punitive damages. Even if Nationwide had an arguable basis for denial, Nationwide's handling the claim breached an implied covenant of good faith and fair dealing making punitive damages proper.

**WHEREFORE, PREMISES CONSIDERED**, having answered the Complaint paragraph by paragraph, and asserting a counterclaim, Thomas Doolittle and Danielle Doolittle demand judgment from Nationwide Insurance Company, for actual damages, including all amounts owed under the insurance contract; actual damages as enumerated above; attorneys' fees and costs associated with this action; punitive damages in an amount calculated to deter Nationwide and those similarly situated from like conduct in the future; and pre-judgment interest on all such amounts in an amount to be established at the trial of this matter. Thomas

Doolittle and Danielle Doolittle also pray for any other relief, both legal and equitable, to which they may be entitled.

Respectfully submitted,

THOMAS DOOLITTLE AND DANIELLE DOOLITTLE

BY: WILLIFORD, McALLISTER & JACOBUS, LLP  
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BY: /s Reeve G. Jacobus, Jr.

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REEVE G. JACOBUS, JR., MSB #2986  
TIFFANY PIAZZA GROVE, MSB #101455

**CERTIFICATE OF SERVICE**

I, Reeve G. Jacobus, Jr., do hereby certify that I have this day served a true and correct copy of the above and foregoing *Answer, Affirmative Defenses and Counterclaim* via electronic case filing, to Patrick Tatum, Esq., at [ptatum@uwbbr.com](mailto:ptatum@uwbbr.com).

DATED: this the 2nd day of August, 2010.

/s Reeve G. Jacobus, Jr.

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REEVE G. JACOBUS, JR.