

**IN THE CIRCUIT COURT OF MILLER COUNTY, ARKANSAS  
THIRD DIVISION**

**GEORGIA HENSLEY, ET AL.**

**PLAINTIFFS**

**V.**

**NO. CV-2005-59-3**

**COMPUTER SCIENCES  
CORPORATION, ET AL.**

**DEFENDANTS**

**ANPAC DEFENDANTS' AND ANICO'S REPLY TO PLAINTIFF'S RESPONSE  
TO ANPAC DEFENDANTS' EXPEDITED MOTION FOR PROTECTIVE ORDER  
WITH REFERENCE TO PLAINTIFFS' MOTION TO COMPEL  
USAA TO PRODUCE PRIVILEGED DOCUMENT PURSUANT TO  
CRIME/FRAUD EXCEPTION TO ATTORNEY-CLIENT PRIVILEGE**

Now come Separate Defendants, American National Property & Casualty Company (ANPAC), American National General Insurance Company (ANGIC), American National County Mutual Insurance Company (ANCMIC), ANPAC Louisiana Insurance Company (ANPAC LA) and Pacific Property & Casualty Company (PPCC) (hereinafter "ANPAC Defendants"), by and through their attorneys, Huckabay, Munson, Rowlett & Moore, P.A., joined by permission with Separate Defendant American National Insurance Company (hereinafter "ANICO"), by and through their attorneys, Greer, Herz & Adams, and file their Reply to Plaintiffs' Response to ANPAC Defendants' Expedited Motion for Protective Order With Reference to Plaintiffs' Motion to Compel USAA to Produce Privileged Document Pursuant to the Crime/fraud Exception to the Attorney-Client Privilege (joined by ANICO).

1. Plaintiffs' response admits two crucial points which illustrate that proceeding with the March 17, 2008 hearing under the current circumstances would represent a deprivation of the due process rights of any Defendant who has an interest in the outcome of the Court's decisions on whether or not a crime/fraud exception

applies to any Defendant in this case in order to compel the production of documents protected from discovery by the attorney-client privilege.

(a) Plaintiffs admitted that the nature of their Motion changed because their generalized argument based on conspiracy is only contained in their reply to USAA's response to their motion. Plaintiffs did indeed change the character and nature of their motion with the reply. This is not unusual for Plaintiffs as they have engaged in this practice throughout this case, for example, see Plaintiffs' arguments presented at the hearing on Certain Defendants' Motion to Dismiss the claims of Tera Clark due to forum selection clause.

(b) Although Plaintiffs have offered to provide, with USAA or the Court's permission, a redacted copy of their reply to all Defendants before the March 17, 2008 hearing, the fact remains that it is Thursday, March 13, 2008, two business days before the hearing, and the arguments that Plaintiffs are presenting for their prima facie showing that USAA engaged in a conspiracy to commit a crime have not been served on all parties as required by Rule 7(b)(2) of the Arkansas Rules of Civil Procedure, and Defendants have not been provided ten days to file a response in opposition as provided by Rule 6(c) of the Arkansas Rules of Civil Procedure. Reference to these rules is noticeably absent from Plaintiffs' response.

2. Plaintiffs illustrate by their response the due process deprivation that will occur if the Court proceeds based on this record. Although Plaintiffs claim on page 2 of their response that the crime/fraud motion as to USAA will not have a precedential or preclusive effect on the ANPAC Defendants, they argue in the preceding sentence that the Court's ruling on USAA's Emergency Motion to File Sur-Reply and to reset March 17 Hearing on Crime/Fraud Motion, set forth in the letter dated March 12, 2008, "moots

ANPAC's motion." Incredibly, on page 3 of their response, the Plaintiffs claim that the ANPAC Defendants lack standing to present legal argument on the issue before the Court! Plaintiffs are apparently forgetting that they have alleged that each and every Insurance Defendant and CSC engaged in a conspiracy to underpay uninsured and underinsured motorist claims and that each Defendant is jointly and severally liable for their Co-Defendants' conduct. If the Plaintiffs succeed in their argument and convince the Court that they have made a prima facie showing that USAA engaged in a crime or a fraud, this is a finding which may have a direct bearing on the liability of each and every Defendant if Plaintiffs prevail in convincing this Court and any appellate court that joint and several liability should apply.

3. Plaintiffs ignore the fact that Rule 6(c) of the Arkansas Rules of Civil Procedure provides that, "Any party opposing a motion shall serve a response within ten days after service of the motion." The rule does not dictate that only the party to whom the motion is directed may serve a response. All Defendants, who Plaintiffs claim share joint and several liability for the conduct of co-conspirators, have an interest in knowing what evidence Plaintiffs rely on which allegedly shows USAA's participation in a Colossus conspiracy that is sufficient to show that USAA engaged in a crime/fraud. Plaintiffs are trying to shroud this issue in secrecy and prejudice each and every Defendant to this action by waiting until they file their reply to USAA's response to their motion in order to set forth this theory, and the fact that they have done so is obvious.

4. Plaintiffs make a self-serving statement to the effect that Defendants might be embarrassed about documents submitted in support of the USAA crime/fraud motion. The pending motion before the Court is not one to strike these exhibits, but to see the brief or reasoning which supports Plaintiffs' claim that these exhibits show that

USAA engaged in a crime. For the same reason, the ANPAC Defendants and ANICO request that the Court rule on pending motions to compel before proceeding to hear this issue. To date, Plaintiffs have yet to set forth the factual basis supporting their claim that any Defendant in this lawsuit engaged in a conspiracy to underpay claims. Plaintiffs seem to feel that they are somehow above the discovery process and do not have to respond to contention interrogatories, despite the fact that they have been allowed to compel the production of approximately 12,000,000 pages of documents from Defendants. If Plaintiffs are prepared to produce evidence sufficient to show that USAA has committed a crime or a fraud, or at least prima facie evidence to this effect, one would think that they should be prepared with supplemental responses to the Insurance Defendants' contention interrogatories, which ask Plaintiffs to identify the facts, documents and witnesses that they will rely on to support their conspiracy claims.

5. Plaintiffs argue in paragraph 8 of their response that it is ridiculous to argue that the Court must rule on pending discovery motions before it rules on Plaintiffs' crime/fraud motion. Noticeably absent from Plaintiffs' response is any explanation as to why Plaintiffs represented last summer that they would be providing third supplemental responses to the Insurance Defendants' discovery requests, yet thirteen months later, they have failed to do so. Plaintiffs would prefer to proceed with the lawsuit as if they were playing a game of blind man's bluff and litigate utilizing trial by ambush techniques. These techniques should not be tolerated by this Court. If the March 17, 2008 hearing goes forward, it will effectively preclude any Defendant interested in this subject from being able to provide a meaningful response and will represent a permanent denial of that Defendants' due process rights.

6. Less than two business days before the first hearing on the crime/fraud exception to the attorney-client privilege issue, Separate Defendants are in the dark as to what particular evidence and arguments Plaintiffs are presenting to the Court to support their argument that a Defendant, whom they claim is jointly and severally liable with Separate Defendants, committed a crime which justifies compelling the production of documents protected from discovery by the attorney-client privilege. This is the issue that Plaintiffs ignore in their response and the reason that the Court cannot proceed to hear this issue on March 17, 2008. To so do would deprive each Defendant of their right to respond and permanently deprive them of due process of law, notice and opportunity to be heard.

Accordingly, the ANPAC Defendants and Separate Defendant ANICO pray that their Expedited Motion for Protective Order With Reference to Plaintiffs' Motion to Compel USAA to Produce Privileged Documents Pursuant to Crime/Fraud Exception to Attorney-Client Privilege be granted, and for all other just and proper relief.

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**CERTIFICATE OF SERVICE**

I hereby state that on this 13<sup>th</sup> day March, 2008, a copy of the foregoing pleading was sent via electronic mail to all parties of record as indicated on the Service List attached as Exhibit A, and via regular mail to:

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