

Insurer Denied Exit From Military Supplier's Recall Suit

By **Bibeka Shrestha**

Law360, New York (May 01, 2013, 7:56 PM ET) -- An Ohio federal judge refused Wednesday to award Houston Casualty Co. a quick win in a coverage battle with military food supplier The Wornick Co. over \$2.8 million in costs tied to a salmonella-related recall of 700,000 cases of meals ready to eat.

U.S. District Judge Susan Dlott decided not to grant summary judgment to either side on the breach of contract and declaratory judgment claims, while also turning down Houston Casualty's request for summary judgment on the remaining bad faith claim.

Wornick and Houston Casualty are **duking** it out over whether Wornick's malicious product tampering and accidental product contamination policy covers the costs of a 2009 recall that the U.S. Department of Defense demanded after regulators uncovered salmonella in the meals' dairy shake blends.

The dispute centers on whether Wornick's recall meets the policy's definition of an "accidental product contamination."

While Judge Dlott agreed with Houston that the meals ready-to-eat, commonly known as MREs, that were recalled were not "contaminated" or "impaired" under the policy terms, she found that other paths to coverage remained. For example, the policy allows coverage for a "fault in design specification or performance" of the MREs — a coverage issue the parties tackled in a total of four paragraphs, the ruling said.

"The court finds that the evidence, albeit scant, is sufficient to create a genuine issue of fact on the question of whether the MREs suffered a fault in design specification or performance amounting to an accidental product contamination," Judge Dlott said.

The federal judge found that it was also unclear whether Wornick's losses stemmed from the government's Do Not Consume orders and a Defense Logistics Agency recall information report specifically naming Wornick's MREs, another question that would decide coverage.

She held off on deciding the bad faith claim, saying it would be more prudent to deny summary judgment until she could resolve the breach of contract and declaratory judgment claims.

Steven Pudell, an Anderson Kill & Olick PC attorney who represents Wornick, told Law360 on Wednesday he was overall pleased with the ruling.

"The judge recognized that we have a valid claim to coverage under the policy and that our bad faith claim against Houston Casualty will get its day in court," Pudell said. "This is the type of claim that companies like Wornick got insurance for ... Wornick did nothing wrong."

Attorneys for Houston Casualty were not immediately available on Wednesday.

Wornick is represented by Gregory Harrison of Dinsmore & Shohl LLP, and Steven Pudell and Anna Piazza of Anderson Kill & Olick PC.

Houston Casualty is represented by Kevin Young, Karl Bekeny and Jesse Thomas of Tucker Ellis LLP.

The case is The Wornick Co. v. Houston Casualty Co., case number 1:11-cv-00391, in the U.S. District Court for the Southern District of Ohio.

--Editing by Katherine Rautenberg.

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