



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Plastic-Maker Says Insurers Must Cover Worker Death Suit

By **Ryan Harroff**

Law360 (February 28, 2024, 1:37 PM EST) -- Ohio-based manufacturer Encore Plastics took Travelers Property Casualty Co. of America and American Guarantee & Liability Insurance Co. to federal court, claiming both companies are violating their policies by refusing to defend or indemnify it in an underlying suit over one of its workers' death in an industrial accident.

Travelers and American Guarantee are both obligated to cover Encore Plastics for its defense in an underlying suit brought in Buckeye State court by the estate of its late worker Todd Shaffer, according to the manufacturer's Tuesday **complaint**, but both insurers have purportedly leaned on the same exclusion listed in one of their policies to avoid providing coverage.

According to the complaint, Encore Plastics' primary insurance policy with Travelers states it will not cover "bodily injury directly intended by the insured," and American Guarantee refused to pay the manufacturer under its excess liability policy on the grounds that the Travelers policy exclusion extends to its own coverage as well.

The exclusion Travelers and American Guarantee are relying on to deny coverage does not apply to Shaffer's death anyway, Encore Plastics argued, because the worker's death was not "directly intended." The manufacturer urged the court to declare that the insurers had to cover it in the Ohio state court proceedings and award it damages with interest for their refusal to do so thus far.

"As a result of Travelers' wrongful failure to acknowledge its indemnity obligations in violation of the terms of the policies, and AGLIC's denial of the same, Encore is at risk of incurring indemnity costs in the lawsuit that should be borne by Travelers and AGLIC," the suit says.

In the underlying suit, which Shaffer's estate first filed in 2022, Encore Plastics is accused of knowingly and intentionally removing certain safety guards from a thermoforming trim press Shaffer was made to use as part of his normal work. The guards in question prevented the press from operating while one of its side doors was open, but the underlying suit says Encore Plastics removed those guards despite requiring Shaffer and other workers to operate those machines.

Removing those guards caused Shaffer's death, his estate claimed. The amended complaint states a press started operating while Shaffer had one of its doors open and was leaning inside to clear out a plastic jam in 2021. The suit says the machine trapped Shaffer's head and neck inside before crushing his throat and sending him into cardiac arrest, later causing him to die at the hospital.

Encore Plastics asserted in its Tuesday complaint against its insurers that Shaffer's death was not something it directly intended and that the underlying suit does not fall into any exclusion for its defense and indemnity coverage.

Counsel and representatives for Encore Plastics and Travelers did not immediately respond to requests for comment Wednesday. A representative for American Guarantee declined to comment.

Encore Plastics is represented by Amanda M. Leffler, P. Wesley Lambert and Sarah M. Sears of Shumaker Loop & Kendrick LLP.

Counsel information for the insurers was not immediately available.

The case is Encore Industries Inc. v. Travelers Property Casualty Co. of America et al., case number 2:24-cv-00875, in the U.S. District Court for the Southern District of Ohio.

--Editing by Daniel King.

All Content © 2003-2024, Portfolio Media, Inc.