

## Ceradyne Says Liberty Mutual Must Cover 3M Deal Suits

By Hope Patti

Law360 (October 12, 2022, 6:34 PM EDT) -- Ceradyne Inc. told a California federal court that Liberty Mutual can't avoid covering the company for now-settled shareholder lawsuits arising from its acquisition by 3M, arguing that the insurer failed to establish that a "bump-up" exclusion precludes coverage for the settlement.

The ceramics manufacturer said Friday **in support of** its September motion for summary judgment that Liberty Mutual Insurance Co. must contribute to an \$11.3 million settlement with shareholders who accused company executives of breach of fiduciary duty when they agreed to 3M's acquisition offer in 2012.

Liberty Mutual **argued last week** in opposition to Ceradyne's motion that it shouldn't have to cover the ceramics manufacturer because the company did not suffer any loss since 3M made all payments in connection with the settlement.

Even if Ceradyne did make the payments, the insurer asserted that the policy's bump-up exclusion bars coverage. The policy provision provides that if there's a claim alleging that the price paid for the acquisition of a company is inadequate, the amount of any settlement that effectively increases that price is not covered.

"Liberty's interpretation of the bump-up exclusion is inconsistent with reading the policy as a whole, as it and the court must do," Ceradyne said. "Liberty has failed to prove the bump-up exclusion's applicability to the settlement amount."

The coverage dispute stems from 3M's acquisition of Ceradyne for approximately \$850 million at \$35 per share, according to court filings. Ceradyne shareholders filed four proposed class actions in California and Delaware federal court, alleging that the company's executives accepted less than fair market value. The ceramics manufacturer settled the suits for \$11.3 million in 2018.

National Union Fire Insurance Co. of Pittsburgh, which provided primary coverage to Ceradyne, paid its full, \$5 million policy limits to cover defense costs and the settlement.

Ceradyne's excess insurers, RLI Insurance Co. and Liberty Mutual, refused to do the same and filed a declaratory judgment action against the company in California federal court, while Ceradyne filed a competing action against the excess insurers in Delaware federal court. The cases were consolidated into the present action in the Central District of California and RLI has since been dismissed from the litigation, court records show.

The settlement amount is a loss under the policy that was incurred by Ceradyne and its executives, the ceramics manufacturer said, arguing that Liberty Mutual failed to establish that the settlement is excluded from the policy's definition of loss.

Ceradyne contended that the shareholder litigation was not a "claim alleging" that Ceradyne or its executives paid inadequate consideration to acquire an entity, as the bump-up exclusion requires in order to apply to the settlement amount. Nor did the insurer demonstrate that the settlement "effectively increased" the consideration for the 3M transaction.

Ceradyne also asserted that the insurer breached the policy by failing to provide coverage for the

settlement, and thus it is entitled to \$5 million in damages.

Just because Ceradyne funded the settlement through a 3M bank account does not mean that the loss was not paid or indemnified by Ceradyne, the company said.

Representatives for the parties did not immediately respond to requests for comment Wednesday.

Ceradyne is represented by Gregory M. Bordo, Linda Kornfeld, James R. Murray, Kyle P. Brinkman and Jared Zola of Blank Rome LLP.

Liberty Mutual is represented by Ronald P. Schiller, Bonnie M. Hoffman and Thomas N. Brown of Hangley Aronchick Segal Pudlin & Schiller and by Paul H. Burleigh of Klinedinst PC.

The case is Ceradyne Inc. v. RLI Insurance Company et al., case number 2:21-cv-06373, in the U.S. District Court for the Central District of California.

--Additional reporting by Josh Liberatore. Editing by Nick Petruncio.