

It's a Mistake! Correcting Scrivener's Errors in Insurance Contracts

BY SCOTT G. JOHNSON

People make mistakes. Even drafters of insurance policies make them. This is not surprising because the preparation of insurance policies and endorsements often involves various steps—drafting, revising, and editing—each of which provides an opportunity for a scrivener's error. Generally speaking, a scrivener's error is an unintentional mistake in the drafting of a contract.¹ Examples include typing an incorrect word, number, or letter, or omitting a word or words or even an entire provision of the contract.

A scrivener's error can occur in an insurer's standard policy form.² But more often, scrivener's errors occur in limits of liability, location schedules, and endorsements that are specially prepared for a particular insured.³ As examples, a policy drafter may include an incorrect limit of liability, fail to exclude a particular location that was not intended to be covered, or inadvertently omit a policy exclusion. Courts have recognized that scrivener's errors "are difficult to prevent" and, more importantly, that "no useful societal purpose is served by enforcing . . . mistaken term[s]."⁴

Accordingly, two distinct theories for correcting scrivener's errors in insurance policies have emerged. First, if the scrivener's error is apparent on the face of the policy, a court may correct that error by applying the general rules of contract interpretation. Second, if a scrivener's error is not apparent on the face of the policy, a court may reform the contract to correct the error if the error is a mutual mistake.

Correcting Obvious Scrivener's Errors

Some scrivener's errors are apparent to an ordinary reader on the face of the insurance policy. Courts have corrected these types of errors by applying the general rules of insurance contract interpretation. Principal among these rules is that the court's goal is to effectuate the parties' mutual intent.⁵ To that end, courts consider the insurance policy as a whole.⁶ While courts

may not rewrite a contract or add terms not included by the parties, correcting an obvious scrivener's error presents an exception to this rule.⁷

*Mendota Insurance Co. v. Ware*⁸ is a recent illustration of these principles. There, the parties disputed the amount of an insurance policy's limit of liability for bodily injury coverage. The policy provided coverage for "bodily injury" (Coverage A) and "property damage" (Coverage B) for which any insured was legally liable.⁹ The policy's declarations page contained a description of the coverage limits as follows:

A.	Bodily Injury	Each Person	\$25,000
		Each Accident	\$50,000
A.	Property Damage	Each Accident	\$10,000 ¹⁰

Mendota asserted that because the policy's other provisions designated the property damage coverage as "Coverage B," the letter "A" next to the words "Property Damage" on the declarations page was a scrivener's error that should have been a "B." Ware, on the other hand, argued that this scrivener's error created unlimited bodily injury coverage because an "average lay person would have found it impossible to apply the [Policy's] limits of liability due to the absence of 'Coverage B' from the Declarations Page."¹¹

The Missouri Court of Appeals, however, rejected Ware's argument, concluding that "[b]ased on the definition of 'Coverage A' and 'Coverage B' in the first sentence of the Insuring Agreement, a reasonable reader would recognize that the letter 'A' next to 'Property Damage' on the Declarations page was a typographical error, and should be the letter 'B.'"¹² Thus in *Ware*, the court found that the policy could not reasonably be construed to provide unlimited liability coverage. Accordingly, it corrected the scrivener's error on the declarations page.

As Ware illustrates, a scrivener's error that is apparent on the face of the insurance policy can be corrected

**TIP**

A scrivener's error in an insurance policy can be corrected if the error is apparent on the face of the policy or considered a mutual mistake.

applying the general rules of contract interpretation. Numerous other courts have also corrected obvious scrivener's errors by applying general rules of contract interpretation.¹³

But where a scrivener's error is not apparent to an ordinary reader on the face of the insurance policy, courts will not correct that error by applying rules of contract interpretation. *Tiger Fibers, LLC v. Aspen Specialty Insurance Co.*¹⁴ is instructive. There, a dispute arose regarding whether a property insurance policy covered damage to the insured's building. The Aspen policy provided three potential categories of coverage: (1) building, (2) business personal property, and (3) business interruption.¹⁵ The policy's summary of insurance page contained a table of the three coverages and a box to mark if the coverage was included. An "X" was marked in the box for all three coverages. After the insured's facility sustained a fire loss, Aspen claimed that the "X" in the box indicating building coverage was a scrivener's error and that the parties did not intend to provide that coverage.¹⁶

But the trial court rejected Aspen's claim and granted summary judgment to the insured, reasoning that the claimed scrivener's error was not readily apparent from the face of the policy:

Aspen's claim that the Aspen Policy's inclusion of building coverage is a scrivener's error fails for several reasons. First, there is nothing on the face of the policy that would suggest that the coverages were intended to be different

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than what is listed. This is not a case where building coverage is listed in one part of the policy but disclaimed in another or where the building coverage listed in one part is inconsistent with some other provision of the policy.¹⁷

As *Tiger Fibers* illustrates, not all scrivener's errors can be corrected by applying principles of contract interpretation.¹⁸ To be corrected by applying principles of contract interpretation, the error must be apparent on the face of the policy and cannot be proved by extrinsic evidence.¹⁹ A scrivener's error that is not apparent on the face of the policy, like the one in *Tiger Fibers*, can be corrected only by reformation. In reformation cases, extrinsic evidence can be used to prove the existence of a scrivener's error.²⁰

Reformation Can Correct Other Scrivener's Errors

An insurance contract can be reformed just like any other contract. A court may reform a written contract when the contract fails to express the parties' actual agreement because of a mutual mistake.²¹ In the insurance context, courts grant reformation where the insurer and insured reach an agreement as to the terms of the policy, but the policy does not accurately reflect their agreement because some terms are either omitted or inaccurately expressed.²² The purpose of reformation is to make the written agreement express the parties' mutual intent.²³

A scrivener's error is a "common example" of a mutual mistake that will support reformation.²⁴ Even though a scrivener's error is made by only one of the parties to a contract, it is considered a mutual mistake and not a unilateral mistake because the written contract does not reflect the parties' mutual intent.²⁵ Thus, a scrivener's error will provide a basis for reformation even though the error was the fault of only one of the parties.²⁶

Similarly, the negligent failure by one party to discover the mistake does not bar reformation.²⁷ And a contract may still be reformed when a mutual mistake is made, even though one of the parties denies that there was a mistake.²⁸

Reformation is considered an exceptional remedy that is available only in limited circumstances.²⁹ As a result, reformation requires a higher standard of proof—clear and convincing evidence—than the preponderance of the evidence standard applied in most civil cases.³⁰ Additionally, a claim for reformation is an equitable claim.³¹ As such, the parties are not entitled to a jury trial on the issues of mutual mistake and reformation.³² Rather, a court will determine whether there was a mutual mistake and whether the remedy of reformation is appropriate.

Extrinsic Evidence Can Be Used to Show Mutual Mistake

Generally, the parol evidence rule bars the introduction of extrinsic evidence to vary or contradict the terms of a completely written contract.³³ But this rule does not apply in reformation cases.³⁴ As a result, extrinsic evidence is admissible to prove a mutual mistake required for reformation.³⁵

Extrinsic evidence is needed to establish the threshold requirement that the insurance policy contained a scrivener's error.³⁶ This evidence could include testimony of the scrivener or someone knowledgeable of the drafting of the insurance contract or documentation showing that the contract contained a scrivener's error. But a unilateral scrivener's error, standing alone, does not establish a mutual mistake required for reformation. There also must be proof that the written contract did not reflect the contracting parties' mutual intent. To that end, courts consider several types of extrinsic evidence.

Pre-policy communications.

The parties' communications leading up to the issuance of the policy

may be considered in a reformation case because they often reflect the parties' mutual intent as to the terms of coverage.³⁷ An objective test is used to determine whether there has been a mutual mistake, so courts will consider the parties' objective manifestations of their intent, that is, their words to each other and their actions, rather than their unexpressed subjective beliefs or intentions.³⁸

*Cincinnati Insurance Co. v. Post*³⁹ is a good illustration. There, Post owned two buildings in the same complex, one located on 24th Street and one located on Ailor Avenue.⁴⁰ For many years, Post insured the 24th Street building and its contents but did not insure either the Ailor Avenue building or its contents because of the high premium cost. In 1982, Post obtained a policy with Fireman's Fund that he mistakenly believed provided him with blanket contents coverage. But in fact the Fireman's Fund policy did not provide that coverage. In 1983, Post, through his new broker, requested that Cincinnati Insurance Co. (CIC) provide the same coverage as the prior Fireman's Fund policy. CIC's subsequent binder reflected that only the 24th Street building and its contents were insured. But during the preparation of the actual policy, a CIC typist inadvertently omitted contents coverage for the 24th Street building and incorrectly included it for the Ailor Avenue building. Shortly thereafter, the Ailor Avenue building was destroyed by fire, and Post submitted a claim for the contents loss.

CIC sued for reformation. In response, Post asserted he believed that he had contents coverage on the Ailor Avenue building and that the typographical error was a unilateral mistake by CIC that did not provide a basis for reformation. The Tennessee Supreme Court, however, affirmed the trial court's reformation finding. The appellate court noted

that while Post subjectively believed that he had contents coverage for the Ailor Avenue building under the Fireman's Fund policy, the Fireman's Fund policy simply could not be interpreted to provide such coverage.⁴¹ So when Post's new broker requested that CIC provide the same coverage as the expiring Fireman's Fund policy, there was no agreement to provide contents coverage for the Ailor Avenue building. Therefore, the appellate court concluded that “[r]eformation would result in correcting the typographical error in the policy” so that the policy would conform to the parties' agreement.⁴²

So in *Post*, the broker's communication to CIC that the insured wanted the same coverage as the expiring Fireman's Fund policy was

broker completed and submitted an estimated exposure form, which acknowledged the seed liability exclusion. But because of a scrivener's error, the 1989 and 1990 policies did not include the seed liability exclusion.⁴³

In 1989, one of Globe's customers filed a claim alleging that Globe's seeds had produced an infestation of yellowstar thistle, a noxious weed.⁴⁴ After Globe submitted this claim to Ranger, Ranger discovered that the 1989 policy had erroneously omitted the seed liability exclusion. As a result, it brought a claim for reformation. The trial court granted reformation, and the Oregon Court of Appeals affirmed, finding that “Globe applied for a policy containing that exclusion when it requested

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the fact that the court found determinative, not the fact that the insured subjectively believed there was contents coverage for the Ailor Avenue building.

Insured's application. In appropriate cases, courts consider the insured's application or submission,⁴⁵ the insurer's proposal,⁴⁶ or the binder.⁴⁷ These documents often show the coverage terms that the parties' requested, agreed to, or intended to include in the policy.

For example, the court in *Ranger Insurance Co. v. Globe Seed & Feed Co.*⁴⁸ relied principally on the insured's renewal submission in the insurer's reformation claim. There, Ranger's 1987 and 1988 general liability policies issued by Globe, a seed mixer and seller, included a seed liability exclusion. When the policy came up for renewal in 1989 and 1990, Globe's

renewal for 1989⁴⁹ and the “omission of the clause apparently was unintentional and was the result of an error made during Ranger's revision of its coding procedure.”⁵⁰

Prior year policies. Courts consider the coverage provided under prior year policies where there is also evidence that the parties intended to provide the same coverage in subsequent policies.⁵¹ *Smith Flooring, Inc. v. Pennsylvania Lumbermens Mutual Insurance Co.*⁵² is one recent example. Smith Flooring's manufacturing facility included numerous buildings, one of which was the Pine Warehouse. Pennsylvania Lumbermens Mutual Insurance (PLM) provided commercial property insurance coverage to Smith Flooring from 2004 to 2009. The 2004–05, 2005–06, and 2006–07 policies included an endorsement excluding coverage for the Pine Warehouse. The 2007–08

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and 2008–09 policies, however, did not include that endorsement. In January 2009, the Pine Warehouse collapsed under the weight of sleet and ice.⁵² Smith Flooring submitted a claim, which PLM denied. After Smith Flooring sued, PLM counterclaimed for reformation, claiming that the omission of the endorsement was a scrivener's error.

At trial, the PLM employee who prepared the 2007–08 and 2008–09 policies testified that she intended to include the endorsement in the policies but simply "overlooked typing them on" and that she never received a request from the insured's broker to add coverage for the Pine Warehouse.⁵³ Smith Flooring's broker testified that no values were reported for the Pine Warehouse because it was his understanding that the warehouse was not covered and that it was his intention that the coverage under the 2007–08 and 2008–09 policies was the same as the prior policies.⁵⁴ The appellate court affirmed the trial court's finding that clear and convincing evidence demonstrated that the 2008–09 policy did not accurately set forth the parties' agreement and that reformation was appropriate.⁵⁵

Premium amount. In some cases, courts consider the amount of premium paid in relation to the coverage provided, because a premium that is incommensurate with the coverage provided by an insurance policy may indicate a mutual mistake.⁵⁶ *Fahy v. Security Mutual Life Insurance Co.*⁵⁷ is one example. There, Security Mutual issued a life insurance policy to Fahy in 1940 under which she would

receive, in addition to a death benefit, a monthly retirement benefit of \$9.00 beginning at age 60. The annual premium was \$39.61.⁵⁸ Shortly thereafter, Fahy exchanged the policy for one with a yearly premium of \$19.25—less than half of the premium of the original policy. But the face page of the policy reflected a \$500 monthly retirement benefit—55 times the amount of the policy that cost twice as much. Upon reaching retirement age and after having paid \$673.75 in premiums, Fahy sought to obtain her \$500 monthly retirement benefit. Security Mutual claimed, however, that the \$500 monthly benefit did not reflect the parties' agreement but rather was the result of a scrivener's error. Citing the fact that Fahy paid a premium that was incommensurate with the claimed monthly benefit, the trial and appellate courts agreed, and the policy was reformed to reflect the parties' actual agreement.⁵⁹

Broker's Intention Is Insured's Intention

In many cases, especially those involving commercial insurance policies, the pre-policy communications are solely between the insurer and the insured's broker. Insurance brokers are generally considered to be the agents of the insured.⁶⁰ As a result, the broker's intentions, statements, conduct, and actions can be imputed to the insured in reformation cases.⁶¹

This can be important in determining whether there was a mutual mistake for purposes of reformation, as shown by *Ribacoff v. Chubb Group*

of Insurance Cos.⁶² There, Ribacoff sued to recover for a jewelry stock theft loss under a policy issued by Federal Insurance Co. Federal counterclaimed to reform the policy claiming that, because of a clerical error, the policy inadvertently omitted a "stock definition" endorsement, which excluded jewelry stock from policy coverage. Among other evidence, Ribacoff's broker, Mary Beth Kelly of Gueits, Adams & Co., testified that Ribacoff never purchased coverage for his jewelry stock through Federal, that she never requested such coverage from Federal on Ribacoff's behalf, and that it was never the intention of the broker or Ribacoff to include such coverage in the policy.⁶³ In affirming judgment for Federal on its reformation counterclaim, the appellate court found that Ribacoff was bound by the admissions of his insurance broker:

At the very least, Kelly and Gueits, Adams [& Co.] were aware that there was no jewelry stock coverage under this policy. An insurance broker is an agent of the insured. As such, the latter is bound, as principal, by notice to or knowledge acquired by the agent. Plaintiffs are thus bound by their agent's understanding that insurance coverage for jewelry stock was not intended to be included in the Federal policy, and that omission of the "stock definition" endorsement was again inadvertent.⁶⁴

Errors Perpetuated in Policy Renewals Can Be Corrected

Courts have granted reformation even where the scrivener's error was committed years earlier and went undiscovered in subsequent renewal policies.⁶⁵ *Fireman's Fund Insurance Co. v. Lansdowne Steel & Iron Co.*⁶⁶ is illustrative. Fireman's Fund provided property insurance coverage for Lansdowne since 1967 under a series of three-year policies.⁶⁷ The

1967–70 and 1970–73 policies included an ordinary payroll exclusion (OPE) endorsement, which provided for a deduction of ordinary payroll expenses from the business interruption coverage. But the 1973–76 and 1976–79 policies did not include the OPE endorsement.⁶⁸ In 1977, a fire partially destroyed Lansdowne's manufacturing plant. A dispute developed over whether Lansdowne's ordinary payroll should be deducted from the business interruption coverage.

After a trial on the subsequent declaratory judgment action, the court ordered reformation of the 1973–76 and 1976–79 policies.⁶⁹ The court found that the omission of the OPE endorsement was the result of a clerical error during the preparation of the 1973–76 policy, which went undetected by all parties until the fire. Fireman's Fund introduced evidence that Lansdowne never requested of its broker or of Fireman's Fund that the 1973–76 and 1976–79 policies include the OPE endorsement.⁷⁰ The broker requested that Fireman's Fund prepare the 1973–76 renewal policy based on the expiring 1970–73 policy, which included the OPE endorsement.⁷¹ Additionally, Lansdowne prepared business interruption worksheets for the 1973–76 and 1976–79 policies, leaving blank the sections that were to be completed in the event the policy was written without an OPE endorsement.⁷² In granting reformation, the court found that the failure to discover the error in the 1973–76 policy, which was perpetuated in the 1976–79 policy, did not bar reformation. The court noted that the 1976–79 policy was prepared in reliance on the 1973–76 policy only and, thus, the error was simply continued.⁷³

In sum, courts have granted reformation in scrivener's error cases where the insurer has presented clear and convincing evidence that there was a scrivener's error and that the written contract did

not reflect the contracting parties' mutual intent. These courts considered, in addition to evidence of a scrivener's error, a variety of extrinsic evidence, including the parties' communications leading up to the issuance of the policy, the broker's statements and intention, the insured's application or submission, the insurer's proposal, the binder, prior year policies, and the amount of premium paid in relation to the coverage provided.

Conclusion

Whether and how a scrivener's error in an insurance contract can be corrected depends on whether the error is apparent from the face of the contract. If the scrivener's error is apparent on the face of the contract, a court may correct that error by applying the general rules of contract interpretation. While courts may not rewrite a contract or add terms to the contract, correcting an obvious scrivener's error is an exception to this rule. If the scrivener's error is not apparent from the face of the contract, extrinsic evidence may be introduced to prove the existence of the error. If there is clear and convincing evidence that the scrivener's error was a mutual mistake, a court may reform the contract to reflect the parties' mutual intent. The availability of reformation to correct a scrivener's error will depend largely on the strength of the extrinsic evidence to demonstrate that the written contract did not reflect the parties' mutual intent. ■

Notes

1. 6 PETER LINZER, CORBIN ON CONTRACTS § 25:19, at 270 (rev. ed. 2010) (describing a scrivener's error as "a typing or computation error that no one noticed"); 27 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS § 70.93, at 499 (4th ed. 2003) ("In contract law, a scrivener's error, like a mutual mistake, occurs when the intention of

the parties is identical at the time of the transaction but the written agreement does not express that intention because of that error.").

2. See, e.g., Seaman v. Farmers Ins. Exch., No. 58956-3-I, 2007 Wash. App. LEXIS 2603, at *4–5 (Ct. App. Sept. 10, 2007).

3. See, e.g., Mendota Ins. Co. v. Ware, 348 S.W.3d 68, 70 (Mo. Ct. App. 2011); Ranger Ins. Co. v. Globe Seed & Feed Co., 865 P.2d 451, 456 (Or. Ct. App. 1993); Cincinnati Ins. Co. v. Post, 747 S.W.2d 777, 778–79 (Tenn. 1988).

4. S.T.S. Transp. Serv., Inc. v. Volvo White Truck Corp., 766 F.2d 1089, 1093 (7th Cir. 1985); see also Tiger Fibers, LLC v. Aspen Specialty Ins. Co., 594 F. Supp. 2d 630, 641 (E.D. Va. 2009).

5. See Taylor v. State Farm Mut. Auto. Ins. Co., 854 P.2d 1134, 1139 (Ariz. 1993); AIU Ins. Co. v. Superior Court, 799 P.2d 1253, 1264 (Cal. 1990); Aultman Hosp. Ass'n v. Cnty. Mut. Ins. Co., 544 N.E.2d 920, 923 (Ohio 1989); 2 LEE R. RUSS & THOMAS F. SEGALLA, COUCH ON INSURANCE 3d § 22:7, at 22-14 (2005).

6. See, e.g., Nichols v. State Farm Fire & Cas. Co., 857 P.2d 406, 408 (Ariz. Ct. App. 1993); Foster Wheeler Enviresponse, Inc. v. Franklin Cnty. Convention Facilities Auth., 678 N.E.2d 519, 526 (Ohio 1997); Russ & SEGALLA, *supra* note 5, § 22:9, at 22-17.

7. See Tiger Fibers, 594 F. Supp. 2d at 641.

8. 348 S.W.3d 68.

9. *Id.* at 72.

10. *Id.* at 70.

11. *Id.* at 71 (alteration in original).

12. *Id.* at 72.

13. See, e.g., Whitmore v. Hartford Cas. Ins. Co., No. 10cv1137-LAB (BLM), 2010 U.S. Dist. LEXIS 128040, at *6–7 (S.D. Cal. Dec. 3, 2010) (holding that reference in "Other Insurance" provision to automobile exclusion of "Section A" was "obviously a typographical error" and should have been "Section B" where Section A did not mention any exclusions); Am. Auto. Ins. Co. v. Murray, No. 08-1680, 2008 U.S. Dist. LEXIS 101543, at *15 (E.D. Pa. Dec. 15, 2008) (finding that semicolon in amendatory

endorsement following the words “the earlier of” was a typographical error and should have been a colon; “otherwise, the endorsement language would not make sense”); *Kennedy v. Hosp. Serv. Corp.*, 455 N.E.2d 206, 207–08 (Ill. App. Ct. 1983) (correcting scrivener’s error in provision limiting duration of hospitalization benefits where provision mistakenly referred to an article that obviously had nothing to do with the duration of benefits); *Prudential Prop. & Cas. Ins. Co. v. Raymond*, 634 A.2d 1015, 1017 (N.H. 1993) (holding that reference to “9032219A” in list of forms on declarations page was intended to refer to separate endorsements “903” and “2219A,” the latter of which prohibited stacking of insurance benefits).

14. 594 F. Supp. 2d 630 (E.D. Va. 2009).

15. *Id.* at 636.

16. *Id.* at 639–40.

17. *Id.* at 642.

18. See also *Seaman v. Farmers Ins. Exch.*, No. 58956-3-I, 2007 Wash. App. LEXIS 2603, at *7–10 (Ct. App. Sept. 10, 2007) (holding that claimed scrivener’s error in collapse coverage provision was not readily apparent to an average consumer).

19. See *Tiger Fibers*, 594 F. Supp. 2d at 642.

20. See *infra* notes 33–59 and accompanying text.

21. 2 E. ALLAN FARNSWORTH, *FARNSWORTH ON CONTRACTS* § 7.5, at 247–48 (3d ed. 2004); 7 JOSEPH M. PERILLO, *CORBIN ON CONTRACTS* § 28.45, at 281 (rev. ed. 2002). Contracts can also be reformed when the failure of the written agreement to express the parties’ real intentions is due to a unilateral mistake accompanied by fraud or inequitable conduct. See, e.g., *Fid. & Guar. Ins. Co. v. Global Techs., Ltd.*, 117 F. Supp. 2d 911, 914 (D. Minn. 2000).

22. See, e.g., *St. Paul Fire & Marine Ins. Co. v. Royal Ins. Co.*, No. 91 Civ. 6151 (CMM), 1994 U.S. Dist. LEXIS 5737, at *7 (S.D.N.Y. May 2, 1994) (reforming limit of liability in insurance policy that through a scrivener’s error inadvertently was listed as \$610,000 but

should have been \$500,000); *Hanes v. Roosevelt Nat’l Life Ins. Co. of Am.*, 452 N.E.2d 357, 415–21 (Ill. App. Ct. 1983) (ordering reformation to correct an incorrectly typed dollar figure in one of the insured’s benefit options in an annuity contract where the mistake resulted in that option being approximately seven times greater than it should have been); *Metro. Life Ins. Co. v. Henriksen*, 126 N.E.2d 736, 738–41 (Ill. App. Ct. 1955) (affirming reformation of policy to correct missing decimal point, which resulted in one of the annuity’s settlement options being 100 times greater than it should have been).

23. See *George Backer Mgmt. Corp. v. Acme Quilting Co.*, 385 N.E.2d 1062, 1066 (N.Y. 1978) (stating that the purpose of reformation is “to restate the intended terms of an agreement when the writing that memorializes that agreement is at variance with the intent of both parties”); *RESTATEMENT (SECOND) OF CONTRACTS* § 155 cmt. a (1981).

24. See *SEC v. Credit Bancorp, Ltd.*, 232 F. Supp. 2d 260, 265 (S.D.N.Y. 2002); *Born v. Schrenkeisen*, 17 N.E. 339, 341 (N.Y. 1888).

25. See *ITT Life Ins. Corp. v. Farley*, 783 F.2d 978, 981 (10th Cir. 1986) (“There is no dispute as to the general availability of reformation as a remedy in instances where a term is erroneously included by reason of a scrivener’s mistake. Such errors should be considered a mutual mistake and equity should correct such errors.”); *Global Techs.*, 117 F. Supp. 2d at 918 (“Minnesota law holds that a mistake in the writing of the policy may be considered a mutual one, even if one of the parties is at fault.”); *Fireman’s Fund Ins. Co. v. Lansdowne Steel & Iron Co.*, No. 78-1521, 1982 U.S. Dist. LEXIS 18181, at *24 (E.D. Pa. June 3, 1982) (“[T]he scrivener’s error is considered to be a mutual mistake of fact in that the written contract does not reflect the intent of the contracting parties.”); *Harris v. Uhendorf*, 248 N.E.2d 892, 894–96 (N.Y. 1969) (“Where there is no mistake about the agreement and the only mistake alleged is in the reduction of the agreement to writing, such

mistake of the scrivener, or of either party, no matter how it occurred, may be corrected.”).

26. See, e.g., *Global Techs.*, 117 F. Supp. 2d at 918; *In re Schick*, 232 B.R. 589, 598 (Bankr. S.D.N.Y. 1999) (“A scrivener’s error will ordinarily provide a basis for reformation, though the fault in drafting lies with only one of the parties.”); *Ranger Ins. Co. v. Globe Seed & Feed Co.*, 865 P.2d 451, 456 (Or. Ct. App. 1993) (“Idaho law generally permits reformation of a contract to correct a scrivener’s error, even if the error was negligently made.”); 27 WILLISTON & LORD, *supra* note 1, § 70.93, at 497 (“If both parties come to an understanding that a writing should contain terms other than those found in the final document, then reformation is still allowed, despite the negligent error of the party drafting the writing.”).

27. See, e.g., *Lansdowne Steel*, 1982 U.S. Dist. LEXIS 18181, at *25 (“[R]eformation will not be barred by mere negligent conduct on the part of one of the parties in failing to discover the mistake.”); *Mike Occhiato Mercantile Co. v. Allemannia Fire Ins. Co. of Pittsburgh*, 98 F. Supp. 888, 892 (D. Colo. 1951) (“[M]ere failure to read the policy and note any error in its provisions will not be sufficient to destroy the right to reformation.”); *In re Schick*, 232 B.R. at 598 (“[T]he negligent failure to read the agreement before signing it does not generally bar relief.”).

28. 27 WILLISTON & LORD, *supra* note 1, § 70.13, at 231.

29. See, e.g., *Optics Labs. Corp. v. Nicholas*, No. 96-8169, 1997 U.S. Dist. LEXIS 14655, at *28 (E.D. Pa. Sept. 23, 1997); *Monarch Ins. Co. of Ohio v. Lankard*, 715 F. Supp. 304, 306 (D. Kan. 1989); *Black & Veatch Corp. v. Wellington Syndicate*, 302 S.W.3d 114, 126 (Mo. Ct. App. 2009).

30. See *USA Cas. Ins. Co. v. Threadgill*, 729 So. 2d 476, 478 (Fla. Dist. Ct. App. 1999); *Tollefson v. Am. Family Ins. Co.*, 226 N.W.2d 280, 284 (Minn. 1974); *Merrimack Mut. Fire Ins. Co. v. Dufault*, 958 A.2d 620, 624 (R.I. 2008).

31. See Bd. of Trs. of the Univ. of Ill. v. Ins. Corp. of Ir., Ltd., 969 F.2d 329, 332 (7th Cir. 1992); *Black & Veatch*, 302 S.W.3d at 126; *Dufault*, 958 A.2d at 624.

32. See *Enserch Corp. v. Shand Morahan & Co.*, 952 F.2d 1485, 1502 (5th Cir. 1992) ("[R]eformation is an equitable decision made by the court, not the jury, and the parties are not entitled to a jury trial even where there is conflicting evidence of historical facts."); *Home Owners Ins. Co. v. Moffitt*, No. 1:11-cv-517, 2013 U.S. Dist. LEXIS 17242, at *14 (W.D. Mich. Feb. 8, 2013) ("The claim for reformation was clearly equitable and not triable to a jury[.]"); *Giant Eagle, Inc. v. Fed. Ins. Co.*, 884 F. Supp. 979, 985 (W.D. Pa. 1995) ("[R]eformation is purely an equitable issue and must be decided by the court rather than by a jury.").

33. See *Casa Herrera, Inc. v. Beydoun*, 83 P.3d 497, 502 (Cal. 2004); *Marine Midland Bank-S. v. Thurlow*, 425 N.E.2d 805, 807 (N.Y. 1981); *E. Greenwich Fire Dist. v. Henrikson*, 632 A.2d 641, 642 (R.I. 1993).

34. See 2 FARNSWORTH, *supra* note 21, § 7.5, at 254 ("The parol evidence rule does not bar evidence of prior negotiations to show either mistake or fraud as a basis for reformation."); 7 PERILLO, *supra* note 21, § 28:45, at 283 ("Because the remedy was created by courts of equity, the parol evidence rule has no application in reformation cases.").

35. See *OneBeacon Am. Ins. Co. v. Travelers Indem. Co. of Ill.*, 465 F.3d 38, 41 (1st Cir. 2006); *Chimart Assocs. v. Paul*, 489 N.E.2d 231, 234 (N.Y. 1986).

36. See *Bd. of Trs. of the Univ. of Ill.*, 969 F.2d at 332–33.

37. See *Harleysville Winchester Ins. Co. v. Diamondhead Prop. Owners Ass'n, Inc.*, 741 F.3d 1336, 1337 (8th Cir. 2014) (reforming liability insurance policy to include omitted law enforcement exclusion where broker informed insurer that insured did not need law enforcement coverage and insurer acknowledged that policy would not include law enforcement coverage); *Smith Flooring, Inc. v. Pa. Lumbermens Mut. Ins. Co.*, 713 F.3d 933, 939–40 (8th Cir. 2013) (reforming property

insurance policy to exclude coverage for warehouse inadvertently listed as a covered location where broker and insured testified there were no requests to provide coverage for warehouse).

38. See *Ryan v. Boucher*, 534 N.Y.S.2d 472, 473 (App. Div. 1988); *First Reg'l Sec., Inc. v. Villella*, 377 N.Y.S.2d 424, 426–27 (Civ. Ct. 1975).

39. 747 S.W.2d 777 (Tenn. 1988).

40. *Id.* at 778.

41. *Id.* at 781.

42. *Id.* at 782.

43. See, e.g., *Fid. & Guar. Ins. Co. v. Global Techs., Ltd.*, 117 F. Supp. 2d 911, 913 (D. Minn. 2000) (reforming excess liability insurance policy that mistakenly included products liability coverage where insured's application specifically declined products liability coverage); *Hanes v. Roosevelt Nat'l Life Ins. Co. of Am.*, 452 N.E.2d 357, 360 (Ill. App. Ct. 1983) (reforming annuity policy that, due to a scrivener's error, provided for a \$270 monthly benefit where insured submitted application requesting annuity option providing for a monthly benefit of \$40.79); *Metro. Life Ins. Co. v. Henriksen*, 126 N.E.2d 736, 739 (Ill. App. Ct. 1955) (reforming annuity policy that provided for benefits amounting to 100 times the amount under the insurance policy that the insured applied for).

44. See, e.g., *Post*, 747 S.W.2d at 779 (reforming property insurance policy that, due to a scrivener's error, incorrectly provided coverage for building where insurer's proposal reflected no coverage for building).

45. See, e.g., *id.*

46. 865 P.2d 451 (Or. Ct. App. 1993).

47. *Id.* at 454.

48. *Id.* at 455.

49. *Id.* at 456.

50. See, e.g., *id.*

51. 713 F.3d 933 (8th Cir. 2013).

52. *Id.* at 935–36.

53. *Id.* at 940.

54. *Id.* at 939.

55. *Id.* at 941–42.

56. See, e.g., *Fid. & Guar. Ins. Co. v. Global Techs., Ltd.*, 117 F. Supp. 2d 911, 913 (D. Minn. 2000) (finding insurers'

intent that excess liability insurance policy not cover products liability was evidenced by fact that premium for policy was 50 percent less than prior policy that included \$10 million products liability coverage).

57. 426 N.Y.S.2d 184 (App. Div. 1980).

58. *Id.* at 185.

59. *Id.*

60. See *Marsh & McLennan of Cal., Inc. v. City of Los Angeles*, 132 Cal. Rptr. 796, 802 (Ct. App. 1976); *Bohlinger v. Zanger*, 117 N.E.2d 338, 339 (N.Y. 1954); *Gen. Accident Ins. Co. of Am. v. Am. Nat'l Fireproofing, Inc.*, 716 A.2d 751, 756 (R.I. 1998).

61. See *Harleysville Winchester Ins. Co. v. Diamondhead Prop. Owners Ass'n, Inc.*, 741 F.3d 1336, 1338 (8th Cir. 2014) (imputing broker's intent and understanding that liability insurance policy did not include law enforcement coverage to insured); *Global Techs.*, 117 F. Supp. 2d at 913 (imputing broker's intent to buy excess liability insurance policy without products liability coverage to insured); *St. Paul Fire & Marine Ins. Co. v. Royal Ins. Co.*, No. 91 Civ. 6151 (CMM), 1994 U.S. Dist. LEXIS 5737, at *7 (S.D.N.Y. May 2, 1994) (relying on broker's testimony that the intent of the policy was to provide a \$500,000 limit of liability in granting reformation of policy that erroneously had \$610,000 limit of liability).

62. 770 N.Y.S.2d 1 (App. Div. 2003).

63. *Id.* at 2.

64. *Id.* (citations omitted).

65. See, e.g., *Ranger Ins. Co. v. Globe Seed & Feed Co.*, 865 P.2d 451, 453–56 (Or. Ct. App. 1993) (reforming general liability policy that mistakenly omitted seed liability exclusion in 1990 policy where scrivener's error occurred in 1989 policy).

66. No. 78-1521, 1982 U.S. Dist. LEXIS 18181 (E.D. Pa. June 3, 1982).

67. *Id.* at *3.

68. *Id.* at *4.

69. *Id.* at *25, *49.

70. *Id.* at *5–6.

71. *Id.* at *8.

72. *Id.* at *5.

73. *Id.* at *24–25.