When Can You Ask for Reformation?

By Daniel Veroff on March 31, 2019

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Everyone in the insurance industry has heard the term ***reformation***, but it is often misunderstood. In California (and elsewhere), the legal right to reformation originated over a century ago when we still had separate courts of "law" and "equity." Reformation was a creature of the latter, designed to prevent one party from using a mistake in a written agreement against the other.

Today, a court's power to reform is generally restricted to the scenarios set forth in California's Civil Code section 3399, which only authorizes reformation in three situations: When a contract fails to reflect the parties' actual agreement because of fraud, a mutual mistake, or the unilateral mistake by one party which was known or suspected by the other.[1]

Still, policyholders and public adjusters should be wise to the fact that section 3399 has not totally displaced courts' equitable powers. "It is well settled that the remedy of reformation is equitable in nature and not restricted to the exact situations stated in [Civil Code] section 3399."[2] Courts are disinclined to apply Section 3399 strictly when doing so would "give[] a windfall" to one party and "work[] a great injustice" on the other.[3]

Policyholders and public adjusters should also be wise to the fact that section 3399 is not specific to insurance, and therefore, cases in other contexts may not be applicable. Compare, for example, the non-insurance case,

Lemoge Elec. v. San Mateo Cty. (1956) 46 Cal.2d 659, versus the insurance case, *Modica v. Hartford Acc. & Indem. Co.* (1965) 236 Cal.App.2d 588. In *Lemoge*, an electrician submitted a bid for a job, but failed to account for some of the work needed. The other party suspected the error but accepted the bid anyway. The electrician asked the court to reform the contract to increase the bid amount, but the court found nothing to "reform" the contract to because the parties never agreed to any other price. The court found there was no "antecedent agreement" to reform the contract to. On the other hand, in the insurance case *Modica*, the court reformed the policy to include a type of coverage the agent agreed to provide but mistakenly excluded. The insurance company argued there was no "antecedent agreement" on the premium or limits for such coverage, and therefore, there was nothing to reform to. The court rejected the argument, holding:

> **We have no doubt that reformation may be had notwithstanding the absence of agreement by the parties as to the specific amounts of such coverages, if such amounts under the evidence are reasonably determinable.**

Modica allowed reformation despite the fact it would be disallowed under the non-insurance case, *Lemoge*.

Another argument that carriers often make is that the mistake was made by the agent, not the insurance company. But, in the insurance context at least, courts have held that an agent's mistake is attributable to the carrier if it is made within their authority.

> **[W]here a policy of insurance does not represent the intention of the parties solely because of some fault or negligence *of an agent of the insurer*, equity will reform it so as to make it express such intention. So, a policy will be reformed to express the actual contract *made with the agent in obtaining the insurance*, although such contract differs from the expressed terms of the policy and notwithstanding it is provided that agents have no authority to make, alter, or discharge contracts.[4]**

Remember, even an independent agent can legally be considered the agent of the insurance company. "The most definitive characteristic of an insurance agent is his authority to bind his principal, the insurer."[5] In addition, look for "a notice of agency appointment on file with the Department of Insurance."[6]

Reformation is always a highly factual question that requires careful review of the legal authorities. It is always advisable to consult with an attorney experienced in that area ***before*** demanding the insurance company reform the policy, to ensure the demand is made as best it can be.

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[1] Section 3399 states, "When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value."

[2] *Jones v. First Am. Title. Co.* (2003), 107 Cal.App.4th 381, 388.

[3] *Schools Excess Liab. Fund v. Westchester Fire Ins. Co.* (2004) 117 Cal.App.4th 1275, 1284.

[4] *Nat'l Auto. & Cas. Ins. Co. v. Indus. Acc. Comm.* (1949) 34 Cal. 2d 20, 24-25 (emphasis added).

[5] *Marsh & McLennan of Cal., Inc. v. City of Los Angeles* (1976) 62 Cal.App.3d 108, 117-118.

[6] *Id.*; Ins. Code § 1704; *Loehr v. Great Republic Ins. Co.* (1990) 226 Cal.App.3d 727, 732-733.

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