# The Case of the Billion-Dollar Typo

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A recent decision by a U.S. Court of Appeals allowed a company to retroactively correct a scrivener's error in their cash balance plan document and avoid having to pay out a whopping $1.67 billion in extra benefits to plan participants. In its decision, the court stated: "People make mistakes. Even administrators of ERISA Plans." *Young v. Verizon's Bell Atlantic Cash Balance Plan.*

**How It Happened**

The drafting error at issue occurred when Bell Atlantic, Verizon's predecessor, converted a traditional defined-benefit pension plan to a cash-balance plan. Specifically, the provision of the plan document pertaining to the calculation of lump-sum payments mistakenly applied a particular multiplier twice, instead of just once. The mistake was the result of a company official inadvertently neglecting to delete a phrase about the multiplier from the end of a sentence after he inserted the same phrase in the middle of the sentence.

The U.S. Court of Appeals for the 7th Circuit concluded that ERISA authorized equitable reformation of the plan document to correct the drafting error. Although Verizon was able to dodge the proverbial bullet by avoiding the payment of over a billion-dollars of unintended benefits, the *Young* decision sets a high standard for future scrivener's error cases – the evidence must be "clear and convincing" that the language is contrary to the parties' expectations. Furthermore, the evidence must be objective and not dependent on the creditability of an interested party's oral or written testimony. According to the Court, having such a high standard of proof will deter an employer from seeking to reform plan language simply because it has proven unfavorable.

In *Young*, the court relied on previous draft versions of the plan document, along with communications between the employer and plan participants. Relevant communications included summary plan documents, summary material modifications, plan brochures, and the opening balance statements – all of which stated that the multiplier at issue was only to be applied once. According to the court, the consistency of the communications put the participants on notice that the multiplier was only to be used once. The court also found that there was no evidence that plan participants had relied on the plan language specifying that the multiplier was to be used twice.

**An Ounce Of Prevention**

While the 7th Circuit's decision provides a precedent for retroactively correcting drafting errors, a future court's willingness to judicially correct such an error will no doubt be highly dependent upon the specific facts and circumstances. And while the case is binding precedent in the 7th Circuit's jurisdiction (Illinois, Indiana, and Wisconsin), it remains unclear whether other circuits will even agree with the *Young* decision.

In light of the uncertainty of being able to retroactively correct drafting errors, combined with the enormous potential for unintended financial consequences if they are not able to do so, employers would be wise to invest resources in careful review of such documents before their release to participants to ensure accuracy and ERISA and tax compliance.