I. INTRODUCTION

“[O]ne of the most difficult ‘problems which a legal system must face is a combination of a due regard for the claims of substantial justice with a system of procedure rigid enough to be workable.’”\(^1\)

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The Federal Rules of Civil Procedure were adopted in 1938 and liberalized the rules of pleading, creating a procedural system that allowed decisions on the merits of actions as opposed to the use of the rules of pleading for clients’ advantage. Many states quickly followed the federal model and adopted similar rules of their own—Iowa followed suit in 1943. In 1976, the Iowa General Assembly adopted recommendations of the Iowa Supreme Court for amendments and additions to the Iowa Rules of Civil Procedure—one of which was a verbatim adoption of the language of Federal Rule of Civil Procedure 15(c) as Iowa Rule of Civil Procedure 89, which was later renumbered as Rule 69(e).

Rule 69(e), now renumbered as Rule 1.402(5), was an explicit recognition of the common law doctrine of “relation back.” The rule allowed for the addition or recharacterization of a party that had been omitted or misnamed in the original pleading after the applicable statute of limitations had run. Since that time, the federal version has evolved to meet the challenges of judicial interpretations of the relation back rule, which were deemed adverse to the intent of the promulgators of the federal

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2. Conley v. Gibson, 355 U.S. 41, 48 (1957) (citing Maty v. Grasselli Chem. Co., 303 U.S. 197 (1938)) (“The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.”).

3. Alison Werner Smith, Rules of Procedure, Evidence, and Court Rules, in IOWA LEGAL RESEARCH GUIDE 93, 93–95 (John D. Edwards ed., 2003). Mr. Wayne Cook, the man who literally “wrote the book” on Iowa civil procedure prior to the enactment of the new rules commented:

The Rules represent the first attempt in over eighty years to revise and bring up to date the procedure in the courts of Iowa. They are intended to simplify the practice, to eliminate, in so far as possible, the technicalities upon which lawsuits can be won without regard to merits, to speed up the judicial process and to make more certain, less expensive and generally more satisfactory the determination of controversies and adjudication of rights by the courts with the dispatch which the public has learned to expect in most other fields.


8. See id.
rules. The Iowa rule, however, has remained static. Iowa is not alone in neglecting to adopt the changes put in place at the federal level—sixteen states and Puerto Rico have relation back statutes that are either identical in language or are the functional equivalent of Iowa Rule of Civil Procedure 1.402(5).

The current federal rule differs in several key respects. First, it explicitly includes both the situation in which the party before the court has merely been misnamed—the “misnomer” cases—and the situation involving a “new” party. Second, the federal rule removed the word

9. The federal rule states in pertinent part:

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when: . . . (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) [which requires the amendment to arise out of the same conduct, transaction, or occurrence as the original pleading] is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment: (i) received such notice of the action that it will not be prejudiced in defending on the merits; and (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party’s identity.


10. The Iowa rule states in pertinent part:

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party, the party to be brought in by amendment has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

IOWA R. CIV. P. 1.402(5).

11. See GA. CODE ANN. § 9-11-15(c) (West 2011); S.D. CODIFIED LAWS § 15-6-15(c) (2004 & Supp. 2011); VA. CODE ANN. § 8.01-6 (2007 & Supp. 2011); WIS. STAT. ANN. § 802.09(3) (West 1994 & Supp. 2010); COLO. R. CIV. P. 15; HAW. R. CIV. P. 15(c); IDAHO R. CIV. P. 15(c); KY. R. CIV. P. 15.03; MINN. R. CIV. P. 15.03; MONT. R. CIV. P. 15(c); N.J. CT. R. 4:9-3; N.M. R. CIV. P. 1-015(C); N.D. R. CIV. P. 15(c); OR. R. CIV. P. 23(C); P.R. R. CIV. P. 13.3; S.C. R. CIV. P. 15(c); WASH. CT. R. 15(c).

12. Compare Iowa R. Civ. P. 1.402(5) (“An amendment changing the party against whom a claim is asserted relates back . . . .”), with FED. R. CIV. P. 15(c) (“An amendment to a pleading relates back to the date of the original pleading when: . . . (C) the amendment changes the party or the naming of the party against whom a claim is asserted . . . .” (emphasis added)).
“institution” from the notice requirement of the rule.13 The most prominent difference is that the federal rule allows relation back where the party being brought into the action receives notice of the suit within the limitations period plus the time allowed for service of process under Federal Rule of Civil Procedure 4(m), which ameliorates the potentially harsh result that can occur when a plaintiff files a complaint shortly before the running of the statute of limitations and thereafter has no chance to correct an error in the pleading concerning a misnamed or misidentified defendant.14

The aim of this Note is to provide a brief history of the concept of “relation back”—as it relates to amendments intended to add or change a party after the running of the statute of limitations—from its common law origins, through the United States Supreme Court’s adoption of the relation back language to Federal Rule of Civil Procedure 15(c), and to its subsequent adoption in Iowa. The second Part of this Note will focus on Iowa caselaw and the Iowa Supreme Court’s reliance on the United States Supreme Court’s decision and rationale in Schiavone v. Fortune.15 Such reliance and continued adherence to the principles laid out in Schiavone is misplaced and contrary to the intent of both the federal and state versions of the relation back rule. Perhaps more importantly, Iowa’s interpretation is contrary to the general thrust of the modern rules of civil procedure and represents one area of civil procedure in which skill in obfuscation can

13. Compare Iowa R. Civ. P. 1.402(5) (“[T]he party to be brought in by amendment has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits . . . .” (emphasis added)), with Fed. R. Civ. P. 15(c)(1)(C) (“[T]he party to be brought in by amendment: (i) received such notice of the action that it will not be prejudiced in defending on the merits . . . .”).

14. Compare Fed. R. Civ. P. 15(c)(1)(C) (“[T]he amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment: (i) received such notice of the action that it will not be prejudiced in defending on the merits; and (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party’s identity.”), and Fed. R. Civ. P. 4(m) (requiring the summons and complaint to be served on the defendant within 120 days of filing the complaint), with Iowa R. Civ. P. 1.402(5) (“An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party, the party to be brought in by amendment has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.”).

determine the outcome of a case before the merits are ever heard.\textsuperscript{16} The final Part of this Note will make the case for an amendment to the Iowa rule in order to come into line with the modern federal rule, or for an interpretation of the Rule that would allow the language to be more than mere surplusage—the possibility of which can be demonstrated by the Arizona Supreme Court’s approach in \textit{Ritchie v. Grand Canyon Scenic Rides}.\textsuperscript{17}

\section*{II. The Common Law}

In 1938, the Federal Rules of Civil Procedure were adopted,\textsuperscript{18} changing the common law test for the circumstances under which an amendment altering a pleading would relate back to the date of the original.\textsuperscript{19} The Advisory Committee’s 1938 note states: “‘Relation back’ is a well-recognized doctrine of recent and now more frequent application.”\textsuperscript{20}

The relation back doctrine at common law, as is the case today, was an exception to the statute of limitations in that a plaintiff could not only amend its legal theory after the limitations period but could also add

\textsuperscript{16} See Rebecca S. Engrav, \textit{Relation Back of Amendments Naming Previously Unnamed Defendants Under Federal Rule of Civil Procedure 15(c)}, 89 CALIF. L. REV. 1549, 1579–82 (2001) (discussing how former Federal Rule of Civil Procedure 15(c)—Iowa’s current Rule 1.402(5)—rewards intended defendants who obfuscate). The Iowa Supreme Court has stated, “The primary purpose of the rules of pleading is to provide notice and to facilitate a fair and just decision on the merits of the case.” Estate of Kuhns v. Marco, 620 N.W.2d 488, 491 (Iowa 2000) (citing Conley v. Gibson, 355 U.S. 41, 48 (1957)). Ten years after the Iowa Rules of Civil Procedure were enacted, Professor Allan D. Vestal, while discussing techniques the new Iowa rules afforded litigants in order to adjudicate suits on their merits, stated, “No longer should surprise be a thing to be reckoned with; no longer should the trial of a law suit be a matter of wit and cunning.” Allan D. Vestal, \textit{A Decade of Practice Under the Iowa Rules of Civil Procedure}, 38 IOWA L. REV. 439, 453 (1953).

\textsuperscript{17} See Ritchie v. Grand Canyon Scenic Rides, 799 P.2d 801, 808 (Ariz. 1990).

\textsuperscript{18} See BYRON F. BABBITT, THE NEW FEDERAL RULES OF CIVIL PROCEDURE 3–4 (1938).

\textsuperscript{19} See FED. R. CIV. P. 15 (1938). Initially, the rule did not mention a change of parties: “Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth . . . in the original pleading, the amendment relates back to the date of the original pleading.” \textit{Id.; see also} Harold S. Lewis, Jr., \textit{The Excessive History of Federal Rule 15(c) and Its Lessons for Civil Rules Revision}, 85 MICH. L. REV. 1507, 1507–08 (1987) (“Added in 1966, [Rule 15(c)] attempts to set standards for the relation back of party-changing amendments to pleadings.”).

\textsuperscript{20} FED. R. CIV. P. 15 advisory committee’s notes (1938).
parties who, but for the doctrine, could successfully plead the affirmative defense of the running of the statute of limitations.\textsuperscript{21} Arbiters concentrated on the sufficiency of notice given to the party being brought into the case.\textsuperscript{22} In general, an amended pleading related back to the filing date of the original complaint so long as the policies underlying the statute of limitations were not offended and the party being brought into the case was either before the court at all times—only misnamed—or had sufficient notice of the action so that it would not be inequitable to require the party to defend the case on its merits.\textsuperscript{23}

A statute of limitations represents an arbitrary point at which a claim may no longer be brought against a defendant.\textsuperscript{24} Statutes of limitations have been described as serving the related purposes of protecting the defendant and the court system from adjudicating claims in which “memories have faded, witnesses have died or disappeared, and evidence has been lost”;\textsuperscript{25} protecting potential defendants’ mental or financial insecurities; relieving the court and potential defendants of having to litigate “stale claims”; encouraging plaintiffs to file claims in a timely fashion; reducing courts’ caseloads; and avoiding the disruption that such claims can have on economic activity.\textsuperscript{26} While the courts employed various forms of analysis under the common law, most often courts utilized the “new cause of action” test to determine whether an amendment would relate back to the date of the original pleading.\textsuperscript{27}

\textsuperscript{21} See, e.g., Engrav, \textit{supra} note 16, at 1579–82 (discussing application of the relation back doctrine in cases where the defendant’s identity is unknown without discovery); Lewis, \textit{supra} note 19, at 1511–12 (“Rule 15(c) seeks to effect a compromise between the conflicting policies of statutes of limitations and modern procedural rules.”).


\textsuperscript{23} See id.

\textsuperscript{24} Id. at 141.

\textsuperscript{25} Lewis, \textit{supra} note 19, at 1511 (citing Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945)).

\textsuperscript{26} Id. at 1511–12 (citations omitted).

\textsuperscript{27} See id. at 1513 (“Before the Federal Rules were adopted in 1938, an amendment of any kind was denied relation-back effect if a district judge viewed it as stating a ‘new cause of action.’”); see also Engrav, \textit{supra} note 16, at 1555–59 (discussing courts’ adherence to the new cause of action test and providing a list of case references applying this test).
A. The “New Cause of Action” Test

Prior to the adoption of the Federal Rules of Civil Procedure, most courts, when faced with a question of whether an amendment to a pleading should be considered to have taken effect at the time of the filing of the original complaint, would adhere to the principle that those claims that merely “amplified” the original cause of action were deemed to relate back, while those to which it could fairly be said constituted a new cause of action would not.28 Needless to say, it was much more likely the addition of a defendant was seen as a new cause of action and was, therefore, more likely to result in a successful statute of limitations defense. Misnomers, however—where the party was before the court at all times but only under an incorrect name—were seen as amplifications.29 Litigation often turned on the issue of what exactly constituted a new cause of action and what constituted a mere amplification of the original pleading.30

B. “New Cause of Action” in Iowa

“‘It appears to be the better rule that the amendment does not relate back.’”31

The new cause of action analysis for both amendments that changed claims as well as parties persisted in Iowa into the late 1970s.32 The Iowa

28. See Lewis, supra note 19, at 1513 (“Only if the amendment were considered a restatement in different form of the originally pleaded cause of action would relation back be permitted and the bar of limitations thus removed.”); Engrav, supra note 16, at 1555–61 (recognizing courts “allowed relation back when the proposed amendments ‘merely amplifie[d] and g[a]ve[[] greater precision to the allegations in support of the cause originally presented, or state[d] new grounds or specifications germane to such charges or allegations’” (alterations in original) (citations omitted)).

29. See, e.g., Schellhorn v. Williams, 58 N.W.2d 361, 364 (Iowa 1953) (holding an amendment related back when it addressed the misidentification of a party who was in the litigation all along).


32. See, e.g., Rowen v. Le Mars Mut. Ins. Co. of Iowa, 282 N.W.2d 639, 646 (Iowa 1979) (citations omitted) (“Amendments filed after the statute of limitations has run are permissible if they relate to or amplify a claim already made. However, an amendment may not be used to set out a new and distinct cause of action against which the statute of limitations has run.”); Gookin v. Norris, 261 N.W.2d 692, 694 (Iowa 1978)
Supreme Court adhered to the principle of disallowing the relation back of amendments that changed parties, but the court allowed the relation back of amendments in the situation when a party had been misnamed and appeared before the court at all times prior to the discovery of the error.  

Illustrative of the former proposition is *Schellhorn v. Williams*.

In *Schellhorn*, a plaintiff brought suit against Ward S. Williams, Inc. and Faye D. Martin for damages stemming from personal injuries allegedly sustained by the plaintiff on the defendants’ business premises. An attorney initially filed a general appearance on behalf of both defendants on the date the applicable statute of limitations would have run. However, another attorney entered a special appearance on behalf of the corporation and moved to dismiss the action. In the face of a certificate of dissolution that demonstrated the corporation known as Ward S. Williams, Inc. ceased to exist in 1938, the trial court sustained the special appearance and dismissed the complaint against the corporation.

After the statute of limitations had run, the plaintiff filed an amended and substituted petition naming “Elizabeth B. Williams and Elizabeth W. Driver, d/b/a Ward S. Williams” as defendants. Both partners were served and the return of service indicated Elizabeth B. Williams was also known as Mrs. Ward S. Williams—the very same person who received service of process on behalf of the incorrectly named business entity. In short, the plaintiff served process on a general partner of a partnership doing business under the name of a now-defunct corporation, named the corporation in the original pleading, and served the same individual with service of process two times—once before the statute of limitations had run and once after.

(quotating Pease v. Citizens State Bank, 228 N.W. 83, 87 (Iowa 1929)) (“The rule is well established that, if the amendment pleads a new and independent cause of action, it is to be treated as the commencement of a new suit, and if the period of limitation has intervened, the amendment is subject to demurrer. If, however, the amendment merely amplifies and enlarges the cause of action originally pleaded, it will be upheld, notwithstanding the statute of limitations.”).

33. See *Schellhorn*, 58 N.W.2d at 364–65 (citations omitted).
34. See *id.* (citations omitted).
35. See *id.* at 361–62.
36. See *id.* at 363.
37. See *id.*
38. See *id.*
39. *Id.*
40. See *id.* at 362–63.
41. See *id.*
The Iowa Supreme Court upheld the decision of the district court that granted the later-named partnership’s motion to dismiss on the basis of the running of the statute of limitations, stating: “[E]ntirely new parties were substituted. There was no misnomer or defect in the description or characterization of the defendant but an entire change of parties.”42 The distinction drawn by the court centered on the fact that the plaintiff, in his amended petition, named not only the partnership, but the individual partners as well.43 A doctrinal analysis from other jurisdictions, supported by an annotation, demonstrated the court was on solid precedential ground when it asserted the general rule was that amendments changing the name of a corporation to some other form of business association—or vice versa—and adding individual members of the business association who were previously unnamed were deemed not to relate back to the date of the original complaint.44

Interestingly, the court made no attempt to distinguish the situations of Elizabeth B. Williams and Elizabeth W. Driver. After all, Elizabeth B. Williams, also known as Mrs. Ward S. Williams, received notice of the institution of the action through service of process on the nonexistent corporation, Ward S. Williams, Inc., prior to the running of the statute of limitations.45 At least as to this defendant it could be argued that the plaintiff, by serving her based on her authority to receive process for the now-dissolved corporation, affected notice of the action.46 This was not service on a new party, but more appropriately upon the business entity from which he sought recompense for his injuries, and plaintiff, therefore, merely misnamed the proper party.47 Further, it is well within reason to conclude that the court decided the case not on its merits, but on a mere technicality by distinguishing the cases that changed one form of business entity to another and named individuals of the business from those that did not name individuals. It would also seem that serving process on a general partner of a partnership consisting of two members would have accomplished the goal of providing notice such that the partners would not be prejudiced in defending the case on its merits.

This criticism, of course, is unfair in that it applies a rule which was

42. \( \text{Id.} \) at 367.
43. \( \text{See id.} \) at 366–67.
44. \( \text{See id.} \) at 364–66 (citations omitted).
45. \( \text{See id.} \) at 362.
46. \( \text{See id.} \)
47. \( \text{See id.} \) at 362–63.
not relevant at the time. In 1953, the new cause of action test was the rule, and it would often lead to results that seemed unfair. In response to the perceived unfairness of cases in which a plaintiff was barred from bringing an action based on the running of the statute of limitations even though the facts would not seem to offend the underlying principles of the limitations period, the United States Supreme Court adopted an amendment to Rule 15, which explicitly dealt with the concept of relation back of amendments.

Twenty-four years after the Schellhorn opinion and ten years after the federal courts explicitly adopted a relation back provision relating to the addition of parties, the Iowa Supreme Court once again denied relation back based on the fact that a nonexistent corporation was originally named and the correct corporate entity was served with process only after the statute of limitations had run. In Smith v. Baule, a motorist was killed in an accident allegedly caused, in part, by a railroad company that allowed water, run-off, and slush to accumulate under a viaduct. The plaintiff originally named “Illinois Central Railroad, an Illinois Corporation” as one defendant. Unbeknownst to the plaintiff, the business entity had merged with, and inherited the name of “Illinois Central Gulf Railroad, a Delaware Corporation,” two years prior to the accident. Illinois Central Railroad did not exist at the time of the accident, and the return of service stating that one of its agents was served proved to be incorrect.

In reading the majority opinion, one is inclined to believe this case represents a situation in which an amendment to the petition after the running of the statute of limitations would violate the principles underlying the concept of a limitations period. According to the majority, the Delaware corporation did not receive notice of the action prior to the running of the limitations period when the plaintiff misnamed the

48. See supra Part II.A.
50. Schellhorn, 58 N.W.2d 361.
53. See id. at 854 (Uhlenhopp, J., dissenting).
54. Id. at 851 (majority opinion).
55. See id.
56. See id.
57. See generally Baule, 260 N.W.2d 850.
corporation and its state of incorporation.\textsuperscript{58}

However, as with many cases from this era involving the now obsolete special appearance, one feels the need to inquire into how the corporation was able to make such an appearance challenging the jurisdiction of the trial court prior to receipt of notice after the original petition was amended.\textsuperscript{59} The dissent answers the question by explaining the plaintiffs effected service of process—although mistakenly—on an agent of Illinois Gulf Railroad, the proper defendant, prior to the running of the limitations period.\textsuperscript{60} The plaintiff originally brought suit against a number of defendants, including Illinois Central Industries, which was served with original notice within the limitations period through its agent E. Fred Meeker.\textsuperscript{61} Mr. Meeker, however, was the Yardmaster for Illinois Central Gulf's Dubuque station.\textsuperscript{62}

Despite—or, perhaps, because of this\textsuperscript{63}—the court held: “This is not a case of correction of a misnomer but rather the substitution of a new party after the statute of limitations had run.”\textsuperscript{64} As these cases illustrate, the new cause of action test made it difficult for plaintiffs who made a mistake in their original pleading to correct that mistake and name a new defendant after the statute of limitations had run. However, both on the federal and state level, the ground shifted beneath the Iowa Supreme Court’s feet.\textsuperscript{65} The predicament lies in the fact that the very same result is likely to be rendered under Iowa’s current relation back provision.

\textsuperscript{58} See id. at 854 (Uhlenhopp, J., dissenting).

\textsuperscript{59} See, e.g., id. at 851 (majority opinion) (noting counsel for Illinois Central Railroad entered a special appearance on March 4, 1976, which was two weeks after the running of the statute of limitations, but more than one month before an agent for Illinois Central Gulf was properly served with process).


\textsuperscript{61} See Baule, 260 N.W.2d at 854–55 (Uhlenhopp, J., dissenting).

\textsuperscript{62} Id. at 855.

\textsuperscript{63} The court may have wanted to avoid the difficult question of whether service of process on an agent for Illinois Central Gulf amounted to notice to the corporation where the return of service stated that Illinois Central Industries had been served.

\textsuperscript{64} \textit{Baule}, 260 N.W.2d at 854.

\textsuperscript{65} While Iowa Rule of Civil Procedure 69(e)—adopting the federal rule for relation back—was put into force in 1977 as Rule 89, the incident giving rise to the litigation in \textit{Baule} occurred prior to its adoption and the rule, therefore, was not applied. See id. at 851 (majority opinion).
III. RULE 15(C)

A. The Rule’s Adoption

In 1966, Federal Rule of Civil Procedure 15(c) was “amplified to state more clearly when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall ‘relate back’ to the date of the original pleading.”66 The Advisory Committee’s note identified five cases involving situations where a plaintiff mistakenly misnamed a defendant as the impetus for the “amplification.”67 In each of the cases, either the United States; the Department of Health, Education, and Welfare (HEW); the Federal Security Administration; or a retired Secretary of HEW was served with notice within the limitations period of sixty days for review of the decision of the Secretary of HEW that denied social security benefits to the plaintiff.68 The plaintiffs should have named the acting Secretary of HEW.69 In all of these cases, the amendment was denied based on the new cause of action test.70

The Advisory Committee stated that reliance on cases such as Davis v. L.L. Cohen & Co.71 and Mellon v. Arkansas Land & Lumber Co.72—the only cases cited in the five Social Security decisions in which the Court applied an analysis in terms of “new proceedings”—was “contrary to the intent of the Rules”; therefore, “clarification of Rule 15(c) [was] considered advisable.”73 The Advisory Committee reemphasized that “[r]elation back is intimately connected with the policy of the statute of limitations,” and by delivering service of process pursuant to Federal Rules of Civil Procedure 4(d)(4) and (5), the government was sufficiently put on notice of the action by virtue of service on a “responsible government official,” even if the correct defendant was technically misnamed.74

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66. FED. R. CIV. P. 15(c) advisory committee’s notes (1966).
68. See id. (discussing the similarities of the five cited cases).
69. See id.
70. See id.
73. FED. R. CIV. P. 15(c) advisory committee’s notes (1966).
74. See id. (“In these circumstances, characterization of the amendment as a
In each of the cases, the denial of an amendment to correct a mistake in naming the defendant was considered contrary to the intent of the relation back rule. For purposes of this Note, it is important to recognize not only that an amendment changing a defendant should be allowed when that party has received sufficient notice of the action within the limitations period, but also the way in which the Advisory Committee characterized “notice” for actions involving private parties. In listing the criteria required for relation back, the Advisory Committee stated the “arising out of” condition must be met “and if, within the applicable limitations period, the party brought in by amendment, first, received such notice of the institution of the action—the notice need not be formal—that he would not be prejudiced in defending the action . . . .”

The Advisory Committee expressly adopted an interpretation of Federal Rule 15(c), which allows for an amendment that changes a defendant to relate back to the date of the original filing of the complaint, if (1) the amendment arises out of the same transaction or occurrence in the original pleading; (2) within the applicable limitations period, the party being brought into the action has received sufficient notice of the action, whether formal or otherwise, so the party would not be prejudiced in defending the action; and (3) the party being brought into the action knew or should have known that, if not for a mistake in the pleading, they would be the defendant in the action. It is the second element, requiring notice within the limitations period, which has caused the most trouble for plaintiffs, especially after the United States Supreme Court had an opportunity to interpret this language.

B. Schiavone v. Fortune

Twenty years after Federal Rule of Civil Procedure 15(c) was amplified, the United States Supreme Court decided Schiavone v. Fortune,
which later led to a further amendment to the Rule to “change the result” of the case.\footnote{80} In reaching its conclusion, one commentator stated “the Court compounded neglectful rulemaking with slipshod adjudication.”\footnote{81} The reasoning and conclusion of the Court in \textit{Schiavone} are the legal standards in Iowa to this day.\footnote{82}

In \textit{Schiavone}, the petitioners filed suit against Fortune for allegedly libeling them in an article that appeared in \textit{Fortune} magazine on May 31, 1982.\footnote{83} However, the correct defendant was Time, Inc., as Fortune was merely a trademark and an internal division of Time, Inc.\footnote{84} The petition was filed on May 9, 1983, just weeks before the statute of limitations was set to expire.\footnote{85} The complaints were received by Time’s registered agent on May 23, 1983.\footnote{86} Time’s motion to dismiss the complaint was granted by the district court, and the Third Circuit affirmed the dismissal, stating: “‘While we are sympathetic to plaintiffs’ arguments, we agree with the defendant that it is not this court’s role to amend procedural rules in accordance with our own policy preferences.’”\footnote{87} The fact was that neither Time nor Fortune received any notice of the action within the applicable statute of limitations.\footnote{88}

The Supreme Court affirmed.\footnote{89} To the Court, the issue was simple in

\begin{itemize}
  \item \footnote{81} Lewis, supra note 19, at 1544.
  \item \footnote{82} Compare \textit{Schiavone}, 477 U.S. at 31 (“The linchpin is notice, and notice within the limitations period.”), with \textit{Iowa R. Civ. P. 1.402(5)} (“An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, \textit{within the period provided by law for commencing the action against the party, the party to be brought in by amendment has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and knew or should have known that . . . the action would have been brought against the party.”) (emphasis added)).
  \item \footnote{83} See \textit{Schiavone}, 477 U.S. at 22–23.
  \item \footnote{84} See id. at 23.
  \item \footnote{85} See id. at 22. Under New Jersey tort law, a libel action had to be filed within one year of the date of the publication of the alleged libel. \textit{See N.J. Stat. Ann. § 2A:14–3} (West 1952). The Court of Appeals for the Third Circuit concluded the limitations period ended “‘on May 19, 1983, at the latest’” based on when the magazine attained “‘substantial distribution’” status. \textit{See \textit{Schiavone}, 477 U.S. at 25} (citing \textit{Schiavone v. Fortune}, 750 F.2d 15, 16 (3d Cir. 1984)).
  \item \footnote{86} \textit{Schiavone}, 477 U.S. at 23.
  \item \footnote{87} \textit{Id.} at 25 (quoting \textit{Schiavone}, 750 F.2d at 18).
  \item \footnote{88} \textit{Id.} at 29.
  \item \footnote{89} \textit{Id.} at 32.
\end{itemize}
light of the plain language of the rule.\textsuperscript{90} However, that language had been interpreted by other courts to include the time for service of process for effecting the requisite notice under the rule\textsuperscript{91}—indeed, this was the reason for the grant of certiorari.\textsuperscript{92}

In \textit{Schiavone}, the Court stated the following, which is language often cited in Iowa decisions where relation back is at issue:

\textsuperscript{90} The Supreme Court in \textit{Schiavone} stated:

It seems to us inevitably to follow that notice to Time and the necessary knowledge did not come into being “within the period provided by law for commencing the action against” Time, as is so clearly required by Rule 15(c). That occurred only after the expiration of the applicable 1-year period. This is fatal, then, to petitioners’ litigation.

\textit{Id.} at 30.

\textsuperscript{91} For example, the Fifth Circuit in \textit{Kirk v. Cronvich} stated:

We note that although the complaint against the sheriff’s office was filed within one year of accrual of the claim, the complaint was not served upon Chief Tompson until six days after the one-year period had expired. Arguably, the appellee, his deputy and attorneys could not have received notice of the institution [of the] action “within the period provided by law for commencing the action against him,” as required by Rule 15(c). This time provision, however, has not been given a literal construction.

\textit{Kirk v. Cronvich}, 629 F.2d 404, 408 (5th Cir. 1980). In \textit{Ingram v. Kumar}, the Second Circuit provides another example stating:

We hold that under Rule 15(c) the period within which “the party to be brought in” must receive notice of the action includes the reasonable time allowed under the federal rules for service of process. We think this interpretation is permissible and desirable and carries out the beneficent purpose of the 1966 amendment.

\textit{Ingram v. Kumar}, 585 F.2d 566, 571–72 (2d Cir. 1978) (footnotes omitted). Further, the Sixth Circuit in \textit{Ringrose v. Engelberg Huller Co.} stated:

If a claim is not stale as to the party originally named, no policy associated with the statute of limitations justifies foreclosing the addition of a party when notice is received within the period provided by the law of statutes of limitations and tolling doctrines. Believing this interpretation both just and in harmony with Rule 15(a) and (c) and the functional approach to pleading requirements, I would adopt it as the law in this Circuit.


\textsuperscript{92} \textit{Schiavone}, 477 U.S. at 22 (“Because of an apparent conflict among the Courts of Appeals, we granted certiorari.” (footnote omitted)).
We do not have before us a choice between a “liberal” approach toward Rule 15(c), on the one hand, and a “technical” interpretation of the Rule, on the other hand. The choice, instead, is between recognizing or ignoring what the Rule provides in plain language. We accept the Rule as meaning what it says.93

And in this sense, the Court was correct. The applicable statute of limitations had run, and the party being brought into the suit had received no notice.94

Justice Stevens, however, dissented strongly:

In my view, the Court’s decision represents an aberrational—and, let us hope, isolated—return to the “sporting theory of justice” condemned by Roscoe Pound 80 years ago. The Court’s result is supported neither by the language nor purposes of the Federal Rules, or of Rule 15(c) in particular.95

Justice Stevens pointed out the incongruity of the situation by recognizing that if the plaintiffs had added what he characterized as “the magic words ‘also known as Time, Incorporated,’” the action would have moved forward.96 Aside from the inequity in allowing a defendant to skate on a mere technicality, Justice Stevens reasoned there was no need to utilize the four-pronged test the majority identified because the “test is utterly irrelevant unless the amendment is one ‘changing the party against whom a claim is asserted.’”97 To Justice Stevens, the fact that the correction would do nothing to alter either party’s understanding of against whom the claim was asserted meant this was not a case in which the party being brought into the action changed.98 In essence, it was a misnomer.99

The ruling in Schiavone was harshly criticized by commentators from the beginning.100 The problem is that Iowa courts continue to apply this

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93. *Id.* at 30; see also *Estate of Kuhns v. Marco*, 620 N.W.2d 488, 492–93 (Iowa 2000) (recognizing adoption of the *Schiavone* rationale in Iowa courts and quoting the *Schiavone* court) (citations omitted)).
94. See *Schiavone*, 477 U.S. at 29.
95. *Id.* at 32–33 (Stevens, J., dissenting) (citing Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. 395, 404–05 (1906)).
96. See *id.* at 32.
97. See *id.* at 35.
98. See *id.* at 35–36.
99. See *id.* at 36.
100. See, e.g., Joseph P. Bauer, *Schiavone: An Un-Fortune-ate Illustration of
reasoning. This is true not only in the case in which a defendant received no notice whatsoever—and is, therefore, more rightly justified in pleading the statute of limitations—but also in cases when the defendant was notified of the existence of the action but was misnamed or misidentified. In the latter situation, a technical interpretation of the rule does substantial harm to the intent of the rule itself.

IV. IOWA’S EXPERIENCE UNDER ITS RELATION BACK RULE

A. The Addition of Party Plaintiffs

In contrast to the Iowa Supreme Court’s strict construction of Iowa’s requirements for the relation back rule as it applies to the addition of defendants after the running of the statute of limitations, Iowa courts have understandably taken a more liberal approach to the addition of plaintiffs. This is due to the fact that the addition or recharacterization of a plaintiff does not offend the principles underlying the statute of limitations—a limitations period is not designed to protect plaintiffs.

The Iowa Supreme Court first had the opportunity to apply its new relation back rule in M-Z Enterprises, Inc. v. Hawkeye-Security Insurance Co., a case involving an amendment to the name of the plaintiff in an action surrounding an insurer’s denial of a claim arising from damage to a

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101. See, e.g., Estate of Kuhns v. Marco, 620 N.W.2d 488, 492−93 (Iowa 2000) (citations omitted) (recognizing Iowa’s adoption of the Supreme Court’s interpretation of Rule 15(c) in Schiavone and applying it to Iowa’s analogous relation back rule).

102. See infra Part IV.B.

103. See IOWA R. CIV. P. 89; see also 1976 Iowa Acts 801 (creating Iowa’s modern relation back rule).

In *M-Z Enterprises*, the plaintiff brought an action that originally named itself as “M.Z. Davis Crane Service, Inc.,” which was the corporation’s “business name” and the name listed as the insured under the policy. The trial court allowed an amendment during trial to correct the error and the defendant appealed, claiming the amendment was barred by a contractual one-year limitations period and should not relate back to the date of the original filing.

The Iowa high court affirmed the decision of the trial court. While this case—as well as most in which a plaintiff is substituted or a plaintiff’s name is correctly amended—demonstrates that substituting plaintiffs will always be more likely to relate back, it is important to take note of the way in which the Iowa Supreme Court interpreted and described the new rule. First, the court acknowledged that although the rule—and the federal rule from which it was derived—did not explicitly state that its terms applied to plaintiffs, the same liberal approach to amendment should apply to plaintiffs as well as defendants.

The court went on to emphasize the rule “requires that within the period of the statute of limitations the defendant had received sufficient notice of the action to avoid prejudice in maintaining a defense.” This language—especially the use of *sufficient* as a synonym for *such*, as opposed to omitting any such reference from the explanation of the rule—is important because it is a concise and simple restatement of the rule that

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105. *See id.* at 410–11.
106. *See id.* at 410.
107. *See id.*
108. *See id.* at 412.
109. *See id.* (quoting *Fed. R. Civ. P.* 15 advisory committee’s notes (1982)) (“The relation back of amendments changing plaintiffs is not expressly treated in revised Rule 15(c) since the problem is generally easier. Again the chief consideration of policy is that of the statute of limitations, and the attitude taken in revised Rule 15(c) toward change of defendants extends by analogy to amendments changing plaintiffs.”). As discussed later in this Note, this reliance on the Advisory Committee notes to ignore the plain language of the rule stands in sharp contrast to the *Schiavone* majority and Iowa’s relation back jurisprudence—both of which consistently cite to the “plain language” of the rule in order to come to results that were later deemed at the federal level to be contrary to the intent of the rule. *See infra* Part IV.B.
111. *M-Z Enters.*, 318 N.W.2d at 411. The court went on to identify three elements to be met in the case of the addition of a plaintiff: “(1) whether defendant received adequate notice before the statute ran, (2) whether defendant would be prejudiced by the amendment, and (3) whether the original and new plaintiffs have an ‘identity of interest.’” *Id.* (citations omitted).
captures its essential thrust: a party being brought into a suit must receive *sufficient notice of the action* so that no prejudice to that party will result in requiring the party to litigate on the merits of the case.\textsuperscript{112} The court further stated, “Notice and prejudice to the defendant are the key inquiries.”\textsuperscript{113}

This reasoning, as it relates to the addition of plaintiffs, remains controlling, as evidenced by the Iowa Supreme Court’s decision in *Estate of Kuhns v. Marco*—the Iowa Supreme Court’s most cogent explanation of Rule 1.402(5).\textsuperscript{114} Dorothy Kuhns was involved in an automobile accident when her vehicle met Dale Marco’s on December 23, 1996, in West Des Moines.\textsuperscript{115} Not quite one year later, Dorothy died from illness unrelated to the accident.\textsuperscript{116} On December 22, 1998, one day before the statute of limitations was set to run, an action was brought in the name of the estate of Dorothy Kuhns against Dale Marco for injuries suffered during the accident.\textsuperscript{117} It took the plaintiff eighteen days to serve process on the defendant.\textsuperscript{118}

Marco moved to dismiss based on the requirement that the suit be brought in the name of Dorothy’s legal representative and not the estate.\textsuperscript{119} After the statute of limitations had run, the estate moved to amend its petition to allow Dorothy’s two children to be included in the complaint in their capacity as her legal representatives.\textsuperscript{120} The amendment was allowed by the trial court, and Marco answered the amended complaint by pleading the statute of limitations as an affirmative defense.\textsuperscript{121} The trial court, no doubt persuaded by Iowa precedent as it relates to the addition of defendants, granted the motion and concluded Marco had to receive notice of the amendment within the limitations period in order for the amendment to relate back to the date of the original filing.\textsuperscript{122}

The court of appeals affirmed, only to be reversed by the Iowa

\begin{itemize}
\item \textsuperscript{112} See id.
\item \textsuperscript{113} Id.
\item \textsuperscript{114} Estate of Kuhns v. Marco, 620 N.W.2d 488 (Iowa 2000).
\item \textsuperscript{115} Id. at 490.
\item \textsuperscript{116} Id.
\item \textsuperscript{117} See id.
\item \textsuperscript{118} See id.
\item \textsuperscript{119} Id.
\item \textsuperscript{120} See id.
\item \textsuperscript{121} See id.
\item \textsuperscript{122} See id.
\end{itemize}
Supreme Court. The court ignored the plain language of the rule to apply relation back to cases involving the change of plaintiffs, stating, “Generally, fewer problems are encountered when the relation back doctrine is applied to amendments changing plaintiffs than when applied to amendments changing defendants.” The court reiterated that relation back must be viewed in terms of the principles of the statute of limitations.

However, the court limited its holding “to amendments to substitute or add plaintiffs when the underlying claim remains unchanged.” On top of this, although relation back was allowed to this plaintiff, the court cemented Iowa’s reliance on Schiavone regarding the addition of defendants.

B. The Addition of Party Defendants

In terms of correcting a name or adding defendants after the running of the statute of limitations, Iowa courts have taken the reasoning of Schiavone and consistently disallowed the relation back of amendments seeking to add defendants whether or not they have received notice of the action. The caselaw reads as a cautionary tale to any plaintiff who dares to file a complaint near the expiration of the applicable statute of limitations. If the wrong defendant is named, or the correct defendant is misnamed, in all likelihood the plaintiff’s cause of action will expire with the running of the statute of limitations. One of the first cases to expound upon the rule, as it relates to the addition of defendants, was Grant v. Cedar Falls Oil Co.

In Grant, two sisters brought an action against a local grocery store,
Food 4 Less, for an alleged unlawful detention. The sisters filed suit on the last permissible day within the limitations period, naming as defendant “HOLIDAY ERICKSON PETROLEUM, INC. d/b/a FOOD 4 LESS,” which plaintiffs’ counsel believed to be a foreign corporation. The plaintiffs served process on the corporation by mailing a notification of filing to what they believed to be the defendant corporation’s address, and also by mailing copies of the petition and original notice to the Food 4 Less store where the incident took place. Because the suit was filed on the last permissible day, the petition and original notice were not received by the store until after the statute of limitations had run.

Over two months after the statute of limitations had run, the plaintiffs’ attorney received notice that the Food 4 Less store was actually owned by Cedar Falls Oil Co., an Iowa corporation, and that Holiday Erickson Petroleum, Inc. was not a legal entity. The plaintiffs moved to amend their complaint, and Cedar Falls Oil Co. successfully moved for dismissal. This decision was reversed by the court of appeals, which determined that this was a misnomer case.

The Iowa Supreme Court sided with the district court and held the amendment did not relate back. In so doing, the court seemed to set several principles in stone relating to the amendment of a pleading to add a party defendant. First, even though the federal rule was already changed to allow amendment within the limitations period plus the time allowed for service of process, the court relied on Schiavone—which was decided when the federal rule was identical to the Iowa rule—to hold that the phrase “within the period of time for commencing the action against him” did not include the time in which service of process could be effected. The court

130. Id. at 864.
131. Id.
132. Id. (noting plaintiff also mailed a copy to another local Food 4 Less store).
133. See id.
134. See id.
135. See id. at 864–65.
136. Id. at 864.
137. See id. at 864–65. This interpretation is reasonable in light of the fact that the party before the court and the party served with process, although after the running of the statute of limitations, was the store Food 4 Less; the plaintiff argued that the only problem was the true legal description of the defendant.
138. See id. at 866.
139. Id. (“[W]e believe that the holding in Schiavone expresses the proper interpretation of the federal rule as it then existed and, inferentially, of the identical
did so by adopting the U.S. Supreme Court’s contention in Schiavone that this conclusion is inescapable because any other interpretation would “do violence to the plain language of [the] rule.”\(^{140}\)

Also, despite the facts being very susceptible to a misnomer argument, the court “entertain[ed] some uncertainty whether there [was] any difference in legal effect between amendments changing parties and amendments changing the name of a party.”\(^{141}\) This statement is hard to understand because there is a substantial difference between a party who has been before a court under an incorrect name, and one who is an actual stranger to the litigation and is brought in only after the running of the statute of limitations. Iowa’s relation back jurisprudence was firmly within the Schiavone interpretation\(^{142}\) and has yet to correct itself.

Based on these themes adopted from Schiavone, Iowa courts consistently denied relation back of amendments that attempted to add defendants. In Porter v. Good Eavespouting, another case where a plaintiff filed suit one day before the running of the statute of limitations, the Iowa Supreme Court added another dimension to Iowa’s relation back jurisprudence.\(^{143}\)

1. **Notice to Insurance Companies**

   The plaintiff in Porter originally named “Good Eavespouting d/b/a Good Construction Company” as the defendant.\(^{144}\) An insurance company, in an attempt to settle the case, contacted and discussed the matter with Porter and indicated that it insured Good Eavespouting and Good Construction Company.\(^{145}\) The correct defendant was the individual, Larry Good.\(^{146}\) The plaintiff sought leave to amend to add Larry and Sandra Good as defendants after the statute of limitations had run.\(^{147}\) The amendment was denied, and both the appellate court and the Iowa Supreme Court affirmed the decision.\(^{148}\)
The rule speaks in terms of “such notice” of the institution of the action so that the party being brought in will not be prejudiced. 149 Despite this language, the court did not allow the addition of Mr. and Mrs. Good even though their insurer attempted to settle the matter and Larry Good personally reviewed the original notice. 150 From this point on, Iowa courts held that communication with a defendant’s insurance company does not constitute notice of the institution of the action warranting relation back. 151 This is the case even though an insurer has a duty to defend an insured for claims arising under the policy under most insurance contracts. 152 The party that will defend the action is notified of the possibility of the suit, yet the proper party is allowed to argue it did not receive notice of the action within the limitations period. 153

This concept can be illustrated by the Iowa Court of Appeal’s holding in Butler v. Woodbury County. 154 Charlotte Butler brought suit against Woodbury County, Iowa, on August 2, 1994—six days prior to the running of the statute of limitations—for injuries she sustained at the Woodbury County fairgrounds. 155 The fairgrounds were operated by the Woodbury County Fair Association, and Butler filed an amended complaint naming

149. See id. at 181 (quoting Schiavone v. Fortune, 477 U.S. 21, 29 (1986)).
150. See id. at 179–80. The court sidestepped the sufficiency of notice problem by stating, “Although Larry Good stated he had reviewed the original notice, the record is silent as to when this occurred.” Id. at 181.
151. See Alvarez v. Meadow Lane Mall, L.P., 560 N.W.2d 588, 589, 592 (Iowa 1997) (citing Jacobson v. Union Story Trust & Sav. Bank, 338 N.W.2d 161, 164 (Iowa 1983)) (stating discussions between the plaintiff and the defendants’ insurer “of intention to bring suit is in no way tantamount to notice of its filing”); Butler v. Woodbury Cnty., 547 N.W.2d 17, 19–20 (Iowa Ct. App. 1996) (citing Jacobson, 338 N.W.2d at 164) (“Notice given to the insurance carrier of the party to be brought into the lawsuit of the possibility of suit is not tantamount to notice to that party a suit has been filed.”).
152. See 44 AM. JUR. 2D Insurance § 1396 (2003) (“Under most policies of liability insurance, the right of the insurer to exclusive control over litigation against the insured is accompanied by a correlative requirement that the insurer defend the insured against all actions brought against him or her on the allegation of facts and circumstances covered by the policy, even though such suits may be groundless, false, or fraudulent.” (footnotes omitted)); see also Kelly v. Iowa Mut. Ins. Co., 620 N.W.2d 637, 643 (Iowa 2001); William T. Barker, Insurer Control of Defense: Reservations of Rights and Right to Independent Counsel, 71 DEF. COUNS. J. 16, 16 (2004) (“[M]ost liability insurance markets have settled on contract terms that provide for the insurer to manage the defense and give it the ‘right and duty to defend.’”).
153. See Alvarez, 560 N.W.2d at 589–590, 592; Butler, 547 N.W.2d at 18–20.
154. See Butler, 547 N.W.2d at 19–20.
155. See id. at 18.
the Association as a defendant one day after the statute of limitations expired.  

Shortly after the incident giving rise to Butler’s injuries, the Association’s insurance carrier contacted Butler and conducted an investigation, resulting in payment for Butler’s medical expenses pursuant to the Association’s policy but also a denial of liability.  

This led to “numerous correspondences” between Butler’s attorney and the insurer, including a demand letter insisting the insurer “either settle Ms. Butler’s claim or [Butler would] file a lawsuit on or before August 8, 1994.”  

The insurer continued to deny liability, and after the amended petition was filed, the insurer successfully moved for summary judgment on the basis of the running of the statute of limitations.  

The Iowa Court of Appeals upheld the decision of the district court denying relation back of the amended petition despite its acknowledgment that “[t]he rationale for the relation back doctrine is to promote the policy of deciding cases on their merits,” and “such notice of the institution of the action” under Rule 89 does not necessarily require personal notice.  

The court relied on the phrase “such notice of the institution of the action” in the rule and determined that the correspondences between the insurer and the plaintiff’s attorney, even the letter stating that the suit would be filed prior to the running of the statute of limitations, merely constituted notice “of the possibility of suit” and therefore was in no way

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156. See id. The Association was also served with notice of the amended petition on the same day. See id.
157. Id.
158. Id.
159. See id.
160. Id. at 19 (citing CHARLES A. WRIGHT, LAW OF FEDERAL COURTS § 66, at 312 (3d ed. 1976)).
161. Id. (quoting IOWA R. CIV. P. 89). Rule 1.402(5), previously numbered 89, states:
An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided for by law for commencing the action against the party, the party to be brought in by amendment has received such notice of the institution of action that the party will not be prejudiced in maintaining a defense on the merits, and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. IOWA R. CIV. P. 1.402(5).
“tantamount to notice to that party a suit has been filed.”  \footnote{162}{See Butler, 547 N.W.2d at 19–20 (citing Jacobson v. Union Story Trust & Sav. Bank, 338 N.W.2d 161, 164 (Iowa 1983)).}

The court further held there was no reason to conform Iowa’s relation back rule to Federal Rule of Civil Procedure 15(c) in order to allow for notice to be effected within the period of time allowed for service of process: “It is important to recognize the present federal standard is the result of recent legislative amendments made to the governing rules of civil procedure, not judicial decisions. Earlier efforts to conform to the former federal relation back rule to the service rule through judicial decisions failed.”  \footnote{163}{Id. at 20 (citing Schiavone v. Fortune, 477 U.S. 21 (1986)).}

The problem in these decisions is that the insurer is obligated to defend the suit, and by informing the insurer of the possibility of the suit, the plaintiff put the party tasked with executing the defense of the case on notice. The insurer in Butler went so far as to conduct an investigation and proceeded to correspond with the plaintiff’s attorney who was seeking to settle the case.  \footnote{164}{See id. at 18.}

It would seem as though the principles underlying the statute of limitations could not possibly be offended if the party defending the case knew of the possibility of the action prior to the running of the statute of limitations.

2. \textit{Obfuscation}

Another troubling aspect of Iowa’s relation back jurisprudence is that it creates the possibility for a situation in which defendants may be rewarded for disguising their actual identity or correct legal name, as demonstrated by Kueter v. Merrick.  \footnote{165}{Kueter v. Merrick, No. 08-0579, 2008 WL 4725406 (Iowa Ct. App. Oct. 29, 2008).}  Cynthia Kueter was injured in an automobile accident with Shirley Vosberg on July 15, 2005.  \footnote{166}{Id. at *1.}  Kueter filed a lawsuit against Vosberg just five days before the statute of limitations was set to run.  \footnote{167}{See id.}  Unbeknownst to Kueter, Vosberg died seven months earlier, and the correct defendant was her son, Leonard Merrick, who was appointed executor of Vosberg’s estate.  \footnote{168}{See id.}  An amended petition naming Merrick as defendant was not filed until August 9, 2007, and Merrick was
not served with the amended petition until August 13, 2007, almost one month after the statute of limitations had run.\footnote{169}{\textit{See id.}}

The district court granted Merrick’s motion for summary judgment on the basis of the expiration of the statute of limitations.\footnote{170}{\textit{See id.}} On appeal, the Iowa Court of Appeals narrowed the issue to “whether Merrick received notice of the lawsuit’s filing within the limitations period so he was not prejudiced in maintaining a defense.”\footnote{171}{\textit{Id.}} The court held that contacts between Kueter’s attorney and Vosberg’s insurer, including the insurer’s notification of Kueter’s petition from Kueter’s attorney on the day it was filed, were insufficient to meet the notice requirements of Rule 1.402(5).\footnote{172}{\textit{See id. at *1–2.}}

The obfuscation lies in the fact that Vosberg’s insurer never once intimated to Kueter’s attorney that Cynthia Vosberg had died.\footnote{173}{\textit{See id.}} Based on the insurer’s lack of direct contact with Merrick, and Kueter’s inability to cite any authority suggesting an affirmative duty on the part of the insurer to disclose this information, the court refused to honor Kueter’s argument that Merrick should be estopped from asserting the statute of limitations defense.\footnote{174}{\textit{See id.}} Thus, although the insurer would have been required to defend the action, it was rewarded for omitting the fact that its insured died.\footnote{175}{\textit{See id.}}

As soon as a plaintiff’s attorney contacts an insurer or other party and misstates the identity of the party, the game begins. The resolution of the matter then depends on the extent to which the insurer or other party can keep the plaintiff’s mistake concealed.

3. \textit{Misnomers}

As stated above, the Iowa Supreme Court in \textit{Grant v. Cedar Falls Oil Co.} “entertain[ed] some uncertainty whether there is any difference in legal effect between amendments changing parties and amendments changing the name of a party.”\footnote{176}{\textit{Grant v. Cedar Falls Oil Co., 480 N.W.2d 863, 866 (Iowa 1992).}} The court relied on the official comment to Federal Rule of Civil Procedure 15(c) to apply relation back to misnomers.\footnote{177}{\textit{See id.}}
Iowa courts since *Grant* have rigidly applied the “within the period provided by law” language of Iowa’s relation back rule with as much veracity as they have applied the language to amendments adding or changing defendants.178 Like the Iowa cases involving the addition of a defendant, the application of the rule to misnomer cases—without extending the time for service of process—demonstrates how Rule 1.402(5) has become nothing but unnecessary wordage as it applies to defendants. There is, in fact, no difference in the rule’s application to misnomer cases and cases where a plaintiff attempts to add an unnamed defendant.179 A comparison of *Gutierrez v. Wal-Mart Stores, Inc.*180 and *Richardson v. Walgreens, Inc.*181 demonstrates the point. In both cases, a plaintiff misnamed the proper corporate entity.182

Sylvia Gutierrez was struck by falling merchandise while shopping at a Wal-Mart store in Davenport, Iowa.183 She ultimately won a judgment of $38,678.56 for medical expenses and lost wages as a result of her injuries.184 Gutierrez filed suit against “WALMART” one month before the statute of limitations was set to run and served process on an assistant manager of the Wal-Mart store prior to the running of the limitations period.185 The trial court allowed an amendment to the original pleading that named “Wal-Mart Stores, Inc.,” as opposed to “WALMART.”186

The Iowa Supreme Court upheld the appellate court’s determination that the amendment to the pleading related back to the date of the filing of the original.187 The original pleading was filed and served on an agent188 of

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178. *See, e.g.*, Richardson v. Walgreens, Inc., No. 03-0817, 2004 WL 360501, at *1 (Iowa Ct. App. Feb. 27, 2004) (citing *Grant* and requiring the plaintiff to meet the relation back requirement to correct the defendant’s name if not within the limitations period).

179. *Compare, e.g.*, id. at *1–2 (denying relation back because the properly named defendant, Walgreens Co., did not receive notice of the lawsuit until after the limitations period), with *Grant*, 480 N.W.2d at 864, 866 (denying relation back where the plaintiffs did not notify the real defendant until after the limitations period).


183. *See Gutierrez*, 638 N.W.2d at 703.

184. *See id.* at 704.

185. *See id.*

186. *Id.*

187. *See id.* at 705.

188. Whether the individual served with process was a “general or managing
Wal-Mart Stores, Inc. prior to the running of the statute of limitations, which allowed this mistake in the exact spelling of the defendant’s name to relate back. Had this particular Wal-Mart store been notified of the suit after the limitations period—although within the time allowed for service of process—this amendment would not have related back.

Such a situation occurred in Richardson v. Walgreens, Inc., a case decided by the Iowa Court of Appeals. One day before the statute of limitations was set to run, plaintiffs Rose and Ralph Richardson filed suit against Walgreens, Inc. and Walgreens Properties, Inc. for injuries allegedly sustained by Rose in a particular Walgreens store. The Walgreens store was served with notice nine days later, well within the time allowed for serving process on the proper defendant but after the running of the statute of limitations.

As it turned out, the entity served with process was not Walgreens, Inc. or Walgreens Properties, Inc., but Walgreen Co. Walgreen Co. provided an affidavit stating it was unaware the plaintiffs filed suit prior to the running of the statute of limitations and successfully moved for summary judgment. Although Rule 1.402(5) states it applies to those amendments “changing the party against whom a claim is asserted,” the appellate court relied on Grant v. Cedar Falls Oil Co. to reaffirm that Rule

agent” of Wal-Mart Stores, Inc. was an issue the appellate court remanded to the trial court prior to the appeal in this case. Id.

189. See id.

190. See id.


192. See id. at *1.

193. See id.; see also IOWA R. CIV. P. 1.302(5) (allowing service of the original notice to be made within ninety days after the petition is filed).

194. See Richardson, 2004 WL 360501, at *1.

195. See id.

196. See id.

197. IOWA R. CIV. P. 1.402(5). The plaintiffs made the same argument Justice Stevens made in his dissent in Schiavone v. Fortune—that relation back should not apply to a misnomer because the rule explicitly applies only to “changes” of parties. Schiavone v. Fortune, 477 U.S. 21, 38–39 (1985) (Stevens, J., dissenting). Misnomers were explicitly included in the federal rule through an amendment in 1991. See FED. R. CIV. P. 15 advisory committee’s notes (1991). This is the same amendment to the rule that explicitly overruled the reasoning of Schiavone. See id. However, according to the committee notes, the rule applied to misnomers or misdescriptions since 1966. See FED. R. CIV. P. 15 advisory committee’s notes (1966).
1.402(5) applied to misnomers.\textsuperscript{198} The court also disapproved of the plaintiffs’ argument that, unlike the plaintiff in \textit{Grant} who named an entity bearing no resemblance to the proper defendant,\textsuperscript{199} Mr. and Mrs. Richardson’s mistake bore an almost precise similitude to the name of the proper defendant.\textsuperscript{200} The court cited \textit{Grant} and came to the conclusion that misnomer cases should not come down to the similarity or dissimilarity of the names involved.\textsuperscript{201}

This reasoning suggests that had the Richardsons named “Walgreens Co.”\textsuperscript{202} in their original petition and served process on the Walgreens store where the alleged injury occurred, any attempt to change the spelling of the name would have been subject to a statute of limitations defense.\textsuperscript{203} The defendant store would be allowed to dismiss the action against it by stating it was not on notice of the institution of the action within the applicable statute of limitations because an “s” was included at the end of the word “Walgreen.”\textsuperscript{204}

\textbf{C. Eischeid v. Dover Construction, Inc.\textsuperscript{205}}

To illustrate the hardship that might befall plaintiffs who misidentify a defendant in their original pleading, one needs to look no further than \textit{Eischeid v. Dover Construction, Inc.}\textsuperscript{206} In \textit{Eischeid}, the United States District Court for the Northern District of Iowa examined the state of the relation back doctrine in Iowa, as well as under Federal Rule of Civil Procedure 15(c).\textsuperscript{207} The court concluded that “[r]ead together, these rules indicate that a plaintiff must file amendments that add defendants within the statutory time period in order to satisfy Rule 69(e)’s requirement that added defendants receive notice of the institution of an action ‘within the

\begin{footnotes}
\footnotetext{198}{See \textit{Richardson}, 2004 WL 360501, at *1 (citing \textit{Grant} v. Cedar Falls Oil Co., 480 N.W.2d 863, 866 (Iowa 1992)).}
\footnotetext{199}{See \textit{Grant}, 480 N.W.2d at 864–65 (naming “HOLIDAY ERICKSON PETROLEUM, INC. d/b/a FOOD 4 LESS” when the proper defendant was Cedar Falls Oil Co.).}
\footnotetext{200}{See \textit{Richardson}, 2004 WL 360501, at *1 n.3.}
\footnotetext{201}{See \textit{id.} (citing \textit{Grant}, 480 N.W.2d at 866).}
\footnotetext{202}{As opposed to “Walgreen Co.”}
\footnotetext{203}{See \textit{Richardson}, 2004 WL 360501, at *1–2.}
\footnotetext{204}{See \textit{id.} (applying the proposition that defendant store would not have notice).}
\footnotetext{205}{Eischeid v. Dover Constr., Inc., No. C00-4100-MWB, 2001 U.S. Dist. LEXIS 24633 (N.D. Iowa Sept. 6, 2001).}
\footnotetext{206}{See generally \textit{id.}}
\footnotetext{207}{\textit{Id.} at *6–10.}
\end{footnotes}
period provided by law for commencing the action.’”208 This reading of the rule would make it so any amendment seeking to add or recharacterize a defendant after the statute of limitations had run would be disallowed. The federal rule has always been interpreted with an understanding that relation back will only apply to situations in which the limitations period would bar the action.209 In fact, relation back is the only way a plaintiff may overcome a statute of limitations defense.210

This reading of Iowa’s relation back jurisprudence—no doubt an accurate reading—creates a situation in which the only time the relation back rule can be used to add a defendant is where there is no need for the application of the rule. Requiring the plaintiff to file amendments that seek to add a defendant within the applicable limitations period will never require the amendment to relate back.211 The only basis for asserting that the amendment relates back is to avoid the statute of limitations.

The facts of the case illustrate the hardship that could have occurred had the court not determined there was no need to apply relation back to the case due to Iowa Code section 4.1(34).212 The plaintiff was injured when he fell from a wall that collapsed while he worked on a construction project on March 17, 1999.213 He filed a tort action against the general contractor, Dover Construction (Dover), basing the cause of action on the company’s “negligence and failure to provide a safe work environment.”214 The action was filed on September 15, 2000, and in December of that year Dover brought a third-party complaint against the subcontractor, Woods

208. Id. at *9 (quoting Alvarez v. Meadow Lane Mall L.P., 560 N.W.2d 588, 592 (Iowa 1997)). It is worth noting that, unlike the court in Kuhns, Judge Bennett, the author of the opinion, omitted the word such or any synonym thereof in his explanation of the notice requirement. Id. This is a common theme in cases in which an amendment is denied relation back.

209. See Fed. R. Civ. P. 15 advisory committee’s notes (1966) (“Relation back is intimately connected with the policy of the statute of limitations.”); see also Lewis, supra note 19, at 1512 (“[A]t the time of its adoption it was clearly understood that relation back is for the most part of critical importance only when a complaint is amended after a limitations period has run . . . .”).

210. 3 James WM. Moore et al., Moore’s Federal Practice § 15.19 (2011) (“Rule 15 is the only vehicle available for a plaintiff to amend the complaint to change or add a defendant after the statute of limitations has run.”).

211. See Iowa R. Civ. P. 1.402.


214. See id. at *1.
Masonry (Woods), for breach of contract, claiming the subcontractor agreement required Woods to indemnify and defend Dover against any claims arising out of their relationship.\textsuperscript{215} Woods’s workers’ compensation carrier denied that the policy included coverage for employees in Iowa, and Eischeid then moved to amend his original complaint on Friday, March 16, 2001, to add Woods as well as Otis, Koglin, and Wilson Architects, Inc. (Otis), the manufacturer of the wall.\textsuperscript{216} This motion to amend was granted by the trial court on Monday, March 19, 2001.\textsuperscript{217} Otis moved under Federal Rule of Civil Procedure 12(b)(6), claiming Eischeid failed to state a claim upon which relief could be granted because Iowa’s two-year statute of limitations had run two days prior to the filing of Eischeid’s amended complaint.\textsuperscript{218}

Under Iowa Code section 4.1(34), if a statutory deadline falls on a Saturday, Sunday, or legal holiday, the limitations period is “extended to include the next day which the office of the clerk of court . . . is open to receive the filing of a commencement of an action, pleading or a motion in a pending action or proceeding.”\textsuperscript{219} Because Eischeid’s statute of limitations expired on a Saturday, the limitations period was extended until the following Monday, March 19, 2001.\textsuperscript{220} Therefore, the pleading was not required to relate back but was filed within the original limitations period.\textsuperscript{221}

The problem is that the claim would have been barred by the statute of limitations had Eischeid’s motion to amend been filed on that Monday, and not two days earlier, based on the reasoning of the court.\textsuperscript{222} This is true even though absolutely nothing of substance changed in those forty-eight hours in terms of violating any of the principles underlying the statute of limitations.\textsuperscript{223} There is no question Otis received sufficient—or “such”—
notice of the action prior to the two-year bar.224 Justice Stevens, in his dissent in *Schiavone*, said it best:

The principal purpose of Rule 15(c) is to enable a plaintiff to correct a pleading error after the statute of limitations has run if the correction will not prejudice his adversary in any way. That purpose is defeated—and the Rule becomes largely superfluous—if it is construed to require the correction to be made before the statute has run. . . . Ironically, it is the language added by the amendment in 1966 to broaden the category of harmless pleading errors which the Court construes today to narrow that category.225

V. A STATUTORY SOLUTION

A. Remove the Word *Institution* from the Language of the Rule

The Advisory Committee on Civil Procedure, or the legislature itself, could recommend changes to the Iowa Rules of Civil Procedure in order to abrogate the problems caused by the Iowa Supreme Court’s reliance on *Schiavone v. Fortune*.226 The first such alteration would be to remove the word *institution* from the rule.

Federal Rule of Civil Procedure 15(c) was amended to remove the word *institution* from the language of the rule in 2007.227 The impetus for the rule change is unclear and this particular change has received scant treatment by the federal courts, but clearly something less than notice of the suit’s filing is required.228 The Advisory Committee’s notes state that what matters is that the party being brought into the suit is aware of the

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224. *See generally id.*


Former Rule 15(c)(3)(A) called for notice of the “institution” of the action. Rule 15(c)(1)(C)(i) omits the reference to “institution” as potentially confusing. What counts is that the party to be brought in have notice of the existence of the action, whether or not the notice includes details as to its “institution.”

*Id.*

228. *See id.*
“existence” of the action.229

This change would have its most relevant impact on the cases surveyed in Part IV(B)(1), where an insurer is contacted but there is only evidence of the plaintiff indicating the potentiality for the filing of the petition rather than the institution of the action.230 It is debatable whether the requirement that a party being brought into a suit must receive notice of the existence of the action—as opposed to its institution—would allow for a different result in cases such as Butler v. Woodbury County231 or Porter v. Good Eavespouting.232 The language could be read to indicate an intent to deal with cases in which a party being brought into the suit was notified of the existence of the action,233 but the party seeking relation back was less than generous in revealing specific facts regarding the suit’s “institution.”234

The question is then whether knowledge of the existence of an action presupposes knowledge of the institution of the action. The language of the Advisory Committee notes seems to indicate the existence of the action assumes a petition has been filed.235 However, the fact remains that the language now presumably encompasses a larger sphere of cases in which notice of the details concerning the filing of the petition is not required.236 The fact that the relation back doctrine is intimately connected with the statute of limitations supports an interpretation that communications with the entity tasked with defending the case on the merits should amount to sufficient notice—despite a lack of communication concerning the

229. See id.
230. See supra Part IV.B.1; see also Grissom v. Dayco Prods., Inc., 758 F. Supp. 650, 653 (D. Kan. 1991) (holding former employee's attorney's phone calls and certified letter to employer were insufficient to meet the “notice of the ‘institution of the action’” requirement in wrongful termination action).
233. For example, the party being brought into the action is notified that a petition had been filed.
234. For example, the party being brought into the action is notified of when and where the action had been filed, and presumably the circumstances surrounding the filing.
235. This is especially true in the Advisory Committee’s use of the phrase “details as to its ‘institution.’” Fed. R. Civ. P. 15(c) advisory committee’s notes (2007). This phrase seems to suggest a situation where specific facts concerning when and where the action was filed are lacking, as opposed to an intent to allow notice of the potential for suit to meet the notice requirement of the rule. See id.
236. See id.; see also Fed. R. Civ. P. 15(c).
institution of the action. This is especially true when the insurer begins defending the case and planning for myriad contingencies. To such a party, the claim is not stale regardless of the fact that they knew only of the potential for suit, as opposed to having known details as to its existence.

B. Allow for Notice to be Effected Within the Time Period Allowed Under Iowa Rule of Civil Procedure 1.302(5)

The change that would have the greatest potential to remedy the problems encountered under Iowa’s relation back doctrine—with the judicial gloss of Schiavone—is the change adopted at the federal level in order to change the result in Schiavone. Allow notice to be effected within the period of time allowed by the statute of limitations, as well as the time for service of process.

Because a statute of limitations is meant to protect defendants from encountering the problems associated with litigating stale claims, there is value in ascertaining the protection the Iowa General Assembly has sought to afford defendants regarding the notice that must be given to defendants who are correctly identified. Iowa Rule of Civil Procedure 1.302(5) sets no definite time in which a defendant must be served with service of process. However, if the defendant is not served within ninety days of

237. Iowa courts have applied a similar principle in terms of attorneys:

The relations of a litigant to his attorneys in the litigation are so close and active and the responsibility of an attorney to his client in such a case is so definite and quasi official in its nature that a notice to the attorney should be deemed as the practical equivalent of actual notice to the client. Stevens v. People’s Sav. Bank, 171 N.W. 130, 132 (Iowa 1919). The relationship between an insurer and a party to the lawsuit, it could be argued, is even more “definite and quasi-official”—it creates a contractual duty to defend. See id.

238. See FED. R. CIV. P. 15(c) advisory committee’s notes (2007).

239. See FED. R. CIV. P. 15 advisory committee’s notes (1991) (citations omitted) (“This paragraph[, 15(c)(3),] has been revised to change the result in Schiavone v. Fortune . . . with respect to the problem of a misnamed defendant. . . . On the basis of the text of the former rule, the Court reached a result in Schiavone v. Fortune that was inconsistent with the liberal pleading practices secured by Rule 8.”); see generally Schiavone v. Fortune, 477 U.S. 21 (1986).

240. FED. R. CIV. P. 15(c)(1)(C) (allowing notice to be effected within the time for service under Rule 4(m)).

241. See Lewis, supra note 19, at 1511–12.


243. See id. R. 1.302(5).
notice to the party filing the petition, shall dismiss the action without prejudice as to that defendant, respondent, or other party to be served or direct an alternate time or manner of service.”

Without allowing for the time for service of process, a party properly before the court is not afforded the same statute of limitations as a party incorrectly named or misidentified. For the former, notice need not be given within the limitations period, yet no one would argue the policies underlying the statute of limitations have been offended. For the latter, somehow the statute of limitations takes umbrage earlier in time.

Initially, the Iowa Supreme Court justified its reliance on Schiavone in part because of the practical limitation that inhered in Iowa Rule of Civil Procedure 49 at the time the court decided Grant v. Cedar Falls Oil Co. However, this infirmity has been remedied by the amalgamation of several procedural rules into Iowa Rule of Civil Procedure 1.302(5), which now is substantively indistinguishable from Federal Rule of Civil Procedure 4(m).

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244. See id. The rule also allows for an extension of time for service of process if the party filing the petition can demonstrate “good cause” as to the delay in service. See id.

245. See supra Part IV (discussing the effect of Iowa’s interpretation on Rule 1.402(5)).


247. At the time, Rule 49, which is now part of Iowa Rule of Civil Procedure 1.302(5), did not contain the ninety-day time limit for service of process in order to avoid a presumption of abuse. See IOWA R. CIV. P. 49 (1991); see also IOWA R. CIV. P. 1.302(5) cmt. (“Rule 1.302 is a combination of former Iowa Rs. Civ. P. 49, 50 and 52 . . . .”).

248. See Grant v. Cedar Falls Oil Co., 480 N.W.2d 863, 866 (Iowa 1992). The court, while also citing the “plain language” of the rule, stated:

There is no usual and ordinary time for receiving notice of the filing of an action. Nor do our rules of civil procedure establish a precise time within which process must be served. If rule [1.402(5)] is to be uniformly applied, we believe it is necessary for the period of time within which the required notice must be received to be fixed and ascertainable.

Id. (citing Bean v. Midwest Battery & Metal, Inc., 449 N.W.2d 353, 355 (Iowa 1989)).

249. IOWA R. CIV. P. 1.302(5) cmt. (“Rule 1.302 is a combination of former Iowa Rs. Civ. P. 49, 50 and 52 reorganized to present the information in a more logical sequence.”).

250. Compare FED. R. CIV. P. 4(m) (“If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for
The ease with which the phrase “within the period provided by Rule 1.302(5) for serving summons and complaint” could be added to Rule 1.402(5), coupled with the absurdity that results from the current interpretation of the rule, counsels in favor of adding this language to the rule.251 There is no justification for an obdurate allegiance to the language of the current rule when the federal rule upon which it is based was changed in direct response to an interpretation of that language which was deemed adverse to modern rules of pleading.252 The Schiavone interpretation was wrong-headed when decided, and the Iowa Supreme Court should promulgate a change to the state rule which would have the same remedial effect as the change to the federal rule.253

VI. AN INTERPRETIVE SOLUTION

Aside from a legislative change to the rule, the Iowa Supreme Court could simply correct its course and interpret the current rule in a way that is more in line with the principles underlying the modern rules of pleading. While this would require overturning many cases with precedential weight, the Iowa Supreme Court has always supported the position that bad precedent must be overturned despite authority to the contrary.254

The Iowa Supreme Court could take the reasoning of several other
courts and simply avoid the anomaly discussed throughout this Note—that a defendant who is properly named in the original complaint need not receive notice of the institution of the action until after the limitations period plus the time allowed for service of process,255 while a misnamed defendant must receive notice within the statute of limitations.256 The court could do so by deciding that the relation back rule’s notice requirement includes the time for service of process. Arizona’s experience with its relation back rule is particularly relevant because it was modeled after the federal rule in the same manner that Iowa’s rule is fashioned today.257

In Ritchie v. Grand Canyon Scenic Rides, the Arizona Supreme Court overturned a court of appeal’s affirmance of a trial court’s decision to deny relation back of an amendment based on the defendant not receiving notice until two months after the applicable statute of limitations had run.258 Ingrid Ritchie was injured while partaking in a mule ride operated by Grand Canyon Scenic Rides (GCSR), a Utah corporation.259 Ritchie negotiated with GCSR’s insurer, Centaur Insurance Company, which stated it was only required to pay a maximum of $1,000 based on a hold-harmless agreement Ritchie signed prior to the incident.260 On the last day prior to the running of the statute of limitations, Ritchie brought suit against, among others, Fred Harvey Transportation Co. (Fred Harvey), an Arizona corporation, doing business as Grand Canyon Scenic Rides.261

After realizing Fred Harvey was not affiliated with the Utah GCSR, Ritchie amended her complaint, dropping Fred Harvey and adding GCSR, which was served two months after the limitations period.262 GCSR successfully moved for summary judgment, and the appellate court, relying on Schiavone v. Fortune, affirmed the denial of relation back.263

256. See id.
257. See, e.g., Ritchie v. Grand Canyon Scenic Rides, 799 P.2d 801, 803 (Ariz. 1990) (relying on Schiavone for its interpretation of Federal Rule of Civil Procedure 15(c)). After the decision in Ritchie, Arizona’s Rule 15(c) was amended to explicitly allow notice to be effected within the period allowed by the statute of limitations as well as the time allowed for service of process. See Ariz. R. Civ. P. 15(c) supplemental state bar committee note.
258. See Ritchie, 799 P.2d at 803, 809.
259. Id. at 802.
260. See id. at 802–03.
261. See id. at 803.
262. See id.
263. See id. (citing Schiavone v. Fortune, 477 U.S. 21 (1986)).
To begin, the Arizona Supreme Court dealt with an issue not foreign to the Iowa courts under its relation back rule—the sufficiency of notice where the plaintiff has communicated with the defendant’s insurer. The court declined to hold that the contact the plaintiff had with the proper defendant’s insurer was sufficient to amount to the requisite notice under Arizona’s relation back rule. The court cited, among other reasons, a violation of the clear language of the rule, which is in line with Iowa’s interpretation.

Next, the court had to decide, as a matter of first impression in Arizona, whether its relation back rule would allow an amendment to relate back within the limitations period plus the time allowed for service of process. The court directly pointed out the anomaly that a properly named defendant, under Arizona’s service of process rule, would have had one whole year after the running of the statute of limitations in which to receive any notice of the action, while a plaintiff could not avail itself of this time period if it incorrectly named the defendant. In this anomaly, the court found that the intent of the legislature, as it concerned the commencement and prosecution of the action, should outweigh the reasoning of the Schiavone Court, which it described as “an unfortunate interpretation of Rule 15(c).” The court stated:

Given that the legislature intended that an action might be commenced by filing within the period of the statute of limitations (see Rule 3) and prosecuted by service within the additional time of one year, allowing an amendment to add or change a party during that same time period does nothing to undermine the protection the

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264. *See id.* at 805–06; *see also supra* Part IV.B.1.
266. *See id.; see, e.g.,* Alvarez v. Meadow Lane Mall, L.P., 560 N.W.2d 588, 589, 592 (Iowa 1997) (citing Jacobson v. Union Story Trust & Sav. Bank, 338 N.W.2d 161, 164 (Iowa 1983)) (finding plaintiff failed to show adequate notice was given to added parties in order to relate back under precedent, stating “[n]otice of intention to bring suit is in no way tantamount to notice of its filing” and “[n]otice to an insurer is not notice to its insured”); Butler v. Woodbury Cnty., 547 N.W.2d 17, 19–20 (Iowa Ct. App. 1996) (“Thus, under the plain language of [the] Rule . . . the required notice must have been received by the party sought to be brought into the lawsuit prior to the expiration of the limitations period.” (citation omitted)).
268. *See id.*
269. *See id.* at 807–08.
legislature intended to provide for defendants.270

On top of this, the court recognized the “clear” language of the rule is “not nearly so clear as one might imagine,” which stands in sharp contrast with the interpretation of the rule’s language by the Schiavone Court and the Iowa courts.271 The Ritchie court cited the Second and Fifth Circuits for their adoption of an interpretation, which included the time for service of process, within their respective understandings of “within the period provided by law for commencing the action against him.”272

In fact, the rule is far from clear. It is conceded that on its face the phrase “notice ‘within the period provided by law for commencing the action against [the party]’ to be brought into the suit”273 seems to clearly support an interpretation that any defendant who had no reason whatsoever to suppose that it might be brought into a lawsuit should not be hauled into court after the statute of limitations has run.274 Further, the inclusion of the word institution within the Iowa and former federal rules seems to make it clear that not only must the party being brought into the action receive notice within the limitations period, but it must be notice of the suit’s institution275—which justifies courts in disallowing relation back in the cases involving a plaintiff negotiating with a defendant’s insurance company about the possibility of suit.276 A possibility of instituting an action is not the equivalent of a suit’s institution.

However, the Iowa rule articulates the rule in terms of “such notice,”277 and the notes to the federal rule upon which the Iowa rule is based clearly state the notice need not be formal.278 At least, then,
something less than actual service of process is required in order to properly notify a defendant in accordance with the rule.\textsuperscript{279} The party being brought in by amendment must have received “such notice” of the institution of the action.\textsuperscript{280}

Even with the inclusion of the word “institution,” the rule requires that the party being brought in by amendment must receive such notice so “that the party will not be prejudiced in maintaining a defense on the merits.”\textsuperscript{281} One could conclude, and the Author asserts, the Iowa courts should interpret this language to encompass, under the right circumstances, a situation in which a defendant could be brought in by amendment even where that party did not receive any notice within the applicable limitations period, based on the principles underlying the statute of limitations. That is to say, where a party being brought in by amendment received notice of the suit within the period provided by law for notifying the proper defendant—including any extended time granted by the court—the inquiry into the prejudice encountered by the defendant should rarely, if ever, outweigh the interests of justice in deciding cases on their merits.

Iowa courts have long clung to the reasoning in \textit{Schiavone}, which excused the Supreme Court’s reasoning, by arguing that although a harsh result occurs by virtue of the anomaly—that a defendant who is properly named need not receive notice until after the limitations period but within the time for service of process, while the misnamed defendant is allowed to plead the statute of limitations even if the defendant had notice within the same time period—this was a rule placed on them by the legislature.\textsuperscript{282} The Arizona Supreme Court in \textit{Ritchie} took a different, and more lucid approach, stating:

\begin{quote}
[W]e are not constrained in this case as we are in many others by doctrines of original intent, framers’ intent, and the like. We are the framers (or at least the enactors) of Rule 15(c) and are somewhat
\end{quote}

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\textsuperscript{279.} See id. \\
\textsuperscript{280.} See id. \\
\textsuperscript{281.} IOWA R. CIV. P. 1.402(5). \\
\textsuperscript{282.} See \textit{Schiavone} v. Fortune, 477 U.S. 21, 31 (1986) (“Of course, there is an element of arbitrariness here, but that is a characteristic of any limitations period. And it is an arbitrariness imposed by the legislature and not by the judicial process.”); Estate of Kuhns v. Marco, 620 N.W.2d 488, 493 (Iowa 2000) (citing Porter v. Good Eavespouting, 505 N.W.2d 178, 181 (Iowa 1993)) (“In \textit{Porter}, we also observed the arbitrary element of the strict-notice requirement, but acknowledged the observation in \textit{Schiavone} that it was ‘an arbitrariness imposed by the legislature and not by the judicial process.’”).
\end{flushright}
more free, therefore, to interpret its meaning in line with our intent
and the intent of the bar committee that proposed it. 283

Just as the Arizona Supreme Court found that they, as promulgators
of the state rules of civil procedure, could interpret the rules in order to
avoid absurd results, 284 the Iowa Supreme Court could adopt this
interpretation and offer plaintiffs a more equitable application of the
relation back rule.

VII. CONCLUSION

The relation back doctrine was meant to make it easier for a plaintiff
to add causes of action and defendants after the running of the statute of
limitations. 285 When read in its entirety, with recognition of the word
“such” and the prejudice language in the rule, the language is not so crystal
clear as to require amendments adding defendants to be filed within the
applicable limitations period. 286 In fact, such an interpretation completely
extinguishes the rule’s effect in terms of the addition of defendants after
the running of the limitations period. Statutory provisions should be read
together so as to not create absurd results. 287 As the Arizona Supreme
Court put it:

The rule was intended to liberalize the relation back doctrine and
allow a plaintiff to correct a misnomer problem or add a defendant
that was named incorrectly or omitted. It would be foolish indeed to
interpret such a rule so narrowly as to allow its use only in those cases
in which it was not needed because the statute of limitations had not
yet run. 288

Travis Armbrust*

(citations omitted).
284. See id.
285. See id. (“The rule was intended to liberalize the relation back doctrine
and allow a plaintiff to correct a misnomer problem or add a defendant that was named
incorrectly or omitted.”).
286. See IOWA R. CIV. P. 1.402(5).
287. See State v. Albrecht, 657 N.W.2d 474, 479 (Iowa 2003) (citing United
Fire & Cas. Co. v. Acker, 541 N.W.2d 517, 519 (Iowa 1995)) (“[W]e construe a statute
in a way that would avoid impractical or absurd results.”).
288. Ritchie, 799 P.2d at 808.

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