



**MANDATORY RELATION BACK:**

***Krupski v. Costa Crociere, S.p.A.***

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Federal Rule of Civil Procedure 15(c) permits an amended complaint to relate back to a previously filed complaint if the proper party knew or should have known within the time of service that but for a mistake in identity, the plaintiff would have asserted the claims against the proper party. The “mistaken identity” problem often arises with corporations and usually occurs when different corporate entities run separate parts of a business. In *Krupski v. Costa Crociere, S.p.A.*, \_\_ U.S. \_\_, 130 S.Ct. 2485, 2490 (2010), the United States Supreme Court interpreted Rule 15(c) and found relation back is mandatory if the requirements of Rule 15(c) are met.

The plaintiff in *Krupski* injured herself while on a cruise ship. She purchased her ticket from Costa Cruise Lines, N.V., an entity serving as the sales and marketing entity for Costa Crociere, S.p.A., in the United States. The back of the ticket contained the terms of the purchase contract and specifically identified Costa Crociere as the cruise line’s owner and operator.

Following her injury, Krupski notified Costa Cruise of her claim. Costa Cruise asked for additional information to facilitate a pre-litigation settlement but did not inform Krupski that Costa Crociere was the actual owner of the cruise ship. A settlement was not reached and litigation followed. Krupski named Costa Cruise as the defendant who owned, operated, and managed the cruise line.

After plaintiff filed her complaint, Costa Cruise informed plaintiff on three separate occasions it was not the proper defendant and also identified Costa Crociere as the interested party. After Costa Cruise filed a motion for summary judgment, plaintiff sought and obtained leave to file an amended complaint naming Costa Crociere as a defendant. Costa Cruise was dismissed from the case after Costa Crociere was served and entered an appearance. Costa Crociere then moved to dismiss plaintiff’s claims, arguing her claims were barred by the statute of limitation because the claims did not relate back to the previously filed complaint. Costa Crociere contended plaintiff knew the identity of the proper defendant and deliberately chose not to sue it. The district court agreed, dismissing plaintiff’s claims. The Eleventh Circuit Court of Appeals affirmed.

The Supreme Court reversed the Eleventh Circuit and found Krupski’s claims did relate back to her original complaint. The Court addressed the two bases relied on by the lower courts -- first, whether Krupski knew the identity of the proper party; and second, whether Krupski waited too long to seek leave to amend her complaint.

The Court quickly dispatched the first argument. The Court held, by focusing on Krupski's knowledge of the proper party, that the lower courts failed to follow the requirements of Rule 15(c). Rule 15(c) specifies the knowledge of the "party to be brought in by amendment" determines when relation back applies. If that party knew or should have known it would have been sued but for a mistake, then the amended complaint will relate back. Rule 15(c) contains no reference to the amending party's knowledge except that the amending party made a mistake. Thus, in the typical case, the proper inquiry is whether the *defendant* knew or should have known it would have been sued but for a mistake in identity -- not what the plaintiff knew.

Costa Crociere argued when a plaintiff knows of the existence of two possible defendants, the plaintiff's choice in suing one defendant rather than the other shows a deliberate action. A deliberate course of action is not a mistake and thus renders Rule 15(c) inapplicable. The Supreme Court found this argument unpersuasive. Although a deliberate choice may be the antithesis of a mistake, "[t]he reasonableness of the mistake is not at issue." The Court found a plaintiff may be simply unaware of the legal ramifications of suing one defendant over the other. This type of mistake does not preclude the application of Rule 15(c).

The Supreme Court did offer some guidance to defendants and the lower courts in addressing this type of situation. If the contents of the original complaint and the plaintiff's conduct "compel the conclusion" the decision to name one defendant over the other was the product of "a fully informed decision" rather than a mistake, "the requirements of Rule 15(c)(1)(C)(ii) are not met." Thus, a plaintiff's actions, both before and during litigation, may be used to demonstrate Rule 15(c) does not apply by proving the plaintiff made a fully informed decision when naming the defendant in the lawsuit.

The Court also reversed the Eleventh Circuit's finding that the plaintiff waited too long to seek leave to amend her complaint. The Court rejected any notion that the plaintiff's dilatory conduct supported the district court's decision to deny her leave to file an amended complaint because the amended complaint did not relate back to a previously filed complaint. The Court held "the Rule mandates relations back once the Rule's requirements are satisfied; it does not leave the decision whether to grant relation back to the district court's discretion."

The Supreme Court specified the plaintiff's undue delay has no bearing on whether an amended complaint will relate back. However, "to the extent plaintiff's postfiling conduct informs the prospective defendant's understanding of whether the plaintiff initially made a 'mistake concerning the proper party's identity,' the courts may consider the conduct." Otherwise, the plaintiff's conduct is irrelevant to the relation back issue.

The Supreme Court's decision in *Krupski* will immediately impact district court rulings on Rule 15(c) issues. First, the Supreme Court's holding drastically alters the current state of the law in many circuit and district courts. For example, the Eighth and Seventh Circuits both reviewed the decision to deny relation back under the abuse of discretion standard. Both circuits have affirmed decisions denying relation back based on the plaintiffs' lack of diligence in seeking leave to amend their complaint and name the correct party. The Supreme Court's decision essentially overrules these cases because *Krupski* now requires that amended complaints relate back to the earlier filing if the plaintiff satisfies the requirements of Rule 15(c). The Court's holding also removes the district court's discretion from the equation.

The Supreme Court did not address how a scheduling order changes or affects the decision to allow an amended complaint to relate back. This issue was not present in *Krupski* because the plaintiff moved for leave to amend within the time allowed by the district court's scheduling order. The Court noted this fact when it rejected the Eleventh Circuit's finding that the plaintiff did not act diligently.

If a plaintiff seeks leave to file a complaint outside the time allowed by the scheduling order, defendants will have a stronger argument that the amended complaint should not relate back. A variety of factors will likely affect the judge's decision if this situation arises, including how long after the deadline did the plaintiff move to amend and whether the trial date will be affected if the amended complaint is allowed. These factors may allow the judge to deny leave to file an amended complaint because plaintiff failed to comply with the scheduling order.

The Supreme Court's decision in *Krupski* changes the way federal district courts will address the application of Rule 15(c). District court judges now lack the discretion to deny a relation back if the plaintiff satisfies the requirements of Rule 15(c) and seeks leave to amend the complaint within the time allowed by the scheduling order. While the plaintiff still bears the burden of demonstrating that Rule 15(c)'s requirements are met, *Krupski* will likely cause the district courts to err on the side of caution and allow an amended complaint to relate back.

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