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Navigating the Course of Relation Back: *Krupski v. Costa Crociere S.p.A.* and Standardizing the Relation-Back Analysis

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**NAVIGATING THE COURSE OF RELATION
BACK: *KRUPSKI V. COSTA CROCIERE S.P.A.*
AND STANDARDIZING THE
RELATION-BACK ANALYSIS**

*Heather Zinkiewicz**

I. INTRODUCTION

Federal Rule of Civil Procedure 15 (“Rule 15” or the “Rule”) provides for liberal amendment of pleadings.¹ Rule 15(c) is the source of the “relation back” doctrine, which allows plaintiffs to amend a timely filed complaint to add a new defendant after the statute of limitations has run.² Relation back allows such an amendment to relate back to the time of the original filing, thereby satisfying the applicable statute of limitations.³ When a party amends a pleading to add a new party, Rule 15(c)(1)(C)(ii) requires that the new party “knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party’s identity.”⁴ The Supreme Court granted certiorari in *Krupski v. Costa Crociere S.p.A.*⁵ to resolve tension among the circuits over Rule 15’s breadth and to clarify what constitutes a “mistake.”⁶

* J.D. 2011, Loyola Law School Los Angeles; B.A. Political Science, University of California, San Diego, June 2008. A special thanks to Loyola Law School Professor Michael Waterstone and the staffers and editors of the *Loyola of Los Angeles Law Review*, especially Elena DeCoste Grieco and Jeff Payne.

1. See Linda S. Mullenix, *Civil Procedure: The Name Game: When Is a Mistake a Mistake?—Parsing Rule 15 on the Relation-Back Doctrine of Amendments to Complaints*, 37 PREVIEW U.S. SUP. CT. CASES 326, 327 (2010).

2. See *Krupski v. Costa Crociere S.p.A.*, 130 S. Ct. 2485, 2489 (2010). “An amendment to a pleading relates back to the date of the original pleading when . . . the amendment changes the party or the naming of the party against whom a claim is asserted” FED. R. CIV. P. 15(c)(1)(C).

3. Mullenix, *supra* note 1, at 327.

4. FED. R. CIV. P. 15(c)(1)(C)(ii).

5. 130 S. Ct. 2485 (2010).

6. *Id.* at 2492; see, e.g., *Krupski v. Costa Cruise Lines, N.V., LLC*, 330 F. App’x 892, 895 (11th Cir. 2009) (per curiam), *rev’d*, 130 S. Ct. 2485 (2010); *Goodman v. Praxair, Inc.*, 494 F.3d 458, 469–70 (4th Cir. 2007); *Arthur v. Maersk, Inc.*, 434 F.3d 196, 208 (3d Cir. 2006); Leonard

Before *Krupski*, some courts narrowly interpreted “mistake” so as to make amendment virtually impossible, while other courts disregarded the mistake requirement almost entirely.⁷ Some circuits held relation back was not allowed when an amending party knew the existence and the correct name of the proper party to be added before the statute of limitations expired because it constituted a deliberate choice not to name that party and thus was not a mistake.⁸ The Supreme Court rejected this view in *Krupski* by holding that “relation back under *Rule 15(c)(1)(C)* depends on what *the party to be added* knew or should have known, not on the amending party’s knowledge or its timeliness in seeking to amend the pleading.”⁹

Krupski clarifies when courts should allow parties to use relation back and “strengthen[s] the policy in favor of allowing liberal amendment of pleadings in order to resolve disputes on their merits.”¹⁰ Part II of this Comment provides the facts and procedural posture of *Krupski*. Part III describes the Supreme Court’s reasoning, including the analysis of whose knowledge is determinative and whether an amending party’s delay in amending the complaint is relevant. Part IV discusses the importance of the text and purpose of Rule 15, the immediate impacts of the opinion, and the questions that remain after *Krupski*. Part V concludes that *Krupski* standardizes the relation-back analysis by requiring courts to focus on the knowledge of the party to be added to the complaint.

v. Parry, 219 F.3d 25, 28–29 (1st Cir. 2000); *Rendall-Speranza v. Nassim*, 107 F.3d 913, 918 (D.C. Cir. 1997); *Cornwell v. Robinson*, 23 F.3d 694, 705 (2d Cir. 1994).

7. Howard Wasserman, *Watching Cases No One Else Cares About*, PRAWFSBLAWG (Apr. 21, 2010, 8:30 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2010/04/watching-cases-no-one-else-cares-about.html>. Almost all federal courts agreed that relation back was proper for cases involving misnomers, such as misspelling the defendant’s name or other typographical errors. Mullenix, *supra* note 1, at 327. Some courts limited Rule 15(c) to misnomer cases, while other courts took a more liberal view and held that both mistakes of fact and law constituted a mistake. *Id.* Courts also differed regarding whether to consider the diligence of the amending party to determine the defendant’s correct identity. *Id.*

8. *See Krupski*, 130 S. Ct. at 2492.

9. *Id.* at 2490 (emphasis added).

10. *In re Dwek*, Nos. 07-11757, 09-18421, 09-40969, 2010 WL 3087474, at *3 (Bankr. D.N.J. Aug. 4, 2010).

II. STATEMENT OF THE CASE

On February 21, 2007, plaintiff Wanda Krupski tripped over a cable and fractured her femur while aboard the cruise ship Costa Magica.¹¹ Krupski's cruise ticket stated it was the sole contract between each passenger and the carrier, and it included various requirements for obtaining damages for an injury suffered on board one of the carrier's ships.¹² The ticket defined the carrier and all other vessels "owned, chartered, operated, marketed, or provided" by the carrier as Italian corporation Costa Crociere S.p.A.¹³ The ticket extended the defenses, limitations, and exceptions that the carrier could invoke to all persons acting on behalf of the carrier or on whose behalf the carrier could act. This included Costa Cruise Lines N.V. ("Costa Cruise"), which was identified as the carrier's sales and marketing agent and was also the issuer of the ticket and accompanying contract.¹⁴ The front of the ticket listed Costa Cruise's address in Florida and stated "that an entity called '*Costa Cruises*'" was the first cruise line in the world to obtain a certain quality certification.¹⁵

On July 2, 2007, Krupski's counsel notified Costa Cruise of Krupski's injury, and on July 9, 2007, the Costa Cruise claims administrator requested additional information from Krupski to assist with pre-litigation settlement negotiations.¹⁶ However, negotiations proved unsuccessful, and Krupski filed suit against Costa Cruise on February 1, 2008, three weeks before the one-year limitations period expired.¹⁷ The complaint alleged that Costa Cruise owned, operated, managed, supervised, and controlled the ship on which Krupski had

11. *Krupski*, 130 S. Ct. at 2490.

12. *Id.* For example, the ticket required an injured person to submit written notice of the claim to the carrier or its authorized agent within 185 days after the date of injury, to file a lawsuit within one year after the injury, and to serve the lawsuit within 120 days after filing. *Id.*

13. *Id.* (citation omitted).

14. *Id.*

15. *Id.* (emphasis added) (citation omitted).

16. *Id.*

17. *Id.*

injured herself.¹⁸ On February 4, 2008, Krupski served Costa Cruise.¹⁹

Although Costa Cruise thrice asserted to Krupski that it was the wrong defendant,²⁰ Krupski argued in her response to Costa Cruise's motion for summary judgment that multiple sources of information led her to believe Costa Cruise was the responsible party.²¹ Krupski contended that her travel documents prominently identified Costa Cruise, Costa Cruise's website listed Costa Cruise in Florida as the U.S. office for the Italian company Costa Crociere, and the Florida Department of State website listed Costa Cruise as the only Costa-related company registered to do business in Florida.²² Furthermore, Krupski noted that Costa Cruise's claims administrator responded to her claims notification without mentioning that Costa Cruise was not a proper party to the suit.²³ Along with her response to Costa Cruise's motion for summary judgment, Krupski moved to amend her complaint to add Costa Crociere as a defendant.²⁴

On July 2, 2008, the district court denied Costa Cruise's motion for summary judgment without prejudice and granted Krupski leave to amend as long as she properly served Costa Crociere by September 16, 2008.²⁵ Krupski complied with the deadline by filing an amended complaint on July 11, 2008, and serving Costa Crociere on August 21, 2008.²⁶ Pursuant to the parties' joint stipulation, the district court dismissed Costa Cruise from the case.²⁷

18. *Id.* The complaint named Costa Cruise as the defendant, even though Krupski's ticket identified Costa Crociere as the carrier and Costa Cruise as the sales and marketing agent for Costa Crociere. *See supra* text accompanying notes 13–14.

19. *Id.* at 2491.

20. First, on February 25, 2008, Costa Cruise filed its answer and declared it was not the proper defendant since it was merely the North American sales and marketing agent for Costa Crociere, which was the actual carrier. *Id.* Second, on March 20, 2008, Costa Cruise listed in its corporate disclosure statement that Costa Crociere was an "interested party" who was concerned with the outcome of the case. *Id.* Third, on May 6, 2008, Costa Cruise moved for summary judgment and argued that Costa Crociere was the proper defendant. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

Costa Crociere, represented by the same counsel who had represented Costa Cruise, moved to dismiss the lawsuit as untimely because the amended complaint did not relate back to the original complaint under Rule 15(c).²⁸ The district court agreed and concluded that Krupski had not made a mistake.²⁹ The U.S. Court of Appeals for the Eleventh Circuit affirmed the grant of summary judgment for Costa Crociere for two reasons: (1) Krupski knew or should have known that Costa Crociere was the proper defendant because she retained her ticket and thus made a deliberate choice not to name Costa Crociere as a party; and (2) Krupski's 133-day delay between when she filed her original complaint and when she sought leave to amend constituted undue delay.³⁰ The Supreme Court unanimously reversed the Eleventh Circuit and remanded the case.³¹ On remand, the Eleventh Circuit reversed the grant of summary judgment to Costa Crociere and remanded for further proceedings.³²

28. *Id.*

29. *Krupski v. Costa Crociere S.p.A.*, No. 08-60152-CIV, 2008 WL 7423654, at *6 (S.D. Fla. Oct. 21, 2008), *aff'd*, 330 Fed. App'x 892 (11th Cir. 2009) (per curiam), *rev'd*, 130 S. Ct. 2485 (2010). The court relied on Eleventh Circuit precedent and explained that the word "mistake" should not be interpreted to mean "a deliberate decision not to sue a party whose identity the plaintiff knew from the outset." *Id.* at *5. The court concluded Krupski knew of the proper defendant and did not make a mistake because Costa Cruise informed Krupski that Costa Crociere was the proper defendant several times, and Krupski delayed for several months before amending her complaint. *Id.* at *6.

30. *Krupski v. Costa Cruise Lines, N.V., LLC*, 330 F. App'x 892, 895 (11th Cir. 2010) (per curiam), *rev'd*, 130 S. Ct. 2485. In affirming the district court, the Eleventh Circuit did not rely on the information in Costa Cruise's filings, but rather explained that Krupski's passenger ticket, which she had given to her counsel shortly after her injury, contained the relevant information identifying Costa Crociere as the carrier. *Id.*

31. *Krupski*, 130 S. Ct. at 2489. Justice Scalia joined the Court's opinion except for its reliance on the Advisory Committee Notes ("the Notes"). *Id.* at 2498 (Scalia, J., concurring in part and concurring in judgment). Justice Scalia did not believe that the Advisory Committee's intentions had any effect on the Rule's meaning; instead, he believed the text of the rule always controls. *Id.* at 2499. Justice Scalia's view is not widely accepted. The Notes are viewed as having a closer connection to the text than ordinary legislative history because they consist of the words of the entire body that drafted a Federal Rule, of Civil Procedure whereas legislative history consists of committee reports and individual legislators' statements. Howard Wasserman, *Belated Thoughts on Relating Back*, PRAWFSBLAWG (June 10, 2010, 8:00 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2010/06/belated-thoughts-on-relation-back.html>.

32. *Krupski*, 387 F. App'x at 893.

III. REASONING OF THE COURT

The Supreme Court began its analysis by quoting Rule 15(c)(1).³³ It focused on Rule 15(c)(1)(C)(ii)'s requirement that the defendant "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity."³⁴ The Court concluded that the text of Rule 15(c)(1)(C)(ii) supported neither of the Eleventh Circuit's reasons for denying relation back.³⁵

A. The Prospective Defendant's Knowledge Is Determinative

The Court explained that the Eleventh Circuit incorrectly focused on Krupski's knowledge.³⁶ The Court clarified that the question was not whether Krupski knew or should have known that Costa Crociere was the proper defendant but whether Costa Crociere knew or should have known that it would have been named as a defendant if not for a mistake.³⁷ The Rule refers to what the prospective *defendant* knew or should have known during the Rule 4(m) period of 120 days after the complaint was filed, not what the *plaintiff* knew or should have known when the original complaint was filed.³⁸ The plaintiff's knowledge is relevant only if it affects the

33. *Krupski*, 130 S. Ct. at 2493. Rule 15(c)(1) states:

(1) *When an Amendment Relates Back*. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back; (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the 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.

FED. R. CIV. P. 15(c)(1).

34. FED. R. CIV. P. 15(c)(1)(C)(ii).

35. *Krupski*, 130 S. Ct. at 2493.

36. *Id.*

37. *Id.*

38. *Id.* Rule 4(m) regulates the time limit for service. 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

defendant's understanding of whether the plaintiff made a mistake regarding the proper party's identity.³⁹

If the plaintiff knows of a party's existence, the plaintiff can still make a mistake regarding that party's identity.⁴⁰ A mistake is "[a]n error, misconception, or misunderstanding; an erroneous belief."⁴¹ The reasonableness of the mistake is not at issue.⁴² Even if the plaintiff knows the correct defendant exists, the plaintiff may misunderstand the correct defendant's status or role in the events giving rise to the claim and may mistakenly choose to sue an incorrect defendant.⁴³ This deliberate but erroneous choice does not bar a finding that the plaintiff has satisfied Rule 15(c)(1)(C)(ii).⁴⁴

To reach this conclusion, the Court distinguished *Krupski* from its prior decision in *Nelson v. Adams USA, Inc.*⁴⁵ In *Nelson*, Adams USA, Inc. ("Adams") sought to amend its pleading to add a corporation's sole shareholder as a party, fearing the corporation did not have sufficient funds to pay an award of attorney's fees.⁴⁶ The Court noted that the mistake clause of Rule 15(c) was not at issue in *Nelson* because Adams had not made a mistake; instead, Adams only moved to amend its pleading when it learned that the corporation was unable to pay the award.⁴⁷ Distinguishing the facts in *Krupski* from the facts in *Nelson*, the Court asserted that *Nelson*'s holding is consistent with its understanding of Rule 15: if the failure to name the prospective defendant in the original complaint were the result of a fully informed decision instead of a mistake regarding the proper defendant's identity, Rule 15 would not be satisfied.⁴⁸

According to the Court, *Krupski*'s complaint showed that she meant to sue the company that "owned, operated, managed,

notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”).

39. *Krupski*, 130 S. Ct. at 2493–94.

40. *Id.* at 2494.

41. *Id.* (quoting BLACK'S LAW DICTIONARY 1092 (9th ed. 2009)).

42. *Id.*

43. *Id.*

44. *Id.*

45. 529 U.S. 460 (2000).

46. *Id.* at 462–63.

47. *Id.* at 467 n.1.

48. *Krupski*, 130 S. Ct. at 2496.

supervised, and controlled' the ship on which she was injured," and the complaint indicated, albeit incorrectly, that Costa Cruise performed these duties.⁴⁹ Thus, Costa Crociere should have known—within the Rule 4(m) period—that Krupski had not named it as a defendant *only* because Krupski misunderstood which Costa entity controlled the ship.⁵⁰ This was a mistake concerning the proper party's identity.⁵¹ Additionally, Costa Crociere could not reasonably have thought Krupski was pursuing a winning strategy by suing a defendant that was legally unable to provide relief.⁵²

B. The Plaintiff's Delay in Amending a Complaint Is Irrelevant

The Court proceeded to repudiate the Eleventh Circuit's reliance on Krupski's delay in seeking to amend her complaint. Rule 15(c)(1)(C) includes the exclusive list of relation-back requirements, and the amending party's diligence is not included.⁵³ Furthermore, relation back is automatic once the Rule 15(c) requirements are satisfied; the court has no discretion.⁵⁴ In contrast, Rule 15(a) gives the court discretion to grant a motion to amend a pleading to add a party or a claim.⁵⁵ Undue delay may be considered as part of the court's decision to grant leave to amend under Rule 15(a),⁵⁶ but the plaintiff's speed in moving to amend the complaint should not affect whether the amended complaint relates back.⁵⁷

A court can examine the plaintiff's conduct during the Rule 4(m) period, but only to the extent that conduct affected the

49. *Id.* at 2497 (citation omitted). Costa Crociere should have known it was the proper defendant because it was represented by the same counsel who represented Costa Cruise, and Costa Crociere and its counsel should have known that Costa Crociere, and not Costa Cruise, owned and controlled the ship on which Krupski was injured. *Id.* at 2491, 2497 (citations omitted).

50. *Id.* at 2497.

51. *Id.*

52. *Id.*

53. *Id.* at 2496.

54. *Id.*

55. *Id.* Compare FED. R. CIV. P. 15(a)(1) ("A party *may* amend its pleading . . ." (emphasis added)), with FED. R. CIV. P. 15(c)(1) ("An amendment to a pleading *relates* back . . ." (emphasis added)).

56. *Krupski*, 130 S. Ct. at 2496; *Foman v. Davis*, 371 U.S. 178, 182 (1962) ("In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, . . . etc.—the leave sought should, as [Rule 15(a) requires], be 'freely given.'").

57. *Krupski*, 130 S. Ct. at 2496.

prospective defendant's understanding of whether a mistake was made regarding the proper party's identity.⁵⁸ The plaintiff's post-filing conduct is otherwise irrelevant.⁵⁹ The Court rejected Costa Crociere's argument that Rule 15(c) requires the plaintiff to move to amend the complaint or to file and serve an amended complaint within the Rule 4(m) period.⁶⁰ The Court concluded Krupski's conduct during the Rule 4(m) period suggested there was no reason other than a mistake that she failed to name Costa Crociere.⁶¹

C. Other Considerations

The Court concluded its analysis by listing additional factors that it weighed in making its decision. First, the Court noted the similarity in Costa Cruise and Costa Crociere's names constituted an "interrelationship and similarity" that should have heightened Costa Crociere's suspicion of a mistake when Krupski named Costa Cruise in a complaint describing Costa Crociere's activities.⁶² Second, Costa Crociere contributed to the confusion over the proper party for a lawsuit: the ticket advertised that "Costa Cruises" had achieved a quality certification but did not clarify whether "Costa Cruises" was Costa Cruise Lines, Costa Crociere, or another related Costa company.⁶³ Finally, prior litigation had made Costa Crociere aware that the difference between Costa Cruise and Costa Crociere confused passengers.⁶⁴

IV. ANALYSIS

Krupski followed the text and purpose of Rule 15(c) and broadly interpreted what constitutes a "mistake" concerning the proper party's identity. The decision will immediately influence district

58. *Id.* at 2496–97.

59. *Id.* at 2497.

60. *Id.* at 2497 n.5.

61. *Id.* at 2498.

62. *Id.* "Crociera" even means "cruise" in Italian. *Id.* (citation omitted).

63. *Id.* (citation omitted).

64. *Id.*; see, e.g., *Suppa v. Costa Crociere, S.p.A.*, No. 07-60526-CIV, 2007 WL 4287508, at *1 (S.D. Fla. Dec. 4, 2007) (denying Costa Crociere's motion to dismiss the amended complaint when the original complaint named Costa Cruise as a defendant because it was "simply inconceivable" that Costa Crociere was not on notice that it would have been named in the original complaint if not for a mistake).

court rulings on Rule 15(c) issues.⁶⁵ Although it provides additional instruction on how courts should construe Rule 15(c) mistakes, uncertainty remains regarding how to determine what constitutes a mistake, how to address Doe defendants, and how failing to comply with a scheduling order affects relation back.

A. Following the Text and Purpose of Relation Back

The Court held that the text of Rule 15(c)(1)(C) requires focusing on the knowledge of the party to be added, not the amending party's knowledge.⁶⁶ There is no reference to the amending party's knowledge in Rule 15(c) other than that the amending party made a mistake.⁶⁷ The Rule specifically instructs that the party to be added must know or should have known that it would have been sued had there been no mistake.⁶⁸ It is therefore logical that the Court concluded that the proper analysis must focus on the new party's knowledge.

The Court noted the plaintiff's diligence in amending a pleading is not a Rule 15(c) requirement but left it unclear whether the plaintiff's tardiness should be wholly irrelevant.⁶⁹ Arguably, it is desirable for a plaintiff to amend a pleading quickly. Even if a potential defendant knows within 120 days after the filing of the complaint that it is a proper party, the potential defendant does not know if it will be sued. Uncertainty is undesirable, especially if the statute of limitations has expired. Eventually, potential defendants should be in repose and should not have to worry about being sued.

Furthermore, the plaintiff's delay in amending a pleading could represent a deliberate decision not to sue a proper defendant.⁷⁰ Krupski waited more than four months to act after learning Costa Cruise was not a proper defendant.⁷¹ Perhaps Krupski's lack of action implied that her decision to sue Costa Cruise was not a mistake but a

65. John R. McLeod, *Mandatory Relation Back: Krupski v. Costa Crociere, S.p.A.*, BROWN & JAMES (Aug. 30, 2010), <http://www.brownjames.com/ArticleDetails.aspx?id=277>.

66. *Krupski*, 130 S. Ct. at 2493; see FED. R. CIV. P. 15(c)(1)(C).

67. See FED. R. CIV. P. 15(c)(1)(C).

68. FED. R. CIV. P. 15(c)(1)(C)(ii).

69. *Krupski*, 130 S. Ct. at 2496.

70. Brief in Opposition at 21, *Krupski*, 130 S. Ct. 2485 (No. 09-337).

71. *Id.*

deliberate omission.⁷² Because one would logically expect a plaintiff to seek leave to amend immediately upon learning that he or she sued an incorrect defendant, it is unclear why the Court did not consider Krupski's reasons for delaying.

Instead of examining the reason for delay, the Court focused on the history and purpose of relation back. The Court noted that its Rule 15(c) analysis was consistent with relation back's history and purpose.⁷³ The Rule's history suggests it was promulgated by the Supreme Court and approved by Congress to respond to mistakes involving the incorrect identification of the party whose conduct was described in the complaint.⁷⁴ Additionally, the Court's analysis is in harmony with the purpose of relation back because it balanced the defendant's interests with the Federal Rules of Civil Procedure's penchant for resolution of disputes on their merits.⁷⁵ A prospective defendant—at least one who knew or should have known he escaped suit during the limitations period only because the plaintiff did not understand his identity—does not have any interest in repose, and it would be unfair to let such a defendant escape the consequences.⁷⁶

The Court's liberal interpretation, however, may have been too forgiving. The rejection of relation back is supported by a legal system premised on favoring laws over sympathies.⁷⁷ Arguably, if the plaintiff does not follow procedural rules, he or she should not be able to avoid the consequences simply because the result is severe. Procedural rules lose effectiveness if courts refuse to apply them in order to avoid harsh outcomes. If the law requires dismissal, "pleas for liberality do not trump the law."⁷⁸

72. *Id.*

73. *Krupski*, 130 S. Ct. at 2494.

74. *In re IndyMac Mortg.-Backed Sec. Litig.*, 718 F. Supp. 2d 495, 507 (S.D.N.Y. 2010). Rule 15(c)(1)(C) responded to a recurring problem in suits against the federal government and particularly relating to Social Security. *See Krupski*, 130 S. Ct. at 2494–95. After the statute of limitations ran, a person who had named an improper defendant in an otherwise timely lawsuit challenging the denial of Social Security benefits could not amend his or her complaint because the amended complaint would not relate back. *Id.* at 2495. "The Advisory Committee clearly meant [these types of] filings to qualify as mistakes under the Rule." *Id.*

75. *Id.* at 2494.

76. *Id.*

77. Mullenix, *supra* note 1, at 328.

78. Brief for Respondent at 8, *Krupski*, 130 S. Ct. 2485 (No. 09-337).

Here, denying relation back would seem harsh, but Krupski arguably got *herself* into her predicament by failing to protect her own interests.⁷⁹ In an adversarial court system, the plaintiff must ascertain who is liable for his or her injury before the statute of limitations ends.⁸⁰ It appears that Krupski—or her attorney—read the ticket because Krupski attempted to comply with its provisions governing claims against the carrier.⁸¹ However, Krupski did not follow the provision identifying Costa Crociere as the carrier against which a claim should be brought.⁸² Instead, Krupski sued Costa Cruise, which the ticket identified as the carrier’s sales and marketing agent.⁸³ Krupski’s counsel himself admitted that “under the plain language of the ticket, Costa Cruise Lines, N.V., clearly can’t be a carrier.”⁸⁴ Failing to sue Costa Crociere may have been unwise and even foolish, but the circumstances suggest that Krupski’s “mistake” may have been a conscious and deliberate decision.⁸⁵

B. Immediate Significant Impact

Scholars already have lauded *Krupski* as a “welcome decision” that “eliminated a gloss on [Rule 15] that imposed additional, non-textual burdens on the amending party and that inappropriately added to the complexity of the rule.”⁸⁶ Rule 15(c) will now be easier to apply because relation back is compulsory once the Rule 15(c) requirements are satisfied.⁸⁷

79. *Id.* at 20.

80. *Rendall-Speranza v. Nassim*, 107 F.3d 913, 919 (D.C. Cir. 1997). If the plaintiff “later discovers another possible defendant, she may not, merely by invoking Rule 15(c), avoid the consequences of her earlier oversight.” *Id.*

81. Brief for Respondent, *supra* note 78, at 13. Krupski gave notice of her claim within 185 days of the injury, filed suit within one year, and filed in the proper venue. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 14.

86. *E.g.*, Allan Ides, *The Scope of Relation Back Under Federal Rule of Civil Procedure 15(c)(1)(C)*, LEXISNEXIS EMERGING ISSUES ANALYSIS, July 2010, at 5.

87. *See* McLeod, *supra* note 65.

Krupski's holding considerably alters the relation-back analysis in both federal and state courts.⁸⁸ For example, the Seventh and Eighth Circuits' previous decisions—affirming denial of relation back under the abuse-of-discretion standard because of the plaintiff's lack of diligence in seeking leave to amend the complaint to name the correct party—are effectively overruled since *Krupski* requires that amended complaints relate back to the earlier filing if Rule 15(c) is fulfilled.⁸⁹ In addition, *Krupski* may affect state civil procedure.⁹⁰ Some state laws for amending pleadings include language nearly identical to Rule 15(c), so the reasoning in *Krupski* should be highly persuasive when state courts confront an issue similar to that in *Krupski*.⁹¹

The decision is also important to the business community. For one, it clarifies the plaintiff's responsibility to identify the correct corporate defendant.⁹² *Krupski* signifies the Court's readiness to impute notice to an associated, similarly named corporation.⁹³ A corporation will no longer be in repose when a plaintiff erroneously files suit against one of the corporation's subsidiaries even after the statute of limitations period has ended.⁹⁴ This likely affects how and when corporations can assert statute-of-limitations defenses.⁹⁵

C. Uncertain Implications

Although *Krupski* will have an immediate impact, its full significance is unknown. Questions remain regarding the relation-

88. Erin McNeill, *Supreme Court Holds That "Close Enough" Counts When Naming Parties to Suit*, MARTINDALE.COM (Aug. 11, 2010), http://www.martindale.com/litigation-law/article_Sands-Anderson-PC_1111520.htm.

89. McLeod, *supra* note 65.

90. McNeill, *supra* note 88.

91. *Id.*; e.g., VA. CODE ANN. § 8.01-6(iv) (2007) ("An amendment changing the party against whom a claim is asserted . . . relates back to the date of the original pleading if . . . that party knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against that party.").

92. Andrew E. Tauber, *United States: Supreme Court Decision Alert—June 7, 2010*, MONDAQ (June 15, 2010), <http://www.mondaq.com/unitedstates/article.asp?articleid=102428>.

93. McNeill, *supra* note 88.

94. *Id.*

95. Andrew E. Tauber, *Supreme Court Docket Report—January 15, 2010*, MONDAQ (Jan. 19, 2010), <http://www.mondaq.com/unitedstates/article.asp?articleid=92390>.

back analysis in such areas as Doe defendants, scheduling orders, and the exact breadth of what constitutes a mistake.

1. Uncertainty Regarding How Broadly Mistake Will Be Interpreted

With the Court's adoption of a broad understanding of "mistake" as to a proper party's identity, it is now uniformly considered a mistake when the plaintiff misunderstands crucial facts concerning a potential defendant's identity.⁹⁶ Courts will likely only deny relation back if the plaintiff failed to name a defendant after making a fully informed decision not to sue that defendant.⁹⁷ The Court suggested that if it is completely illogical for the plaintiff not to sue a party, then the plaintiff's failure to sue that party was a mistake.⁹⁸

It is unclear, however, how expansively courts will interpret "mistake."⁹⁹ *Krupski* suggests that a mistake may now include a situation in which the plaintiff does not know which of two distinct persons or entities is liable.¹⁰⁰ Regardless of the word's scope, plaintiffs must still follow the notice-and-prejudice element of Rule 15(c)(1)(C)(i).¹⁰¹ Thus, if no connection exists between the proper but unnamed party and the improperly named party, the proper party will likely not have received the necessary notice to allow relation back.¹⁰² However, if the parties are related or similarly named entities, as they were in *Krupski*, there likely will be sufficient notice.¹⁰³ The Court's broad interpretation of "mistake" thus principally resulted in minimizing the importance of Rule 15's mistake prong and increasing the significance of the notice-and-prejudice element.¹⁰⁴

96. Wasserman, *supra* note 31.

97. *Id.*

98. *Id.* The Court noted that Costa Crociere "articulated no strategy that it could reasonably have thought Krupski was pursuing in suing a defendant that was legally unable to provide relief." *Krupski v. Costa Crociere S.p.A.*, 130 S. Ct. 2485, 2497 (2010).

99. Wasserman, *supra* note 31.

100. *Id.*

101. *See id.*

102. *Id.*

103. *Id.* The mistaken-identity problem commonly occurs when different corporate entities run separate parts of a business. McLeod, *supra* note 65.

104. *See* Wasserman, *supra* note 31.

Courts could extend *Krupski*'s logic to cases in which both notice is sufficient and the plaintiff adds a new defendant in addition to the one already named.¹⁰⁵ Some courts, however, have already refused to extend *Krupski* this far. For example, in *Venezia v. 12th & Division Properties, LLC*,¹⁰⁶ a Tennessee district court refused to use relation back to add new defendants who allegedly controlled and worked in concert with the initial defendants.¹⁰⁷ The court held that the plaintiffs were not mistaken but were just unaware of the alleged extent of the new defendants' involvement.¹⁰⁸ The court explained, "In the Sixth Circuit, lack of knowledge pertaining to an intended defendant's identity does not constitute a 'mistake concerning the party's identity' within the meaning of Rule 15(c)."¹⁰⁹

2. Uncertainty Regarding Doe Defendants

The *Krupski* Court did not provide guidance for how to address Doe defendants.¹¹⁰ The prevailing view before *Krupski* was that relation back did not encompass Doe defendants because the plaintiff did not make a mistake in suing Doe but rather sued Doe because he or she did not know the defendant's identity.¹¹¹ This lack of knowledge was not considered a mistake.¹¹² After *Krupski*, courts have continued to hold that lack of knowledge is not a mistake,¹¹³ but other courts may extend the Court's broad understanding of "mistake" to include Doe defendants.¹¹⁴ Arguably, an identity

105. *Id.*

106. No. 3:09-cv-430, 2010 WL 3122787 (M.D. Tenn. Aug. 6, 2010).

107. *Id.* at *4–5.

108. *Id.* at *5.

109. *Id.* at *4; *see also* *Burdine v. Kaiser*, No. 3:09CV1026, 2010 WL 2606257, at *2 (N.D. Ohio June 25, 2010) ("The Sixth Circuit . . . does not consider adding new parties as correcting mistaken identity under Rule 15(c). Even '[s]ubstituting a named defendant for a "John Doe" defendant is considered a change in parties' and thus would not relate back." (alteration in original) (citation omitted)). The Second and Fifth Circuits follow the same rule as the Sixth Circuit—that a lack of knowledge is not a mistake—and district courts in both the Second and Fifth Circuits have also upheld this rule post-*Krupski*. *Dominguez v. City of New York*, No. 10 Civ. 2620(BMC), 2010 WL 3419677, at *3 (E.D.N.Y. Aug. 27, 2010); *Trigo v. TDCJ-CID Officials*, No. H-05-2012, 2010 WL 3359481, at *18 (S.D. Tex. Aug. 24, 2010).

110. Wasserman, *supra* note 31.

111. *Id.*

112. *Id.*

113. *See supra* notes 106–09.

114. Wasserman, *supra* note 31.

mistake may occur when the plaintiff sues a Doe defendant because the plaintiff has insufficient knowledge of the defendant's true identity.¹¹⁵ As the Indiana district court in *Smetzer v. Newton*¹¹⁶ noted, the governance of Doe defendants "may have changed" as a result of *Krupski*.¹¹⁷ However, the *Smetzer* court did not apply *Krupski* because neither party discussed *Krupski* or its impact.¹¹⁸ Even with an identity mistake, the notice-and-prejudice element still applies to Doe defendants.¹¹⁹

3. Uncertainty Regarding Scheduling Orders

Krupski also does not provide guidance on how failing to comply with a scheduling order affects relation back.¹²⁰ A scheduling order was not at issue in *Krupski* because Krupski moved for leave to amend within the timeframe allowed by the district court's scheduling order.¹²¹ If the plaintiff seeks leave to amend after the scheduling order's allotted time, a defendant will have a stronger argument that the amended complaint should not relate back.¹²² In addition to timeliness, a judge should look at other factors, such as how long after the deadline the plaintiff moved to amend and whether the amended complaint will affect the trial date.¹²³

V. CONCLUSION

After *Krupski*, district courts must focus on the knowledge of the party to be added instead of the amending party's knowledge when applying Rule 15(c). Furthermore, district judges now lack discretion to deny relation back if Rule 15(c) is satisfied, especially if the plaintiff complies with a scheduling order.¹²⁴ The Court's analysis

115. *Id.*

116. No. 1:10-CV-93-JVB, 2010 WL 3219135 (N.D. Ind. Aug. 13, 2010).

117. *Id.* at *10.

118. *Id.*

119. *See* Nazerzadeh v. Harris Cnty., No. H-08-0499, 2010 WL 3817149, at *36 (S.D. Tex. Sept. 27, 2010) (dismissing claims against John Does one through ten because the Doe defendants did not receive timely notice of the lawsuit).

120. McLeod, *supra* note 65.

121. *Krupski v. Costa Crociere S.p.A.*, 130 S. Ct. 2485, 2498 n.6 (2010).

122. McLeod, *supra* note 65.

123. *Id.*

124. *Id.*

closely followed Rule 15, although arguably the plaintiff's speed in moving to amend a complaint should have been relevant to the Court's analysis, even though the Rule does not mention delay. The Court broadly interpreted what constitutes a mistake, but it is unclear how extensively courts will construe "mistake" going forward. It is possible that the Court's liberal interpretation was too lenient because Krupski complied with some of the provisions listed in the ticket but not others, such as the provision that named Costa Crociere as the correct party to sue. *Krupski* will likely not be the Court's final decision on relation back because questions remain, most notably regarding Doe defendants and scheduling orders.

