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KRUPSKI v. COSTA CROCIERE S.p.A.
Supreme Court of the United States, 2010
560 U.S. ___, 130 S.Ct. ___

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JUSTICE SOTOMAYOR delivered the opinion of the Court.

Rule 15(c) of the Federal Rules of Civil Procedure governs when an amended pleading "relates back" to the date of a timely filed original pleading and is thus itself timely even though it was filed outside an applicable statute of limitations. Where an amended pleading changes a party or a party's name, the Rule requires, among other things, that "the party to be brought in by amendment ... knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." Rule 15(c)(1)(C). In this case, the Court of Appeals held that Rule 15(c) was not satisfied because the plaintiff knew or should have known of the proper defendant before filing her original complaint. The court also held that relation back was not appropriate because the plaintiff had unduly delayed in seeking to amend. We hold 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. Accordingly, we reverse the judgment of the Court of Appeals.

I

On February 21, 2007, petitioner, Wanda Krupski, tripped over a cable and fractured her femur while she was on board the cruise ship Costa Magica. Upon her return home, she acquired counsel and began the process of seeking compensation for her injuries. Krupski's passenger ticket -- which explained that it was the sole contract between each passenger and the carrier -- included a variety of requirements for obtaining damages for an injury suffered on board one of the carrier's ships. The ticket identified the carrier as

"Costa Crociere S.p.A., an Italian corporation, and all Vessels and other ships owned, chartered, operated, marketed or provided by Costa Crociere, S.p.A., and all officers, staff members, crew members, independent contractors, medical providers, concessionaires, pilots, suppliers, agents and assigns onboard said Vessels, and the manufacturers of said Vessels and all their component parts."

The ticket required an injured party to submit "written notice of the claim with full particulars ... to the carrier or its duly

authorized agent within 185 days after the date of injury." The ticket further required any lawsuit to be "filed within one year after the date of injury" and to be "served upon the carrier within 120 days after filing." For cases arising from voyages departing from or returning to a United States port in which the amount in controversy exceeded \$75,000, the ticket designated the United States District Court for the Southern District of Florida in Broward County, Florida, as the exclusive forum for a lawsuit. The ticket extended the "defenses, limitations and exceptions ... that may be invoked by the CARRIER" to "all persons who may act on behalf of the CARRIER or on whose behalf the CARRIER may act," including "the CARRIER's parents, subsidiaries, affiliates, successors, assigns, representatives, agents, employees, servants, concessionaires and contractors" as well as "Costa Cruise Lines N.V.," identified as the "sales and marketing agent for the CARRIER and the issuer of this Passage Ticket Contract." The front of the ticket listed Costa Cruise Lines' address in Florida and stated that an entity called "Costa Cruises" was "the first cruise company in the world" to obtain a certain certification of quality.

On July 2, 2007, Krupski's counsel notified Costa Cruise Lines of Krupski's claims. On July 9, 2007, the claims administrator for Costa Cruise requested additional information from Krupski "[i]n order to facilitate our future attempts to achieve a pre-litigation settlement." The parties were unable to reach a settlement, however, and on February 1, 2008 -- three weeks before the 1-year limitations period expired -- Krupski filed a negligence action against Costa Cruise, invoking the diversity jurisdiction of the Federal District Court for the Southern District of Florida. The complaint alleged that Costa Cruise "owned, operated, managed, supervised and controlled" the ship on which Krupski had injured herself; that Costa Cruise had extended to its passengers an invitation to enter onto the ship; and that Costa Cruise owed Krupski a duty of care, which it breached by failing to take steps that would have prevented her accident. The complaint further stated that venue was proper under the passenger ticket's forum selection clause and averred that, by the July 2007 notice of her claims, Krupski had complied with the ticket's presuit requirements. Krupski served Costa Cruise on February 4, 2008.

Over the next several months -- after the limitations period had expired -- Costa Cruise brought Costa Crociere's existence to Krupski's attention three times. First, on February 25, 2008, Costa Cruise filed its answer, asserting that it was not the proper defendant, as it was merely the North American sales and marketing agent for Costa Crociere, which was the actual carrier and vessel operator. Second, on March 20, 2008, Costa Cruise listed Costa Crociere as an interested party in its corporate disclosure statement. Finally, on May 6, 2008, Costa Cruise moved for summary judgment, again stating that Costa Crociere was the

proper defendant.

On June 13, 2008, Krupski responded to Costa Cruise's motion for summary judgment, arguing for limited discovery to determine whether Costa Cruise should be dismissed. According to Krupski, the following sources of information led her to believe Costa Cruise was the responsible party: The travel documents prominently identified Costa Cruise and gave its Florida address; Costa Cruise's Web site listed Costa Cruise in Florida as the United States office for the Italian company Costa Crociere; and the Web site of the Florida Department of State listed Costa Cruise as the only "Costa" company registered to do business in that State. Krupski also observed that Costa Cruise's claims administrator had responded to her claims notification without indicating that Costa Cruise was not a responsible party. With her response, Krupski simultaneously moved to amend her complaint to add Costa Crociere as a defendant.

On July 2, 2008, after oral argument, the District Court denied Costa Cruise's motion for summary judgment without prejudice and granted Krupski leave to amend, ordering that Krupski effect proper service on Costa Crociere by September 16, 2008. Complying with the court's deadline, Krupski filed an amended complaint on July 11, 2008, and served Costa Crociere on August 21, 2008. On that same date, the District Court issued an order dismissing Costa Cruise from the case pursuant to the parties' joint stipulation, Krupski apparently having concluded that Costa Cruise was correct that it bore no responsibility for her injuries.

Shortly thereafter, Costa Crociere -- represented by the same counsel who had represented Costa Cruise -- moved to dismiss, contending that the amended complaint did not relate back under Rule 15(c) and was therefore untimely. The District Court agreed. Rule 15(c), the court explained, imposes three requirements before an amended complaint against a newly named defendant can relate back to the original complaint. First, the claim against the newly named defendant must have arisen "out of the conduct, transaction, or occurrence set out-or attempted to be set out-in the original pleading." Fed. Rules Civ. Proc. 15(c)(1)(B), (C). Second, "within the period provided by Rule 4(m) for serving the summons and complaint" (which is ordinarily 120 days from when the complaint is filed, see Rule 4(m)), the newly named defendant must have "received such notice of the action that it will not be prejudiced in defending on the merits." Rule 15(c)(1)(C)(i). Finally, the plaintiff must show that, within the Rule 4(m) period, the newly named 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." Rule 15(c)(1)(C)(ii).

The first two conditions posed no problem, the court

explained: The claim against Costa Crociere clearly involved the same occurrence as the original claim against Costa Cruise, and Costa Crociere had constructive notice of the action and had not shown that any unfair prejudice would result from relation back. But the court found the third condition fatal to Krupski's attempt to relate back, concluding that Krupski had not made a mistake concerning the identity of the proper party. Relying on Eleventh Circuit precedent, the court explained that the word "mistake" should not be construed to encompass a deliberate decision not to sue a party whose identity the plaintiff knew before the statute of limitations had run. Because Costa Cruise informed Krupski that Costa Crociere was the proper defendant in its answer, corporate disclosure statement, and motion for summary judgment, and yet Krupski delayed for months in moving to amend and then in filing an amended complaint, the court concluded that Krupski knew of the proper defendant and made no mistake.

The Eleventh Circuit affirmed in an unpublished per curiam opinion. *Krupski v. Costa Cruise Lines, N. V., LLC*, 330 Fed.Appx. 892 (2009). Rather than relying on the information contained in Costa Cruise's filings, all of which were made after the statute of limitations had expired, as evidence that Krupski did not make a mistake, the Court of Appeals noted that the relevant information was located within Krupski's passenger ticket, which she had furnished to her counsel well before the end of the limitations period. Because the ticket clearly identified Costa Crociere as the carrier, the court stated, Krupski either knew or should have known of Costa Crociere's identity as a potential party. It was therefore appropriate to treat Krupski as having chosen to sue one potential party over another. Alternatively, even assuming that she first learned of Costa Crociere's identity as the correct party from Costa Cruise's answer, the Court of Appeals observed that Krupski waited 133 days from the time she filed her original complaint to seek leave to amend and did not file an amended complaint for another month after that. In light of this delay, the Court of Appeals concluded that the District Court did not abuse its discretion in denying relation back.

We granted certiorari to resolve tension among the Circuits over the breadth of Rule 15(c)(1)(C)(ii),² and we now reverse.

² See, e.g., *Krupski v. Costa Cruise Lines, N. V., LLC*, 330 Fed.Appx. 892, 895 (C.A.11 2009) (per curiam) (case below); *Rendall-Speranza v. Nassim*, 107 F.3d 913, 918 (C.A.D.C.1997) (provision does not authorize relation back where plaintiff "was fully aware of the potential defendant's identity but not of its responsibility for the harm alleged"); *Cornwell v. Robinson*, 23 F.3d 694, 705 (C.A.2 1994) (no relation back where plaintiff knew the identities of the responsible defendants and failed to name them); *Goodman v. Praxair, Inc.*, 494 F.3d 458, 469-470 (C.A.4

II

Under the Federal Rules of Civil Procedure, 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." Rule 15(c)(1).

In our view, neither of the Court of Appeals' reasons for denying relation back under Rule 15(c)(1)(C)(ii) finds support in the text of the Rule. We consider each reason in turn.

A

The Court of Appeals first decided that Krupski either knew or should have known of the proper party's identity and thus determined that she had made a deliberate choice instead of a mistake in not naming Costa Crociere as a party in her original pleading. By focusing on Krupski's knowledge, the Court of

2007) (en banc) (rejecting argument that plaintiff's knowledge of proper corporate defendant's existence and name meant that no mistake had been made); *Arthur v. Maersk, Inc.*, 434 F.3d 196, 208 (C.A.3 2006) ("A 'mistake' is no less a 'mistake' when it flows from lack of knowledge as opposed to inaccurate description"); *Leonard v. Parry*, 219 F.3d 25, 28-29 (C.A.1 2000) (plaintiff's knowledge of proper defendant's identity was not relevant to whether she made a " 'mistake concerning the identity of the proper party' "). We express no view on whether these decisions may be reconciled with each other in light of their specific facts and the interpretation of Rule 15(c)(1)(C)(ii) we adopt today.

Appeals chose the wrong starting point. The question under Rule 15(c)(1)(C)(ii) is not whether Krupski knew or should have known the identity of Costa Crociere as the proper defendant, but whether Costa Crociere knew or should have known that it would have been named as a defendant but for an error. Rule 15(c)(1)(C)(ii) asks what the prospective defendant knew or should have known during the Rule 4(m) period, not what the plaintiff knew or should have known at the time of filing her original complaint.³

Information in the plaintiff's possession is relevant only if it bears on the defendant's understanding of whether the plaintiff made a mistake regarding the proper party's identity. For purposes of that inquiry, it would be error to conflate knowledge of a party's existence with the absence of mistake. A mistake is "[a]n error, misconception, or misunderstanding; an erroneous belief." Black's Law Dictionary 1092 (9th ed.2009); see also Webster's Third New International Dictionary 1446 (2002) (defining "mistake" as "a misunderstanding of the meaning or implications of something"; "a wrong action or statement proceeding from faulty judgment, inadequate knowledge, or inattention"; "an erroneous belief"; or "a state of mind not in accordance with the facts"). That a plaintiff knows of a party's existence does not preclude her from making a mistake with respect to that party's identity. A plaintiff may know that a prospective defendant -- call him party A -- exists, while erroneously believing him to have the status of party B. Similarly, a plaintiff may know generally what party A does while misunderstanding the roles that party A and party B played in the "conduct, transaction, or occurrence" giving rise to her claim. If the plaintiff sues party B instead of party A under these circumstances, she has made a "mistake concerning the proper party's identity" notwithstanding her knowledge of the existence of both parties. The only question under Rule 15(c)(1)(C)(ii), then, is whether party A knew or should have known that, absent some mistake, the action would have been brought against him.

Respondent urges that the key issue under Rule 15(c)(1)(C)(ii) is whether the plaintiff made a deliberate choice to sue one party over another. We agree that making a deliberate choice to sue one party instead of another while fully understanding the factual and legal differences between the two parties is the antithesis of making a mistake concerning the

³ Rule 15(c)(1)(C) speaks generally of an amendment to a "pleading" that changes "the party against whom a claim is asserted," and it therefore is not limited to the circumstance of a plaintiff filing an amended complaint seeking to bring in a new defendant. Nevertheless, because the latter is the "typical case" of Rule 15(c)(1)(C)'s applicability, we use this circumstance as a shorthand throughout this opinion.

proper party's identity. We disagree, however, with respondent's position that any time a plaintiff is aware of the existence of two parties and chooses to sue the wrong one, the proper defendant could reasonably believe that the plaintiff made no mistake. The reasonableness of the mistake is not itself at issue. As noted, a plaintiff might know that the prospective defendant exists but nonetheless harbor a misunderstanding about his status or role in the events giving rise to the claim at issue, and she may mistakenly choose to sue a different defendant based on that misimpression. That kind of deliberate but mistaken choice does not foreclose a finding that Rule 15(c)(1)(C)(ii) has been satisfied.

This reading is consistent with the purpose of relation back: to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits. A prospective defendant who legitimately believed that the limitations period had passed without any attempt to sue him has a strong interest in repose. But repose would be a windfall for a prospective defendant who understood, or who should have understood, that he escaped suit during the limitations period only because the plaintiff misunderstood a crucial fact about his identity. Because a plaintiff's knowledge of the existence of a party does not foreclose the possibility that she has made a mistake of identity about which that party should have been aware, such knowledge does not support that party's interest in repose.

Our reading is also consistent with the history of Rule 15(c)(1)(C). That provision was added in 1966 to respond to a recurring problem in suits against the Federal Government, particularly in the Social Security context. Individuals who had filed timely lawsuits challenging the administrative denial of benefits often failed to name the party identified in the statute as the proper defendant -- the current Secretary of what was then the Department of Health, Education, and Welfare -- and named instead the United States; the Department of Health, Education, and Welfare itself; the nonexistent "Federal Security Administration"; or a Secretary who had recently retired from office. By the time the plaintiffs discovered their mistakes, the statute of limitations in many cases had expired, and the district courts denied the plaintiffs leave to amend on the ground that the amended complaints would not relate back. Rule 15(c) was therefore "amplified to provide a general solution" to this problem. It is conceivable that the Social Security litigants knew or reasonably should have known the identity of the proper defendant either because of documents in their administrative cases or by dint of the statute setting forth the filing requirements. Nonetheless, the Advisory Committee clearly meant their filings to qualify as mistakes under the Rule.

* * *

B

The Court of Appeals offered a second reason why Krupski's amended complaint did not relate back: Krupski had unduly delayed in seeking to file, and in eventually filing, an amended complaint. The Court of Appeals offered no support for its view that a plaintiff's dilatory conduct can justify the denial of relation back under Rule 15(c)(1)(C), and we find none. The Rule plainly sets forth an exclusive list of requirements for relation back, and the amending party's diligence is not among them. Moreover, the Rule mandates relation back once the Rule's requirements are satisfied; it does not leave the decision whether to grant relation back to the district court's equitable discretion. See Rule 15(c)(1) ("An amendment ... *relates back* ... when" the three listed requirements are met (emphasis added)).

The mandatory nature of the inquiry for relation back under Rule 15(c) is particularly striking in contrast to the inquiry under Rule 15(a), which sets forth the circumstances in which a party may amend its pleading before trial. By its terms, Rule 15(a) gives discretion to the district court in deciding whether to grant a motion to amend a pleading to add a party or a claim. Following an initial period after filing a pleading during which a party may amend once "as a matter of course," "a party may amend its pleading only with the opposing party's written consent or the court's leave," which the court "should freely give ... when justice so requires." Rules 15(a)(1)-(2). We have previously explained that a court may consider a movant's "undue delay" or "dilatory motive" in deciding whether to grant leave to amend under Rule 15(a). *Foman v. Davis*, 371 U.S. 178, 182 (1962). As the contrast between Rule 15(a) and Rule 15(c) makes clear, however, the speed with which a plaintiff moves to amend her complaint or files an amended complaint after obtaining leave to do so has no bearing on whether the amended complaint relates back.

Rule 15(c)(1)(C) does permit a court to examine a plaintiff's conduct during the Rule 4(m) period, but not in the way or for the purpose respondent or the Court of Appeals suggests. As we have explained, the question under Rule 15(c)(1)(C)(ii) is what the prospective defendant reasonably should have understood about the plaintiff's intent in filing the original complaint against the first defendant. To the extent the plaintiff's postfiling conduct informs the prospective defendant's understanding of whether the plaintiff initially made a "mistake concerning the proper party's identity," a court may consider the conduct. Cf. *Leonard v. Parry*, 219 F.3d 25, 29 (C.A.1 2000) ("[P]ost-filing events occasionally can shed light on the plaintiff's state of mind at an earlier time" and "can inform a defendant's reasonable beliefs concerning whether her

omission from the original complaint represented a mistake (as opposed to a conscious choice)"). The plaintiff's postfiling conduct is otherwise immaterial to the question whether an amended complaint relates back.⁵

C

Applying these principles to the facts of this case, we think it clear that the courts below erred in denying relation back under Rule 15(c)(1)(C)(ii). The District Court held that Costa Crociere had "constructive notice" of Krupski's complaint within the Rule 4(m) period. Costa Crociere has not challenged this finding. Because the complaint made clear that Krupski meant to sue the company that "owned, operated, managed, supervised and controlled" the ship on which she was injured, and also indicated (mistakenly) that Costa Cruise performed those roles, Costa Crociere should have known, within the Rule 4(m) period, that it was not named as a defendant in that complaint only because of Krupski's misunderstanding about which "Costa" entity was in charge of the ship—clearly a "mistake concerning the proper party's identity."

Respondent contends that because the original complaint referred to the ticket's forum requirement and presuit claims notification procedure, Krupski was clearly aware of the contents of the ticket, and because the ticket identified Costa Crociere as the carrier and proper party for a lawsuit, respondent was entitled to think that she made a deliberate choice to sue Costa Cruise instead of Costa Crociere. As we have explained, however, that Krupski may have known the contents of the ticket does not foreclose the possibility that she nonetheless misunderstood crucial facts regarding the two companies' identities. Especially because the face of the complaint plainly indicated such a misunderstanding, respondent's contention is not persuasive. Moreover, respondent has articulated no strategy that it could reasonably have thought Krupski was pursuing in suing a defendant that was legally unable to provide relief.

Respondent also argues that Krupski's failure to move to amend her complaint during the Rule 4(m) period shows that she made no mistake in that period. But as discussed, any delay on Krupski's part is relevant only to the extent it may have

⁵ Similarly, we reject respondent's suggestion that Rule 15(c) requires a plaintiff to move to amend her complaint or to file and serve an amended complaint within the Rule 4(m) period. Rule 15(c)(1)(C)(i) simply requires that the prospective defendant has received sufficient "notice of the action" within the Rule 4(m) period that he will not be prejudiced in defending the case on the merits. The Advisory Committee Notes to the 1966 Amendment clarify that "the notice need not be formal."

informed Costa Crociere's understanding during the Rule 4(m) period of whether she made a mistake originally. Krupski's failure to add Costa Crociere during the Rule 4(m) period is not sufficient to make reasonable any belief that she had made a deliberate and informed decision not to sue Costa Crociere in the first instance.⁶ Nothing in Krupski's conduct during the Rule 4(m) period suggests that she failed to name Costa Crociere because of anything other than a mistake.

It is also worth noting that Costa Cruise and Costa Crociere are related corporate entities with very similar names; "crociera" even means "cruise" in Italian. Cassell's Italian Dictionary 137, 670 (1967). This interrelationship and similarity heighten the expectation that Costa Crociere should suspect a mistake has been made when Costa Cruise is named in a complaint that actually describes Costa Crociere's activities. Cf. *Morel v. DaimlerChrysler AG*, 565 F.3d 20, 27 (C.A.1 2009) (where complaint conveyed plaintiffs' attempt to sue automobile manufacturer and erroneously named the manufacturer as Daimler-Chrysler Corporation instead of the actual manufacturer, a legally distinct but related entity named DaimlerChrysler AG, the latter should have realized it had not been named because of plaintiffs' mistake); *Goodman v. Praxair, Inc.*, 494 F.3d 458, 473-475 (C.A.4 2007) (en banc) (where complaint named parent company Praxair, Inc., but described status of subsidiary company Praxair Services, Inc., subsidiary company knew or should have known it had not been named because of plaintiff's mistake). In addition, Costa Crociere's own actions contributed to passenger confusion over "the proper party" for a lawsuit. The front of the ticket advertises that "Costa Cruises" has achieved a certification of quality, without clarifying whether "Costa Cruises" is Costa Cruise Lines, Costa Crociere, or some other related "Costa" company. Indeed, Costa Crociere is evidently aware that the difference between Costa Cruise and Costa Crociere can be confusing for cruise ship passengers. See, e.g., *Suppa v. Costa Crociere, S.p.A.*, No. 07-60526-CIV, 2007 WL 4287508, *1, (S.D.Fla., Dec.4, 2007) (denying Costa Crociere's motion to dismiss the amended complaint where the original complaint had named Costa Cruise as a defendant after "find[ing] it simply inconceivable that Defendant Costa Crociere was not on notice ...

⁶ The Court of Appeals concluded that Krupski was not diligent merely because she did not seek leave to add Costa Crociere until 133 days after she filed her original complaint and did not actually file an amended complaint for another a month after that. It is not clear why Krupski should have been found dilatory for not accepting at face value the unproven allegations in Costa Cruise's answer and corporate disclosure form. In fact, Krupski moved to amend her complaint to add Costa Crociere within the time period prescribed by the District Court's scheduling order.

that ... but for the mistake in the original Complaint, Costa Crociere was the appropriate party to be named in the action").

In light of these facts, Costa Crociere should have known that Krupski's failure to name it as a defendant in her original complaint was due to a mistake concerning the proper party's identity. We therefore reverse the judgment of the Court of Appeals for the Eleventh Circuit and remand the case for further proceedings consistent with this opinion.

[Concurring opinion by Justice Scalia omitted.]

NOTES AND QUESTIONS

1. Why have statutes of limitations? "Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs." *Wood v. Carpenter*, 101 U.S. 135, 139 (1879). Besides giving defendants peace of mind, they can serve additional purposes, as summarized in Marcus, *Fraudulent Concealment in Federal Court: Toward a More Disparate Standard?*, 71 *Geo. L.J.* 829, 837 (1983):

[T]he passage of time could seriously impair a defendant's ability to defend himself. Coping with stale claims also poses substantial logistical difficulties for courts. At trial, factfinders would be presented with mountains of moldy evidence resulting from discovery relating to events that occurred, perhaps, decades ago. In addition, it may be necessary to contrive alternatives to live testimony when important witnesses are unavailable or cannot recall events. These logistical difficulties are not mere inconveniences that vex judges. To the extent that overburdened courts are entangled in such problems, they may be unable to attend to timely claims.

At their heart, statutes of limitations insist that lawsuits be commenced within a certain time. The "relation back" problem cannot arise unless that occurs; it looks to whether later amendments in the lawsuit should be treated, for limitations purposes, as though they were included in the party's original pleading. What should a defendant who is sued do in response to the suit? Should those actions by defendant be sufficient to protect it against prejudice resulting from the belated amendment to the complaint? Consider, for instance, the role of Rule 15(c)(1)(B) in relation to the policies underlying statutes of limitations. How should courts address situations in which plaintiffs seek to amend to assert claims originally asserted against one original defendant against another original defendant instead? See the Court's footnote 3.

In *Krupski*, suppose the plaintiff later seeks to amend her complaint to assert an additional claim against Costa Crociere for faulty medical treatment provided by the ship's doctor the day after her accident. Assuming the doctor is an employee of the defendant, should that new claim relate back? See Rule 15(c)(1)(B) and Rule 15(c)(1)(C)(i).

2. In *Krupski*, plaintiff served the original defendant three days after she filed suit, and before the statute of limitations ran out. Would it have made a difference if plaintiff had delayed serving the original defendant until Feb. 22, the day after the one-year statute of limitations expired? It has long been recognized that plaintiff usually "tolls" (suspends the running of) the limitations period simply by filing suit, and that a reasonable time is allowed for service thereafter. Rule 4(m) provides that plaintiffs should serve defendants within 120 days. Providing plaintiff serves defendant within that time, there is no limitations defense.

What if plaintiff amends the complaint to substitute the right defendant after the limitations period expires and then serves the right defendant? In *Krupski*, for example, suppose plaintiff had realized her mistake a month after filing her complaint and before she served the original defendant. Under Rule 15(a)(1)(A), she would then be permitted to amend her complaint as a matter of right to substitute the correct defendant. Suppose that she then served the correct defendant. Would it have a valid limitations defense? In *Schiavone v. Fortune*, 477 U.S. 21 (1986), the Court held that Rule 15(c) as then written required that the added party must be notified before the expiration of the limitations period even though there was no corresponding requirement for to notify a properly named defendant. How is the problem handled under Rule 15(c) now? Note the role played there by Rule 4(m). How would current Rule 15(c) apply if the applicable limitations period in *Krupski*'s case were two years, and she sought to amend after learning of the additional defendant's involvement six months after filing suit?

3. Should the filing of a suit have any effect on the protection limitations provides for those *not* sued? At least the plaintiff has, by filing the suit, made a sort of public announcement that she believes she is entitled to relief for the event that prompted the suit. But she may not yet have acquired the necessary information to appreciate whom she should sue. Should wrongdoers who have escaped plaintiff's attention be protected once she has made the decision to sue? Under California procedure, a plaintiff may name "Doe defendants" if ignorant of their identities, and substitute their true identity once those become known. See Cal. Code Civ. Proc. § 474. California does not require that these added defendants have notice of the suit within the limitations period. For

discussion, see Hogan, California's Unique Doe Defendant Practice: A Fiction Stranger Than Truth, 30 Stan. L. Rev. 51 (1977). Is Rule 15(c)(1)(C) a better way of handling the belated assertion of claims against those not initially sued?

4. Does Rule 15(c)(1)(C)(i) adequately protect the interests of those not originally sued? On whom should the burden rest to show that its requirements are satisfied? How were they satisfied in *Krupski*? If the burden to prove that this rule is satisfied rests on the plaintiff, is there a reason to require that plaintiff satisfy Rule 15(c)(1)(C)(ii) also?

5. In *Krupski*, plaintiff sought discovery to identify the proper defendant after the original defendant raised the problem. Should a plaintiff who sues the wrong person be allowed discovery to identify the right one? Although Rule 27 authorizes pre-litigation discovery in exceptional circumstances, the courts have rejected the idea that it may be generally be used to determine whether a claim exists or who should be sued. See *In re I-35W Bridge Collapse Site*, 243 F.R.D. 349 (D. Minn. 2007) (Rule 27 may not be used for pre-litigation discovery to determine whether a cause of action exists or against whom it should be initiated). Should plaintiff obtain the right to do discovery because she has filed a suit against the wrong defendant?

6. How should a court handle a situation in which plaintiff knows there are additional potential defendants but does not know who they are? In *Worthington v. Wilson*, 8 F.3d 1253 (7th Cir. 1993), plaintiff was arrested by three police officers and sued the village that employed them for violating his rights, adding that he wanted also to sue "three unknown police officers." When plaintiff later sought to amend the complaint to add claims against two of the officers, the court ruled that relation back would not be allowed because plaintiff had been aware from the outset that he did not know the identities of these officers: "[A]mendment with relation back is generally permitted in order to correct a misnomer of a defendant where the proper defendant is already before the court and the effect is merely to correct the name under which he is sued. But a new defendant cannot normally be substituted or added by amendment after the statute of limitations has run."

In *Burdine v. Kaiser*, 2010 WL 2606257 (N.D. Ohio, June 25, 2010), plaintiff sued after a relative died in police custody. After the limitations period expired, plaintiff sought to add claims against three officers. The court ruled that relation back was not available because "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)." It ruled that *Krupski* did not direct a different result: "Unlike *Krupski*, the plaintiff's problem here is not

that she knew the parties' identities and simply failed to sue the correct one. Here, instead, plaintiff did not know the identity of Cook, Hirt and Fligor until after the statute of limitations ran." Is this interpretation of *Krupski* correct? Note that the Supreme Court invokes a Webster's Dictionary definition of "mistake" that includes "inadequate knowledge," and emphasizes that the crucial issue for relation back is what the defendant knew, not what the plaintiff knew.

7. In *Krupski*, plaintiff initially sought to add a defendant without dropping her claim against the defendant she originally sued. Should that be allowed? In *Goodman v. Praxair, Inc.*, 494 F.3d 458 (4th Cir. 2007), plaintiff initially asserted a breach of contract claim against a parent company and later concluded that claim should have been asserted against a subsidiary company. He then sought to amend to assert the breach of contract claim against the subsidiary, but wanted to continue asserting a claim against the parent company as well. Defendants urged that Rule 15(c) allows relation back only for an amendment that "changes the party or the naming of the party against whom the claim is asserted." The court rejected this argument:

[W]e can discern no policy that would be served by the Praxair defendants' restrictive reading of "changes," which would force the amending party to drop a defendant for each defendant he adds. Praxair, Inc. [the original defendant], was placed on notice within the limitations period of the claims relating to the transactions alleged in the original complaint, and no unfairness to it resulted from leaving it as a defendant in the amended complaint. Any unfairness caused by the amendment could only be claimed by Praxair Services, Inc., the new party. But the protections for Praxair Services are addressed by considering the requirements of Rule 15(c) [1(1)(B)] and [(C)], not from reading the term "changes" narrowly.

Is this ruling consistent with the Supreme Court's definition of "mistake"?

8. In *Krupski*, the lower courts emphasized plaintiff's delay in moving to amend. Could the original defendant have moved for sanctions under Rule 11 when plaintiff failed to dismiss even though notified of the problem in the answer? Could the court have denied plaintiff's motion to amend under Rule 15(a) due to this delay? Note that the Court contrasts the "mandatory" nature of relation back under Rule 15(c) with the "discretionary" authority conferred by Rule 15(a). At least some judges fear that a liberal interpretation of Rule 15(c) will have undesirable effects. In *Goodman v. Praxair, Inc.*, 494 F.3d 458 (4th Cir. 2007) (*supra* note 7), a dissenting judge objected that the majority's ruling upholding relation back abandoned prior circuit precedent and would have undesirable effects:

I see no reason to abandon our precedent of almost twenty years in favor of a policy that will decrease the incentives for plaintiffs to investigate their cases fully before filing a lawsuit. I think it good that our former interpretation of the Rule limited the mistakes courts would forgive to the clerical and inconsequential. Rule 15(c) [(1)(C)] is not intended to excuse errant lawyering, but to forgive technical, clerical errors. It is reasonable to expect plaintiffs properly to identify those whom they hale into court. It is likewise reasonable to penalize careless plaintiffs who tarry too long by forbidding them to substitute the correct defendant after the limitations period has expired.

Id. at 477-78 (Gregory, J. dissenting). Judge Gregory also worried that "a future plaintiff will be free to file suit against a placeholder defendant while continuing to search for the proper one any time the plaintiff can make a plausible claim that he believed the originally named defendant was the correct one."

9. *Krupski* places considerable weight on the protections defendants get from the notice requirement of Rule 15(c)(1)(C)(ii). What sort of notice should suffice? Some courts treat informal notice of the commencement of litigation as sufficient. See *Loveall v. Employer Health Servs., Inc.*, 196 F.R.D. 399, 403 (D. Kan. 2000) (letter from corporation named as defendant to the company that had sold the allegedly defective product advising that, in the view of its attorneys, the other company would likely be drawn into the action was sufficient notice). However, some courts have stated that "only service constitutes notice," *Williams v. Army & Air Force Exchange Serv.*, 830 F.2d 27, 30 n.2 (3d Cir.1987), and others have required more than mere awareness of the suit. See *Gardner v. Gartman*, 880 F.2d 797, 799 (4th Cir.1989) (suits against the U.S. and certain officials did not constitute notice to the head of the U.S. department where plaintiff worked); *Bell v. Veterans Administration Hospital*, 826 F.2d 357 (5th Cir.1987) (relation back not allowed even though administrative hearings put the party to be joined on notice of the suit). However, the better practice seems to be otherwise. "The conclusion of a growing number of courts and commentators is that sufficient notice may be deemed to have occurred where a party who has some reason to expect his potential involvement as a defendant hears of the commencement of the litigation through some informal means." *Kinnally v. Bell of Pennsylvania*, 748 F.Supp. 1136, 1141 (E.D.Pa.1990). Does *Krupski* shed light on this question? See the Court's footnote 5.