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Civil Rights Update

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Does It Relate Back? Substituting Individuals for Fictitious Defendants after the Statute of Limitations Has Expired

Plaintiffs frequently file complaints naming fictitious defendants. Then, after the statute of limitations has run, the plaintiff seeks to substitute individuals for the "John Does" via an amended complaint. Federal Rule of Civil Procedure 15(c) governs whether the amended complaint is time barred as to the newly added and identified individuals, setting aside other factors that might toll the statute of limitations. Specifically, Rule 15(c)(1)(C) concerns relation back for amended pleadings that change a party or a party's name and states:

> 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) 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 show 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)(C).

Under federal law, a plaintiff may name a fictitious defendant and utilize discovery to learn the defendent's proper identity. *Baskin v. City of Des Plaines*, 138 F.3d 701, 703–04 (7th Cir. 1998). Naming a fictitious defendant, however, does not toll the statute of limitations. Prior to the U.S. Supreme Court decision of *Krupski v. Costa Crociere, S.p.A.*, 130 S. Ct. 2485, 560 U.S. 538 (2010), courts in the U.S. Court of Appeals for the Seventh Circuit consistently held that an amended complaint identifying previously unknown defendants did not relate back to the original pleading. See *King v. One Unknown Federal Correctional Officer*, 201 F.3d 910, 914 (7th Cir. 2007); *Baskin*, 138 F.3d at 704; *Allen v. City of Chicago*, No. 08-cv-6127, 2009 WL 4506317, at *3 (N.D. Ill. Nov. 30, 2009); *Krigbaum v. Sangamon County, Illinois, Sheriff's Dep't*, No. 06-3236, 2007 WL 2701230, at *3 (C.D. Ill. Aug. 6, 2007).

Rule 15(c)(1)(C) contains a "mistake" requirement. Courts reasoned that for relation back purposes, a mistake "concerning the identity of the proper party" does not occur where the plaintiff lacks knowledge of the proper defendant. *Hall v. Norfolk S. Ry.*, 469 F.3d 590, 596 (7th Cir. 2006). Accordingly, "[a] plaintiff's ignorance or misunderstanding about who is liable for his injury is not a 'mistake' as to the defendant's

'identity.'" *Hall*, 469 F.3d at 596. As it relates to fictitious defendants, "plaintiffs cannot, after the statute of limitations period, name as defendants individuals that were unidentified at the time of the original pleading. Not knowing a defendant's name is not a mistake under Rule 15." *Jackson v. Kotter*, 541 F.3d 688, 696 (7th Cir. 2008); see also *King*, 201 F.3d at 914 (holding that an amended complaint identifying the "unknown federal correctional officer" would be futile because there was no mistake as to the officer's identity); *Martinez v. Gade*, No. 07 C 1488, 2009 WL 780225 (N.D. Ill. Mar. 20, 2009) (holding that an amended complaint seeking to join five previously unnamed individuals would be futile because the plaintiff was not simply correcting the mistaken name of a party).

Before *Krupski*, it was clear that, unless a plaintiff amended her complaint to name the "John Doe" defendants before the applicable statute of limitations had expired, her claims were time barred. Following *Krupski*, some district courts have questioned whether not knowing a defendant's identity can be considered a mistake under Rule 15(c).

In *Krupski*, a passenger suffered injury while aboard a cruise ship. Her ticket identified the carrier as Costa Crociere, S.p.A. and identified Costa Cruise Lines N.V. (Costa Cruise) as the sales and marketing agent for the carrier and issuer of the ticket. *Krupski*, 130 S. Ct. at 2490. The plaintiff filed suit against Costa Cruise. The complaint alleged that Costa Cruise "owned, operated, managed, supervised and controlled" the ship on which the plaintiff was a passenger. *Id.* After the expiration of the statute of limitations period, the plaintiff sought to amend her complaint to name Costa Crociere, S.p.A. as a defendant. The district court denied the motion on the grounds that the plaintiff had not made a mistake concerning the identity of the proper party. *Id*. at 2492. The U.S. Court of Appeals for the Eleventh Circuit affirmed and "explained that the word 'mistaken' 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." *Id.*

The Supreme Court reversed. "The question under Rule 15(c)(1)(C)(ii) is not whether *Krupski* knew or should have known the identity of Costa Crociere as a proper defendant, but whether Costa Crociere knew or should have known that it would have been named as a defendant but for an error." *Id*. at 2493. As the plaintiff was mistaken about which "Costa" entity owned, operated, managed, supervised, and controlled the ship, her failure to name Costa Crociere was a "mistake concerning the proper party's identity" and, therefore, the amended complaint related back. *Krupski*, 130 S. Ct. at 2497.

Only one Seventh Circuit case has addressed *Krupski* directly: *Joseph v. Elan Motorsports Technologies Racing Corp.*, 638 F.3d 555 (7th Cir. 2011). In *Joseph*, the plaintiff filed suit against Elan Motorsports Technologies Racing Corp. ("Elan Corp."), alleging breach of a written employment contract. Later, the plaintiff learned that his contract was not with Elan Corp., but rather was with Elan Motorsports Technologies, Inc. ("Elan, Inc."). The plaintiff sought to amend his complaint. *Joseph*, 638 F.3d at 557.

The district court ruled that the proposed amended complaint did not relate back. The court quoted from *Hall v. Norfolk Southern Railway*, 469 F.3d 590, 596 (7th Cir. 2006), that "it is the plaintiff's responsibility to determine the proper party to sue and to do so before the statute of limitations expires." *Joseph*, 638 F.3d at 558. The Seventh Circuit noted that *Krupski* "changed what we and other courts had understood, in *Hall* and other cases we cited, to be the proper standard for deciding whether an amended complaint relates back to the date of the filing of the original complaint. We had thought the focus should be on what the plaintiff knew or should have known . . . ." *Joseph*, 638 F.3d at 559. The Seventh Circuit explained that, after *Krupski*,

> [t]he only two inquiries that the district court is now permitted to make in deciding whether an amended complaint relates back to the date of the original one are, first, whether the defendant who is sought to be added by the amendment knew or should have known that the plaintiff, had it not been for a mistake, would have sued him instead or in addition to suing the named defendant; and second,

whether, even if so, the delay in plaintiff's discovering his mistake impaired the new defendant's ability to defend himself.

Joseph, 638 F.3d at 559–60. Consequently, the court concluded that the plaintiff should be allowed to amend his complaint to name Elan, Inc. *Joseph*, 638 F.3d at 561.

Notably, no Seventh Circuit case has addressed specifically whether *Krupski* and *Joseph* change the analysis for amended complaints seeking to substitute named individuals for fictitious defendants. After *Krupski* and *Joseph*, multiple Seventh Circuit cases have reiterated the rule that "[a] plaintiff's lack of knowledge about a defendant's identity is not a 'mistake' within the meaning of Federal Rule of Civil Procedure 15(c) such that the plaintiff could amend his complaint outside the statute of limitations period upon learning the defendant's identity." *Gomez v. Randle*, 680 F.3d 859 n.1 (citations omitted); see also *Santiago v. Anderson*, 496 Fed. Appx. 630, 631–32 (7th Cir. 2012) (unpublished opinion); *Vance v. Rumsfeld*, 701 F.3d 193, 211 (7th Cir. 2012) (*en banc*) (Wood, J. concurring in judgment); *Flournoy v. Schomig*, 418 Fed. Appx. 528, 532 (7th Cir. 2011) (unpublished opinion).

The majority of the district courts that have reviewed the issue have reached the conclusion that a plaintiff's lack of knowledge of a defendant's [*sic*] identity is not a mistake under Rule 15(c) and that this rule is unchanged by *Krupski*. See *Mitchell v. Nesemeier*, No. 11-C-50329, 2013 WL 5587887, at *5 (N.D. Ill. Oct. 9, 2013); *Dandridge v. Cook County*, No. 12-cv-5458, 2013 WL 3421834, at *4–5 (N.D. Ill. July 8, 2013); *Watson v. Williamson*, No. 11-3093, 2013 WL 3353866, at *4 (C.D. Ill. July 3, 2013). In *Brown v. Deleon*, No. 11 c 6292, 2013 WL 3812093 (N.D. Ill. July 18, 2013), however, the court suggested, in *dicta*, that "*Krupski* supports that inadequate knowledge and lack of full information regarding a defendants' [*sic*] identity satisfies the mistake requirements for Rule 15(c)(1)(C)." *Brown*, 2013 WL 3812093, at *6 (concluding that the issue of what constitutes a mistake need not be conclusively decided, as equitable tolling applied to the federal claims). Also, in *Solivan v. Dart*, 897 F. Supp. 2d 694 (N.D. Ill. 2012), the court concluded that the substitution of John Does for individual defendants satisfied Rule 15(c)(1), where plaintiff had sought, through discovery, the identity of unknown officers, the individual officers knew or should have known that the plaintiff sought to name them as individuals in the suit, and they would not be prejudiced in any way in defending on the merits.

Krupski and *Joseph* both concern plaintiffs that mistakenly named the wrong defendant and who later sought to correct this error to name the proper party. Neither of these cases concerns a plaintiff's lack of knowledge of a defendant's identity. Thus, more likely than not, lack of knowledge will continue to not be considered a mistake for purposes of Rule 15(c). The Seventh Circuit, without expressly addressing *Krupski*, has reiterated the rule. The district courts within the Seventh Circuit, however, have not reached a consensus on the issue. Until that time, practitioners should anticipate an increase in amended complaints seeking to substitute individuals for fictitious defendants.

About the Authors

Brian Smith concentrates his practice in the areas of civil rights, professional liability, employment law and trucking/motor carrier litigation. Much of his practice entails defending government officials and medical professionals in cases alleging violations of constitutional rights. Brian also has experience defending employers before the Illinois Human Rights Commission and in federal court. He represents defendants in other tort litigation, including cases arising from automobile and trucking accidents.

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Mr. Smith began his career with *Heyl, Royster, Voelker & Allen, P.C.* by clerking in the firm's Urbana office. Following graduation from law school in 2007, he joined the firm in the Urbana office as an associate. During law school, he was a teaching assistant at the University of Illinois College of Law and a member of the *University of Illinois Law Review*.

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