Rule 15(c) Mistake: The Supreme Court in Krupski Seeks to Resolve a Judicial Thicket

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RULE 15(c) MISTAKE: THE SUPREME COURT IN KRUPSKI SEeks TO RESOLVE A JUDICIAL THICKET

Robert A. Lusardi

I. INTRODUCTION

The statute of limitations is a device that protects potential defendants from being subjected to suit on stale claims. It is based on the idea that defendants should be free from the risk of litigation after the passage of an arbitrary amount of time, so that they may order their affairs without concern that they will be notified of a suit when information and documents that are needed to defend the matter are no longer available. While recognizing the importance of a statute of limitations, Federal Rule of Civil Procedure 15 acts as a counterbalance to such statutes by allowing a plaintiff to freely amend a complaint to assert additional claims, or to name new or additional parties, and have those amendments relate back to a complaint filed within the statute of limitations even though that statute has run. The intent of the rule is to encourage decisions on the merits by liberally allowing changes to pleadings and having those changes relate back to a timely filed complaint if certain conditions are met.

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2 For purposes of this Article, references will be to the current version of the rule, FED. R. CIV. P. 15(c)(1), which reflects the 2007 style amendments but makes no substantive change. It provides:

(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).

3 See Carrington, supra note 1, at 310–12.
There have been interpretive problems, particularly with the language of Rule 15(c)(1)(C)(ii).\textsuperscript{4} These problems arise when the "amendment changes the party or the naming of the party" after the statutory period and the conditions of Rule 15(c)(1)(C) are applied.\textsuperscript{5} Courts have often been very cautious in interpreting the rule because of a reluctance to see a person drawn into litigation after the statute of limitations has run out.\textsuperscript{6} The text of the rule addresses this problem by allowing such relation back only when the claim is sufficiently related to the original pleading and the defendant "received such notice of the action so that it [would] not be prejudiced in defending on the merits[] and knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity."\textsuperscript{7} This Article will focus on the phrase "knew or should have known . . . but for a mistake concerning the proper party's identity," as set out in Rule 15(c)(1)(C)(ii). Particularly, how differing interpretations of that phrase by courts of appeals have affected the application of the rule in four related but somewhat different situations, which has led to the Supreme Court taking up the issue.

First, courts are in general agreement that the "mistake" language is met when a change is made to correct a misnomer or misidentification in which the plaintiff has asserted a claim against the correct defendant, but has misspelled or misnamed that defendant.\textsuperscript{8} A second situation that has been more problematic occurs when a plaintiff sues the wrong party and wants to substitute or add a new defendant who the plaintiff was unaware of when it filed suit. Here, some courts, relying on misnomer/misidentification as an absolute limitation on the rule, assert that there was no mistake on the plaintiff's part and so deny relation back.\textsuperscript{9} These courts assert that the plaintiff had not made a mistake "concerning the proper party's identity"\textsuperscript{10} because the plaintiff sued the intended party and only lacked knowledge of the proper party.\textsuperscript{11} The third situation arises when a plaintiff knows of the existence of the potential party, but does not sue him because the plaintiff does not know that the person is potentially

\textsuperscript{4}See e.g., Harold S. Lewis, Jr., The Excessive History of Federal Rule 15(c) and Its Lessons for Civil Rules Revision, 85 MICH. L. REV. 1507 (1987).

\textsuperscript{5}FED. R. CIV. P. 15(c)(1)(C).

\textsuperscript{6}See e.g., Rendall–Speranza v. Nassim, 107 F.3d 913 (D.C. Cir. 1997).

\textsuperscript{7}FED. R. CIV. P. 15(c)(1)(C)(ii); see infra text accompanying notes 10–11. The purpose of this provision is to protect the defendant's due process rights. See 6A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1468 (3d ed. 2010).

\textsuperscript{8}See e.g., Roberts v. Michaels, 219 F.3d 775, 777–78 (8th Cir. 2000).

\textsuperscript{9}See e.g., Wilson v. United States Gov't, 23 F.3d 559 (1st Cir. 1994).

\textsuperscript{10}FED. R. CIV. P. 15(c)(1)(C)(ii).

\textsuperscript{11}See Wilson, 23 F.3d at 563.
liable, or because the plaintiff makes a strategic choice not to sue the person. If the plaintiff decides to sue that person after the statute of limitations has run out, it once again raises the "mistake" versus lack-of-knowledge arguments of the misnomer advocates since the plaintiff originally sued the intended party. The final situation deals with placeholder defendants, so called "John Does," and whether an amendment changing a "John Doe" to a named defendant can relate back. Once again it is argued that there is no mistake under the rule since the plaintiff is acknowledging that he has not made a mistake, but instead simply does not know who the defendant or defendants are.

This Article will begin by examining the text and purpose of the rule. It will then analyze the cases that show the competing views as to the meaning of Rule 15(c)(1)(C)(ii) and evaluate these views in light of the U.S. Supreme Court's recent decision in Krupski v. Costa Crociere S.p.A., in which the Court sought "to resolve tension among the Circuits over the breadth of Rule 15(c)(1)(C)(ii)."

II. PURPOSE OF THE RULE

In the words of Professor Kaplan, "[a] rule of procedure has a sphere of influence beyond its precise text, but how far it should extend is a matter of taste." To judge the meaning of the "mistake" language of Rule 15 requires an examination of the text of the rule, the Advisory Committee's notes on its adoption, and a review of the judicial interpretations of that seemingly simple term to judge what its application should be.

The provision dealing with changing parties that includes the "mistake" language was added to Rule 15(c) in 1966. The Advisory Committee's purpose was to expand on the original rule, which only provided that an amendment could relate back to the date of the original pleading if it "arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." While that language clearly addressed

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13 See id.
14 See, e.g., Worthington v. Wilson, 8 F.3d 1253, 1257 (7th Cir. 1993).
15 See id.
17 Id. at 2492.
19 FED. R. CIV. P. 15 advisory committee's note to 1966 amendment.
20 FED. R. CIV. P. 15(c) (1957) (amended 1966); see FED. R. CIV. P. 15 advisory committee's note to 1966 amendment.
questions of relation back for additional claims involving the same parties, it
did not make clear whether it would apply to situations where new parties
were added or the parties were changed. Some courts had read this
language broadly to permit amendments to relate back that changed the
party or the name of the party.21 The Advisory Committee addressed this
issue because it was particularly concerned with cases against the federal
government in which the wrong defendant was named because the plaintiff
used names of parties who did not exist, could not be properly sued, or who
had retired.22 In these cases, some courts had refused to permit relation
back of the amendments by parties that were made upon “[d]iscovering
their mistakes” on the grounds that these amendments would constitute the
“commencement of a new proceeding,” and so could not relate back to the
original filing.23

In criticizing the “new proceeding” approach, the Advisory Committee
emphasized that it was not consistent with the intent of the rule and that the
revisions to the rule were intended to clarify this.24 The question was not
whether the amendment created a “new proceeding,” but whether the
policy of the statute of limitations was satisfied.25 That policy, the Advisory
Committee asserted, turned on whether the defendant had received
adequate notice of the action.26

The Advisory Committee’s note does not focus on the term “mistake”
and does not treat it as an integral part of the rule. Instead it appears to use
“mistake” as a short hand for the type of problems that lead to the need for
relation back. The note initially states that the purpose of the amendment
to the rule is to state “more clearly when an amendment of a pleading
changing the party against whom it is asserted (including an amendment to
correct a misnomer or misdescription of a defendant) shall ‘relate back’ to
the date of the original pleading.”27 In doing so, the Advisory Committee
makes clear its intent to deal with problems beyond basic errors of
misnomer and misdescription, thus opening up the rule’s coverage to a

22 See Fed. R. Civ. P. 15 advisory committee’s note to 1966 amendment (“[T]he claimants instituted timely
action but mistakenly named as defendant the United States, the Department of HEW, the ‘Federal Security
Administration’ (a nonexistent agency), and a Secretary who had retired from the office nineteen days before.”).
23 Id.
24 See id.
25 See id.
26 Id.; see also Carrington, supra note 1, at 311–12 (“The 1966 addition . . . was intended to serve the general
purpose of liberalizing the availability of relation back for plaintiffs who timely commenced suits against the
wrong defendants and whose mistakes were known to the intended defendants.”).
number of additional situations without specifying what those situations are. The note does refer to “mistakenly named defendants” and “[d]iscovering their mistakes,” but uses the mistake language as a generic way to describe the specific examples of suing the federal government that were the precipitating cause for the amendment. More importantly, the note goes on to emphasize that the key to the amendment is the connection between relation back and the policy of the statute of limitations. That policy, the Advisory Committee explains, is based on whether the party was “put on notice of the claim within the stated period.” If the party has received that notice, it would be “merely question-begging; and to deny relation back is to defeat unjustly the claimant’s opportunity to prove his case.” Thus, the key to relation back for the Advisory Committee was whether the defendant has received notice, not whether the claimant lacked knowledge or committed an error at the time he filed the original claim. There is no recognition of a special “mistake” component in the Advisory Committee’s note, and it appears that the term is intended to create a short-hand phrase to describe how the claimant has put himself into the situation requiring relation back.

This reading of the Advisory Committee’s intention is reinforced by its citation to Professor Byse’s article as a source for a fuller discussion of the underlying purpose in amending Rule 15. In his article, Professor Byse states that the goal of a procedural system is to balance the rigidity necessary to have a workable system with the need to do substantial justice. He points out that in striking this balance in the relation back area, the question should be whether the purpose of the statute of limitations is thwarted by permitting the relation back of the amendment. Since the purpose of the statute of limitations is to give the defendant timely notice of the claim, the amendment should relate back if the defendant has received such notice since it would be just to adjudicate the plaintiff’s claim. Nowhere does he suggest any relevance to what caused the plaintiff to have failed to name the correct defendant. This is, presumably, because

28 Id.
29 See id.
30 Id.
31 Id.
33 See FED. R. CIV. P. 15 advisory committee’s note to 1966 amendment.
34 Byse, supra note 32, at 45–46.
35 Id. While Professor Byse speaks of the specific sixty-day requirement to sue after an adverse decision under the Social Security Act, the reasoning applies to all statute of limitations cases.
36 See id. at 46.
the reason for the plaintiff's failure to sue the correct defendant is not relevant to the inquiry.

While it is clear that the Advisory Committee did not focus on the word "mistake," and its use as a limiting condition, in the underlying reasoning that justifies relation back of amendments, a majority of the United States circuit courts that have considered the issue have focused on "mistake" as a significant limiting requirement on the use of relation back. The next section will consider how courts have analyzed the mistake component in relation back and the source of their reasoning.

III. JUDICIAL INTERPRETATIONS OF MISTAKE

A. Origin

The judicial development of the meaning of the "mistake" component of Rule 15(c) originates in the Seventh Circuit Court of Appeals' decision in Wood v. Worachek. While that case is almost always cited as the source for the restrictive reading of "mistake" as not including a lack of knowledge, the decision provides little reasoning or authority for that proposition. The case involved a claim against named and unnamed law enforcement officers who were denominated "John Doe and Richard Roe." When the named defendants were successful on motions for summary judgment, the plaintiff amended the complaint to change the names of John Doe and Richard Roe to specific law enforcement officers. The district court then dismissed the claims against the new defendants since the statute of limitations had expired before they were made parties to the action. In response to the plaintiff's contention on appeal that his amendment should relate back to within the statute of limitations, the court of appeals asserted that the amendment did not meet any of the conditions of the rule, but in particular the court spoke to the "mistake" requirement. It concluded that the requirement was not met "where . . . there is a lack of knowledge of the proper party." The court's basis for this view was that the rule was designed to correct misnomers, and so relation back was only permitted where there was "an error made concerning the identity of the proper party.

37 See infra Part III.
38 See Wood v. Worachek, 618 F.2d 1225, 1230 (7th Cir. 1980).
39 Id. at 1228.
40 Id.
41 Id.
42 Id. at 1229–30.
and where that party is chargeable with knowledge of the mistake."43 Since
the plaintiff’s use of John Doe and Richard Roe was not a mistake, but
simply a lack of knowledge as to the identity of the law enforcement officers,
he could not make use of Rule 15(c).44 The court cited another Seventh
Circuit case, Sassi v. Breier, as authority for its distinction between mistake
and lack of knowledge.45 That case was very similar to Wood on its facts,
which also involved a civil-rights action in which the plaintiff amended the
complaint to substitute the previously unknown police officers for John Doe
and Richard Doe. The Sassi court accepted the findings of the district court
that the new defendants did not have notice of the action, nor knowledge
that they would have been original defendants “but for [a] mistake or even
lack of knowledge of their identities that the newly named defendants would
have been named as original defendants.”46 Having left the question of
mistake/lack of knowledge open, the court went on to say that naming a
John Doe defendant did not toll the statute of limitations “until such time as
a named defendant may be substituted.”47 Thus, the court made the point
that a John Doe defendant without more is not enough to permit relation
back because “[t]o hold otherwise could have an unwarranted impact upon
the salutary purposes of statutes of limitations.”48 So Wood’s citation of this
case is not supportive of its position because Sassi does not address the
mistake/lack of knowledge question, but only says that if you have not met
the Rule 15(c) requirements of notice and knowledge, you cannot go
through the back door by listing a John Doe and have that serve as a
substitute.

B. Majority View

The Wood decision has had a substantial impact on the developing
interpretation of Rule 15(c) and represents the view of a majority of the
courts of appeals that have considered the issue.49 In addition, the
reasoning set out in Wood has been applied not only to John Doe cases, but
also has been used to reach the same result in cases where the plaintiff has

43 Id. at 1230.
44 See id.
45 Id. (citing Sassi v. Breier, 584 F.2d 234, 235 (7th Cir. 1978)); see also FED. R. CIV. P. 15 advisory
committee’s note to 1966 amendment.
46 Sassi, 584 F.2d at 235.
47 Id.
48 Id.
49 See Hall v. Norfolk S. Ry. Co., 469 F.3d 590, 596–97 (7th Cir. 2006) (citing several circuit court decisions
that are in accord with the holding in Wood).
named a defendant and wants to substitute a new defendant, or the plaintiff seeks to add a defendant or defendants to the action.\(^{50}\)

An example of this extension is *Hall v. Norfolk Southern Railway*.\(^{51}\) In *Hall*, a railroad worker who had suffered a work-related injury filed suit under the Federal Employers Liability Act (FELA) against Norfolk Southern Railway on the mistaken belief that Norfolk was his employer and therefore liable under FELA.\(^{52}\) When the plaintiff discovered his error and sought to amend his claim to name his actual employer, Conrail, after the statute of limitations had run, the magistrate judge refused to allow relation back on the view that there was no mistake since the plaintiff “made a conscious choice to sue Norfolk instead of his employer.”\(^{53}\)

In reviewing the magistrate’s decision, the Seventh Circuit rejected the argument that Wood’s lack of knowledge rule should only apply to John Doe cases and not to cases where the plaintiff had named the wrong person.\(^{54}\) The court found the two situations to be the same since in both cases the plaintiffs did not know who to name as defendants before the limitations periods expired. Whether a plaintiff names a fictitious defendant like “John Doe” because he does not know who harmed him or names an actual—but nonliable—railroad company because he does not know which of two companies is responsible for his injuries, he has not made a “mistake” concerning “identity” within the meaning of [Rule 15(c)(1)(C)]. He simply lacks knowledge of the proper party to sue. It is the plaintiff’s responsibility to determine the proper party to sue and to do so before the statute of limitations expires. A plaintiff’s ignorance or misunderstanding about who is liable for his injury is not a “mistake” as to the defendant’s “identity.”\(^{55}\)

\(^{50}\) The word “changing” in the rule has been read liberally to cover both adding and dropping parties, as well as substituting parties. See *e.g.*, *Lundy v. Adamar of N.J.*, Inc., 34 F.3d 1173, 1192–93 & n.13 (3d Cir. 1994); see also 6A WRIGHT ET AL., supra note 7, § 1498, at 126–29.

\(^{51}\) *Hall*, 469 F.3d 590.

\(^{52}\) Id. at 592. The confusion resulted from a business transaction in which the plaintiff’s employer, Conrail, transferred “many of its assets and liabilities” to Norfolk Southern, who “agreed to provide claims services for Conrail such as negotiating settlements and enrolling employees in rehabilitation programs, but Conrail retained liability for FELA claims that arose before June 1, 1999.” Id. at 592–93. The accident occurred on February 2, 1999. Id. at 592.

\(^{53}\) Id. at 593–94. The motion to amend to name Conrail was the second motion to amend. Id. at 593. The first motion asserted that Norfolk Southern was liable as a successor in interest to Conrail, but that motion was never ruled on. Id. at 593 & n.2. If that motion had been granted, Conrail might have argued that the subsequent motion to amend would not relate back because the plaintiff knew at the time of the first motion that Conrail was his employee and had made a strategic decision to sue Norfolk Southern instead of Conrail.

\(^{54}\) Id. at 596.

\(^{55}\) Id.
Having made this assertion, the court failed to state any reason for its view, other than to rely on Seventh Circuit precedent that had "coalesced around the narrower view of... 'mistake' which [the court traced] back at least as far as Wood." The court cited a number of cases from different circuits, in particular Rendall-Speranza v. Nassim, which provides a fuller analysis of the reasons for the court's narrower interpretation.

Nassim involved claims of battery and intentional infliction of emotional distress by an employee of the International Finance Corporation (IFC) against her supervisor. After the running of the statute of limitations, the plaintiff learned that her supervisor had acted within the scope of his duties in committing a battery and inflicting emotional distress. She moved to amend the complaint to include IFC as a defendant and have the amendment relate back. In light of the plaintiff's argument that she had not known IFC was subject to liability, the district court allowed the amendment and its relation back as "a mistake concerning the identity of the proper party."

In reversing the district court's decision in Nassim, the Court of Appeals for the District of Columbia focused on the meaning of "mistake" and rejected the plaintiff's argument that a mistake occurs when the plaintiff believes one person is liable in tort, but it turns out that another person is liable. The court rejected this argument as too broad, and it limited the meaning of "mistake" to misnomers. In doing so, the court set out its reasons for defining "mistake" narrowly. It looked to the purpose of the rule to denote the meaning of mistake. The court characterized that purpose as creating a mechanism to avoid the harsh consequences of a mistake that is neither prejudicial nor a surprise to the misnamed party. A potential defendant who has not been named in a lawsuit by the time the statute of limitations has run is entitled

56 Id. at 597–98 (citing to precedent asserting the narrower view).
57 See id. at 596–97.
59 Id. at 915.
60 Id. IFC had stated in its amicus curiae brief that Nassim was acting within his duties because he was attempting to prevent theft by the plaintiff of IFC’s files. Id.
61 Id.
62 Id.
63 Id. at 917–18.
64 Id. at 918. The court characterized the plaintiff's argument as claiming a mistake when the decision was "one of legal judgment." Id.
to repose—unless it is or should be apparent to that person that he is the beneficiary of a mere slip of the pen, as it were.\textsuperscript{65}

The court also looked to the Advisory Committee notes to support its interpretation of the rule. In particular, the court focused on the language in the 1991 notes that made reference to “the problem of a misnamed defendant,”\textsuperscript{66} as well as references to “a name correcting amendment” and “an intended defendant” to support its view limiting the use of the rule in situations where a plaintiff was aware of the defendant’s identity, but not of its potential liability for the harm.\textsuperscript{67}

The problem with the court’s view is twofold. In the first part of the quote, the court limits persons who will not be prejudiced or surprised to “the misnamed party,” suggesting that this is the only person who would not be surprised or prejudiced, but the text of the rule is not limited in such a way. It applies to an amendment that “changes the party,” as well as those that change the naming of the party. The plain meaning of that language in the rule is that it is not limited to a “misnamed party,” or “a mere slip of the pen,”\textsuperscript{68} but instead includes situations where a plaintiff substitutes new parties or adds additional parties. The other problem with the court’s view of the purpose of the rule is that it assumes that only a “misnamed party” would not be prejudiced or surprised by the relation back. New defendants in many cases might have sufficient notice and knowledge to avoid surprise and prejudice.\textsuperscript{69} More importantly, the plaintiff would have the burden of proof that the new defendant had received notice of the action and knowledge that he was the proper defendant within the time permitted by the rule.\textsuperscript{70} If the plaintiff failed to meet that burden, then the relation back would be denied.\textsuperscript{71}

\textsuperscript{65} Id. (emphasis added).

\textsuperscript{66} Id. at 918 (citing FED. R. CIV. P. 15 advisory committee’s note to 1991 amendment). The 1991 notes were concerned with other changes to the rule unrelated to the “mistake” language of the 1966 amendment to the rule. The Nassim court went on to cite Barrow v. Wethersfield Police Department for the view that the 1991 notes imply the need for “an error, such as a misnomer or misidentification.” Id. (citing Barrow v. Wethersfield Police Dep’t, 66 F.3d 466, 469 (2d Cir. 1995)). Looking for more support for its result, the court went on to say that if the plaintiff knew the new defendant but did not sue because she did not know of his liability, then there was no mistake, and the new defendant did not know or should have known that it was an intended party. Id. at 918–19.

\textsuperscript{67} See id. at 918. The court made passing reference to the 1966 notes, but only to point out the purpose of dealing with suits against the government. Id.

\textsuperscript{68} See, e.g., Worthington v. Wilson, 790 F. Supp. 829, 833 (C.D. Ill. 1992) (denying relation back in John Doe § 1983 action based on Seventh Circuit precedent, even though police officers admitted that they were aware of the action and that they were the unnamed police officers within the applicable period under the rule), aff’d, 8 F.3d 1253 (7th Cir. 1993).

\textsuperscript{69} See Singietary v. Pa. Dep’t of Corr., 266 F.3d 186, 201 n.5 (3d Cir. 1999).

\textsuperscript{70} Id.

\textsuperscript{71}
While a majority of circuit courts that have considered this question have relied on *Wood* and its progeny in applying relation back, cases in the Third and Fourth Circuit Courts of Appeals have raised questions about the proper meaning of “mistake” in the application of relation back.

**C. Alternative View**

Approximately three years before the Seventh Circuit's decision in *Wood* asserted its view of the narrow interpretation of the “mistake” language in Rule 15(c), the Third Circuit Court of Appeals considered the application of relation back in *Varlack v. SWC Caribbean, Inc.* *Varlack* was a placeholder case in which the plaintiff sought to amend the complaint in a tort action after the running of the statute of limitations to replace a “John Doe” caption with the defendant's name. The court had no doubt that such an amendment constituted “changing a party,” and so the amendment would relate back if the three conditions of the rule were met. The parties agreed that the amendment involved the same transaction as the original complaint, and the court was satisfied that the new party had received the necessary notice and knew that he was the proper party even though he was not named in the original complaint. Therefore, the court affirmed the district court's decision that the amendment related back. In doing so, the court made no reference to “mistake” as a separate limiting provision in applying the rule.

The *Varlack* decision was problematic because its timing meant that it did not address the issue of the meaning of “mistake” that would develop after *Wood*. That silence could even be read as not providing any authority for interpreting the mistake language. However, the Third Circuit returned to this question in *Singletary v. Pennsylvania Department of Corrections*, which was also a placeholder relation back case in which the court held that the amendment changing the party could not relate back because the new
party had not received the requisite notice required by the rule.\(^7\) Having decided that issue, Chief Judge Becker still proceeded to consider the issue of “mistake” and affirmed the view that \textit{Varlack} was binding authority in the circuit for the proposition that a “John Doe” complaint could relate back without being stymied by the mistake language.\(^8\) In doing so, he acknowledged that \textit{Varlack} stood in opposition to the case law that developed in other circuits after \textit{Wood}.\(^9\) However, he pointed out that the rule struck a balance between the interests of the parties by allowing the plaintiff to file suit and gather information through discovery so that he could name the proper party, while also providing fairness to the new defendant since the requirements of the rule took care to ensure that the defendant would be protected from surprise claims.\(^10\) Judge Becker acknowledged that the question raised “sticky issues” and asked the Advisory Committee to modify the rule so as to make clear its application in Doe cases to encourage the policies of liberal pleading and decisions based on the merits.\(^11\)

The Third Circuit has set out its reasoning for this alternative approach in allowing relation back in John Doe complaints and has applied that reasoning to cases that do not involve placeholder claims. In \textit{Arthur v. Maersk, Inc.}\(^12\) the Third Circuit considered an appeal by a merchant seaman who had sued in admiralty to recover damages for injuries sustained aboard a number of vessels.\(^13\) The plaintiff sued his employers, as owners of the ships, only to discover after the statute of limitations had run that the United States Navy was the owner of the ships, and therefore the United States was the sole party liable for his claims.\(^14\) The plaintiff sought leave to

\(^7\) \textit{Id.} at 201.
\(^8\) \textit{Id.} at 200–01 (“\textit{Varlack} . . . [appeared to hold that] the amendment of a ‘John Doe’ complaint met all of the conditions for Rule 15(c)(3) relation back, including the ‘but for a mistake’ requirement.”).
\(^9\) \textit{Id.} at 201 (acknowledging that the First, Second, Fourth, Fifth, Sixth, Seventh, and Eleventh Circuits were contrary to \textit{Varlack}).
\(^10\) \textit{Id.} at 201 n.5. Judge Becker noted three additional reasons for this view: (a) that particularly in civil-rights cases, plaintiffs are unaware of the parties who violated their rights and could only hope to determine who is responsible after filing suit; (b) concerns for fairness to new defendants are already protected by the requirements of the rule; and (c) that there is no reason to treat these cases differently than cases involving adding or changing a party which also involve lack of knowledge errors. \textit{Id.}
\(^12\) \textit{Arthur v. Maersk, Inc.}, 434 F.3d 196 (3d Cir. 2006).
\(^13\) \textit{Id.} at 199–200.
\(^14\) \textit{Id.} at 200–02. In \textit{Wilson v. United States Government}, 23 F.3d 559 (1st Cir. 1994), the court considered an almost identical situation. The court concluded that the notice and knowledge requirements of the rule had not been met, but went on to cite with approval the Seventh Circuit authority and conclude that there was “no doubt
amend his complaint to add the United States, a request which was granted by the district court. However, that court then denied relation back, even though the court acknowledged that the requirements of Rule 15(c) had been met, because of what the district court perceived as undue delay in filing the amendment. The court of appeals rejected the district court’s argument and then went on to consider whether relation back was warranted, which in its view depended solely on the question of whether the amendment involved a “mistake.” After first rejecting the government’s argument that there was no mistake since the plaintiff was an experienced seaman and should have known that the ships were public vessels, the court raised the issue of whether a mistake arising from the plaintiff’s lack of knowledge of the agency relationship between the government and the ship operators would satisfy the relation back rule. The court acknowledged that the majority of courts had limited relation back to “misnomer or misidentification,” which was not the case here since the plaintiff’s error was the result of a lack of knowledge as to the proper defendant, but found that of no consequence. In clear, unambiguous language the court asserted that it saw nothing in the word “mistake” that would limit it to misnomers and misidentifications as a definitional matter. More importantly, the difference in the cause of the error was irrelevant to the purpose of the relation back rule, which the court viewed as designed to protect plaintiffs when those “errors render the plaintiff unable to identify the potentially liable party and unable to name that party in the original complaint.” The court reinforced this idea by making the textual argument that if the rule was really limited to misnomers and misidentifications, there would be that Rule 15(c) is not designed to remedy such mistakes.”

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87 Arthur, 434 F.3d at 201.
88 Id. at 201–02. The Supreme Court rejected undue delay as a basis for denying relation back in Krupski. Krupski v. Costa Crociere S.p.A., 130 S. Ct. 2485, 2496–97 (2010) (“The plaintiff’s postfiling conduct is ... immaterial to the question whether an amended complaint relates back.”).
89 Arthur, 434 F.3d at 204–06. While the district court concluded that the requirements of the rule had been met, it denied relation back because there had been undue delay by the plaintiff in asserting the amended complaint changing the party to the United States. Id. at 202. The court of appeals concluded that undue delay was a reason to deny leave to amend under Rule 15(a), but was not relevant to the issue of relation back of that amendment. Id. 204–05. Ultimately, the court decided that the delay was not sufficiently “undue” to warrant refusal to allow the amendment. Id. at 204–06.
90 Id. at 207 (“The sole question is whether the United States knew or should have known that, but for a ‘mistake’ ... it would have been named in the original complaint. ... [T]he United States argues that ... there is no basis on which to find that a ‘mistake’ occurred.”).
91 See id. at 207–08.
92 Id. at 208.
93 Id.
94 See id. (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1446 (1981)) (noting that mistake is defined as “a wrong ... statement proceeding from faulty judgment, inadequate knowledge, or inattention”).
95 Id. (citing 3 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 15.19[3][d] (3d ed. 1997)).
no purpose to the provision that refers to "changes the party," since it would not qualify as a misnomer.96

The reasoning in Singletary and Arthur clarified the position of the Third Circuit, first suggested by Varlack, but it appeared to be a lone dissent to the majority of courts that followed the Seventh Circuit's narrow approach to the issue of relation back. However, the Fourth Circuit Court of Appeals, which had previously adopted the Seventh Circuit rule,97 chose to revisit this question, sitting en banc, in Goodman v. Praxair, Inc.98

In Goodman the court faced a successor-in-interest case in which the plaintiff had entered into a contract with a company to provide certain lobbying activities, and that company breached the contract by failing to pay money owed under the contract.99 The breaching company was then acquired by Praxair Services, Inc., a wholly owned subsidiary of Praxair, Inc.100 The original complaint named Praxair, Inc. as the defendant, but when the plaintiff discovered that Praxair Services, Inc. was the entity that had acquired the company, he filed an amended complaint naming the subsidiary as an additional defendant.101 The defendants then moved to dismiss the action as barred by the statute of limitations.102 The district court granted the motion, concluding that the action was time barred and relation back did not apply.103

The court of appeals determined that the district court had erred in granting the dismissal and remanded the case to the district court to determine whether the statute of limitations barred the action.104 However, the majority, seeing an opportunity in this en banc setting to clarify the Fourth Circuit's view, decided to consider the issue of relation back in the

96 Id. at 209. Judge Van Antwerpen dissented primarily on the view that the plaintiff knew that the United States was the proper party within the statute of limitations and so there was no mistake. Id. at 210 (Van Antwerpen, J., dissenting). He then turned to circuit precedent in Singletary to argue that if the plaintiff was really unsure of the proper defendant, he should have included a "John Doe" in his original filing, thus turning a sword to protect plaintiff's claim into a shield for the defendant to prohibit plaintiff's claim. Id. at 211–12.

99 Id. at 461–62.
100 Id. at 462–63. Goodman brought suit in state court and named Praxair, Inc. as the defendant. Id. at 461. Praxair removed the case to federal court and then moved to dismiss on the grounds that it was not liable under the contract. Id. at 463.
101 Id. at 463–65.
102 Id. at 463.
103 Id. The district court concluded that the rule did not apply because the amendment did not change the party, but added a party; the plaintiff was aware of the subsidiary so it was not a mistake under the rule; and the plaintiff had failed to prove the subsidiary met the "knew or should have known . . . but for a mistake" requirement. Id.
104 See id. at 466.
event that the district court concluded on remand that the statute of limitations had run.\textsuperscript{105} Unlike other cases that began by focusing on the meaning of the word “mistake” in Rule 15(c), the Fourth Circuit began its analysis by recognizing that the text of the rule sought to balance two competing policies.\textsuperscript{106} On the one hand, the Advisory Committee sought to encourage decisions on the merits by allowing for liberal pleading and amendments by plaintiffs.\textsuperscript{107} In turn, those interests had to be weighed against the defendant’s right to repose that is reflected in the statute of limitations.\textsuperscript{108} As such, the court reasoned that the goal should be to allow amendments and relation back so long as “the policies of the statute of limitations have been effectively served.”\textsuperscript{109} This approach allowed the court to apply the rule by focusing on whether the amendment arose from the same events; whether the new party, within the time period required, received sufficient notice of the suit so as not to be prejudiced; and whether he understood his connection to the litigation.\textsuperscript{110} If he did, then the new party had received what the statute of limitations required, and so the liberal amendment rules set out in Rule 15 should operate.\textsuperscript{111} In that context, the term “mistake” serves little purpose since the amending party’s state of mind is not relevant to the inquiry raised by Rule 15(c).\textsuperscript{112} It is only a reference for the cause of the plaintiff’s amendment, and to consider it as having any other significance would waste judicial time parsing the ambiguous meaning of the term when it plays no role in deciding whether the plaintiff should be able to have his amendment relate back.\textsuperscript{113} As the court concluded:

The Rule’s emphasis on notice, rather than on the type of “mistake” that has occurred, saves the courts not only from an unguided and therefore undisciplined sifting of reasons for an amendment but also from

\textsuperscript{105} Id. at 466 & n.2 (“We decide the relation-back issue because the district court’s holding on that issue is broader than the limitations issue and would, if left intact, result in an erroneous judgment if further proceedings revealed that the amended complaint was filed outside of the limitations period.”).

\textsuperscript{106} Id. at 467.

\textsuperscript{107} Id.

\textsuperscript{108} Id. at 467–68.

\textsuperscript{109} Id. at 468 (citing 3 MOORE ET AL., supra note 95, ¶ 15.19(3)(a)) (“The purpose of Rule 15(c) is to provide the opportunity for a claim to be tried on its merits, rather than being dismissed on procedural technicalities, when the policy of the statute of limitations has been addressed.”).

\textsuperscript{110} Id. at 470.

\textsuperscript{111} See id. at 471 (“When that party has been given fair notice of a claim within the limitations period and will suffer no improper prejudice in defending it, the liberal amendment policies of the Federal Rules favor relations-back.”).

\textsuperscript{112} See id. at 470.

\textsuperscript{113} See id. (citing Arthur v. Mared, Inc., 434 F.3d 196, 208 (3d Cir. 2006)). The nature of what caused the plaintiff to seek to amend may be relevant to whether the amendment should be allowed in the first instance under Rule 15(a).
prejudicing would-be defendants who rightfully have come to rely on the statute of limitations for repose.114

IV. Krupski and a Movement Toward a Consistent Application of the Rule

While using somewhat different reasoning, the Arthur and Goodman cases show a clear divergence by the Third and Fourth Circuits from the majority rule developed originally in the Seventh Circuit. Moreover, in some circuits that had adopted the majority rule, courts have moved away from a more restrictive reading of that rule,115 or created exceptions to its strict interpretation.116

These divergent views created an uncertainty and inconsistency in the application of the rule across circuits. Recognizing this, the United States Supreme Court recently addressed the proper interpretation of the relation back rule in Krupski v. Costa Crociere S.p.A.117

In Krupski, the plaintiff was injured aboard a cruise ship, the Costa Magica, and after failing to negotiate a settlement, filed a suit against Costa Cruise Lines, apparently believing that Costa Cruise was the owner of the ship and therefore the responsible party.118 In fact, Costa Cruise Lines was the sales and marketing agent for the owner, Costa Crociere S.p.A., and the passenger ticket named Costa Crociere S.p.A. and others as the carrier.119 This confusion only became apparent to the plaintiff after the running of the statute of limitations, at which point she moved to amend the complaint to name Costa Crociere as a defendant.120 While the district court allowed

114 Id. at 473.
115 Compare Wilson v. United States Gov't, 23 F.3d 559, 563 (1st Cir. 1994) (citing Worthington v. Wilson, 8 F.3d 1253, 1256 (7th Cir. 1993)) (stating that a lack of knowledge as to the proper defendant was not a mistake for purpose of relation back), with Morel v. DaimlerChrysler AG, 565 F.3d 20, 22, 26-27 (1st Cir. 2009) (determining that the mistake requirement was met where plaintiff sought damages from the manufacturer of a vehicle and named DaimlerChrysler Corporation instead of the successor in interest to the manufacturer, DaimlerChrysler AG), and Leonard v. Parry, 219 F.3d 25, 27, 29-31 (1st Cir. 2000) (acknowledging that, where plaintiff sued the wrong defendant who he thought was the driver of the car in the accident, plaintiff's lack of knowledge was sufficient for the mistake language of the rule, and distinguishing Wilson on the view that it involved a "mistake in the selection of legal theory" because plaintiff chose to sue his employers rather than the government who was the owner of the ships involved and the only potentially liable party). While the court sought to distinguish Wilson in Leonard, the cases show a transition to accepting the lack of knowledge standard for mistake.
116 See Howard v. City of New York, No. 02-CV-1731, 2006 WL 2597857, at *4-5 (S.D.N.Y. Sept. 6, 2006) (acknowledging the Second Circuit view that lack of knowledge does not satisfy the mistake requirement, but citing cases that make exceptions in pro se cases).
118 Id. at 2490.
119 Id. at 2490-91.
120 Id. at 2491.
the amendment, it rejected relation back of the amendment on the view that there was no mistake by the plaintiff.\textsuperscript{121} In the court's view, Krupski knew of the existence of Costa Crociere before the statute of limitations ran out and simply lacked knowledge as to the correct defendant.\textsuperscript{122} Since she made a conscious choice as to whom to sue, there was no mistake and therefore no basis for relation back.\textsuperscript{123} The Eleventh Circuit affirmed the district court in a per curiam decision, citing circuit precedent that a lack of knowledge as to the proper defendant is not a mistake for purposes of the rule.\textsuperscript{124} In doing so, the Eleventh Circuit followed the majority view as reflected in cases, such as \textit{Wood, Hall}, and \textit{Nassim}.\textsuperscript{125} The court of appeals focused on what the plaintiff knew or should have known within the period of the statute of limitations.\textsuperscript{126} Since Krupski knew of the existence of Costa Crociere, but chose to sue Costa Cruise, she did not make a "mistake" under the rule because she named the party she intended to sue.\textsuperscript{127} The fact that she chose the wrong company was the result of a lack of knowledge, which was irrelevant under a rule that the court perceived as only applying to misnomers and misidentifications.\textsuperscript{128}

In reversing the Eleventh Circuit, the Supreme Court acknowledged that it had taken the case "to resolve tension among the Circuits over the breadth of Rule 15(c)(1)(C)(ii)."\textsuperscript{129} Unlike the Eleventh Circuit, which focused exclusively on what the plaintiff knew, the Supreme Court viewed the starting point as the knowledge of the new defendant, that is, whether the new party knew or should have known within the time period that it would have been named in the suit "but for an error."\textsuperscript{130} In turn, the plaintiff's knowledge is only relevant as it relates to the prospective defendant's awareness that the plaintiff made a mistake as to whom to

\textsuperscript{121}Id. at 2491–92.

\textsuperscript{122}Id. at 2942.

\textsuperscript{123}Id.

\textsuperscript{124}Krupski v. Costa Cruise Lines, N.V., LLC, 330 F. App'x 892, 895–96 (11th Cir. 2009), re'vd, Krupski, 130 S. Ct. 2485.

\textsuperscript{125}See discussion supra Part III.B.

\textsuperscript{126}Krupski, 330 F. App'x at 894–95.

\textsuperscript{127}See id. at 895 ("Even the most liberal interpretation of 'mistake' cannot include a deliberate decision not to sue a party whose identity [the] plaintiff knew from the outset." (quoting \textit{Power. v. Graff}, 148 F.3d 1223, 1227 (11th Cir. 1998)) (alteration in original)).

\textsuperscript{128}Id. ("Rule 15(c)'s mistake proviso is included 'to resolve the problem of a misnamed defendant and allow a party to correct a formal defect such as a misnomer or misidentification.'" (quoting Wayne v. Jarvis, 197 F.3d 1098, 1103 (11th Cir. 1999)) (internal quotation marks omitted)).

\textsuperscript{129}Krupski v. Costa Crociere S.p.A., 130 S. Ct. 2485, 2492 (2010). In an accompanying footnote the court summarized the circuit split. See id. at 2493 n.2. It then concluded, "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)." Id.

\textsuperscript{130}Id. at 2493.
The Court acknowledged that if the plaintiff had made "a deliberate choice to sue one party instead of another while fully understanding the factual and legal differences between the two parties," there would be no mistake. Because the prospective defendant would have a reasonable expectation of repose, relation back would not be allowed. But if the plaintiff made its choice without adequate understanding of the factual and legal differences between the parties, and the new defendant understood that, it would establish that the defendant knew it was the proper defendant within the prescribed time limit. In so stating, the Court clearly rejected the view of the majority of courts of appeals that there is never a mistake for purposes of the rule when the plaintiff makes a deliberate decision not to sue a prospective defendant whose identity is known to the plaintiff.

The Court applied the reasoning to the facts of the case and concluded that relation back should have been granted. Here, Costa Crociere had constructive notice of the lawsuit within the period, and the complaint made clear that the plaintiff was attempting to sue the carrier, which the plaintiff erroneously believed was Costa Cruise. Therefore, the Court ruled that Costa Crociere should have known it was the proper party since it was apparent that the plaintiff did not have an understanding of the difference between Costa Cruise Lines and Costa Crociere. Thus, the Supreme Court treated the mistake component as a mechanism to insure that the plaintiff's conduct was based on a lack of knowledge or understanding for...
which the defendant should not be able to take advantage of the statute of limitations.\textsuperscript{140}

V. APPLYING THE PROPER APPROACH IN ANALYZING RULE 15(c)(1)(C)(ii)

Early in the \textit{Krupski} opinion, Justice Sotomayor stated that the Court sought to “resolve [the] tension among the Circuits” over the proper interpretation of the relation back rule.\textsuperscript{141} Therefore, what remains is to examine whether and how the \textit{Krupski} analysis resolves the conflicting positions of the circuit courts in considering the categories of cases in which relation back most commonly occurs.\textsuperscript{142}

As to the first category of misnomers and misidentifications, it has always been agreed that the rule would allow for relation back.\textsuperscript{143} However, it is also clear after \textit{Krupski} that relation back is not limited to those terms. The Court makes clear that a mistake includes cases in which the plaintiff lacked knowledge as to the proper party and is not limited to “a mere slip of the pen,” as had been asserted by a majority of the courts of appeals.\textsuperscript{144} While those courts have argued that this would circumvent the statute of limitations, the Supreme Court has clearly affirmed that a broader view of the rule strikes the proper balance of relation back and the statute of limitations.\textsuperscript{145} Such a balance was the very intention of the Advisory Committee in proposing the 1966 amendments to Rule 15.\textsuperscript{146}

This is also the case in a situation in which a plaintiff knows of the existence of a person, but does not know that the person is potentially liable in the plaintiff’s action. The \textit{Krupski} Court makes clear that these cases meet the mistake requirements for relation back and, in doing so, rejects the view of those courts that have characterized these facts as situations in which there was no mistake of identity—because the plaintiff sued the intended party and made a conscious choice in not suing others\textsuperscript{147}—reasoning that the plaintiff “knew who those parties were and made a mistake in who it determined it ought to sue under the circumstances.”\textsuperscript{148} Here the Court

\textsuperscript{140}See id. at 2494 ("[R]epose 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.").

\textsuperscript{141}Id. at 2492.

\textsuperscript{142}See infra text accompanying notes 8–15.

\textsuperscript{143}See, e.g., Roberts v. Michaels, 219 F.3d 775 (8th Cir. 2000).

\textsuperscript{144}See \textit{Krupski}, 130 S. Ct. at 2494.

\textsuperscript{145}Id.

\textsuperscript{146}See FED. R. CIV. P. 15 advisory committee’s note to 1966 amendment.

\textsuperscript{147}See supra text accompanying notes 62 and 90.

expands the concept of mistake of identity to include those situations in which a plaintiff knows of a prospective defendant, but misperceives his status or role in the events giving rise to the claim, and those in which the plaintiff may not have known of the existence of the prospective party until after the statute had run. In both cases, the key question is whether the plaintiff had a full understanding of the facts and law in making the decision either not to sue a prospective defendant or to sue another defendant. If she did so without that full understanding, she would have made a mistake as to the proper party's identity, warranting relation back if the prospective defendant understood her mistake. At the same time, the Supreme Court makes clear that if the plaintiff had made an affirmative decision not to sue a party, and subsequently changed her mind after the statute of limitations had run, the plaintiff would not have made a mistake of identity, but just as importantly, the new defendant would have a strong argument that failing to sue the known potential defendant would not meet the "knew or should have known" component of the rule.

The final situation to consider is the John Doe placeholder case, which was the factual setting for the original rejection of the "lack of knowledge" analysis in the Wood case. While some courts have treated John Does and other changes of parties in the same way, there is a distinct difference with these placeholder cases. In the other situations we have considered, there has clearly been some error caused by some lack of understanding on the part of the plaintiff. In John Doe cases it can be argued that the plaintiff has not made a mistake, but is acknowledging that there is or may be

ASARCO, Inc., 5 F.3d 431, 434 (9th Cir. 1993).

149 Krupski, 130 S. Ct. at 2494; see, e.g., Nassim, 107 F.3d at 918 (involving claim by plaintiff that she did not originally sue the new defendant because she did not think it was the liable party); see also Wilson v. United States Gov't, 23 F.3d 559, 560, 563 (1st Cir. 1994) (involving suit where plaintiff sued his employers, believing they were owners of the boat where he was injured, and later learned that the United States was the owner, resulting in court concluding that the plaintiff "fully intended to sue GEGS, he did so, and GEGS turned out to be the wrong party. We have no doubt that Rule 15(c) is not designed to remedy such mistakes."). In taking this position the courts were viewing the rule as only applying to misnomers and misidentifications. While not being originally sued might be a basis for the new defendant to argue that it did not know it was a proper party to the action, it is not a basis to claim that the plaintiff did not make a mistake under the rule. Contra Mord v. DaimlerChrysler AG, 565 F.3d 20, 27 (1st Cir. 2009).

150 See discussion supra Part IIIA.

151 See supra text accompanying notes 53–58.
another defendant or defendants. However, he does not know that person’s identity.\textsuperscript{155} As a result, if one reads the rule’s mistake language and the Court’s analysis in \textit{Krupski} as requiring an error caused by a lack of understanding, it presents a superficially stronger linguistic argument than in the other situations discussed that no mistake is involved. The Court in \textit{Krupski} is careful to use the error/mistake language in applying the rule, which suggests some support for this position. However, the Court also makes clear that the language is designed to protect against only strategic choices, not those that occur as a result of a lack of knowledge concerning the identity of the proper defendant.\textsuperscript{156} If that prospective defendant has notice and knowledge that it would be a proper defendant but for a lack of factual understanding as to his identity, the prospective defendant would have the very windfall protection of the statute of limitations that the Court sought to prohibit in \textit{Krupski}.\textsuperscript{157} Such a reading is also consistent with the policy of the rule, which is to allow decisions on the merits as long as the policy of the statute of limitations is satisfied.\textsuperscript{158} To read this language as a bar to John Doe amendments, while allowing relation back to changes of parties or the addition of parties, would be inconsistent with the text and the purpose of the rule.

The text of the rule sets the parameters that apply to changes to the party or the naming of the party. In the setting of an amendment that replaces a John Doe with the actual party, the amendment “changes the party,” and so provides entry to the rule. The plaintiff must then show that the notice and knowledge components are met so that the new party is not prejudiced.\textsuperscript{159} Consistent with \textit{Krupski}, the “mistake” language is designed to insure that the rule may only be used when the plaintiff did not have an understanding of the prospective defendant’s identity.\textsuperscript{160} If the prospective defendant knows this, it should not be given the windfall of the statute of limitations any more than a prospective defendant whose status or role was not fully understood.\textsuperscript{161}

\textsuperscript{155} See Goodman v. Praxair, Inc., 494 F.3d 458, 470–71 (4th Cir. 2007). This is the very situation in \textit{Wood}, and it allowed courts to apply the rule in other situations. See \textit{Wood v. Worachek}, 618 F.2d 1225, 1230 (7th Cir. 1980).

\textsuperscript{156} See \textit{Krupski}, 130 S. Ct. at 2496.

\textsuperscript{157} See id. at 2494.

\textsuperscript{158} See Goodman, 494 F.3d at 471; Singletary v. Pa. Dept’t of Corr., 266 F.3d 186, 201 n.5 (3d Cir. 2001); see also supra text accompanying notes 15–20.

\textsuperscript{159} Goodman, 494 F.3d at 470 (“The Rule’s description of when such an amendment relates back ... focuses on the notice to the new party and the effect on the new party that the amendment will have. These core requirements preserve for the new party the protections of a statute of limitations.” (citation omitted)).

\textsuperscript{160} See id. at 471.

\textsuperscript{161} Id. (“The ‘mistake’ language is textually limited to describing the notice that the new party had, requiring
The important point is that the plaintiff has an opportunity to have his amended claim heard against the newly named party who has replaced the John Doe, but only if the plaintiff can show that the new defendant had the proper notice and knowledge that the rule requires. In this way, a proper balance is struck between the defendant's right to repose and the plaintiff's right to proceed with his claim.

VI. CONCLUSION

In adopting amendments to the relation back provisions of Rule 15(c) in 1966, the Advisory Committee sought to clarify and liberalize the relation back of amendments, changing the party or the naming of the party, in light of the policy of encouraging decisions on the merits. However, the courts have often applied the rule in a narrow fashion that limits its utility as a tool to encourage decisions on the merits. Those courts focused on the mistake language in the rule and applied it only in cases of missomers and misidentifications. In doing so, these courts seek to protect defendants' rights to repose without acknowledging the fact that those rights have to be balanced against plaintiffs' rights to have a case heard on the merits. In recent years, some courts have begun to expand the application of the rule to a far wider range of cases, which allows the rule to be used in a way that is consistent with the Advisory Committee's intent to encourage decisions on the merits. The tension created by these conflicting cases has been resolved by the Supreme Court's opinion in *Kruski v. Costa Crociere S.p.A.*, which makes clear that courts should read the rule in a way that strikes a proper balance between the interests of the parties and thus avoid a crabbed reading of the rule that would limit its use to "a slip of the pen."