

LEGAL ALERT

SUPREME COURT ALLOWS LATE FILING BASED ON DEFENDANT'S KNOWLEDGE

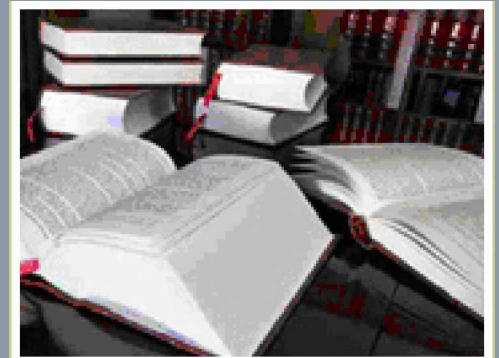
A plaintiff who sues the wrong defendant can sometimes add the right defendant as a party even if the statute of limitations has run on filing against the right party. This is allowed under the doctrine of "relation back" by which the late filing relates back to the original, timely, filing, which is provided for (in certain circumstances) under Federal Rule of Civil Procedure 15(c).

The noteworthy aspect of *Krupski v. Costa Crociere S. p. A.*, No. 09-337, 2010 WL 2243705, (U.S. June 7, 2010) is that the court focused on the knowledge of the correct defendant, rather than on the diligence of the plaintiff.

Rule 15(c) allows relation back if the claim against the new defendant (1) arose out of the same conduct, transaction or occurrence; (2) the new defendant received notice within a specified period (generally within 120 days of the original filing) such that it will not be prejudiced in defending on the merits; and (3) within that same period, the new 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.

In *Krupski*, the plaintiff was injured on a cruise ship, the Costa Magica. Her ticket identified the carrier as Costa Crociere S. p. A., and also referred to Costa Cruise Lines N.V. as the issuer of the contract. The front of the ticket listed an address for Costa Cruise Lines, and said that Costa Cruises was the finest cruise company in the world. Plaintiff negotiated with Costa Cruise before the litigation but the efforts failed, and plaintiff filed suit shortly before the limitations period passed. Plaintiff sued Costa Cruise. Plaintiff later amended to add Costa Crociere S. p. A. ("Costa Crociere"). The lower courts dismissed Costa Crociere as a party.

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The Supreme Court took the case to resolve tension among the Circuits over the breadth of Rule 15(c)(1)(C)(ii). The court identified the question under the Rule as not whether plaintiff knew or should have known the identity of Costa Crociere, but whether Costa Crociere should have known it would have been named a defendant but for an error. The court rejected the argument that the fact that plaintiff chose to sue Costa Cruise was the key issue. A deliberate but mistaken choice does not prevent satisfaction of the Rule's requirements. A defendant who understood, or should have understood, that he escaped suit because the plaintiff misunderstood a crucial fact about the defendant's identity is not entitled to the bar of limitations. Costa Crociere should have known that but for plaintiff's mistake as to which "Costa" entity was in charge of the ship, it would have been named as a defendant.

The court also rejected the argument that the plaintiff unduly delayed amendment. The Rule does not provide that delay can justify denial of relation back. The Rule mandates relation back if the requirements are satisfied and does not leave the decision to judicial discretion.