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Erratum

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*Meg Tomlinson**

Federal Rule of Civil Procedure 15(c)(1)(C) governs amendments that change the party or naming of a party in a pleading after the statute of limitations has run. Many courts have found amendments identifying defendants previously named as John Doe to be outside the scope of the rule, holding that a lack of knowledge does not constitute a mistake under Rule 15. In 2010, however, the U.S. Supreme Court refocused the relation back inquiry on what the party to be brought in by amendment knew or should have known within the limitations period—away from what the plaintiff knew or should have known at the time of filing the complaint. In light of that decision, a number of federal district courts have reinterpreted Rule 15(c) and have begun to allow relation back for claims against John Doe defendants when the requirements of Rule 15(c) are met. This Note examines relation back for claims against John Doe defendants and concludes that this new approach is supported by the Supreme Court's relation back doctrine as well as the text and purpose of Rule 15(c), and it avoids the tension with Rule 11 that the John Doe rule creates.

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INTRODUCTION

On January 30, 2014, Michael Hagen's widow, Tiffany Hagen, filed a complaint on behalf of her late husband's estate after he was beaten to death by his cellmate at the Snake River Correctional Institute (SRCI).[1] Hagen's cellmate was a member of a white supremacist gang that had repeatedly threatened him.[2] The complaint alleged that, despite Hagen's numerous attempts to inform prison officials that he was being targeted by the gang, the officials failed to help him.[3] Instead, they repeatedly sent him to solitary confinement; once for refusal to comply with orders to return to his cell where a cellmate that had threatened him was waiting and again for an altercation arising out of the conflict with the gang.[4] During his second stay in solitary confinement, Hagen was told that he would be transferred to another prison after the stay was completed.[5] Instead, he was forced to return to general population and once again share a cell with a member of the white supremacist gang.[6] The following day, Hagen was found beaten and unconscious in his cell and died the next day from blunt force injuries to his head.[7] Hagen's murder was the second inmate-on-inmate homicide at SRCI within a year.[8]

After Hagen's death, Tiffany requested information from the Oregon Department of Corrections (DOC), the DOC's counsel, and the District Attorney's Office to discover the identities of those involved in the incident, but all cited an the ongoing investigation and refused to provide the

1. Hagen v. Williams, No. 14-CV-00165, 2014 WL 6893708, at *1 (D. Or. Dec. 4, 2014).
2. *Id.*
3. Complaint at 5–6, *Hagen*, 2014 WL 6893708 (No. 14-CV-00165).
4. *Id.*
5. *Id.* at 7.
6. *Id.*
7. *Id.*
8. *See id.* at 5.

information.[9] She later filed civil rights claims against a number of named supervisors and "John Doe" DOC employees at SRCI. She alleged violations of Hagen's Eighth Amendment right to be free from cruel and unusual punishment on the ground that DOC officials knew of the violence at SRCI and failed to prevent it.[10] After filing the complaint, Tiffany Hagen learned the identities of the individual officers through discovery.[11] By this point, however, the statute of limitations on the claims had expired, and when she moved to amend her complaint to identify the previously unnamed officers, the court held that the claims were time-barred as Tiffany's lack of knowledge of the officers' identities at the time of filing did not constitute a mistake under Rule 15(c).[12]

This Note examines whether an amendment identifying a John Doe defendant can relate back to the original complaint under Rule 15(c)(1)(C)(ii). That is, after the statute of limitations has expired, can a plaintiff amend the complaint to add the real names of defendants previously identified as John Doe? Courts considering the question have commonly found that such amendments are barred by the statute of limitations.[13] Many courts reach the same conclusion reached by the court in *Hagen*: even if the prospective defendant had notice of the action within the period for service of the complaint, the amendment does not relate back to the original complaint because a lack of knowledge of a prospective defendant's identity is not a "mistake concerning the proper party's identity" under Rule 15(c)(1)(C)(ii).[14] This approach is known as the John Doe rule.[15]

The U.S. Supreme Court's decision in *Krupski v. Costa Crociere S.p.A.*,[16] however, offers a better approach. Although *Krupski* did not involve John Doe defendants, it focused the inquiry under Rule 15(c)(1)(C)(ii) on whether the prospective defendant knew or should have known it would have been named as a defendant in the original action but for a mistake concerning its identity, and away from what the plaintiff knew or should have known at the time the complaint was filed.[17] In response to *Krupski*, a number of federal district courts have changed their approach and now allow relation back for claims against John Doe defendants when the other requirements of Rule 15(c) have been met.[18]

Scholars and courts alike have long noted the strong policy arguments in favor of an amendment to Rule 15(c) that allows relation back for claims

9. Hagen v. Williams, No. 14-CV-00165, 2014 WL 6893708, at *4 (D. Or. Dec. 4, 2014).
10. *See* Complaint, *supra* note 3, at 8.
11. *Hagen*, 2014 WL 6893708, at *5.
12. *Id.* at *5–6.
13. *See infra* Part II.A.
14. *See* FED. R. CIV. P. 15(c)(1)(C)(ii); *infra* Part II.A.
15. Cheatham v. City of Chicago, No. 16-cv-3015, 2016 WL 6217091, at *2 (N.D. Ill. Oct. 25, 2016).
16. 560 U.S. 538 (2010).
17. *Id.* at 548.
18. *See infra* note 221 and accompanying text.

against John Doe defendants.[19] Some have argued for a broader interpretation of Rule 15(c)'s mistake requirement even before *Krupski* shifted the relation back inquiry from the plaintiff's knowledge to the defendant's knowledge.[20] Others have acknowledged the ambiguity *Krupski* created with respect to relation back for claims against John Doe defendants[21] or have argued that the decision suggests that Rule 15(c) should not be interpreted to preclude amendments identifying John Doe defendants.[22] This Note builds on that scholarship by examining recent applications of *Krupski* in the context of relation back for claims against John Doe defendants. It argues that, in light of *Krupski*, courts should interpret Rule 15(c) to allow relation back for claims against John Doe defendants where the prospective defendant had timely notice of the action and knew or should have known that it was not named because the plaintiff lacked knowledge concerning its identity.

Part I examines the balance struck between relation back and statutes of limitations, as well as the use of John Doe pleading in federal court. Next, Part II describes courts' approaches to relation back for claims against John Doe defendants prior to the 2010 *Krupski* decision. Part III then describes the majority and minority approaches to this question after *Krupski*. It examines the textual, precedential, and purpose-based arguments in favor of each approach. Finally, Part IV of this Note argues that the minority's

19. *See* Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 202 n.5 (3d Cir. 2001) (arguing that an amendment to Rule 15(c) allowing relation back in the event of a mistake or lack of information concerning the identity of the proper party would bring the rule more in line with the policies underlying the Federal Rules of Civil Procedure); Rebecca S. Engrav, *Relation Back of Amendments Naming Previously Unnamed Defendants Under Federal Rule of Civil Procedure 15(c)*, 89 CALIF. L. REV. 1549, 1552–53 (2001) (arguing that the language of Rule 15(c) should be changed to allow relation back when the plaintiff did not know the identity of the correct defendant); Howard M. Wasserman, *Civil Rights Plaintiffs and John Doe Defendants: A Study in 1983 Procedure*, 25 CARDOZO L. REV. 793, 799 (2003) (arguing for a procedural mechanism for § 1983 claims that allows a potential civil rights plaintiff to obtain formal discovery from the government prior to filing a suit and before the statute of limitations expires); Brian J. Zeigler et al., *A Change to Relation Back*, 18 TEX. J. ON C.L & C.R. 181, 182–83 (2013) (arguing for an exception to Rule 15 in excessive force cases only).

20. Steven S. Sparling, *Relation Back of "John Doe" Complaints in Federal Court: What You Don't Know Can Hurt You*, 19 CARDOZO L. REV. 1235, 1238–39 (1997) (arguing that Rule 15(c) preserves § 1983 claims against John Doe defendants where the plaintiff lacked knowledge of the proper party's identity).

21. Edward F. Sherman, *Amending Complaints to Sue Previously Misnamed or Unidentified Defendants After the Statute of Limitations Has Run: Questions Remaining from the* Krupski *Decision*, 15 NEV. L.J. 1329, 1344–47 (2015); Heather Zinkiewicz, *Navigating the Course of Relation Back:* Krupski v. Costa Crociere S.p.A. *and Standardizing the Relation-Back Analysis*, 44 LOY. L.A. L. REV. 1197, 1211–12 (2011); Stacy H. Farmer, Comment, *The United States Supreme Court in* Krupski v. Costa Crociere, S.p.A. *Creates Additional Ambiguity in the Relation Back Doctrine*, 35 AM. J. TRIAL ADVOC. 207, 215–16, 224–26 (2011) (noting that *Krupski* has created confusion in relation back doctrine and arguing that the decision should be construed broadly).

22. Robert A. Lusardi, *Rule 15(c) Mistake: The Supreme Court in* Krupski *Seeks to Resolve a Judicial Thicket*, 49 U. LOUISVILLE L. REV. 317, 338 (2011) (arguing that, after *Krupski*, reading Rule 15(c) as barring John Doe amendments is not supported by the text or the purpose of the Rule).

rejection of the John Doe rule is supported by the text of Rule 15(c), Supreme Court precedent, and the purpose of the Federal Rules of Civil Procedure.

I. A BALANCING ACT: RELATION BACK, STATUTES OF LIMITATIONS, AND JOHN DOE PLEADING

This Part examines relation back under Rule 15, the connection between relation back and statutes of limitations, and John Doe pleading. Part I.A.1 explores the requirements for relation back under Rule 15(c), and Part I.A.2 describes the Supreme Court's interpretation of the rule in *Krupski*. Part I.B examines the connection between relation back and statutes of limitations. Part I.C explores the history and use of John Doe pleading.

A. Rule 15 and Relation Back

Rule 15 of the Federal Rules of Civil Procedure allows a party to amend a pleading to add or change a claim or party in the original complaint.[23] Depending on the circumstances, parties can amend pleadings as a matter of course, with the opposing party's consent, or with leave of the court. The rule instructs courts that they should "freely give leave [to amend] when justice so requires."[24] This guidance reflects the Rules' commitment to the notion that a claim should be decided on its merits rather than on the basis of mere technicalities.[25] In this respect, Rule 15 is emblematic of the shift from the common law regime, which rarely allowed amendments to pleadings, to a notice pleading system, which generally only requires that pleadings place parties on notice of the nature of and the basis for the claims or defenses asserted.[26]

Rule 15(c)(1)(C) governs amendments changing parties or the naming of parties after the relevant statute of limitation has expired. The Rule states that an amendment relates back to the date of the original pleading when:

> [T]he amendment changes the party or the naming of the party against whom a claim is asserted if [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] 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.[27]

23. FED. R. CIV. P. 15(a)(1)–(2).
24. *Id.* r. 15(a)(2).
25. 6 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1471, at 587 (3d ed. 2010).
26. *Id.* § 1471, at 584–85.
27. FED. R. CIV. P. 15(c).

This subsection is viewed as having three separate requirements: the notice requirement, the change-of-parties requirement, and the knowledge-of-mistake requirement.[28]

1. Rule 15(c): Notice, Change of Parties, and Knowledge-of-Mistake Requirements

The requirement that the defendant receive adequate notice of the original action has been described as the "linchpin" of relation back.[29] This requirement is set forth in Rule 15(c)(1)(C)(i), which requires that the party to be brought in by amendment receive adequate notice of the action within the period for service under Rule 4(m).[30] Rule 4(m) requires service of summons and the complaint within ninety days of filing.[31] Thus, Rule 15(c)(1)(C) requires a defendant to be brought into an action to have received notice of the action within ninety days of the filing of the original complaint such that it will not suffer prejudice in defending against the claim on its merits.[32]

Notice of the action need not be formal, so long as it is sufficient to ensure that the party will not be prejudiced in defending against the claims asserted.[33] Formal notice often comes from service of the complaint,[34] but informal notice can take a variety of forms. Some courts require the prospective defendant to have actual awareness of the suit.[35] For example, in *Lembach v. Indiana*,[36] the court held that, despite the fact that individual corrections officers may have been aware of the facts underlying an inmate's civil rights claim, the amendment adding them as parties did not relate back, because Rule 15 required that they have notice of the suit itself.[37]

Other courts, however, have allowed constructive or imputed notice.[38] Constructive notice—also known as implied notice—is often found when the circumstances surrounding the commencement of litigation suggest that the prospective defendant had reason to expect his potential involvement.[39] In

28. 6A WRIGHT ET AL., *supra* note 25, § 1498

29. Schiavone v. Fortune, 477 U.S. 21, 31 (1986); *see also* Lacedra v. Donald W. Wyatt Det. Facility, 334 F. Supp. 2d 114, 128 (D.R.I. 2004).

30. FED. R. CIV. P. 15(c)(1)(C)(i).

31. *Id.* r. 4(m).

32. Prior to Rule 15(c)'s amendment in 1991, the U.S. Supreme Court interpreted the notice requirement to require notice of the action within the statute of limitations. *Schiavone*, 477 U.S. at 31. In 1991, the Advisory Committee amended the rule to make clear that notice must be received within the period for service set forth in Rule 4(m), not within the limitations period. FED. R. CIV. P. 15(c)(3) advisory committee's note to 1991 amendment. The Advisory Committee explicitly stated that the rule had been revised to change the result in *Schiavone*. *Id.*

33. FED. R. CIV. P. 15 advisory committee's notes to 1966 amendment.

34. *See* Sanders-Burns v. City of Plano, 594 F.3d 366, 374 (5th Cir. 2010).

35. 6A WRIGHT ET AL., *supra* note 25, § 1498.1, at 138 & n.15.

36. 987 F. Supp. 1095 (N.D. Ind. 1997).

37. *Id.* at 1104.

38. 6A WRIGHT ET AL., *supra* note 25, § 1498.1, at 138–41, 141 n.16; *see, e.g.*, Davis v. Corr. Med. Sys., 480 F. Supp. 2d 754, 761 (D. Del. 2007).

39. *See* Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 195 (3d Cir. 2001).

Varlack v. SWC Caribbean, Inc.,[40] for example, the Third Circuit found that a prospective defendant had sufficient notice of the action when he coincidentally saw a copy of a complaint describing the incident giving rise to the action and naming his employer and "unknown employee" as defendants.[41]

Notice can also be imputed from the originally named party to the party to be added by amendment.[42] Notice can be imputed when a prospective defendant shares an identity of interest with a named defendant or when a prospective defendant and a named defendant share counsel.[43] Parties have an identity of interest when their business operations or other activities are so closely related that the commencement of an action against one provides notice of the litigation to the other.[44] In *Schiavone v. Fortune*,[45] the Supreme Court validated this method of imputing interest, finding that, when the complaint provided timely notice to the original defendant, notice can be imputed to a sufficiently related defendant added by amendment.[46]

The shared-attorney method permits imputation of notice to a prospective defendant who is represented by the same attorney as the originally named defendant.[47] This theory recognizes that the attorney for the named defendant is likely to discuss with the prospective defendant the likelihood that he may be joined in the action, thus providing the prospective defendant with notice of both the action and his potential involvement.[48] The fact of shared counsel is sometimes viewed as simply demonstrating an identity of interest with the originally named party, but courts generally treat the two as separate methods of imputing notice.[49]

Rule 15(c)(1)(C) is also viewed as having a change-of-parties requirement, as the rule governs relation back of amendments that "change[] the party or the naming of the party against whom a claim is asserted."[50] Courts differ in their interpretations of this subsection. Some courts interpret the change-of-parties requirement narrowly and allow only the correction of misnomers or substitutions of one party for another—not the addition of new parties.[51]

40. 550 F.2d 171 (3d Cir. 1977).
41. *Id.* at 175.
42. 6A WRIGHT ET AL., *supra* note 25, § 1498.1, at 138–51.
43. *See Singletary*, 266 F.3d at 195–99.
44. *Id.* at 197.
45. 477 U.S. 21 (1986).
46. *Id.* at 29.
47. *Singletary*, 266 F.3d at 197.
48. *Id.* at 196.
49. *Id.* at 197.
50. FED. R. CIV. P. 15(c)(1)(C); *see also* 6A WRIGHT ET AL., *supra* note 25, § 1498.2.
51. *See, e.g.*, Stewart v. Bureaus Inv. Grp., LLC, 309 F.R.D. 654, 659–60 (M.D. Ala. 2015) ("[T]he plain language of Rule 15 advises that amendments relate back only when 'the plaintiff redirect[s] an existing claim toward a different party, and drop[s] the original party'" (second and third alterations in original) (quoting Telesaurus VPC, LLC v. Power, No. CV 07-01311-PHX-NVW, 2011 WL 5024239, at *3 (D. Ariz. Oct. 21, 2011))); Stew Farm, Ltd. v. Nat. Res. Conservation Serv., 967 F. Supp. 2d 1164, 1175–76 (S.D. Ohio 2013) (holding that relation back is unavailable to amendments naming additional defendants, rather than simply correcting a misnomer or substituting parties).

Other courts adopt a broader interpretation that permits amendments that add or drop parties.[52]

The final requirement under Rule 15(c)(1)(C) is that the party to be added "knew or should have known" that it would have been named in the original action "but for a mistake concerning the proper party's identity."[53] Unlike Rule 15(c)'s notice requirement, which addresses a prospective defendant's awareness of the original action, this subsection addresses the prospective defendant's awareness that it was not named in the original action solely because of a mistake concerning its identity.[54]

The Advisory Committee on the Federal Rules of Civil Procedure has elaborated on the requirements for relation back in its notes accompanying several amendments to the rule. In its note to the 1966 amendment to Rule 15(c), the Advisory Committee observed that relation back problems had commonly arisen in private actions against officers or agencies of the federal government.[55] The Committee described situations in which plaintiffs brought suit before the statute of limitations expired but mistakenly named improper defendants, such as the United States, a recently retired Secretary, or a nonexistent agency such as the "Federal Security Administration."[56] After learning of their mistakes, the plaintiffs moved to amend their complaints. Their motions were denied on the ground that the statute of limitations had expired.[57] The Committee characterized these decisions as "question-begging" and unresponsive to reality, stating that the denial of relation back under these circumstances robbed the plaintiffs of their opportunity to prove their cases.[58] The Advisory Committee went on to explain that relation back should be allowed when the party to be brought in by amendment received timely notice of the action, formal or informal, such that it would not be prejudiced by defending against the claim, and knew or should have known that it would have been named in the original action but for the plaintiff's mistake concerning the identity of the proper party.[59]

Neither Rule 15 nor the Advisory Committee notes expressly defines "mistake" under Rule 15(c)(1)(C)(ii), but they do offer some guidance.[60] Rule 15(c)(1)(C)(ii) clarifies that a mistake under the rule must concern the proper party's identity.[61] The note to the 1966 amendment describes various situations in which claimants "mistakenly" named improper government

52. *See, e.g.*, Goodman v. Praxair, Inc., 494 F.3d 458, 468–69 (4th Cir. 2007) (interpreting "change" to encompass additions because "an *addition* to something is generally regarded as a *change* to that thing"); *see also* Covey v. Assessor, 666 F. App'x 245, 247 (4th Cir. 2016) ("Rule 15(c)(1) requires that the party to be *added* to the action received timely notice . . . ." (emphasis added)).

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

54. 6A WRIGHT ET AL., *supra* note 25, § 1498.3.

55. FED. R. CIV. P. 15(c) advisory committee's notes to 1966 amendment.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *See* FED. R. CIV. P. 15; *id.* r. 15 advisory committee's notes to 1991 amendment; *id.* r. 15 advisory committee's notes to 1966 amendment.

61. *Id.* r. 15(c)(1)(C)(ii).

defendants.[62] Similarly, the note to the 1991 amendment to Rule 15(c)(3) (now Rule 15(c)(1)(C)) provides an example of a mistake in its description of an amendment to correct "a formal defect such as misnomer or misidentification."[63] Thus, despite offering some general examples of mistakes under Rule 15(c), neither the Advisory Committee's notes to the rule's amendments nor the text of the rule itself clearly defines what qualifies as a mistake under the rule.[64]

2. The Supreme Court's Interpretation of Rule 15(c)(1)(C)(ii) in *Krupski*

In 2010, the Supreme Court addressed the knowledge-of-mistake requirement in *Krupski*.[65] In February 2007, Wanda Krupski took a cruise on the Costa Magica, a ship owned and operated by the Italian corporation Costa Crociere S.p.A. ("Costa Crociere").[66] While on board, Krupski broke her leg when she tripped over a cable.[67] Krupski sought counsel and, after attempts at settlement proved unsuccessful, filed a suit in the Southern District of Florida.[68] The suit, which was filed three weeks before the statute of limitations expired, named Costa Cruise Lines ("Costa Cruise"), the Florida-based sales and marketing agent for Costa Crociere as a defendant.[69] Costa Cruise notified Krupski of Costa Crociere's existence three times after the statute of limitations had expired: first in its answer where it asserted that Costa Crociere was the actual operator of the ship, then in its corporate disclosure statement, which listed Costa Crociere as an interested party, and finally in a motion for summary judgment on the ground that Costa Crociere, not Costa Cruise, was the proper defendant.[70] In response to Costa Cruise's motion for summary judgment, Krupski produced the information that led her to believe Costa Cruise was the proper party, including the fact that Costa Cruise's website listed its office in Florida as Costa Crociere's U.S. office.[71] The district court granted Costa Cruise's motion to dismiss but also granted Krupski leave to file an amended complaint.[72]

Shortly thereafter, Krupski filed an amended complaint naming Costa Crociere as the defendant.[73] In response, Costa Crociere moved to dismiss the complaint on the ground that it was barred by the statute of limitations because it did not relate back under Rule 15(c).[74] The court granted the

62. *See id.* r. 15(c) advisory committee's notes to 1966 amendment.
63. *Id.* r. 15(c) advisory committee's notes to 1991 amendment.
64. *See* Leonard v. Parry, 219 F.3d 25, 29 (1st Cir. 2000) (pointing to the examples offered by the Advisory Committee's notes to the 1966 to confirm its interpretation of "mistake" in the context of Rule 15(c)).
65. Krupski v. Costa Crociere S.p.A, 560 U.S. 538, 541 (2010).
66. *Id.* at 542.
67. *Id.* at 541.
68. *Id.*
69. *Id.* at 543.
70. *Id.* at 543–44.
71. *Id.* at 544.
72. *Id.*
73. *Id.*
74. *Id.* at 544–45.

motion, and the Eleventh Circuit affirmed in an unpublished per curiam opinion.[75] The Eleventh Circuit found that, because the information relevant to the proper party's identity was contained in Krupski's cruise ticket, it was appropriate to impute the knowledge of the proper party's identity to Krupski and her counsel.[76] In other words, Krupski either knew or should have known the proper party's identity before filing suit and therefore should be treated as having made a deliberate choice to sue one party over another.[77] The Eleventh Circuit further held that, even assuming Krupski did not learn of Costa Crociere as the proper party until Costa Cruise filed its answer, Krupski's delay in filing an amended complaint justified the district court's denial of relation back, regardless of whether Costa Crociere received sufficient notice of the action within the limitations period through its shared counsel and identity of interest with Costa Cruise.[78]

The Supreme Court reversed, finding that neither of the Eleventh Circuit's grounds for denying relation back was supported by the text of Rule 15(c).[79] The Court explained that the Eleventh Circuit "chose the wrong starting point" by focusing on Krupski's knowledge in determining whether or not she had made a mistake under Rule 15(c)(1)(C)(ii).[80] The proper inquiry, the Court explained, does not focus on what the plaintiff knew or should have known at the time of filing but instead on whether the prospective defendant knew or should have known that it would have been named as a defendant but for a mistake.[81] Thus, the plaintiff's knowledge is relevant only to the extent that it impacts the prospective defendant's understanding of whether its omission from the original complaint was the result of a mistake concerning the proper party's identity.[82]

The Court also rejected Costa Crociere's argument that the amended complaint did not relate back because Krupski unreasonably delayed filing it after learning of Costa Crociere's existence. The Court stated that Rule 15(c)(1)(C) "plainly sets forth an exclusive list of requirements for relation back, and the amending party's diligence is not among them."[83] Therefore, like the plaintiff's knowledge, a delay in amending is relevant only to the extent that it impacts the prospective defendant's knowledge that it would have been included in the original action but for a mistake concerning its identity.[84]

The Court found this reading to be supported by the balance struck within relation back doctrine between defendants' interests in repose after the expiration of the statute of limitations and the Federal Rules of Civil

75. Krupski v. Costa Cruise Lines, N.V., LLC, 330 F. App'x 892, 895–96 (11th Cir. 2009) (per curiam), *rev'd*, 560 U.S. 538.
76. *Id.* at 895.
77. *Id.*
78. *Id.* at 894–95.
79. *Krupski*, 560 U.S. at 547.
80. *Id.* at 548.
81. *Id.*
82. *Id.*
83. *Id.* at 553.
84. *Id.* at 554.

Procedure's preference for "resolving disputes on their merits."[85] The Court noted that a defendant's interest in repose is implicated most strongly when he legitimately believes that there has been no attempt to sue him within the limitations period, but that "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."[86]

In sum, *Krupski* directed courts to approach questions of relation back by focusing on a prospective defendant's awareness that the plaintiff intended to name it in the action.[87] By refocusing this inquiry, the Supreme Court invalidated plaintiff-focused approaches to relation back, holding that a plaintiff's knowledge, or lack thereof, is relevant only insofar as it impacts the defendant's awareness that it was meant to be sued.[88]

B. Relation Back and Policies Underlying Statutes of Limitations

As the Advisory Committee note to the 1966 amendment of Rule 15 observes, relation back is closely connected to the policies underlying statutes of limitations.[89] Statutes of limitations set a time limit for bringing a claim based on the date the claim accrued and bar claims that are not brought within that period.[90] They are "designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared," and they are supported by the theory that the right to be free from the indefinite possibility of defending against a claim eventually overcomes the right to bring even a meritorious claim.[91] Statutes of limitations reflect a "value judgment concerning the point at which interests in favor of protecting valid claims are outweighed by interests in prohibiting the prosecution of stale ones."[92]

Statutes of limitations do not affect merely the "manner and the means" by which a person can vindicate substantive rights but rather create a substantive right themselves.[93] Aside from the administrative aims of promoting judicial economy and requiring the diligent pursuit of claims, statutes of limitations also protect defendants' rights to a speedy and fair adjudication and to the security that comes with certainty that one will not be called to defend against

85. *Id.* at 550.
86. *Id.*
87. *See supra* note 81 and accompanying text.
88. *See supra* note 82 and accompanying text.
89. FED. R. CIV. P. 15 advisory committee's notes to 1966 amendment.
90. *Statute of Limitations*, BLACK'S LAW DICTIONARY (10th ed. 2014).
91. Order of R.R. Telegraphers v. Ry. Express Agency, Inc., 321 U.S. 342, 348–49 (1944).
92. 54 C.J.S. *Limitations of Actions* § 2 (2017).
93. Guar. Tr. Co. v. York, 326 U.S. 99, 109 (1945).

an outstanding claim years in the future.[94] These rights are referred to collectively as a defendant's right to repose.[95]

In applying relation back doctrine, courts often note the connection to statutes of limitations and express apprehension that too liberal an approach to relation back would allow plaintiffs to circumvent statutes of limitations' protections of a prospective defendant's right to repose.[96] Thus, courts are generally protective of statute of limitations defenses because they recognize the need for defendants to be able to rely on the repose promised by a statute of limitations.[97]

C. John Doe Pleading: From Fictional to Functional

John Doe pleading has its roots in English common law, where plaintiffs used fictional characters to minimize the effects of writ pleading's rigidity and to facilitate the pursuit of claims that did not fit into one of the predetermined categories that were the hallmark of that system.[98] In the American system, John Doe pleading can be traced back to the Field Code[99]—David Field's transformative overhaul of New York's Code of Civil Procedure.[100] The Field Code allowed a plaintiff that did not know the defendant's name to designate that defendant by any name and to amend the pleading once the name was discovered.[101] Thus, the shift to code pleading marked John Doe's transformation from a legal fiction into a stand-in for an actual but unidentified person.[102]

In contemporary civil litigation, John Doe pleading refers to the practice of naming intended but yet unidentified defendants as "John Doe."[103] This practice began in state courts, as many states adopted some form of the Field Code's provision allowing unidentified defendants to be given fictitious names.[104] The vast majority of states have adopted some provision for the use of fictitiously named defendants, whether by statute, in codes of civil

94. 54 C.J.S. *Limitations of Actions* § 3.

95. *See* Lozano v. Montoya Alvarez, 134 S. Ct. 1224, 1234 (2014) (explaining that statutes of limitations "characteristically embody a 'policy of repose'" (quoting Burnett v. N.Y. Cent. R.R., 380 U.S. 424, 428 (1965))).

96. *See, e.g.*, Goodman v. Praxair, Inc., 494 F.3d 458, 467–68 (4th Cir. 2007); Powers v. Graff, 148 F.3d 1223, 1226 (11th Cir. 1998) (citing Wells v. HBO & Co., 813 F. Supp. 1561, 1567 (N.D. Ga. 1992)).

97. 54 C.J.S. *Limitations of Actions* § 12 (citing Owen v. Gen. Motors Corp., 533 F.3d 913, 920 (8th Cir. 2008) (finding that statutes of limitations are not tolled in the absence of affirmative action designed to prevent the discovery of the cause of action).

98. Carol M. Rice, *Meet John Doe: It Is Time for Federal Civil Procedure to Recognize John Doe Parties*, 57 U. PITT. L. REV. 883, 890–91 (1996).

99. *Id.*

100. For an interesting discussion of the historical significance of the Field Code and its relation to the Federal Rules of Civil Procedure, see generally William Nelson, *Remarks: The History of New York Civil Procedure*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 659 (2013).

101. Rice, *supra* note 98, at 891–92 & n.27.

102. *Id.* at 892.

103. *See generally* David M. Epstein, Annotation, *Propriety of Use of Fictitious Name Defendant in Federal District Court*, 139 A.L.R. Fed. 553 (1997).

104. Rice, *supra* note 98, at 891–92 & n.27.

procedure, or by judicial decree.[105] Only Connecticut, Delaware, and Louisiana expressly reject John Doe pleading in civil actions.[106]

In contrast to the many state codes that address Doe pleading, the Federal Rules of Civil Procedure are notoriously "silent on the matter."[107] Indeed, Carol Rice has argued that the Federal Rules "simply do not contemplate" a situation in which a plaintiff does not know the identity of the proper defendant.[108] She notes that, while none of the federal rules address the matter directly, Rules 10(a) and 17(a) address the matter obliquely.[109] Rule 10(a) provides that the title of a complaint "must name all the parties."[110] While this may seem inconsistent with Doe pleading, Rice notes that Rule 10(a) is better interpreted as simply distinguishing the caption from the remainder of the complaint rather than establishing substantive rules related to name designation.[111]

Rule 17(a) states that actions "must be prosecuted in the name of the real party in interest."[112] The Advisory Committee note to the 1966 amendment of this provision is the only explicit mention of John Doe parties in the federal rules.[113] The note clarifies that, while the rule recognizes a broad class of parties as having standing as the real party in interest, the provision should not be construed to allow filing of an action in the name of a fictitious John Doe plaintiff to circumvent the statute of limitations by preserving a claim should a real victim come forward in the future.[114] Rice argues that this rule requires only that a claim be prosecuted by the party whose interests are implicated and does not govern the name under which a person must prosecute the claim.[115] Further, both Rule 17(a) and the Advisory Committee's note refer to the use of fictional or nonexistent John Doe plaintiffs;[116] neither appears to address the use of John Doe defendants as pseudonyms for real parties.[117]

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105. *Id.* at 892 n.27.

106. *Id.*

107. Donald P. Balla, *John Doe Is Alive and Well: Designing Pseudonym Use in American Courts*, 63 ARK. L. REV. 691, 692 (2010); *see also* Rice, *supra* note 98, at 892 n.27.

108. Rice, *supra* note 98, at 887. Rice also notes the other interesting questions that arise from the Rules' failure to acknowledge Doe parties, particularly in the context of venue and jurisdictional disputes. *See id.*

109. *See* Balla, *supra* note 107, at 694.

110. FED. R. CIV. P. 10(a).

111. Rice, *supra* note 98, at 915.

112. FED. R. CIV. P. 17(a)(1).

113. *See id* r. 17 advisory committee's notes to 1966 amendment.

114. *Id.*

115. Rice, *supra* note 98, at 916.

116. Claims by fictitious plaintiffs are most common when the plaintiff wants to remain anonymous because of the sensitive nature of the claims being asserted. *See id.* at 908. The most notable example is in the landmark reproductive rights case *Roe v. Wade*, 410 U.S. 113 (1973). Rice, *supra* note 98, at 909–10. The tensions raised by the use of fictitious names in this context are different from those raised by the use of fictitious defendants, and the plaintiff's privacy interest is often outweighed by practical needs and fairness to the defendant. *Id.*

117. *See* FED. R. CIV. P. 17(a); *id.* r. 17 advisory committee's notes to 1966 amendment.

Still, despite silence regarding the use of fictitious defendants in federal court, John Doe defendants are commonly named in complaints.[118] While the use of fictitious defendants is not favored, courts have recognized their utility as stand-ins for real parties to afford plaintiffs the opportunity to identify unknown defendants through discovery.[119] Thus, fictitious-name pleading is proper when it is reasonably likely that the discovery process will reveal the identity of the unknown defendant.[120]

John Doe defendants play a special role in civil rights litigation.[121] A well-known example comes from the Supreme Court's decision in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*,[122] where the Court first recognized a cause of action against federal law enforcement agents who violate an individual's constitutional rights.[123] Bivens's complaint did not name the specific federal agents allegedly involved in his unconstitutional arrest, but the district court ordered service against the agents indicated by the U.S. Attorney's records to have been involved in the arrest.[124] Thus, Bivens was able to discover the identities of those involved in his arrest with the district court's help.

Bivens is illustrative of the role that John Doe pleading plays for plaintiffs squaring off against large, institutional defendants, often in civil rights actions. As scholars have noted, a plaintiff in such a case often faces a catch-22: before filing suit, she cannot enlist the court's help through discovery requests or orders to discover the identity of unknown defendants, but she cannot file suit without naming a defendant.[125] As *Bivens* demonstrates, the ability to sue defendants under fictitious names like John Doe can be critical to receiving the assistance necessary to discover the unknown defendant's identity.[126]

II. PRE-*KRUPSKI* APPROACHES TO RELATION BACK FOR CLAIMS AGAINST JOHN DOE DEFENDANTS

Before the Supreme Court's decision in *Krupski*, virtually all federal circuit courts had adopted the position that Rule 15(c) allowed relation back when a plaintiff misidentified a prospective defendant but not when the plaintiff lacked knowledge of the prospective defendant's identity. Courts thus routinely denied relation back on the ground that a plaintiff's lack of

118. *See generally* Epstein, *supra* note 103.

119. Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980); Johnson v. City of Erie, 834 F. Supp. 873, 878 (W.D. Pa. 1993).

120. *See* Martinez-Rivera v. Sanchez Ramos, 498 F.3d 3, 8 (1st Cir. 2007) (noting that plaintiffs may bring suits against unnamed parties when "a good-faith investigation has failed to reveal the identity of the relevant defendant and there is a reasonable likelihood that discovery will provide that information").

121. Rice, *supra* note 98, at 888–89.

122. 403 U.S. 388 (1971).

123. *Id.* at 395.

124. *Id.* at 390 n.2.

125. Rice, *supra* note 98, at 897.

126. *See Bivens*, 403 U.S. at 390 n.2.

knowledge did not constitute a mistake under the rule.[127] Only the Third and Fourth Circuits focused the inquiry on the prospective defendant's notice of the action and knowledge of the plaintiff's mistake,[128] and only the Third Circuit interpreted Rule 15(c) to allow relation back for claims against John Doe defendants.[129]

Part II of this Note examines the majority and minority approaches to this question. Part II.A describes the majority approach to relation back for claims against John Doe defendants. It discusses the textual and purpose-based arguments supporting the majority's interpretation that a lack of knowledge does not constitute a mistake under Rule 15(c). Part II.B describes the slightly more permissive approach adopted by the Third and Fourth Circuits.

A. Majority Approach: The John Doe Rule

Pre-*Krupski* courts commonly advanced two lines of reasoning in denying relation back for claims against John Doe defendants. The first was a simple textual argument that a lack of knowledge is not a mistake, so a plaintiff who names a John Doe defendant because she did not know the identity of the proper party at the time of filing the complaint has not made a "mistake" under Rule 15(c).[130] The second was a purpose-based argument that emphasized the need to protect defendants' interests created by statutes of limitations and was wary of plaintiffs' use of John Doe pleading and relation back to circumvent these protections.[131]

The pre-*Krupski* courts that prohibited relation back for claims against Doe defendants under Rule 15(c) relied on two related propositions based on the rule's text: First, Rule 15(c)(1)(C)(ii) requires the plaintiff to have made a mistake concerning the proper party's identity, separate from its requirement that the defendant know that, but for the mistake, it would have been named in the original action. Second, a lack of knowledge of the identity of the proper party to be sued is not a mistake concerning the proper party.[132]

The Seventh Circuit has articulated the basis for this rationale. In *Worthington v. Wilson*,[133] Richard Worthington sued Peoria Heights, Illinois, and three unknown police officers, alleging that he was assaulted by the

127. *See, e.g.*, Garrett v. Fleming, 362 F.3d 692, 696 (10th Cir. 2004); Foulk v. Charrier, 262 F.3d 687, 696 (8th Cir. 2001); Wayne v. Jarvis, 197 F.3d 1098, 1103–04 (11th Cir. 1999), *overruled on other grounds by* Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003) (en banc); Jacobsen v. Osborne, 133 F.3d 315, 321–22 (5th Cir. 1998); Cox v. Treadway, 75 F.3d 230, 240 (6th Cir. 1996); Barrow v. Wethersfield Police Dep't, 66 F.3d 466, 470 (2d Cir. 1995); Wilson v. U.S. Gov't, 23 F.3d 559, 563 (1st Cir. 1994); Wood v. Worachek, 618 F.2d 1225, 1229 (7th Cir. 1980).

128. *See infra* Part II.B.

129. *See infra* notes 172–77 and accompanying text.

130. *See infra* note 132 and accompanying text.

131. *See infra* note 149 and accompanying text.

132. *See, e.g.*, Jacobsen v. Osborne, 133 F.3d 315, 320 (5th Cir. 1998); Worthington v. Wilson, 8 F.3d 1253, 1256 (7th Cir. 1993) (citing *Wood*, 618 F.2d at 1229–30).

133. 8 F.3d 1253 (7th Cir. 1993).

officers during an arrest.[134] When Worthington amended his complaint to substitute officers Wilson and Wall for the unknown officers, the district court granted Wilson and Wall's motion to dismiss on the ground that the statute of limitations had expired.[135] In affirming the district court's dismissal, the Seventh Circuit explained that Rule 15(c) allows relation back "only where there has been an error made concerning the identity of the proper party and where that party is chargeable with knowledge of the mistake"—not where the plaintiff lacks knowledge of the proper party's identity.[136] The court further held that, in the absence of such a mistake, it is irrelevant to the relation back analysis whether the party to be brought in knew or should have known that the plaintiff intended to name him in the original complaint, as the mistake requirement is a separate hurdle the plaintiff must clear before the court undertakes further analysis.[137] Worthington could not satisfy the mistake requirement of Rule 15(c), as his failure to name the defendants was the result of a lack of knowledge regarding their identity rather than a mistake in their names.[138] Thus, there was no reason to undertake notice or knowledge analysis. This rationale was advanced by other federal circuit courts in opinions affirming denials of relation back for the same reasons[139] and has come to be known as the "John Doe rule."[140]

Courts adopting the John Doe rule pointed for support to the Advisory Committee notes to the 1966 and 1991 amendments to Rule 15(c), which added and clarified the rule's mistake requirement.[141] The 1991 Committee note clarified that an intended defendant with notice of the action within the Rule 4(m) period cannot "defeat the action on account of a defect in the pleading with respect to the defendant's name" and that plaintiffs are permitted to amend a complaint to "correct a formal defect such as misnomer or misidentification."[142] This "misnomer or misidentification" language was repeated in numerous opinions denying relation back, as courts found that a lack of knowledge simply was not analogous to a misnomer or misidentification.[143]

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134. *Id.* at 1254.
135. *Id.* at 1255.
136. *Id.* at 1256 (quoting *Wood*, 618 F.2d at 1230).
137. *Id.*
138. *Id.* at 1257.
139. *See, e.g.*, Jacobsen v. Osborne, 133 F.3d 315, 320–21 (5th Cir. 1998) (denying relation back for failure to clear Rule 15(c)'s separate "mistake hurdle"); Force v. City of Memphis, No. 95-6333, 1996 WL 665609, at *4 (6th Cir. Nov. 4, 1996) (denying relation back, without examining notice or knowledge, on the ground that a lack of knowledge is not a mistake).
140. Cheatham v. City of Chicago, No. 16-cv-3015, 2016 WL 6217091, at *2 (N.D. Ill. Oct. 25, 2016).
141. *See, e.g.*, Garrett v. Fleming, 362 F.3d 692, 696–97 (10th Cir. 2004); Wayne v. Jarvis, 197 F.3d 1098, 1103 (11th Cir. 1999), *overruled on other grounds by* Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003); Barrow v. Wethersfield Police Dep't, 66 F.3d 466, 469 (2d Cir. 1995); *Worthington*, 8 F.3d at 1256.
142. FED. R. CIV. P. 15 advisory committee's notes to 1991 amendment.
143. *See, e.g.*, *Garrett*, 362 F.3d at 696–97; *Jacobsen*, 133 F.3d at 319–20.

In *Barrow v. Wethersfield Police Department*,[144] for example, the Second Circuit affirmed the District of Connecticut's dismissal of Elgin Barrow's complaint against six individual officers in the Wethersfield Police Department as time barred because the amended complaint identifying the officers, previously named as John Does, was not filed until after the statute of limitations had expired.[145] The Second Circuit interpreted the Advisory Committee's inclusion of "misnomer or misidentification" in its note to the 1991 amendment to imply that the rule only allowed the relation back of amendments necessary to cure such defects.[146] Therefore, the plaintiff's amendment to correct a lack of knowledge failed to satisfy the requirements of Rule 15(c).[147] The other federal circuit courts have found this interpretation compelling—before *Krupski*, the vast majority held that an amendment correcting a lack of knowledge cannot relate back to the date of the original complaint because it fails to satisfy the mistake requirement of Rule 15(c).[148]

In addition to the textual argument that a lack of knowledge does not constitute a mistake, these courts also relied on purpose-based reasoning in applying the John Doe rule—namely, that fictitious-name pleading cannot be used to undermine the balance struck by Rule 15(c) between a defendant's interest in repose and a plaintiff's interest in pursuing meritorious claims.[149] This reasoning reflects two main concerns.

The first concern is an interest in discouraging plaintiffs from waiting until the last minute to file a complaint. In *Wayne v. Jarvis*,[150] for example, Frank Wayne filed a pro se § 1983 claim against Georgia's DeKalb County Sheriff's Department and a number of individual sheriffs, including seven John Doe defendants, after he was attacked by fellow inmates at the DeKalb County Jail.[151] In affirming the district court's denial of Wayne's motion to amend the complaint to name specific deputy sheriffs after the statute of limitations had run, the Eleventh Circuit criticized the plaintiff's decision to wait to file suit until two weeks before the statute of limitations was set to expire.[152] The court described the plaintiff's problem as one created by his own failure to comply with a deadline imposed by law and stated that he must "bear[] the consequences of his own delay."[153] The court further suggested that, had Wayne filed his complaint earlier, he would have been able to

144. 66 F.3d 466 (2d Cir. 1995).
145. *Id.* at 470.
146. *Id.* at 469.
147. *Id.* at 469–70.
148. *See supra* note 127 and accompanying text.
149. *See* Garrett v. Fleming, 362 F.3d 692, 696 (10th Cir. 2004).
150. 197 F.3d 1098 (11th Cir. 1999), *overruled on other grounds by* Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003).
151. *Id.* at 1101.
152. *Id.* at 1104. In affirming the district court's denial of Wayne's motion to amend, the Eleventh Circuit further noted that Wayne's pro se status did not entitle him to any differential treatment because the problem was not one of construction, but rather a lack of compliance with statutorily imposed deadlines. *Id.* Thus, the practice of liberally construing a pro se litigant's complaint would not save his claims from dismissal. *Id.*
153. *Id.*

discover the officers' identities prior to the expiration of the statute of limitations.[154]

Courts adopting the John Doe rule also expressed concern that an overly permissive approach to Rule 15(c) would undermine the purposes served by statutes of limitations, specifically the protection of defendants' interest in repose.[155] These courts found this right implicated in amendments identifying John Doe defendants after the statute of limitations had run.[156] In *Rendall-Speranza v. Nassim*,[157] for example, then-D.C. Circuit Judge Ruth Bader Ginsburg asserted that a prospective defendant not named in a suit prior to the expiration of the statute of limitations is entitled 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."[158] Allowing amendments identifying defendants previously named as John Doe, then, would allow plaintiffs to preserve a claim indefinitely by filing a complaint against a fictitious party without any requirement that the plaintiff amend the complaint before the expiration of the statute of limitations.[159] For these reasons, courts often found that a broad interpretation of the mistake requirement in this context would deprive a defendant of his right to repose without serving the purpose of Rule 15(c), that is, "to avoid the harsh consequences of a mistake that is neither prejudicial nor a surprise to the misnamed party."[160]

Not all courts adopting the John Doe rule categorically barred relation back in the context of John Doe pleading. Rather, one principal exception to the rule emerged where the plaintiff's inability to identify the John Doe defendant was attributable to action (or inaction) by the defendant.[161] In *Byrd v. Abate*,[162] often cited as the case creating this exception,[163] William Byrd filed suit against the Commissioner of the New York City Department of Correction, the Warden and Deputy Warden of Riker's Island, the Mayor of New York City, and a John Doe correction officer, after an attack by a fellow inmate resulted in the loss of Byrd's left eye.[164] Despite Byrd's numerous attempts to discover the identity of the John Doe officer on duty at the time of the attack, Corporation Counsel refused to disclose records until the court bifurcated the trial for the claims against the individual officer.[165] Even after

154. *Id.*
155. *See* Rendall-Speranza v. Nassim, 107 F.3d 913, 918 (D.C. Cir. 1997).
156. *E.g.*, Aslanidis v. U.S. Lines, Inc., 7 F.3d 1067, 1075 (2d Cir. 1993).
157. 107 F.3d 913 (D.C. Cir. 1997) (Ginsburg, J.).
158. *Id.* at 918. Although this case did not involve John Doe defendants, courts have applied its reasoning to bar relation back of amendments identifying John Doe defendants. *See, e.g.*, Cornett v. Weisenburger, No. 1:05CV00101, 2007 WL 321399, at *5 (W.D. Va. Jan. 31, 2007) (finding that naming unidentified Sheriff's employees as John Doe defendants was "no mere slip of the pen").
159. Locklear v. Bergman & Beving AB, 457 F.3d 363, 367 (4th Cir. 2006).
160. *Nassim*, 107 F.3d at 918.
161. *See, e.g.*, Byrd v. Abate, 964 F. Supp. 140, 146 (S.D.N.Y. 1997).
162. 964 F. Supp. 140 (S.D.N.Y. 1997).
163. *See, e.g.*, DaCosta v. City of New York, No. 1:15-CV-05174, 2017 WL 5176409, at *16–17 (E.D.N.Y. Nov. 8, 2017) (citing cases that have followed *Byrd* in finding an exception to the John Doe rule where defendants withheld identifying information).
164. *Byrd*, 964 F. Supp. at 142–43.
165. *Id.* at 143.

the court ordered bifurcation, Corporation Counsel did not produce documents identifying Wade Hults as the officer on duty for over six months, which allowed the statute of limitations for the claims against him to expire.[166] In finding that Byrd's amended complaint related back, the court noted that "it was the defense, rather than the plaintiff, who failed to identify the individual defendant despite Byrd's requests for that information."[167] The court emphasized that the relevant information was "uniquely within the knowledge of Corporation Counsel," who withheld it until after the limitations period had run.[168] Other courts, mainly in the Second Circuit, now recognize an exception to the John Doe rule when a defendant impedes a plaintiff's attempts to discover the proper party's identity before the expiration of the statute of limitations.[169]

B. Minority Approach: A Focus on the Defendant's Knowledge

As discussed above, the majority of federal circuit courts focused on Rule 15(c)'s mistake language to bar relation back for claims against John Doe defendants prior to *Krupski* and found that a plaintiff's lack of knowledge did not qualify as a mistake.[170] The Third and Fourth Circuits, however, focused their inquiries on the defendant's knowledge instead.[171]

In *Varlack*, the Third Circuit became the only court of appeals to allow relation back for claims against John Doe defendants.[172] The case involved an altercation between Varlack and the night manager of an Orange Julius restaurant who denied Varlack entry to the restaurant when it was closing.[173] Varlack alleged that during the fight he fell through a window and sustained an injury to his arm that required amputation eight inches below the shoulder.[174] Varlack sued Orange Julius and an "Unknown Employee" and later moved to amend the complaint to identify the employee as Bernette Cannings after the statute of limitations had expired.[175] In holding that Varlack's amendment related back, the Third Circuit noted that Cannings had previously testified that he was aware of the suit and knew that Unknown Employee referred to him.[176] The court found that this knowledge was sufficient to satisfy Rule 15(c)'s requirement that the party to be brought in

166. *Id.*
167. *Id.* at 146.
168. *Id.*
169. *See, e.g.*, Peralta v. Donnelly, No. 6:04-CV-06559, 2009 WL 2160776, at *4–5 (W.D.N.Y. July 16, 2009); Murphy v. West, 533 F. Supp. 2d 312, 316–17 (W.D.N.Y. 2008).
170. *See supra* note 127 and accompanying text.
171. *See* Robinson v. Clipse, 602 F.3d 605, 610 (4th Cir. 2010); Goodman v. Praxair, Inc., 494 F.3d 458, 471–72 (4th Cir. 2007); Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 194 (3d Cir. 2001) (denying relation back on the ground that the defendant did not receive timely notice).
172. Varlack v. SWC Caribbean, Inc., 550 F.2d 171, 174 (3d Cir. 1977).
173. *Id.*
174. *Id.*
175. *Id.*
176. *Id.* at 175.

by amendment know that, but for a mistake, it would have been named in the original action.[177]

Subsequently, in *Singletary v. Pennsylvania Department of Corrections*,[178] Chief Judge Becker of the Third Circuit noted that the weight of authority in other federal circuit courts did not favor such an interpretation but suggested that the John Doe rule was subject to both epistemological and semantic challenges.[179] The *Singletary* court instead affirmed the district court's refusal to allow an amendment identifying John Doe defendants on the ground that the parties to be brought in by amendment had not received timely notice of the action, thus avoiding having to address what the court described as "sticky issues" relating to the relation back of claims against John Doe defendants.[180] Despite denying relation back under the circumstances, however, the court dedicated a long footnote to arguing that the Rules Advisory Committee should amend Rule 15(c) to make clear that it permits the relation back of amendments identifying John Doe defendants.[181]

The Fourth Circuit similarly focused its inquiry on the defendant's knowledge, while continuing to preclude relation back for claims against John Doe defendants. In *Goodman v. Praxair, Inc.*,[182] the Fourth Circuit reversed the district court's dismissal of the plaintiff's amendment adding Praxair Services, Inc., Praxair, Inc.'s wholly owned subsidiary, on the ground that it was barred by the statute of limitations.[183] The court rejected the defendants' argument that the plaintiff had not made a mistake under Rule 15(c). It held that the lower court's interpretation of the rule improperly focused on the type of mistake without fully considering notice and prejudice to the party to be brought in by amendment.[184] Specifically, the court held that the relation back inquiry "does not concern itself with the amending party's particular state of mind except insofar as he made a mistake" but rather "focuses on the *notice to the new party and the effect on the new party* that the amendment will have" and that the mistake language is confined to describing the prospective defendant's notice and understanding.[185]

The Fourth Circuit also found that the mistake requirement is not the proper vehicle for addressing concerns about plaintiffs circumventing statutes of limitations by filing an action against fictitious defendants with the plan of amending after the opportunity for discovery.[186] Instead, the court

177. *Id.*
178. 266 F.3d 186 (3d Cir. 2001).
179. *Id.* at 200.
180. *Id.* at 201.
181. *See id.* at 201 n.5.
182. 494 F.3d 458 (4th Cir. 2007).
183. *Id.* at 475.
184. *Id.* at 469.
185. *Id.* at 469–70. The court's use of the term notice here is slightly unclear, as its assertion that "[t]he 'mistake' language is textually limited to describing the notice that the new party had, requiring that the new party have expected or should have expected, within the limitations period, that it was meant to be named a party in the first place" appears to refer both to the notice requirement and to the knowledge-of-mistake requirement. *Id.* at 471.
186. *Id.* at 470, 473.

found that the notice and prejudice requirements adequately protect a defendant's interest in repose.[187] Thus, because Praxair Services, Inc. knew or should have known within the limitations period that it was the proper party to the suit and had suffered no prejudice, the amendment adding it as a party related back to the original complaint.[188] The *Goodman* court, however, explicitly stated that this approach to relation back would continue to preclude relation back for claims against John Doe defendants as such amendments would likely result in prejudice to the new party or would be unable to satisfy the knowledge-of-mistake requirement.[189]

In *Robinson v. Clipse*,[190] the Fourth Circuit reaffirmed this approach to relation back.[191] Plaintiff Tyrone Robinson filed a pro se complaint against the South Carolina Department of Public Safety and Highway Patrol after being shot by Trooper Joseph Franklin Clipse at the termination of a high-speed chase.[192] The district court originally dismissed the action on the ground that the department could not be held liable under a theory of respondeat superior and that qualified immunity prevented Trooper Clipse from being sued in his individual capacity.[193] The Fourth Circuit vacated that order,[194] but on remand the district court granted Clipse's motion for summary judgment on the ground that Robinson's claims against him, asserted for the first time in the amended complaint, were barred by the statute of limitations.[195] Noting its rejection of a formalistic interpretation of Rule 15(c)'s mistake requirement in *Goodman*, the court explained that the mistake language simply described the new party's notice or knowledge.[196] The Fourth Circuit reversed the district court's dismissal of Robinson's amended complaint naming Trooper Clipse as a defendant after the statute of limitations had run.[197] Because Clipse had notice within the limitation period that he was the party Robinson intended to sue, the Fourth Circuit explained, the amendment related back under Rule 15(c).[198]

While neither *Goodman* nor *Robinson* involved an amendment identifying a defendant previously sued as John Doe, the Fourth Circuit's reasoning, like that of the Third Circuit, differed meaningfully from the approach taken by the majority of the federal circuit courts, which adopt the John Doe rule. The

187. *Id.* at 470–71.
188. *Id.* at 475.
189. *Id.* at 471.
190. 602 F.3d 605 (4th Cir. 2010).
191. *Id.* at 610.
192. *Id.* at 606.
193. *Id.* at 606–07.
194. Robinson v. S.C. Dep't of Pub. Safety, 222 F. App'x. 330, 331–32 (4th Cir. 2007). The Fourth Circuit found that the district court improperly resolved a factual issue with respect to qualified immunity. It further held that by concluding that Trooper Clipse was entitled to qualified immunity, the district court effectively made Clipse a party, as the qualified immunity defense is only available to a defendant sued in his individual capacity. *Id.* at 332 n.*.
195. *Robinson*, 602 F.3d at 608.
196. *Id.* at 610.
197. *Id.*
198. *Id.*

Third and Fourth Circuits focused on the prospective defendant's notice and knowledge rather than on whether the amendment sought to rectify the plaintiff's misidentification or lack of knowledge.[199] Thus, the Third and Fourth Circuits interpreted the mistake requirement as inquiring into what the prospective defendant knew about the action and his intended involvement in it, rather than as a distinct and dispositive factor separate from any analysis of the prospective defendant's notice or knowledge.[200] The Supreme Court validated this approach to relation back in *Krupski* when it held that the knowledge-of-mistake requirement in Rule 15(c)(1)(C)(ii) addresses the defendant's knowledge that it would have been named in the original action but for a mistake concerning its identity, and that the plaintiff's knowledge is relevant only insofar as it affects the defendant's understanding.[201]

III. *KRUPSKI* AND THE IMPORTANCE OF PERSPECTIVE

After *Krupski*, courts have reached differing conclusions as to whether the decision mandates a new approach to relation back for claims against John Doe defendants. Disagreement exists over *Krupski*'s applicability to relation back for such claims. This Part explores the disagreement and the arguments advanced in favor of the majority and minority approaches.

A. A Split over the Breadth of Krupksi*'s Impact*

While *Krupski* did not involve claims against John Doe defendants, scholars have noted that the Court's reasoning in the decision is likely relevant to such claims, as the Court's focus on the prospective defendant's knowledge appears to conflict with an approach to relation back that focuses primarily on determining whether the plaintiff's knowledge, or lack thereof, can be considered a mistake.[202] While some courts have held that *Krupski* controls in the context of John Doe defendants, most continue to apply the John Doe rule.[203] This tension has led to a split, both across circuits and between district courts within the same circuit, as to the proper interpretation of Rule 15(c)(1)(C)(ii) in the context of claims against John Doe defendants.

1. The Majority's Narrow Interpretation of *Krupski*

Since *Krupski*, only three federal circuit courts have directly considered the decision's impact on the John Doe rule, and each has determined that, even in light of the decision, Rule 15(c) continues to preclude relation back for claims against John Doe defendants.[204] The Sixth Circuit was the first to

199. *See supra* notes 172–77, 183–85 and accompanying text.

200. *See supra* notes 136–39 and accompanying text.

201. Krupski v. Costa Crociere S.p.A., 560 U.S. 538, 548 (2010).

202. *See* Sherman, *supra* note 21, at 1346 (noting that the "lack of knowledge is not a mistake" rationale is hard to justify after *Krupski*); Zinkiewicz, *supra* note 21, at 1211–12.

203. *See infra* Part III.A.1–2.

204. *See infra* notes 205–07 and accompanying text. The circuits that have directly considered *Krupski*'s impact are the Second, Sixth, and Eighth Circuits. Two Seventh Circuit cases have also applied the John Doe rule after *Krupski*, but district courts in the circuit have

address the question in 2012 and held in an unreported opinion that even after *Krupski*, Rule 15(c) did not allow relation back for identification of defendants originally named as John Doe.[205] Similarly, the Second Circuit has also retained its pre-*Krupski* approach by holding that amendments identifying John Doe defendants do not correct a mistake of fact and, thus, do not relate back under Rule 15(c)(1)(C).[206] In 2017, the Eighth Circuit held that naming a John Doe defendant is not a "mistake" and that the Supreme Court's analysis in *Krupski* does not expand the definition of mistake to include a lack of knowledge.[207]

As discussed above, courts adopting the John Doe rule do not deny relation back whenever a plaintiff does not know the identity of all intended defendants.[208] *Wyatt v. Owens*[209] illuminates the nuance of this approach. There, Michael Owens alleged excessive force during his arrest in a pro se § 1983 action against officers Johnny Owens, Allen Shelton, William Harris, Scott Wyatt, and M.D. Pickeral.[210] Defendants Harris and Pickeral succeeded in moving for summary judgment as they each had been misidentified by Wyatt at the time he filed his complaint and neither was actually present at Wyatt's arrest.[211] After retaining counsel, Wyatt filed an unopposed motion to amend his complaint under Rule 15 to replace Harris and Pickeral with officers Thomas Nicholson and Robert Wolsham.[212] Nicholson and Wolsham moved for summary judgment on the theory that the claims against them were barred by the statute of limitations; because Wyatt's error did not qualify as a "mistake" under Rule 15(c), the claims could not relate back to the original complaint.[213] In denying the motion, the court found that Wyatt's misidentification of the officers was the "quintessential type of mistake contemplated by Rule 15(c)."[214] Because Wyatt incorrectly named two actual officers, instead of using fictitious names as placeholders, his misidentification qualified as a mistake under the rule.[215]

In addition to the exception described in Part II.A.3 above, courts adopting the John Doe rule have begun to recognize another exception to the John Doe rule since *Krupski*. This exception allows relation back for claims against John Doe defendants under Rule 15(c)(1)(A), which permits relation back when the law providing the statute of limitations allows relation back for such

found that those cases are not controlling and neither involved unidentified defendants. *See infra* note 219.

205. Smith v. City of Akron, 476 F. App'x. 67, 69 (6th Cir. 2012).

206. *See* Scott v. Village of Spring Valley, 577 F. App'x. 81, 83 (2d Cir. 2014); Hogan v. Fischer, 738 F.3d 509, 518 (2d Cir. 2013). The Second Circuit's decision in *Scott*, however, was a ruling by summary order and, thus, lacked precedential effect.

207. Heglund v. Aitkin County, 871 F.3d 572, 579–81 (8th Cir. 2017).

208. *See supra* notes 159–67 and accompanying text.

209. 317 F.R.D. 535 (W.D. Va. 2016).

210. *Id.* at 538.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.* at 540.

215. *Id.* at 540–41.

claims.[216] In the context of state claims being tried in federal court or of claims arising under § 1983, which derive their statutes of limitations from state law, courts applying this exception look to the rules of procedure in the relevant state.[217] Thus, in the event that the state rules of civil procedure allow relation back for claims against John Doe defendants, relation back may be permitted pursuant to Rule 15(c)(1)(A).[218]

2. The Minority's Broader Interpretation of *Krupski*

In contrast to the approach described above, a number of district courts, largely in the Seventh Circuit,[219] have found that, by refocusing the inquiry under Rule 15(c)(1)(C)(ii), *Krupski* marked a "doctrinal change in the law of relation back."[220] These courts apply *Krupski* to allow relation back for amendments identifying John Doe defendants.[221] In addition to finding this approach supported by both the Supreme Court's guidance in *Krupski* and by the text of Rule 15(c), these courts are also persuaded that this interpretation of Rule 15(c) is more consistent with the purpose of the rule.[222] Other courts have applied *Krupski* in finding the mistake requirement satisfied but denied

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

217. 3 SHELDON H. NAHMOD, CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION: THE LAW OF SECTION 1983 § 9.2 (4th ed. 2017).

218. *See* Hogan v. Fischer, 738 F.3d 509, 518–20 (2d Cir. 2013); Palacio v. City of Springfield, 25 F. Supp. 3d 163, 168–70 (D. Mass. 2014).

219. In *Haroon v. Talbott*, No. 16-CV-04720, 2017 WL 4280980 (N.D. Ill. Sept. 27, 2017), the court stated that the Seventh Circuit had not expressly considered *Krupski*'s impact on the John Doe rule, as the only two cases to even address the question indirectly were not controlling because one addressed the issue only in dictum, the other was unpublished, and neither addressed *Krupski*'s impact on cases involving unidentified defendants, *id.* at *5 (citing Gomez v. Randle, 680 F.3d 859, 864 n.1 (7th Cir. 2012); Flournoy v. Schomig, 418 F. App'x. 528, 532 (7th Cir. 2011)). This may explain why district courts in the Seventh Circuit are more likely than others to adopt this approach.

220. White v. City of Chicago, No. 14 cv 3720, 2016 WL 4270152, at *17 (N.D. Ill. Aug. 15, 2016).

221. While not a comprehensive list, the following represent a significant number of the cases that have adopted this approach: Moore v. Cuomo, No. 14 C 9313, 2017 WL 3263483, at *5 (N.D. Ill. Aug. 1, 2017); *White*, 2016 WL 4270152, at *18; Williams v. City of Chicago, No. 14 C 6959, 2017 WL 1545772, at *3 (N.D. Ill. Apr. 28, 2017); Clair v. Cook County, No. 16 C 1334, 2017 WL 1355879, at *4 (N.D. Ill. Apr. 28, 2017); Klinger v. City of Chicago, No. 15-CV-1609, 2017 WL 736895, at *5 (N.D. Ill. Feb. 24, 2017); Ayoubi v. Basilone, No. 14 C 0602, 2016 WL 6962189, at *4 (N.D. Ill. Nov. 28, 2016); Cheatham v. City of Chicago, No. 16-cv-3015, 2016 WL 6217091, at *3 (N.D. Ill. Oct. 25, 2016); Karney v. City of Naperville, No. 15 C 4608, 2016 WL 6082354, at *9 (N.D. Ill. Oct. 18, 2016); Tomlin v. Gafvert, No. CV 13-1980-PHX-SMM (ESW), 2015 WL 4639242, at *6 (D. Ariz. Aug. 4, 2015); Foster v. Cerro Gordo County, 33 F. Supp. 3d 1052, 1059 (N.D. Iowa 2014); Smith v. City of New York, 1 F. Supp. 3d 114, 120–21 (S.D.N.Y. 2013); Ferencz v. Medlock, 905 F. Supp. 2d 656, 666 (W.D. Pa. 2012); Solivan v. Dart, 897 F. Supp. 2d 694, 701 (N.D. Ill. 2012); McKnight v. Iceberg Enters. LLC, No. 9:10-cv-03248-DCN, 2012 WL 2418870, at *3–4 (D.S.C. June 26, 2012); Abdell v. City of New York, 759 F. Supp. 2d 450, 457 (S.D.N.Y. 2010); Jamison v. City of York, No. 1:09-cv-1289, 2010 WL 3923158, at *5 (M.D. Pa. Sept. 30, 2010); McDaniel v. Maryland, No. RBD-10-00189, 2010 WL 3260007, at *5–6 (D. Md. Aug. 18, 2010); Smetzer v. Newton, No. 1:10-CV-93-JVB, 2010 WL 3219135, at *10 (N.D. Ind. Aug. 13, 2010); Edwards v. Middlesex County, No. 08-Civ 06359 (JAP), 2010 WL 2516492, at *5 (D.N.J. June 14, 2010).

222. *See, e.g.*, *White*, 2016 WL 4270152, at *18.

relation back on the ground that the prospective defendants did not have adequate notice of the suit.[223] Still other courts, without deciding the issue definitively, have suggested that *Krupski* undermines the John Doe rule.[224]

Courts adopting this approach do not allow relation back any time a plaintiff seeks to amend a complaint to identify John Doe defendants. Rather, these courts recognize a difference between amendments that identify prospective defendants that were originally identified with reasonable specificity in the complaint and those where John Doe defendants seemed to serve as placeholders not tied to any identifiable party.[225] In *McKnight v. Iceberg Enterprises LLC*,[226] for example, the district court allowed the plaintiff to amend her complaint after the limitations period had expired to identify Mid-Continent Distributors, Inc. and Mid-Continent Distributors, LLC as John Doe Chair Manufacturer and John Doe Chair Distributor.[227] In explaining why the Fourth Circuit's pronouncement in *Goodman* that "naming Doe defendants self-evidently is no mistake [under Rule 15]" would not preclude relation back, the court noted that Mid-Continent received service of the complaint within the Rule 4(m) period, that McKnight's complaint stated that she would amend the complaint when the name of the defendant-manufacturer was discovered, and that Mid-Continent was on notice that McKnight was injured when she sat on the chair.[228] Thus, the court reasoned, "the liberal amendment policies of the Federal Rules favor[ed] relation back" under the circumstances.[229]

Similarly, in *Solivan v. Dart*,[230] the court allowed relation back of an amendment identifying John Doe corrections officers in reckless indifference claims arising out of an incident where Solivan, the only Hispanic inmate in a majority African American tier of Cook County Department of Corrections maximum security housing, was severely beaten by African American inmates and left untended by corrections staff for nearly three hours.[231] The court noted that Solivan displayed diligence by timely filing his complaint, repeatedly seeking the names of the John Doe officers, and identifying the John Does as specifically as he could "based on their shift times on specific

223. *See* Covey v. Assessor, 666 F. App'x. 245, 248 (4th Cir. 2016); *Haroon*, 2017 WL 4280980, at *9.

224. *See, e.g.*, DaCosta v. City of New York, No. 15-CV-5174, 2017 WL 5176409, at *16 (E.D.N.Y. Nov. 8, 2017) ("The guidance of the Second Circuit Court of Appeals [regarding relation back in the context of a John Doe pleading] after *Krupski* . . . seems too narrow . . . ."); Ryan v. City of Chicago, No. 15 C 9762, 2016 WL 6582570, at *2 (N.D. Ill. Nov. 7, 2016); Roland v. McMonagle, No. 12 Civ. 6331 (JPO), 2014 WL 2861433, at *4 n.3 (S.D.N.Y. June 24, 2014) (stating that "to the extent that *Barrow* defines 'mistake' in terms of what the plaintiff—rather than the prospective defendant—knew or should have known, it has been abrogated by [*Krupski*]"); Brown v. Deleon, No. 11 C 6292, 2013 WL 3812093, at *4–6 (N.D. Ill. July 18, 2013); Callicut v. Scalise, No. 1:11-CV-1282 (LEK/RFT), 2013 WL 432913, at *5 (N.D.N.Y. Feb. 4, 2013).

225. *See infra* notes 227–39 and accompanying text.

226. No. 9:10-cv-03248-DCW, 2012 WL 2418870 (D.S.C. June 26, 2012).

227. *Id.* at *4.

228. *Id.*

229. *Id.*

230. 897 F. Supp. 2d 694 (N.D. Ill. 2012).

231. *Id.* at 698.

dates and at specific posts in the [division] and based on the incident log number for his injuries."[232] Given this specificity, it was clear that the officers identified in this way knew or should have known that Solivan intended to name them in his suit.[233] Unlike a plaintiff asserting claims against named defendants and numerous unidentifiable John Does,[234] Solivan used John Doe designations to refer as specifically as possible to intended defendants that he was not yet able to identify.[235]

In contrast, in *Haroon v. Talbott*,[236] the court denied relation back for an amendment identifying a John Doe defendant who was omitted as a party from the caption of the complaint, merely described in the complaint's body as an unknown driver and agent of the named defendant, and excluded from the complaint's request for relief against the named defendant.[237] The court found that while relation back is not categorically unavailable to a plaintiff who lacks the knowledge of the proper party's identity, relation back will be denied when the content of the original complaint and the plaintiff's post-filing conduct create the impression that the initial failure to name the prospective defendant was intentional.[238] Thus, courts adopting this more permissive approach to relation back after *Krupski* use Rule 15(c)'s notice and knowledge requirements as a mechanism for filtering claims against John Doe defendants that properly relate back from those that do not.[239]

B. Textual, Precedential, and Purpose-Based Arguments for the Narrow and Broad Interpretations of Krupski

Courts adopting both interpretations of *Krupski*'s impact on relation back doctrine have advanced various arguments in favor of each approach. This Part examines the textual, precedential, and purpose-based arguments supporting both interpretations.

1. Textual Arguments for Each Approach

After *Krupski*, some courts continue to rely on pre-*Krupski* interpretations of Rule 15(c)'s mistake requirement without addressing *Krupski*, while others explicitly distinguish the plaintiff's position in *Krupski* from that of a plaintiff naming John Doe defendants.[240] Under either approach, the

232. *Id.* at 702.
233. *Id.*
234. *See generally* Krekelberg v. Anoka County, No. 13-3562, 2016 WL 4443156 (D. Minn. Aug. 19, 2016) (listing numerous parties as well as John and Jane Does 1 through 1000 and Entity Does 1 through 50).
235. *Solivan*, 897 F. Supp. 2d at 702.
236. No. 16-cv-04720, 2017 WL 4280980 (N.D. Ill. Sept. 27, 2017).
237. *Id.* at *8.
238. *Id.* at *7–9.
239. *See id.* at *9.
240. *Compare* Hogan v. Fischer, 738 F.3d 509, 517 n.2 (2d Cir. 2013) (citing *Krupski* in a footnote but only for the proposition that Rule 15(c) had been renumbered without substantive change since 1995), *with* Smith v. City of Akron, 476 F. App'x. 67, 69 (6th Cir. 2012) (asserting that "Krupski's problem is not Smith's problem").

underlying rationale is consistent with pre-*Krupski* interpretations of the mistake requirement: a lack of knowledge simply is not a mistake.[241]

These courts retain the reasoning articulated in pre-*Krupski* decisions and continue to interpret Rule 15(c)'s mistake requirement as excluding situations in which a plaintiff lacked knowledge concerning the proper party's identity.[242] In *Heglund*, for example, the Eighth Circuit found that *Krupski* did not justify an expansion of "mistake" to include the naming of John Doe defendants as the Court in *Krupski*, unlike those considering amendments identifying John Doe defendants, "was not confronted with an intentional error by a plaintiff that is incompatible with the very definition[] of 'mistake.'"[243] Courts adopting this approach continue to hold that satisfying the mistake requirement is an independent and necessary step before analyzing whether the prospective defendant knew it should have been named in the original complaint.[244] Thus, these courts find that *Krupski* has not expanded Rule 15(c) to capture a situation where a plaintiff lacks the knowledge of the proper party's identity.[245]

The main textual justification for this approach comes from the plain meaning of the word "mistake," which courts adopting the John Doe rule define as a "*misunderstanding*, wrong decision, or *inadvertent* wrong action."[246] These courts rely on both lay and legal dictionaries in reaching the conclusion that "mistake" implies a lack of intentionality that is simply irreconcilable with an intentional use of a John Doe designation to accurately convey a lack of knowledge of a party's identity.[247] Thus, these courts reason that, regardless of the policy arguments in favor of permitting relation back under these circumstances, the text of the rule simply does not permit such an interpretation.[248]

A number of district courts, however, find that *Krupski* has mandated a reinterpretation of Rule 15(c)'s mistake requirement. In *White v. City of Chicago*,[249] Willie White, a pro se plaintiff, filed a complaint under § 1983 alleging violations of his constitutional rights after an unknown police officer pushed him down a flight of stairs while handcuffed, causing him to separate his shoulder.[250] Although White received some records from the City of

241. *See, e.g.*, Lelieve v. Orosa, No. 10-23677-CIV, 2011 WL 5103949, at *4–5 (S.D. Fla. Oct. 27, 2011).

242. *See supra* Part II.A.

243. Heglund v. Aitkin County, 871 F.3d 572, 580 (8th Cir. 2017).

244. *See infra* Part III.B.2.

245. *See, e.g.*, Strong v. City of Eugene, No. 6:14-cv-01709-AA, 2015 WL 2401395, at *4 (D. Or. May 19, 2015); Bender v. City of New York, No. 14 Civ. 4386(LTS)(GWG), 2015 WL 524283, at *4 (S.D.N.Y. Feb. 10, 2015); Asten v. City of Boulder, No. 08-cv-00545-PAB-MEH, 2010 WL 5464298, at *6 (D. Colo. Sept. 28, 2010).

246. *Heglund*, 871 F.3d at 580 (quoting *Mistake*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 772 (2002)); *see also* Bostick v. McGuire, No. 6:15-cv-01533-Orl-37GJK, 2016 WL 2811246, at *3 (M.D. Fla. Apr. 20, 2016) (citing *Mistake*, BLACK'S LAW DICTIONARY (10th ed. 2014)).

247. *Heglund*, 871 F.3d at 580.

248. *Id.* at 581.

249. No. 14 cv 3720, 2016 WL 4270152 (N.D. Ill. Aug. 15, 2016).

250. *Id.* at *1.

Chicago in response to discovery requests, these did not reveal the identity of the officer that pushed him down the stairs.[251] After receiving court-appointed counsel and at the court's suggestion, White filed a second amended complaint adding as defendants all of the officers that appeared in the records White had received.[252] While this saved White's § 1983 claims from being time barred, the individual defendants moved to dismiss certain state law claims that had expired five months before the amended complaint was filed.[253]

In determining whether these state claims would relate back, the court relied heavily on *Krupski*. The court found that Rule 15(c)(1)(C)(ii) could not be interpreted to preclude relation back for claims against John Doe defendants after *Krupski* because such an interpretation would rely on the plaintiff's knowledge without examining the defendant's knowledge—an approach that had been expressly rejected by the Supreme Court.[254] The court noted that, while *Krupski* involved a plaintiff's knowledge of a party's existence, claims against John Doe defendants involve a lack of knowledge of the proper party's identity.[255] Still, the court reasoned, there was no reason to assume that the Supreme Court would treat the two situations differently because *Krupski* had rejected as the central relation back inquiry not only what the plaintiff knew but what the plaintiff should have known.[256] For support, the court further pointed to the *Krupski* court's definition of mistake, which included not only error, misconception, or misunderstanding, but also *inadequate knowledge* and inattention.[257] The court found the reference to "inadequate knowledge" to support the extension of *Krupski*'s reasoning to the lack of knowledge resulting in John Doe designations.[258] Other courts have similarly found that *Krupski*'s interpretation of Rule 15(c) supports the notion that a lack of knowledge concerning a defendant's identity can constitute a mistake.[259]

The main textual justification for this approach comes from *Krupski*'s definition of mistake in conjunction with its guidance that the proper inquiry under relation back is whether the prospective defendant knew or should have known that, but for a mistake, the plaintiff would have named him in the original action—not what the plaintiff knew at the time of filing the

251. *Id.* at *3.
252. *Id.*
253. *Id.*
254. *Id.* at *16.
255. *Id.*
256. *Id.*
257. *Id.* (citing Krupski v. Costa Crociere S.p.A., 506 U.S. 538, 548–49 (2010)).
258. *Id.*
259. Williams v. City of Chicago, No. 14 C 6959, 2017 WL 1545772, at *2–3 (N.D. Ill. Apr. 28, 2017); Klinger v. City of Chicago, No. 1:15-CV-1609, 2017 WL 736895, at *5–6 (N.D. Ill. Feb. 24, 2017); Smith v. City of New York, 1 F. Supp. 3d. 114, 121 (S.D.N.Y. 2013); Brown v. Deleon, No. 11 C 6292, 2013 WL 3812093, at *6 (N.D. Ill. July 18, 2013); Solivan v. Dart, 897 F. Supp. 2d 694, 701 (N.D. Ill. 2012); Abdell v. City of New York, 759 F. Supp. 2d 450, 457 (S.D.N.Y. 2010) ("After *Krupski*, it is clear that a 'mistake concerning the proper party's identity' under Rule 15(c) includes lack of knowledge regarding the conduct or liability of that party." (quoting FED. R. CIV. P. 15(c)(1)(C)(ii))).

complaint.[260] These courts point to the inclusion of "inadequate knowledge" in *Krupski*'s definition of mistake as an indication that "mistake" under Rule 15(c) can include a lack of knowledge concerning the proper party's identity.[261] In light of this definition of mistake, these courts find that the interpretation articulated in *Heglund* fails to follow the text of Rule 15(c), as well as the Supreme Court's guidance, by continuing to employ a plaintiff-focused inquiry and relying on an underinclusive definition of mistake.[262]

2. Precedential Arguments for Each Approach

Courts continuing to apply the John Doe rule have found that the decision does not undermine pre-*Krupski* precedent interpreting Rule 15(c)(1) as having a mistake requirement separate from its notice and knowledge requirements.[263] In *Terry v. Chicago Police Department*,[264] for example, the district court in the Northern District of Illinois cited *Worthington* and other pre-*Krupski* cases from the Seventh Circuit to support the proposition that "Rule 15(c)(1) contains a 'mistake' requirement that is independent from the determination of whether the new party knew that the action would be brought against it."[265] Therefore, the court held, because the plaintiff's lack of knowledge of the proper defendant's identity did not constitute a mistake, relation back was unavailable.[266] The court further held that the plaintiff's reliance on *Krupski* was misguided, as the plaintiff did not "make the type of mistake of fact at issue in [*Krupski*]."[267] Thus, the absence of such a mistake ended the inquiry, and analysis under the notice and knowledge portions of Rule 15(c)(1) was irrelevant.[268]

Similarly, in *Dominguez v. City of New York*,[269] the district court in the Eastern District of New York declined to interpret *Krupski* as overruling the Second Circuit's precedent in *Barrow* that a lack of knowledge did not constitute a mistake.[270] The court explained that "*Krupski* merely picks up where *Barrow* left off. *Barrow* asked whether a mistake has been committed; *Krupski* assumes the presence of a mistake and asks whether it is covered by Rule 15(c)(1)(C)(ii)."[271] Like the court in *Terry*, the court in *Dominguez* separated Rule 15(c)'s mistake analysis from its notice and knowledge analysis and found that *Krupski* is relevant only to the latter.[272]

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260. *See Krupski*, 560 U.S. at 548.
261. Haroon v. Talbott, No. 1:16-cv-04720, 2017 WL 4280980, at *6 (N.D. Ill. Sept. 27, 2017); *see also White*, 2016 WL 4270152, at *16.
262. *White*, 2016 WL 4270152, at *7.
263. *See supra* Part III.B.1.
264. 200 F. Supp. 3d 719 (N.D. Ill. 2016).
265. *Id.* at 724–25.
266. *Id.* at 726.
267. *Id.* at 725.
268. *Id.* (citing Baskin v. City of Des Plaines, 138 F.3d 701, 704 (7th Cir. 1998)).
269. No. 10 Civ. 2620(BMC), 2010 WL 3419677 (E.D.N.Y. Aug. 27, 2010).
270. *Id.* at *3.
271. *Id.*
272. *Id.*

Courts rejecting the John Doe rule in light of *Krupski*, however, have found that this pre-*Krupski* precedent is no longer good law.[273] In *White*, for example, the court rejected the argument that *Krupski* does not affect prior decisions precluding relation back for claims against John Doe defendants because such claims involve a lack of knowledge rather than a factual mistake.[274] The court reasoned that the Seventh Circuit had already rejected such a distinction in *Hall v. Norfolk Southern Railway*[275] when it held that the distinction between a plaintiff's ignorance of and misunderstanding about a party's liability for an injury creates no meaningful difference in the relation back analysis as neither is a mistake concerning the defendant's identity under Rule 15(c).[276] The *White* court further pointed to the Seventh Circuit's assertion in *Joseph v. Elan Motorsports Technologies Racing Corp.*[277] that the Supreme Court's decision in *Krupski* had "cut the ground out from under" *Hall*'s view that a misunderstanding could not constitute a mistake under Rule 15(c). The court reasoned that the decision similarly must have cut the ground out from under an interpretation that ignorance could not constitute a mistake. It held that the rationale underlying the exclusion of either from the definition of "mistake" ultimately depends improperly on the amending party's knowledge rather than that of the prospective defendant.[278] Thus, the *White* court found that *Krupski* undermined Seventh Circuit precedent that mandated adherence to the John Doe rule.[279] Other courts have also found that *Krupski* undermines John Doe rule precedent by rejecting distinctions within relation back analysis that rely on the plaintiff's knowledge and not that of the prospective defendant.[280]

3. Purpose-Based Arguments for Each Approach

After *Krupski*, courts retaining the majority John Doe rule continue to advance the purpose-based arguments in favor of the approach set forth in *Wayne*, *Nassim*, and other pre-*Krupski* decisions.[281] These courts maintain that plaintiffs who wait to file their complaints until several days before the expiration of the statute of limitations and are unable to discover the John

273. *See infra* notes 274–80 and accompanying text.

274. White v. City of Chicago, No. 14 cv 03720, 2016 WL 4270152, at *16 (N.D. Ill. Aug. 15, 2016).

275. 469 F.3d 590 (7th Cir. 2006).

276. *White*, 2016 WL 4270152, at *15 (citing *Hall*, 469 F.3d at 596).

277. 638 F.3d 555 (7th Cir. 2011).

278. *White*, 2016 WL 4270152, at *16 (citing *Joseph*, 638 F.3d at 559).

279. *Id.* at *18.

280. DaCosta v. City of New York, No. 1:15-CV-5174, 2017 WL 5176409, at *16 (E.D.N.Y. Nov. 8, 2017) (finding that the "guidance of the Second Circuit Court of Appeals after *Krupski*—and the district courts following that court's reasoning—seems too narrow"); Moore v. Cuomo, No. 14 C 9313, 2017 WL 3263483, at *5 (N.D. Ill. Aug. 1, 2017); Smith v. City of New York, 1 F. Supp. 3d 114, 120 (S.D.N.Y. 2013) (finding that "*Krupski* overrules *Barrow* in the context of amended pleadings that add previously unidentified defendants"); Abdell v. City of New York, 759 F. Supp. 2d 450, 457 (S.D.N.Y. 2010) (finding that an examination of the *Krupski* opinion invalidates prior narrow understanding of a Rule 15(c) "mistake").

281. *See supra* notes 149–60 and accompanying text.

Does' identities within the limitation period should be left to bear the consequences of their own delay.[282] Additionally, courts adopting the John Doe rule argue that this approach is supported by the purpose of Rule 15(c), which protects defendants' interest in repose by preventing plaintiffs from circumventing statutes of limitations through the use of John Doe designations.[283]

The courts that have changed their approach to relation back in light of *Krupski*, however, find not only that *Krupski* mandates a reinterpretation of "mistake" but also that such a reinterpretation is supported by the purposes of Rule 15, and the policies underlying the Federal Rules of Civil Procedure more broadly.[284] In *Haroon*, for example, the court pointed to *Krupski*'s statement of the purpose of relation back as "balanc[ing] 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."[285] The court also focused on *Krupski*'s observation that Rule 15(c) protects a prospective defendant's legitimate interest in repose but that repose "would be a windfall for a prospective defendant who understood, or should have understood, that he escaped suit during the limitations period only because the plaintiff misunderstood a crucial fact about his identity."[286]

In light of this guidance from *Krupski*, the *Haroon* court concluded that interpreting *Krupski* to allow relation back for claims against John Doe defendants, provided that the notice and knowledge requirements are met, best serves the purposes of relation back doctrine by striking the appropriate balance between a defendant's interest in repose and the Federal Rules' preference for resolving disputes on their merits.[287] The court also noted that the plaintiff-focused reasoning advanced to support the continued application of the John Doe rule unjustifiably treats plaintiffs with inadequate knowledge much more harshly than plaintiffs who simply identify the wrong defendant in the original complaint.[288] Finally, courts adopting this approach reason that, by focusing on the defendant's knowledge, the approach does not undermine prospective defendants' legitimate interest in repose as they are in the same position as a defendant sued within the limitations period and suffer no harm by omission from the original complaint.[289] Thus, these

282. *See, e.g.*, Bostick v. McGuire, No. 6:15-cv-1533-Orl-37GJK, 2016 WL 2811246, at *4 (M.D. Fla. Apr. 20, 2016); Cooper v. Rhea County, 302 F.R.D. 195, 199 (E.D. Tenn. 2014).

283. *See, e.g.*, Mwangi v. Norman, No. 16-cv-000002-CMA-NYW, 2016 WL 7223270, at *6 (D. Colo. Dec. 13, 2016); Bender v. City of New York, No. 14 Civ. 4386(LTS)(GWG), 2015 WL 524283, at *2 (S.D.N.Y. Feb. 10, 2015); Lelieve v. Orosa, No. 10-23677-CIV, 2011 WL 5103949, at *4 (S.D. Fla. Oct. 27, 2011).

284. *See, e.g.*, Haroon v. Talbott, No. 1:16-cv-04720, 2017 WL 4280980, at *7 (N.D. Ill. Sept. 27, 2017); *White*, 2016 WL 4270152, at *18; *Smith*, 1 F. Supp. 3d at 121.

285. *Haroon*, 2017 WL 4280980, at *5 (quoting Krupski v. Costa Crociere S.p.A., 560 U.S. 538, 550 (2010)).

286. *Id.* (quoting *Krupski*, 560 U.S. at 550).

287. *Id.* at *7.

288. *Id.*

289. *White*, 2016 WL 4270152, at *18 (citing Joseph v. Elan Motorsports Techs. Racing Corp., 638 F.3d 555, 559 (7th Cir. 2011)).

courts find that focusing the analysis under Rule 15(c) on the defendant's knowledge best harmonizes the Supreme Court's analysis in *Krupski* with the purpose of relation back.[290]

IV. A BETTER WAY

After *Krupski*, courts should adopt the approach described in Part III.A.2 and allow relation back for claims against John Doe defendants, provided that the other requirements of Rule 15(c) are met. This approach is supported by the text and purpose of Rule 15(c) as well as the Supreme Court's guidance in *Krupski*, and is consistent with the Federal Rules of Civil Procedure generally.

The majority's definition of "mistake" as implying a lack of intentionality that may be inconsistent with the intentional use of John Doe designations is supported by lay and legal dictionaries.[291] Still, such close scrutiny of the word "mistake," without broader reference to the other provisions within Rule 15(c), results in an excessively formalistic interpretation that is not mandated by the rule's text.[292]

As an initial matter, *Krupski*'s definition of mistake to include "inadequate knowledge" challenges the majority's narrow definition.[293] Further, by focusing unnecessarily on the meaning of "mistake," proponents of the John Doe rule read into Rule 15(c) a distinction between its mistake requirement and its knowledge requirement that is unsupported by the text of the Rule.[294] The Supreme Court described the central inquiry under Rule 15(c)(1)(C)(ii) as whether the prospective defendant knew or should have known during the Rule 4(m) period that it would have been named in the original action were it not for a mistake concerning its identity.[295] Wright & Miller's treatise on the Federal Rules of Civil Procedure supports this interpretation. It describes Rule 15 has having a "knowledge of mistake" requirement and not a "knowledge" requirement and a "mistake" requirement.[296] Thus, Rule 15(c)(1)(C)(ii) is best understood as having a single requirement: the party to be brought in by amendment knew or should have known that it was not named in the complaint solely because the plaintiff had inaccurate or incomplete information concerning its identity. Relatedly, the minority approach to relation back for claims against John Doe defendants appropriately recognizes that much of the reasoning upon which continued application of the John Doe rule relies, both for its definition of mistake and for its interpretation of Rule 15(c)(1)(C)(ii), has been undermined by

290. *See Haroon*, 2017 WL 4280980, at *7.
291. *See supra* note 246 and accompanying text.
292. *See* Goodman v. Praxair, Inc., 494 F.3d 458, 470 (4th Cir. 2007) ("[T]he text of [Rule 15(c)(1)(C)(ii)] does not support . . . parsing of the 'mistake' language.").
293. *See supra* notes 260–62 and accompanying text.
294. *Goodman*, 494 F.3d at 470–71.
295. Krupski v. Costa Crociere S.p.A., 560 U.S. 538, 548 (2010).
296. 6A WRIGHT ET AL., *supra* note 25, § 1498.3.

Krupski's rejection of an inquiry under the rule that focuses on what a plaintiff knew at the time of filing.[297]

This approach is also better supported by the purpose of Rule 15(c).[298] Under the majority's approach, plaintiffs that lack the knowledge of the proper party are treated significantly more harshly than those that misunderstand which party is responsible for their injuries.[299] This outcome does not protect a defendant's legitimate right to repose, nor is it consistent with the Federal Rules of Civil Procedure.[300]

Policies underlying statutes of limitations are not implicated by an amendment identifying a previously unidentified party who timely received sufficient notice of his status as an intended defendant and faces no prejudice by having not been identified in the original complaint.[301] As the Supreme Court observed in *Krupski*, "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."[302] To free intended defendants from the obligation to defend against potentially meritorious claims solely on the ground that the plaintiff lacked knowledge of their identities, instead of misperceiving their identities, overprotects an interest in repose that is neither warranted nor faithful to the Rules' preference for resolving disputes on their merits.[303]

The majority approach also results in a paradox in which cases with similar sets of facts reach fundamentally different outcomes. In *Wyatt*, the court found that because Wyatt incorrectly named two real but ultimately uninvolved officers, instead of using fictitious names as placeholders for defendants whose identities he had not yet discovered, his misidentification qualified as a "quintessential" mistake under Rule 15(c).[304] However, had Wyatt been aware of his lack of knowledge and named John Doe defendants instead, his claims would likely have been barred by the statute of limitations.[305] The arbitrariness of this disparity in outcomes is remarkable given the similarity of the circumstances. In both situations, Wyatt would have known the identities of some, but not all, of the individuals involved in his encounter with law enforcement, the only difference being his own awareness of his lack of knowledge. To dismiss the claims in one instance while allowing the case to proceed in another clearly seems to constitute a result based on a technicality, an outcome disfavored by the Federal Rules of Civil Procedure.[306] Further, recognizing a legally significant difference

297. *See supra* notes 274–80 and accompanying text.
298. *See supra* Part III.B.3.
299. *See supra* notes 287–90 and accompanying text.
300. *See supra* notes 289–90 and accompanying text.
301. *See supra* notes 288–90.
302. Krupski v. Costa Crociere S.p.A., 560 U.S. 538, 550 (2010).
303. *See id.*
304. Wyatt v. Owens, 317 F.R.D. 535, 540–41 (W.D. Va. 2016); *see also supra* notes 209–15.
305. *See Wyatt*, 317 F.R.D. at 541.
306. *See* Foman v. Davis, 371 U.S. 178, 181 (1962).

between the two situations ultimately requires focusing on the plaintiff's knowledge at the time of filing the complaint, which the Supreme Court has identified as "the wrong starting point."[307]

Disparate treatment of such similar situations also creates troubling incentives for plaintiffs and puts the current interpretation of Rule 15(c) in tension with Rule 11's requirement that all factual contentions contained in a pleading have evidentiary support or are likely to have support after an opportunity for investigation or discovery.[308] Under the majority approach, it is not unreasonable to expect a plaintiff to conclude that she is better off naming *someone* in the original complaint, as opposed to using a John Doe designation with the hope of discovering the party's identity, in order to avoid dismissal of the entire action if she is unable to do so within the limitations period. While such a pleading violates Rule 11 in that it does not, to the best of the plaintiff's knowledge or belief, contain factual allegations supported by evidence,[309] the violation would likely be hard to prove. In this way, the majority interpretation potentially incentivizes bad faith misidentifications by punishing plaintiffs who are aware of and candid about their lack of information, despite their situational similarity with plaintiffs who are ignorant of their own lack of knowledge. Thus, aside from its tension with the Supreme Court's approach to Rule 15(c)(1)(C)(ii) and the Federal Rules of Civil Procedure generally, this approach creates incentives for plaintiffs that run counter to the requirements under Rule 11.

The minority approach to Rule 15(c) also standardizes relation back doctrine by eliminating the need for various exceptions to the John Doe rule to avoid inequitable outcomes.[310] By focusing the question under Rule 15(c)(1)(C)(ii) on the prospective defendant's knowledge, the minority approach allows courts to screen claims against John Doe defendants that should properly be dismissed when the policies underlying statutes of limitations are implicated through a robust notice inquiry that results in the dismissal of claims when a prospective defendant reasonably could have concluded that the plaintiff did not intend to name him in the suit,[311] while allowing claims to proceed when such policies are not implicated.[312] Thus, the minority approach allows courts to reach this outcome through a single, standardized approach, while the majority does it through a patchwork of exceptions.[313]

CONCLUSION

After *Krupski*, the John Doe rule should be abandoned in favor of an approach that better balances the competing interests protected by the relation back doctrine—namely, a defendant's interest in repose and the Federal

307. *Krupski*, 560 U.S. at 548.
308. FED. R. CIV. P. 11(b)(3).
309. *Id.*
310. *See supra* notes 161–69 and accompanying text.
311. *See supra* notes 234–39 and accompanying text.
312. *See supra* notes 284–86 and accompanying text.
313. *See supra* notes 161–69, 216–18 and accompanying text.

Rules' goal of facilitating the disposition of claims on their merits. By interpreting Rule 15(c) to allow relation back for claims against John Doe defendants when the other requirements are met, courts can screen claims against defendants with a legitimate interest in repose, while avoiding the dismissal of meritorious claims based on a technicality. This approach is supported by the text and purpose of Rule 15(c) as well as by Supreme Court precedent interpreting the rule, and it is more consistent with the Federal Rules of Civil Procedure generally.