

A day before the applicable statutory limitations period expired, a worker filed a federal diversity action for defamation against her former employer, alleging that the employer had falsely and publicly accused her of stealing trade secrets. In describing the events that led to the false accusations, the complaint quoted a statement of a competitor made to the employer about the worker's alleged theft.

During discovery, the worker deposed the competitor. One week after discovery closed, the worker moved to amend the complaint to add the competitor as a defendant. The competitor opposed the motion on the ground that the statutory limitations period had expired.

Is the court likely to grant the motion?

- A. No, because discovery has closed, and the competitor will be prejudiced. (18%)
- B. No, because the amendment would not relate back and thus would be futile. (18%)
- C. Yes, because leave to amend should be freely granted when the underlying action was timely. (4%)
- D. Yes, because the allegations against the competitor arise out of the same factual circumstances and relate back to the allegations in the original complaint. (57%)

Incorrect

Correct answer B

18% Answered correctly

46 secs Time Spent

2023 Version

Explanation:

An amended complaint filed after the statute of limitations has expired is prohibited unless the **relation-back doctrine** applies. This doctrine treats the **amended complaint** as if it were filed on the same date as the original complaint. But an amendment that **changes or adds a party** "relates back" only if the statute of limitations allows (not seen here) OR when: the amendment concerns the **same transaction or occurrence** as the original complaint

the new party **received notice** of the suit **within 90 days** after the original complaint was filed *and*

the new party **knew or should have known** that the **suit would have been brought** against it **but for a mistake** concerning the proper **party's identity**.

Here, the allegations against the competitor arise out of the same factual circumstances as the complaint, and the competitor received notice of the suit through the deposition. But the worker's failure to name the competitor in the complaint was not due to mistaken identity because the complaint quoted the competitor. As a result, the amendment does *not* relate back to the date the complaint was filed and thus would be futile (**Choice D**). Accordingly, the court is unlikely to grant the worker's motion.

(Choice A) The close of discovery does not prevent the amendment because the court can permit [amendments to pleadings](#) when justice so requires. And any resulting prejudice to the competitor is relevant to—but not dispositive of—whether the court should give leave to amend.

(Choice C) A court should freely grant leave to amend a pleading when justice so requires unless the amendment would be prohibited (as seen here)—not because the underlying action was timely.

Educational objective:

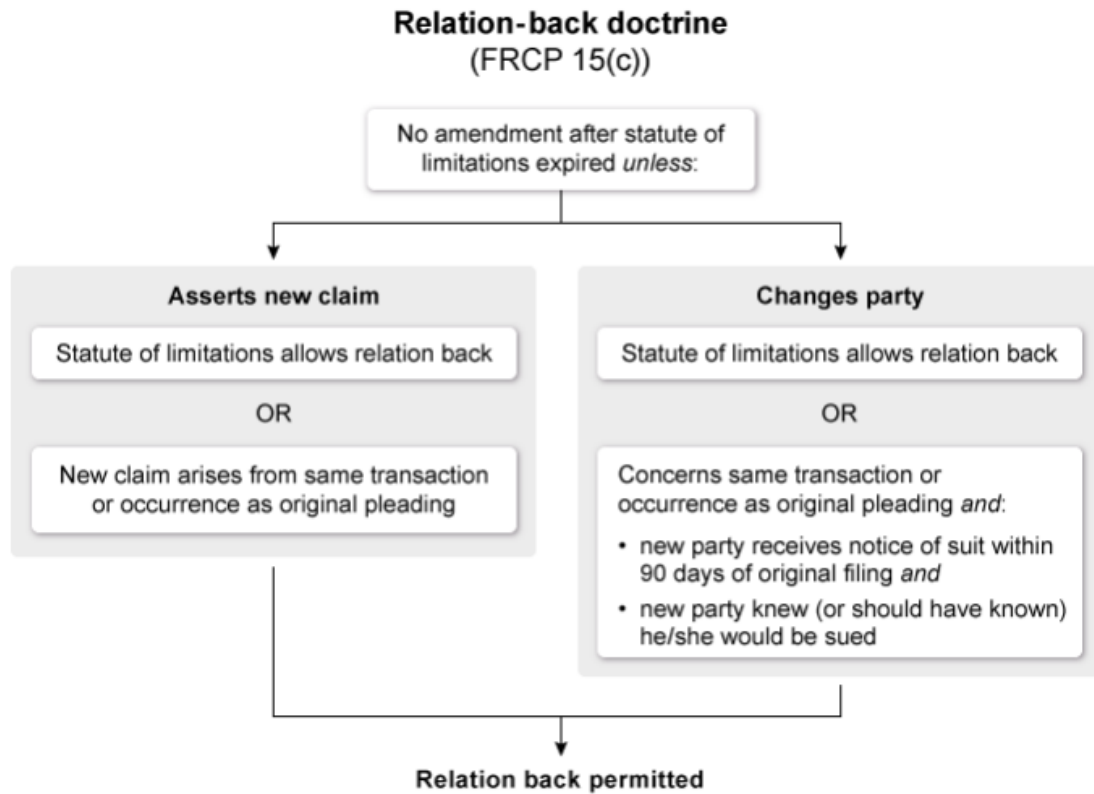
An amended complaint will "relate back" to the date of the original complaint if (1) the same occurrence is at issue, (2) the new party received notice of the suit within 90 days after the original complaint was filed, and (3) the new party knew or should have known that it would have been named but for a mistake about its identity.

References

Fed. R. Civ. P. 15(c) (setting forth the requirements for relation back of amended pleadings).

6A Charles Alan Wright et al., Federal Practice and Procedure § 1498.3 (3d ed. 2021) (explaining that the relation back of an amendment changing a party must arise out of a mistake concerning the proper party's identity).

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FRCP = Federal Rule of Civil Procedure.