

## Third Circuit Makes Clear that “Good Cause” Standard Applies to Motions to Amend Filed After Deadline in Scheduling Order

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In a precedential opinion, the United States Court of Appeals for the Third Circuit Court clarified that “when a party moves to amend or add a party after the deadline in a district court’s scheduling order has passed, the ‘good cause’ standard of Rule 16(b)(4) of the Federal Rules of Civil Procedure applies.” *Premier Comp. Solutions, LLC v. UPMC, et al.*, No. 19-1838, slip op. at 5 (Aug. 12, 2020). A party moving to amend must meet this standard *before* the Court examines whether the party also satisfies the more liberal standard for amending under Rule 15(a).

In the underlying case, plaintiff filed suit alleging violations of federal antitrust and state unfair competition laws. Nearly five months after the deadline in the district court’s scheduling order had elapsed, plaintiff learned facts from a deposition to suggest that defendants entered into an illegal bid-rigging agreement. As a result, plaintiff moved to amend the complaint to add a new antitrust count and another party defendant.

Plaintiff argued in its opening brief that it met the standard to amend set forth in Rule 15(a), which states that “[t]he court should freely give leave [to amend] when justice so requires.” Plaintiff did not address the good cause standard under Rule 16(b)(4), which states that a scheduling order “may be modified only for good cause and with the judge’s consent.” In reply to defendant’s opposition that plaintiff “relie[d] on the wrong rule” and failed to show diligence, plaintiff conceded that Rule 16(b)(4) applied, and it did not contest that diligence was relevant to the court’s analysis under Rule 16(b)(4). Op. at 4. The district court denied plaintiff’s motion, finding that plaintiff failed to establish good cause under Rule 16(b)(4). Subsequently, on plaintiff’s motion for reconsideration, the district court denied reconsideration, reasoning that it would not consider issues plaintiff raised for the first time in its reply.

On appeal, plaintiff argued that (1) diligence is not required under Rule 16(b)(4)’s good cause standard; and (2) even if it is, plaintiff addressed that issue in its reply in support of its motion to amend. The Court of Appeals rejected both arguments. First, the Court of Appeals found that plaintiff failed to raise the first argument in the district court and therefore waived it. Nevertheless, the Court of Appeals took this opportunity to reaffirm that diligence is relevant to the good cause standard under Rule 16(b)(4): “[W]e have repeatedly recognized—and we reaffirm today—that whether ‘good cause’ exists under Rule 16(b)(4) depends in part on a plaintiff’s diligence.” Op. at 6. As to plaintiff’s second argument, the Court of Appeals found that the district court did not abuse its discretion in concluding that plaintiff forfeited its argument under Rule 16(b)(4) by raising it for the first time in its reply.



A full copy of the Court of Appeals' August 12, 2020 opinion in *Premier Comp. Solutions, LLC v. UPMC, et al.*, No. 19-1838 is attached.