

## Third Circuit Denies Appeal Against Axinn Client UPMC

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### PRACTICE AREAS

Antitrust

Axinn obtained a significant victory in an antitrust case against UPMC, a world-renowned health care provider and insurer. The plaintiff, a former vendor of UPMC WorkPartners, a UPMC subsidiary providing worker's compensation insurance and Third Party Administration ("TPA") services to employers alleged that UPMC had violated Section 1 and Section 2 of the Sherman Act. On August 12, 2020, the Third Circuit Court of Appeals affirmed the District Court for the District of Western Pennsylvania's earlier judgment for UPMC. On March 27, 2019, the district court granted Axinn's motion for summary judgment on all six antitrust counts, including allegations of conspiracy, group boycott, monopolization, attempted monopolization, and exclusive dealing. Axinn successfully argued that the plaintiff failed to define any relevant markets, lacked antitrust injury, and failed to prove foreclosure or harm to competition. The district court also found that UPMC did not have market power or a dangerous probability of achieving a monopoly in the provision of worker's compensation insurance or TPA services.

The Third Circuit's unanimous decision involved two important procedural rulings. First, the court affirmed that the plaintiff, in moving to amend its complaint, had inappropriately attempted to rely on the more liberal standard of Federal Rule of Civil Procedure Rule 15 rather than the more exacting standard of Rule 16(b)(4), which must be met if a case management order establishes a deadline to amend. Rule 16(b)(4) requires an affirmative showing of "good cause" and "due diligence," and the plaintiff did not address these issues in its opening brief in support of its motion to amend. Second, the appellate court affirmed that the district court judge was not obliged to consider arguments raised by plaintiff for the first time in its reply brief.

The Axinn team was led by partners Richard Dagen and Tom Rohback, assisted by Dan Oakes and Brandon Boxbaum.