

FCA Relator Petitions Supreme Court Seeking Resolution of Circuit Split Regarding Applicability of Rule 15(a) to Post-Judgment Motions to Amend

Dr. Helen Ge, the relator in *United States ex rel. Ge v. Takeda Pharmaceutical Co Ltd.*, recently filed a petition for a writ of certiorari in the United States Supreme Court seeking review of the First Circuit's decision that Rule 15(a)'s liberal amendment standard did not apply to her post-judgment motion to amend.

Dr. Ge filed two *qui tam* actions in the United States District Court for the District of Massachusetts. In her opposition to Takeda's motion to dismiss, she also made a cursory request for an opportunity to amend the complaints if the court found they were deficient in any way. The District Court dismissed the complaints without addressing her request to amend. After judgment entered, she moved for reconsideration and simultaneously moved for leave to file amended complaints. The District Court denied this post-judgment motion as well.

The First Circuit affirmed, finding that the initial request to amend, contained in her opposition brief, was not properly made "because it consisted of 'boilerplate' language and did not include the components of a formal motion to amend." Thus, the "bare request in [the] opposition to [the] motion to dismiss does not constitute a motion to amend for purposes of Rule 15(a)." As for her second, more formal motion, the First Circuit held that because it was filed post-judgment, it was required to meet the standards in Rule 59, not those in Rule 15(a). Since she had not presented "newly acquired evidence or a manifest error of law," the First Circuit affirmed the District Court's denial of the post-judgment motion as well.

Relator's petition for Supreme Court review focuses on two points:

- First, she argues that the First Circuit deepened a circuit split on whether Rule 15(a) applies to a post-judgment motion to amend. Relator argues that the First Circuit joined three circuits in holding that a district court should not apply Rule 15 post-judgment. She states that five other circuits do apply the Rule 15 standard in this context, while two circuits apply a balancing test.
- Second, Relator argues that Rule 15 has taken on more importance post-*Iqbal*. In her view, as the standard for pleading generally has become more demanding, the opportunity to correct deficiencies post-judgment should become more forgiving. To hold otherwise, she asserts, would undermine the spirit of the Federal Rules.

Relator's Petition argues that the Supreme Court should grant cert to resolve the circuit split and recognize that Rule 15(a) applies to post-judgment motions to amend.

Ropes & Gray will continue to monitor developments in this area. If you have questions or would like to discuss the foregoing or any related matter, please contact the Ropes & Gray attorney with whom you regularly work, or any other attorney in our [false claims act](#) practice.