

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**KIMBERLY A. MARTIN,**

**Plaintiff,**

vs.

**INSIGHT COMMUNICATIONS  
COMPANY, LP, et al.,**

**Defendants.**

**Civil Action 2:10-cv-00537**

**Judge Michael H. Watson**

**Magistrate Judge E. A. Preston Deavers**

**ORDER**

This matter is before the Court on Defendant Timothy Martin's Motion for Leave to Amend Answer (Doc. # 26). Defendant specifically requests that the Court's leave to amend his answer to bring a statute of limitation defense to the attention of the Court.

Pursuant to Federal Rule of Civil Procedure 15(a), the Court may allow a party to amend its pleading "when justice so requires." Fed. R. Civ. P. 15(a). Nevertheless, "[o]nce the scheduling order's deadline to amend the [pleadings] passes . . . 'a plaintiff first must show good cause under Rule 16(b) . . . for failure earlier to seek leave to amend.'" *Ruschel v. Nestle Holdings, Inc.*, 89 Fed. Appx. 518, 521 (6th Cir. 2004) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). The Court then "must evaluate prejudice to the nonmoving party 'before [it] will [even] consider whether amendment is proper under Rule 15(a).'" *Id.* (quoting *Foman*, 371 U.S. at 182).

In this case, the Preliminary Pretrial Order stated that "[m]otions or stipulations addressing the parties or pleadings, if any, must be filed on or before **SEPTEMBER 15, 2010.**" (Doc. # 15 at 2.) Defendant filed his Motion for Leave to Amend Answer on September 28,

2010. Defendant's Motion does not indicate whether good cause exists for his failure to seek leave to amend the answer before the scheduling deadline passed. Accordingly, Defendant Timothy Martin's Motion for Leave to Amend Answer (Doc. # 26) is **DENIED** without prejudice. If Defendant still wishes to amend his Answer, he must file a motion to modify the case schedule and for leave to file an amended answer, pursuant to Federal Rules of Civil Procedure 16(b)(4) and 15(a)(2), demonstrating that good cause exists for granting his motions.

**IT IS SO ORDERED.**

September 29, 2010

/s/ Elizabeth A. Preston Deavers

Elizabeth A. Preston Deavers  
United States Magistrate Judge