

**IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**TRITON CONSTRUCTION, INC.,
a West Virginia corporation,**

Plaintiff,

vs.

Civil Action No. 21-C-07

Presiding Judge: H. Charles Carl, III

**Resolution Judge: Michael D. Lorensen
and Jennifer P. Dent**

**GANNETT FLEMING, INC.,
a Delaware corporation, and**

**MONONGAHELA CONSERVATION DISTRICT,
a West Virginia Conservation District,**

Defendants.

**ORDER GRANTING THE MOTION FOR LEAVE
TO FILE SECOND AMENDED COMPLAINT**

CAME THIS DAY January 7, 2022, the Plaintiff Triton Construction, Inc. ("Triton"), by its counsel Norman T. Daniels, Jr. and the Daniels Law Firm, PLLC, and the Defendant Gannett Fleming, Inc., by its counsel James A. Kirby III, and Defendant Monongahela Conservation District, by its counsel Hilary M. Bright, for a hearing pursuant to the Briefing Order entered on December 10, 2021. This Briefing Order required that the non-moving parties file their responses to the Motion for Leave to File Second Amended Complaint by December 20, 2021. Plaintiff had until December 30, 2021, to file a rebuttal memorandum.

The Court has carefully considered the Motion, the Briefs filed, arguments of counsel at the hearing, and pertinent legal authority. In support of its decision, the Court makes the following findings of fact and conclusions of law:

1. Rule 15 of the West Virginia Rules of Civil Procedure provides, in pertinent part,

...a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires...

W.Va. R. Civ. P. 15.

2. Further, the rule of civil procedure that leave to amend a pleading “shall be freely given when justice so requires” is to be liberally construed to promote substantial justice and to secure the just, speedy, and inexpensive determination of every action. *Perdue v. S. J. Groves & Sons Co.*, 152 W. Va. 222, 161 S.E.2d 250 (1968). “The purpose of the words ‘and leave [to amend] shall be freely given when justice so requires’ in Rule 15(a) W. Va. R. Civ. P., is to secure an adjudication on the merits of the controversy as would be secured under identical factual situations in the absence of procedural impediments; therefore, motions to amend should always be granted under Rule 15 when: (1) the amendment permits the presentation of the merits of the action; (2) the adverse party is not prejudiced by the sudden assertion of the subject of the amendment; and (3) the adverse party can be given ample opportunity to meet the issue.” Syl. pt. 3, *Rosier v. Garron, Inc.*, 156 W.Va. 861, 199 S.E.2d 50 (1973). Syl. Pt. 6, *Berry v. Nationwide Mut. Fire Ins. Co.*, 181 W.Va. 168, 381 S.E.2d 367 (1989); *see also*, Franklin D. Cleckley, Robin J. Davis & Louis J. Palmer, *Litigation Handbook on West Virginia Rules of Civil Procedure* § 334 (2002).

3. Triton moved for leave to amend its Complaint under Rule 15, to add additional counts regarding allegedly fraudulent activity after the allegedly withholding of documents “has appeared from documents recently obtained”. *See* Pl’s Mot., p. 17. Given the standard outlined above, the Court finds this request must be granted. The Court finds that Triton alleges Defendants committed fraud by the redaction of important information from the geotechnical reports contained in the bid package which was given to add bidders. *Id.* at 18. The Court finds

the information contained in these redacted or withheld documents was not known until Plaintiff was able to access the redacted information.

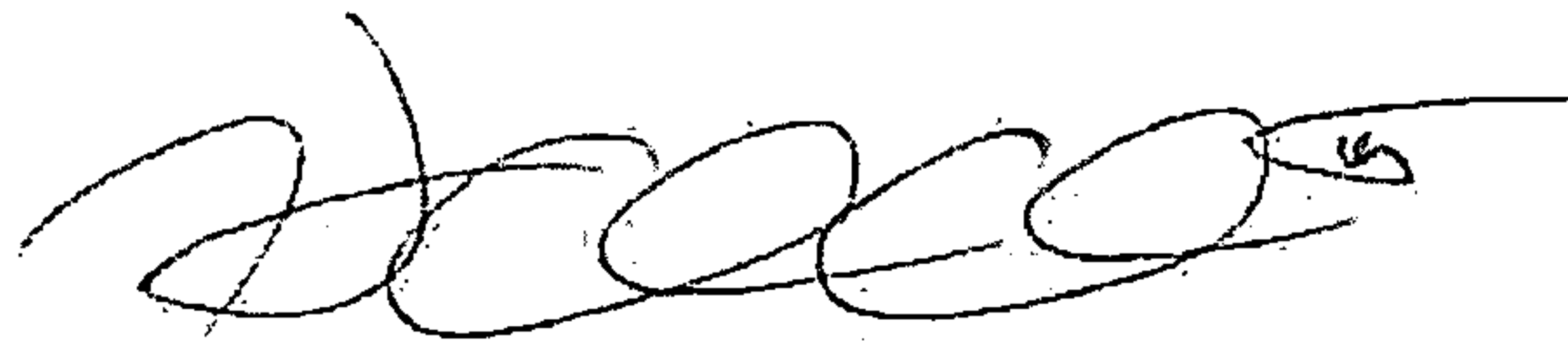
4. The Court also finds the addition of these counts at this early stage in the litigation will not prejudice any party. Trial is not set until 2023 and significant discovery has not been underway. Discovery on the added counts can occur concurrently with the original Complaint's counts. The Court notes the proposed causes of action could be brought in a separate suit. Therefore, in the interests of judicial economy, the Court finds Plaintiff shall be entitled to amend its Complaint to promote a more accurate consideration of the merits in one case. The Court has considered the liberal standard of Rule 15, and finds that as leave to amend must be "freely given," Defendants' request should be granted. Therefore, the Court concludes that Triton should be, and hereby is, granted leave of Court to file its *Second Amended Complaint* pursuant to *W. V. R. Civ. P. 15* and the rule of liberality established in that rule in freely granting motions to amend.

Accordingly, the Court **GRANTS** Triton's Motion for Leave to Amend Complaint and hereby **ORDERS** that Triton's *Second Amended Complaint* as attached as Exhibit 2 to Triton's *Motion for Leave to File Second Amended Complaint* is hereby deemed filed and served as of the entry of this *Order*. Defendants are **ORDERED** to respond to Triton's *Second Amended Complaint* within twenty (20) days of entry of this *Order*.

Upon its entry, the Circuit Clerk is directed to forward a copy of this Order to all counsel of record and to the Business Court Division Central Office, Berkeley County Judicial Center, Suite 2100, 380 West South Street, Martinsburg, WV 25401.

IT IS SO ORDERED this 25 day of January, 2022.

A handwritten signature in black ink, appearing to be "J. C. [unclear]", is written over a horizontal line.



**H. Charles Carl, III, Presiding Judge
Business Court Division**

4 copies
SD
1-25-22
Business ct.
JAK III
NTD JC
HB

Entered: January 25, 2022

Lisa Lushman, Clerk

By: Sandy Murray, Deputy