

No. 31391– *State ex rel. Frazier & Oxley v. Hon. John L. Cummings, Judge*

FILED

McGraw, Justice, dissenting:

**December 10, 2003
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

It is clear that Rule 15 of the West Virginia Rules of Civil Procedure provides that a party may amend a pleading by leave of the court and “leave shall be freely given when justice so requires.” W. Va. R. Civ. P. 15 (2003). The Rules favor the resolution of claims rather than their exclusion. As this Court has often noted “[i]t is well established that complaints are to be read liberally as required by the notice pleading theory underlying the West Virginia Rules of Civil Procedure.”” *Whorton v. Malone*, 209 W. Va. 384, 390 n.6, 549 S.E.2d 57, 63 n.6 (2001); accord, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995); *Mandolidis v. Elkins Indus., Inc.*, 161 W. Va. 695, 246 S.E.2d 907 (1978); *John W. Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W. Va. 603, 245 S.E.2d 157 (1978). In light of this authority, I believe that the lower court was correct in allowing St. James to amend its complaint. Therefore, I must respectfully dissent.