

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

W.E. BLAIN AND SONS, INC.

NO. 2018 CW 1214

VERSUS

LOUISIANA DEPARTMENT OF
TRANSPORTATION AND
DEVELOPMENT, STATE OF
LOUISIANA

DEC 17 2018

In Re: Louisiana Department of Transportation and
Development, State of Louisiana, applying for
supervisory writs, 19th Judicial District Court,
Parish of East Baton Rouge, No. 571749.

BEFORE: WHIPPLE, C.J., WELCH AND HIGGINBOTHAM, JJ.

WRIT DENIED. The criteria set forth in **Herlitz Construction Co., Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981) (per curiam) are not met.

TMH
VGW

Welch, J., dissents. I would reverse the trial court and grant relator's, Louisiana Department of Transportation and Development, State of Louisiana, motion to file an amended answer and request for a jury trial. Amendment of pleadings should be liberally allowed provided the movant is acting in good faith, the amendment is not sought as a delaying tactic, the opponent will not be unduly prejudiced, and the trial on the issues will not be delayed. **Joseph v. Our Lady of the Lake Regional Medical Center**, 2014-0181 (La. App. 1st Cir. 10/16/14), 156 So.3d 210, 215. In this case, the amendment of the pleadings herein by relator appears to be in good faith and, since the trial court has not yet set a trial date, would not unfairly prejudice plaintiff, W. E. Blain and Sons, Inc., or unduly delay the trial. See **Rainey v. Entergy Gulf States, Inc.**, 2001-2414 (La. App. 1st Cir. 11/8/02), 840 So.2d 586, 590-91, on reh'g., 2001-2414 (La. App. 1st Cir. 6/25/04), 885 So.2d 1193.

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DEPUTY CLERK OF COURT
FOR THE COURT