

Supreme Court

No. 06-158-A

No. 07-121-A

State of Rhode Island :
v. :
Lead Industries Association, Inc., et al. :

ORDER

This is the Attorney-General's public-nuisance lawsuit against certain lead pigment manufacturers and their trade association, Lead Industries Association, Inc. (collectively referred to herein as the defendants). The liability portion of the litigation has now concluded in the Superior Court and the case is before this Court on a multitude of appeals and cross appeals filed by the parties from the sundry pre-trial and post-trial rulings issued by the trial justice. Due to the sheer number of the parties and the complexity of the issues involved in these appellate proceedings, the Chief Justice of this Court, on May 1, 2007, conducted an Organizing Conference with the attorneys for the parties to work out a strategy designed to assist counsel and the Court in moving these matters efficiently and expeditiously through the appellate process.

Following the Organizing Conference, the parties' counsel, in compliance with the Chief Justice's directive, drafted a Proposed Appeal and Briefing Protocol (the Protocol), which settles important housekeeping matters, provides for additional Organizing Conferences, and establishes a 5-Track procedure for the briefing of all pending appeals and cross appeals. Such appeals and cross appeals include in particular

the appeals of defendants The Sherwin-Williams Company, NL Industries, Inc. and Millenium Holdings, Inc. from the judgment of abatement in favor of the state; the state's cross appeal on the issue of compensatory damages; the state's appeal from the judgment for defendant Atlantic Richfield Company and the latter's conditional cross appeal; and the state's and the Attorney-General's appeals from the trial justice's pre-trial contempt rulings (the Contempt Appeals), previously docketed in this Court under the caption, *State v. Lead Industries Association, Inc. et al.*, No. 06-158-A. Also included in the Protocol (see Paragraph 4 and Track 5) is a provision for the Court's acceptance of briefs previously filed in *State v. Lead Industries Association, Inc. et al.*, 898 A.2d 1234 (2006), wherein defendants petitioned for certiorari to review the trial justice's pre-trial ruling in respect to the state's contingency fee agreement. This Court there denied certiorari without prejudice and deferred consideration of the constitutional issues raised by the defendants on the grounds that such issues were not justiciable and should await the trial justice's disposition of then pending post-trial motions. Those motions having now been decided, the constitutional issues are properly before this Court for consideration pursuant to defendants' appeals.

The motion to adopt the Protocol came before this Court in conference. The Attorney-General, in his response, while concurring for the most part, proposes a minor modification of the 5-Track briefing formula which would in effect permit his office to avoid the requirement imposed therein on all counsel for the simultaneous filing of appellants' briefs. Further, in a separate filing, the Attorney-General moves to consolidate the instant appeals/cross appeals with his previously-docketed Contempt Appeals. After

careful consideration of the motions and memoranda filed by counsel, we hereby direct that the following Order shall enter:

1. The Attorney-General's motion to consolidate the Contempt Appeals with the subsequent appeals/cross appeals filed in this case is granted.
2. The joint motion to adopt the 5-Track Briefing and Appeal Protocol as drafted by counsel for the defendants, a copy of which is attached hereto as Exhibit A, is granted, provided, however, that notwithstanding our approval of the Protocol, this Court retains ultimate control over these appellate proceedings, including the continued authority to supervise and manage all aspects of the appeals and cross appeals in accordance with the Rules of Appellate Procedure.

Justice Goldberg did not participate.

Entered as an Order of this Court this *21st* day of *May 2007*.

By Order,


Clerk

STATE OF RHODE ISLAND
PROVIDENCE, SC.

EXHIBIT A

SUPREME COURT

STATE OF RHODE ISLAND, BY
AND THROUGH PATRICK C. LYNCH,
ATTORNEY GENERAL

No. 04-63-M.P.
No. 06-158-A.
No. 07-121-A.

v.

LEAD INDUSTRIES ASSOCIATION, INC.,
ET AL.

**JOINT MOTION ON
APPEAL AND BRIEFING PROTOCOL**

On May 1, 2007 the undersigned parties met and conferred with the Honorable Chief Justice Frank J. Williams to discuss preliminary arrangements for the orderly litigation of the several appeals arising out of *State of Rhode Island, by and through Patrick C. Lynch v. Lead Industries Association, Inc.*, C.A. No. 99-5226. Those appeals include:

- the individual appeals of The Sherwin-Williams Company (SW), NL Industries, Inc. (NL) and Millennium Holdings Inc. (MH) from the judgment of abatement in favor of the State, and the State of Rhode Island's cross-appeal on the issues of compensatory damages. (No. 07-121-A.).
- the State's appeal from the judgment in favor of Atlantic Richfield Company and Atlantic Richfield Company's conditional cross-appeal. (No. 07-121-A.).
- the State's and the Attorney General's appeals of contempt orders entered on or about December 2, 2005 and June 2, 2006. (No. 06-158-A and 07-121-A)¹.
- the Writ of Certiorari issued to review the propriety of the State's use of a contingency fee agreement with private counsel to prosecute a public nuisance action on behalf of the State. (No. 04-63-M.P.).

¹ The parties assume that all post-judgment appeals will be docketed under No. 07-121-A.

Subject to the approval of the Court, the parties agree the following protocol shall apply to the litigation of these appeals:

1. Preparation of the official transcripts and record should be expedited if reasonably possible.

2. Upon the completion, certification and filing of the official transcripts with the Supreme Court clerk, the Superior Court clerk shall certify the original papers and exhibits filed in the Superior Court as the balance of the record on appeal, but they shall remain in place in the Superior Court in lieu of physical transmittal to the Supreme Court clerk. Counsel shall have access to the original papers and exhibits as though they had been physically transmitted to the Supreme Court Clerk's Office.

3. The Rule 12A pre-briefing process shall be waived. Upon the completion of the official transcript, certification of the original papers and exhibits, and the docketing of this matter in the Supreme Court, a second organizing conference will be held, either by motion of a party or at the initiative of the Court. The organizing conference will consider among other things: a) page lengths of the parties' briefs; b) the schedule for the filing of the parties briefs and briefs of amicus curiae; c) the possibility of a consolidated appendix in an electronic, computerized disc, or hard copy format; and any other matters deemed appropriate by the Court. Prior to the conference, the parties will meet and confer.

4. Having already been fully briefed, argued and submitted, the petition for Writ of Certiorari concerning the contingency fee arrangement, No. 04-63-M.P., is resubmitted for decision without further briefing or argument unless requested by the Court. The parties may file citations of supplemental authorities under R.I.S.Ct. R. 16(e).

5. The appeals will be briefed on the following separate but simultaneous tracks:

| | TRACK 1 Liability Appeal (07-121-A) | TRACK 2 State's Cross- Appeal (07-121-A) | TRACK 3 State's ARCO Appeal (07-121-A) | TRACK 4 State's/AG's Contempt Appeals (06-158-A) (07-121-A) | TRACK 5 Contingency- Fee Appeal (04-63-M.P.) |
|---------------|--|---|---|--|---|
| First Filing | Appellants' Briefs by: SW, NL, MH | Appellant's Brief by: State | Appellant's Brief by: State | Appellant's Brief by: State/AG | |
| Second Filing | Appellee Brief(s) by: State | Appellee Briefs by: SW, NL, MH | ARCO's Brief: Appellee / Cross-Appellant | Appellees' Briefs by: SW, NL, MH | |
| Third Filing | All Amicus Briefs | | | | |
| Fourth Filing | Reply Briefs by: SW, NL, MH | Reply Brief by: State | State's Brief: Reply as Appellant / Brief-in-Chief as Appellee in ARCO's Cross-Appeal | Reply Brief by: State/AG | |
| Fifth Filing | Any Replies to Amici | | ARCO's Brief: Reply as Appellant in Cross-Appeal | | |

6. Upon completion of briefing, a third organizing conference, upon motion of a party or at the initiative of the Court, will be held to determine the procedures for oral argument, including but not limited to, the order and length of oral argument and a tentative oral argument date.

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