

STATE OF RHODE ISLAND
PROVIDENCE, SC.

STATE OF RHODE ISLAND
SUPREME COURT

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STATE OF RHODE ISLAND)
)
 v.)
)
 LEAD INDUSTRIES ASSOCIATION,)
 INC., *et al.*)

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

ORDER ON BRIEFING PROTOCOL

On December 17, 2007, the parties conferred with the Honorable Chief Justice Frank J. Williams to discuss a protocol for briefing and scheduling the several appeals arising out of *State v. Lead Industries Association*, C.A. No. 99-5226. Those appeals include:

- Track One: The individual liability appeals of defendants, The Sherwin-Williams Company (SW), NL Industries, Inc. (NL) and Millennium Holdings Inc. (MH), from the judgment of abatement in favor of the plaintiff, State of Rhode Island.
- Track Two: The plaintiff's cross-appeal on the issue of compensatory damages.
- Track Three: The plaintiff's appeal from the judgment in favor of Atlantic Richfield Company (ARCO) and ARCO's conditional cross-appeal.
- Track Four: The plaintiff's and the Attorney General's appeals of contempt orders entered on or about December 2, 2005 and June 2, 2006.
- Track Five: The writ of *certiorari* to review the propriety of the plaintiff's use of a contingency fee agreement with private counsel to prosecute a public nuisance action on behalf of the State.

Following the Conference with the parties, counsel submitted a Joint Proposal Concerning Briefing Protocol that has been considered by

the Court. After careful consideration of the issues raised by the parties, we hereby direct that the following Order shall enter:

Briefing Schedule

1. Schedule as to the Track One (liability), Two (damages) and Four (contempt) briefs:

Brief	Due Date
Opening Briefs and supporting Amici	45 days: due January 31, 2008
Responsive Briefs and supporting Amici	45 days: due March 17, 2008
Reply Briefs	30 days: due April 16, 2008
Oral argument	May 15, 2008

2. Schedule as to the Track Three (State's appeal of ARCO verdict and ARCO conditional cross-appeal):

Brief	Due Date
Plaintiff's Opening Brief as Appellant	45 days: due January 31, 2008
ARCO's Responsive Brief as Appellee and Opening Brief as Cross-Appellant	45 days: due March 17, 2008

Plaintiff's Reply Brief as Appellant and Responsive Brief as Cross-Appellee	30 days: due April 16, 2008
ARCO's Reply Brief as Cross-Appellant	15 days: due May 1, 2008
Oral argument	May 15, 2008

3. Track Five, the writ of certiorari addressed to the contingency fee issue, will not be further briefed unless this Court so requests.
4. The Court will not grant any extensions of these filing dates.

Page Limits

5. Page limits for the Track One liability appeal by defendants SW, NL and MH:
 - Appellants SW, NL and MH may each file an opening brief on the merits, not to exceed 90 pages. Each of these briefs will address a different grouping of joint legal issues, which the two other appellants will incorporate by reference in order to avoid repetition. As presently contemplated,
 - NL will address the various legal issues relating to public nuisance.
 - SW will address certain statutory, constitutional, and new trial issues.
 - MH will address issues regarding actual and legal causation.
 - As the briefing comes closer to completion, some issues may be added, and issues presently contemplated to be in one appellant's brief may be addressed in a different brief.
 - Each merits brief will also include any issues unique to that defendant.

- Appellants SW, NL, and MH may also file with their opening briefs one joint additional brief, not to exceed 75 pages, containing an introductory summary of the case, its procedural history, and a description of the evidence. Appellee State of Rhode Island may also file a separate brief containing an introductory summary of the case, its procedural history, and a description of the evidence of not more than 75 pages.
 - Appellee may file [a] responsive brief[s] on the merits that do[es] not exceed the collective total pages allotted to the appellants for their opening briefs on the merits.
 - Appellants may each file a reply brief not to exceed 45 pages.
6. Page limits for the plaintiff's appeals in Tracks Two (damages) and the appeals in Track Four (contempt):
- All parties will follow the usual rules governing page limits with the exception of Track Four (the contempt appeals), where the opening brief on behalf of the appellants and the responsive briefs on behalf of the appellees will each not exceed 70 pages. The reply brief will be no more than 40 pages.
7. Page limits for Track Three (the plaintiff's appeal of the ARCO verdict and ARCO's Cross-Appeal):
- The plaintiff's opening brief will not exceed 50 pages.
 - ARCO's response brief, together with its opening brief on its conditional cross-appeal, will not exceed 65 pages.

- The plaintiff's reply brief and response brief to ARCO's conditional cross-appeal will not exceed 40 pages.
- ARCO's reply brief on its conditional cross-appeal will not exceed 15 pages.

Appendices

8. With respect to the Track One appeal, the parties will continue to work together regarding the preparation of a joint record appendix.
 - The parties will provide the Court with the transcript in an electronic format.
 - The parties will file the joint appendix electronically. Appellants will file an appendix with the individual pages numbered consecutively. The Appellee may add pages beginning with the next consecutive number and consecutively paginated thereafter, and the completed electronic appendix will be substituted for the appendix filed with the appellants' briefs.
 - At the close of the briefing, the parties shall submit a hard copy supplemental appendix containing portions of the record and exhibits that are most central to the Court's consideration of the issues presented.

Entered as an Order of this Court this 28th day of December, 2007.

By Order



Clerk