

FAST FIVE

RHODE ISLAND APPELLATE PRACTICE

This edition of the Fast Five on Rhode Island Appellate Practice features the final chapter of the case that is commonly known in Rhode Island as the “Lead Paint Case.” Two decisions issued by the Rhode Island Supreme Court in that case this term provide guidance to practitioners on a variety of issues.

(1) SUPREME COURT DETERMINES REMAND FOR FURTHER FACTFINDING UNNECESSARY.

In [State v. Lead Industries Association, Inc., No. 2010-288-Appeal](#), the Rhode Island Supreme Court was asked to review the trial justice’s determination that three PowerPoint slides were not protected by the attorney client privilege or the work product doctrine.

On appeal, the Supreme Court recognized that the trial justice did not make a clear determination as to whether the document should be protected by the work product doctrine. *Id.* at 11. Nevertheless, because the record before the Court was sufficient and because the Court’s review is de novo, the Court concluded that it was able to thoroughly consider the issue. *Id.*

The Court explained that “[a]lthough our usual practice would be to remand the matter to the Superior Court for further factfinding, we deem it appropriate to decide this issue because of the prolonged travel of this case and because the issue is relatively straightforward.” *Id.* n.11. In doing so, the Court paused to note that it “conduct[s] such review only on rare occasions.” *Id.*

(2) SUPREME COURT RELIES ON UNOFFICIAL TRANSCRIPTS ATTACHED TO PARTIES' APPENDICES.

When a party files a notice of appeal to the Rhode Island Supreme Court, it is his or her obligation to order from the court reporter(s) the official transcript(s) upon which he or she will rely. R.I. Sup. Ct. R. App. P. Art. I, Rule 10(b)(1). This is true even if a party has ordered unofficial copies of the relevant transcripts during the course of the case. *See Vogel v. Catala*, 63 A.3d 519 (R.I. 2013); *Sentas v. Sentas*, 911 A.2d 266, 270 (R.I. 2006).

In [State v. Lead Industries Association, Inc., No. 2010-278-Appeal; 2010-296-Appeal](#), the parties had ordered only one of the transcripts that was relevant to the appeal, however, because the parties had include unofficial copies of the additional relevant transcripts in its appendices, the Rhode Island Supreme Court relied on the unofficial transcripts. *Id.* at 3 n.4. (“We note that the only official transcript submitted to this Court was of the August 15, 2008 hearing; however, copies of the additional relevant transcripts were attached to the parties’ appendices.”).

(3) NON-RESPONSIVE DOCUMENTS NEED NOT BE LISTED ON A PRIVILEGE LOG.

It is well settled that a party who withholds discovery materials must provide sufficient information, usually in the form of a privilege log, to enable the other party to evaluate the applicable protection. [State v. Lead Industries Association, Inc., No. 2010-288-Appeal](#) at 20 (citing R.I. R. Civ. P. 26(b)(5)). It is equally well settled that a party is only required to disclose on its privilege log documents, communications, or things not produced that are “otherwise discoverable.” *Id.* at 21. Thus, a document that is irrelevant, immaterial, overbroad, or never requested in document requests need not be disclosed on a privilege log. *Id.* For that reason, the Supreme Court held that “nonresponsive documents are not required to be reported in a privilege

log.” *Id.*

(4) SUPREME COURT HOLDS THAT THERE IS NO WAIVER OF THE WORK PRODUCT DOCTRINE WHEN INFORMATION IS SHARED BETWEEN COPARTIES OR PARTIES WITH SHARED INTERESTS.

In [State v. Lead Industries Association, Inc., No. 2010-288-Appeal](#), the state argued that a defendant waived the work-product protection because it disclosed a document prepared in anticipation of litigation to three senior management personnel at a meeting of the defendant company's board of directors. *Id.* at 17. The Supreme Court disagreed.

In holding that the defendant did not waive the work product protection by its disclosure of the information to three top members of its management, the Court recognized that “[t]here is no waiver where the transferor of the protected information and the recipient of that information are coparties or where they share interests in a matter litigated against a common adversary.” *Id.*

(5) DID YOU KNOW?

Did you know that the Lead Paint Case resulted in the longest civil jury trial in state history? *See State v. Lead Industries Association, Inc.*, 951 A.2d 428 (R.I. 2008).



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