



For Immediate Release

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Paper Analyzes Rhode Island Supreme Court's "Public Nuisance" Ruling

The scenario facing lead paint manufacturers in Rhode Island was one that resembles the civil litigation nightmares of most American businesses. The defendants faced a hostile state attorney general represented by contingent-fee lawyers. The plaintiffs' lawyers wielded a vague but public-spirited legal theory to which juries could readily relate. The "victims" described at trial were hundreds of homeowners, particularly in lower income areas, especially children. A jury in 2006 had found the paint makers liable of a "public nuisance" and the trial court denied defendants' numerous post-trial motions. But as three attorneys discuss in a new Washington Legal Foundation WORKING PAPER, the state Supreme Court vindicated the defendants' rational arguments in the end, and restored order to Rhode Island's civil justice system.

The publication, **THE MOUSE ROARED!: RHODE ISLAND HIGH COURT REJECTS EXPANSION OF PUBLIC NUISANCE**, was authored for WLF by **Thomas R. Bender**, a partner in the Providence, Rhode Island firm of Hanson Curran LLP; **Richard O. Faulk**, a partner in the Houston office of the law firm Gardere Wynne Sewell LLP; and **John S. Gray**, also a partner with Gardere Wynne Sewell. In March 2007, WLF published a paper by Faulk and Gray, [*The Mouse that Roared?: Novel Public Nuisance Theory Runs Amok in Rhode Island*](#), which meticulously dissected the deep legal flaws in the Rhode Island trial court's ruling.

This new paper first recounts the suit's path from the state attorney general filing it in 1999, to a jury's verdict in favor of the plaintiffs in 2006, to the state high court's ruling on July 1. The authors then explain the Court's reasons for rejecting the plaintiffs' legal theory. Its rationale was solidly based in judges' role as arbiters of the law, not policymakers, and the state's obvious failure to establish the elements of a public nuisance violation.

The authors conclude with an entreaty to other courts faced with public nuisance lawsuits, which in addition to lead paint are arising in the context of subprime lending and global warming: embrace the Rhode Island high court's principles-based, persuasive approach to judging.

Printed copies of this educational paper, WLF WORKING PAPER, Number 157 (July 2008), can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.