

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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U.S. EPA HEADQUARTERS

OCT 31 2018

In re:)	ENVIRONMENTAL APPEALS BOARD
Titan Tire Corporation & Dico, Inc.)	Petition No.
(Southern Iowa Mechanical Superfund Site))	CERCLA § 106(b) 10-01
)	
Petitioners.)	
)	
CERCLA Administrative Order)	
No. CERCLA-07-2009-0006)	

JOINT NOVEMBER 1, 2018 STATUS REPORT

Petitioners Titan Tire Corporation and Dico, Inc. ("Petitioners"), by and through their attorneys, Thomas D. Lupo and Michael F. Iasparro of Hinshaw & Culbertson LLP, and Respondent, U.S. Environmental Protection Agency, by and through its attorney, Kristen Nazar, Attorney, Office of Regional Counsel, U.S. Environmental Protection Agency Region 7, submit this Joint November 1, 2018 Status Report pursuant to the Environmental Appeals Board's ("EAB") December 5, 2017 Order Continuing Stay of Proceedings.

The parties believe this matter should continue to be stayed pending resolution of the *United States of America v. Dico, Inc. and Titan Tire Corporation* matter in the United States Court of Appeals for the Eighth Circuit, Case No. 17-3462. Briefs have been submitted and the parties are waiting for oral argument to be scheduled. The appellate Docket Summary is attached hereto as Exhibit A.

Dated: October 31, 2018

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2018, the foregoing was filed with the Environmental Appeals Board and on October 31, 2018 has been served by U.S. Mail on counsel of record.

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/s/ Kristen Nazar
ATTORNEY FOR U.S. ENVIRONMENTAL
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This case was appealed from
Iowa Southern: [4:10-cv-00503-RP](#)

U.S. Circuit Court of Appeals

US Circuit Court of Appeals - 08th Circuit

17-3462

United States v. Dico, et al

This case was retrieved from the court on Tuesday, October 23, 2018

Header

Case Number: 17-3462

Date Filed: 11/13/2017

Date Full Case Retrieved: 10/23/2018

NOS Description: (893) 2893: Environmental Matters; Appeal

[\[Summary\]](#) [\[Associated Cases\]](#) [\[Participants\]](#) [\[Proceedings\]](#) [\[Pending Motion\]](#) [\[Brief\]](#) [\[Rehearings\]](#) [\[History\]](#) [\[Additional Case\]](#)

Summary

No Information is Available for this case

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Associated Cases

<u>Case Number</u>	<u>Relationship</u>	<u>Lead Case</u>	<u>Member Case</u>	<u>Additional Information</u>
4-2762	Prior cases:			Filed: 07/25/2014 Disposed: 12/10/2015 Disposition: Affirmed In Part and Reversed In Part
6-3478	Prior cases:			Filed: 08/24/2016 Disposed: 10/06/2016 Disposition: Denied

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Participants

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Proceedings

<u>Date</u>	<u>Details</u>
1/13/2017	Civil case docketed. [4599613] [17-3462] (DMW)
1/13/2017	Originating court document filed consisting of notice of appeal, docket entries, Order 9-5-17 and Judgment 9-7-17 and Order of 11-2-17 [4599620] [17-3462] (DMW)
1/13/2017	BRIEFING SCHEDULE SET AS FOLLOWS: Transcript due on or before 12/26/2017. Appendix due 01/05/2018. BRIEF APPELLANTS Dico and Titan Tire Corporation due 01/05/2018. Appellee brief is due 30 days from the date the court issues the Notice of Docket Activity filing the brief of appellant. Appellant reply brief is due 14 days from the date the court issues the Notice of Docket Activity filing the appellee brief. [4599627] [17-3462] (DMW)
1/16/2017	RECORD FILED - HEARING TRANSCRIPT, 1 volumes, Location STL, Comments: Copy do not return to the District Court at end of case, Source Location: USDC / SI, Dt. of Proceeding/Hearing: 03/03/2017, No. of Pgs.: 29, Court Reporter: Mulcahy, Kelli M [4601395] [17-3462] (STL)
1/16/2017	RECORD FILED - TRIAL TRANSCRIPT, 4 volumes, Location STL, Comments: Copies do not return to the District Court at end of case, Source Location: USDC / SI, Dt. of Proceeding/Hearing: 04/03/2017 - 04/06/2017, No. of Pgs.: 731, Court Reporter: Mulcahy, Kelli M [4601405] [17-3462] (STL)
1/16/2017	RECORD FILED - HEARING TRANSCRIPT, 1 volumes, Location STL, Comments: District Court document #93 [Copy do not return to the District Court at end of case], Source Location: USDC / SI, Dt. of Proceeding/Hearing: 08/22/2012, No. of Pgs.: 132, Court Reporter: Mulcahy, Kelli M [4601465] [17-3462] (STL)
1/16/2017	RECORD FILED - TRIAL TRANSCRIPT, 4 volumes, Location STL, Comments: Copies do not return to the District Court at end of case, Source Location: USDC / SI, Dt. of Proceeding/Hearing: 12/02/2013 - 12/05/2013, No. of Pgs.: 795, Court Reporter: Kenkel, Theresa [4601473] [17-3462] (STL)
1/20/2017	CORPORATE disclosure statement filed by Appellants Dico and Titan Tire Corporation. - FOR CAL [4602373] [17-3462] (SHL)
1/27/2017	Certificate of transcript filed by Appellant Titan Tire Corporation. No Transcript[4604063] [17-3462] (SHL)
1/27/2017	METHOD of appendix preparation filed by Appellants Dico and Titan Tire Corporation - Joint Appendix - w/service 11/27/2017 [4604065] [17-3462] (SHL)
2/19/2017	MOTION for extension of time to file brief until 01/26/2018, filed by Mr. Stephen H. Locher for Appellants Dico and Titan Tire Corporation and Mr. Thomas D. Lupo for Appellants Dico and Titan Tire Corporation w/service 12/19/2017. [4612128] [17-3462] (SHL)
2/21/2017	On December 1, 2016, the Federal Rules of Appellate Procedure were amended to require a certificate of

limitations and stating the number of words in the document. Your recently filed motion did not contain this certificate of compliance. No action will be taken on your motion for extension of time to file brief, , submitted by Mr. Stephen H. Locher and Mr. Thomas D. Lupo in 17-3462 , pending the filing of a certificate of compliance using the 'Certificate of Compliance' event. Please do not refile your motion [17-3462] (MDS)

- 2/21/2017 CERTIFICATE OF COMPLIANCE filed by Mr. Stephen H. Locher for Appellants Dico and Titan Tire Corporation and Mr. Thomas D. Lupo for Appellants Dico and Titan Tire Corporation correcting motion filed by null. [4613172] [17-3462] (SHL)
- 2/21/2017 CLERK ORDER:Granting motion for extension of time to file brief filed by Mr. Stephen H. Locher and Mr. Thomas D. Lupo. Brief of Dico and Titan Tire Corporation due 01/26/2018. Appendix due on 01/26/2018 [4613217] [17-3462] (MDS)
- 2/22/2017 APPEARANCE filed by Thekla Hansen-Young for Appellee United States of America w/service 12/22/2017 [4613426] [17-3462] (TH)
- 1/23/2018 MOTION for extension of time to file brief until 02/26/2018, filed by Attorney Mr. Stephen H. Locher for Appellants Titan Tire Corporation and Dico w/service 01/24/2018. [4622712] [17-3462]--[Edited 01/25/2018 by MDS - Reason: Edited to correct requested date.] (SHL)
- 1/24/2018 CERTIFICATE OF COMPLIANCE filed by Attorney Mr. Stephen H. Locher for Appellants Dico and Titan Tire Corporation correcting. [4623116] [17-3462] (SHL)
- 1/25/2018 CLERK ORDER:Granting motion for extension of time to file brief filed by Mr. Stephen H. Locher. Brief of Dico and Titan Tire Corporation due 02/26/2018. Appendix due on 02/26/2018 [4623338] [17-3462] (MDS)
- 2/19/2018 MOTION to file an overlength brief of up to 16,000 words in length, filed by Attorney Mr. Stephen H. Locher for Appellants Dico and Titan Tire Corporation w/service 02/19/2018. [4631339] [17-3462] (SHL)
- 2/21/2018 CLERK ORDER: Granting motion to file an overlength brief filed by Mr. Stephen H. Locher for Appellants Dico and Titan Tire Corporation. Motion to file brief in excess of limits set forth in FRAP Rule 32 (a)(A) and (B) is granted. Brief of 16,000 words may be filed. [4632059] [17-3462] (MER)
- 2/26/2018 APPELLANT brief of Dico and Titan Tire Corporation submitted for review. The time for filing the subsequent brief (if any) does not begin to run until the brief has been approved and filed. To open/view this brief, you must first login to CM/ECF and then open the document link in your Notice of Docket Activity. [4633713] [17-3462] (SHL)
- 2/26/2018 Addendum of APPELLANT submitted for review by Dico and Titan Tire Corporation. To open/view this addendum, you must first login to CM/ECF and then open the document link in your Notice of Docket Activity. [4633715] [17-3462] (SHL)
- 2/27/2018 BRIEF FILED - APPELLANT BRIEF filed by Dico and Titan Tire Corporation. w/service 02/27/2018 , Length: 15,848 words 10 COPIES OF PAPER BRIEFS WITHOUT THE APPELLATE PDF HEADER FROM Dico and Titan Tire Corporation due 03/05/2018 WITH certificate of service for paper briefs . Brief of United States of America due on 03/29/2018 [4634198] [17-3462] (AMT)
- 2/27/2018 ADDENDUM of APPELLANT FILED by Appellants Dico and Titan Tire Corporation , w/service 02/27/2018 [4634199] [17-3462] (AMT)
- 3/05/2018 RECORD FILED - APLNT/PET APPENDIX, 4 volumes, Location STL, 1 boxes, Comments: 3 copies. [4636061] [17-3462] (MDS)
- 3/05/2018 Paper copies Appellant/Petitioner Brief, filed by Dico and Titan Tire Corporation 10 paper copies received. [4636739] [17-3462] (MDS)
- 3/07/2018 Paper copies , Addendum filed by Dico and Titan Tire Corporation 10 paper copies received. [4636731] [17-3462] (MDS)
- 3/12/2018 MOTION for extension of time to file brief until 05/30/2018, filed by Attorney Mr. Thekla Hansen-Young for Appellee United States of America w/service 03/12/2018. [4638401] [17-3462] (TH)
- 3/13/2018 CLERK ORDER:Granting in Part motion for extension of time to file brief filed by Mr. Thekla Hansen-Young [4638705] Brief of United States of America due 04/30/2018. [4638705] [17-3462] (MDS)
- 4/20/2018 MOTION for extension of time to file brief until 05/30/2018, filed by Attorney Mr. Thekla Hansen-Young for Appellee United States of America w/service 04/20/2018. [4652863] [17-3462] (TH)
- 4/23/2018 CLERK ORDER:Granting motion for extension of time to file brief filed by Mr. Thekla Hansen-Young. Brief of United States of America due 05/30/2018. [4653346] [17-3462] (MDS)
- 5/30/2018 APPELLEE brief of United States of America submitted for review. The time for filing the subsequent brief (if any) does not begin to run until the brief has been approved and filed. To open/view this brief, you must first login to CM/ECF and then open the document link in your Notice of Docket Activity. Only direct recipients on accounts can open this document. [4667344] [17-3462]--[Edited 06/04/2018 by MDS - Reason: Document contains appendix. Counsel contacted and directed to file appendix in paper format only.] (TH)
- 5/31/2018 RECORD FILED - SEALED APPENDIX, 1 volumes, Location STL, Comments: 3 copies. - SEALED. [4669797] [17-3462] (MDS)
- 6/04/2018 BRIEF FILED - APPELLEE BRIEF filed by United States of America, w/service 05/30/2018 , Length: 12,272 words. 10 COPIES OF PAPER BRIEFS WITHOUT THE APPELLATE PDF HEADER FROM United States of America due 06/11/2018 WITH certificate of service for paper briefs . Reply brief of Dico and Titan Tire Corporation due on 06/18/2018. [4668890] [17-3462] (MDS)

- 6/07/2018 MOTION to seal entire appendix, filed by Attorney Mr. Thekla Hansen-Young for Appellee United States of America w/service 06/05/2018. [4669506] [17-3462] (MDS)
- 6/06/2018 CLERK ORDER:Granting motion to seal filed by Mr. Thekla Hansen-Young. The Court is hereby sealing the following: Appellee's appendix [4669788] [17-3462] (MDS)
- 6/06/2018 Paper copies Appellee/Respondent brief, filed by United States of America 10 paper copies received. [4670593] [17-3462] (MDS)
- 6/07/2018 RECORD FILED - APLEE/RES APPENDIX, 8 volumes, Location STL, 2 boxes, Comments: 3 copies [4670735] [17-3462] (MDS)
- 6/11/2018 Please note that this case has been screened for oral argument. The exact date of your oral argument has not been determined at this time. You will be receiving a calendar approximately 4 weeks before the scheduled argument date. Please review the current and future argument dates immediately to determine if you have any conflicts. Click Here to View Published Argument Calendars and Future Court Session Dates and Locations If you do have conflicts with any of the argument dates, please inform this court by sending a letter using the ECF docketing event 'Correspondence to Court', 'Letter filed' regarding availability for oral argument'. Your compliance with this policy will minimize the need for motions to continue or reschedule oral argument. The court also encourages you to notify the clerk if conflicts with these dates develop in the future. The clerk's office takes conflict dates into consideration in scheduling oral arguments but cannot guarantee that every request will be honored. [4671204] [17-3462] (BWB)
- 6/12/2018 MOTION for extension of time to file brief until 07/09/2018, filed by Attorney Mr. Stephen H. Locher for Appellants Titan Tire Corporation and Dico w/service 06/12/2018. [4671900] [17-3462]--[Edited 06/14/2018 by MDS - Reason: Edited to correct ECF relief.] (SHL)
- 6/12/2018 On December 1, 2016, the Federal Rules of Appellate Procedure were amended to require a certificate of compliance for motions filed under Rule 27, certifying that the document complies with the type-volume limitations and stating the number of words in the document. Your recently filed motion did not contain this certificate of compliance. No action will be taken on your motion ext of time to file document, , submitted by Mr. Stephen H. Locher in 17-3462 , pending the filing of a certificate of compliance using the 'Certificate of Compliance' event. Please do not refile your motion [17-3462] (MDS)
- 6/13/2018 CERTIFICATE OF COMPLIANCE filed by Attorney Mr. Stephen H. Locher for Appellants Dico and Titan Tire Corporation correcting motion ext of time to file document filed by Attorney. [4672153] [17-3462] (SHL)
- 6/13/2018 LETTER from Appellee United States of America regarding availability for oral argument. w/service 06/13/2018 [4672398] [17-3462] (TH)
- 6/14/2018 CLERK ORDER:Granting motion for extension of time to file brief filed by Mr. Stephen H. Locher. Reply brief of Dico and Titan Tire Corporation due 07/09/2018. [4672966] [17-3462] (MDS)
- 6/27/2018 LETTER from Appellee United States of America regarding availability for oral argument. w/service 06/27/2018 [4676903] [17-3462] (TH)
- 7/09/2018 APPELLANT brief of Dico and Titan Tire Corporation submitted for review. The time for filing the subsequent brief (if any) does not begin to run until the brief has been approved and filed. To open/view this brief, you must first login to CM/ECF and then open the document link in your Notice of Docket Activity. Only direct recipients on accounts can open this document. [4680357] [17-3462] (SHL)
- 7/11/2018 BRIEF FILED - APPELLANT REPLY BRIEF filed by Dico and Titan Tire Corporation. w/service 07/11/2018 , Length: 6494 words. 10 COPIES OF PAPER BRIEFS WITHOUT THE APPELLATE PDF HEADER FROM Dico and Titan Tire Corporation due 07/16/2018 WITH certificate of service for paper briefs [4681437] [17-3462] (MDS)
- 7/13/2018 Paper copies Reply brief, filed by Dico and Titan Tire Corporation 10 paper copies received. Paper brief deficiency due 07/23/2018. [4683523] [17-3462] (MDS)
- 7/19/2018 LETTER from Appellants Titan Tire Corporation and Dico regarding availability for oral argument. w/service 07/19/2018 [4684372] [17-3462] (SHL)
- 7/19/2018 CORRECTED certificate of service for brief Reply brief, Doc No. , filed by Appellants Dico and Titan Tire Corporation [4684382] [17-3462] (SHL)

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Pending Motion

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Rehearings

No Information is Available for this case

History

No Information is Available for this case

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Additional Case

Additional Case Information

Civil - United States as a party -

Appeal from: U.S. District Court for the Southern District of Iowa - Des Moines

District: 0863 Division: 4 CaseNumber: 4:10-cv-00503-RP DateFiled: 10/26/2010

Court Reporter: Kelli M Mulcahy

Trial Judge: Robert W. Pratt , U.S. District Judge

Judgement Date: 09/07/2017

Latest NOA Filed: 11/02/2017

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