



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

BARBARA D. UNDERWOOD
SOLICITOR GENERAL

March 29, 2012

Hon. Andrew W. Klein
Clerk of the Court
State of New York Court of Appeals
20 Eagle Street
Albany, New York 12207-1095

Re: *Gyrodyne Co. v. State of New York*
Mo. No. 2012-363

Dear Mr. Klein:

I write on behalf of defendant-appellant the State of New York, in response to this Court's letter of March 26, 2012, which directed the State to provide additional material establishing the timeliness of the motion. I have enclosed an affirmation which provides the information requested.

Thank you for accommodating us in this matter.

Respectfully submitted,

ANDREW B. AYERS
Assistant Solicitor General

cc: Thomas J. Donlon, Esq. ✓

STATE OF NEW YORK
COURT OF APPEALS

GYRODYNE COMPANY OF AMERICA, INC.,

Claimant-Respondent,

-against-

STATE OF NEW YORK,

Defendant-Appellant.

**Supplemental
Affirmation**

Mo. No. 2012-363

ANDREW B. AYERS, an attorney at law admitted to practice in the State of New York affirms under the penalties of perjury that the following statements are true:

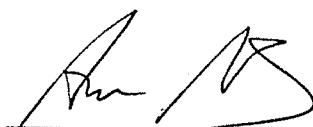
1. I am an Assistant Solicitor General in the Office of Eric T. Schneiderman, Attorney General of the State of New York and attorney for defendant-appellant the State of New York.
2. I submit this affirmation in response to the Court's letter of March 26, 2012, directing that the State supplement its motion for leave to appeal with an affidavit or other proof establishing the timeliness of the motion. *See* C.P.L.R. § 5513(b); Rule 500.22(b)(2).
3. On November 28, 2011, claimant Gyrodyne served on the State by overnight mail the November 22, 2011 Decision and Order of the Appellate Division, Second Department, on the State. (Motion Appendix ("M.A.") 58; Ex. A.) *See* Rule 500.22(b)(2)(ii)(a).

4. The State then moved the Appellate Division for reargument or for leave to appeal to this Court. The State filed its notice of motion and accompanying papers and served them on Gyrodyne by first-class mail on December 29, 2011. (Ex. B.) *See* Rule 500.22(b)(2)(ii)(b).

5. Claimant Gyrodyne served the February 17, 2012 Order of the Appellate Division (which denied the State's motion for reargument and for leave to appeal) with notice of entry upon the State by overnight mail on February 21, 2012 (M.A. 60-63), thirty-one days before the filing of the State's motion for leave on March 23, 2012. *See* Rule 500.22(b)(2)(ii)(c).

6. This motion for leave to appeal is therefore timely under C.P.L.R. §§ 5513(b) and 2103(6).

Dated: March 29, 2012
Albany, New York



ANDREW B. AYERS

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EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION SECOND DEPARTMENT

----- X
GYRODYNE COMPANY OF AMERICA, INC.,

Respondent,

-against-

THE STATE OF NEW YORK,

Appellant.
----- X

Docket Nos.: 2010-08950
2011-02295
2011-02298

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the Decision, a true copy of which is annexed hereto,
was entered on November 22, 2011.

Dated: New York, New York
November 28, 2011

ROBINSON & COLE LLP

By: 

Thomas J. Donlon, Esq.
Joseph L. Clasen, Esq.

Attorneys for Plaintiff
Gyrodyne Company of America, Inc.
885 Third Avenue, Suite 2800
New York, NY 10022
212-451-2900

TO:

Robert C. Weisz, Esq.
State of New York
Office of the Attorney General
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New York, New York 10271
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Page 1 of 2

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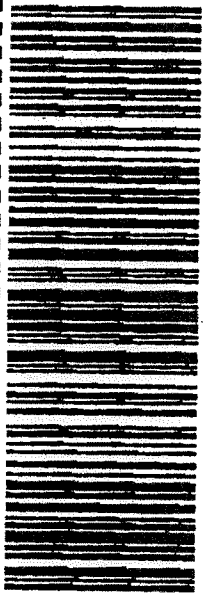
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EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

GYRODYNE COMPANY OF
AMERICA, INC.,

Claimant-Respondent,

against

STATE OF NEW YORK,

Defendant-Appellant.

Appellate Division

Docket Nos.

2010-08950

2011-02295

2011-02298

NOTICE OF MOTION

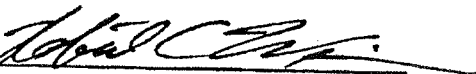
PLEASE TAKE NOTICE that upon the accompanying Affirmation of Robert C. Weisz dated December 29, 2011, and the exhibits annexed thereto, and upon all of the prior pleadings and proceedings had herein, defendant-appellant State of New York will move this Court at 9:30 a.m. on Friday, January 13, 2012, or as soon thereafter as counsel may be heard, at the Courthouse, 45 Monroe Place, Brooklyn, New York for an order: pursuant to C.P.L.R. 2221 and 22 N.Y.C.R.R. § 670.6, granting reargument of the Court's November 22, 2011 decision and order, and, upon reargument, vacating the judgments below and remanding for a new trial; or, in the alternative, pursuant to C.P.L.R. 5602 and 22 N.Y.C.R.R. § 670.6, granting leave to appeal to the Court of Appeals; and

granting such other and further relief as to this Court may seem just
and proper.

Dated: New York, New York
December 29, 2011

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
Attorney for Appellant

By: 
Robert C. Weisz
Assistant Solicitor General
Office of the Attorney General
120 Broadway, 25th Floor
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TO: Joseph L. Clasen, Esq.
Thomas J. Donlon, Esq.
Robinson & Cole, LLP
Attorneys for Claimant-Respondent
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New York, NY 10022
(212) 451-2900

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AFFIRMATION OF SERVICE

ROBERT C. WEISZ, an attorney duly admitted to the bar of this State, affirms the truth of the following, pursuant to C.P.L.R. 2106:

I am over eighteen years of age and an employee in the office of Eric T. Schneiderman, Attorney General of the State of New York, attorney for the State of New York herein.

On the 29th day of December, 2011, I served one copy of the attached Notice of Motion and Affirmation by regular First-Class United States Postal Mail upon the following named person(s):

Joseph L. Clasen, Esq.
Thomas J. Donlon, Esq.
ROBINSON & COLE, LLP
885 Third Avenue, Suite 2800
New York, NY 10022

Dated: New York, New York
December 29, 2011


ROBERT C. WEISZ