

STATE OF NEW YORK: COURT OF CLAIMS

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

Claimant,

-against-

THE STATE OF NEW YORK,

Defendant.
-----X

:
: Claim No.: 112279

:
: Hon. James J. Lack

:
: **AFFIRMATION OF JOSEPH L.**
: **CLASEN IN FURTHER SUPPORT**
: **OF MOTION FOR EDPL § 701**
: **ADDITIONAL ALLOWANCE AND**
: **IN REPLY TO STATE’S**
: **OPPOSITION**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOSEPH L. CLASEN, being duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in the State of New York and a member of the law firm of Robinson & Cole LLP for the Claimant in this action. I am fully familiar with the facts at issue and the proceedings heretofore had in this action.

2. I make this affirmation in further support of the motion of the Claimant Gyrodyne Company of America (“Gyrodyne”) for an Order awarding Gyrodyne an additional allowance pursuant to EDPL § 701 for attorneys fees, appraisal fees, and other actual and necessary disbursements, and in reply to the affirmation in opposition of Defendant State of New York’s (the “State”) submitted by Assistant Attorney General J. Gardner Ryan dated October 7, 2010 (the “Ryan Opp.”).

3. The Ryan Opp. (¶3) concedes that this Court’s award “is substantially in excess of the State’s proof” and that “there is no issue” that Gyrodyne’s “litigation was unnecessary”. *Id.* Further, the Ryan Opp. (¶6) points out that Gyrodyne was “ably represented in claim by Robinson & Cole LLP” and that the “rates charged appear fair and consistent with legal charges

in the New York City community.” *Id.* at ¶8. In fact, the Ryan Opp. states “[g]iven the unquestionable success to date of the firm’s efforts, no dispute is made but its time spent on the litigation to obtain the award was reasonable.” *Id.*

4. Nonetheless, AAG Ryan cannot resist trying to reduce Gyrodyne’s claim for an additional allowance. The Ryan Opp. cites to language in *Harkes v. State of New York*, 81 N.Y. 2d 392, 397 (1993), taken from the Governor’s Memorandum in support of the 1987 amendments to EDPL § 701, concerning limiting the cost of acquiring land through eminent domain. However, that same Governor’s Memorandum reflects “the objective was to insure that a condemnee obliged to incur heavy litigation expenses because of an inadequate offer finally obtains an award of just compensation that is not significantly impaired by litigation expenses.” *Walsh v. State of New York*, 180 A.D. 2d. 290, 292 (3d. Dept. 1992). In *Walsh*, the court held the “enormous discrepancy between the State’s offer [\$700.00] and the fair market value of claimants’ property as ultimately found by the court [\$86,948.00]” (*id.*, at 294) justified an additional allowance of over \$68,000, over 3/4 of the amount of the award. *Id.*, at 291-292.

5. In his attempt to save the State a few dollars, AAG Ryan fails to address the point, recognized by this Court in its award decision (p. 28, n. 25), that the standard recovery for attorneys in condemnation actions in New York is 1/3 of the recovery above the State’s advance payment. Even the Court of Claims decision which the Ryan Opp. (¶16) cites, *Brown v. State of New York*, Claim No. 88093 dated March 1, 2001, recognizes this standard in awarding a 1/3 fee payment. In the present case, the standard contingent fee would amount to well over \$30 million. Gyrodyne, however, only seeks \$1.47 million, a small portion of the standard fee since this case was not handled on a contingency. A copy of the signed retention agreement between Robinson & Cole LLP and Gyrodyne demonstrating the hourly fee arrangement is attached as

Exhibit A. Yet, because Gyrodyne and its attorneys agreed to pursue this case on an hourly fee basis, which substantially reduces the potential cost to the State, and submitted bills detailing every hour expended by its attorneys and experts, AAG Ryan expects this Court to comb through the bills to find a few hours or dollars that might be excluded. Such an effort would be fruitless since Gyrodyne submitted a claim that deleted any non-litigation charges.

6. EDPL § 701 provides that this Court may award fees and expenses “actually incurred by such condemnee.” *See also Hakes*, 81 N.Y. 2d at 397. The Ryan Opp. does not assert that Gyrodyne seeks fees and expenses that were not incurred. Rather, the Ryan Opp. (¶ 8) makes some vague, general assertions that some fees do not “relate to the litigation.” The record reflects that AAG Ryan is simply wrong in this assertion.

7. For example, the Ryan Opp. (¶9) refers to hours spent obtaining documents concerning the advance payment and the amount thereof. However, documents related to how the State determined the value of the property in calculating the advance payment were certainly relevant to litigation over that value and the amount of the payment effected Gyrodyne’s litigation strategy. Notably, AAG Ryan is complaining about entries for such small amounts as 1.1 hours or 0.4 hours (*see* Robinson & Cole LLP bill dated March 15, 2006, pp. 1, 6). The Ryan Opp. (¶9) also questions a few hours of client relations, such as briefing the Board of Directors, or shareholders, about litigation strategy. Certainly communications between the client and attorney on the approaches to, and progress of, litigation are relevant to litigating the claim.

8. The Ryan Opp. (¶9) questions time spent researching whether to bring a RICO or §1983 claim. However, as the time entries on the bill make clear, this was “research to determine whether a RICO claim can be raised in an eminent domain case.” Robinson & Cole

LLP bill dated August 14, 2008, p.2 (emphasis added). Since courts have recognized that attorneys fees for litigating unsuccessful theories to inflate a claim may not be recoverable (*see e.g. Harkes*, 81 N.Y. 2d at 396), time spent analyzing and determining which theories are valid is certainly relevant to the litigation. Here Gyrodyne's attorneys saved this Court valuable time by considering and rejecting certain theories prior to trial. Not only do AAG Ryan's objections to the attorneys fees individually have no merit, they are de minimus in relation to the clearly documented time spent in successfully litigating this case, which recovered \$125 million, almost five times the States advance payment.

9. With regard to expert fees, the Ryan Opp. (¶11) agrees there is "no question" that Gyrodyne's appraiser Gary Taylor's "fees for professional services is [sic] reasonable and was [sic] necessary." On the question of reasonableness, AAG Ryan, however, glosses over the fact that Gyrodyne is not seeking any fees for its planning and zoning expert, Mr. Gulizio since he testified without receiving a fee.

10. The Ryan Opp. (¶¶12 – 14) does question the fees of Alan King Jr. of Cameron Engineering Associates. AAG Ryan acknowledges that "his services were necessary to the award and that a reasonable fee for such services may be warranted." Ryan Opp. ¶12. However, AAG Ryan asserts (wrongly) that the Cameron Engineering's bills do not differentiate between work done on the litigation and otherwise. *Id.* at ¶13.

11. Mr. King in his affidavit dated August 27, 2010 (¶6) stated:

During the period in question, Cameron Engineering did other work for Gyrodyne. The amounts for such work, which appear on the invoices, have not been included in the total.

(emphasis added). To counter this sworn statement, AAG Ryan merely asserts, without proof, that these "charges is [sic] patently a matter of interpretation and historic revise" (Ryan Opp.,

¶14) and that Mr. King's affidavit is a "conclusory assertion" that "should be weighed with a healthy measure of judicial skepticism." *Id.* AAG Ryan's assertion is not only without basis, it is demonstrably untrue.

12. The Ryan Opp. (¶14) proceeds from the premise that there is an "absence of any contemporaneous earmarking of the firm's time charges" on Cameron Engineering's invoices. However, reference to the invoices themselves demonstrates this is wrong. Each bill reflects an amount that was apportioned to the condemnation litigation (reference number 670119) with contemporaneous dates of review on that point. The summary sheet submitted by Mr. King with his affidavit lists only the portions chargeable to the litigation. Thus, the documentation presented by Mr. King under oath demonstrates AAG Ryan was mistaken and no reduction in the amount of Mr. King's fees is appropriate.

13. AAG Ryan contends that no allowance should be awarded for the non-testifying experts: Tim Barnes; Thomas Cramer, or BFJ (Buckhurst, Fish & Jacquemort) Planning. Ryan Opp. ¶15. AAG Ryan does not cite any authority that prohibits this Court from awarding fees actually incurred for non-testifying experts that contributed to a claimant's success. Instead, AAG Ryan (Ryan Opp. ¶16) relies upon language about disregarding certain expenses in *Meyers v. State of New York*, 166 Misc. 2d 586, 590 (Ct. Claims 1995). *Meyers* dealt with a claim for \$30,395 in attorney's fees and costs in a case where the claimant only recovered \$37,850. The court substantially reduced the attorney's fees applying "[a] rule that appears to have evolved under EDPL § 701 that expenses incurred to develop and present unsuccessful or rejected claims should not be considered in determining the propriety or extent of an additional allowance." 166 Misc. 2d at 589 (emphasis added). The cases *Meyers* relies upon make clear that this principle is limited to expenses and fees resulting from attempts to increase the value of a claim that the

court rejects at trial. See e.g. *First Bank & Trust v. State of New York*, 184 A.D. 2d. 1034, 1035 (4th Dept. 1992) (“claimants’ expenses were incurred to develop and present their unsuccessful claim for consequential damages of more than \$2,000,000 to a non-appropriated parcel. That theory was rejected by the trial court...”); *National Fuel Gas Supply v. Cunningham Natural Gas*, 191 A.D. 2d 1003 (4th Dept. 1993) (“much unnecessary expense was incurred in support of the inflated appraisal submitted on behalf of defendants evaluating the value of the property taken as \$2,070,400 (subsequently reduced by one of the defendants’ appraisers to the sum of \$643,447)”, where the court awarded only \$57,301).

14. Here the fees of Mr. Barnes, Cramer Consulting and BFJ Planning were not incurred in pursuit of an unsuccessful theory. This Court, in fact, awarded Gyrodyne its full claimed value of the property. BFJ Planning specifically prepared the yield analysis relied upon by Mr. King and Mr. Gulizio in their testimony, which was accepted by this Court.

15. Another decision cited by the Ryan Opp. (¶16) on this point is very instructive. In *Brown*, Claim No. 88093, the court considered an EDPL § 701 request for an engineer’s fee. The decision notes that the engineer’s fee was for calculations that were incorporated into the appraisal. Although the engineer did not testify, his fee was still a recoverable expense incurred by the claimant and the court specifically awarded his fee under EDPL § 701. *Id.* Here, there is no question that Gyrodyne incurred the expenses of Mr. Barnes, Mr. Cramer and BFJ Planning. The uncontradicted affidavits of the claimant and the undersigned, previously submitted, attest to the fact that these experts were necessary to the litigation and that their contribution assisted the great success achieved in this case. It should be noted that the total fees of these three experts represents less than 0.2 percent of the total award (without interest). Allowance of that minimal amount is appropriate in the particular circumstances of this case.

16. AAG Ryan makes one additional objection. He states the charges of Buckhurst, Fish & Jacquemart that are included in certain bills from Robinson & Cole LLP "appear duplicative of the claimant's request for an additional allowance to an entity referred to as BFJ Planning." Ryan Opp., ¶9. BFJ Planning is simply a business name of Buckhurst, Fish & Jacquemart ("BFJ"). Originally, BFJ billed Robinson & Cole, which paid the invoices and was in turn reimbursed by Gyrodyne as a cost disbursement. Subsequently, BFJ began to bill Gyrodyne directly. Each BFJ invoice listed on Robinson & Cole's bills of June 9, 2006, July 18, 2006 and September 8, 2006 has an invoice number, date and amount. Comparing them to the invoices attached to the affidavit of Gyrodyne's President, Stephen V. Maroney dated September 2, 2010, demonstrates the BFJ invoices are not duplicative -- with exception of invoice 422.00-0000001 dated April 24, 2006 in the amount of \$4,250.00. This was an inadvertent error and Gyrodyne respectfully reduces its request for additional allowance by the amount of \$4,250.00, making the total allowance sought \$1,469,941.18.

WHEREFORE, Gyrodyne respectfully requests the Court to grant an order in its favor and against the State awarding it an additional allowance pursuant to EDPL § 701 for its attorneys fees, appraisal fees and other actual and necessary disbursements in the total amount of \$1,469,941.18, together with such other and further relief as to the Court seems just.

Dated: New York, New York
October 12, 2010



JOSEPH L. CLASEN

EXHIBIT A

ROBINSON & COLE LLP

DWIGHT H. MERRIAM, FAICP, CRE

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November 23, 2005

Mr. Peter Pitsiokos
Chief Operating Officer
Gyrodyne Company of America, Inc.
102 Flowerfield
Saint James, New York 11780

Re: Legal Services -- Gyrodyne Company of America, Inc. --
Condemnation of a portion of real property located in St. James, New York, by
Stony Brook University from Gyrodyne

Dear Mr. Pitsiokos:

This letter is to confirm our agreement with regard to the representation of Gyrodyne Company of America, Inc. in connection with the condemnation of a portion of real property located in St. James, New York, by Stony Brook University from Gyrodyne.

Scope of Representation

Our client in this matter will be Gyrodyne Company of America, Inc. ("Gyrodyne"). We have been engaged to assist represent Gyrodyne in connection with the condemnation of certain real property located in St. James, New York by Stony Brook University from Gyrodyne. The work will include litigation representation, corporate planning, tax advice and land use advice.

Fees and Billing

Legal fees for our services are determined by the amount of time spent by members of our staff multiplied by an hourly rate that is based upon the experience of the lawyer or staff member. We are fortunate to have people with experience at various levels (including partners, associates, legal assistants, land use and environmental analysts and law clerks). Where possible, we will have the most appropriate individual with the lowest hourly rate do the work.

Andrew S. Roffe, Joseph L. Clasen and I will be the lawyers principally responsible with me for this matter. We will charge an hourly rate of \$450. Other lawyers may be required to lend their expertise and contribute time to this matter. Their billing



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rates range from \$160 to \$600. When appropriate, we will assign certain tasks to analysts, legal assistants, paralegals and other non-lawyer professionals at an hourly rate of between \$165 and \$260. Time is recorded to the tenth of an hour, and billing will be monthly. I will be preparing and sending bills and, if there are any aspects of your relationship with Robinson & Cole you wish to discuss, I am the person with whom you should speak.

The bill will also include expenses paid or incurred by us on your behalf. Although we do not charge our clients for overhead costs such as telephone charges, facsimile charges, word processing, routine copying and the like, our bill will include extraordinary costs such as special copying projects, travel/meals/lodging, and disbursements made on your behalf. Expense items of \$250 or more will be sent to you for direct payment. Our hourly rates and charges for certain expense items may be changed without prior notice.

To our fee, we will add interest at one percent per month (compounded annually) on any bills not paid within 90 days of receipt by Gyrodyne, plus costs of collection and attorneys' fees if collection becomes necessary.

Statement of Client's Rights

Enclosed for your information is a Statement of Client's Rights which has been promulgated by the New York Courts and which must be posted in all attorneys' offices in New York State. It has always been the policy of this firm to follow the principles set forth in this Statement, and we pride ourselves in our concern for our clients and that we have always placed the interests of our clients foremost and in accordance with these principles.

Robinson & Cole LLP makes every effort to bill fairly and clearly for fees and expenses and to represent client interests zealously and diligently. Occasionally, however, lawyers and clients disagree about the amount of a bill for legal services or for related costs and expenses. If a fee dispute arises in this matter, you may have the right to elect to resolve the dispute through arbitration pursuant to Part 137 of the Rules of the Chief Administrator. A copy of Part 137 is enclosed.

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Disclosure of Lobbying Activities

While the services to be rendered by us to Gyrodyne under this retainer agreement do not presently anticipate our offering any "lobbying" services that would require us to register and file as a "lobbyist" under the laws of the State of New York, Gyrodyne acknowledges that it has been informed by us that, if necessary and legally appropriate, a copy of this retainer agreement will be filed by us with the NYS Temporary Commission on Lobbying as evidence of the retainer agreement between us. We represent and warrant that we will fully disclose to state, municipal and federal agencies all lobbying activities performed hereunder in accordance with all applicable disclosure requirements and shall supply copies of all required filings and supporting documentation, if any, to Gyrodyne for review prior to our filing.

Termination

Gyrodyne may terminate our representation at any time by notifying us, subject to court approval if there is a pending litigation representation. The termination of our services will not affect Gyrodyne's responsibility for payment of outstanding statements, accrued fees, and expenses incurred before termination or incurred thereafter in connection with an orderly transition of the matter. If such termination occurs and upon your request, your papers and property will be returned promptly upon receipt of payment for outstanding fees and costs. We will retain our own files pertaining to the matter. These files include, for example, our administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records, as well as internal lawyer's work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, that are prepared by or for the internal use of our lawyers.

We may withdraw from representation if Gyrodyne fails to fulfill an obligation under this agreement, including your obligation to pay our fees and expenses; as permitted or required under any applicable standards of professional conduct or rules of court; or upon our reasonable notice to you. Our right to withdraw will depend upon the circumstances existing at the time we seek withdrawal, and we will not withdraw unless withdrawal can be accomplished without material adverse effects on your interests.

Conclusion of Representation; Retention and Disposition of Documents

Unless previously terminated, our representation of Gyrodyne will conclude upon our sending our final statement for services rendered in this matter. Following such conclusion, we will maintain in confidence any otherwise nonpublic information that Gyrodyne has supplied to us, and that we retain, in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned promptly upon receipt of payment for outstanding fees and costs. We will retain copies for our files pertaining to the matter. All such documents retained by us will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials that we retain within a reasonable time after the termination of the engagement. We may also transfer the information on the documents to electronic media.

Potential Conflicts/Unrelated Matters

Our firm represents many other companies and individuals. It is possible that during the time that we are representing Gyrodyne, some of our present or future clients may have disputes with you. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage.

Post-Engagement Matters

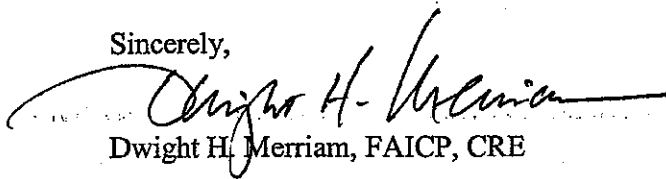
Gyrodyne is engaging Robinson & Cole LLP to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless Gyrodyne engages us after completion of the matter to provide additional advice on issues arising from the matter, we have no continuing obligation to advise you with respect to future legal developments.

Peter Pitsiokos
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If this proposal accurately describes a satisfactory arrangement, please have a duly authorized officer or representative of Gyrodyne sign and date on the line below and return the original to me. A copy is enclosed for your file.

We look forward to working with you on this matter. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Dwight H. Merriam, FAICP, CRE

DHM/pfo

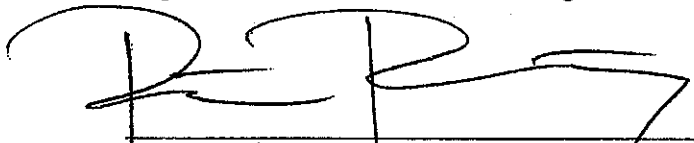
Enclosures

Copy to:

Andrew S. Roffe
Joseph L. Clasen

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I agree to the above-described arrangement:



By Peter Pitsiokos, COO
For Gyrodyne Company of America, Inc.

11-29-05

Date

**STATEMENT OF CLIENT'S RIGHTS
FULL TEXT OF SECTION 1210.1 PROMULGATED BY ALL THE APPELLATE
DIVISIONS OF THE SUPREME COURT OF THE STATE OF NEW YORK**

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and personnel in your lawyer's office.
2. You are entitled to an attorney capable of handling your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from your attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).
3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.
4. You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory.
5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.
6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.
7. You are entitled to have your legitimate objectives respected by your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).
8. You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.
9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.
10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.

PART 137. FEE DISPUTE RESOLUTION PROGRAM

§ 137.0 Scope of Program

This Part establishes the New York State Fee Dispute Resolution Program, which provides for the informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation. In accordance with the procedures for arbitration, arbitrators shall determine the reasonableness of fees for professional services, including costs, taking into account all relevant facts and circumstances. Mediation of fee disputes, where available, is strongly encouraged.

§ 137.1 Application

(a) This Part shall apply where representation has commenced on or after January 1, 2002, to all attorneys admitted to the bar of the State of New York who undertake to represent a client in any civil matter.

(b) This Part shall not apply to any of the following:

- (1) representation in criminal matters;
- (2) amounts in dispute involving a sum of less than \$1000 or more than \$50,000, except that an arbitral body may hear disputes involving other amounts if the parties have consented;
- (3) claims involving substantial legal questions, including professional malpractice or misconduct;
- (4) claims against an attorney for damages or affirmative relief other than adjustment of fee;
- (5) disputes where the fee to be paid by the client has been determined pursuant to statute or rule and allowed as of right by a court; or where the fee has been determined pursuant to a court order;
- (6) disputes where no attorney's services have been rendered for more than two years;
- (7) disputes where the attorney is admitted to practice, in another jurisdiction and maintains no office in the State of New York, or where no material portion of the services was rendered in New York;
- (8) disputes where the request for arbitration is made by a person who is not the client of the attorney or the legal representative of the client.

§ 137.2 General

(a) In the event of a fee dispute between attorney and client, whether or not the attorney already has received some or all of the fee in dispute, the client may seek to resolve the dispute by arbitration under this Part. Arbitration under this Part shall be mandatory for an attorney if requested by a client, and the arbitration award shall be final and binding unless de novo review is sought as provided in section 137.8.

(b) The client may consent in advance to submit fee disputes to arbitration under this Part. Such consent shall be stated in a retainer agreement or other writing that specifies that the client has read the official written instructions and procedures for Part 137, and that the client agrees to resolve fee disputes under this Part.

(c) The attorney and client may consent in advance to arbitration pursuant to this Part that is final and binding upon the parties and not subject to de novo review. Such consent shall be in writing in a form prescribed by the Board of Governors.

(d) The attorney and client may consent in advance to submit fee disputes for final and binding arbitration to an arbitral forum other than an arbitral body created by this Part. Such consent shall be in writing in a form prescribe, by the Board of Governors. Arbitration in that arbitral forum shall be governed by the rules and procedures of that forum and shall not be subject to this Part.

§ 137.3 Board of Governors

(a) There shall be a Board of Governors of the New York State Fee Dispute Resolution Program.

(b) The Board of Governors shall consist of 18 members, to be designated from the following 12 members of the bar of the State of New York and six members of the public who are not lawyers.

Members of the bar may include judges and justices of the New York State Unified Court System.

(1) The members from the bar shall be appointed as follows: four by the Chief Judge from the membership of statewide bar associations and two each by the Presiding Justices of the Appellate Divisions.

(2) The public members shall be appointed as follows: two by the Chief Judge and one each by the Presiding Justices of the Appellate Divisions.

Appointing officials shall give consideration to appointees who have some background in alternative dispute resolution.

(c) The Chief Judge shall designate the chairperson.

(d) Board members shall serve for terms of three years and shall be eligible for reappointment for one additional term. The initial terms of service shall be designated by the Chief Judge such that six members serve one-year terms, six members serve two-year terms, and six members serve three-year terms. A person appointed to fill a vacancy occurring other than expiration of a term of office shall be appointed for the unexpired term of the member he or she succeeds.

(e) Eleven members of the Board of Governors shall constitute a quorum. Decisions shall be made by a majority of the quorum.

(f) Members of the Board of Governors shall serve without compensation but shall be reimbursed for their reasonable, actual and direct expense incurred in furtherance of their official duties.

(g) The Board of Governors, with the approval of the four Presiding Justices of the Appellate Divisions, shall adopt such guidelines and standards as may be necessary and appropriate for the operation of programs under this Part, including, but not limited to:

accrediting arbitral bodies to provide fee dispute resolution services under this Part; prescribing standards regarding the training and qualifications of arbitrators; monitoring the operation and performance of arbitration programs to insure their conformance with the guidelines and standards established by this Part and by the Board of Governors; and submission by arbitral bodies of annual reports in writing to the Board of Governors.

(h) The Board of Governors shall submit to the Administrative Board of the Courts an annual report in such form as the Administrative Board shall require.

§ 137.4 Arbitral Bodies

(a) A fee dispute resolution program recommended by the Board of Governors, and approved by the Presiding Justice of the Appellate Division in the judicial department where the program is established, shall be established and administered in each county or in a combination of counties. Each program shall

be established and administered by a local bar association (the "arbitral body") to the extent practicable. The New York State Bar Association, the Unified Court System through the District Administrative Judges, or such other entity as the Board of Governors may recommend also may be designated as an arbitral body in a fee dispute resolution program approved pursuant to this Part.

(b) Each arbitral body shall: -

(1) establish written instructions and procedures for administering the program, subject to the approval of the board of Governors and consistent with this Part. The procedures shall include a process for selecting and assigning arbitrators to hear and determine the fee disputes covered by this Part. Arbitral bodies are strongly encouraged to include nonlawyer members -of the public in any pool of arbitrators that will be used for the designation of multi—member arbitrator panels.

(2) require that arbitrators file a written oath or affirmation to faithfully and fairly arbitrate all disputes that come before them. -

(3) be responsible for the daily administration of the arbitration program and maintain all necessary file, records, information and documentation required for purposes of the operation of the program, in accordance with directives and procedures established by the Board of Governors.

(4) prepare an annual report for the Board of Gov- ernors containing a statistical synopsis of fee dispute resolution activity and such other data as the Board shall prescribe.

(5) designate one or more persons to administer the program and serve as a liaison to the public, the bar, the Board of Governors and the grievance committees of the Appellate Division.

§ 137.5 - Venue

A fee dispute shall be heard by the arbitral body handling disputes in the county in which the majority of the legal services were performed. For good cause shown, a dispute may be transferred from one arbitral body to another. The Board of Governors shall resolve any disputes between arbitral bodies over venue.

§ 137.6 Arbitration Procedure

(a)(1) Except as set forth in paragraph (2), where the attorney and client cannot agree as to the attorney's fee, the attorney shall forward a written notice to the client, entitled "Notice of Client's Right to Arbitrate," by certified mail or by personal service. The notice (i) shall be in a form approved by the Board of Governors; (ii) shall contain a statement of the client's right to arbitrate; (iii) shall advise that the client has 30 days from receipt of the notice in which to elect to resolve the dispute under this Part; (iv) shall be accompanied by the written instructions and procedures for the arbitral body having jurisdiction over the fee dispute, which explain how to commence a fee arbitration proceeding; and (v) shall be accompanied by a copy of the "request for arbitration" form necessary to commence the arbitration proceeding.

(2) Where the client has consented in advance to submit fee disputes to arbitration as set forth in subdivisions (b) and (c) of section 137.2 of this Part, and where the attorney and client cannot agree as to the attorney's fee, the attorney shall forward to the client, by certified mail or by personal service, a copy of the "request for - arbitration" form necessary to commence the arbitration proceeding along with such notice and instructions as shall be required by the rules and guidelines of the Board of Governors, and the provisions of subdivision (b) of this section shall not apply.

(b) If the attorney forwards to the client by certified mail or personal service a notice of the clients right to arbitrate, and the client does not file a request for arbitration within 30 days after the notice was received or served, the attorney may commence an action in a court of competent jurisdiction to recover the fee and the client no longer shall have the right to request arbitration pursuant to this Part with respect to the fee dispute at issue, An attorney who institutes an action to recover a fee must allege in the complaint (i) that the client received notice under this Part of the client's right to pursue arbitration or (ii) that the dispute is not otherwise covered by this Part.

(c) In the event the client determines to pursue arbitration on the client's own initiative, the client may directly contact the arbitral body having jurisdiction over the fee dispute. Alternatively, the client may contact the attorney, who shall be under an obligation to refer the client to the arbitral body having jurisdiction over the dispute. The arbitral body then shall forward to the client the appropriate papers set forth in subdivision (a) necessary for commencement to the arbitration.

(d) If the client elects to submit the dispute to arbitration, the client shall file the "request for arbitration form" with the appropriate arbitral body, and the arbitral body shall mail a copy of the "request for arbitration" to the named attorney together with an "attorney fee response" to be completed by the attorney and returned to the arbitral body within 15 days of mailing. The attorney shall include with the "attorney fee response" a certification that a copy of the response was served upon the client.

(e) Upon receipt of the attorney's response, the arbitral body shall designate the arbitrator or arbitrators who will hear the dispute and shall expeditiously schedule a hearing. The parties must receive at least 15 days notice in writing of the time and place of the hearing and of the identity of the arbitrator or arbitrators.

(f) Either party may request the removal of an arbitrator based upon the arbitrator's personal or professional relationship to a party or counsel. A request for removal must be made to the arbitral body no later than five days prior to the scheduled date of the hearing. The arbitral body shall have the final decision concerning the removal of an arbitrator.

(g) The client may not withdraw from the process after the arbitral body has received the "attorney fee response." If the client seeks to withdraw at any time thereafter, the arbitration will proceed as scheduled whether or not the client appears, and a decision will be made on the basis of the evidence presented.

(h) If the attorney without good cause fails to respond to a request for arbitration or otherwise does not participate in the arbitration, the arbitration will proceed as scheduled and a decision will be made on the basis of the evidence presented.

(i) Any party may participate in the arbitration hearing without a personal appearance by submitting to the arbitrator testimony and exhibits by written declaration under penalty of perjury.

§ 137.7 Arbitration Hearing

(a) Arbitrators shall have the power to:

- (1) take and hear evidence pertaining to the proceeding;
- (2) administer oaths and affirmations; and
- (3) compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the proceeding.

(b) The rules of evidence need not be observed at the hearing.

(c) Either party, at his or her own expense, may be represented by counsel.

(d) The burden shall be on the attorney to prove the reasonableness of the fee by a preponderance of the evidence and to present documentation of the work performed and the billing history. The client may then present his or her account of the services rendered and the time expended. Witnesses may be called by the parties. The client shall have the right of final reply.

(e) Any party may provide for a stenographic or other record at the party's expense. Any other party to the arbitration shall be entitled to a copy of said record upon written request and payment of the expense thereof.

(f) The arbitration award shall be issued no later than 30 days after the date of the hearing. Arbitration awards shall be in writing and shall specify the bases for the determination. Except as set forth in section 137.8, all arbitration awards shall be final and binding.

(g) Should the arbitrator or arbitral body become aware of evidence of professional misconduct as a result of the fee dispute resolution process, that arbitrator or body shall refer such evidence to the

appropriate grievance committee of the Appellate Division for the appropriate action.

(h) In any arbitration conducted under this Part, an arbitrator shall have the same immunity that attaches in judicial proceedings.

§ 137.8 De Novo Review

(a) A party aggrieved by the arbitration award may commence an action on the merits of the fee dispute in a court of competent jurisdiction within 30 days after the arbitration award has been mailed. If no action is commenced within 30 days of the mailing of the arbitration award, the award shall become final and binding.

(b) Any party who fails to participate in the hearing shall not be entitled to seek de novo review absent good cause for such failure to participate.

(c) Arbitrators shall not be called as witnesses nor shall the arbitration award be admitted in evidence at the trial de novo.

§ 137.9 Filing Fees

Upon application to the Board of Governors, and approval by the Presiding Justice of the Appellate Division in the judicial department where the arbitral program is established, an arbitral body may require payment by the parties of a filing fee. The filing fee shall be reasonably related to the cost of providing the service and shall not be in such an amount as to discourage use of the program.

§ 137.10 Confidentiality

All proceedings and hearings commenced and conducted in accordance with this Part, including all papers in the arbitration case file, shall be confidential, except to the extent necessary to take ancillary legal action with respect to a fee matter.

§ 137.11 Failure to Participate in Arbitration

All attorneys are required to participate in the arbitration program established by this Part upon the filing of a request for arbitration by a client in conformance with these rules. An attorney who without good cause fails to participate in the arbitration process shall be referred to the appropriate grievance committee of the Appellate Division for appropriate action.

§ 137.12 Mediation

(a) Arbitral bodies are strongly encouraged to offer mediation services as part of a mediation program approved by the Board of Governors. The mediation program shall permit arbitration pursuant to this Part in the event the mediation does not resolve the fee dispute.

(b) All mediation proceedings and all settlement discussions and offers of settlement are confidential and may not be disclosed in any subsequent arbitration.

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February 13, 2007

Peter Pitsiokos
Chief Financial Officer
Gyrodyne Company of America Inc.
Suite 24
One Flowerfield
Saint James, NY 11780

Re: **2007 Billing Rates**

Dear Peter:

We have revised billing rates effective January 1st. Under the terms of our retainer agreement, Robinson & Cole LLP may revise billing rates. The rates for timekeepers actively involved in your matters will be:

John Anderson	\$240
Joseph Clasen	\$575
Alan Fox	\$475
Richard Krantz	\$525
Dwight Merriam	\$575
Andrew Roffe	\$575
David Ross	\$325
Robert Sitkowski	\$375



Please call if you have any questions. Thank you.

Sincerely,

Dwight H. Merriam, FAICP, CRE

DHM/ddm

Enclosures

HART1-1382739-1

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STATE OF NEW YORK: COURT OF CLAIMS

----- X

GYRODYNE COMPANY OF AMERICA, INC.	:	Claim No: 112279
Claimant,	:	AFFIDAVIT OF SERVICE
-against-	:	
THE STATE OF NEW YORK,	:	
Defendant.	:	

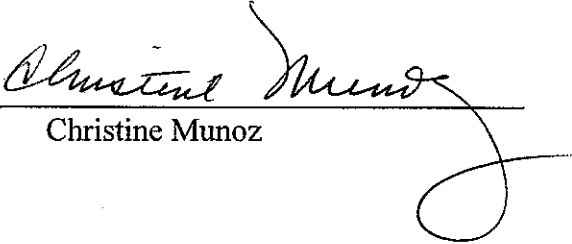
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STATE OF NEW YORK)
)
 COUNTY OF NEW YORK) ss.:

Christine Munoz, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in Yonkers, New York.


On October 12, 2010, I served a copy of the annexed Claimant's **AFFIRMATION OF JOSEPH L. CLASEN IN FURTHER SUPPORT OF MOTION FOR EDPL § 701 ADDITIONAL ALLOWANCE AND IN REPLY TO STATE'S OPPOSITION**, via Federal Express, addressed to:

J. Gardner Ryan, Esq.
 Assistant Attorney General
 Office of the Attorney General
 235 Main Street, 3rd Floor
 Poughkeepsie, New York 12601
 (845) 485-3900



 Christine Munoz

Sworn to before me this
12th day of October 2010


 Notary Public PAUL GUSAK
 Notary Public - State of New York
 No. 01GU6194035
 Qualified in Kings County
 Commission Expires September 29, 2012

NEWY1-632945-1

*** TX REPORT ***

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New York State Court of Claims - Filing by Fax Cover Sheet
(complete, print form, and fax with paper to be filed)

Date: 10/12/10

Claimant(s): Gyrodyne Company of America, Inc.

Claim Number (if any): 112279

Paper Being Filed: Reply Affirmation in Further Support of Motion

Name and Address of Filing Party or Attorney:

Robinson & Cole LLP
885 Third Avenue, Suite 2800
New York, New York 10022

Telephone Number of Filing Party or Attorney: (212) 451 - 2900

Fax Number of Filing Party or Attorney: (212) 451 - 2999

Total Number of Pages of this Transmission, including Cover Page: 23

***** FOR CLAIM FILINGS ONLY *****

If you are filing a claim, you must either pay the \$50.00 filing fee by completing the credit card authorization, or make an application for a waiver or reduction of the filing fee by submitting the appropriate affidavit.

CREDIT CARD AUTHORIZATION

I, _____, authorize the New York State Court of Claims to charge my credit card for the \$50.00 filing fee required for filing the above claim.