STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES
POUGHKEEPSIE REGIONAL OFFICE

February 28, 2011

Robert T. DeCataldo, Chief Clerk
New York State Court of Claims
Governor Nelson A. Rockefeller Empire
State Plaza
P.O. Box 7344, Capitol Station
Albany, NY 12224

Re: Gyrodyne Company of America v. State of New York
Claim Nos. 112279

Dear Mr. DeCataldo:

Enclosed for filing, please find the original and three copies of State's Amended Notice of Appeal with regard to the above matter.

Very truly yours,

J. Gardner Ryan
Assistant Attorney General

JGR:jm
Enc.

cc: Robinson & Cole, LLP
885 Third Avenue
New York, NY 10022-4834
Attn.: David Clasen, Esq.

NEW YORK STATE : COURT OF CLAIMS

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GYRODYNE COMPANY OF AMERICA, INC.,

Claimant,

AMENDED
NOTICE OF APPEAL

-against-

Claim No. 112279

THE STATE OF NEW YORK,

Defendant.

----------X

SIR/MESDAMES:

PLEASE TAKE NOTICE that the defendant, the State of New York, by its attorney, Eric T. Schneiderman, Attorney General of the State of New York, appeals to the Appellate Division of the Supreme Court in and for the Second Department, from a judgment entered by the Clerk of the Court on February 9, 2011, granting an additional allowance for fees and expenses under Eminent Domain Procedure Law § 701 in favor of the claimant, Gyrodyne Company of America, Inc. and against the defendant, in the sum of One Million, Four Hundred, Seventy Four Thousand, Nine Hundred, Forty dollars and Sixty Seven Cents ($1,474,940.67), a copy of which is appended, and this appeal is taken from each and every part of that judgment.

DATED: Poughkeepsie, New York
February 28, 2011

Yours, etc.,

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

Attorney for Defendant

BY:
s/J. GARDNER RYAN
J. GARDNER RYAN
Assistant Attorney General
235 Main Street, 3rd Floor
Poughkeepsie, NY 12601
Telephone: (845) 485-3900

TO: Clerk of the Court of Claims
P.O. Box 7344
Capitol Station
Albany, NY 12224

Robinson & Cole, LLP
885 Third Avenue
New York, NY 10022-4834

Attn.: David Clasen, Esq

STATE OF NEW YORK - COURT OF CLAIMS

GYRODYNE COMPANY OF AMERICA, INC.

Claimant,

Claim No. 112279

-against-

THE STATE OF NEW YORK,

Defendant.

Additional
JUDGMENT

ROBINSON & COLE, LLP,
Attorneys for Claimant,
by JOSEPH L. CLASEN, ESQ.
and THOMAS J. DONLON, ESQ.,
of Counsel.

HONORABLE ERIC T. SCHNEIDERMAN,
Attorney General,
by J. GARDNER RYAN,
Assistant Attorney General,
of Counsel for the Defendant.

This claim for the sum of One Hundred Fifty-Eight Million and no/100 Dollars ($158,000,000.00) for damages resulting from the appropriation on November 2, 2005, of premises situate in the towns of Brookhaven and Smithtown, county of Suffolk, state of New York, described in Maps D 0200-S 273-B 01-L 003.000; D 0800-S40-B 02-L 011.000, Parcels N: 1224728.745; E: 268179.244 (permanent appropriation) for proceeding entitled "Stony Brook University Research and Development Campus Project, No. 5091," pursuant to the Eminent Domain

Procedure Law and New York State Education Law; filed May 1, 2006 and numbered 112279, and pursuant to a decision and order filed July 29, 2008, the caption was amended, *sua sponte*, to read as above set forth to read the State of New York as the properly named defendant, and this claim came on to be heard before the Honorable James J. Lack, a Judge of the Court of Claims,

AND the Court having heard the proofs and allegations of the parties and having duly made and filed its decision in which it made an award to claimant, and judgment having been entered on August 17, 2010, in the sum of $179,636,437.50, in accordance with said decision,

AND claimant having moved for an order granting an additional allowance pursuant to Eminent Domain Procedure Law § 701,

AND said motion having come on to be heard before the Honorable James J. Lack, a Judge of the Court of Claims,

AND the Court after due deliberation having been had, duly made and filed its decision and order on February 1, 2011, in which it granted claimant's motion and made an award to claimant in the sum of $1,474,940.67, it is

ORDERED AND ADJUDGED that GYRODYNE COMPANY OF AMERICA, INC., the above named claimant, recover herein against the State of New York, the sum of One Million Four Hundred Seventy-Four Thousand Nine Hundred Forty and 67/100 Dollars ($1,474,940.67).

Dated: Albany, New York
February 9, 2011

JOAN M. FONTANA
DEPUTY CHIEF CLERK, COURT OF CLAIMS

State of New York,

County of Albany : ss.:

City of Albany :

I, JOAN M. FONTANA, Deputy Chief Clerk of the Court of Claims, of the State of New York, Do Hereby Certify, *That I have compared the foregoing and annexed copy of the additional judgment in the claim of*

GYRODYNE COMPANY OF AMERICA, INC.

Claim No. 112279

against the State of New York with the original thereof on file and of record in this office, and that the same is a correct transcript therefrom and of the whole of the original.

In Testimony Whereof, *I have hereunto set my hand and affixed the seal of said Court of Claims in the City and County of Albany, N.Y., this 9th day of February A.D. 2011*

Deputy Chief Clerk of the Court of Claims

STATE OF NEW YORK COURT OF CLAIMS

GYRODYNE COMPANY OF AMERICA, INC.,

Claimant,

DECISION AND ORDER

-V-

THE STATE OF NEW YORK,

Claim No. 112279
Motion No. M-78778

Defendant.

BEFORE: HON. JAMES J. LACK
Judge of the Court of Claims

APPEARANCES: For Claimant:
Robinson & Cole LLP
By: Joseph L. Clasen, Esq. and
Thomas J. Donlon, Esq.

For Defendant:
Andrew M. Cuomo, New York State Attorney General
By: J. Gardner Ryan, Assistant Attorney General

Claimant, Gyrodyne Company of America. Inc.. moves this Court for an additional allowance for actual and necessary costs, disbursements and expenses pursuant :0 EDPL 3701'.

I he following papers have been read and considered on claimant's motion: Notice of Manion dated September 3, 2010 and filed September 7.2010; Affirmation of Joseph I.. Clasen in Support of"/lotion for [DEL § 701 Additional Allosvance with annexed Exhibits A-C dated September 3. 2010 and filed September 7, 2010; Affidavit of Stephen V. Marone>. in Support of Claimant's Motion for HOPI. § 70 I .Acidit ional Allowance Ns; th annexed Exhibits A-B sworn to September 2, 2010 and tiled September 7, 2010, Ailidas it of Gory aylor in Support of Clahnant's Motion for IiDPL § 701 Additional Allowance with annexed Exhibits swo rn to :Violist 16. 2010 and tiled September 7, 2010; A flidavit orlimothy Barnes in Support of Claimant's Motion for MEI. § 701 Additional Allowance with annexed Exhibits sworn to August 16, 2010 and filed September 7, 2010; Affidavit of Alan J. King, Jr. in Support of Claimant's Motion for KEPI_ § 701 Additional Allowance with annexed Exhibits sworn to August 27, 2010 and filed September 7, 2010;

Following trial, a memorandum decision, filed June 30, 2010, awarded claimant SI25,000,000.00 with statutory interest thereon from the vesting date of November 2, 2005, to the date of decision and thereafter to the date of entry of judgment for the permanent appropriation. Thereafter, on August 17, 2010, the Clerk of the Court entered judgment pursuant to the memorandum decision.

At the time of the taking, the State offered 526,315,000.00 as payment for the taking. Claimant rejected the offer, sought counsel and commenced this action. The State's trial appraisal was accorded no weight. In addition to hiring counsel, claimant retained experts, to wit: an appraiser, a planner and a traffic engineer.

An award of an additional allowance is in order where the am ard is substantialls in excess of the condemnor's initial offer *(Matter of Alow York (7ty fransit Authority, [Superior Reed & Rattan Furniture Co Inc"*, 160 AD2d 705) and when deemed necessary by the Court to ach e e just and adequate compensation. The additional allowance is not mandatory and the determinations are left to the Court's discretion.

Gyrodl ne Company of America's Memorandum of Law in Support of EON.. e 701 Additional Allowance dated September 2, 2010 and received September 7, 2010; Affirmation all Gardner Ryan. Esc). dated October 7, 2010 and filed October 8, 2010; Affirmation of Joseph L. Clasen in I Lather Support of Motion for EDP'. ir 701 Additional Allowance and in Reply to State's Opposition \Anil annexed Lxhihit A dated October 12, 2010 and filed October 12, 2010.

In determining whether the difference is substantial, the Court must look to the percentage difference. as well as the dollar amount. The award for permanent taking was about 47584o of and 898,685,000.00 more than the initial offer.

The Court finds the award is substantially inure than the initial offer. Based upon the foregoing, it is determined that the differences herein satisfy the first test and are substantial within the meaning of the statute *(Matter of Malin v State of Area York,* 183 AD2d 899).

Defendant submits no opposition to claimant's entitlement to damages for attorneys fees. Defendant objects to individual charges made by claimant's counsel. Thus, defendant seeks a reduction of the fee requested by claimant's attorney.

To obtain a fair and just valuation of it's property, claimant hired an appraiser . Gary Taylor, who was paid $50,000.00 for his report and 323,087.00 to review and critique defendant's appraisal and testify at trial. The total paid to the appraiser was 373,087.00 Claimant retained a traffic engineer, Alan King, Jr., to prepare a traffic impact study of the subject property and evaluate traffic conditions on the surrounding area. The Ice paid to the traffic engineer was 5164,397.61. Claimant hired an additional appraiser. Timothy Barnes, for expert advice regarding appraisals, condemnation and trial issues. This appraiser was paid 5226,749.49. Claimant retained BFJ Planning to prepare a yield analysis of the subject property. The analysis was used by claimant's appraiser and planner

in preparing their eports. The fee paid for the analysis was 532,037.75. Claimant also paid Tom Cramer a fee to advise on zoning issues. This fee was 55.000.00.

The total fees paid by claimant, excluding attorney fees, is 5501,271.85? The Court takes note claimant makes no application for the services of Daniel Gulizio. Mr. Gulizio testified as an expert in planning and zoning. He graduated from college in 1986 and went to work in the Town of Islip planning department. The w itness obtained a Master of Science degree in urban planning and a law degree. Mr. Gulizio worked tbr the Town of Islip from 1986 until 2002. From 2002 until 2005, the witness worked at the Town of Brookhaven as the Commissioner of Department of Planning Environment and Land Management. During his career, Mr. Gulizio indicated he had been involved with a few hundred rezoning applications. Mr. Gulizio's testimony was integral to the Court's ultimate finding as to the highest and best use of the subject property. At the time of trial, Mr. Gulizio was employed as the Deputy Director oldie County of Suffolk's Planning Department. During his testimony, the witness stated he was not taking a fee for his work in this matter. It as alleged Mr. Gulizio was v iolating the Suffolk Countv Administrative Code because his employment with Suffolk County and his work for claimant were in conflict. However. the witness had been retained prior to his current employment , and entitled to a fee. Nonetheless, Mr. Gulizio declined to charge claimant.

- Invoices supporting the expenses hate been attached to claimant's paper in support of the instant motion.

Claimant also retained counsel on an hourly basis. The rate> applied for the attorney fee ranged from 8200.00 to $600.00 per hour depending upon who in the firm was charging. The total attorney fee requested is 5907,070.00. In addition, counsel incurred expenses on behalf of claimant during the prosecution of the claim. The expenses submitted by counsel total $66,598.82. The total requested by counsel is $971,668.8 [7.4]

Claimant is requesting an additional award of S1,474,940.67:

The Court finds the total fee and expenses requested by counsel to be reasonable and legitimate.[1] The retainer agreement is reasonable and the counsel fees. even with the interest, is a legitimate expense that claimant has incurred in obtaining just and adequate compensation.

With regard to the fees paid, the Court has no doubt that it was necessary for claimant to obtain an appraisal as well as incur the other expenses for reports and testimony. The Court finds

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- Claimant has submitted a detailed accounting of the titre charged by counsel. In a ddition, claimant has also submitted a detailed accounting for the expenses charged by counsel.

Retaining counsel on an hourly basis is not the standard in the practice of eminent domain law. The standard fee is calculated as one-third of the difference between the total recovery and advance payment. Claimant will receive statutory interest from the date of the taking to the date of pay mem at the rate of 9% on the difference between the award and the advance payment. Counsel's award would not he valued until interest is first added to the difference between the total recovery and advance pa>,ment. The underlying decision awarded interest from the date of vesting until the date of decision and thereafter until entry ofjudgment, a total of 4 scars. 7 months and 19 days (the Court will disregard the nineteen days for the purpose of this hypothetical). Claimant would be entitled to 41.25% interest on top of its award less the advance payment or 526,315,000.00. The total due claimant would be S 139.392,562.50. Therefore, if counsel had been retained using the industry standard, counsel could be seeking a fee of 546464,187.50.

In its papers. claimant incorrectly states the sum as S I .4[7]4,191.18. 'I he Court notes this is 5749.49 less than the total. It is surmised counsel left the 5749.49 off of the sum owed Mr. Barnes in totaling the sum owed.

file Court notes a savings to the taxpayer ofupproximately S43,000,000.00 compared to what could have been requested.

the expenses of S501,271.S5, in consideration oldie issues before the Court at trill!, to be reasonable and necessary.

Based upon the foregoing, the Court finds that the reasonable and necessary expenses that claimant has incurred to be S1,474,9.40.67. Without the additional allowance, the net proceeds of the aRNard, plus interest, will be substantially less *of* what was found to be just or adequate compensation. Thiswouldbeagrosslyinadequateamountandclaimantshouldreceiveanadditional allowance for the necessary costs and expenses as set forth previously.

Accordingly, the motion is granted. The Clerk shall enter an additional judgment in Favor of the claimant in the amount of S I ,474,940.67. This judgment shall he without interest. costs or disbursements.

Hauppauge, New York
December 14,2010

JAMES J. LACK
Judge of the Court of Claims

Supreme Court of the State of New York
Appellate Division : Second Judicial Department

Form A - Request for Appellate Division Intervention - Civil

See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

STATE OF NEW YORK : COURT OF CLAIMS

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GYRODYNE COMPANY OF AMERICA, INC. ,

Claimant,

-against- CLAIM NO. 112279

THE STATE OF NEW YORK,

Defendant.

----------x

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type		Filing Type	
☑ Civil Action	☐ CPLR article 78 Proceeding	☐ Appeal	☐ Transferred Proceeding
☐ CPLR article 75 Arbitration	☐ Special Proceeding Other	☐ Original Proceeding	☐ CPLR 5704 Review
	☐ Habeas Corpus Proceeding		

Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.

A. Administrative Review
- ☐ 1 Freedom of Information Law
- ☐ 2 Human Rights
- ☐ 3 Licenses
- ☐ 4 Public Employment
- ☐ 5 Social Services
- ☐ 6 Other

B. Business & Other Relationships
- ☐ 1 Partnership/Joint Venture
- ☐ 2 Business
- ☐ 3 Religious
- ☐ 4 Not-for-Profit
- ☐ 5 Other

C. Contracts
- ☐ 1 Brokerage
- ☐ 2 Commercial Paper
- ☐ 3 Construction
- ☐ 4 Employment
- ☐ 5 Insurance
- ☐ 6 Real Property
- ☐ 7 Sales
- ☐ 8 Secured
- ☐ 9 Other

D. Domestic Relations
- ☐ 1 Adoption
- ☐ 2 Attorney's Fees
- ☐ 3 Children - Support
- ☐ 4 Children - Custody/Visitation
- ☐ 5 Children - Terminate Parental Rights
- ☐ 6 Children - Abuse/Neglect
- ☐ 7 Children - JD/PINS
- ☐ 8 Equitable Distribution
- ☐ 9 Exclusive Occupancy of Residence
- ☐ 10 Expert's Fees
- ☐ 11 Maintenance/Alimony
- ☐ 12 Marital Status
- ☐ 13 Paternity
- ☐ 14 Spousal Support
- ☐ 15 Other

E. Miscellaneous
- ☐ 1 Constructive Trust
- ☐ 2 Debtor & Creditor
- ☐ 3 Declaratory Judgment
- ☐ 4 Election Law
- ☐ 5 Notice of Claim
- ☐ 6 Other

F. Prisoners
- ☐ 1 Discipline
- ☐ 2 Jail Time Calculation
- ☐ 3 Parole
- ☐ 4 Other

G. Real Property
- ☑ 1 Condemnation
- ☐ 2 Determine Title
- ☐ 3 Easements
- ☐ 4 Environmental
- ☐ 5 Liens
- ☐ 6 Mortgages
- ☐ 7 Partition
- ☐ 8 Rent
- ☐ 9 Taxation
- ☐ 10 Zoning
- ☐ 11 Other

H. Statutory
- ☐ 1 City of Mount Vernon Charter §§ 120, 127-f, or 129
- ☐ 2 Eminent Domain Procedure Law § 207
- ☐ 3 General Municipal Law § 712
- ☐ 4 Labor Law § 220
- ☐ 5 Public Service Law §§ 128 or 170
- ☐ 6 Other

I. Torts
- ☐ 1 Assault, Battery, False Imprisonment
- ☐ 2 Conversion
- ☐ 3 Defamation
- ☐ 4 Fraud
- ☐ 5 Intentional Infliction of Emotional Distress
- ☐ 6 Interference with Contract
- ☐ 7 Malicious Prosecution/ Abuse of Process
- ☐ 8 Malpractice
- ☐ 9 Negligence
- ☐ 10 Nuisance
- ☐ 11 Products Liability
- ☐ 12 Strict Liability
- ☐ 13 Trespass and/or Waste
- ☐ 14 Other

J. Wills & Estates
- ☐ 1 Accounting
- ☐ 2 Discovery
- ☐ 3 Probate/Administration
- ☐ 4 Trusts
- ☐ 5 Other

V2.0.060293

Appeal

Paper Appealed From (check one only):

☐ Amended Decree	☐ Determination	☐ Order	☐ Resettled Order
☐ Amended Judgment	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
☐ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☑ Judgment	☐ Resettled Judgment	

Court: Court of Claims	County: Suffolk
Dated: February 1, 2011	Entered: February 9, 2011
Judge (name in full): James J. Lack	Index No.:
Stage: ☐ Interlocutory ☑ Final ☐ Post-Final	Trial: ☐ Yes ☑ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal Information

Are any unperfected appeals pending in this case? ☑ Yes ☐ No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals? ☑ Yes ☐ No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court:	County:
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order

Court:	County:
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Defendant appeals from an additional or supplemental judgment, entered on February 9, 2011, providing an additional award to the claimant of attorney fee and expert fees under Eminent Domain Procedure Law, Section 701

Amount: If an appeal is from a money judgment, specify the amount awarded. $1,474,490.67

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.

The court failed to limit its award to the reasonable fees attributable to those legal and expert services contributing to its determination of compensation

Issues Continued:

Use Form B for Additional Appeal Information

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defendant third-party plaintiff, third-party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

No.	Party Name	Original Status	Appellate Division Status
1	State of New YorK	Defendant	Appellant
2	Gyrodyne Company of America, Inc.	Claimant	Appellee
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Attorney Information

Instructions: Fill in the names of the attorneys or firms of attorneys for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided.

In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: New York State Attorney General

Address: The Capitol

City: Albany State: NY Zip: 12224 Telephone No.: 518-416-8016

Attorney Type: ☐ Retained ☐ Assigned ☑ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C): 1

Attorney/Firm Name: Robinson & Cole

Address: 885 Third Avenue

City: New York State: NY Zip: 10022 Telephone No.: 212-451-2900

Attorney Type: ☑ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C): 2

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No.:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

Use Form C for Additional Party and/or Attorney Information

The use of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division Intervention [Form A, this document], (2) any required Additional Appeal Information Forms [Form B], (3) any required Additional Party and Attorney Information Forms [Form C], (4) the notice of appeal or order granting leave to appeal, (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken, and (6) a copy of the decision or decisions of the court of original instance, if any.