

APPENDIX

APPENDIX

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CHRISTOPHER CHIN

PART

22

Justice

-----X

JEFFREY COLT, BETSY TSAI,

Plaintiff,

- v -

NEW JERSEY TRANSIT CORPORATION, NJ TRANSIT
BUS OPERATIONS, INC., ANA HERNANDEZ

Defendant.

-----X

INDEX NO. 158309/2017MOTION DATE 06/02/2025MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 151, 152, 153, 154, 155, 156, 157, 158, 164, 165, 166, 172, 173, 178, 179, 185, 186

were read on this motion to/for

STAY

Upon the foregoing documents, after oral argument, and upon due deliberation, it is

ORDERED that this motion by defendants New Jersey Transit Corporation, New Jersey Transit Bus Operations, Inc. and Ana Hernandez (hereinafter collectively as "NJT"), to stay this action pursuant to CPLR § 2201 is denied.

BACKGROUND

This action involves a motor vehicle accident which occurred on February 9, 2017. Jeffrey Colt was allegedly struck by a New Jersey Transit bus at the intersection of West 40th Street and Dyer Avenue, in the City and State of New York, while he was a pedestrian in a pedestrian crosswalk.

The bus was driven by defendant Ana Hernandez, an employee of New Jersey Transit. This case was commenced on September 15, 2017, with the filing of a summons and complaint.¹

On July 15, 2020, defendants NJT moved for dismissal pursuant to CPLR 3211(a)(2) (Motion Seq. No. 002), on the basis that this court lacked subject matter jurisdiction because NJT is immune from being sued in New York State Court. The motion was filed after many discovery conferences, and after several depositions were conducted. The motion was filed after the expiration of the New Jersey statute of limitations for the commencement of this action. Additionally, the basis of the motion was the US Supreme Court decision in *Franchise Tax Bd of California v. Hyatt* (587 US 230 [2019]) (“*Hyatt III*”) - decided on May 13, 2019, approximately 14 months before NJT filed the motion.

By order dated October 6, 2020, the court (Hon. Adam Silvera) denied defendants’ motion to dismiss (NYSCEF Doc No 98). An appeal was taken and by order dated May 24, 2022, the Appellate Division affirmed the trial court’s order. An appeal was thereafter taken to the Court of Appeals and, by order dated November 25, 2024, the Court affirmed the decision by the Appellate Division, First Department, that NJT was not immune from being sued in New York State Court.

A note of issue was filed by plaintiff on February 9, 2021. By order dated January 19, 2022 (Hon. Lisa Headly), partial summary judgment as to liability was granted against defendants and it was ordered that the matter proceed to trial on damages (NYSCEF Doc No. 138). The parties

¹ Plaintiff Betsy Tsai is the wife of plaintiff Jeffrey Colt, who has a loss of consortium claim.

have appeared for multiple settlement conferences, and the matter appeared in the Trial Ready Part on two (2) occasions, and the matter is currently marked “final” for jury selection on September 15, 2025.

NJT now moves by notice of motion for an order staying this matter pursuant to CPLR § 2201, based upon petitions for a writ of certiorari filed with the United States Supreme Court in: (i) *Galette v NJ Transit* (332 A3d 776 [Pa 2025]; and in this matter (ii) *Colt v NJ Transit Corp.*, 43 NY3d 463 [Nov 25, 2024]) (the “petitions”).² The petitions, involve the conflicting rulings by the Pennsylvania Supreme Court and the New York Court of Appeals (the ruling in this matter), with respect to whether New Jersey Transit is an arm of the State of New Jersey, entitled to sovereign immunity.

Defendants argue that a stay of this case is warranted, because the United States Supreme Court will be deciding whether NJT benefits from immunity. Specifically, defendants argue that based on *Hyatt III*, a decision by the US Supreme Court holding that NJT is entitled to sovereign immunity would effectively end this case. NJT further argues that if the US Supreme Court rules that NJT is not entitled to immunity, this case would proceed to a damages trial thereafter. NJT also argues that a denial of their request for a stay would be a waste of judicial resources and plaintiffs would not suffer undue prejudice since a decision from the US Supreme Court is expected by June 2026. This court disagrees.

² The court notes that it does not appear that defendants sought a stay of this matter in the US Supreme Court.

DISCUSSION

Stay Pursuant to CPLR 2201

CPLR §2201 provides that, “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.”

It is well settled that a court has broad discretion to grant or deny an application for a stay (*see 215 W. 84th St Owner LLC v. Ozsu*, 209 AD3d 401, 401 [1st Dept 2022]; *Lauria v. Kriss*, 147 AD3d 575, 575 [1st Dept 2017]). Whether a stay is warranted is wholly discretionary and such decision “is primarily addressed to the discretion of the court” (*Pierre Assoc. Inc. v. Citizens Cas. Co. of New York*, 32 AD2d 495, 496 [1st Dept 1969]; *see also Berger-Tilles Leasing Corp. v. York Assoc. Inc.*, 28 AD2d 1132, 1133 [2d Dept 1967], *affd* 22 NY2d 837 [1968]). When a party seeks to stay compliance with a court’s lawful mandate, such as to proceed to trial, such a stay should be denied unless the proponent of the stay can demonstrate prejudice if no stay is granted (*Peerce v. Peerce*, 97 AD2d 718, 719 [1st Dept 1983]).

Since a stay of an action can be a drastic remedy, on the legal maxim that justice delayed is justice denied, it should therefore be refused, unless the proponent shows good cause for granting it (*see* Patrick M. Connors, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C2201:7; *David I. Ferber SEP IRA v. Fairfield Greenwich Group*, 28 Misc3d 1214 [A] [Sup Ct, NY County 2010]). In considering whether a stay is warranted, the “[f]actors to consider include avoiding the risk of inconsistent adjudications, [duplication] of proof and potential waste of judicial resources” (*Britt v International Bus Servs.*, 255 AD2d 143, 144 [1st

Dept 1998]; *see also Zonghetti v Jeromack*, 150 AD2d 561, 563 [2d Dept 1989]; *One Beacon America Ins. Co. v Colgate-Palmolive Co.*, 96 AD3d 541, 542 [1st Dept 2012]).

Applying those factors here, including whether defendants demonstrated prejudice if no stay was granted, the court finds that a stay is not warranted.

Risk of Inconsistent Adjudications

As mentioned above, the posture of this case is that summary judgment as to liability has been granted in plaintiff's favor, with only a trial on damages remaining. Jury selection is scheduled to commence on September 15, 2025. It is unfathomable that any ruling by the United States Supreme Court would include any determination regarding plaintiff Jeffrey Colt's injuries and/or value of any compensable damages. A decision by the Supreme Court that New Jersey Transit is entitled to immunity would therefore, not be inconsistent with any finding of damages by a jury. Thus, there is little to no risk of inconsistent adjudications.

Duplication of Proof

Similarly, it is not likely that there would be an overlap or duplication of proof in the damages-only trial as the United States Supreme Court will not be evaluating plaintiff Jeffrey Colt's injuries.

Waste of Judicial Resources

As this matter has proceeded through the trial court, the Appellate Division, First Department and the Court of Appeals, the New York State courts have already expended significant judicial

resources in having this case adjudicated in New York. To deny plaintiffs their day in court at this juncture, would (in this court's view) not be a waste of resources but rather, resources well utilized in bringing this eight (8) year old matter to fruition. Notably, plaintiffs estimate that the trial on damages will involve no more than six (6) witnesses and take less than one (1) week to complete.

Additionally, while there is a possibility that a Supreme Court ruling could render a damages trial unnecessary, it is just as likely that the United States Supreme Court decision may *not* obviate the need for a damages trial. Moreover, even if the Supreme Court ruled that defendant New Jersey Transit is entitled to immunity, it may not eliminate the need for a damages trial as to defendant Ana Hernandez, the driver of the bus that struck plaintiff Jeffrey Colt, as the Supreme Court could rule that she is not an arm of the State of New Jersey (*see State Emp. Bargaining Agent Coalition v Rowaland*, 718 F3d 126, 137 [2d Cir 2013], *quoting Berman Enterprises, Inc. v Jorling*, 3 F3d 602, 606 [2d Cir 1993] (“ ‘[w]here a complaint ‘specifically seeks damages from [] defendants in their individual capacities[,]...the mere fact that the state may reimburse them does not make the state the real party in interest’ ”); *Farid v Smith*, 850 F2d 917, 923 [2d Cir 1988] [“the law is clear that a state’s voluntary decision to indemnify its public servants does not transform a personal-capacity action against a state official into an official-capacity action against the state”]; *Wilson v Beebe*, 770 F2d 578, 588 [6th Cir 1985] [same])).

Prejudice

NJT argues that it will be prejudiced if forced to proceed to a damages-only trial where they will expend resources for attorneys and experts, which will be unnecessary if they prevail at the

United States Supreme Court. However, NJT fails to cite to any cases where a court has held that litigation expenses would constitute undue prejudice. In fact, there are a multitude of cases that have declined to hold that incurring the usual costs of litigation would constitute prejudice (*see Tuker v. Hicks*, 2022 NY Slip Op 51097[U] [Sup Ct, Kings County 2022]; *Matter of PPDAL Group Sec. Litig.*, 2019 Slip Op 51075(U) [Sup Ct, NY County 2019]; *Jackson v. Citywide Mobile Response Corp.*, 2024 NY Misc LEXIS 10221 [Sup Ct, Bronx County 2024]; *Saldana v. Riess*, 2022 NY Misc LEXIS 29973 [Sup Ct, Bronx County 2022]; *Century Indem. Co. v. Brooklyn Union Gas Co.*, 2024 NY Slip Op 51791 [U] [Sup Ct, NY County 2024]; *Trump v. Trump*, 81 Misc 3d 1228 [A] [Sup Ct, New York County 2024]). Moreover, should a jury award money damages in plaintiffs' favor, *at that juncture*, NJT can move to stay the enforcement of the judgment.

Further, despite conventional wisdom, a verdict for money damages, even if unenforceable, has some (intangible) value. This is why numerous inquests are conducted daily, in courthouses throughout our state, against defaulting parties who are most likely "judgment proof," where the plaintiff will never recover any of the monetary damages. The court is reminded of a recent trial, where dozens of women came to testify before a jury in this court about unwanted sexual acts committed by a famous and influential writer and movie maker against them. The plaintiffs in that case testified that they understood that they would likely not recover any monetary damages from the defendant, but nonetheless, they each spoke of wanting to tell their story and getting some vindication from a jury that what the defendant had done was wrong, and that the injuries they suffered had value. The jury returned a verdict of \$1.68 billion, which (to the court's knowledge) remains uncollectible to date, yet the plaintiffs were grateful to have had their day in

court. Likewise, plaintiffs in this case are entitled to their day in court and would be prejudiced if they were prevented from having an opportunity to present their case to a jury, after eight (8) years of litigation.

Stay Pursuant To CPLR 5519 (c)

The CPLR prescribes several factual scenarios warranting an automatic stay barring the enforcement of an order or judgment from which an appeal was taken. When no basis for an automatic stay is available however, a party may move for a discretionary stay under CPLR § 5519 (c), which defendants elected not to do here. Nevertheless, for the sake of completeness, this court will analyze the applicability of CPLR § 5519 (c) to defendants' request for the stay sought herein.

CPLR 5519 (c) provides, in relevant part that, "Stay and Limitation of Stay by Court Order. The court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the... order appealed from pending an appeal...".

Similar to CPLR 2201, whether to grant a stay under section 5519 (c) is generally a matter of discretion (*Grisi v. Shainswit*, 119 AD2d 418, 421 [1st Dept 1986]); however, section 5519 (c) also requires that the proponent of the stay demonstrate the merits of the appeal (*Da Silva v. Musso*, 76 NY2d 436 [1990] [footnote 4]). The court in evaluating whether to grant a stay will also be influenced by any relevant factor, including "any exigency or hardship confronting any party" (Richard C. Reilly, Practice Commentaries McKinney's Cons Laws of NY, CPLR C:5519:4; *see also Deutsche Bank Natl. Trust Co. v. Royal Blue Realty Holdings, Inc.*, 2016 NY

Slip Op 3150 [U] [Sup Ct, NY County 2016]. Here, defendants failed to address their likelihood of success on the appeal before the United States Supreme Court as required under CPLR 5519 (c), and instead merely set forth the basis for their appeal - regurgitating the arguments they made in their original motion for immunity - and therefore, the application would fail under section 5519 (c). Additionally, defendants failed assert any exigency or hardship they may confront if a stay is not granted. Further, as discussed above, defendants failed to establish any undue prejudice if a stay is denied.

CONCLUSION

In conclusion, the court finds that this is not a proper case in which a stay should be granted pursuant to CPLR 2201 (nor CPLR 5519 [c]).

This is a case where a New Jersey Transit bus struck a pedestrian in the State of New York. However, under New Jersey Law (NJSA 4:3-2), a suit against New Jersey Transit can only be brought in New Jersey and *only* in the county where the incident occurred. Based on a plain reading of the New Jersey statute, there is no right of redress for someone struck by a New Jersey Transit bus in New York State. Notably, in their submissions, defendants fail to reference any way a person injured by a New Jersey Transit bus in New York could commence a suit and obtain justice.

Additionally, it is clear from every decision in this case regarding sovereign immunity, that New York Courts have a compelling interest in holding NJT accountable for its alleged negligence, in the courts of this state. At each level of review, the judges deciding the issue found varied and

different reasons to deny NJT's request to hold that it is entitled to immunity. In fact, at the Court of Appeals, two judges, including Chief Judge Wilson, wrote compelling concurring opinions holding NJT accountable in New York state. Even the lone dissenting opinion by Judge Rivera wrote about her distain for the "gamesmanship" by NJT, throughout this litigation. It is clear that New York has an interest in protecting its residents from negligence of others, including buses owned and operated by New Jersey Transit. To issue a stay of the damages trial at this time, pending a decision from the US Supreme Court, would be an extreme miscarriage of justice to plaintiffs. After litigating the action for approximately eight (8) years, plaintiffs are entitled to a verdict.

Based upon the above and given that "justice delayed" is often "justice denied," (Patrick M. Connors, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C2201:7), it is

ORDERED that defendants' motion for a stay is denied.

9/2/025

DATE


CHRISTOPHER CHIN, J.S.C.

CHECK ONE:

☐

CASE DISPOSED

☒

NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

Date: 9/5/2025

Case # 2025-05314

Title of Matter

Index/Indict/Docket # 158309 - 2017

Jeffrey Colt, et al. v. New Jersey Transit Corporation, et al.

Appeal by Defendants from Decree ☒ Order Judgment ☐ of Supreme Surrogate's Family ☒ County New York Court entered on 9/4, 20 25

Name of Judge The Honorable Christopher Chin

Notice of Appeal filed on 9/5, 20 25

If from administrative determination, state agency _____

Nature of action or proceeding This is a personal injury matter which has a trial date of September 15, 2025.

Provisions of ☒ order ☐ judgment ☐ decree appealed from Decision and Order of the lower court which denied Defendants' motion to stay based on an appeal in this matter pending in U.S. Supreme Court.

This application by appellant respondent is for stay of case before lower court based on an issue before U.S. Supreme Court involving the decision in Franchise Tax Bd. of Ca. v. Hyatt, 587 U.S. 230 (2019) holding states cannot be sued in a sister state's court.

If applying for a stay, state reason why requested U.S. Supreme Court granted a Petition for Writ of Certiorari in this matter on whether NJ Transit "is an arm of the State of New Jersey for interstate sovereign immunity purposes."

Has any undertaking been posted No. If "yes", state amount and type N/A

Has application been made to court below for this relief Yes. If "yes", state Disposition the lower court denied the motion
Has there been any prior application here in this court Yes If "yes", state dates and nature On 5.24.25, this Court affirmed the lower court's denial of Defendants' Motion to dismiss complaint based on interstate immunity. 206 A.D.3d 126 (1st Dep't 2022).

Has adversary been advised of this application Yes Does he/she consent No

Attorney for Movant

Attorney for Opposition

Name John A. Stone, Esq.

Erik K. Schwarz, Esq.

Address 7 Stokum Lane

120 Broadway, 27th Floor

New City, NY 10956

New York, New York 10271

Tel. No. 845-352-0206, 201-928-1100

Tel. No. 212-266-4116, E-Mail: eschwarz@triallaw1.com

Email jstone@decotilaw.com

Appearing by _____

DISPOSITION

(Do not write below this line)

*Application for an interim stay is denied.
Expedite motion to panel as below:*

Motion Date 9/22/25 Opposition 9/15 Reply 9/22 10 am

EXPEDITE ☒ PHONE ATTORNEYS _____ DECISION BY _____

ALL PAPERS TO BE SERVED PERSONALLY. _____

_____ Court Attorney



State of New York
Court of Appeals

Heather Davis, Esq.
Chief Clerk and
Legal Counsel to the Court

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095
518-455-7700

September 11, 2025

sent via email only

DeCotiis, FitzPatrick, Cole & Giblin, LLP
Attn: John A. Stone, Esq.
60 South Main Street, Suite 11
New City, NY 10956

Re: Colt v New Jersey Transit
Mo. No. 2025-684 (Pin No. 83218)

Dear Mr. Stone:

Your proposed order to show cause and notice of motion for leave to appeal in the above matter were received by this office on September 10, 2025. The proposed order to show cause was reviewed by Judge Singas, who declined to sign the order to show cause.

The notice of motion for leave to appeal will be submitted to the Court on the return date of September 22, 2025. Any papers opposing the motion for leave to appeal must be served and filed on or before September 22, 2025.

You must provide this office with the \$45 motion fee as required by CPLR 8022 or proof of exemption from the fee.

In addition to paper filing, a copy of the motion and a copy of any opposition to the motion must be uploaded via the Companion Filing Upload Portal on the Court's website.

Questions about the Rules of the Court of Appeals for motions may be directed to Rachael MacVean at (518) 455-7705.

Very truly yours,

A handwritten signature in black ink, appearing to read 'H. Davis'.

Heather Davis

HD/RMM

cc: Hon. Madeline Singas
Brian J. Shoot, Esq.



Case Caption: **JEFFREY COLT et al - v. - NEW JERSEY TRANSIT CORPORATION, et al**

Judge Name: **Christopher Chin**

Doc#	Document Type/Information	Status	Date Received	Filed By
1	SUMMONS + COMPLAINT	Processed	09/18/2017	Schwarz, E.
2	SUMMONS - SUPPLEMENTAL (PRE RJ1)	Processed	09/27/2017	Schwarz, E.
3	COMPLAINT (AMENDED)	Processed	09/27/2017	Schwarz, E.
4	ADMISSION OF SERVICE Affidavit of Service through Secretary of State of Notice of Commencement of Action Subject to Manda	Processed	09/27/2017	Schwarz, E.
5	ADMISSION OF SERVICE Affidavit of Service through Secretary of State of Notice of Commencement of Action Subject to Manda	Processed	09/27/2017	Schwarz, E.
6	ADMISSION OF SERVICE Affidavit of Service of Notice of Commencement of Action Subject to Mandatory E-Filing, Summons and	Processed	09/29/2017	Schwarz, E.
7	ADMISSION OF SERVICE Affidavit of Service thru Secretary of State of Notice of Commencement of Action Subject Mandatory t	Processed	10/06/2017	Schwarz, E.
8	ADMISSION OF SERVICE Affidavit of Service thru Secretary of State of Notice of Commencement of Action Subject Mandatory t	Processed	10/06/2017	Schwarz, E.
9	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit in Compliance with Section 307 BCL - New Jersey Transit Corp.	Processed	10/12/2017	Schwarz, E.
10	EXHIBIT(S) - A Notice of Commencement of Action Subject to Mandatory Electronic Filing with Summons & Verified Comp	Processed	10/12/2017	Schwarz, E.
11	EXHIBIT(S) - B Affidavit of Service through Secretary of State of Notice of Commencement of Action to Mandatory Ele	Processed	10/12/2017	Schwarz, E.
12	EXHIBIT(S) - C Notice Pursuant to Section 307 BCL on New Jersey Transit Corp. with Affidavit of Service	Processed	10/12/2017	Schwarz, E.
13	EXHIBIT(S) - D Original P.O. Via Registered Mail, Return Receipt Requested on New Jersey Transit Corp.	Processed	10/12/2017	Schwarz, E.
14	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit in Compliance with Section 307 BCL - NJ Transit Bus Operations, Inc.	Processed	10/12/2017	Schwarz, E.
15	EXHIBIT(S) - A Notice of Commencement of Action Subject to Mandatory Electronic Filing with Summons & Verified Comp	Processed	10/12/2017	Schwarz, E.



Doc#	Document Type/Information	Status	Date Received	Filed By
16	EXHIBIT(S) - B Affidavit of Service thru Secretary of State of Notice of Commencement of Action Subject to Mandator	Processed	10/12/2017	Schwarz, E.
17	EXHIBIT(S) - C Notice Pursuant to Section 307 BCL on NJ Transit Bus Operations, Inc.	Processed	10/12/2017	Schwarz, E.
18	EXHIBIT(S) - D Original P.O. delivery via Registered Mail, Return Receipt Requested on NJ Transit Bus Operations, I	Processed	10/12/2017	Schwarz, E.
19	ADMISSION OF SERVICE Affidavit of Service of Notice of Commencement of Action Subject to Mandatory Electronic Filing, Sup	Processed	10/12/2017	Schwarz, E.
20	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit Comply Req'd Mail (307) - New Jersey Transit Corp.	Processed	10/24/2017	Schwarz, E.
21	EXHIBIT(S) - A Exhibit A - New Jersey Transit Corp. (Notice of Commencement of Action Subject to Mandatory E-Filing	Processed	10/24/2017	Schwarz, E.
22	EXHIBIT(S) - B Exhibit B - AOS thru SOS of Nx of Commencement of Action Subject to Mandatory E-Filing with Suppleme	Processed	10/24/2017	Schwarz, E.
23	EXHIBIT(S) - C Exhibit C - Notice Pursuant to Section 307 BCL upon New Jersey Transit Corp.	Processed	10/24/2017	Schwarz, E.
24	EXHIBIT(S) - D Exhibit D - Post Office Registered Mail, Return Receipt Requested upon New Jersey Transit Corp.	Processed	10/24/2017	Schwarz, E.
25	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit Comply Req'd Mail (307) - NJ Transit Bus Operations, Inc. (Supplemental Summons & Amended	Processed	10/24/2017	Schwarz, E.
26	EXHIBIT(S) - A Exhibit A - NJ Transit Bus Operations (Nx of Commencement of Action Subject to Mandatory E-Filing wi	Processed	10/24/2017	Schwarz, E.
27	EXHIBIT(S) - B Exhibit B - AOS thru SOS of Nx of Commencement of Action Subject to Mandatory E-Filing with Suppleme	Processed	10/24/2017	Schwarz, E.
28	EXHIBIT(S) - C Exhibit C - Notice Pursuant to Section 307 BCL upon NJ Transit Bus Operations, Inc.	Processed	10/24/2017	Schwarz, E.
29	EXHIBIT(S) - D Exhibit D - Post Office Registered Mail, Return Receipt Requested upon NJ Transit Bus Operations, In	Processed	10/24/2017	Schwarz, E.
30	ANSWER VERIFIED ANSWER	Processed	01/05/2018	Stone, J.



Doc#	Document Type/Information	Status	Date Received	Filed By
31	STIPULATION - TIME TO ANSWER STIPULATION EXTENDING TIME TO ANSWER AND/OR RESPOND TO COMPLAINT	Processed	01/05/2018	Stone, J.
32	PRELIMINARY CONFERENCE REQUEST	Processed	06/19/2018	Schwarz, E.
33	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit of Service of Preliminary Conference Request and Request for Judicial Intervention	Processed	06/19/2018	Schwarz, E.
34	RJI -RE: REQUEST FOR PRELIMINARY CONFERENCE	Processed	06/19/2018	Schwarz, E.
35	ORDER - CASE SCHEDULING comm 002	Processed	06/20/2018	Court User
36	STIPULATION - SO ORDERED	Processed	11/15/2018	Court User
37	NOTICE OF CHANGE OF FIRM NAME OR ADDRESS (POST RJI)	Processed	02/06/2019	Stone, J.
38	STIPULATION - SO ORDERED	Processed	02/11/2019	Court User
39	ORDER - STATUS CONFERENCE	Processed	04/29/2019	Court User
40	STIPULATION - SO ORDERED	Processed	06/24/2019	Court User
41	STIPULATION - SO ORDERED	Processed	09/20/2019	Court User
42	NOTICE OF MOTION (Motion #001) *Corrected* to Compel Discovery	Processed	11/15/2019	Stone, J.
43	MEMORANDUM OF LAW IN SUPPORT (Motion #001) of Motion to Compel Discovery	Processed	11/14/2019	Stone, J.
44	AFFIRMATION (Motion #001) of John A. Stone, Esq.	Processed	11/14/2019	Stone, J.
45	EXHIBIT(S) - A (Motion #001) Verified Bill of Particulars	Processed	11/14/2019	Stone, J.
46	EXHIBIT(S) - B (Motion #001) Deposition Transcript of Jeffrey Colt	Processed	11/14/2019	Stone, J.
47	EXHIBIT(S) - C (Motion #001) Deposition Transcript of Ana Hernandez	Processed	11/14/2019	Stone, J.
48	EXHIBIT(S) - D (Motion #001) Deposition Transcript of Antwone Steele	Processed	11/14/2019	Stone, J.
49	EXHIBIT(S) - E (Motion #001) Bellevue Hospital Center Outpatient Chart Print	Processed	11/14/2019	Stone, J.
50	EXHIBIT(S) - F (Motion #001) NJT's Digital Photos and Operator's Occurrence Report	Processed	11/14/2019	Stone, J.
51	EXHIBIT(S) - G (Motion #001) NJT's Demand for Telephone, Texting and Related Records	Processed	11/14/2019	Stone, J.



Doc#	Document Type/Information	Status	Date Received	Filed By
52	EXHIBIT(S) - H (Motion #001) Plts Response to NJT's Demand for Telephone, Texting and Related Records	Processed	11/14/2019	Stone, J.
53	EXHIBIT(S) - I (Motion #001) Court's 9/20/19 Order	Processed	11/14/2019	Stone, J.
54	ORDER (PROPOSED) (Motion #001)	Processed	11/14/2019	Stone, J.
55	STIPULATION - SO ORDERED	Processed	11/20/2019	Court User
56	STIPULATION - ADJOURNMENT OF CONFERENCE	Processed	11/22/2019	Schwarz, E.
57	COURT NOTICE (Motion #001)	Processed	12/03/2019	Court User
58	STIPULATION - ADJOURNMENT OF MOTION -IN SUBMISSIONS PART -RM 130 (Motion #001) Stipulation to adjourn Defendants' Motion to compel phone records	Processed	12/09/2019	Schwarz, E.
59	STIPULATION - SO ORDERED	Processed	01/27/2020	Court User
60	STIPULATION - ADJOURNMENT OF MOTION -IN SUBMISSIONS PART -RM 130 (Motion #001) Stipulation to adjourn Defendants' Motion to compel phone records	Processed	01/27/2020	Schwarz, E.
61	STIPULATION - SO ORDERED (Motion #001)	Processed	01/31/2020	Court User
62	STIPULATION - SO ORDERED	Processed	03/02/2020	Court User
63	STIPULATION - ADJOURNMENT OF MOTION -IN SUBMISSIONS PART -RM 130 (Motion #001) Stipulation to adjourn Defendants' Motion to compel phone records	Processed	03/09/2020	Schwarz, E.
64	URGENT - COURT APPEARANCE UPDATE	Processed	03/19/2020	Court User
65	NO FEE AUTHORIZATION (LETTER/ORDER/AFFIRMATION) Covid 19 Memo	Processed	03/26/2020	Stone, J.
66	NOTICE OF MOTION (Motion #002) To Dismiss Plaintiff's Complaint	Processed	07/15/2020	Stone, J.
67	MEMORANDUM OF LAW (Motion #002) In Support of Motion to Dismiss	Processed	07/15/2020	Stone, J.
68	AFFIRMATION (Motion #002) of John A. Stone, Esq.	Processed	07/15/2020	Stone, J.
69	ORDER (PROPOSED) (Motion #002)	Processed	07/15/2020	Stone, J.
70	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION (Motion #001) Affirmation in Opposition	Processed	07/22/2020	Schwarz, E.
71	EXHIBIT(S) - A (Motion #001) EBT transcript of Ana Hernandez	Processed	07/22/2020	Schwarz, E.



Doc#	Document Type/Information	Status	Date Received	Filed By
72	EXHIBIT(S) - B (Motion #001) EBT transcript of Antwone Steele	Processed	07/22/2020	Schwarz, E.
73	EXHIBIT(S) - C (Motion #001) Redacted copy of Mr. Colt's cell phone call log	Processed	07/22/2020	Schwarz, E.
74	EXHIBIT(S) - D (Motion #001) Subpoena served on Verizon	Processed	07/22/2020	Schwarz, E.
75	AFFIRMATION/AFFIDAVIT OF SERVICE (Motion #001) Affidavit of Service of Affirmation in Opposition with Exhibits A-D	Processed	07/22/2020	Schwarz, E.
76	STIPULATION - ADJOURNMENT OF MOTION - BEFORE JUDGE (Motion #001) Stipulation to Adjourn Motion	Processed	07/23/2020	Schwarz, E.
77	STIPULATION - ADJOURNMENT OF MOTION - BEFORE JUDGE (Motion #002) Stipulation to Adjourn Motion	Processed	07/23/2020	Schwarz, E.
78	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION (Motion #002) Affirmation in Opposition	Processed	08/26/2020	Schwarz, E.
79	EXHIBIT(S) - A (Motion #002) Exhibit A - Copy of Court's published decision in Fetahu	Processed	08/26/2020	Schwarz, E.
80	EXHIBIT(S) - B (Motion #002) Exhibit B - Email dated July 23, 2020 regarding Fetahu decision	Processed	08/26/2020	Schwarz, E.
81	EXHIBIT(S) - C (Motion #002) Exhibit C - Defendant Ana Hernandez EBT transcript	Processed	08/26/2020	Schwarz, E.
82	EXHIBIT(S) - D (Motion #002) Exhibit D - Notice of Claim served upon defendants	Processed	08/26/2020	Schwarz, E.
83	EXHIBIT(S) - E (Motion #002) Exhibit E - Transcript of oral argument on Motion to Dismiss in Trepel	Processed	08/26/2020	Schwarz, E.
84	EXHIBIT(S) - F (Motion #002) Exhibit F - Civil cover sheets for cases cited	Processed	08/26/2020	Schwarz, E.
85	AFFIRMATION/AFFIDAVIT OF SERVICE (Motion #002) Affidavit of Service of Affirmation in Opposition with Exhibits A-F	Processed	08/26/2020	Schwarz, E.
86	STIPULATION - ADJOURNMENT OF ORAL ARGUMENT (Motion #001)	Processed	08/31/2020	Court User
87	STIPULATION - ADJOURNMENT OF ORAL ARGUMENT (Motion #002)	Processed	08/31/2020	Court User
88	MEMORANDUM OF LAW IN REPLY (Motion #002)	Processed	09/25/2020	Stone, J.
89	AFFIDAVIT OR AFFIRMATION IN REPLY (Motion #002)	Processed	09/25/2020	Stone, J.



Doc#	Document Type/Information	Status	Date Received	Filed By
90	EXHIBIT(S) - A (Motion #002) September 24, 2020 Docket	Processed	09/25/2020	Stone, J.
91	EXHIBIT(S) - B (Motion #002) September 24, 2020 Docket in Fetahu v. NJT	Processed	09/25/2020	Stone, J.
92	EXHIBIT(S) - C (Motion #002) Novermeber 14, 2019 Stone Affirmation	Processed	09/25/2020	Stone, J.
93	EXHIBIT(S) - D (Motion #002) Affirmation in Support	Processed	09/25/2020	Stone, J.
94	EXHIBIT(S) - E (Motion #002) Affirmation in Opposition	Processed	09/25/2020	Stone, J.
95	EXHIBIT(S) - F (Motion #002) July 23, 2020 Stipulation	Processed	09/25/2020	Stone, J.
96	EXHIBIT(S) - G (Motion #002) August 31, 2020 Stipulation	Processed	09/25/2020	Stone, J.
97	EXHIBIT(S) - H (Motion #002) Email	Processed	09/25/2020	Stone, J.
98	DECISION + ORDER ON MOTION (Motion #002)	Processed	10/05/2020	Court User
99	NOTICE OF ENTRY (Motion #002) Decision & Order with Notice of Entry and Exhibit A	Processed	10/07/2020	Schwarz, E.
100	NOTICE OF APPEAL	Processed	11/06/2020	Stone, J.
101	NOTICE OF MOTION (Motion #003)	Processed	12/15/2020	Schwarz, E.
102	EXHIBIT(S) - A (Motion #003) NOTICE OF CLAIM	Processed	12/15/2020	Schwarz, E.
103	EXHIBIT(S) - B (Motion #003) Summons and Verified Complaint	Processed	12/15/2020	Schwarz, E.
104	EXHIBIT(S) - C (Motion #003) SUPPLEMENTAL SUMMONS AND AMENDED COMPLAINT	Processed	12/15/2020	Schwarz, E.
105	EXHIBIT(S) - D (Motion #003) DEFENDANT ANSWER	Processed	12/15/2020	Schwarz, E.
106	EXHIBIT(S) - E (Motion #003) BILL OF PARTICULARS	Processed	12/15/2020	Schwarz, E.
107	EXHIBIT(S) - F (Motion #003) DEFENDANT BOP ON AFFIRMATIVE DEFENSES	Processed	12/15/2020	Schwarz, E.
108	EXHIBIT(S) - G (Motion #003) EBT OF PLAINTIFF JEFFREY COLT	Processed	12/15/2020	Schwarz, E.
109	EXHIBIT(S) - H (Motion #003) EBT OF DEFENDANT HERNANDEZ	Processed	12/15/2020	Schwarz, E.
110	EXHIBIT(S) - I (Motion #003) EBT OF ANTOINE STEELE	Processed	12/15/2020	Schwarz, E.
111	EXHIBIT(S) - J (Motion #003) NOTICE OF EBT 9 23 19	Processed	12/15/2020	Schwarz, E.
112	EXHIBIT(S) - K (Motion #003) 11 15 19 SO ORDERED STIPULATION	Processed	12/15/2020	Schwarz, E.



Doc#	Document Type/Information	Status	Date Received	Filed By
113	EXHIBIT(S) - L (Motion #003) 3 2 20 SO ORDERED STIPULATION	Processed	12/15/2020	Schwarz, E.
114	EXHIBIT(S) - M (Motion #003) EMAIL DATED 3 4 20	Processed	12/15/2020	Schwarz, E.
115	EXHIBIT(S) - N (Motion #003) EMAILS DATED 5 5 20 AND 5 27 20	Processed	12/15/2020	Schwarz, E.
116	EXHIBIT(S) - O (Motion #003) EMAIL DATED 6 10 20	Processed	12/15/2020	Schwarz, E.
117	EXHIBIT(S) - P (Motion #003) EMAIL DATED 6 24 20	Processed	12/15/2020	Schwarz, E.
118	EXHIBIT(S) - Q (Motion #003) EMAIL DATED 7 1 20	Processed	12/15/2020	Schwarz, E.
119	EXHIBIT(S) - R (Motion #003) EMAIL DATED 7 10 20	Processed	12/15/2020	Schwarz, E.
120	EXHIBIT(S) - S (Motion #003) EMAIL DATED 7 13 20	Processed	12/15/2020	Schwarz, E.
121	EXHIBIT(S) - T (Motion #003) EMAILS DATED 10 5 20 11 12 20 and 11 12 20	Processed	12/15/2020	Schwarz, E.
122	EXHIBIT(S) - U (Motion #003) EMAIL DATED 11 12 20	Processed	12/15/2020	Schwarz, E.
123	EXHIBIT(S) - V (Motion #003) EMAIL DATED 12 3 20	Processed	12/15/2020	Schwarz, E.
124	AFFIDAVIT OR AFFIRMATION IN SUPPORT (Motion #003)	Processed	12/15/2020	Schwarz, E.
125	AFFIRMATION OF GOOD FAITH (Motion #003)	Processed	12/15/2020	Schwarz, E.
126	STIPULATION - OTHER (Motion #003)	Processed	01/04/2021	Miller, P.
127	EXHIBIT(S) - W (Motion #003) Photograph depicting the intersection where the subject accident occurred.	Processed	01/08/2021	Schwarz, E.
128	AFFIRMATION OF GOOD FAITH (Motion #003)	Processed	01/08/2021	Schwarz, E.
129	MEMORANDUM OF LAW IN OPPOSITION (Motion #003)	Processed	02/01/2021	Miller, P.
130	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION (Motion #003)	Processed	02/01/2021	Miller, P.
131	EXHIBIT(S) - A (Motion #003) Plaintiff's Medical Record	Processed	02/01/2021	Miller, P.
132	NOTE OF ISSUE:WITH JURY	Processed	02/09/2021	Schwarz, E.
133	AFFIDAVIT OR AFFIRMATION IN REPLY (Motion #003)	Processed	02/09/2021	Schwarz, E.
134	EXHIBIT(S) - A (Motion #003) Exhibit A - EBT transcript of Raji Jacob	Processed	02/09/2021	Schwarz, E.



Doc#	Document Type/Information	Status	Date Received	Filed By
135	EXHIBIT(S) - B (Motion #003) Exhibit B - EBT transcript of Anthony Beatrice	Processed	02/09/2021	Schwarz, E.
136	AFFIRMATION/AFFIDAVIT OF SERVICE (Motion #003) Affidavit of Service by Electronic Filing (NYSCEF only)	Processed	02/09/2021	Schwarz, E.
137	APPELLATE DIVISION RECEIPT Notification of Case Number and Other Information in E-Filed Appeal	Processed	04/07/2021	Zunin, J.
138	DECISION + ORDER ON MOTION (Motion #003)	Processed	01/18/2022	Court User
139	NOTICE OF ENTRY (Motion #003) Decision & Order with Notice of Entry	Processed	01/19/2022	Schwarz, E.
140	LETTER / CORRESPONDENCE TO JUDGE	Pending	06/07/2022	Schwarz, E.
141	REMITTITUR	Processed	06/15/2022	Court User
142	NOTICE OF APPEAL - COURT OF APPEALS	Processed	06/21/2022	Stone, J.
143	DECISION + ORDER ON MOTION (Motion #001)	Processed	08/24/2022	Court User
144	NOTICE OF ENTRY (Motion #001)	Processed	08/25/2022	Schwarz, E.
145	LETTER / CORRESPONDENCE TO JUDGE	Pending	11/28/2022	Schwarz, E.
146	NOTICE OF ENTRY (Motion #003)	Processed	11/27/2024	Schwarz, E.
147	AFFIRMATION/AFFIDAVIT OF SERVICE (Motion #003)	Processed	11/27/2024	Schwarz, E.
148	REMITTITUR	Processed	11/27/2024	Court User
149	RESPONSE TO DEMAND Notice of Exchange of Expert Information Pursuant to CPLR 3101(d)(1)	Processed	05/30/2025	Schwarz, E.
150	AFFIRMATION/AFFIDAVIT OF SERVICE	Processed	05/30/2025	Schwarz, E.
151	NOTICE OF MOTION (Motion #004) *Corrected*	Processed	06/02/2025	Stone, J.
152	AFFIDAVIT OR AFFIRMATION IN SUPPORT OF MOTION (Motion #004)	Processed	05/30/2025	Stone, J.
153	EXHIBIT(S) - 1 (Motion #004) decision in Colt	Processed	05/30/2025	Stone, J.
154	EXHIBIT(S) - 2 (Motion #004) decision in Galette	Processed	05/30/2025	Stone, J.
155	EXHIBIT(S) - 3 (Motion #004) Petition for a Writ of Certiorari	Processed	05/30/2025	Stone, J.



Doc#	Document Type/Information	Status	Date Received	Filed By
156	EXHIBIT(S) - 4 (Motion #004) response	Processed	05/30/2025	Stone, J.
157	EXHIBIT(S) - 5 (Motion #004) Petition	Processed	05/30/2025	Stone, J.
158	EXHIBIT(S) - 6 (Motion #004) response	Processed	05/30/2025	Stone, J.
159	RESPONSE TO DEMAND Supplemental Notice of Exchange of Expert Information Pursuant to CPLR 3101(d)(1)	Processed	06/02/2025	Schwarz, E.
160	AFFIRMATION/AFFIDAVIT OF SERVICE Affirmation of Service	Processed	06/02/2025	Schwarz, E.
161	SUBPOENA (REQUEST TO SO ORDER)	Processed	06/04/2025	Schwarz, E.
162	SUBPOENA (REQUEST TO SO ORDER)	Processed	06/04/2025	Schwarz, E.
163	SUBPOENA (REQUEST TO SO ORDER)	Processed	06/04/2025	Schwarz, E.
164	AFFIDAVIT OR AFFIRMATION IN OPPOSITION TO MOTION (Motion #004)	Processed	06/12/2025	Shoot, B.
165	EXHIBIT(S) - 1 (Motion #004) Point II of Plaintiffs' Court of Appeals Brief	Processed	06/12/2025	Shoot, B.
166	AFFIRMATION/AFFIDAVIT OF SERVICE (Motion #004)	Processed	06/12/2025	Shoot, B.
167	SUBPOENA - COPY RETURNED TO COURT	Processed	06/17/2025	Court User
168	SUBPOENA - COPY RETURNED TO COURT	Processed	06/17/2025	Court User
169	SUBPOENA - COPY RETURNED TO COURT	Processed	06/17/2025	Court User
170	SUBPOENA - COPY RETURNED TO COURT	Processed	06/17/2025	Court User
171	SUBPOENA - COPY RETURNED TO COURT	Processed	06/23/2025	Court User
172	MEMORANDUM OF LAW IN REPLY (Motion #004)	Processed	06/23/2025	Stone, J.
173	AFFIDAVIT OR AFFIRMATION IN REPLY (Motion #004)	Processed	06/23/2025	Stone, J.
174	SUBPOENA - COPY RETURNED TO COURT	Processed	06/24/2025	Court User
175	SUBPOENA - COPY RETURNED TO COURT	Processed	06/24/2025	Court User
176	SUBPOENA - COPY RETURNED TO COURT	Processed	06/25/2025	Court User
177	LETTER / CORRESPONDENCE TO JUDGE	Processed	06/27/2025	Stone, J.



Doc#	Document Type/Information	Status	Date Received	Filed By
178	AFFIDAVIT OR AFFIRMATION IN SUPPORT (Motion #004)	Processed	07/07/2025	Stone, J.
179	LETTER / CORRESPONDENCE TO JUDGE (Motion #004)	Processed	07/07/2025	Stone, J.
180	SUBPOENA - COPY RETURNED TO COURT	Processed	07/07/2025	Court User
181	SUBPOENA - COPY RETURNED TO COURT	Processed	07/11/2025	Court User
182	SUBPOENA - COPY RETURNED TO COURT	Processed	07/15/2025	Court User
183	SUBPOENA - COPY RETURNED TO COURT	Processed	07/16/2025	Court User
184	SUBPOENA - COPY RETURNED TO COURT	Processed	07/28/2025	Court User
185	LETTER / CORRESPONDENCE TO JUDGE (Motion #004)	Processed	07/28/2025	Stone, J.
186	AFFIDAVIT OR AFFIRMATION IN SUPPORT (Motion #004)	Processed	07/28/2025	Stone, J.
187	SUBPOENA - COPY RETURNED TO COURT	Processed	08/01/2025	Court User
188	RESPONSE TO DEMAND	Processed	08/14/2025	Stone, J.
189	TRIAL DOCUMENTS Notice of Intention to Introduce Records Pursuant to 3122CPLR	Processed	08/15/2025	Schwarz, E.
190	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit of Service	Processed	08/15/2025	Schwarz, E.
191	TRIAL DOCUMENTS Notice Pursuant to CPLR 4531-a	Processed	08/15/2025	Schwarz, E.
192	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit of Service	Processed	08/15/2025	Schwarz, E.
193	SUBPOENA - COPY RETURNED TO COURT	Processed	08/15/2025	Court User
194	DEMAND FOR: Letter to preclude Drs. Passick and Bender at trial	Processed	08/18/2025	Schwarz, E.
195	TRIAL DOCUMENTS Notice of Intention to Introduce Records Pursuant to 3122CPLR	Processed	08/18/2025	Schwarz, E.
196	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit of Service	Processed	08/18/2025	Schwarz, E.
197	TRIAL DOCUMENTS Notice of Intention to Produce Films	Processed	08/18/2025	Schwarz, E.
198	AFFIRMATION/AFFIDAVIT OF SERVICE Affidavit of Service	Processed	08/18/2025	Schwarz, E.



Doc#	Document Type/Information	Status	Date Received	Filed By
199	SUBPOENA - COPY RETURNED TO COURT	Processed	08/19/2025	Court User
200	RESPONSE TO DEMAND	Processed	08/19/2025	Stone, J.
201	DECISION + ORDER ON MOTION (Motion #004)	Processed	09/03/2025	Court User
202	NOTICE OF ENTRY (Motion #004)	Processed	09/04/2025	Stone, J.
203	NOTICE OF ENTRY (Motion #004) NOE with Decision & Order on Mx No. 4	Processed	09/04/2025	Schwarz, E.
204	AFFIRMATION/AFFIDAVIT OF SERVICE (Motion #004)	Processed	09/04/2025	Schwarz, E.
205		Error		
206	NOTICE OF APPEAL (Motion #004)	Pending	09/04/2025	Stone, J.



Case Caption: **JEFFREY COLT et al v. NEW JERSEY TRANSIT CORPORATION, et al**

Judge Name:

Doc#	Document Type/Information	Status	Date Received	Filed By
1	COPY OF NOTICE OF APPEAL WITH PROOF OF FILING / INFORMATIONAL STATEMENT / ORDER OR JDMT APPEALED FROM	Processed	09/05/2025	Stone, J.
2	PROOF OF SERVICE OF NOTIFICATION OF CASE NUMBER	Processed	09/05/2025	Stone, J.
3	PROOF OF SERVICE OF NOTIFICATION OF CASE NUMBER	Processed	09/05/2025	Stone, J.
4	APPLICATION FOR INTERIM RELIEF W/SUPPORTING DOCUMENTS INCLUDING EXHIBIT(S) (Motion #4804)	Processed	09/05/2025	Stone, J.
5	AFFIRMATION/AFFIDAVIT OF SERVICE -	Processed	09/05/2025	Stone, J.
6	ORDER (Motion #4804)	Processed	09/09/2025	Court User
7	LETTER - APPLICATION	Returned For Correction	09/09/2025	Stone, J.
8	LETTER - APPLICATION	Returned For Correction	09/10/2025	Shoot, B.

Court of Appeals
of the
State of New York

JEFFREY COLT and BETSY TSAI,

Plaintiffs-Respondents,

— against —

NEW JERSEY TRANSIT CORPORATION, NJ TRANSIT
BUS OPERATIONS, INC. and ANA HERNANDEZ,

Defendants-Appellants.

**ORDER TO SHOW CAUSE FOR STAY &
MOTION FOR LEAVE TO APPEAL**

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STATE OF NEW YORK COURT OF APPEALS

JEFFREY COLT and BETSY TSAI,

Plaintiffs-Respondents,

-against-

NEW JERSEY TRANSIT CORPORATION,
NJTRANSIT BUS OPERATIONS, INC. and
ANA HERNANDEZ,

Defendants-Appellants.

APPELLATE DIVISION

Case - Docket No. 2025-05314

Originating Court Index No.
158309/2017

ORDER TO SHOW CAUSE

Upon the annexed Affirmation of John A. Stone affirmed on the 10th day of September 2025, and upon all pleadings and proceedings heretofore had herein, it is hereby.

ORDERED, that the plaintiffs-respondents show cause before this Court at the Courthouse located at 20 Eagle Street, Albany, New York 12202, on the _____ day of _____, 2025, or as soon thereafter as counsel can be heard, why, pursuant to 22 NYCRR 500.25, CPLR 2021, CPRL 5519, CPLR 5601 and CPLR 5602: (i) an order should not be entered staying this matter pending the United States Supreme Court's decision on the question of "[w]hether the New Jersey Transit Corporation is an arm of the State of New Jersey for interstate sovereign immunity purposes;" (ii) an order should not be entered staying this matter pending the determination of the appeal before the Appellate Division relating to the trial court's September 8, 2025 decision denying the NJ Transit

Defendants' application for an interim stay in this matter; and
(iii) for such other and further relief as the Court may deem just
and proper; and it is further

ORDERED that service of a copy of this Order to Show Cause,
and the papers on which it was made, shall be made upon counsel
for the plaintiffs-respondents by _____ on or before
the _____ day of _____, 2025, be deemed good and
sufficient service hereof; it is further

ORDERED that service of answering papers, shall be made upon
counsel for the defendants-appellants by _____ on or
before the _____ day of _____, 2025, be deemed good and
sufficient service hereof; it is further

ORDERED that service of reply papers, shall be made upon
counsel for the plaintiffs-respondents by _____ on or
before the _____ day of _____, 2025, be deemed good and
sufficient service.

ENTER:

COMPLIANCE WITH 22 NYCRR 500.25
OF THE COURT OF APPEALS STATE OF NEW YORK RULES OF PRACTICE

Statement Giving Reasons for Granting The Request: as set forth in detail in the Affirmation of John A. Stone, defendants-appellants respectfully state:

- This matter has a trial date of September 15, 2025.
- The United States Supreme Court granted a Petition for a Writ of Certiorari in this matter on whether New Jersey Transit Corporation can be subject to suit in the state courts of New York and will decide the question of "[w]hether the New Jersey Transit Corporation is an arm of the State of New Jersey for interstate sovereign immunity purposes."
- United States Supreme Court precedent provides that sovereign immunity is not simply "concerned ... with the States' ability to withstand suit, but with their privilege not to be sued." *P.R. Aqueduct & Sewer Auth v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 n.5 (1993) (*PRASA*).
- On September 3, 2025, the trial court denied defendants-appellants application for a stay.
- On September 8, 2025, the Appellate Court denied defendants-appellants' application for an interim stay and set a briefing schedule on the application with a return date of September 22, 2025 - 1 week after the start of the trial in this matter.
- If this Court does not issue a stay in this matter, defendants-appellants will suffer irreparable harm by facing a trial in this matter.

Telephone Numbers - Facsimile Numbers of Counsel:

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STATE OF NEW YORK COURT OF APPEALS

JEFFREY COLT and BETSY TSAI,

Plaintiffs-Respondents,

-against-

NEW JERSEY TRANSIT CORPORATION,
NJTRANSIT BUS OPERATIONS, INC. and
ANA HERNANDEZ,

Defendants-Appellants.

APPELLATE DIVISION

Case - Docket No. 2025-05314

**Originating Court Index No.
158309/2017**

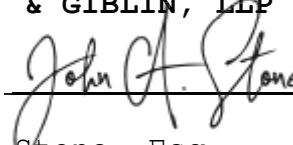
NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the annexed Affirmation of John A. Stone in Support of Motion for Leave to Appeal and all papers and prior proceedings in this action, defendants-appellants will move this Court at the courthouse 20 Eagle Street, Albany, New York 12202 an order granting defendants-appellants leave to appeal, pursuant to CPLR 5601 and 5602, the Appellate Division's September 8, 2025 denial of the NJ Transit Defendants' application for an interim stay in this matter, and for such other and further relief as this Court finds just and proper.

Dated: New York, New York.
September 10, 2025

**DECOTIIS, FITZPATRICK, COLE
& GIBLIN, LLP**

By:

A handwritten signature in cursive script, appearing to read "John A. Stone", written over a horizontal line.

John A. Stone, Esq.

Attorneys for Defendants-Appellants
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Direct Dial: (201) 347-2126
Email: jstone@decotiislaw.com

STATE OF NEW YORK COURT OF APPEALS

JEFFREY COLT and BETSY TSAI,

Plaintiffs-Respondents,

-against-

NEW JERSEY TRANSIT CORPORATION,
NJTRANSIT BUS OPERATIONS, INC. and
ANA HERNANDEZ,

Defendants-Appellants.

APPELLATE DIVISION

Case - Docket No. 2025-05314

Originating Court Index No.
158309/2017

AFFIRMATION OF
JOHN A. STONE

John A. Stone, duly admitted and licensed to practice law before the courts of the State of New York, affirms the following to be true under penalties of perjury pursuant to CPLR § 2106:

A. INTRODUCTION

1. I am an attorney at DeCotiis, FitzPatrick, Cole & Giblin, LLP, attorneys for defendants-appellants New Jersey Transit Corporation, New Jersey Transit Bus Operations, Inc., (collectively, "NJ Transit") and Ana Hernandez (collectively, the "NJ Transit Defendants").

2. I respectfully submit this Affirmation in support of the NJ Transit Defendants': (i) motion by way of order to show cause, pursuant to 22 NYCRR 500.25, CPLR 2021 and CPRL 5519, for emergent relief in the form of stay pending the United States Supreme Court's decision on the question of "[w]hether the New Jersey Transit Corporation is an arm of the State of New Jersey for

interstate sovereign immunity purposes;" (ii) motion by way of order to show cause, pursuant to 22 NYCRR 500.25, CPLR 2021 and CPRL 5519, for emergent relief in the form of stay pending the determination of the appeal before the Appellate Division relating to the trial court's September 8, 2025 decision (the "September 8th Decision") denying the NJ Transit Defendants' application for an interim stay in this matter; and (iii) motion, pursuant to CPLR 5601 and 5602, for leave to appeal the Appellate Division's denial of the NJ Transit Defendants' application for an interim stay in this matter.

3. The NJ Transit Defendants seek this relief from this Court because the United States Supreme Court **granted a Petition for a Writ of Certiorari in this matter** on whether NJ Transit can be subject to suit in the state courts of New York. *N.J. Transit Corporation v. Colt*, No. 24-1113, --- S. Ct. ----, 2025 WL 1829162 (U.S. Jul. 3, 2025) (granting petition for writ of certiorari in *Colt v. N.J. Transit Corp.*, 43 N.Y.3d 463 (2024)); *Galette v. N.J. Transit Corp.*, No. 24-1021, --- S. Ct. ----, 2025 WL 1829160 (U.S. Jul. 3, 2025) (granting petition for writ of certiorari in *Galette v. NJ Transit*, 332 A.3d 776 (Pa. 2025), and consolidating for briefing and argument with this case)).

4. The New York Court of Appeals in *Colt* and the Pennsylvania Supreme Court in *Galette* are divided over: (i) whether NJ Transit enjoys sovereign immunity as an arm of the State of New

Jersey and (ii) on the test that governs that question. The parties in both cases filed Petitions for a Writ of Certiorari with the United States Supreme Court seeking guidance about whether NJ Transit can be sued in New York state court in *Colt* and in the Pennsylvania state court in *Galette*.

5. The United States Supreme Court granted the Petitions for Writs of Certiorari in *Colt* and *Galette* on the question of "[w]hether the New Jersey Transit Corporation is an arm of the State of New Jersey for interstate sovereign immunity purposes."

(A copy of the United States Supreme Court's July 3rd Docket Entry is attached as Exhibit 1). If the United States Supreme Court were to rule in NJ Transit's favor, then the NJ Transit Defendants cannot be sued in New York state court in this case.

6. On July 22, 2025, the United States Supreme Court set a briefing schedule relating to the Petitions for Writs of Certiorari: (i) Opening Brief: September 3, 2025; (ii) Response Brief: November 12, 2025; and (iii) Reply Brief: December 12, 2025.

(A copy of the United States Supreme Court's July 22nd Docket Entry is attached as Exhibit 2 and a copy of the NJ Transit's Opening Brief is attached as Exhibit 3).

7. As detailed below, for the NJ Transit Defendants to be subject to trial in this matter would irreparably prejudice the State of New Jersey's dignitary interest not to be subject to suit in New York's state courts without consent.

8. This matter has a trial date of September 15, 2025.

B. THE NJ TRANSIT DEFENDANTS' REQUEST FOR EMERGENT RELIEF

9. On September 6, 2025, the NJ Transit Defendants filed an emergent application for interim relief with the Appellate Division. (A copy of the NJ Transit Defendants' summary statement on application for expedited service and/or interim relief and supporting Affirmation without exhibits is attached hereto as Exhibit 4).

10. In that application, the NJ Transit Defendants explained that: (i) this is a "personal injury matter which has a trial date of September 15, 2025;" (ii) they were appealing the trial court's Decision and Order "which denied their motion to stay based on an appeal in this matter pending in the United States Supreme Court;" (iii) the application is for a "stay of the case before the lower court based on an issue before the United States Supreme Court involving the decision in *Franchise Tax Bd. of Ca. v. Hyatt*, 587 U.S. 230 (2019) ("*Hyatt III*") which held that States and arms of States cannot be sued in a sister state's court;" and (iv) the reasons why they were requesting a stay is because the United States Supreme Court "granted a Petition for Writ of Certiorari in this matter on whether NJ Transit "is an arm of the State of New Jersey for interstate sovereign immunity purposes." (Exhibit 4).

C. THE APPELLATE DIVISION DENIES THE REQUEST FOR EMERGENT RELIEF

11. On September 8, 2025, the Appellate Division - a single Justice - issued the September 8th Decision: (i) directing that the NJ Transit Defendants' "[a]pplication for an interim stay is denied;" (ii) ordering an "[e]xpedited motion to panel;" and (iii) directing that opposition is due September 15, 2025, reply is due September 22, 2025 and the motion date is September 22, 2025. (**Exhibit 4**).

12. The Appellate Division's decision to deny the stay and set the motion day on September 22, 2025 - one (1) week after the start of trial - was error as it improperly forces the NJ Transit Defendants to defend against a trial in this matter even though the issue before the United States Supreme Court is whether NJ Transit is entitled to interstate sovereign immunity - which, as detailed below, protects **a defendant not merely from liability, but from suit itself**. Thus, the NJ Transit Defendants respectfully request that this Court grant the relief requested herein.

13. On September 9, 2025, the NJ Transit Defendants filed a letter with the Appellate Division: (i) respectfully requesting that a full panel of the Appellate Division issue an Order adjudicating the NJ Transit Defendants' emergent application which requests a stay of the trial commencing September 15, 2025; and (ii) explaining that such relief is necessary to seek relief from this Court. (A copy of that letter is attached hereto as **Exhibit**

4(a)). On September 10, 2025, plaintiffs-respondents submitted a response letter to the Appellate Division: (i) objecting to a full panel adjudication; and (ii) arguing that defendants-appellants have delayed in seeking a stay in this matter. (A copy of that letter is attached hereto as **Exhibit 4(b)**). But Plaintiffs'-Respondents' argument of delay, as detailed herein, is contravened by both the facts and the applicable law. As of this submission, the Appellate Division has not responded to the NJ Transit Defendants' letter.

D. THE ISSUE BEFORE THE UNITED STATES SUPREME COURT

14. The issue before the United States Supreme Court implicates principles of interstate sovereign immunity that arise in the wake of its decision in *Hyatt III*. *Hyatt III* established that States are immune from suit in their sister States' courts without their consent. *Hyatt III*, 587 U.S. at 233. Longstanding United States Supreme Court precedent also provides that state-created entities, that are arms of the State, also receive their creator States' sovereign immunity. *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997). NJ Transit argues to the United States Supreme Court that based on these principles, neither it nor its employees, can be sued in a state court - other than New Jersey - because NJ Transit is an arm of the State of New Jersey entitled to interstate sovereign immunity.

15. In *Colt*, the NJ Transit Defendants filed a Petition for Certiorari to the United States Supreme Court seeking guidance for the test to determine whether an entity is an arm of a state and whether NJ Transit is an arm of the State of New Jersey entitled to interstate sovereign immunity. (A copy of the Petition attached as **Exhibit 5**). Plaintiffs filed a response with the United States Supreme Court. (A copy of the response attached as **Exhibit 6**).

16. In *Galette*, plaintiff filed a Petition for a Writ of Certiorari to review the judgment of the Pennsylvania Supreme Court. (A copy of the Petition is attached as **Exhibit 7**). NJ Transit filed a response with the United States Supreme Court, agreeing that the review is needed to address the split. (A copy of the response is attached as **Exhibit 8**).

17. On July 3, 2025, the United States Supreme Court granted both petitions for certiorari. (**Exhibit 2**).

E. THE NJ TRANSIT DEFENDANTS' INITIAL STAY APPLICATION

18. On May 20, 2025, the NJ Transit Defendants filed an application for a stay with the trial court based on Petitions for a Writ of Certiorari that were filed with the United States Supreme Court.¹ (A copy of the Affirmation in support of the application without exhibits is attached as **Exhibit 9**). On June 12, 2025, plaintiffs filed their opposition. (A copy of plaintiffs'

¹ Since then, as noted above, the United States Supreme Court has granted the Petitions.

Affirmation without exhibits is attached as **Exhibit 10**). On June 23, 2025, the NJ Transit Defendants filed their reply. (A copy of the reply Affirmation is attached as **Exhibit 11**).

19. On July 7, 2025 and July 28, 2025, the NJ Transit Defendants filed supplemental affirmations, explaining, as noted above, that the United States Supreme Court granted the Petitions for Writs of Certiorari and set a briefing schedule. (Copies of the supplemental affirmations are attached as **Exhibit 12**).

F. THE TRIAL COURT DENIES THE STAY APPLICATION

20. On August 21, 2025, the parties appeared for argument and on September 3, 2025, the trial court issued a decision, denying the NJ Transit Defendants' application for a stay based on the following reasons. (A copy of the trial court's Decision and Order is attached as **Exhibit 13**).

21. The trial court denied the application on the grounds that there would be: (i) "little to no risk of inconsistent adjudications" between itself and the United States Supreme Court; (ii) little risk of a duplication in proof; and (iii) no waste of judicial resources because of the duration of the case and the possibility that NJ Transit and Ms. Hernandez - the bus driver - might proceed to trial depending on the outcome of the United States Supreme Court's decision. (**Exhibit 13** at Pages 5-6).

22. The trial court also rejected the possibility that the NJ Transit Defendants might be prejudiced by proceeding to trial.

In so doing, the trial court relied solely on case law holding that "the usual costs of litigation" do not constitute prejudice. (Exhibit 13 at Pages at 6-7).

23. The trial court indicated that the NJ Transit Defendants could move to stay enforcement of any possible judgment and "a verdict for money damages, even if unenforceable, has some (intangible) value." (Exhibit 13 at Page 7).

24. The trial court's prejudice analysis concluded that "plaintiffs are entitled to their day in court and would be prejudiced if they prevented from having an opportunity to present their case to a jury." (Exhibit 13 at Page 8).

25. As detailed here, the NJ Transit Defendants respectfully submit that the trial court's decision was improper.

G. AUTHORITY TO GRANT A STAY

26. Orders from the Supreme Court State of New York denying a motion for a stay are appealable. *Hunter v. Hunter*, 10 A.D.2d 937 (1st Dep't 1960); *Parsons & Whittemore, Inc. v. Rederiaktie-Bolaget Nordstjernan*, 286 A.D. 553 (1st Dep't 1955); *Brooklyn Union Gas Company v. State Board of Equalization and Assessment*, 97 A.D.2d 897 (3rd Dep't 1983). New York courts may also issue a stay of the proceedings in the Supreme Court State of New York pursuant to its inherent authority. *Tax Equity New NY LLC v. City of New York*, 173 A.D.3d 464, 465 (1st Dep't 2019); *Schwartz v. New York City Housing Authority*, 219 A.D.2d 47, 48 (2d Dep't 1996).

27. 22 NYCRR 500.25 provides that: (i) a "request for emergency relief pending the determination of an appeal or a motion for permission to appeal shall be brought on by order to show cause;" and (ii) if "there is no pending appeal or motion for permission to appeal, the order to show cause shall bring on a motion for leave to appeal or be accompanied by a notice of appeal or a motion for permission to appeal complying with section 500.22 of this Part."²

28. The NJ Transit Defendants apply to this Court for a stay because of the United States Supreme Court's decision to review the issue of whether NJ Transit is an arm of the State of New Jersey and, if so, **not subject to jurisdiction of the New York state courts.**

29. A stay is appropriate when a potentially dispositive legal issue will be decided in another forum. *E D & F Man Sugar Ltd. v. Gellert*, 202 A.D.3d 475 (1st Dep't 2022).³ In deciding whether to grant a stay, a court may consider whether any of the parties would be prejudiced with or without the issuance of the

² Although, as noted above, there is a pending appeal before the Appellate Division, the NJ Transit Defendants also seek leave to appeal in this application.

³ New York's federal courts routinely stay actions pending a decision from the United States Supreme Court in cases merely on similar issues—let alone interlocutory decisions in the same case. *Sikhs for Justice v. Nath*, 893 F. Supp. 2d 598, 622 (S.D.N.Y. 2012); *Loftus v. Signpost, Inc.*, 464 F. Supp. 3d 524, 527 (S.D.N.Y. 2020); *Consumer Fin. Prot. Bureau v. Credit Acceptance Corp.*, No. 23-cv-38 2023 WL 5013303, at *5 (S.D.N.Y. Aug. 7, 2023).

stay. *OneBeacon Am. Ins. Co. v. Colgate-Palmolive Co.*, 96 A.D.3d 541, 541 (1st Dep't 2012). Courts may also consider whether a stay would avoid a waste of judicial resources. *Zonghetti v. Jeromack*, 150 A.D.2d 561, 563 (2d Dep't 1989); *El Greco, Inc. v. Cohn*, 139 A.D.2d 615, 616 (2d Dep't 1988). Courts may also consider whether a stay would help avoid a risk of inconsistent adjudications or any duplication of proof. *Britt v. Int'l Bus. Servs.*, 255 A.D.2d 143, 144 (1st Dep't 1998).

30. Based on the foregoing and the following, the NJ Transit Defendants respectfully submit that a stay is warranted.

H. THE NJ TRANSIT DEFENDANTS WOULD SUFFER PREJUDICE

31. The trial court improperly found that the NJ Transit Defendants would not be prejudiced by the denial of a stay.

32. That finding is contravened by well-established United States Supreme Court precedent holding that sovereign immunity is not simply "concerned ... with the States' ability to withstand suit, but with their privilege not to be sued." *P.R. Aqueduct & Sewer Auth v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 n.5 (1993) (*PRASA*).

33. The United States Supreme Court has repeatedly emphasized that state "sovereign immunity does not merely constitute a defense to monetary liability or even to all types of liability. Rather it provides an immunity from suit." *Fed. Mar. Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 766 (2002) (emphasis added); *Hyatt III*, 587 U.S. at 245 (the Constitution

establishes the “inability of one State to hale another into its courts without the latter’s consent”); *Va. Office for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 258 (2011) (“The specific indignity against which sovereign immunity protects is the insult to a State of being haled into court without its consent.”)

34. So far as sovereign immunity is concerned, “[i]t is the fact that the private party is allowed to sue a sovereign State—not the burden of litigation or the relief sought—that infringes the immunity of the State.” *Alabama v. North Carolina*, 560 U.S. 330, 362 (2010) (Roberts, C.J., concurring in part).

35. New York law also recognizes that sovereign immunity confers protection from suit, not just liability. Indeed, this Court in this case explained that its sovereign immunity inquiry aimed “to determine whether allowing the suit to proceed ... would offend [New Jersey’s] ‘equal dignity and sovereignty under the Constitution.’” *Colt v. N.J. Transit Corp.*, 43 N.Y.3d 463, 470 (2024) (emphasis added); *Pollicina v. Misericordia Hosp. Med. Ctr.*, 82 N.Y.2d 332, 338 n.3 (1993) (describing channeling of claims to Court of Claims as a limit on Supreme Court’s ability “to entertain” actions for damages against New York). And the Court of Claims Act distinctly waives New York’s immunities both from “liability” and from “action.” N.Y. Court of Claims Act §8.

36. Because sovereign immunity is an immunity from suit, its denial is not only immediately appealable, but as the United States

Supreme Court held in *PRASA*, its benefit “is effectively lost if a case is erroneously permitted to go to trial.” 506 U.S. at 144 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). There, the Court held that “States and state entities that claim to be ‘arms of the State’” could take advantage of the collateral order doctrine, halting any trial until following a denial of immunity until the immunity question was itself resolved. *Id.* at 143, 147.

37. That decision is consistent with even more longstanding United States Supreme Court practice. For example, the Court’s decision in *Ex parte New York*, 256 U.S. 490 (1921), similarly granted a “writ of prohibition” to halt an admiralty suit against a barge that was entitled to New York’s sovereign immunity, rather than “permitting them to run their slow course to final decree, with inevitably futile result.” *Id.* at 495, 503.

38. The Court’s decision in *PRASA* reflects the critical federalism considerations at play in this case. The *PRASA* Court rejected the notion that sovereign immunity “confers only protection from liability,” instead explaining that the doctrine instead works “to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties.” 506 U.S. at 146 (quoting *In re Ayers*, 123 U.S. 443, 505 (1887)). Thus, its result stemmed not just from “a concern that States not be unduly burdened by litigation,” but

also from “the importance of ensuring that the States’ dignitary interests can be fully vindicated.” *Id.*

39. Those same dignitary considerations animated the Court’s decision in *Hyatt III*. 587 U.S. at 245. And how those dignitary interests apply in the arm-of-the-State context is the central question that the United Supreme Court faces in this very case. (**Exhibit 3** at Page 19).

40. The NJ Transit Defendants would be severely prejudiced by proceeding to trial. Any victory at the United States Supreme Court would be essentially a hollow one, with its benefit “effectively lost.” *PRASA*, 506 U.S. at 144. That is because at stake are far more than the “usual costs of litigation,” (**Exhibit 13** at Page 7) (though NJ Transit is entitled to immunity from those as well). Instead, because sovereign immunity protects States’ more dignitary right not to be subject to suit in a sister State’s court, if anything, that is the “intangible value” that must be protected in the stay analysis. *Id.*

41. That plaintiffs might never collect on a judgment against NJ Transit is beside the point. After all, state sovereign immunity protects against suits for injunctive relief where no damages are at stake. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 58 (1996). And the United States Supreme Court has explicitly rejected the notion that a State could be subjected without its

consent to suit before a tribunal simply because any monetary award would be unenforceable. *Fed. Mar. Comm'n*, 535 U.S. at 765-66.

42. Nor would plaintiffs be prejudiced if the NJ Transit Defendants receive a stay. Indeed, should the United States Supreme Court affirm the decision of this Court, plaintiffs will still have "their day in court" and "an opportunity to present their case to a jury." (Exhibit 13 at Page 8). Any delay from a stay here would not constitute undue prejudice to the opposing party. *Kwiatkowski v. Nat'l Student Mktg. Corp.*, 85 A.D.2d 559 (1st Dep't 1981) (stay did not constitute undue prejudice); *Research Corp. v. Singer-General Precision, Inc.*, 36 A.D.2d 987 (3d Dep't 1971) (stay pending federal court decision).

43. Finally, that the Appellate Division issued a single-judge order is no reason to deny relief in this matter. NJ Transit has invoked the defense of sovereign immunity. Because interstate sovereign immunity is "integral to the structure of" the federal Constitution, *Hyatt III*, 587 U.S. at 246, it is a federally-protected privilege that belongs to the State, as well as to its arms. *See Regents*, 519 U.S. at 429 n.5.

44. And because the sovereign interest in not being subject to suit without sovereign consent is "effectively lost if a case is erroneously permitted to go to trial," *PRASA*, 506 U.S. at 144, even before liability attaches, the federal Constitution bars New York's courts from subjecting the NJ Transit Defendants to suit if

NJ Transit is indeed an arm of New Jersey. This Court, and the United States Supreme Court, must thus be able to act to prevent trial from moving forward to protect the United States Supreme Court's ultimate authority to decide whether NJ Transit is actually subject to this lawsuit in this matter.

45. That outcome is impossible if both the trial date and the Appellate Division's denial of interim relief all remain undisturbed. The trial date in this matter is September 15: that is, trial begins this Monday. But the Appellate Division set a return date of September 22: that is, a week after trial, after irreparable harm has attached.

46. If the Appellate Division does not issue a panel order until on or after September 22, and if this Court refuses to entertain interim relief until there is a panel order below, then it will be impossible for NJ Transit to obtain a stay from the New York judicial system until after trial has begun, and thus until after a critical benefit of sovereign immunity has been lost.

47. That is, without a stay of the trial date from this Court, there is no way for this Court - or for a panel of the Appellate Division - to further consider the merits of the trial court's denial of NJ Transit's stay motion before NJ Transit's right not to proceed to trial is irreversibly lost, irreparably harming NJ Transit. NJ Transit therefore requires this Court's immediate intervention to prevent irreparable harm to New Jersey's

dignity and sovereignty, notwithstanding that the Appellate Division below only acted via a single judge. See *Hyatt III*, 587 U.S. at 245.

I. WASTE OF JUDICIAL RESOURCES

48. The trial court erred in finding that the use of judicial resources may be unaffected because a damages trial could proceed against bus driver - Ms. Hernandez.

49. Ms. Hernandez's immunity rises and falls with NJ Transit's. Indeed, this Court has already explained in this case, no less—that "employees sued in their official capacity in which [NJ Transit] would be vicariously liable for their negligence are entitled to avail themselves of" any sovereign immunity that NJ Transit may possess. *Colt v. NJ Transit Corp.*, 206 A.D.3d 126, 127 (1st Dep't 2022) (citing N.J. Stat. Ann. §59:2-2(a) (providing that "a public entity is liable for injury proximately caused by an act or omission of (an employee of the entity) with the scope of his employment"))).

50. Although the ultimate arm-of-the-State question is now before the United States Supreme Court, the status of Ms. Hernandez's liability is not. Rather, that portion of this Court's ruling is law of the case. *Miller v. Schreyer*, 257 A.D.2d 358, 360-61 (1st Dep't 1999).

51. This Court's other precedents also demonstrate that Ms. Hernandez's immunity tracks NJ Transit's. In *Trepel v. Hodgins*,

183 A.D.3d 429 (1st Dep't 2020), for example, this Court affirmed the dismissal of a suit against both the Arizona Board of Regents and a professor employed by the Board on the ground that interstate sovereign immunity barred the common law contract and tort claims against both parties. *Id.* at 429. Employee liability, in other words, tracked the Board's as an arm of the State. Similarly, in *Belfand v. Petosa*, 196 A.D.3d 60 (1st Dep't 2021), this Court treated an NJ Transit bus driver sued for personal injuries as having acted in his official capacity, and thus entitled to invoke sovereign immunity. *Id.* at 63 n.2; *Nizomov v. Jones*, 220 A.D.3d 879, 880-81 (2d Dep't 2023) (allowing NJ Transit driver to invoke sovereign immunity in personal injury suit).

52. Nor are any of the cases relied on by the trial court for the proposition that Ms. Hernandez may not have immunity apposite here. Rather, all involved claims that plaintiffs had asserted under 42 U.S.C. §1983. *Emp't Bargaining Agent Coalition v. Rowland*, 718 F.3d 126, 130-31 (2d Cir. 2013); *Berman Enters., Inc. v. Jorling*, 3 F.3d 602, 606 (2d Cir. 1993); *Farid v. Smith*, 850 F.2d 917, 920 (2d Cir. 1988); *Wilson v. Beebe*, 770 F.2d 578, 580 (6th Cir. 1985). That is not the case here.

53. And while the mere fact of state reimbursement does not make a State a real party in interest for purposes of individual-capacity §1983 suits, *Rowland*, 718 F.3d at 137; see also *Lewis v. Clarke*, 581 U.S. 155, 167-68 (2017) (same, for tribal immunity

from common law suits), none of those decisions grapple with interstate sovereign immunity—where, as here, laws like the New Jersey Tort Claims Act ensure that public employees receive the same immunity as their public employers. N.J. Stat. Ann. §59:3-1(c) (“A public employee is not liable for an injury where a public entity is immune from liability for that injury”).

54. Accordingly, this Court’s post-*Hyatt III* interstate sovereign immunity decisions provide a better guide to when the dignitary considerations underlying that doctrine require giving the same treatment to suits nominally against a public employee as to suits against that defendant’s employer.

55. Moreover, the trial court ultimately treated Ms. Hernandez’s amenability to suit as an open question. (**Exhibit 13** at Page 6). If Ms. Hernandez is entitled to New Jersey’s sovereign immunity from suit, an unnecessary trial for Ms. Hernandez is just as damaging to New Jersey’s dignitary interests it would be for all other NJ Transit Defendants.

56. For that reason, too, this Court should not consider a trial purely against Ms. Hernandez to be an appropriate, non-wasteful use of judicial resources.

J. RISK OF INCONSISTENT ADJUDICATIONS

57. The trial court found that because this case only involves a trial on damages, a “decision by the Supreme Court that New Jersey Transit is entitled to immunity would ... not be

inconsistent with any finding of damages by a jury.” (Exhibit 13 at Page 5). That finding was error. Indeed, as noted above, the issue before the United States Supreme Court involves whether the NJ Transit Defendants can be sued at all in the trial court in this case. Accordingly, the possibility of finding of damages by a jury in this case against the NJ Transit Defendants would be totally inconsistent with a finding by the United States Supreme Court that NJ Transit Defendants cannot be sued - and therefore cannot have damages assessed them - in New York state court.

K. DUPLICATION OF PROOF

58. The trial court’s finding that “it is not likely that there would be an overlap of duplication of proof in damages-only trial as the United States Supreme Court will not be evaluating plaintiff Jefferey Colt’s injuries” misses the point. (Exhibit 13 at Page 5). The United States Supreme Court in this case has elected to address the issue of interstate sovereign immunity and the protection that it afford States - and arms of States - from the indignity of being haled into another court without its consent. *Hyatt III*, 587 U.S. at 247-47; *Regents*, 519 U.S. at 429-31. A decision by the United States Supreme Court in favor of the NJ Transit Defendants would mean that the trial court cannot assess damages against the NJ Transit Defendants. Accordingly, the trial court’s reliance on this factor was error.

L. THIS COURT SHOULD GRANT PERMISSION TO APPEAL

59. The NJ Transit Defendants respectfully submit that this Court should grant their request for leave to appeal in this matter for the following reasons.

60. *First*, the NJ Transit Defendants seek to invoke the defense of sovereign immunity as an arm of the State of New Jersey, which is not just concerned 'with the states' ability to withstand suit, but with their privilege not to be sued," *P.R. Aqueduct & Sewer Auth.*, 506 U.S. at 146, its benefit is "effectively lost if a case is erroneously permitted to go to trial," *id.* at 144 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

61. *Second*, the Appellate Division's briefing schedule with a motion date of September 22, 2025 means that the NJ Transit Defendants will suffer irreparable harm of proceeding to trial on September 15, 2025. *See supra* at ¶31-47.

62. *Third*, to the extent that the Appellate Division's denial of a stay will force the NJ Transit Defendants to stand trial, and thus irreparably deprive them and the State of New Jersey of their sovereign dignitary interest not to be subject to suit without their consent in New York's courts, the Appellate Division's order constitutes a "conclusive adjudication of the parties' substantive rights" that rises to the level of finality- and therefore reviewability-for purpose of this Court's jurisdiction. *Da Silva v. Musso*, 76 N.Y.2d 436, 440 (1990); see

also *Rifkin v. Lipton*, 14 N.Y.2d 725, 725 (1964) (granting leave to appeal from interlocutory decision granting immediate accounting); *Maggi v. Sabatini*, 250 N.Y. 296, 297 (1929) (per curiam) (partial judgment ordering defendants to execute and deliver deeds and interest in mortgage to plaintiff was final in that regard where "immediate execution" made it so "[n]othing remained to be done" vis-à-vis property rights).

63. *Fourth*, to the extent that irreparable injury that the NJ Transit Defendants face and their ability to obtain relief involves the construction of the Constitution of the United States—including, e.g., the determination and application of any arm-of-the-State test, the NJ Transit defendants are entitled to appeal as of right. See N.Y. Const., art. VI, §3(b)(1); CPLR §5601(b)(1).

64. *Fifth*, even if the NJ Transit Defendants are not entitled to an appeal as of right on constitutional grounds, the irreparable harm faced by the NJ Transit Defendants and the State of New Jersey are such that the interest of substantial justice requires this Court's review. See N.Y. Const., art. VI, §3(b)(6); CPLR §5602(a).

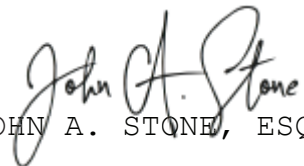
65. Finally, as pointed at above, if the United States Supreme Court decides against the NJ Transit Defendants, then plaintiffs in this case will have their day court.

WHEREFORE the NJ Transit Defendants respectfully request that this Court grant a stay and leave to appeal in this matter.

I affirm this 10th day of September 2025 under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand this document may be filed in an action in a court of law.

Dated: New York, New York
September 10, 2025

Respectfully submitted,



JOHN A. STONE, ESQ.

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September 9, 2025

Via NYSCEF

Appellate Division, First Department
27 Madison Avenue
New York, New York 10010

Attn: Susanna Molina Rojas, Esq.
Clerk of Court

Re: Colt, et al. v. New Jersey Transit Corporation, et al.
Appellate Division Docket No: 2025-05314
Supreme Court Index No. 158309/2017

Dear Ms. Rojas:

I write on behalf of Defendants-Appellants New Jersey Transit Corporation, New Jersey Transit Bus Operations, Inc., and Ana Hernandez (collectively, "NJ Transit").

NJ Transit respectfully requests that a full panel of this Court today issue an Order adjudicating NJ Transit's Application for Interim Relief (the "Application"), which requests the stay of a trial commencing on Monday, September 15, and was ruled on yesterday by a single Justice of this Court. See NYSCEF Nos. 4, 6 at 2.

An Order of a full panel of this Court is necessary to allow NJ Transit to pursue its further applications for emergency relief at the Court of Appeals. Following this Court's denial of the Application this morning, NJ Transit determined it would seek to file an Order To Show Cause and Motion for Permission To Appeal with the Court of Appeals pursuant to Rule 500.25 of the Court of Appeals Rules of Practice, 22 NYCRR §500.25. In accordance with Rule 500.25's requirements, NJ Transit contacted the Court of Appeals Clerk's Office in advance of the filing. The Clerk's Office informed NJ Transit that the Court of Appeals would not consider a request for emergency relief from this Court's order issued by a single Justice, but instead requires an order from a panel first. NJ Transit thus requests simply that a panel of this Court, rather

than a single Justice, issue an Order on its request for interim relief.

NJ Transit respectfully requests and requires this relief today, to allow it to seek further relief from the New York Court of Appeals—and, if necessary, the U.S. Supreme Court—before trial begins. The briefing schedule set by the single-Justice Order—setting a return date of September 22, 2025—will make it impossible for NJ Transit to avoid the irreparable harm of proceeding to trial on September 15—this Monday. See NYSCEF No. 6, at 1-2. NJ Transit has sought to invoke the defense of sovereign immunity below as an arm of the State of New Jersey. Because sovereign immunity is “concerned” not just “‘with the states’ ability to withstand suit, but with their privilege not to be sued,” *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 n.5 (1993), its benefit is “effectively lost if a case is erroneously permitted to go to trial,” *id.* at 144 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). But that is precisely what will happen here absent emergency intervention staying the trial against NJ Transit that is slated to commence on Monday. Under the current briefing schedule, there is no way for a panel of this Court to consider the merits of the trial court’s denial of NJ Transit’s stay motion—let alone to issue an opinion or Order on those merits—before the trial commences and NJ Transit’s right not to proceed to trial is irreversibly lost, thereby irreparably harming NJ Transit. To prevent these irreparable harms to New Jersey’s dignity and sovereignty, see *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 245 (2019), NJ Transit requests a ruling from a panel—or, at the very least, a speedy denial of its request for a panel decision.

Thank you for your consideration, and time and attention to this matter.

Respectfully submitted,

/s/ John A. Stone, Esq.

John A. Stone, Esq.

Cc: Eric Schwarz, Esq. (via NYSCEF)

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September 10, 2025

Via NYSCEF

Appellate Division, First Department
27 Madison Avenue
New York, New York 10010
Attn: Susanna Molina Rojas, Esq.
Clerk of the Court

***Re: Colt v. New Jersey Transit Corp.
App. Div. Docket No. 2025-05314***

Dear Ms. Rojas:

I write on behalf of plaintiffs Jeffrey Colt and Betsy Tsai, and in response to the defendants-appellants' letter application of September 9, 2025.

After waiting six months to petition for certiorari and then waiting an additional four months to move in this Court for a stay of the damages-only trial, and after having then been denied an interim stay of the trial, defendants now ask the Court to grant them an unprecedented "full panel" review of their application for an interim stay.

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As in the lower court, defendants proclaim that they will be grievously and irreparably harmed if they are compelled to defend a one-week, damages-only trial that comes only eight years into the case, whereas the New York plaintiffs would purportedly not be “prejudiced” in the slightest if compelled to wait yet another half year to be compensated for conduct that was earlier adjudged negligent as a matter of law.

Plaintiffs are in the process of drafting papers in opposition to the defendants’ motion. We intend to file our opposition prior to the date set by the Court for opposing papers (*i.e.*, September 15, 2025). I now write to oppose defendants’ request for a “full panel” review of their application for an interim stay.

Very simply, that the defendants’ efforts to delay the trial were twice rejected — once by Justice Chin in the lower court and then by Justice Shulman of this Court — does not provide legal or equitable basis for departure from the Court’s rules governing applications for interim relief.

Nor should the defendants’ delay, and the fact that they chose to make their application on the veritable eve of trial, serve as grounds for denial of the plaintiffs’ opportunity to be heard in opposition to defendants’ application.

Respectfully,


Brian J. Shoot

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BJS:lm

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