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Office-Supreme Court, U.S.
FILED

MAR 2 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1967

No. 34, Original

STATE OF NEW JERSEY,

Plaintiff,

against

STATE OF NEW YORK and HUDSON RAPID TUBES
CORPORATION, a corporation of the State of Delaware,
Defendants.

**BRIEF OF THE STATE OF NEW YORK IN RESPONSE
TO THE MOTION OF THE STATE OF NEW JERSEY.
FOR LEAVE TO FILE A COMPLAINT**

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Defendant,
The State of New York
The Capitol
Albany, New York 12224

RUTH KESSLER TOCH
Solicitor General

JULIUS L. SACKMAN
Principal Attorney

of Counsel



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Statement

On January 22, 1968, the State of New Jersey docketed in this Court a motion for leave to file a complaint against the State of New York and Hudson Rapid Tubes Corporation. This brief is respectfully submitted in response to the motion of the State of New Jersey.

Complaint

The complaint of the State of New Jersey alleges that the State of New York, by basing a condemnation award for the interstate Hudson Tubes railroad on the value of the railroad to the public rather than on the loss to the condemnee, has breached the 1962 legislative compact or agreement between New Jersey and New York which

authorized the condemnation of the railroad. Specifically, New Jersey alleges that the Court of Appeal, the highest court of the State of New York, has misinterpreted, misapplied and failed to enforce two provisions in the agreement. The first specifies that New Jersey valuation law be applied to the New Jersey portion of the railroad (65%) and the second provides that under no circumstances shall the condemnee be paid any increment above the minimum amount of just compensation required by the Constitutions of the United States, New York and New Jersey.

The Position of the State of New York

The complaint does not raise a disputed question of fact. The sole issue presented is the legal one involving the interpretation, application and enforcement of the interstate agreement providing for the condemnation of the railroad.

New Jersey contends that the agreement mandates that the condemnation award for the railroad should have been based solely upon economic loss to the owner and not upon the value of the railroad to the public because it was condemned for continuance in use. New Jersey asserts that under the circumstances of this case economic loss to the owners is liquidation value.

The New York State Court of Appeals in *Hudson Rapid Tubes Corporation v. Port Authority Trans-Hudson Corporation*, 20 N. Y. 2d 457, has construed the 1962 agreement contrary to the position of the State of New Jersey. However, it is the position of the State of New York that this Court alone can render a final and authoritative decision for the two States which are parties to this litigation with respect to the interpretation, application and enforcement of provisions of this interstate agreement affecting their

rights thereunder. The defendant State of New York, therefore, relies upon the following:

1. The 1962 Agreement. (See Chapter 8, Laws of New Jersey, 1962 [Exhibit "A" of plaintiff's motion for leave to file complaint, appendix pages 1a to 35a inclusive]; and Chapter 209 of New York Laws of 1962; N. Y. Unconsolidated Laws §§ 6601 *et seq.* [Exhibit "A" of plaintiff's motion for leave to file complaint, appendix pages 36a to 70a].)

2. The opinions of the New York Court of Appeals. (See Appendix A of Petition for Writ of Certiorari by Port Authority Trans-Hudson Corporation [No. 1054], pp. A1 to A24 inclusive.)

3. The opinions of the New York Appellate Division, First Department. (See Appendix B of the above-mentioned Petition for Writ of Certiorari, pp. A25 to A61 inclusive.)

4. The opinions of the New York Supreme Court. (See Appendices C, D and E of the above-mentioned Petition for Writ of Certiorari, pp. A62 to A144 inclusive.)

Conclusion

For the foregoing reasons, the matter of the interpretation, application and enforcement of the interstate agreement is respectfully submitted to this Court for final determination.

Dated: February 23, 1968.

Respectfully submitted,

LOUIS J. LEFKOWITZ

Attorney General of the State
of New York

*Attorney for Defendant,
The State of New York*

RUTH KESSLER TOCH
Solicitor General

JULIUS L. SACKMAN
Principal Attorney

of Counsel

