

Matter of Metro-N. R.R. Collision at Valhalla, N.Y.
2017 NY Slip Op 33572(U)
July 19, 2017
Supreme Court, Westchester County
Docket Number: Index No. 64924/2015
Judge: Joan B. Lefkowitz
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

DECISION & ORDER

-----X
IN RE: METRO-NORTH RAILROAD
COLLISION AT VALHALLA, NEW YORK
FEBRUARY 3, 2015
-----X

Index No. 64924/2015
54467/2016
56176/2016
Motion Date: July 17, 2017
Seq. No. 20

LEFKOWITZ, J.

The following papers were read on the motion by nonparty New York State Department of Transportation (the State or NYSDOT) for an order pursuant to CPLR 2304, quashing a subpoena plaintiffs served on the State seeking discovery, or alternatively, for a protective order pursuant to CPLR 3103, and for any further relief that the Court may deem just and proper.

Order to Show Cause - Affirmation in Support - Exhibits
Affidavit of Service
Affirmation in Opposition - Exhibits
Court File on NYSCEF

Upon the foregoing papers and the proceedings held on July 17, 2017, this motion is determined as follows:

This consolidated action concerns wrongful death actions and personal injury actions arising from a February 3, 2015 collision between a commuter train and a car in a grade crossing on Commerce Street, Valhalla, New York. By amended stipulation and order, entered on July 25, 2016, nineteen actions were consolidated for discovery on liability, liability motion practice, and joint trial as to liability only (NYSCEF Doc #41).¹ In the complaint filed by plaintiffs Jill Shiner Vandercar, individually and as Administratrix of the Estate of Eric Vandercar, plaintiffs allege failure to follow governmental recommendations to upgrade and make changes to the tracks, intersection and roadway (NYSCEF Doc #1, p. 13). It is alleged defendants failed to ensure the MTA and Metro North Railroad implemented all sections of the Railroad Safety Act of 2008 (NYSCEF Doc #1, p. 14). It is alleged that defendants failed to utilize funds allocated by NYSDOT in 2008-2009 or thereafter for a planned upgrade at the crossing by installation of additional warning lights and signs (NYSCEF Doc #1, p. 16).

On May 24, 2017, plaintiffs served on the State a subpoena and a document demand,

¹ The stipulation provides that any and all discovery, motion practice, and trials related to damages will be handled under each plaintiffs' individual index number.

including forty-eight demands (State's Exhibit C).² The State served a response, including general objections (State's Exhibit F). The State argues it previously provided documents to plaintiffs pursuant to a Freedom of Information Law request (FOIL) (State's Exhibit A). The State now argues the demand for documents is overbroad, lacks specificity and seeks documents that are not relevant to this action. The State argues most of the demands do not identify any specific document and plaintiffs' intent in serving the subpoena was to ascertain the existence of evidence. The State contends that only demands 11, 31, 36, 38, 42 and 43 are not overbroad and it is not in possession or control of any documents that would satisfy demands 31, 38, 42, and 43. It provides two documents responsive to demand 11 (State's Exhibits D, E). The State objects to providing an unredacted version of a document in response to demand 36. The State seeks an order quashing the subpoena and directing that plaintiffs conduct depositions prior to serving another demand on the State.

Plaintiffs Jill Shiner Vandercar, individually and as Administratrix of the Estate of Eric Vandercar, submit opposition.³ Plaintiffs argue the demand sufficiently appraises the State of the documents sought by reference to specific documents or categories of documents. Plaintiffs submit a twenty-seven page National Transportation Safety Board Report on the February 3, 2015 accident (hereinafter NTSB Report), which indicates the investigative group included at least two individuals with an address at the NYSDOT (Plaintiffs' Exhibit A).

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Merkos L'Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]). Pursuant to CPLR 3103(a), "[t]he court may at any time on its own initiative, or on motion of any party... make a protective order denying, limiting, conditioning or regulating the use of any disclosure device to

² The demand includes two demands numbered 40, the first of which is herein referred to as 40(a) and the second of which is herein referred to as 40(b).

³ Pursuant to an amended stipulation and order, plaintiffs' counsel Natascia Ayers, Esq. is one of the attorneys selected as lead counsel and appointed as a member of Plaintiffs' Steering Committee, which was formed to act on behalf of all plaintiffs in the consolidated action to streamline the handling of the litigation. The stipulation provides that Plaintiffs' Steering Committee's responsibilities include issuing subpoenas concerning documents and conducting all liability discovery for the benefit of all plaintiffs (NYSCEF Doc 48).

prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice to any person or the courts.”

To obtain nonparty discovery, a party must show only that the nonparty discovery is “material and necessary” to the prosecution or defense of the action. Conversely, a nonparty subpoena should be quashed “where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is ‘utterly irrelevant to any proper inquiry’” (*In re Kapon v Koch*, 23 NY3d 32 [2014]; *Ferolito v Arizon Beverages USA*, 119 AD3d 642 [2d Dept 2014]). The one seeking to quash the subpoena has the burden of demonstrating the subpoena should be vacated under the circumstances. If this burden is satisfied, the subpoenaing party must then establish that the discovery sought is relevant to the prosecution or defense of an action (*In re Kapon v Koch*, 23 NY3d 32 [2014]; *Ferolito v Arizon Beverages USA*, 119 AD3d 642 [2d Dept 2014]).

Plaintiffs seek all documents submitted by the State of New York to the US Department of Transportation/Federal Highway Administration/Federal Railroad Administration, including drawings, plans, petitions, photographs, diagrams, and emails, regarding State Project No: 8932.07.321, Commerce Street Crossing of Metro North Railroad for a Crossing Upgrade (State’s Exhibit C, p. 4). Plaintiffs submit a redacted seven page NYSDOT Initial Project Proposal for a Commerce Street Metro North Railroad Crossing Upgrade Project, which was approved and signed by the Regional Director on April 6, 2009 and refers to identification number 8932.37 (hereinafter 2009 Initial Project Proposal) (Plaintiffs’ Exhibit C). The 2009 Initial Project Proposal notes the work type was a railroad grade crossing improvement and the project purpose was “100% safety” (Plaintiffs’ Exhibit C, p. 4). The document states “the Main Office will develop a contract between NYSDOT and Metro North Railroad for the railroad force account work” (Plaintiffs’ Exhibit C, p. 5). Plaintiffs’ counsel argues the 2009 Initial Project Proposal was provided pursuant to a FOIL request, but the “problem description, project description and project objectives” were redacted. Documents submitted by the State of New York to federal agencies regarding the grade crossing upgrade referenced in the 2009 Initial Project Proposal are relevant to the claims in this matter. At oral argument on July 17, 2017, plaintiffs’ counsel indicated the state project number was incorrectly noted in demand 1 and the correct project number is State Project No.: 8932.37.321. Plaintiffs’ counsel argued and the State did not dispute that the project referenced in plaintiffs’ demand 1 concerns the same project referenced in the 2009 Initial Project Proposal, referenced as identification number 8932.37 (Plaintiffs’ Exhibit C). As such, the State shall provide documents and items responsive to demand 1 as to State Project No.: 8932.37.321.

Plaintiffs submit a May 20, 2016 response to a FOIL request for federal expenditures for the DOT grade crossing at Commerce Street, Valhalla for 2000 to present. The documents provided in response refer to State Project No.: 8932.37.321 and the project description is Mount Pleasant Commerce Street crossing of Metro North Railroad for a crossing upgrade (Plaintiffs’ Exhibit D). The State remarks indicate “this project provides for the elimination of a rail-highway safety hazard at this location.” The documents indicate the project was authorized by the NYSDOT and the Federal Highway Administration in August 2009, then modified in November 2011 as no longer authorized for federal funding due to inactivity, then modified in

December 2011 as ready to proceed, then modified in March 2014 to “de-obligate the project” as there had been no expenditures on the project since February 2013. The State remarks in 2014 indicate “the funds may be re-established if the project is ready to be progressed or if bills are received” (Plaintiffs’ Exhibit D). The State shall provide documents responsive to plaintiffs’ demand 3, seeking in part documents showing what work, if any, was done by the State, Metro North Railroad, or the MTA or any of its agents or contractors with regard to State Project No. 8932.37.321 between 2009 and the date of the accident. Plaintiffs’ demand 2 is stricken, as the language in the demand is vague and confusing, and it is unclear what documents are sought (State’s Exhibit C, p. 4-5).

Plaintiffs’ demands 4, 5, and 6 seek documents and items pertaining to the State’s investigation of the accident, surveillance footage of the intersection and railroad for the relevant time period, and documents regarding any malfunction of the traffic signal and/or crossing gate on the date of the accident. The State shall provide documents and items responsive to demands 4, 5, and 6, which seek information relevant to the claims in this matter (State’s Exhibit C, p. 5).

Plaintiffs’ demand 7, seeking copies of all accident or incident reports, police reports, complaints, investigatory reports and photographs concerning any prior similar accidents, including a 1984 accident and five gate accidents referenced in the NTSB Report (State’s Exhibit C, p. 5). The NTSB Report indicates grade crossing malfunction reports were reviewed for the twelve months prior to the accident and six malfunctions at the Commerce Street crossing were reported between February 14, 2014 and June 24, 2014. After each malfunction, the crossing was tested and returned to service (Plaintiffs’ Exhibit A, p. 17-18). Records of prior similar accidents are discoverable in a negligence case, as they are relevant to establish that a particular condition was dangerous and that defendant had notice of that condition (*Coan v Long Island R.R.*, 246 AD2d 569 [2d Dept 1998]; *Allstadt v Long Island Home*, 210 AD2d 365 [2d Dept 1994]; *Klatz v Armor Elevator Co.*, 93 AD2d 633 [2d Dept 1983]). The State shall provide documents and items responsive to demand 7 for a period of six years prior to the accident at issue, including such documents and items pertaining to the reported malfunctions on June 4, 2014, June 12, 2014 and June 24, 2014, which involved contact between a vehicle and the gate arm (State’s Exhibit C, p. 5-6; Plaintiffs’ Exhibit A, p. 18; Plaintiffs’ Exhibit E). Plaintiffs fail to demonstrate on this motion that the reported malfunctions on February 14, 2014, June 6, 2014, and June 8, 2014, as documented in the NTSB report, involved prior similar accidents and the State need not provide discovery related to these malfunctions (Plaintiffs’ Exhibit A, p. 18). Plaintiffs fail to demonstrate on this motion that the 1984 accident was a prior similar accident or that the condition of the grade crossing was similar at the time of that accident.

Demands 8 and 9 seek in part studies and engineering reports performed at any time before the accident regarding the safety of the Commerce Street crossing and/or the entrance onto the Taconic State Parkway, documents showing transmittal of such studies or reports to any of the defendants in this matter, and documents showing whether defendants participated in the studies or reports. In Demand 10, plaintiffs demand that if any such studies or reports were prepared as a result of an accident or complaint, plaintiffs seek copies of the record of the complaint or the accident report (State’s Exhibit C, p. 6). The State shall provide documents responsive to demands 8 and 9 for a period of six years prior to the accident. Demand 10 is

stricken as overbroad, as it is unclear whether such prior accidents or complaints involved a prior similar accident (*See Coan v Long Island R.R.*, 246 AD2d 569 [2d Dept 1998]; *Allstadt v Long Island Home*, 210 AD2d 365 [2d Dept 1994]; *Klatz v Armor Elevator Co.*, 93 AD2d 633 [2d Dept 1983]).

The State shall provide documents responsive to demand 12, limited to documents showing the pre-set timing for vehicular traffic control signals at the Commerce Street crossing and entrance to the Taconic State Parkway on the date of the accident at issue. The State shall provide documents responsive to demand 13, limited to documentation showing when the traffic control signal was installed at the Commerce Street entrance to the Taconic State Parkway and any documentation showing any changes or modification to the traffic control signal at any time during the six year period prior to and including the date of the accident. Plaintiffs fail to demonstrate demands 14 and 15 seek documents relevant to the claims in this matter, as the demands seek documents so remote in time that they are not material and necessary to plaintiffs' claims (State's Exhibit C, p. 7).

The State shall provide documents responsive to Demand 16, seeking communications in any form between numerous entities, including the named defendants, regarding the safety of the Commerce Street crossing and/or its entrance onto the Taconic State Parkway, limited to the six year period prior to the date of the accident at issue (State's Exhibit C, p. 7).

The State shall provide documents responsive to Demand 17, seeking documentation of financial assistance and/or grants received by the State in conjunction with or to be used with Metro North Railroad or the MTA for projects relating to grade crossing safety improvements to mitigate dangerous conditions at the Commerce Street crossing. Such discovery shall be limited to a six year period prior to the date of the accident at issue (State's Exhibit C, p. 7-8). Plaintiffs establish a foundation for this demand, as plaintiffs' Exhibit D references the availability of federal funds under an agreement and a project for the elimination of a rail-highway safety hazard at the Mount Pleasant Commerce Street crossing.

Demand 18, seeking communications regarding the safety of the third rail on the Harlem Line, is stricken as vague and overbroad. Demand 19 seeks studies, plans, complaints, engineering reports, recommended modifications regarding the third rail on the Hudson Line or any other line which used an under-running third rail before the accident at issue. Demand 19 is stricken as the demand is overbroad and seeks information that is not relevant to the claims in this matter. Demand 20 seeks plans, studies, engineering reports, meeting minutes, NYSDOT records, and specification drawings regarding the planning of any reconstruction of the Taconic State Parkway at or about the Commerce Street intersection including the entrance to the parkway at the intersection, whether or not such plans were implemented. Plaintiffs fail to submit any evidence demonstrating there was a plan to reconstruct the Taconic State Parkway at Commerce Street. Demand 20 is stricken as vague and overbroad (State's Exhibit C, p. 8).

Demand 21 seeks plans, studies, engineering reports, and NYSDOT records supporting the State's determination regarding which preemption and priority system would be used with the traffic control signal at the intersection of Commerce Street and the Taconic State Parkway at any

time both before and after the accident. Demand 21 is stricken as vague and overbroad. Furthermore, demand 21 improperly seeks information regarding when the State altered the traffic signal preemption and priority system after the accident (State's Exhibit C, p. 8-9). Evidence of subsequent remedial measures is not discoverable or admissible in a negligence case unless there is an issue of maintenance or control (*Graham v Kone, Inc.*, 130 AD3d 779 [2d Dept 2015]; *Del Vecchio v Danielle Assoc., LLC*, 94 AD3d 941 [2d Dept 2012]; *Klatz v Armor Elevator Co.*, 93 AD2d 633 [2d Dept 1983]). Here, plaintiffs do not allege there is an issue as to the maintenance and control of the traffic signal system.

Demand 22 seeks documentation supporting the State's decision prior to the accident to not have railroad preemption as the highest priority for the traffic control signal at the Commerce Street crossing. Plaintiffs fail to submit documentation demonstrating such a decision was made by the State prior to the accident. Demand 22 is stricken as it is vague and overbroad. Demand 24 seeks documents regarding the State's evaluation, if any, of the available site distance and/or site obstructions for drivers using the Commerce Street entrance to the Taconic State Parkway. Demand 24 is stricken, as plaintiffs fail to submit evidence on this motion showing the State made such an evaluation (State's Exhibit C, p. 9). Demands 25, 26 and 27 are stricken, as they are vague and overbroad. Plaintiffs fail to demonstrate on this motion that these demands seek documents relevant to the claims in this matter (State's Exhibit C, p. 9-10).

Demand 23 seeks documents showing whether defendants participated with the State in installing or making decisions regarding the traffic signal and/or traffic signal preemption/priority system. Plaintiffs allege defendants failed to synchronize the traffic signal for vehicles entering the Taconic State Parkway from Commerce Street with trains passing into the intersection (NYSCEF Doc 1, Verified Complaint, p. 12). The State shall provide any documents showing defendants participated in installing or in making decisions regarding the traffic signal and/or the traffic signal preemption/priority system for a period of six years prior to the date of the accident at issue (State's Exhibit C, p. 9).

Demands 28 and 29 seek traffic signal studies and traffic calming studies at the crossing and entrance onto the Taconic State Parkway. The State shall provide documents responsive to demands 28 and 29 limited to a period of six years prior to the date of the accident at issue (State's Exhibit C, p. 10). Demand 30 seeks documentation and specification drawings documenting any changes to the Taconic State Parkway or the intersection at issue, including the railroad tracks, as a result of any study or engineering report. Demand 30 is stricken as vague and overbroad. Plaintiffs fail to submit any evidence demonstrating any such study or engineering report resulted in any changes to the intersection or the parkway (State's Exhibit C, p. 10).

The State shall provide documents responsive to demand 32 insofar as the demand seeks correspondence, inquiries and petitions to or from the State, Town of Valhalla, Westchester County, Metro North Railroad, MTA, or the Federal Railroad Administration regarding altering or eliminating the Commerce Street crossing for a time period of six years prior to the date of the accident at issue (State's Exhibit C, p. 10). Demands 33 and 34 are stricken as vague, confusing, overbroad and not reasonably calculated to lead to relevant discovery.

The State shall provide documents responsive to demand 35, seeking copies of letters, reports or communications from the Federal Railroad Administration or its agencies referencing any safety issues at the Commerce Street grade crossing for a time period of six years prior to the accident at issue (State's Exhibit C, p. 11).

In demand 36, plaintiffs demand an unredacted copy of the June-November 2005 NYSDOT Metro North Railroad, Grade Crossing Assessment, Harlem, Hudson, and West of Harlem Lines (State's Exhibit C, p. 11). The State's response indicates the document was previously disclosed and redacted as an interagency or intra-agency memoranda pursuant to Public Officers Law 87(2)(g) (State's Exhibit F, p. 4). The State now objects to providing an unredacted version of the document, arguing the document was created in 2005, the redacted document was previously disclosed in response to a FOIL request, and the proper procedure to challenge the determination to redact the document was to exhaust administrative appeals and then commence an Article 78 proceeding. The parties did not submit the 2005 NYSDOT Assessment on this motion. Demand 36 is stricken, as plaintiffs fail to demonstrate that the 2005 NYSDOT Assessment is relevant to the claims in this matter.

Demand 37 is stricken as vague and overbroad, as it is unclear what documents are sought (State's Exhibit C, p. 11). Furthermore, the demand is duplicative of demands 8 and 16. Demand 40(a) is stricken, as it is overbroad and duplicative of demand 17 (State's Exhibit C, p. 12).

Demand 39 seeks copies of all visibility, sight distance and/or safety studies or engineering reports regarding the location of the substation structure located at the Commerce Street grade crossing. Plaintiffs allege defendants failed to clear visibility obstructions near the track including the gate, trees, signage, utility box and other obstructions blocking the view of the driver and the train operator (NYSCEF Doc #1, p. 11). The State shall provide documents responsive to demand 39 for a time period of six years prior to the date of the accident at issue (State's Exhibit C, p. 12).

The State shall provide documents responsive to demand 40(b), which seeks copies of any accident or investigatory reports, witness statement, photographs, root cause analysis reports of the February 3, 2015 accident that were prepared by or on behalf of the State or are in possession of the State (State's Exhibit C, p. 12). Insofar as the State's response to plaintiffs' demands objects to demands 4 and 40 on the basis that these demands seek privileged information, the State fails to meet its burden to demonstrate the materials are privileged (State's Exhibit F). A party asserting that documents sought in disclosure are privileged bears the burden of demonstrating the material is protected from discovery (*Melworm v Encompass Indemnity Company*, 112 AD3d 794 [2d Dept 2013]; *Ural v Encompass Ins. Co of America*, 97 AD3d 562 [2d Dept 2012]). The State fails to even argue in its motion papers that the documents sought in demands 4 and 40 are privileged. Insofar as the State asserts certain documents are privileged, the State shall provide a privilege log, specifying for each respective document on the privilege log, the type of document, the nature of the contents of the document, who prepared the document, the date of the document, and the basis for the claimed privilege (CPLR §3122[b]; *Ren Zheng Zheng v Bermeo*, 114 AD3d 743 [2d Dept 2014]).

Demand 41 is stricken as overbroad. Plaintiffs fail to demonstrate on this motion that the documents sought in demand 41 are relevant to the claims in this action (State's Exhibit C, p. 12-13). Demand 44 is stricken as overbroad and not relevant to the claims in this action, as the State of New York is not a party to this action (State's Exhibit C, p. 13).

Demand 45 seeks documents showing what funds, if any, were used for improving, performing construction or reconstruction of the Commerce Street railroad crossing or the entrance onto the Taconic Parkway at Commerce Street. The State shall provide documents responsive to demand 45 for a period of six years prior to the date of the accident at issue. Demand 46 is stricken, as it is overbroad, duplicative of demand 45, and seeks information that is not relevant to the claims in this action (State's Exhibit C, p. 13).

Demand 47 seeks copies of investigatory reports regarding whether the train preemption signal at the Commerce Street crossing allowed sufficient time for vehicles to safely clear the crossing. The State shall provide documents responsive to demand 47 for a period of six years prior to the date of the accident at issue.

In view of the foregoing, it

ORDERED that the State's motion for an order quashing the subpoena at issue is denied; and it is further

ORDERED that the State's motion for a protective order is granted to the extent that demands 2, 10, 14, 15, 18, 19, 20, 21, 24, 25, 26, 27, 30, 33, 34, 36, 37, 40(a), 41, 44 and 46 are stricken; and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents and items responsive to demand 1 as to State Project No.: 8932.37.321; and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents and items responsive to demands 3, 4, 5, 6, and 40(b); and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents responsive to demands 8, 9, 28, 29, 35, 39, 45 and 47 limited to a period of six years prior to the date of the accident at issue; and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents and items responsive to demand 7 for a period of six years prior to the date of the accident at issue, including such documents and items pertaining to the reported malfunctions on June 4, 2014, June 12, 2014 and June 24, 2014, which involved contact between a vehicle and the gate arm; and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents responsive to demand 12, limited to documents showing the pre-set timing for vehicular traffic control signals at the Commerce Street crossing and entrance to the Taconic State Parkway on

the date of the accident at issue; and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents responsive to demand 13, limited to documentation showing when the traffic control signal was installed at the Commerce Street entrance to the Taconic State Parkway and any documentation showing any changes or modification to the traffic control signal at any time during the six year period prior to and including the date of the accident at issue; and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents responsive to demand 16, seeking communications in any form between numerous entities, including the named defendants, regarding the safety of the Commerce Street crossing and/or its entrance onto the Taconic State Parkway, limited to the six year period prior to the date of the accident at issue; and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents responsive to demand 17, seeking documentation of financial assistance and/or grants received by the State in conjunction with or to be used with Metro North Railroad or MTA for projects relating to grade crossing safety improvements to mitigate dangerous conditions at the Commerce Street crossing. Such discovery shall be limited to the six year period prior to the date of the accident at issue; and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents responsive to demand 23 insofar as the demand seeks any documents showing defendants participated in installing or in making decisions regarding the traffic signal and/or the traffic signal preemption/priority system for a period of six years prior to the date of the accident at issue; and it is further

ORDERED that on or before August 11, 2017, the State shall provide documents responsive to demand 32 insofar as the demand seeks correspondence, inquiries and petitions to or from the State, Town of Valhalla, Westchester County, Metro North Railroad, MTA, or the Federal Railroad Administration regarding altering or eliminating the Commerce Street crossing for a time period of six years prior to the date of the accident at issue; and it is further

ORDERED that all parties are directed to appear for a conference in the Compliance Part, Courtroom 800, on August 17, 2017 at 9:30 a.m.; and it is further

ORDERED that The Law Office of Eric Richman shall serve a copy of this order with notice of entry on all counsel appearing in the action within ten days of entry.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
July 19, 2017


HON. JOAN B. LEFKOWITZ, J.S.C.
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