

<b>Matter of Hoffie v Port Auth. of N.Y &amp; N.J</b>
2020 NY Slip Op 31711(U)
May 29, 2020
Supreme Court, New York County
Docket Number: 151256/2020
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62

Justice

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INDEX NO. 151256/2020

IN THE MATTER OF THE APPLICATION OF VISAYA
HOFFIE,

MOTION DATE 03/03/2020

Petitioner,

MOTION SEQ. NO. 001

For an Order Pursuant to N.Y. C.P.L.R. § 3102 (c)
Permitting Pre-Action Discovery and/or, in the alternative,
Ordering the Preservation of Evidence,

- v -

DECISION + ORDER ON
MOTION

THE PORT AUTHORITY OF NEW YORK AND NEW
JERSEY, METROPOLITAN TRANSPORTATION
AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY,
THE CITY OF NEW YORK

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 11,
12, 13, 14, 15, 17, 18, 19, 20

were read on this motion to/for DISCOVERY - PRE-ACTION

Upon the foregoing documents, the petition is decided as follows:

On February 4, 2020, Petitioner filed the instant petition seeking pre-action discovery
pursuant to CPLR 3102(c). According to Petitioner's Amended Notice of Claim, dated February
24, 2020, annexed to Respondent's opposition papers:

On January 11, 2020, at approximately between 3:58 and 4:21 a.m.,
claimant VISAYA HOFFIE (the "Claimant") was injured when she
was caused to trip/slip on a defect on the northbound train passenger
platform at the 14th Street P.A.T.H. train station in New York, New
York (located at approximately West 14th Street and 6th Avenue in
Manhattan), causing her to stumble and fall on to the tracks and
ultimately to be run over/struck by two distinct Port Authority
Trans-Hudson ("P.A.T.H.") trains (said occurrence being
hereinafter referred to as the "Accident") as they passed through said
station in a northbound direction. The Claimant tripped/slipped and
fell onto the tracks towards the northbound end of the passenger
platform (several hundred feet away from the southbound area of

the station through which trains enter the station traveling northbound). She was left on the tracks for approximately seven minutes after falling onto the tracks before being run over by the entirety of the first P.A.T.H. train (which was several cars in length); and then, after the first train departed the station, left on the tracks for another approximately fifteen minutes until a second P.A.T.H. train came into the station and ran her over again. The Accident was caused by the carelessness, recklessness and negligence of the Respondents and their employees, agents and/or assigns as alleged herein throughout, and proximately caused the Claimant to be seriously injured and permanently and totally physically and psychologically disabled.

Petitioner now seeks, pursuant to CPLR 3102(c), pre-action discovery. Petitioner specifically seeks: (a) video footage of all areas of the 14th Street P.A.T.H. station (b) video camera footage from cameras affixed to and/or within/upon either of the P.A.T.H. trains that were involved (c) post-accident photographs of the P.A.T.H. trains involved and of the rescue operation (d) investigative reports, including all supporting/underlying documentation (e) reports, communications, notices and/or other documents to/from and/or relating to the involvement of the New York State Department of Transportation, the New York City Department of Transportation, the New York State Public Transportation Safety Board, the Federal Railway Administration and/or the United States National Transportation Safety Board (f) witness statements and/or documents tending to identify potential witness (g) Any and all event data recorder data ("black box" data), speed data, braking data, debris/track obstruction sensor data, and/or any other data recorded by any means relating to the operation of either of the P.A.T.H. trains (h) Any attendance logs, work logs, trip sheets, daily reports or any other similar documentation made by any agent or employee of any Respondent, including the conductors/engineers/motormen of either of the P.A.T.H. trains involved and/or other documentation tending to identify the conductors/engineers/motormen of either of the P.A.T.H. trains in question (i) Any attendance logs, work logs, trip sheets, daily reports or any other similar documentation tending to identify

any employees, agents (e.g., third-party contractors) or personnel of any Respondent who was/were working at and/or on duty (j) Contracts by/between/among the Respondents and any third parties contracted to perform any aspect of the operation, maintenance or repair of the P.A.T.H. trains involved (k) Documents relating to the purchase, installation, maintenance and/or repair of debris/track obstruction sensors or similar devices that were affixed to the P.A.T.H. trains involved (l) Documents containing the specifications of the P.A.T.H. trains involved (m) Any rules, regulations, standards, manuals (the P.A.T.H. Train Operator Manual and/or any training manuals relating to the operation of P.A.T.H. trains), protocols and/or similar documentation containing standard operating procedures for P.A.T.H. trains (n) Plans and/or schematics tending to show the layout of the 14d' Street P.A.T.H. station (o) The complete employee files, including disciplinary history and/or infraction history relating to the safe operation of trains, of the conductors/engineers/motormen of either of the P.A.T.H. trains involved (p) Any and all repair/maintenance/cleaning/inspection records relating to the P.A.T.H. trains involved (q) Preservation of the two P.A.T.H. trains involved in the accident, and (r) Any other materials, documents and/or evidence that is relevant to VISAYA HOFFIE's accident of January n, 2020 at the 14th Street P A.T.H. station in New York, New York.

As discussed in Uddin v. New York City Transit Auth., 27 A.D.3d 265, 266 (1<sup>st</sup> Dept. 2006), an action involving a plaintiff who also fell on train tracks,

“Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order” (CPLR 3102 [c]). Thus, while pre-action disclosure may be appropriate to preserve evidence or to identify potential defendants, it may not be used to ascertain whether a prospective plaintiff has a cause of action worth pursuing (*Matter of Gleich v Kissinger*, 111 AD2d 130, 131-132 [1985]). “A petition for pre-action discovery should only be granted when the petitioner demonstrates that he has a meritorious cause of action and that the information sought is material and necessary to the actionable

wrong” (*Holzman v Manhattan & Bronx Surface Tr. Operating Auth.*, 271 AD2d 346, 347 [2000]). Here, petitioner's notice of claim already set forth the time, place and particulars of the accident. The only purpose of inspecting the file at this point would be to explore alternative theories of liability, which is not a proper basis for invoking CPLR 3102 (c) (*id.* at 347-348).

Here, Petitioner is demanding, as pre-suit discovery, functionally all of the written discovery that it would demand from the Port Authority in a potential future action, a purpose which CPLR 3102 is not designed to allow. Petitioner’s Notice of Claim, with its attached Port Authority of NY & NJ Motor Vehicle Crash Report clearly shows that Petitioner is already in possession of sufficient facts necessary to frame her complaint. Specifically, Petitioner is aware of all of the trains involved, the operators of those trains, and the Port Authority Police Officers involved. As such, pre-suit discovery is unwarranted. In reply, Petitioner objects as the crash report does not identify any third-parties that may have been responsible for the Petitioner's accident in connection with the provision of security at the train station or maintenance of the trains and their components, nor does it identify any prospective products liability defendants. As discussed above, Petitioner is seeking information about alternative theories of liability and potential additional defendants to be added later, which are not a proper basis for the relief requested.

Petitioner’s petition is granted solely to the extent that Respondents are ORDERED to preserve all of the evidence demanded by Petitioner, to the extent that it exists, and said petition is denied in all other respects.

LAURENCE L. LOVE, J.S.C.

<u>5/29/2020</u>			
DATE			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE