

**Country-Wide Ins. Co. v City of New York**

2025 NY Slip Op 32789(U)

August 8, 2025

Supreme Court, New York County

Docket Number: Index No. 158048/2025

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. HASA A. KINGO PART 05M**

*Justice*

-----X

COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

- v -

THE CITY OF NEW YORK, JULIO RICARDO SANTIAGO

Respondent.

-----X

INDEX NO. 158048/2025

MOTION DATE 07/31/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8  
were read on this motion for LEAVE TO FILE.

Petitioner COUNTRY-WIDE INSURANCE COMPANY (“CWI”), as subrogee of its insured, Shaniqua T. Jones, seeks an order pursuant to General Municipal Law (“GML”) § 50-e: 1.) deeming the notice of claim previously served upon Respondents to have been timely filed, *nunc pro tunc*; or, in the alternative, granting Petitioner leave to file a late notice of claim in the form previously served; and 2.) granting such other and further relief as the court deems just and proper.

The application is unopposed.

**BACKGROUND AND PROCEDURAL HISTORY**

This subrogation proceeding arises from a motor vehicle collision that occurred on August 20, 2024, at approximately 7:40 a.m., near the intersection of Throop Avenue and Lexington Avenue in Kings County, New York.

Petitioner’s insured was operating her vehicle when it came into contact with a vehicle owned by the City of New York and operated by Respondent Julio Ricardo Santiago, a City employee. The police accident report indicates that the City vehicle, previously stopped on the right-hand side of the roadway, pulled into traffic and struck Petitioner’s insured’s vehicle.

On November 19, 2024—approximately ninety days after the accident—Petitioner’s counsel received referral of this claim from CWI’s Property Damage Subrogation Unit. On that same day, Petitioner submitted a notice of claim through the New York City Comptroller’s online portal, attaching the police report, repair estimates, photographs, and proof of payment.

Petitioner now seeks to have that notice of claim deemed timely *nunc pro tunc*, or alternatively, to obtain leave to serve a late notice pursuant to GML § 50-e(5).

## ARGUMENT

In support of the petitioner, Petitioner submits that the City acquired actual knowledge of the essential facts constituting the claim within a reasonable time following the accident. This conclusion is supported by the fact that the incident involved a City-owned vehicle operated by a City employee, and that the police accident report provided clear and timely notice of a potentially actionable negligence claim. Petitioner further submits that the delay in serving the notice of claim was minimal—approximately twenty days beyond the statutory ninety-day period—and such delay did not result in any substantial prejudice to the City’s ability to defend this matter on the merits. In addition, Petitioner argues that the delay is attributable to the timing of the insured’s reporting of the loss to the insurer, and the subsequent referral of the claim to counsel, circumstances which amount to a reasonable excuse. Moreover, even if the court were to find that this explanation falls short of a reasonable excuse, Petitioner contends that the demonstrated actual knowledge by the City and the absence of any prejudice justify the exercise of the court’s discretion to grant the petition pursuant to the remedial provisions of General Municipal Law § 50–e.

## DISCUSSION

Under GML § 50–e(1)(a), a claimant must serve a notice of claim upon a public corporation within ninety days after the claim arises. Section 50–e(5) grants courts broad discretion to permit late service provided the application is made within the applicable statute of limitations period. In deciding whether to grant such relief, the court must consider: 1.) Whether the public corporation acquired actual knowledge of the essential facts constituting the claim within the statutory period or a reasonable time thereafter; 2.) Whether the claimant has a reasonable excuse for the delay; and 3.) Whether the delay substantially prejudiced the public corporation in maintaining its defense on the merits (*see Matter of Newcomb v. Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 465 [2016]; *Matter of Dubowy v. City of New York*, 305 AD2d 320 [1st Dept 2003]).

The statute is remedial in nature and should be liberally construed to balance “a public corporation’s reasonable need for prompt notification of claims against it and an injured party’s interest in just compensation” (*Camarella v. E. Irondequoit Cent. Sch. Bd.*, 34 NY2d 139, 142–143 [1974]; *Matter of Quiroz v. City of New York*, 154 AD2d 315 [1st Dept 1989]).

### I. Actual Knowledge Within a Reasonable Time

Whether the City acquired actual knowledge is “a factor which should be accorded great weight” (*Matter of Dell’Italia v. Long Island R.R. Corp.*, 31 AD3d 758, 759 [2d Dept 2006]). Courts have consistently held that when a municipal employee is directly involved in the incident and the accident is documented in an official report, the municipality is deemed to have received timely actual knowledge of the essential facts (*Matter of Cruz v. City of New York*, 149 AD3d 835 [2d Dept 2017]; *Matter of Vasquez v. City of Newburgh*, 35 AD3d 621 [2d Dept 2006]).

Here, the police accident report—prepared contemporaneously—identifies the City vehicle, its driver, the circumstances of the collision, and the property damage sustained. As in *Delgado v. City of New York* (39 AD3d 387 [1st Dept 2007]), this report was sufficient to alert the City that a potentially actionable wrong may have occurred.

The City's own employee's involvement provided it with immediate access to witnesses, vehicle inspection opportunities, and internal records. Under *Gibbs v. City of New York* (22 AD3d 717 [2d Dept 2005]) and *Cruz, supra*, such circumstances establish actual knowledge within the meaning of § 50-e.

## II. Prejudice to the Municipality

A finding of actual knowledge “militates strongly against a finding of substantial prejudice” (*Newcomb*, 28 NY3d at 467, *supra*). Prejudice is not presumed and must be demonstrated by the municipality (*Williams v. Nassau County Med. Ctr.*, 6 NY3d 531, 539 [2006]).

Petitioner's claim is for property damage—a category of loss that is readily ascertainable from physical inspection and documentary evidence. Repair estimates, photographs, and payment proofs were preserved and submitted with the notice of claim. Courts have recognized that such documentation mitigates any potential prejudice (*Matter of Vitali v. City of New York*, 205 AD2d 636 [2d Dept 1994]; *Sayad v. New York City Tr. Auth.*, 246 AD2d 639 [2d Dept 1998]).

The City has not shown that the short delay impaired its ability to investigate or defend against the claim.

## III. Reasonable Excuse

Petitioner attributes the delay to the insured's late reporting of the claim to CWI, and the resulting gap before counsel's retention. Courts have accepted comparable explanations where, as here, they are supported by sworn affirmation and documentary evidence (*Matter of Ansong v. City of New York*, 308 AD2d 333 [1st Dept 2003]).

Even absent a reasonable excuse, leave to serve a late notice may still be granted when actual knowledge and lack of prejudice are present (*Pendley v. City of New York*, 119 AD3d 410 [1st Dept 2014]; *Matter of Gerzel v. City of New York*, 117 AD2d 549 [1st Dept 1986]).

## IV. Equitable and Remedial Considerations

The delay here was brief—approximately 20 days beyond the 90-day period—far less than in cases where leave was granted despite months of delay (*Gerzel, supra*). GML § 50-e was not designed to “operate as a device to defeat the rights of persons with legitimate claims” (*Matter of Annis v. New York City Tr. Auth.*, 108 AD2d 643 [1st Dept 1985]).

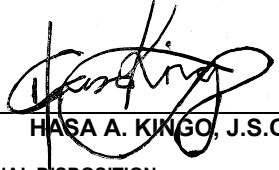
Balancing the City's interest in prompt notice against Petitioner's right to seek recovery, the equities weigh heavily in favor of granting the petition.

For the foregoing reasons, it is hereby

ORDERED and ADJUDGED that the petition is GRANTED; and it is further

ORDERED and ADJUDGED that the notice of claim previously served by Petitioner on November 19, 2024, is deemed timely filed, *nunc pro tunc*, pursuant to General Municipal Law § 50-e; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

8/8/2025			
DATE			HASA A. KINGO, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE