SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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ANDRES DELGADILLO

Plaintiff,

- v -

CITY OF NEW YORK,

Defendant.

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INDEX NO. 162178/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to AMEND CAPTION/PLEADINGS.

Plaintiff moves pursuant to General Municipal Law ("GML") § 50-e(6) for leave to amend his notice of claim to clarify the mechanism of the roadway defect involved in his November 19, 2024 accident at the intersection of Third Avenue and East 96th Street in Manhattan. The original notice of claim alleged that "excessive asphalt" surrounding a manhole caused the front wheel of plaintiff's bicycle to stop abruptly; the proposed amendment pleads, in the alternative and based on information learned after service of the notice, that the condition may have been the absence of asphalt around the same manhole (i.e., a depression/unfinished paving condition) at the same location and time. The motion is unopposed. For the reasons that follow, the motion is granted. The amended notice shall be deemed served, *nunc pro tunc*, as of the date of service of this order.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff alleges that at approximately 7:00 p.m. on November 19, 2024, while turning westbound from the northbound Third Avenue bike lane onto East 96th Street, his bicycle's front wheel struck an asphalt condition at (or surrounding) a manhole in the middle/west side of the intersection, causing him to be pitched over the handlebars and injured. Plaintiff served a notice of claim on February 18, 2025—the 90th day, extended by the Presidents' Day holiday—identifying the precise intersection and describing the defect as "excessive asphalt" around the manhole. Plaintiff later testified at the GML § 50-h hearing on June 17, 2025. After further investigation (including a FOIL response revealing a July 14, 2024 DEP permit for water-line gate work involving the manhole area and a contemporaneous August 2024 photograph showing the manhole with no surrounding asphalt), plaintiff moved promptly to amend his notice to allege in the alternative that the defect may have been a *lack* of asphalt at the same site on the date in question. Plaintiff filed this motion shortly after issue was joined; no delay is attributable to plaintiff.

ARGUMENT

Plaintiff contends the proposed amendment fits squarely within GML § 50-e(6). He argues the change is a good-faith clarification about the very same occurrence at the very same place and time; it does not inject new parties, a new accident, or an unrelated hazard. Plaintiff emphasizes that the City will suffer no prejudice because (i) the location is unchanged and was identified with specificity from the outset; (ii) the City's own records (including the DEP permit work) chronicle what was done around the manhole and when; (iii) the City already examined plaintiff at a § 50-h hearing; and (iv) the motion was made expeditiously.

Notably, the motion is unopposed.

DISCUSSION

General Municipal Law § 50-e (6) authorizes courts, in their discretion, to allow good-faith, non-prejudicial amendments to a notice of claim that do not substantively change the nature of the claim. The Appellate Divisions have distilled the rule into three elements: (1) the error or omission must have been made in good faith; (2) the municipality must suffer no prejudice from the amendment; and (3) the amendment must not substantively change the nature of the claim (*Pisano v Metropolitan Transp. Auth.*, 191 AD3d 907, 908 [2d Dept 2021] [permitting amendment that satisfied the tripartite showing]). Within the Appellate Division, First Department, courts consistently permit corrections that clarify location or mechanism where the claim still concerns the same accident at the same place and time, absent demonstrated prejudice or bad faith (*see Weiss v City of New York*, 136 AD3d 575 [1st Dept 2016] [permitting amended notice changing the location where no prejudice was shown]; *Williams v City of New York*, 229 AD2d 114, 117 [1st Dept 1997] ["Prejudice is not presumed merely because an inadvertent error was made in the notice of claim with respect to location; prejudice must be established"]); *and Goodwin v New York City Hous. Auth.*, 42 AD3d 63, 68 [1st Dept 2007] ["[Prejudice] may not be shown without evidence of an attempt to investigate the accident"]).

The record demonstrates good faith. Plaintiff served his notice of claim on the last permissible day—extended by holiday—after first consulting counsel on that day; he had not previously revisited the scene. When he did return on day 90, he observed "excessive asphalt" around the manhole and reasonably described the condition accordingly. Subsequent document review (including a July 14, 2024 DEP permit referencing water-main gate work associated with the manhole area) and a dated August 2024 image showing no surrounding asphalt suggested a different—indeed opposite—condition may have existed nearer to the accident date: a lack of asphalt/unfinished restoration. Plaintiff moved to amend after obtaining this information and after his § 50-h testimony clarified he did not personally verify the paving condition in the moment. These facts reflect diligence, transparency, and a good-faith effort to conform the notice to the evidence—not gamesmanship.

The City identifies no concrete prejudice stemming from the amendment, and indeed, none is apparent from the record. The incident at issue occurred at the same time, in the same place, and under the same circumstances originally described in the notice of claim. The location remains the identical intersection—Third Avenue and East 96th Street—specifically near the manhole at the

center and west side of that junction. Neither the date nor the time has changed. Consequently, the City's investigative focus has never shifted, whether geographically or temporally. As the Appellate Division, First Department, made clear in *Weiss v City of New York* (136 AD3d 575), an amendment should be permitted where the municipality cannot demonstrate actual prejudice in investigating the corrected details. Similarly, in *Williams v City of New York* (229 AD2d 114, 117), the court held that prejudice is not presumed merely because an inadvertent error was made regarding location; it must be affirmatively established.

The asserted hazard—whether consisting of excessive asphalt or, conversely, an unfilled cut—relates to restoration work surrounding a City-owned or City-permitted manhole, arising from utility activity under the City's control. All relevant records, including permits, crew logs, restoration dates, and photographs, remain exclusively within the City's possession or that of its agencies and contractors. Plaintiff's submissions specifically identify DEP Permit No. M012024196A00, dated July 14, 2024, which reflects pre-accident work at the precise location in question. This fact underscores that the City, more than any private individual, is uniquely situated to ascertain the paving condition as it existed on November 19, 2024. Both *Williams* and *Goodwin v New York City Housing Authority* (42 AD3d 63, 68) make clear that claims of prejudice cannot rest on speculation; they must be supported by evidence of an actual, attempted investigation that was meaningfully hindered. Here, the City has not described any investigative steps it undertook, nor explained how its ability to investigate the same intersection, at the same date and location, was compromised by plaintiff's clarification that the surface defect may have involved too much or too little asphalt.

Furthermore, the procedural posture of the case dispels any suggestion of prejudice. Plaintiff was examined at a General Municipal Law § 50-h hearing on June 17, 2025, and moved to amend shortly thereafter, at a time when discovery was still in its early stages. The City will have ample opportunity, through depositions, document discovery, and site inspections if necessary, to evaluate precisely what condition existed. This promptness in seeking amendment further demonstrates good faith and eliminates any plausible claim of prejudice.

Accordingly, on this record, the court finds that the City has failed to carry its burden of demonstrating any actual prejudice. The authorities of *Weiss* (136 AD3d 575), *Williams* (229 AD2d 114), and *Goodwin* (42 AD3d 63) compel this conclusion.

In addition, the amendment does not transform a sidewalk trip into a medical malpractice claim, or a bus-collision into a negligent maintenance case. It is the same roadway-defect accident at the same intersection and time, against the same municipal defendant, with the same injury sequence (front wheel stops; rider is pitched forward). The proposed pleading simply acknowledges, consistent with newly reviewed municipal records and pre-accident imagery, that the manhole-area defect could have been an unfinished restoration (depression/edge) rather than excess asphalt (bump/lip).

Courts applying § 50-e(6) distinguish between amendments that merely clarify the details of the existing occurrence (typically permitted) and those that introduce a different occurrence, different location, or different theory of liability that would require a wholly new investigation (typically not permitted). The Appellate Division, First Department's decision in *Weiss* embodies

that distinction, allowing an amendment where the defendant could not show prejudice and where the change did not alter the essential claim (136 AD3d 575). Likewise, *Pisano* confirms that § 50-e(6) embraces good-faith corrections that do not alter the claim's essence (191 AD3d at 908). Here, whether the pavement height was too high or too low, the operative negligence theory remains municipal failure to properly restore and maintain the pavement surrounding a City-related manhole at the specified intersection. That is a clarification of the mechanism—not a new accident or new situs.

The record here also reflects promptness and candor on the part of the plaintiff. He explained with precision when and how the new information came to light—through a Freedom of Information Law response and a dated pre-accident photograph—and why the initial description in the notice of claim was phrased as it was, having been based on his day-90 site visit. This explanation is both plausible and unrebutted. Such transparency, combined with the timing of the motion and the diligence shown in investigating the true condition, strongly supports the exercise of the Court's discretion to permit amendment. As the Appellate Division, Second Department, observed in *Pisano v Metropolitan Transp. Auth.* (191 AD3d 907, 908 [2d Dept 2021]), where an error in a notice of claim was made in good faith, caused no prejudice, and did not alter the substance of the claim, amendment is appropriate. The same principle applies here.

Moreover, discovery in this case will further refine the precise nature of the roadway defect without causing any unfair surprise to the City. At his General Municipal Law § 50-h examination, plaintiff candidly acknowledged uncertainty about the exact paving configuration at the moment of impact, thereby placing the City on notice of that uncertainty from the outset. The municipal records now identified by plaintiff—including permits and restoration documents—further narrow the scope of inquiry. The City remains free to pursue targeted discovery, such as Department of Environmental Protection and contractor restoration logs, as-built photographs, crew reports, and close-out records. Under *Goodwin v New York City Hous. Auth.* (42 AD3d 63, 68 [1st Dept 2007]), prejudice cannot be presumed and may not be found absent a concrete showing that the defendant's ability to investigate has been impeded. Here, no such impediment has been shown.

Although this motion does not alter the location of the alleged defect, the line of cases addressing amendments to correct the location of an accident provides instructive guidance. Those decisions focus on whether a municipality was blindsided in a way that truly frustrates investigation. Both *Weiss v City of New York* (136 AD3d 575 [1st Dept 2016]) and *Williams v City of New York* (229 AD2d 114, 117 [1st Dept 1997]) teach that when a municipality fails to identify actual prejudice, amendment should be allowed. If a corrected location—which inherently alters the site to be investigated—may be permitted absent prejudice, then it follows a fortiori that a clarification of the mechanism of the same defect at the same location should likewise be allowed where no prejudice exists. The reasoning of these cases thus compels the same result here.

When the record is viewed as a whole, the three-part test under General Municipal Law § 50-e (6) is plainly satisfied. The element of good faith is demonstrated by plaintiff's prompt and candid explanation, the day-90 timing of his initial inspection, the later receipt of municipal records through FOIL, the dated pre-accident imagery, and the forthright testimony at his § 50-h hearing (*Pisano*, 191 AD3d at 908). The element of prejudice is entirely absent: the City identifies none and offers no evidence that its ability to investigate has been thwarted. The occurrence

remains fixed in both place and time, and the pertinent records are squarely within the City's own control (*Weiss*, 136 AD3d 575; *Williams*, 229 AD2d at 117; *Goodwin*, 42 AD3d at 68). Finally, the proposed amendment does not substantively change the claim. It merely clarifies the mechanism of the same roadway defect at the same site; it introduces no new theory, party, or event (*Pisano*, 191 AD3d at 908; *Weiss*, 136 AD3d 575).

Accordingly, having considered the totality of the record and guided by the remedial purposes of General Municipal Law § 50-e (6), the court, in its discretion, grants leave to amend the notice of claim.

Accordingly, it is

ORDERED that plaintiff's motion to amend the notice of claim pursuant to GML § 50-e(6) is granted; and it is further

ORDERED that the amended notice of claim, clarifying that the roadway defect surrounding the identified manhole at Third Avenue and East 96th Street on November 19, 2024 may have consisted of either excessive asphalt or insufficient/absent asphalt (unfinished restoration) at the same location, is deemed served *nunc pro tunc* as of the date of service of the original notice; and it is further

ORDERED that defendant shall, within 30 days of service of this decision and order with notice of entry, serve an amended response to the notice of claim if it be so advised; and it is further

ORDERED that, to the extent either party believes a limited supplemental § 50-h examination focused on the amended notice is necessary, the parties shall confer in good faith and schedule same within 60 days, or promptly seek court intervention upon impasse; and it is further

ORDERED that the parties shall proceed with discovery in the ordinary course.

This constitutes the decision and order of the court.

11/6/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		**CASE DISPOSED**		**X**	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**