SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. RICHARD TSAI** **PART** **21**

Justice

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LAETICIA EMMANUEL,

Petitioner,

- v -

MTA LONG ISLAND RAILROAD, NEW YORK CITY TRANSIT AUTHORITY, and METROPOLITAN TRANSPORTATION AUTHORITY,

Respondents.

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INDEX NO. 158818/2025

MOTION DATE 11/3/2025

MOTION SEQ. NO. 001

DECISION, ORDER, and JUDGMENT ON PETITION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 1-17 were read on this petition for DISCOVERY - PRE-ACTION.

Upon the foregoing documents, it is **ORDERED** and **ADJUDGED** that the petition for pre-action discovery is **GRANTED IN PART TO THE FOLLOWING EXTENT**:

(1) respondent Metropolitan Transportation Authority (MTA) is directed to preserve any body-worn camera footage taken on June 15, 2025 from 9:30 a.m. through 10:15 a.m. by MTA Police Department Officers Rochester Joseph (Shield 2944); Matthew Lockridge (Shield 3177); Kevin Cordero Rubiano (Shield 3331) and Richardo Jonas (Shield 2436) until September 14, 2026;

(2) each respondent is directed to preserve any video footage taken by any still cameras within the Madison Concourse of Grand Central Madison that is in its custody, possession, or control, limited to the area near the exits to East 42nd Street and Vanderbilt Avenue and to the subway, for the period from June 8, 2025 through and including June 15, 202 until September 14, 2026; and it is further

ADJUDGED that the remainder of the petition is otherwise denied.

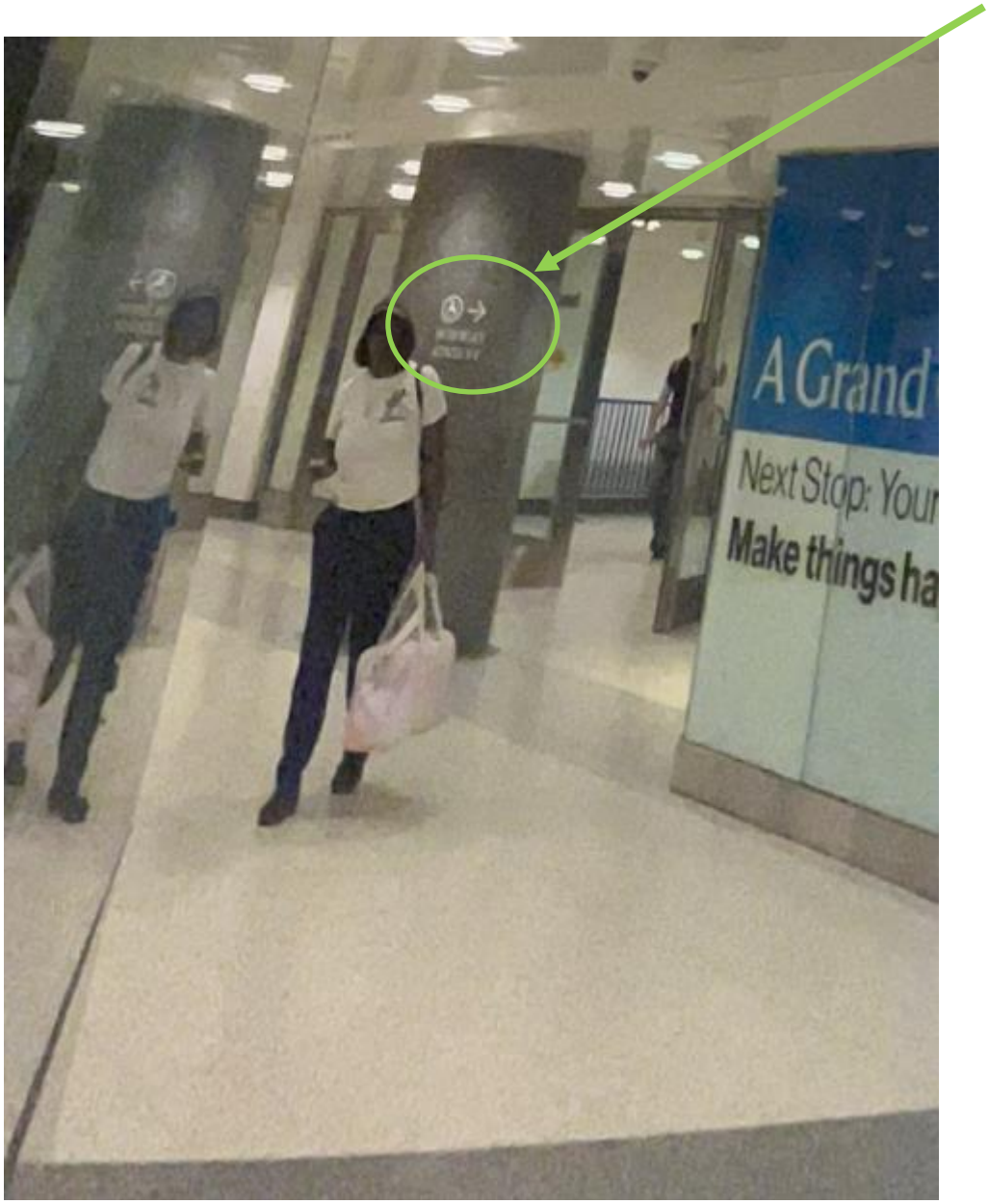
Pursuant to CPLR 3102 (c), petitioner seeks pre-action discovery from respondents in connection with an alleged slip and fall that occurred on June 15, 2025 at approximately 9:45 a.m., on the concourse connecting the Long Island Railroad to the “New York City Transit System” at Grand Central Terminal. Respondents oppose the petition, arguing that petitioner already has sufficient information to frame a complaint. Oral argument was held on November 3, 2025 on the stenographic record (William Leone, court reporter).

Petitioner avers that, on June 15, 2025, at approximately 9:45 a.m., she slipped on a wet surface in the "pedestrian tunnel" connecting the Long Island Railroad and the New York City Transit system at Grand Central (*see* Exhibit 1 in support of petition, petitioner's aff ¶ I). According to petitioner, "There was a wet substance leaking from the ceiling above the floor where I fell" (*id.*), and "a maintenance woman mopping in the area where I fell" (*id.* ¶ 4).

Petitioner stated that MTA police officers responded to the scene were wearing body cameras (*see* petitioner's aff ¶ 4). According to an aided report from the MTA Police Department, Officer Matthew Lockridge (Shield 2944) reported to the scene, assisted by Officers Rochester Joseph (Shield 3331), Kevin Cordero Rubiano (Shield 3331) and Richardo Jonas (Shield 2436) (*see* Exhibit 1). According to the report, "officers also observed a clear oily substance falling from the ceiling onto the floor near the aided" (*id.*, Exhibit 4). The report indicated that the officers were "on patrol at Grand Central Madison" and responded to the "42nd/Madison concourse"; the location of the occurrence as "E 42nd St / Vanderbilt Avenue" (*id.*).

According to a picture of the concourse area, there is a still camera, which petitioner's counsel stated at oral argument was circled in red:

(*see* Exhibit 2 in support of petition [NYSCEF Doc No. 4]). On a gray column to the far left of the photograph appears directions towards a wheelchair accessible exit to "Subway
42ND St":



The branch of the petition seeking an order of preservation of any body-worn camera footage from the MTA Police Department Officers who responded to the scene on June 15, 2025 is granted in part to the extent that the MTA is directed to preserve only the footage for the period of approximately 30 minutes before and after the alleged incident (*see White v New York City Tr. Auth.*, 198 AD3d 557 [1st Dept 2021]). The preservation of body-worn camera footage from June 15, 2025 to the present is denied as overly broad (*see generally Matter of Rosenberg v Brooklyn Union Gas Co.*, 80 AD2d 834, 834 [2d Dept 1981] [pre-action discovery of records covering a five block area for a period of three years was overly broad]).

The MTA must preserve the body-worn camera footage until September 14, 2026, which is one year and 90 days after the date of the occurrence.[1]

The branch of the petition seeking an order of preservation of any video footage taken by any still cameras is granted in part, to the extent that respondents are directed to preserve any video footage taken by any still cameras within the Madison Concourse of Grand Central Madison that are in its custody, possession, or control, limited to the area depicted in Exhibit 2 of the petition, near the exits to East 42nd Street and Vanderbilt Avenue and to the subway, for the period of one week before the alleged incident, from June 8, 2025 through and including June 15, 2025 (*see White*, 198 AD3d 557).

Petitioner's description of the area where she allegedly fell—"the pedestrian tunnel connecting the Long Island Railroad connection to the New York City Transit System train platforms at the Grand Central Terminal, New York, NY"—was vague. Grand Central Madison, the terminal which connects the Long Island Railroad to Grand Central, spans six streets, from 42nd Street to 48th Street (*see* https://www.mta.info/agency/long-island-rail-road/grand-central-madison-guide [last accessed Nov. 7, 2025]). Directing respondents to preserve video footage from the still cameras within all of Grand Central Madison is overly broad and unduly burdensome. The court has therefore limited the duty to preserve footage to the area of the Madison Concourse of Grand Central Madison that is depicted in the photograph annexed as Exhibit 2 to the petition, as described in the aided report as being within the vicinity of East 42nd Street and Vanderbilt Avenue.

Respondents must preserve the still camera footage until September 14, 2026. Respondents' duty to preserve applies only to still cameras that are in the custody, possession, or control of respondents. Respondents were unable to state at oral argument which respondent, if any, had control over the area where petitioner allegedly slipped and fell.

The preservation and production of any video footage taken by still cameras of the subject area after the date of the incident is denied.

The court disagrees with petitioner's counsel such post-incident footage would be relevant to the establishing the liability of respondents. Neither would such footage reasonably lead to the identity of any other persons who could be liable for petitioner's slip and fall. At oral argument, petitioner's counsel stated that the substance leaking from the ceiling could have been oil, from a restaurant located above the concourse. As the New York City Transit Authority (NYCTA) and MTA's counsel pointed out at oral

[1] The court has chosen one year and 90 days because that is the applicable statute of limitations for actions against respondents (*see generally* Public Authorities Law §§ 1212 [2] and 1276 [2]). As one year and 90 days from June 15, 2025 would fall on Sunday, September 13, 2026, the court has extended the duty to preserve through September 14, 2026. Nothing in this decision concerning pre-action discovery should be construed as limiting any duty to preserve such footage that could be triggered in the event that petitioner subsequently commences an action against respondents concerning the slip-and-fall incident.

argument, the pre-action discovery sought here would not be necessary to determine the name of that restaurant.

It is speculation that any persons who came after the incident to repair the alleged leak from the ceiling (who were not respondents' employees) would also be the same persons who allegedly caused the leak in the first instance. "Pre-action discovery 'is not permissible as a fishing expedition to ascertain whether a cause of action exists'" (*Bishop v Stevenson Commons Assocs., L.P.*, 74 AD3d 640, 641 [1st Dept 2010], quoting *Liberty Imports v Bourguet*, 146 AD2d 535, 536 [1st Dept 1989]).

The branch of the petition seeking production and preservation of any "reports, orders, and invoices" of the "work being performed" and for "conduit/pipe removal/repair" is denied.

At oral argument, petitioner's counsel clarified that the "work being performed" refers to any work relating to removal/repair of any conduit/pipe in the ceiling, and also to the mopping by an unidentified woman in the area where petitioner allegedly fell.

To the extent that petitioner seeks pre-action discovery to determine the identity of any third-party who purportedly performed repairs to the ceiling, such pre-action discovery is denied.

> "Pre-action discovery 'is not permissible as a fishing expedition to ascertain whether a cause of action exists' and is only available where a petitioner demonstrates that he or she has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong. Generally, the determination of whether a party has demonstrated merit lies in the sound discretion of the trial court" (*Bishop v Stevenson Commons Assocs., L.P.*, 74 AD3d 640, 641 [1st Dept 2010]).

Here, the court is not persuaded that there would be a meritorious cause of action against a contractor that installed/repaired any conduit or pipe in the ceiling from which petitioner believes the leak originated.

Under *Espinal v Melville Snow Contractors, Inc.* (98 NY2d 136, 140 [2002]), such a contractor would owe no duty to plaintiff unless the contractor (1) launched a force or instrument of harm; (2) the plaintiff detrimentally relied on the continued performance of the contracting party's duties; or (3) the contracting party has entirely displaced the other party's duty to maintain the premises safely. The only exception that could potentially apply on the record presented is whether the contractor had launched a force or instrument of harm. Petitioner's theory that faulty work of the contractor might have resulted in a leak is speculation, in the absence of any evidence such a contractor affirmatively created or exacerbated any unsafe condition (*see Welliver v T-C The Colorado LLC*, 238 AD3d 579, 580 [1st Dept 2025]). In the court's view, petitioner is clearly seeking pre-action discovery to ascertain whether a cause of action exists at all against that purported contractor.

To the extent that petitioner seeks pre-action discovery to determine the identity of the person who was mopping the floor in the area where petitioner allegedly fell, the discovery demand was overly broad, and the court declines to pare the discovery demand.

The remainder of petition is otherwise denied. As the NYCTA and MTA point out, petitioner would not need the discovery to be produced to frame a claim against respondents. At oral argument, petitioner's counsel stated that petitioner had already served notices of claim, and that petitioner appeared for a statutory hearing on September 5, 2025. In the court's view, the only purpose of the discovery sought in the remainder of the petition would be to "explore alternative theories of liability, which is not a proper basis for invoking CPLR 3102 (c)" (*Matter of Neham v New York City Tr. Auth.*, 202 AD3d 965, 966 [2d Dept 2022]).

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11/7/2025
DATE

RICHARD TSAI, J.S.C.

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