Portoles v Metropolitan Tr. Auth.
2026 NY Slip Op 30585(U)
February 17, 2026
Supreme Court, New York County
Docket Number: Index No. 157100/2025
Judge: Richard Tsai
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

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MATTHEW PORTOLES,

Petitioner,

- v -

METROPOLITAN TRANSIT AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY, MTA BUS COMPANY,

Respondents.

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INDEX NO. 157100/2025

MOTION DATE 05/30/2025

MOTION SEQ. NO. 001

DECISION + JUDGMENT ON PETITION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 1-18

were read on this petition for LEAVE TO SERVE A LATE NOTICE OF CLAIM.

Upon the foregoing documents, it is **ADJUDGED** that the petition for leave to serve a late notice of claim is **DENIED**, and the proceeding is dismissed.

Pursuant to General Municipal Law §50-e, petitioner seeks leave to serve a late notice of claim upon the Metropolitan Transportation Authority, sued herein as the Metropolitan Transit Authority (MTA), New York City Transit Authority (NYCTA), Manhattan and Bronx Surface Transit Operating Authority (MABSTOA), and MTA Bus Company. Respondents oppose the petition.

DISCUSSION

According to the proposed notice of claim, on August 26, 2024, petitioner, an NYPD Sergeant, was on duty when a bus struck his NYPD vehicle as petitioner was pulling out of an NYPD facility located at 92-15 Northern Boulevard (*see* Petitioner's Exhibit A in support of petition [NYSCEF Doc. No. 6]).

As a threshold matter, there is no legal requirement to serve a notice of claim upon the MTA Bus Company.

The MTA Bus Company is a subsidiary corporation of the Metropolitan Transportation Authority (*see Rampersaud v Metropolitan Transp. Auth.*, 73 AD3d 888 [2d Dept 2010]). A notice of claim is not required for subsidiaries of the Metropolitan Transportation Authority (*see* Public Authorities Law § 1276 [6]; *see Andersen v Long Is. R.R. Auth.*, 59 NY2d 657 [1983]; *see also Burgess v Long Is. R.R. Auth.*, 172 AD2d 302 [1991]; *Stampf v Metropolitan Transp. Auth.*, 57 AD3d 222 [1st Dept 2008]). It is

therefore academic for the court to consider whether to grant leave to serve a late notice of claim upon the MTA Bus Company where no notice of claim is legally required.[1]

Turning to the merits as to the other respondents, under General Municipal Law § 50-e (5), courts have discretion to grant an extension of time for service of a notice of claim.

> "In determining whether to grant or deny leave to serve a late notice of claim, the court must consider 'in particular' whether the municipality 'acquired actual knowledge of the essential facts constituting the claim within [90 days of the claim's accrual] or within a reasonable time thereafter.' Courts are to place 'great weight' on this factor, which the party seeking leave has the burden of establishing through the submission of nonspeculative evidence" (*Matter of Jaime v City of New York*, 41 NY3d 531 [2024] [internal citations omitted]).

> "Additionally, the statute requires the court to consider 'all other relevant facts and circumstances' and provides a 'nonexhaustive list of factors that the court should weigh'. One factor the court must consider is 'whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits' "(*Matter of Newcomb v Middle Country Cent. School Dist.*, 28 NY3d 455, 460-461 [2016] [internal citation omitted]).

The Appellate Divisions have held that courts must also consider whether petitioner has "a reasonable excuse" for the delay in filing the notice of claim (*see e.g. Matter of Vijeu v New York City Health & Hosps. Corp.*, 202 AD3d 425, 426 [1st Dept 2022]; *Matter of McLeod v Department of Sanitation*, 183 AD3d 548, 549 [1st Dept 2020]; *Matter of Salazar v City of New York*, 212 AD3d 633, 634-35 [2d Dept 2023]). "While the statute does not explicitly provide for the consideration of that factor, the statute is nonexhaustive and this factor has firmly taken root in the case law" (*Matter of Jaime*, 41 NY3d at 541).

However, the "failure to offer a reasonable excuse is not necessarily fatal" (*Clarke v New York City Tr. Auth.*, 222 AD3d 552, 553 [1st Dept 2023]; *Guerre v New York City Tr. Auth.*, 226 AD3d 897, 898 [2d Dept 2024]). "[W]here there is actual notice and absence of prejudice, the lack of a reasonable excuse will not bar the granting of leave to serve a late notice of claim" (*Guerre*, 226 AD3d at 898 [quotation marks and

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[1] Although a notice of claim is not required, Public Authorities Law § 1276 (1) nevertheless requires that a complaint in an action must allege that a pre-suit demand was made upon the subsidiary at least 30 days prior to commencement of suit against the subsidiary, and that the subsidiary "neglected or refused to make an adjustment or payment thereof" (*see Andersen*, 59 NY2d at 661).

citation omitted]). Thus, petitioner essentially needs to prove only the first two factors to be entitled to leave to serve a late notice of claim.

I. Excuse for Delay

Here, petitioner offers no excuse for the delay in serving the notice of claim. For the first time in reply, petitioner claims that “he was undergoing surgery and treatment for his injuries, and initially believed the injury might resolve without litigation” (reply affirmation of petitioner’s counsel ¶ 9 [NYSCEF Doc. No. 14]). However, that petitioner did not realize the seriousness of his injury until after the 90–day period had expired cannot be accepted as a reasonable excuse in the absence of any supporting medical documentation (*Moran v New York City Hous. Auth.*, 224 AD2d 257, 257-258 [1st Dept 1996]; *Matter of Ryan v New York City Tr. Auth.*, 110 AD3d 902, 903 [2d Dept 2013]).

II. Timely Actual Knowledge

“The actual knowledge requirement contemplates actual knowledge of the essential facts constituting the claim, not knowledge of a specific legal theory” (*Matter of Townson v New York City Health & Hosps. Corp.*, 158 AD3d 401, 403 [1st Dept 2018]; *Matter of Grande v City of New York*, 48 AD3d 565 [2nd Dept 2008]). However, “knowledge of the facts underlying an occurrence does not constitute knowledge of the claim. What satisfies the statute is not knowledge of the wrong. What the statute exacts is notice of [the] ‘claim’” (*Chattergoon v New York City Hous. Auth.*, 161 AD2d 141 [1st Dept 1990]; *see also Bullard v City of New York,* 118 AD2d 447 [1st Dept 1986]). “The statute contemplates not only knowledge of the facts, but also how they relate to the legal claim to be asserted” (*Carpenter v City of New York*, 30 AD3d 594, 595 [2d Dept 2006]).

“The evidence of actual knowledge need not be exhaustive, provided the petitioner meets the applicable evidentiary burden” (*Matter of Jaime*, 41 NY3d at 543). It bears repeating that knowledge of the collision alone would not suffice; petitioner must also demonstrate that respondents had actual knowledge that petitioner had suffered personal injuries (*see e.g. Matter of Molme v New York City Tr. Auth.*, 177 AD3d 601, 602 [2d Dept 2019]).

Here, petitioner argues respondents had actual knowledge “since it involved a vehicle owned by the Respondents herein” (affirmation of petitioner’s counsel in support of petition ¶ 26 [NYSCEF Doc. No. 3]). Petitioner also argues that respondents were “on notice” of petitioner’s claims because petitioner’s partner, Peter Powell, commenced a lawsuit against respondents and others in Supreme Court, Queens County, under index Number 707786/2025. According to petitioner’s counsel, “the facts of the lawsuit are identical to the instant matter” (*id.* ¶ 13). Lastly, petitioner argues that respondents “conducted hearings on the circumstances giv[ing] rise to Petitioner[’s] claims” (*id.* ¶ 17).

To the extent that petitioner argues that respondents acquired actual knowledge of petitioner’s claims due to the involvement of the bus, this argument fails.

When considering imputing knowledge based on an employee's involvement, "courts should not assume that every municipal employee's knowledge of essential facts is necessarily imputed to the municipality" (*Matter of Jaime,* 41 NY3d at 540). The Court of Appeals reasoned that "[a]llowing imputation in every case would undermine the purpose of the notice of claim requirement because not every employee's knowledge will necessarily afford the municipality an opportunity to commence a prompt investigation" (*id.*). "Generally, knowledge of essential facts as to time and place by an actor *in a position to investigate* will suffice" (*id.* [emphasis added]).

Because the bus operator is not "in a position to investigate" (*see e.g. Matter of Cani v New York City Health and Hosps. Corp.*, 242 AD3d 408, 409 [1st Dept 2025]), the bus operator's knowledge of the collision cannot be imputed to respondents. The appellate cases which petitioner cites in support of imputing knowledge to respondents based on the knowledge of the perpetrators pre-date *Matter of Jaime*.

To the extent that petitioner argues that respondents had timely, actual knowledge based on the lawsuit *Powell v Lewis*, Sup Ct, Queens County, index number 707786/2025, this argument fails.

In *Powell*, petitioner is named as a defendant, who was operating a vehicle bearing New York State license plate number 477119, which was involved in a collision on August 26, 2024 with Bus #530 bearing New York State license plate number AU2312, at the 115th Precinct located at 92-15 Northern Boulevard in Jackson Heights, Queens (*see* petitioner's Exhibit A in reply, complaint ¶¶ 56, 73 [NYSCEF Doc. No. 15]).

As respondents point out, petitioner did not submit any materials in the supporting papers accompanying the petition to show that the other action had conveyed any notice of petitioner's claims or injuries. Although the pleadings in *Powell* were submitted in reply, those pleadings do not show that respondents had actual knowledge that petitioner had suffered personal injuries as a result of the collision.

Even assuming, for the sake of argument, that the pleadings in *Powell* could constitute actual knowledge of petitioner's claims, respondents would not have acquired actual knowledge within 90 days after the collision or within a reasonable time thereafter.

Ninety days after the collision on August 26, 2024 fell on November 24, 2024, which was a Sunday, and so the deadline to serve a timely notice of claim was extended by operation of law to the next business day, November 25, 2024 (*see* General Construction Law § 25-a [1]). Court records reflect that *Powell* was commenced on March 18, 2025, 113 days after the 90-day period had passed, which is not a reasonable time thereafter. To this court's knowledge, the longest period which was ever considered a "reasonable time thereafter" reported in the appellate precedent was 59 days (*see Bertone Commissioning v City of New York*, 27 AD3d 222, 224 [1st Dept 2006]).

To the extent that petitioner argues that respondents acquired timely actual knowledge based on hearings, petitioner does not state when such hearings had occurred. The only hearing that petitioner specifically mentions is a "50-h hearing on December 5, 2024" in connection with a notice of claim that was served prior to the commencement of *Powell* (*see* affirmation of petitioner's counsel ¶ 12). However, because petitioner did not submit any transcript from that hearing, this argument fails.

In sum, petitioner failed to establish that respondents acquired timely actual knowledge of the essential facts constituting petitioner's claims.

III. Substantial Prejudice

"[T]he burden initially rests on the petitioner to show that the late notice will not substantially prejudice the public corporation. Such a showing need not be extensive, but the petitioner must present some evidence or plausible argument that supports a finding of no substantial prejudice" (*Matter of Newcomb*, 28 NY3d at 466).

"Once this initial showing has been made, the public corporation must respond with a particularized evidentiary showing that the corporation will be substantially prejudiced if the late notice is allowed" (*Matter of Newcomb*, 28 NY3d at 467). "Substantial prejudice may not be inferred solely from the delay in serving a notice of claim" (*id.* at 468 n 7).

Here, petitioner failed to meet the initial showing that would support a finding of no substantial prejudice.

Given all the above, the petition is therefore denied, and the proceeding is dismissed.

This constitutes the decision and judgment of the court.

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2/17/2026		RICHARD TSAI, J.S.C.
DATE		

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