

184 A.D.2d 847

(Cite as: 184 A.D.2d 847)

**C**

In the Matter of Mary A. McAdams, Respondent,  
v.

Police Department of the Town of Clarkstown et  
al., Appellants.

Supreme Court, Appellate Division, Third Depart-  
ment, New York

(June 4, 1992)

CITE TITLE AS: Matter of McAdams v Police  
Dept. of Town of Clarkstown

Levine, J.

Appeal (transferred to this court by order of the Ap-  
pellate Division, Second Department) from an order  
of the Supreme Court (Weiner, J.), entered March  
30, 1990 in Rockland County, which granted peti-  
tioner's application pursuant to [General Municipal  
Law § 50-e](#) (5) for leave to serve a late notice of  
claim.

On November 16, 1988, petitioner was injured  
when a vehicle being driven by her husband, in  
which she was riding as a passenger, was involved  
in an accident in Rockland County with a vehicle  
owned by respondent Police Department of the  
Town of Clarkstown and operated by respondent  
Michael Sullivan, a member of the Department. On  
or about November 16, 1989, approximately three  
months prior to the expiration of the one year and  
90- day Statute of Limitations (*see*, [General Muni-  
cipal Law § 50-i](#) [1]), petitioner moved for leave to  
serve a late notice of claim pursuant to [General Mu-  
nicipal Law § 50-e](#) (5). Supreme Court granted the  
motion and this appeal by respondents ensued.

We affirm. One of the principal factors to be con-  
sidered in determining whether leave to file a late  
notice of claim should be granted is “whether the  
public corporation or its attorney or its insurance  
carrier acquired actual knowledge of the essential  
facts constituting the claim within [90 days after the  
claim arose] or within a reasonable time thereafter”

([General Municipal Law § 50-e](#) [5]). Here, the re-  
cord establishes that the Department's vehicle was  
damaged in the accident and towed from the scene  
to the garage of respondent Town of Clarkstown,  
that all three individuals involved were injured and  
taken from the scene by ambulance, and that a po-  
lice accident report was prepared and police photo-  
graphs taken. Additionally, it appears from a sup-  
porting deposition given in connection with a sub-  
sequent prosecution against petitioner's husband for  
his alleged violation of [Vehicle and Traffic Law §  
1142](#) (a) that the Department conducted an investig-  
ation of the accident well within 90 days of its oc-  
currence. In view of the foregoing and the fact that  
the Department's employee was directly involved in  
the collision, we find that actual knowledge of the  
facts constituting petitioner's claim may be imputed  
to respondents (*see*, [Goodall v City of New York](#),  
179 AD2d 481; [Matter of Gerzel v City of New  
York](#), 117 AD2d 549, 550-551; [Flynn v City of  
Long Beach](#), 94 AD2d 713, 714; [Matter of Matey v  
Bethlehem Cent. School Dist.](#), 63 AD2d 807). We  
are unpersuaded by respondents' contention that,  
because the police accident report attributed the  
cause of the accident to the failure by petitioner's  
husband “to yield right of way”, they had no actual  
notice of petitioner's claim. The circumstances sur-  
rounding the accident were sufficient to alert re-  
spondents to potential liability. \*849

With regard to the other relevant factors to be con-  
sidered under [General Municipal Law § 50-e](#) (5),  
there is nothing in the record to indicate that the  
delay in the filing of the notice of claim has preju-  
diced respondents in their defense of the action on  
the merits (*see*, [Matter of Krohn v Berne- Knox-  
Westerlo Cent. School Dist.](#), 168 AD2d 826). Fi-  
nally, although petitioner's explanation for her  
delay in serving a notice of claim is weak, the ab-  
sence of a reasonable excuse is not determinative  
(*see*, [Matter of Buono v City of New York](#), 133  
AD2d 685, 686; [Matter of Gerzel v City of New  
York](#), *supra*, at 551; [Matter of Cicio v City of New](#)

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*York*, 98 AD2d 38, 39). Accordingly, we conclude that Supreme Court properly exercised its discretion in granting petitioner's motion for leave to file a late notice of claim.

Mikoll, J. P., Yesawich Jr., Mercure and Harvey, JJ., concur.

Ordered that the order is affirmed, with costs.

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N.Y.A.D.,1992.

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