COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

August 12, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Wolf, Douglas and Steid, Jared v. Town of Orchard Park, City of Buffalo, County of Erie and John Does 1 through 50*
Document Received:	Notice of Motion with Motion
Name of Claimants:	Douglas Wolf & Jared Steid
Claimant's attorney:	Jeffrey Voelkl, Esq. Robshaw & Voelkl, P.C. 5672 Main Street Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enc.

This paper received at the
Erie County Attorney's Office
from David Cu. tm on
the 9th day of Aug, 2013
at 1:06 a.m./p.m.
Assistant County Attorney

In the Matter of the Claim of

DOUGLAS E. WOLF AND JARED STEIN,

Claimants,

v.

THE TOWN OF ORCHARD PARK, THE CITY OF BUFFALO, THE COUNTY OF ERIE AND JOHN DOES 1 THORUGH 50

Defendants.

NOTICE OF MOTION

Index No. 2013/002338

PLEASE TAKE NOTICE that DOUGLAS E. WOLF of 2030 Eastern Avenue, Erie, Pennsylvania 16510, and JARED STEIN, of P.O. Box 8346, Erie, PA 16505, ('Claimants"), by and through their attorney on September 12, 2013 at 9:30 am/pm at a Special Term of this Court located at Part 29 50 Delaware Ave, Buffalo New York hereby moves this Court for relief to file a late Notice of Claim pursuant to the attached supporting petition and exhibits.

FAID
08/08/2013/ 16:06:27
ERIE COUNTY CLERK
RCPT # 131266626
I 2013002338

PLR 2214(b) or 3213 Demand: Answering ffidavits/papers and any notice of cross-motion, with upporting papers, if any, shall be served at least 10 ays before the above return date/date of hearing.

Ronald DiNicola, Esq.
DiNicola Law Offices
1001 State Street, Suite, 1400,
Erie, Pennsylvania, 16501
(814) 451-1118

8-8-13
Jeffrey Voelkl, Esq.
Robshaw & Voelkl, P.C.
5672 Main Street,
Williamsville, New York, 14221.
(716) 633-4030

Counsel for Claimants Douglas E. Wolf and Jared Stein

In the Matter of the Claim of DOUGLAS E. WOLF AND JARED STEIN, Claimants, v. THE TOWN OF ORCHARD PARK, THE CITY OF BUFFALO, THE COUNTY OF ERIE AND JOHN DOES 1 THORUGH 50 Defendants.	:	**MOTION FOR LEAVE TO SERVE LATE NOTICE OF CLAIM** Index No. 2013/002338

PLEASE TAKE NOTICE that the above-named Claimants hereby file this Motion for Leave to Serve Late Notice of Claim pursuant to Section 50-e.5 of the General Municipal Law of the New York Code ("N.Y. Code §50-e.5") and in support thereof allege as follows:

1. The Notice of Claim that is the subject of this motion is presented for fling and service pursuant to N.Y. Code §50-e. A true and correct copy of the Notice of Claim is attached hereto as Exhibit A.

2. The Notice of Claim is presented against the Town of Orchard Park, New York ("Orchard Park"), the City of Buffalo, New York ("Buffalo"), and the County of Erie, New York (the "County," together with Orchard Park and Buffalo the "Municipal Defendants") in connection with their negligent training, deployment and supervision of various sheriff deputies, officers and other security personnel (collectively "Officer Defendants") and in the operation of the Stadium, which negligence proximately caused serious bodily injury and other damages to Claimants. The Officer Defendants, named in the Notice of Claim as John Does pending their identification, were negligent in their

failure to provide adequate security to Claimants as more particularly set forth in the Notice of Claim. The Municipal Defendants together with the Officer Defendants are referred to herein collectively as the Defendants.

3. The events giving rise to the Notice of Claim occurred on November 15, 2012, at or near Ralph Wilson Stadium (the "Stadium") located at 1 Bills Drive, Orchard Park, New York. Claimants are informed and believe and based thereon allege that at all relevant times the Stadium was owned by the County and operated under a long term lease between the County and the Buffalo Bills football club of the National Football League.

4. On or about November 15, 2012, following a Buffalo Bills game at the Stadium, Claimants were confronted by a group of males (hereinafter the "Assailants") at a location immediately outside the main gate of the Stadium while Claimants were exiting the Stadium on foot and proceeding to their automobile.

5. Claimants are informed and believe and based thereon allege that the Assailants had previously been ejected from the Stadium by security, were intoxicated at a time prior to and during the confrontation with Claimants and were in the possession of one or more glass bottles of alcohol at the time of the confrontation with Claimants.

6. Claimants were attacked and beaten by the Assailants. In particular, Claimant Douglas E. Wolf was struck in the eye with a glass bottle by one of the Assailants later identified as Vincent P. Paterno. Claimant Jared Stein was struck about the head, neck and shoulders by another of the Assailants. As a result of the attack the Claimants suffered serious and permanent injuries.

7. Claimants are informed and believe and based thereon allege that in or about May 2013, Paterno pled guilty in the Orchard Park Town Court at Case No. 13010122 to one or more criminal charges filed against him in connection with the November 15, 2012 assault of Claimants. At about that time, Paterno tendered settlement to Claimant Wolf in the amount of $837 along with a request for a full release. The Claimants rejected the offer on June 21, 2013. The tender and the rejection are attached hereto as Exhibit B.

8 Under the provisions of N.Y. Code §50-e.5, good cause exists for the granting of the instant Motion for Leave to Serve Late Notice of Claim. In granting leave to serve a late notice of claim, a court may consider among other things "whether the public corporation or its attorney...acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one or within a reasonable time thereafter;" where a claimant "failed to serve a timely notice of claim by reason of his justifiable reliance upon settlement representations made by an authorized representative of the public corporation...," (N.Y. Code §50-e.5), or "whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits." Each of these factors is satisfied in the present case and warrants the granting of this motion.

9. This action is brought at this time because during the pendency of the investigation of the incident and the resultant criminal proceedings against Assailant Paterno, Claimant Wolf was advised by representatives of the County including an assistant district attorney and sheriff deputies that the Claimants could and should defer the retention of legal counsel and the commencement of any civil action until such time

as the criminal action was resolved. The Claimants understood that forbearing from the filing of a civil action was without prejudice, that it would aid the prosecution and that the resolution of the criminal proceeding would involve a payment of restitution that would approximate the damages suffered by the Claimants. In reliance thereon, Claimants deferred taking any civil action until the conclusion of the criminal proceedings. This Motion is being made promptly after the conclusion of the criminal case against Paterno and the corresponding tender by Paterno of a sum in restitution wholly inadequate to compensate Claimant Wolf for his permanent eye injury. The foregoing is a factor under N.Y. Code §50-e.5 warranting the allowance of this motion.

10. In addition, the Municipal Defendants, including the County "acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one of this section." The Erie County Sheriff's office investigated the incident that is the subject of this claim and prepared a report of the incident at or about the time of its occurrence. See, Exhibit C, Erie County Sheriff's Office Police Report. Likewise, the Erie County District Attorney prosecuted Vincent P. Paterno and others in the Orchard Park Town Court. See Exhibit D, Summons directed to Douglas Wolf in the matter of People v. Paterno. The District Attorney's office then invited the Claimants to seek victim compensation. See, Exhibit E, letter of 12/12/12 enclosing application for victim compensation.

12. Thus both the County and the Town of Orchard Park had actual knowledge of the event. Claimants are informed and believe and based thereon allege that Buffalo must have had actual knowledge since it owns the Stadium and is ultimately responsible for security and the hiring of security personnel to patrol and keep order in

the stadium. All of these entities had had specific knowledge of the "facts that were the bases for the claims." Matter of Williams v City of New York, 2008 N.Y. Misc. LEXIS 9366 (N.Y. Sup. Ct. Aug. 7, 2008). Finally, given these factors and as specified in N.Y. Code §50-e.5, there is no prejudice to the Defendants in the granting of the instant motion. See, N.Y. Code §50-e.5 (lack of prejudice factor to be considered in permitting late notice of claim).

WHEREFORE, Claimants requests that the Motion for Leave to Serve Late Notice of Claim be granted pursuant to N.Y. Code section 50-e.5.

Dated: August 6, 2013

Ronald DiNicola, Esq.
DiNicola Law Offices
1001 State Street, Suite, 1400,
Erie, Pennsylvania 16501
(814) 451-1118

Jeffrey Voelkl, Esq.
5672 Main Street,
Williamsville, New York, 14221.
(716) 633-4030

EXHIBIT A

In the Matter of the Claim of	:	
DOUGLAS E. WOLF AND JARED STEIN,	:	
Claimants,	:	
v.	:	**NOTICE OF CLAIM**
THE TOWN OF ORCHARD PARK, THE CITY OF BUFFALO, THE COUNTY OF ERIE AND JOHN DOES 1 THORUGH 50	:	
Defendants.	:	

PLEASE TAKE NOTICE that DOUGLAS E. WOLF of 2030 Eastern Avenue, Erie, Pennsylvania 16510, and JARED STEIN, of P.O. Box 8346, Erie, PA 16505, ('Claimants"), hereby make this claim against the Town of Orchard Park, New York ("Orchard Park"), the City of Buffalo, New York ("Buffalo"), the County of Erie, New York (the "County"), and John Does 1 through 50 and in support thereof allege as follows:

1. This Notice of Claim is made and presented pursuant to section 50-e of the General Municipal Law of the New York Code.

2. The events giving rise to the claim alleged herein occurred at or near Ralph Wilson Stadium ("Stadium") located at 1 Bills Drive, Orchard Park, New York. Claimants are informed and believe and based thereon allege that at all relevant times the Stadium was owned by the County and operated under a long term lease between the County and the Buffalo Bills football club of the National Football League.

3. This Notice of Claim is made and presented against the Orchard Park, Buffalo and the County (collectively the "Municipal Defendants") in connection with their negligent training, deployment and supervision of various sheriff deputies, officers and other security personnel (collectively "Officer Defendants") and in the operation of the Stadium, which negligence proximately caused serious bodily injury and other damages to Claimants.

4. The Officer Defendants, named in the Notice of Claim as John Does 1 through 50 pending their identification, were negligent in their failure to provide adequate security to Claimants as more particularly set forth below.

5. The Municipal Defendants together with the Officer Defendants are referred to herein collectively as the Defendants.

6. On or about November 15, 2012, following a Buffalo Bills game at the Stadium, Claimants were confronted by a group of males (hereinafter the "Assailants") at a location immediately outside the main gate of the Stadium while Claimants were exiting the Stadium on foot and proceeding to their automobile.

7. Claimants are informed and believe and based thereon allege that the Assailants had previously been ejected from the Stadium by security, were intoxicated at a time prior to and during the confrontation with Claimants and were in the possession of one or more glass bottles of alcohol at the time of the confrontation with Claimants.

8. Claimants were attacked and beaten by the Assailants. In particular, Claimant Douglas E. Wolf was struck in the eye with a glass bottle by one of the

Assailants later identified as Vincent P. Paterno. Claimant Jared Stein was struck about the head, neck and shoulders by another of the Assailants. As a result of the attack the Claimants suffered serious and permanent injuries.

9. Claimants are informed and believe that in or about May 2013, Paterno pled guilty in the Orchard Park Town Court at Case No. 13010122 to one or more criminal charges filed against him in connection with the November 15, 2012 assault of Claimants.

10. Given the nature of the activities at the Stadium of which Defendants were aware including, but not limited to, the pervasiveness of alcohol consumption by patrons, the high incidence of violence at the Stadium during and after football games and the vulnerability of patrons to random attack while exiting the Stadium, the Defendants understood and undertook the responsibility of providing police protection in and around the Stadium to vulnerable patrons.

11, As a result, Defendants occupied a special relationship with patrons of the Stadium including the Claimants which gave rise to a duty to provide them with safe corridors of exit after a game. The Defendants owed a duty to Claimants to identify and isolate potential assailants.

12. Defendants breached their duty to Claimants by, among other things:

(a) Failing to take reasonable steps to prevent the attack on the Claimants;

(b) Failing to respond and/or address the safety needs of Claimants;

(c) Failing to provide adequate uniformed and other security at the Stadium including in the area immediately outside of the Stadium and leading to the parking lots;

(d) Failing to prevent access to the Stadium and/or the surrounding area to persons under the influence of alcohol and/or exhibiting hostile, disorderly, and/or violent behavior;

(e) Failing to eject form the Stadium and/or the surrounding area persons under the influence of alcohol and/or exhibiting hostile, disorderly, and/or violent behavior;

(f) Failing to prevent the unreasonable consumption of alcohol by person exhibiting visible signs of intoxication or the influence of drugs;

(g) Failing to provide adequate lighting in the area where the attacks took place,

(h) Failing to arrest the Assailants earlier when the Assailants were ejected from the Stadium for drunkenness and disorderly conduct,

(i) Ejecting persons, including the Assailants, from the Stadium because of intoxication, hostile, violent and/or disorderly conduct, but not removing them from the area outside the Stadium and thus leaving them in an area of inadequate security to prey on other patrons;

(j) Providing security in a manner that was below the industry- wide standard for security and safety at such events, and below Defendants' standards to guard and protect the public;

(k) Failing to stop the assault as soon as possible and allowing the assault to escalate and cause serious injury to the Claimants; and

(l) Failing to adequately select, train and supervise the Security Personnel to prevent the acts and omission herein alleged.

13. Claimants are informed and believe and based thereon allege that the Defendants had reasonable cause to anticipate criminal acts of third parties and the probability of injury arising from them and had notice that the serving of alcohol at a sporting event could incite violent criminal behavior. The Defendants failed to take affirmative steps to control the wrongful conduct at the Stadium and the surrounding area as herein alleged.

14. Claimants are informed and believe and based thereon allege that there have been other similar incidents (involving serious bodily injury to Stadium patrons) of which the Defendants had knowledge and that placed the Defendants on notice of the dangerous and unsafe condition for patrons both inside and outside the Stadium.

15. As a result of the acts and omissions of the Defendants set forth hereinabove, Defendants breached their duty to the Claimants.

16. Defendants acts and omissions constitute malice, oppression and/or a willful and conscious disregard of the rights and safety of Claimants entitling Claimants to punitive damages.

17. As a direct and proximate cause of the aforementioned acts and omissions, Claimants was exposed to the aggressive and violent acts of third parties and suffered serious injury, including but not limited to, severe, permanent and painful injuries, internal as well as external, resulting in pain, suffering, loss of enjoyment of life and economic loss including lost wages. Claimants have been and will be compelled to expend large sums of money for medical bills.

18. At all times mentioned herein, the Officer Defendants were the agents, servants and/or employees of and acting within the course and scope of said agency and employed by and under the control of the Municipal Defendants and under the control of the owners and operators of the Stadium and the Buffalo Bills football club.

19. Claimants are informed and believe and based thereon allege that in or about May 2013, Assailant Paterno pled guilty in the Orchard Park Town Court at Case No. 13010122 to one or more criminal charges filed against him in connection with the November 15, 2012 assault of Claimants. At about that time, Paterno tendered settlement to Claimant Wolf in the amount of $837 along with a request for a full release. The Claimants rejected the offer on June 21, 2013.

20. Under the provisions of N.Y. Code §50-e.5, good cause exists for the bringing of this Notice of Claim at this time. During the pendency of the investigation of the incident and the resultant criminal proceedings against Assailant Paterno, Claimant

Wolf was advised by representatives of the County including an assistant district attorney and sheriff deputies that the Claimants could and should defer the retention of legal counsel and the commencement of any civil action until such time as the criminal action was resolved. The Claimants understood that forbearing from the filing of a civil action was without prejudice, that it would aid the prosecution and that the resolution of the criminal proceeding would involve a payment of restitution that would approximate the damages suffered by the Claimants. In reliance thereon, Claimants deferred taking any civil action until the conclusion of the criminal proceedings. The foregoing is a factor under N.Y. Code §50-e.5 warranting the allowance of this Notice of Claim at this time.

21. In addition, the Municipal Defendants, including the County "acquired actual knowledge of the essential facts constituting the claim within a short time following the incident. The Erie County Sheriff's office investigated the incident that is the subject of this claim and prepared a report of the incident at or about the time of its occurrence. Likewise, the Erie County District Attorney prosecuted Paterno and others in the Orchard Park Town Court. The District Attorney's office then invited the Claimants to seek victim compensation. Thus both the County and Orchard Park had actual knowledge of the event. Claimants are informed and believe and based thereon allege that the Buffalo must have had actual knowledge since it owns the Stadium and is ultimately responsible for security and the hiring of security personnel to patrol and keep order in the stadium. All of these entities had had specific knowledge of the facts that were the bases for the claims.

WHEREFORE, Claimants requests that the claim be allowed and paid for by the Defendants in a sum pursuant to law and according to prrof.

Ronald DiNicola, Esq.
DiNicola Law Offices
1001 State Street, Suite, 1400,
Erie, Pennsylvania, 16501
(814) 451-1118

8-7-13

Jeffrey Voelkl, Esq.
Robshaw & Voelkl, P.C.
5672 Main Street,
Williamsville, New York, 14221.
(716) 633-4030

Counsel for Claimants Douglas E. Wolf and Jared Stein

EXHIBIT B

MOHUN & KILLELEA
Michael M. Mohun
344 Kern Road
Cowlesville, New York 14037-9734
Tel: (585) 937-8987
Fax: (585) 937-8988
email: mmohun@aol.com
Website: www.mohunlaw.com
May 7, 2013

Mr. Douglas Wolf
2030 Eastern Avenue
Erie, PA 16510

Dear Mr. Wolf:

This will confirm that this office represents Vincent Paterno. Enclosed please find First Niagara teller check in the amount of $837.21 representing the restitution amount together with a general release. Please sign this release before a notary public and return to my office in the enclosed stamped, self-addressed envelope.

Very truly yours,

Michael M. Mohun

MICHAEL M. MOHUN

MMMjm
Enclosure
cc: Timothy Garvin, ADA
Orchard Park Justice Court

FIRST NIAGARA

PAYABLE AT
First Niagara Bank
ROCHESTER, NY 14604

TELLER CHECK

5546082566

50-7044/2223

REMITTER VINCENT P PATERNO

05/04/2013

PAY ***EIGHT HUNDRED THIRTY SEVEN and 21/100***USDollars

$837.21

TO THE ORDER OF DOUG WOLF

BRANCH NUMBER: 918

AUTHORIZED SIGNATURE

⑈5546082566⑈ ⑆222370440⑆ 7166259130⑈

GENERAL RELEASE

KNOW YE, that DOUG WOLF, the Grantor, for and in consideration of the sum of Eight Hundred Thirty-Seven 21/100 dollars ($837.21), lawful money of the United States of America to the Grantor in hand paid by VINCENT PATERNO, the Grantee, the receipt whereof is hereby acknowledged, and the Grantor has remised, released, and forever discharged and by these presents does for the Grantor's successors and assigns, heirs, executors, and administrators, remise, release, and forever discharge the said Grantee's successors and assigns, heirs, executors, and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or in equity, which against the said Grantee, Grantor ever had, now has, or which the Grantor's assigns and successors, heirs, executors, and administrators, hereafter can, shall, or may have for, upon or by reason of any matter, cause, or thing, whatsoever from the beginning of the world to the date of the date of these presents. Rights against parties not named herein are reserved.

SIGN HERE

_____
DOUG WOLF

NOTARIZE

STATE OF PENNSYLVANIA)
COUNTY OF _____) ss:

On the ____ day of May, 2013, before me, the undersigned, a notary public in and for said state, personally appeared DOUG WOLF, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

DiNicola Law Offices

1001 State Street
Erie, Pennsylvania 16501
Telephone: 814-451-1118
Fax: 814-838-0676
ronald@dinicolagroup.com

RONALD A. DINICOLA
ADMITTED IN CALIFORNIA
NEW YORK AND PENNSYLVANIA

June 21, 2013

VIA EMAIL MOHUN@AOL.COM
AND U.S. MAIL
Michael M. Mohun
Mohun & Killelea
344 Kern Road
Cowlesville, New York 14037-9734

Re: Douglas E. Wolf ads. Vincent Palerno

Dear Mr. Mohun:

This office was recently retained by Douglas E. Wolf. We are in receipt of your letter on behalf of Vincent Palerno dated May 7, 2013 to Mr. Wolf enclosing a teller's check in the amount of $837.21 accompanied by a general release. We believe your correspondence relates to the assault on Mr. Wolf by Mr. Palerno that occurred on or about November 15, 2012 at or near Ralph Wilson Stadium.

Your letter requests that Mr. Wolf execute the release. We are returning to you with this letter both the check, which has not been endorsed, and the general release unsigned.

To the extent this check is tendered pursuant to a court-ordered obligation on the part of Mr. Palerno to make restitution to Mr. Wolf, we do not believe Mr. Palerno can properly condition the payment of restitution on Mr. Wolf's execution of a release. Accordingly, on that basis, Mr. Wolf rejects your client's tender of payment.

This letter is not intended to be a full recitation of the facts related to this matter' or a waiver of any of Mr. Wolf's rights or remedies with regard to this matter or the incident at Ralph Wilson Stadium, all of which rights and remedies are hereby expressly reserved.

Please feel free to contact me if you have any questions.

Very truly yours,

DiNicola Law Offices

Ronald A. DiNicola

RAD/jr

Cc' Timothy Garvin, Esq.
Assistant District Attorney
Orchard Park Justice Court
4295 South Buffalo Street
Orchard Park, New York 14127

EXHIBIT C

Erie County Sheriff's Office
POLICE REPORT
ASSAULT 3RD

Complaint
12-078873
Report Date & Time
11/15/2012 23:30

INCIDENT

Address of Occurrence	District	Tract	Occ Date & Time	Day of Week	Type of Premise
1 BILLS DR			11/15/2012 22:00	Thursday	Other Public Access

Status	Follow Up By	Supl	TT Mess#	TT Entry Date	TT Cancel#	TT Cancel Date
Investigation Pending		N				

Officers: 201 - BARBARITZ
87 - ELY

Rep. Off.: 201 - BARBARITZ
Supervisor: CAPT3 - SAVAGE

Victim

Last Name	First Name	MI	Ext	Birth Date	Race	Sex	Age	Juvenile	Arrested	Report
WOLF	DOUGLAS	E		03/07/1960	White	M	52	N	N	PR

Address	City	State	Zip	Home Phone	Work Phone
2030 EASTERN AV	ERIE	PA	16510	(814) 323-5437	

Height | Weight | Hair | Eyes | Build | Complexion | Glasses | Scars/Marks/Tattoos

Subject

Last Name	First Name	MI	Ext	Birth Date	Race	Sex	Age	Juvenile	Arrested	Report
TITANIC	ADAM	N		11/09/1992	White	M	20	N	N	PR

Address	City	State	Zip	Home Phone	Work Phone
146 DELTA RD	AMHERST	NY		(716) 834-8314	(716) 866-2048

Height | Weight | Hair | Eyes | Build | Complexion | Glasses | Scars/Marks/Tattoos

Subject

Last Name	First Name	MI	Ext	Birth Date	Race	Sex	Age	Juvenile	Arrested	Report
PATERNO	ANTHONY	J		06/06/1993	White	M	19	N	N	PR

Address	City	State	Zip	Home Phone	Work Phone
170 DELLWOOD RD	AMHERST	NY	14226	(716) 861-0907	

Height | Weight | Hair | Eyes | Build | Complexion | Glasses | Scars/Marks/Tattoos

Associated Person

Last Name	First Name	MI	Ext	Birth Date	Race	Sex	Age	Juvenile	Arrested	Report
WOLF	NOAH	D		12/20/1989	White	M	22	N	N	PR

Address	City	State	Zip	Home Phone	Work Phone
2030 EASTERN AV	ERIE	PA			

Height | Weight | Hair | Eyes | Build | Complexion | Glasses | Scars/Marks/Tattoos

OFFENSES

Law	Section	CA	CL	DG	Description	Report
PL	120.00-03	M	A	3	ASSAULT 3RD: CRIM NEGLIGENCE CAUSE INJURY W/WEAP	PR

NARRATIVE

POLICE REPORT Date Entered: 11/17/2012 16:10 Typist: DAVID BARBARITZ Officer: 201-BARBARITZ

Patrol was sent to North Side Security at Ralph Wilson Stadium in regards to an assault. Patrol interviewed subject, Adam Titanic who denied any involvement in a assault. Adam told patrol that he was with his friend, Anthony Paterno at the game but did not know where Adam went during the melee. Victim and his son Noah had already been transported to ECMC for evaluation and patrol was unable to conduct an interview. Security at North Side stated they had no other witnesses of the assault. Adam was released and advised that he would be contacted for a interview in the future. Patrol was able to follow up with the victim,Douglas Wolf on Saturday 11/17/2012 by telephone and he gave the following statement of facts. Doug was leaving the stadium with his son, daughter and her daughters boyfriend. Doug's other son had just been removed by stadium security for a incident with another fan and they all were going to head home. Three men walked past Doug and his family and made rude obscene remarks to them as his family was wearing Dolphins attire. Doug's son and one of the three began to fight and Doug;s son Noah was knocked unconscious to the ground. Another one of the three subjects began to go after his daughter and both Doug and the daughters boyfriend attempted to intervene. At this time Doug was struck by what he believed to be a bottle of beer across his face and dropped to the ground. Doug has no doubt that Adam Titanic is on of the three individuals that was involved in the assault. Doug and Noah were treated at

ECMC and released. Doug has three broken bones around his eye socket. Report referred to Detective bureau .

Our Copy

Has insurance
Griener
Det. Jack Graham
667-5282

2. Jersey's

EXHIBIT D

Orchard Park Town Court

4295 South Buffalo Street
Orchard Park, NY 14127

Edward A. Pace
Town Justice

Phone: (716) 662-6415
Fax: (716) 662-6416

January 25, 2013

Doug Wolf
2030 Eastern Avenue
Erie, PA 16510

People of the State of New York versus:

Vincent P. Paterno
170 Dellwood Road
Amherst, NY 14226

Case No: 13010122
DOB: 05/07/1990
REF: 12078873

TicketNo.	Officer	Statute/Section	Charge Text
	Noecker, Matthew	PL 120.00 01	ASSAULT 3

Next Date: 03/26/2013 Time: 03:00PM

Please be advised that the Assistant District Attorney has requested your appearance on the above captioned matter.

Your presence is mandatory, at the date and time above.

If you have any questions, please feel free to contact the Erie County District Attorney's Office at (716) 858-2650.

Very truly yours,

Orchard Park Town Justice

Talked to Kathy

Asst. District Attorney Timothy Garvin

EXHIBIT E

OFFICE OF THE ERIE COUNTY DISTRICT ATTORNEY

FRANK A. SEDITA, III
DISTRICT ATTORNEY

December 12, 2012

MR DOUGLAS WOLF
2030 EASTERN AVE
ERIE PA 16510

Dear MR.WOLF:

Enclosed you will find a New York State Office Of Victims Services claim application. As we discussed, please complete all highlighted sections on each.

Additionally, attach copies of any available supporting documentation received to date. Supporting documentation may include medical bills, essential personal property receipts, employment pay stub, etc. More specifically any paper work that was given to you from ECMC on the date of incident.

Forward the original claim and supporting documentation copies to me as I have included my contact information. I will send it to:

New York State
Office Of Victim Services
1 COLUMBIA CIRCLE, SUITE 200
ALBANY, NY 12203-6383

If you need further assistance, please contact me at 858-4644.

Very truly yours,

FRANK A. SEDITA III
DISTRICT ATTORNEY

Rosalind Miller

By: ROSALIND MILLER
VICTIM WITNESS CASE AIDE
Victim/Witness Assistance Program

[**2] **In the Matter of PAUL WILLIAMS, Petitioner, against CITY OF NEW YORK, Respondent.**

Index Number 107025/2008

SUPREME COURT OF NEW YORK, NEW YORK COUNTY

2008 N.Y. Misc. LEXIS 9366; 2008 NY Slip Op 32248(U)

August 7, 2008, Decided

NOTICE: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS

COUNSEL: [*1] For the Petitioner: Covington & Burlington, LLP, By: Mari K. Bonthuis, Esq., New York, NY.

For the Respondent: Michael A. Cardozo, Esq., Corporation Counsel of the City of New York, By: William A. Grey, Esq., New York, NY.

JUDGES: PAUL G. FEINMAN, J.S.C.

OPINION BY: Paul G. Feinman

OPINION

DECISION, ORDER AND JUDGMENT

PAUL G. FEINMAN, J.:

Pursuant to GML § 50-e(5), petitioner Paul Williams seeks leave to serve a late notice of claim upon respondent City of New York. For the reasons which follow, the petition is granted.

Factual and Procedural Background

Petitioner alleges that he was assaulted by two New York City police officers on March 21, 2007 when they arrested him at his home. Petitioner claims that one of the officers struck him in the head with a blunt object. He was taken to Metropolitan Hospital Center, a City hospital, and treated for lacerations to the head (OSC Bonthius Aff. Ex. C). According to the hospital Chart Review Print, petitioner complained to the hospital staff that he was struck by a [**3] police officer (*id.* ["36 [year old] male [brought in by the] police with c/o cut to right side of scalp after being hit with club by police."]). Petitioner claims that he suffers from "headaches and other side effects" [*2] as a result of his injuries (OSC Bonthius Aff. Ex. B).

On May 1, 2007, petitioner's girlfriend, with whom he lives, filed a notice of claim against the City for property damage to her apartment, claimed that the police confiscated $ 1200, and that she and her "family" suffered "emotional distress and mental anguish . . . as a result of being physically and unlawfully assaulted and publicly embarrassed" (OSC Bonthius Aff. Ex. A). Petitioner asserts that he "was unable to retain counsel within ninety days of the assault because of his indigent

status, and had to wait until a lawyer agreed to take his case on a *pro bono* basis" (OSC Bonthius Aff. P 19). On April 7, 2008, after he met with counsel, petitioner filed a notice claim against the City (OSC Bonthius Aff. Ex. B). Petitioner now seeks permission to serve a late notice of claim against respondent.

Petitioner's attorney argues that the delay in filing the notice of claim is reasonable. Petitioner asserts that he initially believed that his girlfriend's Notice of Claim was sufficient to protect his potential claim. Petitioner argues that there is no prejudice against the City because it had actual notice of the claim through: (1) the [*3] hospital records that stated he alleged that he was struck in the head by the police officer, (2) another police officer who witnessed the accusation at the hospital, (3) the officers who allegedly assaulted the petitioner, and (4) the girlfriend's Notice of Claim (OSC Bonthius Aff. PP 12-17).

The City opposes the petitioner's application seeking permission to file a late notice of claim. The City first argues that the application should be denied because the petitioner fails to articulate an adequate excuse for his delay. The City asserts that petitioner's excuse "amounts to [**4] nothing more than being unaware of the statutory requirement," and that "[m]erely being unaware of the 'statutory requirement for serving a timely notice of claim' is an 'unacceptable excuse'" (Res. Aff. P 10 [quoting *Pico v City of New York*, 8 AD3d 287, 288, 777 N.Y.S.2d 697 [2d Dept. 2004]]).

The City next argues that the application should be denied because it never acquired actual knowledge of the claim within the statutory period. The City argues that even if it had knowledge of the occurrence of the accident and injury, this does not constitute actual knowledge of the claim. The City additionally argues that the application [*4] should be denied because it did not have an opportunity to investigate the allegations in a timely fashion. The City asserts that "[a]t this delayed point in time, all investigative efforts would prove inadequate. Thus, the City claims it is deprived of any opportunity to investigate the allegations" (Res. Aff. P 19).

Discussion

Pursuant to General Municipal Law § 50-e(1)(a), "any case founded upon tort" where the City is a defendant, "the notice of claim shall be . . . served . . . within ninety days after the claim arises." "It is well settled that General Municipal Law § 50-e(5) permits the court to consider all relevant factors and to exercise considerable discretion in determining whether to permit late service of claim" (*Baldeo v City of N.Y.*, 127 AD2d 809, 809, 511 N.Y.S.2d 937 [2d Dept. 1987]).

In making this determination the Court first considers whether "the claimant demonstrated a reasonable excuse for the failure to serve a timely notice of claim" (*Matter of Chambers v Nassau County Health Care Corp.*, 50 AD3d 1134, 1134, 857 N.Y.S.2d 222 [2d Dept. 2008]; *see* General Municipal Law § 50-e[5]). Suffering a debilitating injury resulting from an alleged accident has been seen as a reasonable excuse for filing a [*5] late notice of claim (*Matter of Strauss* [**5] *v New York City Trans. Auth.*, 195 AD2d 322, 322, 600 N.Y.S.2d 32 [1st Dept. 1993] [noting that the petitioner's injuries prevented her from filing a timely notice of claim]). Failure to identify the proper public corporation against which the claim should have been brought has also been found to be a reasonable excuse (*Baldeo*, 127 AD2d at 809). However, simply being "unfamiliar with statutory requirement

for serving a timely notice of claim" is not a reasonable excuse for filing a late notice of claim (*Pico v City of N.Y.*, 8 AD3d 287, 287, 777 N.Y.S.2d 697 [2d Dept. 2004]). Similarly, merely waiting to retain counsel is not a reasonable excuse (*Matter of Gilliam v City of N.Y.*, 250 AD2d 680, 680, 673 N.Y.S.2d 172 [2d Dept. 1998]).

The Court also considers whether "the [City] acquired actual knowledge of the facts constituting the claim within 90 days of its accrual or a reasonable time thereafter" (*Chambers*, 50 AD3d at 1134; *see* General Municipal Law § 50-e[5]). "The relevant inquiry is whether the [City] had actual knowledge of the facts--as opposed to the legal theory--underlying the claim" (*Matter of Dumancela v New York City Health & Hosps. Corp.*, 32 AD3d 515, 516, 820 N.Y.S.2d 136 [2d Dept. 2006]). The petitioner [*6] has the burden of establishing this element (*Washington v City of N.Y.*, 72 NY2d 881, 883, 528 N.E.2d 513, 532 N.Y.S.2d 361 [1988]). "Where . . . members of the municipality's police department participate in the acts giving rise to the claim, and *reports and complaints have been filed by the police*, the municipality will be held to have actual notice of the essential facts of the claim" (*Matter of Ragland v New York City Hous. Auth.*, 201 AD2d 7, 11, 613 N.Y.S.2d 937 [2d Dept. 1994] [emphasis in original]). The City may also acquire actual of the facts constituting petitioner's claim from another party's notice of claim (*see Heredia v City of N.Y.*, 141 AD2d 473, 474, 529 N.Y.S.2d 793 [1st Dept. 1988] [holding that the City had actual knowledge of a shooting victim's claim from another victim's notice]). City records may also provide actual knowledge (*but see* [**6] *Williams v Nassau County Medical Center*, 6 NY3d 531, 538, 847 N.E.2d 1154, 814 N.Y.S.2d 580 [2006] ["Merely having or creating hospital records, *without more*, does not establish actual knowledge of the facts--as opposed to the legal theory--underlying the claim."] [emphasis added]).

Finally the Court will consider whether "the delay would substantially prejudice the public corporation in defending on the merits" (*Chambers*, 50 AD3d at 1134; [*7] *see* General Municipal Law § 50-e[5]). The application to amend must be made within one year and 90 days of the accident (*Matter of Sanders v New York City Hous. Auth.*, 170 AD2d 607, 608, 566 N.Y.S.2d 381 [2d Dept. 1991]). "The purpose of the statutory notice of claim requirement (General Municipal Law § 50-e) is to provide a public corporation with an adequate opportunity to investigate the circumstances surrounding the accident and to explore the merits of the claim while the information is still readily available" (*Barno v New York Hous. Auth.*, 185 AD2d 292, 293, 586 N.Y.S.2d 291 [2d Dept. 1992]). The petitioner has the burden of proving that the delay has not prejudiced the City by depriving it of the opportunity to investigate the incident (*see Matter of Cattell v Town of Brookhaven*, 21 AD3d 896, 897, 800 N.Y.S.2d 603 [2d Dept. 2005]).

"The presence or absence of any one factor, including the absence of a reasonable excuse, is not necessarily fatal" (*Chambers*, 50 AD3d at 1135).

Turning to the facts of this case, to the extent petitioner argues that the girlfriend's Notice of Claim of "property damage" is sufficient to provide notice of his claim for personal injury, his argument is unavailing. This amounts to simply being unaware of [*8] the statutory requirements of General Municipal Law § 50-e and is an unacceptable excuse for his failure to timely serve a notice of claim (*Pico*, 8 AD3d at 287). His claim that his delay resulted from an inability to retain counsel until he was able to find an attorney to take the case on a *pro bono* basis is also [**7] insufficient to satisfy

the need to show an reasonable excuse for the delay -- this is particularly true given that this kind of action is typically brought on a contingency basis. Although petitioner fails to provide a reasonable excuse for his delay, this error is not fatal (*Jordan v City of N. Y.*, 41 AD3d 658, 660, 838 N.Y.S.2d 624 [2d Dept. 2007]).

The City asserts that although it had knowledge of the "accident and injury," this "without more, does not constitute actual knowledge of the essential facts constituting the claim" (Res. Aff. P 13). The City first relies on *Felice v Eastport/South Manor Central School District*, 50 AD3d 138, 851 N.Y.S.2d 218 (2d. Dept. 2008) to oppose petitioner's assertion that the City received actual knowledge of the underlying facts of the claim. In that case a student, who was injured in a cheerleading accident, sought permission to file a late notice of claim against a school [*9] district alleging negligent supervision and control of the stunt team. (*id.* at 139). The court rejected her contention that the district received actual knowledge of the claim of negligent supervision through an accident report because "[n]owhere in the injury report is there any recitation or allegation that the 'basers' were either too small to catch a 'flyer' such as [the student], or that [the student] had made known to the coach her dissatisfaction with the team members assigned as 'basers'" (*id.* at 150).

Similarly, the City also relies on *Chattergoon v New York City Housing Authority*, 161 AD2d 141, 554 N.Y.S.2d 859 (1st Dept. 1990). There, in a wrongful death action an estate administrator claimed that the public corporation had actual notice of his claim of negligence through the police department's investigation of his father's murder (*id.* at 142). The court held that although there was knowledge of the occurrence there was not knowledge of the claim because "[t]he police investigation into the murder of the petitioner's decedent was geared toward finding the murderer [**8] and not toward preparation of a possible claim for pain and suffering on the basis of alleged negligence by the respondent" (*id.*).

These [*10] two cases involved official reports that failed to state the facts that were the bases for the claims. Here, however, unlike *Felice* and *Chattergoon*, the petitioner's statements to the City hospital personnel, which were made in front of another police officer, specifically alleged that the arresting police officers struck him with a blunt object, which is the basis for his claim. Thus, the City can be deemed to have had actual knowledge of the facts underlying the claim within 90 days of the incident (*Dumancela*, 32 AD3d at 516).

The City further contends that the girlfriend's Notice is insufficient to give the City actual knowledge of the facts underlying the claim because it only notifies the City of property damage. Even assuming, however unlikely, that the City's investigation of the girlfriend's Notice did not uncover the facts underlying petitioner's claim, the petitioner has still met his burden of establishing that the City had actual knowledge of the facts of the claim within 90 days of the incident (*Washington*, 72 NY2d at 883). Accordingly, there is no need to address petitioner's additional assertion that the City gained actual knowledge of the facts underlying the claim through [*11] the two arresting police officers.

The City finally argues that it will be extremely prejudiced in their defense if petitioner is allowed to file a late notice of claim because at this delayed point in time, all investigative efforts would prove inadequate. This bald assertion is

unsupported by any facts. There is no suggestion that the City cannot interview both the police officers involved in the arrest and the police officer present in the hospital, all of whom presumably documented the underlying facts in their memo books (*see Schiffman v City of N.Y.*, 19 AD3d 206, 206, 797 N.Y.S.2d 450 [1st Dept. 2005]). The [**9] City also has the hospital records and can interview members of the hospital staff who were present when petitioner made his allegations. Moreover, it is likely that an investigation of the girlfriend's Notice would have uncovered the underlying facts that give rise to petitioner's claim (*see Dumancela*, 32 AD3d at 515). The City's conclusory assertions of prejudice, based solely on the petitioner's delay in serving notice of claim, are insufficient (*Jordan v City of New York*, 41 AD3d 658, 660, 838 N.Y.S.2d 624 [2d Dept. 2007]). Thus, petitioner has met his burden showing a lack of prejudice because the City [*12] has not been denied an opportunity to investigate the incident (*Cattell*, 21 AD3d at 897).

While the petitioner fails to provide a reasonable excuse for the delay in filing a notice of claim, the City did in fact gain actual knowledge of the facts underlying his claim, and has shown no prejudice resulting from the delay. Balancing all the relevant factors and the remedial purpose to be served by allowing a late notice of claim, the petition seeking permission to serve a late notice of claim should be granted. Accordingly it is,

ADJUDGED and ORDERED that the petition is granted and the notice of claim previously served on the City on April 7, 2008, and attached as Exhibit B of petitioner's motion, is deemed timely filed nun pro tunc to the 90th day after the claim accrued..

This is the decision, order and judgment of this court. This is a final disposition of this index number and any subsequently filed action requires the purchase of a new index number.

Dated: Aug. 7, 2008

New York, New York

ENTER:

/s/ Paul G. Feinman

J.S.C.