

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**1208**

**CA 18-00260**

PRESENT: WHALEN, P.J., SMITH, CENTRA, NEMOYER, AND CURRAN, JJ.

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DONNA POWELL, CLAIMANT-APPELLANT,

V

MEMORANDUM AND ORDER

CENTRAL NEW YORK REGIONAL TRANSPORTATION AUTHORITY,  
RESPONDENT-RESPONDENT,  
ET AL., RESPONDENT.

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MCMAHON, KUBLICK & SMITH, P.C., SYRACUSE (W. ROBERT TAYLOR OF  
COUNSEL), FOR CLAIMANT-APPELLANT.

MACKENZIE HUGHES LLP, SYRACUSE (SAMANTHA L. MILLIER OF COUNSEL), FOR  
RESPONDENT-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County  
(Spencer J. Ludington, A.J.), entered September 23, 2016. The order  
denied the application of claimant for leave to serve a late notice of  
claim.

It is hereby ORDERED that the order so appealed from is  
unanimously affirmed without costs.

Memorandum: In this action seeking damages for personal injuries  
that she allegedly sustained while exiting a bus owned and operated by  
Central New York Regional Transportation Authority (respondent),  
claimant appeals from an order that denied her application for leave  
to serve a late notice of claim. We affirm.

A notice of claim must be served within 90 days after the claim  
accrues, although a court may grant leave extending that time (see  
General Municipal Law § 50-e [1] [a]; [5]). The decision whether to  
grant such leave requires "consideration of all relevant facts and  
circumstances," including the "nonexhaustive list of factors" in  
section 50-e (5) (*Williams v Nassau County Med. Ctr.*, 6 NY3d 531, 539  
[2006]). The three main factors are "whether the claimant has shown a  
reasonable excuse for the delay, whether the [respondent] had actual  
knowledge of the facts surrounding the claim within 90 days of its  
accrual, and whether the delay would cause substantial prejudice to  
the [respondent]" (*Matter of Friend v Town of W. Seneca*, 71 AD3d 1406,  
1407 [4th Dept 2010]; see generally § 50-e [5]). Although "the  
presence or absence of any single factor is not determinative, one  
factor that should be accorded great weight is whether the [public  
corporation] received actual knowledge of the facts constituting the  
claim in a timely manner" (*Matter of Szymkowiak v New York Power*

*Auth.*, 162 AD3d 1652, 1654 [4th Dept 2018] [internal quotation marks omitted]), including knowledge of the injuries or damages claimed (see *Santana v Western Regional Off-Track Betting Corp.*, 2 AD3d 1304, 1305 [4th Dept 2003], *lv denied* 2 NY3d 704 [2004]). The claimant bears the burden of demonstrating that the respondent had actual timely knowledge (see *Szymkowiak*, 162 AD3d at 1654). Absent a "clear abuse" of the court's broad discretion, "the determination of an application for leave to serve a late notice of claim will not be disturbed" (*Matter of Hubbard v County of Madison*, 71 AD3d 1313, 1315 [3d Dept 2010] [internal quotation marks omitted]).

Here, claimant failed to meet her burden of demonstrating that respondent had actual knowledge of the incident, including knowledge of claimant's injuries, within 90 days of the accident. Indeed, the record establishes that claimant did not say anything to the bus driver when the accident allegedly occurred and that it was not obvious that she was injured (*cf. generally Matter of Ragland v New York City Hous. Auth.*, 201 AD2d 7, 11 [2d Dept 1994]). Claimant's only communication with respondent about the incident within the statutory period was an anonymous telephone call that she made to respondent's general phone number, during which she did not indicate that an accident had occurred or describe her injuries (see *Kennedy v Oswego City Sch. Dist.*, 148 AD3d 1790, 1791 [4th Dept 2017]). In addition, her untimely notice of claim incorrectly identified the date on which the accident allegedly occurred. Finally, claimant became aware shortly after the incident that she was injured (*cf. Shane v Cent. N.Y. Regional Transp. Auth.*, 79 AD3d 1820, 1821 [4th Dept 2010]), and we reject her contention that the nature of her injuries, including a torn meniscus and a bone contusion, constituted a reasonable excuse for failing to comply with the notice of claim requirement (*cf. Matter of Heredia v New York City Health & Hosps. Corp.*, 159 AD3d 663, 664 [1st Dept 2018]). Consequently, Supreme Court did not abuse its discretion in denying her application for leave to serve a late notice of claim.