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GML § 50-e(5): Denial of Renewed Application to Serve Late Notice of Claim on City Was Not an Abuse of Discretion, Despite the City's Actual Knowledge of Essential Facts of Claim, Where Petitioner's Delay Was Excessive, His Excuse Insufficient, and City Was Substantially Prejudiced

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been inapplicable.[31] In view of this statutory response to the drunk driving problem, the continued recognition of the physician-patient privilege in this area will create inconsistent results based solely on whether the blood alcohol test was administered by a physician or at the direction of a police officer.[32]

Therefore, it is submitted that the New York Legislature should repeal the physician-patient privilege embodied in CPLR 4504(a) to the extent that it applies to personal injury actions.[33] Alternatively, a qualifying provision could be added to CPLR 4504(a) to allow a court to compel disclosure when it is necessary to avoid inequitable results in personal injury actions.[34]

Anthony N. Magistrale

General Municipal Law

GML § 50-e(5): Denial of renewed application to serve late notice of claim on city was not an abuse of discretion, despite the city's actual knowledge of essential facts of claim, where petitioner's delay was excessive, his excuse insufficient, and city was substantially prejudiced

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[31] *See supra* notes 17-18 and accompanying text.

[32] *See Hess*, 73 N.Y.2d at 292, 536 N.E.2d at 1135, 539 N.Y.S.2d at 716 (Bellacosa, J., dissenting); *see also Koump*, 25 N.Y.2d at 292, 250 N.E.2d at 860, 303 N.Y.S.2d at 862 (1969) ("question of whether the doctor-patient privilege obtains when a party's mental or physical condition is in controversy has not received uniform treatment by the lower courts").

[33] *See* E. Fisch, *supra* note 2, § 557, at 377; *see also Koump*, 25 N.Y.2d at 294, 250 N.E.2d at 861, 303 N.Y.S.2d at 864 ("in personal injury actions there is little reason for the [physician-patient privilege]"); *In re* Grand Jury Subpoena, 460 F. Supp. 150, 151 (W.D. Mo. 1978) (there is no physician-patient privilege under federal law).

[34] *See* N.Y. (Proposed) Code of Evidence § 501(c); E. Cleary, *supra* note 2, § 105, at 260; 5 WK&M § 4504.02, at 45-183; *cf.* CPLR 4504, commentary at 319 (McKinney Supp. 1989) (when the plaintiff has "solid grounds" for placing defendant's physical condition in issue, the plaintiff's interests in obtaining a fair judgment should outweigh the privilege). North Carolina and Virginia have adopted such a provision in their physician-patient privilege statutes. *See* N.C. Gen. Stat. § 8-53 (1986) ("[the] judge . . . either at . . . the trial or prior thereto . . . may . . . compel disclosure if in his opinion disclosure is necessary to a proper administration of justice"); Va. Code Ann. § 8.01-399 (1984) (similar language).

Section 50-e(5) of the General Municipal Law[1] vests the courts with broad discretionary power to authorize the service of late notices of claim against a municipality in tort actions.[2] Subdivision 5 was the legislative response to a legacy of inequitable decisions that resulted from rigid judicial construction of section 50-e.[3] Sec-

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[1] GML § 50-e(5) (McKinney 1986). Section 50-e(5) in its amended form became effective on September 1, 1976 and provides that in determining whether to grant an extension of the period in which to serve a notice of claim:

> [T]he court shall consider, in particular, whether the public corporation . . . acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one or within a reasonable time thereafter. The court shall also consider all other relevant facts and circumstances, including: whether the claimant was an infant, or mentally or physically incapacitated, or died before the time limited for service of the notice of claim; whether the 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 . . . ; whether the claimant in serving a notice of claim made an excusable error concerning the identity of the public corporation against which the claim should be asserted; and whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits.

Id. The amended subsection signifies a dramatic change from its predecessor which allowed the court to grant an extension only where a claimant's failure to serve timely notice was due to infancy, physical or mental incapacity, death, or justifiable reliance on settlement representations. *See* GML, ch. 694, § 50-e(5), [1945] N.Y. Laws 1486 (amended 1976); *see also* Beary v. City of Rye, 44 N.Y.2d 398, 407, 377 N.E.2d 453, 455, 406 N.Y.S.2d 9, 10 (1978) (discussing differences between original and amended versions of § 50-e(5)).

Generally, the plaintiff must serve a notice of claim within 90 days. *See* GML § 50-e(1)(a) (McKinney 1986). *See generally* Graziano, *Recommendations Relating to Section 50-e of the General Municipal Law and Related Statutes*, TWENTY-FIRST ANN. REP. N.Y. JUD. CONFERENCE 358 (1976) (study of pre-amendment versions of § 50-e and of proposed amended section); SIEGEL § 32 (discussing the notice of claim requirement).

[2] *See* GML § 50-e(5) (McKinney 1986) ("Upon application, the court, in its discretion, may extend the time to serve a notice of claim"); *see also Beary*, 44 N.Y.2d at 411, 377 N.E.2d at 457, 406 N.Y.S.2d at 13 (amendment was prompted by need to provide court with greater discretion in granting extensions); Reisse v. County of Nassau, 141 App. Div. 2d 649, 650, 529 N.Y.S.2d 371, 372 (2d Dep't 1988)(statute grants court discretion in authorizing late notice); Annis v. New York City Transit Auth., 108 App. Div. 2d 643, 644, 485 N.Y.S.2d 529, 531 (1st Dep't 1985)(statute provides court discretion to extend time to serve notice in "proper case").

[3] *See Beary*, 44 N.Y.2d at 411, 377 N.E.2d at 457, 406 N.Y.S.2d at 13. In *Beary*, the Court of Appeals noted that the change was prompted by the 1976 recommendations made by the Judicial Conference, which had in turn relied on the following statement made by the Court of Appeals in Camarella v. East Irondequoit Cent. School Bd., 34 N.Y.2d 139, 142, 313 N.E.2d 29, 30, 356 N.Y.S.2d 553, 555 (1974): "The need for legislative reconsideration of the harsher aspects of section 50-e is apparent. . . ." *Id.* The cases utilizing § 50(e) have been described as "literally a graveyard of meritorious claims barred by lateness" because the court lacked broad discretion to allow a late service. *See* SIEGEL § 32, at 32. The revamped provisions dramatically expanded the court's power to extend the 90 day period. *See supra* note 2 and accompanying text.

The Report of the Committee to Advise and Consult with the Judicial Conference on

tion 50-e(5) expressly authorizes the courts to give "particular" attention to whether the municipal corporation had actual knowledge of the essential facts underlying the claim within ninety days after the claim arose.[4] Accordingly, courts have consistently granted motions for leave to serve a late notice of claim where the defendant municipality had such knowledge.[5] Recently, however, in *Robertson v. City of New York*,[6] the Appellate Division, First Department, held that, despite the city's actual notice of the claim, leave to serve a late notice was properly denied because no sufficient excuse was provided for a delay which resulted in prejudice to the city.[7]

In *Robertson*, the petitioner and a companion were injured in an automobile accident on August 18, 1983.[8] The petitioner's companion served a timely notice of claim against New York City, alleging that she suffered paralyzing injuries as a result of the city's

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the Civil Practice Law and Rules contained a draft of the revised law and this draft was enacted by the legislature without change. *See* FOURTEENTH ANN. REP. OF THE JUD. CONFERENCE ON THE CPLR (1976), in TWENTY-FIRST ANN. REP. N.Y. JUD. CONFERENCE 278 (1976). The purpose of the amendment was stated as follows:

"It is intended that older judicial decisions construing the provisions of section 50-e rigidly and narrowly will be inapplicable as a result of these remedial amendments, which will enable the courts to apply these provisions in a more flexible manner to do substantial justice." *Id.* at 288; *see also* Heiman v. City of New York, 85 App. Div. 2d 25, 27-28, 447 N.Y.S.2d 158, 159-60 (1st Dep't 1982) (discussing report).

[4] *See* GML § 50-e(5) (McKinney (1986). The importance of actual knowledge by the city is underscored by the fact that it is the only factor. *See Beary*, 44 N.Y.2d at 412, 377 N.E.2d at 458, 406 N.Y.S.2d at 14 ("amedment expressly directs" extent of public corporation's knowledge be given great weight). In *Beary*, the Court of Appeals recognized further that "actual knowledge of the facts within 90 days . . . makes it unlikely that prejudice will flow from a delay in filing." *Id.* at 412-13, 377 N.E.2d at 458, 406 N.Y.S.2d at 14.

[5] *See, e.g.*, Gerzel v. City of New York, 117 App. Div. 2d 549, 550-51, 499 N.Y.S.2d 60, 62 (1st Dep't 1986) (motion granted where accident report provided city with actual knowledge of essential facts and city failed to show substantial prejudice); Edwards v. Town of Delaware, 115 App. Div. 2d 205, 206, 495 N.Y.S.2d 289, 290 (3d Dep't 1985) (motion granted where city had actual notice of facts within reasonable time after 90 day period expired and no prejudice shown); Fahey v. County of Nassau, 111 App. Div. 2d 214, 217, 489 N.Y.S.2d 249, 252 (2d Dep't 1985) (motion granted where victim incapacited for 14 months following accident and city had actual notice of facts within 90 days).

[6] 146 App. Div. 2d 456, 536 N.Y.S.2d 70 (1st Dep't), *aff'd without opinion*, 74 N.Y.2d 781, 543 N.E.2d 745, 545 N.Y.S.2d 102 (1989).

[7] *Id.* at 456-57, 536 N.Y.S.2d at 70-71.

[8] *Id.* at 456, 536 N.Y.S.2d at 70. The accident occurred at 5:15 A.M., when the petitioner's vehicle struck a barrier on the West Side Highway near 72nd street in New York City. *Id.* "[A] detailed 'Police Accident Report'. . . state[d] that the car 'overturned,' and that 'both passengers' were 'ejected' from the vehicle [and] were 'unconscious.'" *Id.* at 457, 536 N.Y.S.2d at 71 (Carro, J., dissenting).

negligence.[9] On November 16, 1984, one year and three months after the accident, petitioner sought permission to serve a late notice of claim against the city pursuant to section 50-e(5) of the GML.[10] The petitioner asserted that the delay in serving a notice of claim was due to a lapse of memory which prevented him from recalling the details of the accident.[11] On January 30, 1985, the Supreme Court, New York County, denied the application, stating that renewal of the motion would be granted if petitioner supported his claim of amnesia with a suitable medical affidavit.[12] Petitioner renewed his application one year later, on February 10, 1986, with the supporting medical affidavit.[13] The court denied the application, holding that the physician's affidavit did not support the petitioner's contention that amnesia prevented him from filing a timely notice of claim.[14]

The Appellate Division, First Department, affirmed and concluded that the trial court properly determined that the petitioner had not presented a valid excuse for the "inordinate delay" in renewing the application.[15] The court further noted that, despite having received actual notice of the claim soon after the accident, the city had nonetheless been prejudiced by the delay in examining the petitioner.[16]

In a strong dissent, Justice Carro argued that the city had ac-

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[9] *Id.* at 456, 536 N.Y.S.2d at 70. The notice of claim was filed 61 days after the accident. *Id.* The court noted that "[t]he City thus acquired notice of the accident at that time." *Id.*

[10] *Id.* at 458, 536 N.Y.S.2d at 71 (Carro, J., dissenting). The petitioner had initially been treated for "multiple lacerations of the head, face, and right forearm." *Id.* at 457, 536 N.Y.S.2d at 71 (Carro, J., dissenting). At the time of the accident the petitioner, Andre Robertson, was the starting shortstop for the New York Yankees. *Id.* (Carro, J., dissenting) As a result of his injuries, the petitioner missed the rest of the 1983 season. *Id.* (Carro, J., dissenting). However, he did return to the Yankees for the 1984 season. *Id.* (Carro, J., dissenting). Petitioner claimed that the injury to his arm from the accident damaged his career. *Id.*

[11] *Id.* at 458, 536 N.Y.S.2d at 71 (Carro, J., dissenting). The trial court found this excuse invalid because his amnesia was "a willful rejection as opposed to an uncontrolled lapse of memory." *Id.* (Carro, J., dissenting).

[12] *Id.* at 456, 536 N.Y.S.2d at 70.

[13] *Id.* at 457, 536 N.Y.S.2d at 71 (Carro, J., dissenting).

[14] *Id.* (Carro, J., dissenting).

[15] *Id.* at 456, 536 N.Y.S.2d at 70. The court emphasized that none of the cases cited by the dissent involved an initial delay of one year and three months and a subsequent delay of over one year in filing the renewed application. *Id.* at 457, 536 N.Y.S.2d at 71.

[16] *Id.* at 457, 536 N.Y.S.2d at 71. It is significant to note that the court failed to explain how the city's ability to defend on the merits of the claim was prejudiced by the delay. *See id.*

quired actual knowledge of the essential facts of the petitioner's claim through the police department's accident report[17] and from the notice of claim filed by the petitioner's companion sixty-one days after the accident.[18] Justice Carro also found that the record did not support the conclusion that the city had been prejudiced.[19] Thus, he concluded that the lack of an acceptable excuse for the delayed notice of claim should not have been fatal to the petitioner's application.[20]

While the excuse proffered for the petitioner's delay in serving the late notice of claim may have been disingenuous, it is submit-

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[17] *Id.* at 458, 536 N.Y.S.2d at 72 (Carro, J., dissenting). It is submitted that Justice Carro miscalculated the importance of the police report. Generally, knowledge of the facts contained in a police accident report are imputed to a city only when a *municipal employee* is injured in the course of his employment. *See* Caselli v. City of New York, 105 App. Div. 2d 251, 255-56, 483 N.Y.S.2d 401, 405-06 (2d Dep't 1984); *see also* Perry v. City of New York, 133 App. Div. 2d 692, 693, 519 N.Y.S.2d 862, 864 (2d Dep't 1987) ("police 'Aided Report' " not sufficient to constitute actual knowledge where plaintiff was not municipal employee); Cicio v. City of New York, 98 App. Div. 2d 38, 39-40, 469 N.Y.S.2d 467, 468 (2d Dep't 1983) (accident report of municipal employee injured in line of duty provides actual knowledge to municipality); Lucas v. City of New York, 91 App. Div. 2d 637, 637, 456 N.Y.S.2d 816, 817 (2d Dep't 1982) (police accident report of police officer injured in line of duty provided city with actual knowledge).

[18] *Robertson*, 146 App. Div. 2d at 459, 536 N.Y.S.2d at 72 (Carro, J., dissenting); *see also* Heredia v. City of New York, 141 App. Div. 2d 473, 474, 529 N.Y.S.2d 793, 794 (1st Dep't 1988)(prior notice of claim by one shooting victim provided city with actual knowledge, entitling other shooting victim to file late notice of claim); Annis v. New York City Transit Auth., 108 App. Div. 2d 643, 644, 485 N.Y.S.2d 529, 531 (1st Dep't 1985) (notices of claim filed by victims of train derailment, along with substantial media coverage of accident, provided city with actual knowledge of occurrence, entitling another victim to file late notice of claim). The *Robertson* court acknowledged that the city had acquired actual knowledge in this manner. *Robertson*, 146 App. Div. at 456, 536 N.Y.S.2d at 70.

[19] *Robertson*, 146 App. Div. 2d at 459, 536 N.Y.S.2d at 72 (Carro, J., dissenting). Justice Carro cited the conclusions of the trial court that Robertson's complaint " 'differ[ed] in no significant detail from that filed by his companion,' " and that the city had not been prejudiced by the delay. *Id.* at 458, 536 N.Y.S.2d at 71 (Carro, J., dissenting).

[20] *See id.* at 460, 536 N.Y.S.2d at 73 (Carro, J., dissenting). Justice Carro quoted from the physician's affidavit, which stated that Robertson " 'had pretraumatic and post-traumatic amnesia from the accident having no recollection of the accident itself.' " *Id.* at 458, 536 N.Y.S. at 72 (Carro, J., dissenting). Justice Carro felt that this affidavit was sufficient to excuse the delay because it complied with the trial court's condition "that he need only submit a suitable medical affidavit in order to obtain relief." *Id.* at 460, 536 N.Y.S.2d at 73 (Carro, J., dissenting). The dissent noted the well-established rule that GML § 50-e (5) is " 'to be liberally construed and the absence of an acceptable excuse is not necessarily fatal.' " *Id.* at 459, 536 N.Y.S.2d at 72 (Carro, J., dissenting) (quoting *Cicio*, 98 App. Div. 2d at 39, 469 N.Y.S.2d at 468). Justice Carro noted that "Robertson's application for the extension was timely, since it was made within one year and ninety days after the action accrued." *Id.* at 460, 536 N.Y.S.2d at 73 (Carro, J., dissenting). Robertson's initial application was one year and three months after the accident, and thus was within the statute of limitations period provided in GML § 50-i(1). *See id.* (Carro, J., dissenting).

ted that the *Robertson* court improperly limited the scope of its inquiry to the validity of the petitioner's excuse. This resulted in a failure to strike an "equitable balance . . . between a public corporation's reasonable need for prompt notification of claims against it and an injured party's interest in just compensation."[21]

Section 50-e(5) of the GML specifically directs courts to consider, "in particular," whether a municipality has acquired actual knowledge of the facts constituting the claim.[22] Indeed, where such knowledge exists, courts have consistently granted motions to serve a late notice of claim, even where the excuse has been "debatable"[23] or where the petitioner had "failed to present any reasonable explanation for [the] delay."[24] Conversely, courts have consistently denied section 50-e(5) motions where the city did not acquire actual knowledge of the essential facts underlying the claim.[25] Moreover, the intent of an amendment to the statute in 1976 was to expand the factors which the court should consider in determining whether to grant an extension.[26] Therefore, it is submitted that the court's emphasis on the merit of the petitioner's medical excuse, irrespective of the city's actual knowledge, strayed from the plain meaning of the statute as amended.

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[21] Camarella v. East Irondequoit Cent. School Bd., 34 N.Y.2d 139, 142-43, 313 N.E.2d 29, 30, 356 N.Y.S.2d 553, 555 (1974).

[22] *See* GML § 50-e(5) (McKinney 1986); *see also* Beary v. City of Rye, 44 N.Y.2d 398, 413, 377 N.E.2d 453, 458, 406 N.Y.S.2d 9, 14 (1978) (whether public corporation had knowledge of claim is important factor in exercise of discretion).

[23] *See* Reisse v. Nassau County, 141 App. Div. 2d 649, 656, 529 N.Y.S.2d 371, 373 (2d Dep't 1988) (motion granted notwithstanding a "debatable" excuse).

[24] Rechenberger v. Nassau County Medical Center, 112 App. Div. 2d 150, 152, 490 N.Y.S.2d 838, 839 (2d Dep't 1985). In *Rechenberger*, the court held that while lack of an excuse was "troublesome," the petitioners' motion for late service of a notice of claim was granted because the defendant had actual knowledge of the underlying facts and had not shown it was prejudiced by the delay. *Id.* at 152, 490 N.Y.S.2d at 839-40; *see also* Gerzel v. City of New York, 117 App. Div. 2d 549, 551, 499 N.Y.S.2d 60, 62 (1st Dep't 1986) (granting motion to serve a late notice of claim even though "petitioner's explanation for the seven month delay . . . [was] troublesome").

[25] *See, e.g.*, Perry v. City of New York, 133 App. Div. 2d 692, 693, 519 N.Y.S.2d 862, 864 (2d Dep't 1987) (though prejudice to defendant was not clearly demonstrated, application denied for failure to explain delay); Bullard v. City of New York, 118 App. Div. 2d 447, 452, 499 N.Y.S.2d 880, 884 (1st Dep't 1986) (to excuse unreasonable delay would emasculate standard of § 50-e(5)); Morris v. County of Suffolk, 88 App. Div. 2d 956, 957, 451 N.Y.S.2d 448, 449-50 (2d Dep't) (application for time extension denied where excuse for delay was unacceptable), *aff'd*, 58 N.Y.2d 767, 445 N.E.2d 214, 459 N.Y.S.2d 38 (1982).

[26] *See* Heiman v. City of New York, 85 App. Div. 2d 25, 30, 447 N.Y.S.2d 158, 160-61 (1st Dep't 1982). The statute was amended specifically to "eliminate the requirement that disability be the reason for the delay." *Id.*

The underlying purposes of the notice of claim provision are to protect the municipality from unsubstantiated claims and to assure it "an adequate opportunity . . . to explore the merits of the claim while information is still readily available."[27] The presence of actual knowledge by the city fulfills these purposes and decreases the likelihood that the municipality has been substantially prejudiced.[28] It is submitted that the *Robertson* court failed to view the facts in light of the statutory objectives, and gave insufficient weight to the undisputed circumstance that the city had actual knowledge of the essential facts constituting the petitioner's claim.[29] Additionally, the *Robertson* court failed to explain how the city was prejudiced by the petitioner's delay.[30] Moreover, it is suggested that the *Robertson* court's inappropriate focus on the soundness of the petitioner's excuse undermined the statutory purpose, since the court failed to balance the purported prejudice to the city against the possibility that the petitioner suffered legiti-

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[27] Teresta v. City of New York, 304 N.Y. 440, 443, 108 N.E.2d 397, 398 (1952); *see also* Beary v. City of Rye, 44 N.Y.2d 398, 412, 377 N.E.2d 453, 458, 406 N.Y.S.2d 9, 13 (1978) (1976 amendments designed to encourage "prompt investigation and preservation of evidence); Adkins v. City of New York, 43 N.Y.2d 346, 350, 372 N.E.2d 311, 312, 401 N.Y.S.2d 469, 471 (1977)(notice is "designed to afford the municipality opportunity to make an early investigation of the claim while the facts surrounding the alleged claim are still 'fresh' "); TWENTY-FIRST ANN. REP. N.Y. JUD. CONFERENCE 302 (1976)("The only legitimate purpose served by the notice is . . . to enable [the city] to investigate the facts surrounding the occurrence on which the claim is based").

[28] *See supra* note 4 and accompanying text. One of the key factors under GML § 50-e(5) is whether the city possessed actual knowledge of the facts underlying the claim and whether the lack of such knowledge has substantially prejudiced the city. *See Beary*, 44 N.Y.2d at 412-13, 377 N.E.2d at 458, 406 N.Y.S.2d at 14. In *Robertson*, the city had timely notice of the facts underlying the claim. 146 App. Div. 2d at 458, 536 N.Y.S.2d at 70. However, the court failed to explain how at 458, the city's ability to defend on the merits had been impeded by the delay. *See id.* at 456-57, 536 N.Y.S.2d at 70-71; *see also Perry*, 133 App. Div. 2d at 693, 519 N.Y.S.2d at 864 (city did not possess actual knowledge and, due to changed conditions, there was real danger that the accident could not be reconstructed, thus potentially prejudicing the city); DeModna v. City of New York, 126 App. Div. 2d 435, 435-36, 510 N.Y.S.2d 581, 581-82 (1st Dep't 1987) (extension granted where city had actual notice of claim and was unable to show prejudice); Edwards v. Town of Delaware, 115 App. Div. 2d 205, 206, 495 N.Y.S.2d 289, 290 (3d Dep't 1985) (extension granted where city did not show any change in highway condition that would impair its investigation).

[29] *See Robertson*, 146 App. Div. 2d at 457, 536 N.Y.S.2d at 71. The city acquired actual knowledge through the notice of claim served by the petitioners companion; *id.* at 456, 536 N.Y.S.2d at 70, and, it is submitted, through the news coverage of the accident. *See* Annis v. New York City Transit Auth., 108 App. Div. 2d 643, 644, 485 N.Y.S.2d 529, 531 (1st Dep't 1985) (city had actual knowledge of claim arising from train derailment through news media coverage and claims filed by other victims). The accident in *Robertson* was described in a New York Times article. *See* N.Y. Times, Aug. 19, 1983, at A13, col. 3.

[30] *See Robertson*, 146 App. Div. 2d at 457, 536 N.Y.S.2d at 71.

mate injuries as a result of the accident.[31]

It is therefore submitted that the decision in *Robertson* established a potentially dangerous precedent by scrutinizing the legitimacy of a petitioner's excuse while ignoring the presence of actual knowledge by the municipality. Consequently, it is suggested that the validity of an excuse based on medical or physical incapacity should be examined only when the municipality demonstrates that it did not have timely notice of the essential facts of the underlying suit and that the delay substantially prejudices the ability of the municipality to defend against the claim on the merits. This approach would ensure that plaintiffs with otherwise legitimate claims would receive judgments based on the substantive merits of their lawsuit, while providing the municipality with the degree of protection intended by section 50-e.

Howard M. Miller

RENT CONTROL

9 N.Y.C.R.R. § 2204.6(d): "Family" as used in New York City's Rent and Eviction Regulation includes nontraditional and nonlegal relationships

Rent control laws were enacted in New York City in 1946 to protect tenants from abnormal and unwarranted rent increases resulting from an acute housing shortage,[1] and these laws continue to

[31] *See id.* at 456-57, 536 N.Y.S. 2d at 70-71. "It never was the intention of the Legislature that this section [GML § 50-e] was to be used as a sword to defeat the rights of a person having a legitimate claim. Its purpose was as a shield to protect the municipality against spurious claims." Hopkins v. East Syracuse Fire Dist., 49 Misc. 2d 197, 201, 267 N.Y.S.2d 61, 66 (Syracuse City Court 1966); *See also Annis*, 107 App. Div. 2d at 644, 485 N.Y.S.2d at 531 ([GML § 50-e] "should not operate as a device to defeat the rights of persons with legitimate claims").

[1] *See* N.Y. UNCONSOL. LAWS § 8581 (McKinney 1987). The Emergency Housing Rent Control Law provides in part:

> The legislature hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons in the state of New York which emergency was created by war, the effects of war and the aftermath of hostilities; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases in