

General Municipal Law Section 50-e: Statutory or Judicial Stay of an Action as Extending the Statute of Limitations and Its Applicability to the Public Authorities Law

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insured may recover from MVAIC for injuries caused by an uninsured or unidentified motorist.¹⁷ Such a provision is known as the uninsured motorist endorsement. In *MVAIC v. McDonnell*,¹⁸ the plaintiff's insurance policy contained such a clause and, as required by the Insurance Law, the deceased's executor demanded arbitration on the wrongful death claim.¹⁹ MVAIC contended that the two-year statute of limitations for wrongful death²⁰ barred plaintiff's demand for arbitration. The court, however, concluded that the claim was based on the uninsured motorist endorsement as provided in the insurance contract rather than on the unidentified motorist's negligence which caused the automobile accident, and therefore, the six-year statute of limitations for contract actions was applicable.²¹ It is important to note that a "qualified person," *i.e.*, one who does not have automobile liability insurance, would not have the benefit of the breach of contract statute of limitations since the claim will not have arisen out of an insurance contract. Therefore, the two-year statute of limitations for a wrongful death action or the three-year statute of limitations for personal injury actions would be applicable.

General Municipal Law Section 50-e: Statutory or judicial stay of an action as extending the statute of limitations and its applicability to the Public Authorities Law.

CPLR 204(a) provides that where commencement of an action is stayed by a court or by statutory prohibition, the duration of that stay is not included in computing the time within which the action must be commenced. In *Barchet v. New York City Trans. Auth.*,²² the defense of the statute of limitations was raised since the action had not been commenced within one year and thirty days after the accrual of the claim.²³ The plaintiff, pointing out that the court had taken fifty-three days to adjudicate the request to file a late notice of claim, contended that such time should not be computed in the running of the statute.²⁴ Furthermore,

¹⁷ N.Y. INS. LAW § 167(2-a).

¹⁸ 23 App. Div. 2d 773, 258 N.Y.S.2d 735 (2d Dep't 1965).

¹⁹ Note, *MVAIC Six Years Later—A Practical Appraisal*, 39 ST. JOHN'S L. REV. 321, 335-37 (1965).

²⁰ N.Y. DECED. EST. LAW § 130.

²¹ CPLR 213.

²² 46 Misc. 2d 414, 259 N.Y.S.2d 470 (Sup. Ct. N.Y. County 1965).

²³ N.Y. PUB. AUTH. LAW § 1212(2); *Forstad v. New York City Trans. Auth.*, 13 App. Div. 2d 836, 216 N.Y.S.2d 116 (2d Dep't 1961); *Hernandez v. New York City Trans. Auth.*, 41 Misc. 2d 123, 245 N.Y.S.2d 43 (Sup. Ct. 1963), *aff'd*, 20 App. Div. 2d 968, 251 N.Y.S.2d 415 (1st Dep't 1964).

²⁴ N.Y. PUB. AUTH. LAW § 1212(2). This section demands compliance with § 50-e of the General Municipal Law which requires a notice of claim to be filed within ninety days after the accrual of the claim.

since a summons and complaint may not be served until thirty days after the filing of a notice of claim,²⁵ the plaintiff urged that such statutory stay should not be included within the running of the statute of limitations. The court ruled for plaintiff on both points and, pursuant to CPLR 204(a), extended the statute of limitations for a period equal to the time lost through the stay of the proceedings by the court and the statutory prohibition.

It is also interesting to note that many authorities, such as the Transit Authority, have separate statutes of limitations rather than a standard limitation as provided in Section 50-i of the General Municipal Law. In the instant case, the statute of limitations for the Transit Authority is one year and thirty days as opposed to one year and ninety days for city or municipal governments.²⁶ A statute of limitations applicable to all municipalities and public authorities would be more expedient and reasonable.

General Municipal Law Section 50-e: Amending notice of claim subsequent to expiration of filing period.

As a condition precedent to the right to maintain an action against a public corporation, *e.g.*, city, town or municipality, a notice of claim must be filed within ninety days after the claim accrues.²⁷ The notice of claim filed in *Montana v. Incorporated Village of Lynbrook*²⁸ was defective because it failed to specify the damage and the manner in which the claim arose. The court, in accordance with the discretion established by Section 50-e of the General Municipal Law, allowed a subsequent amendment to the notice of claim.²⁹ A construction of the provisions permitting amendment of most faulty filings unless prejudice is shown against the public corporation, will, in many cases, prevent hardship to a claimant. The rule of thumb is to file a notice of claim in accordance with whatever facts are available, concentrating on filing within the ninety-day period rather than strict compliance with the required contents.

General Municipal Law Section 50-e: New period for filing notice of claim allowed in fraud action extraneous to the original tort.

In *Orsell v. Board of Educ.*,³⁰ the infant plaintiff, upon requesting information from defendant's representative regarding a

²⁵ N.Y. PUB. AUTH. LAW § 1212(1).

²⁶ Compare N.Y. PUB. AUTH. LAW § 1212, with N.Y. MUNIC. LAW § 50-i.

²⁷ N.Y. MUNIC. LAW § 50-e.

²⁸ 23 App. Div. 2d 585, 256 N.Y.S.2d 651 (2d Dep't 1965).

²⁹ N.Y. MUNIC. LAW § 50-e(6).

³⁰ 23 App. Div. 2d 703, 256 N.Y.S.2d 970 (3d Dep't 1965).