Suits Against Public Entities For Injury or Wrongful Death Pose Varying Procedural Hurdles

By Michael G. Bersani

Bringing personal injury and wrongful death claims against New York public entities – the state, its public corporations, public authorities, agencies, departments, etc. – can seem like walking a minefield. Lurking just beneath the surface are myriad malpractice bombs waiting for the uninitiated to tread and detonate. The procedures for bringing claims against the state and against its sundry political subdivisions are similar, yet different, thus causing confusion, which in turn can lead to mistakes by novices and even experienced attorneys.

First, know your opponent. Is the potential defendant a "public corporation," a "public authority," some other type of public entity, or is it a mere agency or department of the state?

Generally, if the wrongdoer is a "public corporation" (e.g., towns, cities, counties, villages, fire districts, industrial development agencies, N.Y. City Health and Hospitals Corp.) you must sue in Supreme or County Court. "Public corporations" include all "municipal corporations" (town, city, county, village, school district, etc.), district corporations (e.g., fire districts, water districts), and public benefit corporations (e.g., industrial development agencies, N.Y. City Health and Hospitals Corp.). Public corporations are creatures of statute, and their enabling statutes, charters and local laws almost invariably require adherence to the Notice of Claim procedures in General Municipal Law § 50-e for actions brought for personal injuries or wrongful death. Section 50-e was enacted in 1945 to establish a uniform system for instituting tort claims against public corporations to replace the numerous provisions that had developed under local laws.

"Public authorities" are another type of New York public entity. Most of their enabling statutes provide that, among other things, those seeking damages from them for personal injury or wrongful death must adhere to the Notice of Claim provisions of General Municipal Law § 50-e. Generally, actions against public authorities must be brought in Supreme or County Court, though in some cases exclusive jurisdiction is conferred in the Court of Claims, in which case the procedural provisions of the Court of Claims Act apply. Public authorities differ from public corporations in one significant way; their enabling statutes often contain additional procedural requirements, beyond those set forth in General Municipal Law 50-e, for bringing actions for personal injury or wrongful death. Therefore, in suing a public authority, you must pay careful attention to its enabling statute, which can be found in the Public Authorities Law. This will tell you where, how and when you must sue.

Generally, if the wrongdoer is a mere agency or department of the State of New York (e.g., the New York State Police, SUNY, the Department of Transportation, the State correctional facilities) or a state official acting in official capacity, you must sue the State of New York in the Court of Claims, and the Court of Claims Act applies.

Most New York "public entities" are either public corporations, public authorities, or mere agencies or departments of the state with no independent identity for lawsuit purposes, i.e., the state itself. There are, however, some specially constructed public entities that do not fall into these categories, such as the City University of New York, whose enabling statute requires that, among other things, wrongful death and tort claims against it be brought in the Court of Claims

If the defendant is a public entity, and you are unfamiliar with the procedures for suing it, you must conduct thorough research regarding the entity. A good place to start is case law. Research tort lawsuits involving the same entity to identify the forum in which the entity was sued. Next, conduct a statutory search regarding the entity in question to see whether it is set up as a public corporation, a public authority, some other independent body, or whether it is a mere agency or department of the state. Read the enabling statutes carefully to discern how, where and when you must sue.

Whether suing a public corporation, a public authority, some other independent public entity, or the state itself, attention must be paid to: (1) time limitations; (2) how, where and when you must move for leave to serve a late notice of claim (against public corporations and public authorities) or for leave to file and serve late claim (against the State); (3) the required contents of the various pleadings (the Notice of Claim, Complaint, Notice of Intention to File a Claim, and the Claim); (4) upon whom to serve these pleadings; (5) how to file and serve these pleadings; (6) pre-suit hearings, and (7) requirements regarding prior written notice of defects. Each issue is discussed below.

TIME LIMITATIONS
Against a Public Corporation
The Notice of Claim: Serving a Notice of Claim is a condition precedent to the commencement of an action against a public corporation. The defendant must be served with a Notice of Claim within 90 days of the date of the accrual of the claim (the incident complained of) or, in wrongful death actions, from the date of the appointment of a representative of the decedent's estate.

careful! In an action for conscious pain and suffering on behalf of the decedent's estate, the 90-day period is measured from, at the latest, the date of death, and probably from the accident date, but never from the date of the appointment of the representative of the decedent's estate.

careful! The 90-day Notice of Claim requirement is not, strictly speaking, a "time limitation," but rather a jurisdictional condition precedent to the lawsuit, and therefore, the time for serving the Notice of Claim is not tolled by the tolling provisions of CPLR Article 2 (such as a claimant's legal disability pursuant to CPLR 208 or the recommencement-within-six-months provision of CPLR 205).

Service of a Notice of Claim upon an officer or employee of a public corporation is not a condition precedent to the commencement of an action or special proceeding against such person unless the corporation has a statutory obligation to indemnify such person. Be safe! When in doubt, serve the Notice of Claim upon the public corporation.

The Summons and Complaint At the earliest, the Summons and Complaint can be filed 30 days after the Notice of Claim was served or, if the public corporation has noticed a 50-h hearing, after the 50-h hearing takes place. The outside time limit (i.e., the statute of limitations) for filing the Summons and Complaint is one year and 90 days from the accrual date (not 3 years as with ordinary negligence cases), except for wrongful death claims, in which case it is 2 years from the date of death.

careful! A conscious pain and suffering claim on behalf of the decedent does not benefit from the 2-year period; the Notice of Claim must be served within 90 days of the incident complained of.

careful! Personal injury actions against a sheriff or a coroner have 1-year statute of limitations.

The one-year-and-90-day statute of limitations of the General Municipal Law trumps the sometimes-shorter statutes of limitations set forth in Article 2 of the CPLR (e.g., one year for intentional torts). For example, in a suit against a public corporation based on intentional tort, the statute of limitations is 1 year and 90 days, not 1 year.

careful! Although it is possible to sue a public corporation for an intentional tort (such as defamation) even after the shorter (1-year) CPLR Article 2 statute of limitations has expired, the shorter (CPLR Article 2) statute of limitations will apply to claims against any individual defendants (e.g., officers or employees of the public corporation). Thus, if you sue a public corporation and its officers or employees for an intentional tort after the 1-year statute of limitations of Article 2 of the CPLR has expired, but before the 1-year-90-day statute of limitations of the General Municipal Law has expired, the officers and employees may escape liability on statute of limitations grounds. At the same time, the public corporation may escape liability if its officers or employees were acting outside the scope of their duties in committing the intentional tort. Result: Your case is dismissed. Lesson: Always sue the public corporation and its officers or employees for such torts before the shorter CPLR Article 2 statute of limitations expires.

Although the CPLR Article 2 tolling provisions do not extend the time to serve a Notice of Claim, they do extend the time to file the Summons and Complaint, (and simultaneously, the time to bring a motion to serve a late Notice of Claim and then to serve the late Notice of Claim against a public corporation).

Public Authorities

And Other Independent Public Entities

The enabling statutes of other public entities, and most notably many of New York's "public authorities," set forth different or additional "conditions precedent" for commencing an action as well as shorter statutes of limitations." This can be a trap to the unwary!
The attorney who prefers to learn from others' mistakes should take heed of Ramirez v. New York City School Const. Authority, where the unfortunate plaintiff, or more precisely her attorney, had sued the case within the 1 year and 90 days provided by the General Municipal Law, but not within the 1-year statute of limitations set forth in the Public Authority Law for suing the New York City School Construction Authority. In dismissing the claim on statute of limitations grounds, the Court held that, "having chosen to pursue a claim against defendant, a public authority, plaintiff is charged with knowledge of the statutory provisions dealing with the commencement of actions against such a body". Lesson: Research the public entity you are suing carefully, checking both case law and statutory law to be certain where, how and when you must sue.

Against the State

As stated above, if the public entity does not have "public corporation" or "public authority" status, it is generally deemed a mere agency or department of the State of New York, in which case you must sue the state in the Court of Claims.

Here, too, the claimant must act within 90 days of the accrual date, or in wrongful death claims, from the date of the appointment of the representative of the estate. Here, however, the claimant has the option of either serving a "Notice of Intention to File a Claim" (also known simply as a "Notice of Intention") or filing and serving the "Claim" itself within that time period.

If the "Claim" is filed and served within 90 days, then the claimant never serves a Notice of Intention; the Claim commences the action and the state must now answer. If the claimant chooses to serve a Notice of Intention rather than file and serve the Claim itself within the first 90 days, then the Claim itself must be filed and served within 1 year of the accrual date for intentional tort claims, within 2 years of the accrual date for claims based on negligence, and within 2 years of death for wrongful death claims.

As noted above, in wrongful death actions the 90-day period for serving a Notice of Intention (or alternatively, filing and serving the Claim itself) is measured from the date of the appointment of a representative of the decedent's estate rather than from the date of death. careful! In an action for conscious pain and suffering, the 90-day period is measured from the ordinary accrual date for the tort, not from the date of the appointment of the representative of the decedent's estate.

If the state does not object to claimant's failure to adhere to the above 90-day time limitations, either by motion to dismiss the Claim before service of the Answer, or by affirmative defense in the Answer itself, then defendant has waived the defense.

careful! The time periods for serving the Notice of Intention and for filing and serving the Claim are not, strictly speaking, "time limitations", but rather jurisdictional conditions precedent to the lawsuit, and therefore, these time periods are not tolled by CPLR Article 2 tolling provisions.

Although the CPLR Article 2 tolling provisions cannot be applied to extend the time for serving the Notice of Intention or filing and serving the Claim, the Court of Claims Act provides one toll of its own: "If the claimant shall be under legal disability, the Claim may be presented within two years after such disability is removed."

LATE CLAIM OR LATE NOTICE OF CLAIM

As can be seen from the above, whether the public entity you are suing is a public corporation or the state itself, the first 90 days following the incident, or following the appointment of a legal representative in the case of wrongful death, are crucial. If the defendant is a public corporation, a Notice of Claim must be served, and if the defendant is the State, either a Notice of Intention must be served or, alternatively, the Claim itself must filed and served.

Yet even if these crucial 90 days have transpired, the claimant is not without hope. If the defendant is a public corporation, the claimant can move for leave to serve a late Notice of Claim. If the defendant is the state, the claimant can move for permission to serve a late Notice of Intention or to file and serve a Late Claim.

Against a Public Corporation

How In the community where this author practices, a motion for leave to serve a late Notice of Claim is often brought simply by purchasing an index number and an RJI (request for judicial intervention) and then serving the motion by regular mail. Some courts, however, have held that such motions must be brought upon a special proceeding, with personal service. One commentator cautions that, without starting a special proceeding, jurisdiction over the defendant is not obtained.

In any event, you must attach the proposed Notice of Claim to your motion for leave to serve a late Claim. In your affidavits and other proof in support of the motion, try to show the factors set forth in General Municipal Law § 50(e)(5):

1. The public corporation or its attorney or its insurance carrier knew of the essential facts constituting the Claim within 90 days of the incident, or acquired such knowledge within a "reasonable time thereafter". (This includes actual as well as constructive notice).

2. The claimant was an infant, or mentally or physically incapacitated, or dies before the time for service of the Notice of Claim.

3. The failure to timely serve a Notice of Claim was attributable to claimant's justifiable reliance upon settlement representations.

4. The claimant or his/her attorney made an "excusable error" concerning the identity of the public corporation.

5. The delay did not "substantially prejudice" the public corporation in maintaining a defense on the merits.

6. Other factors at the Court's discretion.

1. law has added one more factor: whether the claimant has demonstrated a "reasonable excuse for the failure to serve a timely notice of claim". Unfortunately for plaintiffs and their lawyers, neither a plaintiff's ignorance of the 90-day Notice of Claim requirement nor "law office failure" constitutes a "reasonable excuse" for failure to timely serve the Notice of Claim.

"Ordinarily courts should not delve into the merits of an action in determining an application for leave to file a late Notice of Claim." Although the claimant need not definitively demonstrate that the Claim is meritorious, claimant must at least show that sufficient facts exist to establish that the Claim is reasonable. Why risk it? Demonstrate the merits of your case as best you can.
of the "factors" tend to interact like falling dominos. For example, if the public corporation had "actual [or constructive] knowledge of the essential facts constituting this claim within 90 days or a reasonable time thereafter" (factor #1) this usually eliminates any "prejudice to the municipal

defendant in maintaining a defense on the merits" (factor #5). These two factors are accorded great weight. If you can satisfy factor #1, this should in turn show that the delay did not "substantially prejudice" the defendant (factor #5) (since defendant will have had a timely opportunity to investigate the claim), and thus, even without satisfying the other factors, your motion will probably be granted. If you cannot satisfy factor #1, then you will usually be unable to satisfy #5, and your motion will usually be denied.

A motion for leave to serve a late Notice of Claim cannot be granted if, at the time the motion was served, the time limit for filing the Summons and Complaint (i.e., the 1-year-90-day, or 2-year in wrongful death actions, statute of limitations, plus any available tolls) had expired. As we have already seen, although the CPLR Article 2 tolling provisions do not extend the time to serve the Notice of Claim, they do extend the time to file the Summons and Complaint, and simultaneously, the time to bring a motion for leave to serve a late Notice of Claim against a public corporation. The statute of limitations is tolled from the time the plaintiff commences the proceeding to obtain leave to file a late Notice of Claim until the order granting that relief goes into effect..

careful practitioner will not wait until the 11th hour to move for leave to serve a late Notice of Claim. Instead, the attorney will do so as soon as possible, because lengthy delays are more likely to cause "prejudice" to defendant, less likely to be justified by a "reasonable excuse", and therefore more likely to result in denial of the motion.

Against the State

How The motion for leave to file a late Claim must be filed in the Court of Claims and served upon the attorney general. Case law has held that service by regular mail will do; the formal service requirements of Court of Claims Act § 11(a) (regarding service of the Claim and Notice of Intention to File a Claim) do not apply here. You must attach the proposed Claim to your motion.

The factors considered by the Court of Claims in deciding whether to grant a motion for leave to file a late Claim (or late Notice of Intention to File a Claim), enumerated in Court of Claims Act 10(6), are substantially the same as those enumerated in General Municipal Law § 50(e)(5), listed above, except that, in addition, the Court considers whether the Claim "appears to be meritorious" and whether the claimant "has any other available remedy" (e.g., worker's compensation). Therefore, in a motion for leave to file a late Claim against the State, an affidavit of merit from a party with personal knowledge of the events making out a prima facie showing of the Claim should always be submitted with the motion papers.

Although the court must consider the six factors enumerated in Court of Claims Act 10(6), those factors are not exhaustive and no one factor is controlling. Of all the factors considered by the court, the most important is that the defendant have actual or constructive notice of the facts of the Claim within the 90-day period or shortly thereafter If it is shown that the state had prompt notice of the accident and an opportunity to investigate, this dispels any cloud of "prejudice" from claimant's delay. (Again, note the domino-like interplay among these "factors".) Under such circumstances, the motion is usually granted, even if the claimant has failed to show a reasonable excuse for the delay.

One court, reading the Court of Claims Act perhaps too literally, found that the statute does not permit motions to serve a late Notice of Intention to File a Claim, but only to file and serve a late Claim. Thus, if more than 90 days have transpired since the accrual date (or date of the appointment

of a representative of the estate in a wrongful death action), and neither the Notice of Intention nor the Claim has been filed or served, it is better to move to file and serve a late Claim rather than a late Notice of Intention, or at least to ask for alternative relief.

When Leave to file and serve a late Claim can be granted, at the court's discretion, as long as the underlying CPLR Article 2 statute of limitations had not expired at the time the motion was brought. Example: Your client informs you of his potential negligence claim against the State at almost the 3-year anniversary of the accident. If you move for leave to file a late Claim on that same day, the Court has discretion to grant it.

The Court of Claims Act adopts the tolling provisions of CPLR Article 2 in calculating the time to move for leave to file a late Claim.

If a Notice of Intention was timely served (i.e., within 90 days), and the time for filing and serving the Claim then expires (e.g., in a negligence action, 2 years), but the time to move for leave to file and serve a late Claim (e.g., in a negligence action, 3 years) has not yet expired, a claimant has two options: Move for leave to file a late Claim or move for permission to treat the Notice of Intention as a Claim. The better practice is to move for alternative relief.

The careful practitioner will not wait until the 11th hour to move for leave to file and serve a late Claim. Instead, the attorney will do so as soon as possible, because lengthy delays are more likely to cause prejudice to defendant, less likely to be justified by a "reasonable excuse," and therefore more likely to result in a denial of the motion.

CONTENTS OF THE PLEADINGS
Against a Public Corporation
Notice of Claim Pursuant to General Municipal Law § 50-e(2) the Notice of Claim against a public corporation must contain:

1. Name and post-office address of each claimant, and of his or her attorney.

2. The nature of the Claim.

3. The time, place and manner in which the Claim arose.

4. Only if suing a City with a population of more than one million, the amount of damages claimed.

1. careful to clearly and specifically allege the above. If you fail to describe the site, time of the accident or nature of the Claim with enough specificity so that the public corporation can properly investigate the Claim, your Notice of Claim may be deemed defective and your case dismissed.

2. claimant must verify the Notice of Claim.

3. Complaint
The Complaint must contain everything a Complaint ordinarily contains, but should also allege that plaintiff has complied with all the conditions precedent set forth in General Municipal Law § 50-e and that 30 days or more have elapsed since the Notice of Claim was served upon the public corporation,

and that the “adjustment or payment” thereof has been neglected or refused. You should also state the amount of damages claimed.

4. Complaint should not allege punitive damages against the public corporation, because none are allowable.

Against a Public Authority

And Other Independent Public Entities

The enabling statutes of many public authorities and certain other independent public entities set forth their own rules regarding content, but often defer to the General Municipal Law. Check the enabling statutes carefully.

Against the State

The Claim The Claim must contain everything listed above regarding a Notice of Claim against a public corporation, but in addition must set forth “the total sum claimed”.

Do not name any state employees whom you are suing individually. When the state employee or official is sued individually, i.e., for acts committed outside the scope of employment or on other theories of personal liability, such claims must be brought in Supreme or County Court, because the Court of Claims has no ancillary jurisdiction over such defendants. This is so even where the state may be liable for the same acts under a respondeat superior theory. Thus, to pursue the state as well as its employees or officers individually, a claimant must pursue parallel actions in the Court of Claims (against the state) and Supreme or County Court (against the individuals).

As in claims against public corporations, you cannot claim punitive damages against the State of New York.

Notice Of Intention To File a Claim The contents of the Notice of Intention are the same as for the Claim itself, except that you need not (but can if you wish) state “the items of damage or injuries and the sum claimed.” The Notice of Intention must describe, with sufficient specificity, the site and time of the incident as well as the nature of the claim “to enable the State to investigate the claim and promptly ascertain the existence and extent of its liability.”

Both the Claim and the Notice of Intention must be verified.

WHOM TO SERVE

Against a Public Corporation

The Notice of Claim and the Summons and Complaint must be “served upon the public corporation against which the Claim is made.” (The latter but not the former must be filed first.) Specifically, service must be “upon the person designated by law to receive service at the corporation or to its attorney if said attorney is regularly engaged in representing the corporation.” CPLR 311 sets forth

those “designated by law” for service at various municipal corporations, the most relevant of which are listed here:

1. upon the city of New York, to the corporation counsel or to any person designated to receive process in a writing filed in the office of the clerk of New York county;

2. upon any other city, to the mayor, comptroller, treasurer, counsel or clerk; or, if the city lacks such officers, to an officer performing a corresponding function under another name;

3. upon a county, to the chair or clerk of the board of supervisors, clerk, attorney or treasurer;

4. upon a town, to the supervisor or the clerk;

5. upon a village, to the mayor, clerk, or any trustee.

6. upon a school district, to a school officer, as defined in the education law;

7. upon a park, sewage or other district, to the clerk, any trustee or any member of the board.

Against a Public Authority

And other Independent Public Entities

The enabling statutes of many public authorities and certain other independent public entities set forth their own rules regarding service, but often defer to the General Municipal Law. Check the enabling statutes carefully on how and whom to serve.

Against the State

The Notice of Intention to File a Claim and the Claim (only the later must be filed with the Court of Claims first) must be served upon the state attorney general.

As stated above, the Court of Claims has exclusive jurisdiction over claims for personal injury and wrongful death against some public entities. Three of these are the Thruway Authority, the City University of New York or the New York State Power Authority. The Court of Claims Act requires that, if the defendant is among of these three, said defendant must be served as well as the attorney general.

HOW TO FILE AND SERVE

Against a Public Corporation

The Notice of Claim against must be served personally or by registered or certified mail upon the public corporation.

Do not “file” the Notice of Claim; merely serve it upon the public corporation. Be careful, however. Improper service can be fatal. Defects in the manner of service are waived, however, if (1) the public

corporation demands a 50-h hearing or (2) the public corporation actually received the Notice of Claim within the 90-days and fails to return the Notice of Claim to plaintiff within 30 days of its receipt with a statement specifying the defect. The plaintiff then has 10 days to serve a new notice, which in turn cures the defect.

The Summons and Complaint must be filed in the county where the public corporation resides, or in New York City, in the county where the claim arose, or, if it arose outside the city, in the county of New York in the same manner as a Summons and Complaint against any private defendant, and then personally served pursuant to CPLR 311 or by mail with acknowledgment pursuant to CPLR 312-a.

Against the State
In an action against the state, the "Notice of Intention to File a Claim" or "Claim" can be served either personally or by certified mail, return receipt requested. The Notice of Intention need not be "filed," but merely served, while the Claim itself must be filed in the Court of Claims and served upon the attorney general.

careful! Service by certified mail, return receipt requested is not deemed completed until the attorney general receives the Notice of Intention or Claim. So, if your time is short, go with personal service.

The Claim can be filed by personally delivering or sending by regular mail (along with the filing fee) two copies of the Claim to the Court of Claims clerk's office In either case, proof of service must be filed within 10 days of the filing of the Claim. Filing by fax is permitted, but be careful to follow the rules at 22 NYCRR 206.5-a.

If the state does not object to the manner or timeliness of service of the Claim or Notice of Claim, either by motion to dismiss the Claim prior to service of the first responsive pleading or by affirmative defense in the responsive pleading itself, then defendant has waived such defense.

PRE-SUIT HEARINGS

Against a Public Corporation

In suits against certain public corporations (cities, counties, towns, villages, fire districts, ambulance districts, school districts), the defendant is given the opportunity to take a 50-h hearing of the claimant after the notice of claim is served but before suit is commenced. The 50-h hearing is not really a "hearing" (no judge is present), but rather a deposition. The public corporation has the right to demand such a hearing "relative to the occurrence and extent of the injuries or damage for which the Claim is made."

The public corporation may notice the 50-h hearing at any time before being served with the Summons and Complaint, and the Summons and Complaint cannot be filed until 30 days after service of the Notice of Claim. If, 30 days after serving the Notice of Claim, claimant's attorney has received no 50-h notice, he or she may file and serve the Summons and Complaint.

The public corporation must notice the 50-h hearing within 90 days of service of the Notice of Claim. If the public corporation notices the hearing in a timely manner, but the 50-h hearing does not take place within 90 days of service of the 50-h notice, plaintiff may commence the action by filing and

serving the Summons and Complaint, but only if the plaintiff did not fail to appear at the examination, request adjournments, or otherwise cause the delay the 90-day period.

Unlike the rules for an ordinary deposition, the public corporation can notice the 50-h hearing to take place anywhere it wants. If, however, it notices a place outside the municipality against which the Claim is made, "the claimant may demand, within ten days of such service, that the examination be held at a location within such municipality".

By taking a 50-h hearing, the public corporation does not waive its right to also take a deposition of the plaintiff pursuant to the CPLR after suit is filed. In essence, then, the public corporation gets two "depositions" of the plaintiff; the 50-h hearing before suit and the CPLR deposition after suit is filed.

Against the State

If the claimant serves a Notice of Intention against the state, the state has the right to demand an examination of the claimant pursuant to Court of Claims Act § 17-a, which again is really nothing more than a deposition. If the claimant is served with such a demand, claimant cannot file and serve the Claim until after the § 17-a hearing. The examination must take place within 90 days of service of the demand, or else claimant may file and serve the Claim notwithstanding the hearing demand, unless the delay was claimant's fault.

By taking a § 17-a hearing, the State waives its right to a subsequent deposition. This no doubt explains why § 17-a hearings are not demanded with the same frequency as 50-h hearings.

PRIOR WRITTEN NOTICE OF DEFECT

In some instances, in order to bring a Claim against a public entity, you must show that the public entity had prior written notice of the defect that allegedly caused the injury.

Against a Public Corporation

Where a municipality (e.g., cities, towns, villages, counties) is the defendant, and injury is alleged to have been caused by a dangerous condition (including an accumulation of snow or ice) in a street, highway, bridge, culvert, sidewalk or crosswalk, you may be required to show that the defendant had "prior written notice" of the dangerous condition. This is only so if the municipal charter or local law so provides (but they almost always do).

In New York City, the Big Apple Pothole Corporation roams the city mapping such defects and keeps careful records of its written notices to the city. Everywhere else, the prior written notice rule is often the death knell for plaintiff's case. There are several exceptions to the prior written notice rule, so check case law carefully before giving up on your claim for lack of prior written notice.

Against the State
There is no requirement of "prior written notice" of a defect when bringing a Claim against the state.

Suits against the State

	Time limits	Contents	Whom to serve	How to file/serve
Notice of Claim against public corporation	90 days from accrual date, or, in wrongful death actions, from the appointment of the administrator (unless leave to serve late notice granted).	Name and address of claimants, and attorney; nature of the Claim; time, place and manner in which the claim arose; items of damage or injury sustained, and only if suing City with a population of more than one million, the amount of damages claimed.	See CPLR § 311 for those "designated by law" for service at various municipal corporations, or serve the public corporation's attorney if said attorney is regularly engaged in representing the corporation.	Serve by personal service or certified or registered mail.
Summons & Complaint against public corporation	1 yr & 90 days from accrual date, or, in wrongful death claims, 2 yrs from death (unless tolls apply).	Everything a Complaint ordinarily contains, including amount of damages claimed, but also allege that plaintiff has complied with all the conditions precedent set forth in General Municipal Law, that 30 days or more have elapsed since the Notice of Claim was served upon the public corporation, and that the "adjustment or payment" thereof has been neglected or refused.	Same as above.	File in the county where the public corporation resides, or in New York City, in the county where the claim arose, or, if it arose outside the city, in the county of New York. Serve by personal service pursuant to CPLR. 311 or 312-a.
Motion for leave to serve Late Notice of Claim against public corporation	Time limit coincides with statute of limitations (see above) plus all available CPLR Article 2 tolls.	Attach proposed claim and show the following "factors": reasonable excuse for failing to serve a timely Notice of Claim; defendant aware of facts of Claim within 90 days or within reasonable time; infant, incapacitated or deceased claimant; claimant relied on settlement representations; "excusable error" concerning the identity of the public corporation; no substantial prejudice to defendant; and any other equitable factors.	Same as above.	Although service is frequently accomplished by regular mail, some courts hold plaintiff must bring special proceeding and effect personal service.
Notice of Intention to file a Claim against state	Must serve this, or alternatively file and serve the Claim itself, 90 days from accrual date, or, in wrongful death actions, from the date an administrator is appointed (unless leave to serve late notice of intention is granted).	Substantially same as for "Claim" (see below), except need not state items of damages or sum claimed.	Attorney General.	Serve either personally or by certified mail, return receipt requested.

Claim against state	Must file and serve either within the 90-days indicated above, or, if a Notice of Intention was served instead, Claim must be filed and served 1 yr from accrual date for intentional torts, 2 yrs from accrual date for negligence claims and 2 yrs from death for wrongful death claims (unless leave to file late claim is granted).	Substantially everything listed above regarding a Notice of Claim against a public corporation, but in addition must set forth "the total sum claimed".	Attorney General	File 2 copies with ct of Claims and serve upon A.G. in same manner as above, then file proof of service w/i 10 days of filing.
Motion for leave to file late claim against state	Coincides with underlying statute of limitations (e.g., 3 years for negligence claim) plus all available CPLR Article 2 tolls.	Attach the proposed claim and show "factors," which are substantially the same as those listed above regarding motion for leave to serve late claim against public corporation, but also whether claim "appears to be meritorious" as well as whether the claimant "has any other available remedy" (e.g., worker's compensation).	Attorney General.	Serve by regular mail.
Notice of Claim, complaint, motion for late notice, etc., against public authorities and other independent public entities	Check enabling statutes, which often defer in large part to the General Municipal Law, but often contain additional conditions precedent and shorter statutes of limitations.	Check enabling statutes, which often defer in large part to the General Municipal Law.	Check enabling statute, which often defer in large part to the General Municipal Law. Otherwise, follow CPLR 311.	Check enabling statutes, which often defer in large part to the General Municipal Law.