



*The Women's Bar Association
of the State of New York*

presents

*Convention 2023
Continuing Legal Education Series*

**Demystifying the New York State
Court of Claims**

June 2, 2023
2:00 pm - 3:30 pm

Presenters: Hon. Catherine Leahy-Scott
Hon. Maureen T. Liccione

NEW YORK STATE COURT OF CLAIMS



DEMYSTIFYING THE NEW YORK STATE COURT OF CLAIMS

RESOURCE MATERIALS

I. COURT OF CLAIMS HOMEPAGE

Information regarding the Court of Claims, including frequently asked questions, relevant rules and forms, and a database of Court of Claims decisions can be found on the Court of Claims website at: <https://ww2.nycourts.gov/COURTS/nyscourtofclaims/index.shtml>.

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NEW YORK STATE COURT OF CLAIMS



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Overview

Fax Filing Update

Effective September 1, 2021, the Court of Claims can no longer accept payment of filing fees by fax. The \$50.00 filing fee must be paid in advance using the Court's online payment system.

For Claims to be filed by fax beginning September 1, 2021:

Prior to filing a Claim, please visit the online payment page at <https://iappscontent.courts.state.ny.us/NYSCEF/live/edds.htm> and complete payment. Once payment is completed, a confirmation/receipt number will be generated. Please include the confirmation/receipt number in the appropriate field on the Filing Fax Cover Sheet when faxing the Claim.

****CLAIMS SUBMITTED WITHOUT CONFIRMATION OF ONLINE PAYMENT WILL NOT BE FILED****

Electronic Filing Update

New York State Electronic Filing System (NYSCEF)

Pursuant to the [Administrative Order of Acting Presiding Judge Richard E. Sise](#), effective February 23, 2021, all categories of claims in all districts of the Court of Claims are eligible for consensual/voluntary electronic filing in the **New York State Electronic Filing System (NYSCEF)**.

Please note: Motions for Permission to File Late Claims, other pre-action applications and Special Proceedings (i.e., EDPL § 304 [E] distribution proceedings) are not eligible for NYSCEF at this time.

The **Electronic Document Delivery System (EDDS)** allows you to electronically deliver the following items to the court:

II. MOTION TO TREAT A NOTICE OF INTENTION AS A CLAIM

Correa v State of New York, 208 AD3d 847 [2d Dept 2022]

Pedestrian brought an action in the Court of Claims against the State of New York for injuries sustained when he was struck by a vehicle while crossing a roadway where construction barriers were placed that obscured the driver's visibility. While claimant's initial notice of intent was timely served upon the Attorney General detailed the injuries sustained by claimant as a result of the accident, the later claim failed to provide any specific information regarding these injuries. The Court of Claims granted the State's motion to dismiss on jurisdictional grounds for claimant's failure to state any injuries in the claim and denied the motion to amend. Claimant appealed and the Appellate Division, Second Department affirmed, holding that claimant's failure to specify injuries in the claim was a jurisdictional defect requiring dismissal. The Court also held that the fact that the State had notice of the specific injuries sustained by claimant because they were previously stated in claimant's notice of intention was immaterial because the pleading requirements set forth in Court of Claims Act 11(b) are to be strictly construed and "a court is without power to dispense with applicable jurisdictional requirements of law based upon its own concepts of justice."

III. MOTION FOR LEAVE TO AMEND A CLAIM

Bastian v State of New York, 8 AD3d 764, 765 [3d Dept 2004]

Claimant, an individual incarcerated in a state correctional facility, filed a pro se Claim against the State of New York for medical malpractice in the Court of Claims. Claimant later sought to amend the claim on two separate occasions: first, by filing an addendum with additional claims, and later by filing a motion for leave to amend based upon new claims. Claimant's amendments also significantly increased the damages sought. The State opposed Claimant's motion, arguing that the new claims were without merit and improperly expanded the scope of the initial cause of action. The Court of Claims denied claimant's motion, ruling that the proposed amendments were unnecessary, as they did not substantially alter the original claim. On appeal, the Third Department of the Appellate Division reversed, ruling that the Court of Claim's denial of Claimant's motion constituted an "improvident exercise of discretion." The Court argued that pursuant to CPLR 3025(b) "leave to amend in this fashion should be freely given unless the proposed amendments plainly lack merit or would cause the nonmoving party to suffer prejudice or unfair surprise." Finally, the court held that the significant increase in the amount of damages sought by the Claimant in his motion were justified by claimant's accompanying allegations that the ongoing acts of medical malpractice perpetrated by prison medical staff continued to exacerbate his preexisting medical conditions.

Rodriguez v. State of New York, UID No 2020-038-506 [Ct Cl, DeBow, J., Jan. 17, 2020]

An individual incarcerated at Green Haven Correctional Facility filed an action in the Court of Claims alleging that the state failed to protect him from an assault by another incarcerated individual in the recreation yard of the facility. Claimant filed a motion for leave to amend the

claim, which was unopposed by defendant, but failed to provide a copy of the proposed amended claim with claimant's motion. The Court of Claims denied Claimant leave to amend, holding that claimant's omission of the proposed amended pleading constituted a fatal defect to claimant's motion.

McLean v State of New York, UID No 2016-040-098 [Ct C, McCarthy, J., Nov. 15, 2016].

An incarcerated individual filed a pro se claim for wrongful confinement by Greene Correctional Facility in the Court of Claims, seeking monetary damages for time spent in Greene's special housing unit (SHU). Claimant was initially found guilty of the charges in the report at a disciplinary hearing, and upon administrative appeal, the sentence imposed at Claimant's hearing was modified. The hearing disposition was ultimately reversed after Claimant commenced a CPLR Article 78 proceeding in State Supreme Court, while the matter was still pending. Claimant sought leave to amend his claim to include a "verified response to [D]efendant's affirmation in opposition" but failed to include a proposed amended claim with his motion papers. The Court of Claims dismissed claimant's motion without prejudice for failure to comply with the requirements of CPLR 3025(b). The Court also denied Claimant's motion for summary judgement, holding that Claimant, who relied exclusively on his own affidavit in his motion, had failed to "make prima facie showing of entitlement to judgement as a matter of law", mandating denial of the motion. In its decision, the Court set out the relevant standards for a finding of liability in wrongful confinement cases. It noted that the State has "absolute immunity in the area of prison discipline" when its employees act in full compliance with applicable laws and regulations and is only liable when a disciplinary hearing is not conducted in compliance with those laws and regulations.

IV. MOTION TO DISMISS FOR LACK OF JURISDICTION

Bush v Stevenson Commons Assoc., LLP, Esqs. 156 AD3d 752, 753 [2d Dept 2017], lv. dismissed 32 NY3d 1034 [2018], rearg denied 32 NY3d 1089 [2018]

Claimant filed an action in the Court of Claims to recover damages for housing discrimination. The State, who was not a party in the matter, filed a motion to dismiss for lack of subject matter jurisdiction, which the Court of Claims granted. On appeal, the Appellate Division, Second Department affirmed the Court of Claim's ruling, holding that "[t]he Court of Claims has limited jurisdiction to hear actions against the State itself, or actions naming State agencies or officials as defendants, where the action is, in reality, one against the State- i.e., where the State is the real party in interest."

Matter of Gross v Perales 72 NY2d 231, 236 [1st Dept 1988]; rearg denied 72 NY2d 1042 [1st Dept 1988]

The City of New York brought a CPLR Article 78 proceeding in Supreme Court against the State of New York seeking review of the State's decision not to reimburse the City for public assistance benefits. In its petition, the City alleged that the State of New York wrongfully withheld \$20 million dollars in reimbursements and sought monetary relief for this amount from the State. In its answer, the State argued the Supreme Court lacked subject matter jurisdiction. The Supreme Court rejected the State's argument and granted the City's petition in its entirety.

The State appealed to the Appellate Division, First Department, which modified the Supreme Court's ruling by vacating the award of interest on the \$20 million dollars in reimbursements. On appeal, the Court of Appeals affirmed the lower court's rulings and held that where a lawsuit is primarily brought for review of an adverse state agency determination and money damages are incidental, the state supreme court may entertain the entire case under an Article 78 proceeding.

Lavery v State of New York UID No. 2019-040-028 [Ct Cl, McCarthy, J., April 15, 2019]

A pro se Claimant filed an action in the Court of Claims against the State, alleging negligence and abuse of discretion on the part of the Worker's Compensation Board. The State filed a motion to dismiss the claim for lack of subject matter jurisdiction, arguing that Claimant sought to have the Court of Claims review the determination of the Worker's Compensation Board, and that the Court lacked jurisdiction to do so. The Court of Claims granted the State's motion to dismiss, holding that Claimant's request for monetary relief was incidental to the review of administrative actions by the Worker's compensation board. As a "court of limited jurisdiction", the Court of Claims lacked the jurisdiction to review the determination of the administrative agency, which should have been challenged in a CPLR Article 78 proceeding in State Supreme Court.

V. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Buckles v State of New York, 221 NY 418 [1917]

A deceased claimant's estate filed an action in the Court of Claims seeking monetary relief from injuries resulting from a contract dispute with the State of New York over work to resurface a portion of the highway in Washington County. The Court of Claims dismissed the claim on the grounds that because claimant failed to file any notice of intention prior to its filing of the claim, the court lacked jurisdiction to determine the matter. Claimant's estate appealed, and the Appellate Division reversed the determination, directing judgement for the claimant for the full amount of monetary relief requested. The State was granted leave to appeal. The Court of Appeals reversed the Appellate Division's ruling and held that the Court of Claims has no jurisdiction to hear claims against the State where no written notice of intention to file a claim has been properly filed.

Case v State of New York, UID No. 2022-053-502 [Ct Cl, Sampson, J., Jan. 13, 2022]

A formerly incarcerated individual brought an action against the State in the Court of Claims for medical negligence in the treatment of claimant's hemorrhoids, which he alleged to have occurred continuously at seven different state correctional facilities in the period from 2014 through 2018. A copy of the claim was served upon the Attorney General via priority mail. The State moved to dismiss the claim for lack of jurisdiction based upon improper service of the claim. The motion was unopposed. The Court of Claims granted defendant's motion to dismiss, reasoning that §11(a) of The Court of Claims Act requires all claims to be served upon the Attorney General's Office by personal service or by certified mail. Claimant's use of overnight priority mail was therefore not in compliance with the statute, resulting in a fatal defect in the claim that deprived the court of jurisdiction over the claim, mandating dismissal.

Jackson v State of New York, UID No. 2022-059-043 [Ct Cl, Liccione, J., July 28, 2022]

Claimant, an incarcerated individual, filed a pro se claim against the State of New York for the alleged confiscation of Claimant's personal property by a corrections officer at Sing Sing Correctional Facility. Defendant filed a pre-answer motion to dismiss for lack of jurisdiction based upon the improper service of the claim upon the Attorney General by regular mail. The Court of Claims granted defendant's motion to dismiss, holding that service of the claim by regular mail was in contravention of the requirements for service set forth in The Court of Claims Act §11(a), which require that such claims be served upon the Attorney General either by personal service, or by certified mail, return receipt requested. The Court of Claims held that the Specified service requirements of §11(a) must be strictly construed, and failure to comply with these requirements is a jurisdictional defect requiring dismissal of the claim.

Geico v State of New York, UID No. 2019-045-006 [Ct Cl. Lopez-Summa, J., Mar 13, 2019]

Claimant insurance corporation filed an action in the Court of Claims seeking confirmation of a prior arbitration award for \$478 that the corporation had obtained against the New York State Department of Transportation. Defendant moved to dismiss the claim for lack of jurisdiction based upon improper service of the claim upon the Attorney General's office by regular mail instead of certified mail, return receipt requested. The Court granted defendant's motion to dismiss, holding that claimant's use of ordinary mail was not in compliance the service requirements of Court of Claims Act §11(b), which must be strictly construed. Claimant's service of the claim by ordinary mail was therefore insufficient to acquire jurisdiction over the State, which deprived the Court of jurisdiction.

Betancourt v State of New York, UID No. 2021-059-057 [Ct Cl, Liccione, J., Sept 22, 2021]

Claimant timely served a Notice of Intention to file a claim on the Attorney General in an action for damages resulting from the negligence of State employees at Jones Beach State Park. The Notice of Intention was sent by regular mail and not by personal service or certified mail, return receipt requested, as required by §11(a) of the Court of Claims Act. Claimant later personally served another copy of the Notice of Intention on the Attorney General sixty-four days after the statute of limitations had expired. Defendant submitted a verified answer which included the affirmative defense that Claimant had improperly served the Notice of Intention by regular and not certified mail, and then filed a motion for summary judgement to dismiss the claim for lack of jurisdiction based upon the improper service. The Court of Claims granted defendant's motion, holding that because the State's waiver of sovereign immunity is conditioned upon strict compliance with the provisions of the Court of Claims act, the failure to comply mandates dismissal. While Claimant's second attempt at service was proper, it was untimely. In its decision, the Court also addressed Claimant's arguments in opposition to defendant's motion for summary judgement, that because a physical copy defendant's answer was never served, the jurisdictional defenses contained in defendant's motion were therefore waived. The Court held that because defendant had timely submitted its answer electronically pursuant to the Uniform Rules for the Court of Claims §206.5-aa, (adopting §202.5-b of the Uniform Rules of the Supreme Court and the County Court) which requires electronic service of documents in e-filed cases, defendant's jurisdictional defenses were not waived.

VI. CONTENTS OF PLEADING AND LACK OF SPECIFICITY

Lepkowski v State of New York, 1 NY3d 201 [2003]

Public employees in the executive branch of state government filed actions in the Court of Claims for unpaid overtime after their initial claims filed in Federal Court were dismissed on eleventh amendment grounds. The claims filed by the employees failed to identify the specific workforce locations and dates on which the claim arose, and similarly failed to itemize the damages or specify the total sum the parties sought for relief. Additionally, the claims were verified by only one individual employee on behalf of all other claimants. The State moved to dismiss for, among other things, failure to comply with the substantial pleading requirements of Court of Claims Act §11(b), which requires that claimants state the time and place where the claim arose, identify the itemized damages and total sum requested, and be properly verified. The Court of Claims denied the State's motion to dismiss, finding that the claims were sufficiently detailed to satisfy the substantive pleading requirements of §11(b), and were properly verified because the verifiers had "knowledge of the facts and were united in interest with other claimants". The State appealed, and the Appellate Division reversed, granting the State's motion to dismiss. The Court of Appeals affirmed the Appellate Division's ruling, noting that the State's waiver of immunity is contingent upon a claimant's compliance with the pleading requirements of the Court of Claims Act, and ruling that the claims at issue were jurisdictionally defective because the information provided was "insufficiently definite to enable the State to investigate the claims promptly and to ascertain its liability under the circumstances." The Court of Appeals further held that it was not the State's burden to conduct inquiries into its personnel records to ascertain the details omitted from the claims, because "The Court of Claims Act does not require the State to ferret out or assemble information that section 11(b) obligates the claimant to allege."

Morra v State of New York, 107 AD3d 1115 [3d Dept 2013]

Claimant, a former criminal defendant, brought an action in the Court of Claims against the State of New York for damages resulting from the State's failure to properly supervise an investigator employed by the State Police. Claimant moved for an order to compel an in-camera inspection and disclosure of the investigator's personnel records. Defendant opposed the motion and filed its own motion to dismiss the claim for lack of jurisdiction, arguing that the Notice of Intention to file a claim that was served upon the Attorney General's office was insufficiently detailed to comply with the pleading requirements set forth in the Court of Claims Act §11(b). The Court of Claims granted defendant's motion to dismiss, holding that the claim was jurisdictionally defective for lack of specificity. On appeal, the Appellate Division, The Third Department held that, while "absolute exactness" was not required, a claim must provide a sufficiently detailed description of the particulars of the claim to comply with the pleading requirements set forth in Court of Claims Act §11(b), which require claimant to specify the time, place, and extent of claimant's injuries (among other things) and must be strictly construed. Because the claim did not provide specific dates when claimant's cause of action accrued, and completely omitted any facts regarding the investigator's conduct or related to the nature of claimant's criminal charges, it lacked the specificity necessary to enable the State to "promptly ascertain the existence and extent of its liability." Claimant's failure to comply with the specified pleading requirements of

§11(b) constituted a jurisdictional defect mandating dismissal. Accordingly, the Third Department affirmed the Court of Claim's ruling granting defendant's motion to dismiss.

Matter of DeMairo v State of New York, 172 AD3d 856, 857 [2d Dept 2017]

Claimant, decedent's estate, filed a wrongful death claim against the State for a state-run hospital's misdiagnosis of a patient's lacerated spleen that resulted in personal injury and death. Claimant's Notice of Intention to file a claim was timely served upon the Attorney General but stated incorrectly that the claim arose on April 5, 2012, two days after decedent's death on April 3, 2012. The later claim also incorrectly stated that the hospital's negligent treatment of the patient occurred "from March 27, 2012, through the date of decedent's death on April 3, 2013" – one year after decedent's actual death. The claim also stated that "the claim accrued between March 27, 2012, and April 3, 2012, at 5:05am", giving the correct date and time of decedent's death, but without any further description or clarification. Claimants attempted to serve an amended claim stating the correct date of decedent's death upon defendant, which was rejected as unverified. Defendant filed a motion for summary judgement for lack of jurisdiction, which was opposed by Claimant, who filed a cross-motion for leave to amend the claim. The Court of Claims denied Claimant's cross motion, and granted defendant's motion for summary judgement, holding that the claim was untimely and that lack of specificity in pleading constituted a jurisdictional defect mandating dismissal of the claim. On appeal, the Appellate Division, Second Department affirmed the Court of Claim's ruling. It noted in its decision that "a jurisdictionally defective notice of intention to file a claim may not be cured by amendment."

JF v State of New York, 76 Misc.3d 1082 [2022]

Claimant filed a revival action in the Court of Claims against the State pursuant to the Child Victims act for alleged sexual abuse that occurred when claimant was approximately fourteen years old, at a state-run psychiatric center in Brooklyn where claimant received treatment. In its answer, the State raised the affirmative defense that the claim failed to comply with Court of Claims Act §11(b) because it failed to include the dates and specific details of the incidents of sexual abuse which formed the basis of the claim. The State then filed a motion to dismiss the claim for failure to satisfy the jurisdictional pleading requirements of Court of Claims Act §11(b) because the claim did not "sufficiently particularize the date, time and place of the complained incidents of sexual abuse." Specifically, the State noted in its motion that, while the claim alleges that the sexual abuse of claimant occurred in 1992, inspection of facility records during discovery revealed that claimant was a patient of the facility in 1994. The State argued that this error rendered the claim jurisdictionally defective and unamendable pursuant to the act. Claimant opposed the State's motion and moved to amend the claim. Claimant argued that the claim provided "substantial compliance" with these requirements to enable the State to investigate the allegations without surprise or prejudice. The Court of Claims denied the State's motion to dismiss and granted claimant leave to amend the claim. In its decision, the Court of Claims disagreed with claimant's argument that that the revival statute of the Child Victim's act lessened the stringent pleading requirements of §11(b), noting that at the time of the Child Victim's Act's passing, the legislature amended §10 of the Court of Claims Act to specify that the strict time limitations provided in §10 did not apply to Child Victim's Act Cases, but did not amend the pleading requirements of §11(b) to grant a similar exception. The Court of Claims instead held that the claim was sufficiently detailed for the State to "investigate the claim promptly and ascertain its potential liability and noted that the discrepancy in dates should be viewed in light

of the nature of Child Victims Act revival claims, which are often brought decades after the abuse occurred.

VII. MOTION FOR SUMMARY JUDGMENT

See Generally CPLR § 3212

Kirbis v LP Ciminelli, 90 AD3d 1581, 1582 [4th Dept 2011]

Plaintiff filed a negligence action in State Supreme Court for damages based on the injuries he sustained by falling from a ladder. Plaintiff filed a motion for partial summary judgement on the threshold issue of defendant's liability pursuant to Labor Law §240(1). Defendant opposed the motion, attacking the plaintiff's general credibility as a sole witness to the incident due to his former incarceration, and offering evidence that the ladder was structurally sound, but offering no denials of the facts regarding the ladder's placement stated in plaintiff's affidavit. The Supreme Court granted Plaintiff's motion for Summary Judgement. On appeal, the Appellate Division, Fourth Department affirmed, holding that the medical records submitted by plaintiff did not constitute proof in admissible form, but that the plaintiff had nonetheless demonstrated entitlement to judgement as a matter of law. The Court reasoned that plaintiff's affidavit, which was never adequately contested by defendant, stated facts sufficiently demonstrating that the ladder was improperly placed to protect him from falling, and that this incident was the proximate cause of Claimant's injuries.

Proctor v State of New York, UID No. 2022-061-204 [Ct Cl, Rivera, R., J., Jan. 31, 2022]

Claimant, an individual incarcerated in the State of New York, filed a claim against the State for wrongful confinement, seeking damages for the 14 days claimant spent in keeplock at Five Points Correctional Facility. Claimant alleged that he was confined to keeplock retaliation for filing a grievance regarding another incident of wrongful confinement that occurred the prior year, and that he was never issued a misbehavior report, or given a hearing or determination during his keeplock. Claimant also alleged that responses to his records requests to the facility were not timely. Defendant's answer included a denial to the allegations, and asserted various affirmative defenses, including privilege, justification, and absolute immunity. Claimant filed a motion for summary judgement, which referred to - but did not include- documents which claimant argued would demonstrate upon review that "no substantial dispute" existed regarding claimant's cause of action. The only attachments included in claimant's motion were additional copies of the motion itself. The Court of Claims denied Claimant's motion for failure to include requisite elements of the motion such as a copy of the pleadings, a signed affidavit in support, or any documents in admissible form. The Court also noted that even if Claimant's motion for summary judgement had been properly filed, it would likely have still been denied. It reasoned that because summary judgement is a "drastic remedy effectively denying the opposing party opportunity for trial", the movant has the burden of establishing a right to judgement as a matter of law, and a motion "should only be granted where there are no issues of fact, and the claim can be decided as a matter of law." The Court also denied defendant's motion for summary judgement to dismiss the claim for lack of personal and subject matter jurisdiction, ruling that the

evidence presented did not establish defendant's entitlement to summary judgement as a matter of law.

Blanchard v State of New York, UID No. 2020-051-029 [Ct Cl, Martin, J., Dec. 19, 2020]

An incarcerated individual filed a wrongful confinement claim pro se against the State of New York, seeking damages for the eight additional days that claimant spent in the Special Housing Unit of Upstate Correctional Facility, which were in excess of the 100-day sentence imposed by claimant's disciplinary hearing. Claimant moved for summary judgement but failed to attach a copy of the pleadings or defendant's answer to his motion papers, as is required pursuant to CPLR §3212(b). The Court of Claims denied claimant's motion for summary judgement on the grounds that the motion failed to comply with the procedural requirements of CPLR §3212(b), which mandated denial, regardless of the merits. The Court further opined that claimant's motion for summary judgement would be denied even if it were in compliance with procedural requirements, because claimant failed to demonstrate in his motion that no material facts were at issue in this matter. Specifically, the Court noted that the "logistical difficulties" in transfer to other facilities is justification for delay in the restoration of privileges to incarcerated individuals whose disciplinary detention has ended.

Pine v State of New York, UID No. 2022-038-512 [Ct Cl, DeBow, J., Feb. 9, 2022]

Claimant brought an action in the Court of Claims for injuries associated with alleged negligence of the local District Attorney in failing to amend a felony indictment that incorrectly named claimant as a defendant. Claimant filed a motion for summary judgment 23 days after the deadline for filing such motion had expired and made no showing of good cause to permit a late filing. Summary judgment was denied based on untimeliness of the motion, as well as procedural deficiency in Claimant failing to attach a copy of defendant's answer as part of the motion papers.

Adeleke v County of Suffolk, 156 AD3d 748 [2d Dept 2017]

Plaintiff sued the county seeking compensation for injuries that he allegedly sustained in a fight with several other incarcerated individuals assigned to distribute lunches in the county jail. Defendant, the County, filed a motion for summary judgement, which was denied by the Suffolk County Supreme Court. Defendant appealed. The Second Department of the Appellate Division affirmed the Supreme Court's ruling, holding that the county failed to establish a prima facie entitlement to judgement as a matter of law, because a genuine issue of material fact existed as to whether the county knew or should have known of the dangerous propensity of plaintiff's attackers.

Wassmann v County of Ulster, 144 AD3d 1470 [3d Dept 2016]

Plaintiff filed a lawsuit in the Ulster County Supreme Court, alleging that officials at the county jail failed to protect plaintiff from assault by another individual who was incarcerated in the county jail. The Supreme Court of Ulster County granted defendant's motion for summary judgement on the issue of liability, dismissing the complaint. Plaintiff appealed. The Third Department of the Appellate Division modified the Supreme Court's ruling, reversing the court's decision to grant defendant's motion for summary judgement. It held first that the County's failure to obtain and review records regarding plaintiff's attacker's violent conduct during prior imprisonment at other facilities was not negligence per se, because review of these records was

not required by statute. However, the Court further held the existence of these records created questions of fact regarding whether the attack on plaintiff was reasonably foreseeable in light of attacker's history, thereby precluding summary judgment in the matter.

VIII. MOTION PRACTICE – MISCELLANEOUS

Pierotti v State of New York, UID No. 2007-028-538 [Ct Cl, Sise, P.J., Mar 30, 2007]

If malfeasance or misfeasance is found on the part of a correctional facility employee, the State is equitably estopped from seeking dismissal of an improperly and/or untimely served claim. Claimant directed the facility to send his claim by certified mail return receipt requested as required by law and paid the requisite amount to accomplish same. Facility employees failed to carry out claimant's instructions and the State is equitably estopped from raising the defense of improper service.

Tafari v State of New York, UID No. 2006-036-533 [Ct Cl, Schweitzer, J., May 22, 2006]

Claimant, an incarcerated individual, brings a motion to compel the attendance of three incarcerated individuals to serve as witnesses at trial, but failed to comport with the mandates of CPLR § 2302(b). Claimant's motion was denied.

Quillen v State of New York, 191 AD2d 31 [3d Dept, 1993]

The guardian of a child brought an action in the Court of Claims against the State, for damages inflicted on the child by a State employee while the child was in a State-run group home. The child's guardian sought an order directing the State to either produce or provide the addresses of several children in State custody who had witnessed the incident for the purpose of giving testimony. The Court of Claims granted the guardian's motion and the defendant appealed. The Appellate Division, Third Department reversed the Court of Claims decision, holding that claimant could not compel the state to disclose confidential information without first providing adequate notice and the opportunity for a hearing on the matter.

IX. TYPES OF CLAIMS

Bailment

Morales v State of New York, UID No. 2017-045-013 [Ct Cl, Lopez-Summa, J., June 6, 2017]

Claimant, an incarcerated person proceeding pro se, filed a claim alleging that the defendant, through its agents, lost his property while he was incarcerated at Fishkill Correctional Facility. Defendant provided evidence that Claimant failed to exhaust the administrative remedies available, which deprives Court of Claims of subject matter jurisdiction. Claim dismissed on that basis.

McCullough v State of New York, 3 AD3d 749 [3d Dept 2004]

Claimant, an incarcerated person proceeding pro se, sought \$300 in damages for a typewriter allegedly damaged by employees of the Department of Correctional Services. Claimant failed to exhaust administrative remedies and submitted an untimely claim. Claim dismissed and decision affirmed on appeal.

George v State of New York, UID No 2018-032-090 [Ct Cl, Hard, J., Dec. 26, 2018]

Claimant, an incarcerated person proceeding pro se, filed a claim alleging a deprivation of civil and constitutional rights for the alleged taking of his personal property at the George R. Vierno Center, Rikers Island. Claim was filed over a year after the alleged taking. Defendant moved to dismiss on the grounds of timeliness, failure to state a cause of action and that the Court of Claims lacks jurisdiction over claims arising from Rikers Island. Claim dismissed.

Roberts v State of New York, 11 AD3d 1000 [4th Dept 2004]

Appeal by State challenging Court of Claims decisions allowing three incarcerated persons to file late claims associated with loss of inmate property. On appeal, late claim relief was reversed, as the incarcerated individuals had failed to file their claims within the period set forth in Court of Claims Act § 10 (9) for such claims. Appellate court held that late claim relief is not applicable to property claims of incarcerated individuals under the statute.

McCann v State of New York, 194 Misc2d 340 [Ct Cl, Hard, J., Nov. 14, 2002]

An incarcerated individual sought to file a late claim for loss of property allegedly taken while he was assigned to the Special Housing Unit. Court held that the plain language of CCA 10 (6) and (9) preclude late claim relief for property claims brought by incarcerated individuals.

Wrongful/Unlawful Confinement

Arteaga v State of New York, 72 NY2d 212 [1988]

Incarcerated individuals appealed dismissal of their claims for alleged wrongful confinement and loss of privileges associated with disciplinary proceedings brought against them at Great Meadow Correctional Facility. The Court of Appeals affirmed the dismissal of their claims stating that when employees' actions were within their authority and in conformance with all governing statutes and regulations, the actions constituted discretionary conduct of a quasi-judicial nature for which the State has absolute immunity.

Gittens v State of New York, 132 Misc2d 399 [Ct Cl, Corbett, Jr., J., June 16, 1986]

Incarcerated individuals sought to recover damages for alleged wrongful confinement in keeplock, associated loss of privileges, and, in one case, keeplock confinement lasting in excess of the penalty imposed. Claimants asserted claims for false imprisonment, malicious prosecution and cruel and inhuman punishment. State moved to dismiss all claims on three bases: 1) the State agents' quasi-judicial conduct being immune from suit; 2) lack of subject matter jurisdiction over federal civil rights claims, and 3) monetary damages cannot be requested incidental to relief associated with a prior Article 78 proceeding. Court denied dismissal of the wrongful excessive confinement claim and dismissed all remaining claims.

Diaz v State of New York, UID No. 2006-036-008 [Ct Cl, Schweitzer, J., June 20, 2006]

Trial decision on a claim of an incarcerated individual who alleged wrongful keeplock confinement and loss of honor block housing on charges of drug use which were subsequently dismissed during the administrative appeals process. Claimant provided evidence about his prior medical treatment at a hospital, which included the administration of opiates, and disclosure of

same to corrections officers prior to administration of a drug test which returned as positive. Claimant also provided evidence that at his initial hearing he was not permitted to call witnesses and the proceeding was not recorded in conformance with applicable regulations. Court found for claimant with a total award of \$5000 to compensate for his 28 days in keeplock and 360 days in general population outside the honor block.

Shelton v State of New York, UID No. 2018-018-989 [Ct Cl, Fitzpatrick, J., Dec. 20, 2018]

Trial decision on a claim of an incarcerated individual who alleged wrongful keeplock confinement after he was charged with involvement in a fight at Cayuga Correctional Facility. Claimant was denied the opportunity to call witnesses during his administrative hearing and the hearing officer called witnesses outside of claimant's presence. Claimant was sentenced to 8 months in the Special Housing Unit, which was upheld in an administrative appeal. Following claimant's release, he was notified that the hearing determination was reversed and expunged. The Court held in favor of claimant, citing violations of due process in the hearing procedure which removed the immunity established in *Arteaga, supra.*, and awarded \$43,880.00 in damages.

Assaultive Conduct

Evans v State of New York, 11 Misc 3d 1065(A) [Ct Cl 2006]

Claimant, an incarcerated individual, filed a claim in the Court of Claims against the State for injuries sustained when he was attacked from behind by another incarcerated individual while in the phone area of the "A Block Yard" at Sing Sing Correctional Facility. Claimant did not know why he was attacked, even after learning the identity of the individual sometime after the attack occurred. Claimant argued that his attacker's use of a metal weapon to injure claimant was evidence that the State was negligent in failing to employ adequate security measures to protect claimant and other incarcerated individuals in the A Block Yard. The Court of Claims bifurcated the trial and issued a decision pertaining solely to the State's liability in the matter. It heard the testimony of several witnesses, including that of correctional officers who were present in the yard of the facility at the time of the attack, as well as the testimony of claimant's expert witness, a retired employee of the New York City Department of Corrections who worked as a corrections officer for 26 years. In its decision, the Court of Claims noted that, in order to establish liability in an prison assault case, a claimant "must demonstrate one or more of the following: (1) the State knew or should have known that claimant was at risk of being assaulted and yet failed to provide claimant with reasonable protection; (2) the State knew or should have known that the assailant was prone to perpetrating such an assault and the State did not take proper precautionary measures; or (3) the State had ample notice and opportunity to intervene but did not act ." The Court took issue with the credibility of claimant's expert witness, who had never personally walked through Sing Sing Correctional Facility, and who made multiple erroneous assumptions on the layout of the facility. The Court ultimately dismissed the claim, holding that the evidence that prison officials had any notice of the threat to claimant's safety was insufficient to meet claimant's burden of proof for a determination of liability in this matter.

Flaherty v State of New York, 296 NY 342 [1947]

The guardian ad litem of a child claimant filed a negligence action in the Court of Claims for injuries sustained by claimant while he was in the custody of the State Training School for Boys at Warwick. The claim alleges that after claimant failed to show up for a challenged fight with another child in the custody of the school, this child poured a vial of acid over claimant's face and head while he was in bed sleeping, causing serious injury. Importantly, claimant alleges that the boy initially poured acid on claimant's pillow sometime before bedtime, producing a hole in the pillow, which, after alerting and obtaining permission from the headmaster, was discarded by claimant when he noticed that the pillow was damaged. The Court of Claims granted the State's motion to dismiss the claim, and the appellate division reversed, holding the state liable for negligence in its failure to protect claimant from the other child. The Court of Appeals reversed the Appellate Division's ruling and affirmed that of the Court of Claims, holding that "the state is responsible in the operation and management of its schools, hospitals, and other institutions only for hazards reasonably to be foreseen and risks reasonably to be perceived." The Court further held that the generally "lax" supervision of boys by the facility, and the headmaster's awareness that claimant's pillow had a mysterious hole in it were alone insufficient to establish that the risk of acid attack while claimant was sleeping was foreseeable by the State.

Dizak v State of New York, 124 AD2d 329 [3d Dept 1986]

Claimant, an individual incarcerated in a state correctional facility, filed a claim against the state, alleging negligence on the part of state employees for failure to protect claimant from being assaulted by another incarcerated individual. Claimant alleges that he was struck in the head and face with the wooden handle of a pickaxe by another incarcerated individual while they were working together on a ground crew detail at Adirondack Correctional Facility. Claimant also argued that because claimant's attacker had been the subject of close to a dozen misbehavior reports, the state had notice of the individuals' tendency for violence and was therefore negligent in its failure to protect claimant from attack. The Court of Claims dismissed the claim on the grounds that the evidence presented by claimant failed to establish that the state had knowledge of the attacker's propensity to commit acts of violence, and that the state provided adequate general supervision of the facility and was therefore not negligent. Claimant appealed. The Third Department of the Appellate Division affirmed the Court of Claims ruling. The Third Department that while it is well settled that the State "had a duty to provide inmates of its correctional facilities with "reasonable protection against foreseeable risks of attack by other prisoners," claimant failed to establish that the attack that injured claimant was foreseeable by the State. The Court disagreed that the attacker's prior misbehavior reports constituted notice to the state of the attacker's propensity for violence, because it noted that many of these misbehavior reports were the result of small, or otherwise nonviolent infractions. It noted, however, that "a known dangerous prisoner may place the state on notice of an increased likelihood of an assault and impose a heightened duty to take special precautions."

Rivera v State of New York, 34 NY3d 383 [2019]

An incarcerated individual brought an action against the state alleging liability for claimant's assault and battery by correctional officers at the facility where claimant was incarcerated under a theory of respondeat superior. Claimant was granted permission to file a late notice of claim in the Court of Claims, pleading causes of action for assault and battery, and ultimately filed a second claim for failure to provide adequate protection, gross negligence, excessive force, failure

to properly train and supervise, negligence per se, and intentional infliction of emotional harm which was later dismissed upon stipulation of the parties. Both parties filed cross-motions for summary judgement. The State argued that it was not responsible for claimant's injuries, because the employee who attacked claimant was acting outside of the scope of his employment when the alleged assault occurred. The Court of Claims denied claimant's motion and granted the State's motion for summary judgement, and the Appellate Division affirmed. The Court held that there was "no reasonable connection" between the assault and the duties normally performed by corrections officers, and therefore the correctional officer's attack on claimant was "a substantial departure" from the normal method of performance. On appeal, the Court of Appeals affirmed, holding that the corrections officers were acting outside of the scope of their employment by the department of corrections when they assaulted claimant. The court gave five factors involved in determining whether conduct is within the scope of a defendant's employment: "(1) the connection between the time, place, and occasion for the act, (2) the history of the relationship between employer and employee as spelled out in actual practice, (3) whether the act is one commonly done by the employee, (4) the extent of departure from normal methods of performance, and (5) whether the specific act was one that the employer could reasonably have anticipated, i.e., whether it was foreseeable. The Court of Appeals explained that unauthorized use of force by corrections officers was "so egregious as to constitute a significant departure from the normal methods of performance of the duties of a corrections officer as a matter of law.

Lewis v State of New York, 223 AD2d 800 [3d Dept 1996]

Claimant an incarcerated youth, filed an action in the Court of Claims seeking damages for the injuries he sustained when a Division for Youth Facility (DYF) Aide allegedly used excess force to "take down" an already subdued claimant during an altercation in the facility's van. The Court of Claims awarded damages in favor of claimant, finding that the aide did not follow the required procedures pertaining to the use of force in DYF facilities, and ruling that excessive force had been used by the aide on claimant, resulting in his injuries. The State appealed, arguing that the Court of Claims erred in measuring the degree of force necessary to bring claimant under control under the circumstances. The Appellate Division, Third Department affirmed the Court of Claims decision. The Court acknowledged its due deference to the decision of the Court of Claims, which it argued was "in a better position to assess the evidence and credibility of the witnesses," and found no evidentiary basis to disturb the Court of Claims' ruling that claimant was already sufficiently under control at the time of the actions taken by the DYF employee resulting in excessive force.

Davis v State of New York, 203 AD2d 234 [2d Dept 1994]

Claimant decedent's estate brought an action in the Court of Claims to recover damages for personal injuries sustained by decedent as a result of use of force by Corrections Officers while decedent was incarcerated in a State Correctional Facility. The Court of Claims granted defendant's motion to dismiss, finding that claimant's eyewitness and expert with lacked credibility. The testimony of claimant's eyewitness was inconsistent, and that of the expert witness failed to indicate whether he considered the use of force by corrections officers to be excessive. Claimant appealed. In affirming the Court of Claims' ruling, the Second Department of the Appellate Division held that a trial court's determinations should be accorded great weight and should not be quickly overturned, particularly when these determinations relate to the weighing of evidence and the assessment of the credibility of witnesses at trial.

Pitts v State of New York, 166 AD3d 1505, 1505 [4th Dept 2018]

An individual incarcerated at a State Correctional Facility filed a negligence claim in the Court of Claims against the facility, seeking damages for injuries allegedly caused when he was attacked by another incarcerated individual in the recreation yard of the correctional facility. The trial was bifurcated, and after the conclusion of the liability portion, the Court of Claims entered a judgement in favor of the claimant, finding that the facility was negligent in its failure to prevent the attack, and was therefore fully responsible for claimant's injuries. Defendant, the State, appealed. The Fourth Department of the Supreme Court, Appellate Division, affirmed the Court of Claims ruling, holding that the facility's continuous failure to keep officers posted in the recreation yard of the facility resulted in the lack of supervision in the yard which led to the attack on Claimant, and was therefore the proximate cause of claimant's injuries.

Brown v City of New York, 95 AD3d 1051, 1052 [2d Dept 2012]

A formerly incarcerated individual sued the City of New York for injuries sustained when plaintiff was assaulted by another incarcerated individual while at Riker's Island. The State filed a motion for summary judgement, which was granted by the state supreme court, who dismissed the case. Plaintiff appealed. The Appellate Division, Second Department reversed the Supreme Court's decision granting defendant's motion for summary judgement. The Court found that the City, as the movant for summary judgement, failed to meet its burden of establishing that plaintiff's attack was not foreseeable. The Court further held that the degree to which defendant had knowledge of the danger presented by plaintiff's assailant presented genuine issues of material fact which required denial of the summary judgement motion.

Vasquez v State of New York, 68 AD3d 1275 [3d Dept 2009]

Claimant, an incarcerated individual, brought a negligence lawsuit against the state for its failure to protect claimant from an assault by three other incarcerated individuals in the bathroom of Ogdensburg Correctional Facility. The Court of Claims bifurcated the trial on the issue of liability, and then dismissed the claim, finding that the state lacked notice of the danger to claimant and that the assault in the bathroom was not sufficiently foreseeable by the state. Claimant appealed, and the Appellate Division, Third Department affirmed the Court of Claims ruling. It held that the evidence failed to show that the State had any notice of the risk of assault to the claimant in the bathroom. The Court argued that defendant's duty of care to protect individuals under incarceration is limited to those risks that are "reasonably foreseeable."

Blake v State of New York, 259 AD2d 878, 879 [3d Dept 1999]

Claimant, an individual incarcerated at Shawangunk Correctional Facility, was in one of the two recreation yards reserved for individuals confined to the Special Housing Unit (SHU) when he was assaulted by another incarcerated individual, resulting in serious injury. Claimant filed a lawsuit against the State in the Court of Claims, alleging that State employees of the correctional facility failed to protect claimant from the attack. Evidence presented during trial showed that plaintiff's attacker had assaulted another individual in the same yard only several months earlier, and that guards had never located the weapon used during that assault by the attacker. After a bifurcated trial, the Court of Claims entered judgement in favor of claimant on the issue of liability. Defendant appealed. The Appellate Division of the Supreme Court, Third Department,

affirmed the Court of Claim's ruling. It held that the existence of a "known dangerous prisoner" in the yard heightens the duty of the State to provide adequate supervision, because attacks by this individual upon others are more foreseeable. Given these facts, the Court found no reason to disturb the Court of Claims judgement in favor of the plaintiff in this matter.

Littlejohn v State of New York, 218 AD2d 833, 834 [3d Dept 1995]

Claimant filed a lawsuit against the State of New York, seeking damages for injuries sustained by claimant when he was assaulted by another incarcerated individual with a piece of glass that the individual found lying in the yard at Clinton Correctional Facility. The trial record further revealed that claimant's attacker was involved previously in four separate assaults against a corrections officer and several incarcerated individuals in the months leading up to Claimant's attack. Additionally, attacker's file contained several notations by correctional staff regarding the individual's propensity towards violence and the risk he posed to staff and other incarcerated individuals. The Court of Claims entered judgement in favor of claimant. The State appealed; arguing that the Court of Claims improperly expanded the duty of care owed by the State to Claimant. The Third Department of the Appellate Division affirmed the judgement entered by the Court of Claims. It found the state's argument to be without merit because "the state has a duty to use reasonable care to protect its inmates from foreseeable risks of harm, including risks of attack by other prisoners," and noted that such a duty could be heightened by the presence of a "known dangerous prisoner" such as attacker.

Huertas v State of New York, 84 AD2d 650, 650-651 [3d Dept 1981]

Claimant, decedent's estate, filed a lawsuit in the Court of Claims, seeking damages for injuries sustained when decedent was attacked by another incarcerated individual while at Clinton Correctional Facility. Decedent died six days after the attack, having never regained consciousness. The Court of Claims entered judgement in favor of claimant and awarded claimant damages that included \$1500 for decedent's "conscious pain and suffering. On Appeal, the Appellate Division of the Supreme Court, Third Department, modified the Court of Claim's ruling, reversing the award of \$1,500 in damages for pain and suffering to claimant. The Third Department found that while ample evidence supported the Court of Claims' finding that the State was negligent in its careless supervision of facility grounds and subsequent failure to protect decedent from his attacker, the award for pain and suffering cannot be sustained, as decedent never regained consciousness before dying because of the attack.

Martin v State of New York, UID No. 2002-001-502 [Ct Cl, Read, P.J., Mar 11, 2002], mod 39 AD3d 905 [3d Dept 2007], lv denied 9 NY3d 804 [2007]

Claimant, and individual incarcerated by the State of New York at Great Meadow Correctional Facility, brought an action in the Court of Claims to recover damages for injuries sustained when claimant was assaulted with a knife-like device, or "shanked", by another incarcerated individual in the Keep lock recreation yard at Great Meadow. Claimant alleged that on the day of the attack, defendant negligently failed to adhere to its own metal detector policy to screen prisoners in the keeplock recreation area, which allowed claimant's attacker to smuggle in a weapon. In entering judgement for the liability portion of Claimant's bifurcated trial, the Court of Claims reasoned that, while the State has a duty to use reasonable care to protect those incarcerated from "foreseeable risks of harm" including the risk of attack by other incarcerated individuals, the State is "not the absolute insurer of an inmate's safety". It found no evidence that the State had

any reason to believe that claimant's attacker posed any particular threat or danger to claimant. However, the Court of Claims did find evidence that the State was negligent by failing to appropriately utilize metal detectors in its screening of keeplocked individual entering the yard, and therefore liable for claimant's injuries. Accordingly, the Court of Claims entered judgment in favor of Claimant.

Medical Negligence/Medical Malpractice

Kagan v State of New York, 221 AD2d 7 [2d Dept 1996]

Claimant, an incarcerated individual, commenced an action against the State after she lost hearing in one of her ears. Claimant did not plead any distinct theories of liability but described how she consistently sought and was denied medical treatment at Bedford Hills Correctional Facility. The Court held that the State was liable under theories of ministerial neglect, medical negligence, and/or medical malpractice. The Court found that Bedford Hills staff breached nondiscretionary protocols in addressing Claimant's medical concerns and screening her for same, which supported a claim of ministerial neglect. The Court held that the State could also be held liable under a theory of medical malpractice and medical negligence as there was ample evidence establishing that Claimant suffered injuries directly attributable to a breach of the State's duty to provide adequate medical care for its prisoners and the injury was foreseeable. The Court concluded the State's failure to adequately diagnose and treat Claimant's condition amounted to medical malpractice and its failure to provide a hearing test for six months after it was recommended by a doctor demonstrated medical negligence.

Howard v State of New York, 96 AD2d 656 [3d Dept 1983]

Continuous Treatment Doctrine. Movant moved for permission to serve and file a late claim for medical malpractice. The Claim was premised upon the failure to adequately diagnose and treat his kidney failure. The Court held that the motion was time-barred. Although Movant was still incarcerated in State custody and receiving treatment for his kidney failure, he was no longer treating at Clinton Correctional Facility, where he allegedly received the incorrect diagnosis and ineffective treatment. Thus, the Court concluded the continuous treatment doctrine did not apply.

Kelly v State of New York, 110 AD2d 1062 [4th Dept 1985]

Continuous Treatment Doctrine. Different view than Howard. Although the original diagnosis of Claimant's eye condition was made by the prison doctor at Attica Correctional Facility in July 1980, Claimant continued to seek medical care and treatment for his eye condition from medical personnel employed by the State at three different prisons between July 1980 and March 1982. The Court concluded the continuous treatment doctrine applied and the claim was timely commenced.

Rivers v State of New York, 159 AD2d 788 [3d Dept 1990], ly denied 76 NY2d 701 [1990]

The Appellate Division reversed a Court of Claims judgment and held the State was not liable for negligent medical treatment provided to incarcerated individual by non-State surgeon at third-party hospital. Claimant was transferred from State prison facility to nearby hospital because the State lacked the facilities to perform the surgery. The Court held that the surgeon was an independent contractor and there was nothing to suggest to the State that the surgeon was inadequate (i.e. negligent referral). Moreover, there was not any evidence that State had control

over the surgeon. The Appellate Division concluded that, to hold the State liable in this circumstance (as the Court of Claims did), would render the State a guarantor of medical services provided to incarcerated individuals.

Soltis v State of New York, 172 AD2d 919 [3d Dept 1991]

Following Rivers, the Third Department evaluates claims of medical malpractice committed by non-State employees under a theory of agency by estoppel. The applicability of the doctrine depends upon whether the claimant could have reasonably believed, based upon all of the surrounding circumstances, that the treating physician was provided by the State or was otherwise acting on the State's behalf. In this case, the State, relying on Rivers moved for summary judgment arguing that the treating doctor was an independent contractor for whom the State could not be responsible for. The Court denied the motion and held that there were issues of fact as to whether the State can be responsible under the theory of agency by estoppel. The Court held "the record indicates that claimant was initially examined at the facility's infirmary by a physician's assistant employed by the State, who arranged for claimant's later consultation with Scors, [the non-State doctor] which also occurred at the facility. Prior to surgery, claimant signed a Department of Correctional Services consent form authorizing performance of the procedure by Scors. In addition, the surgery took place in the facility's operating room where Scors was assisted by a facility nurse. In view of the foregoing, we find that questions of fact exist as to whether claimant, in accepting the services of Scors, reasonably assumed that Scors was either employed by or acting on behalf of the State and, therefore, that Scors' services were offered by the State." (172 AD2d at 920)

Garofolo v State of New York, 135 AD3d 1108 [3d Dept 2016]

"[A] hospital or an entity, such as DOCCS, may be vicariously liable for the medical malpractice of independent contractors in certain circumstances based on a theory of 'agency or control in fact, or apparent or ostensible agency'" (135 AD3d at 1109, quoting Kavanaugh v Nussbaum, 71 NY2d 535, 547 [1988]). The Court held that there was no evidence to demonstrate the two non-State doctors were agents of DOCCS. "[W]hile claimant may not have been explicitly informed of the employment relationship between DOCCS and the doctors, the record demonstrates that claimant's request for a second opinion was honored and, further, that claimant was told that he could seek treatment elsewhere at his own expense. Additionally, claimant's surgery took place outside of the prison without the involvement of any prison employees and, as noted above, claimant signed consent forms that did not reference DOCCS." In reaching its decision, the Court specifically distinguished Soltis.

Rothschild v Braselmann, 157 AD3d 1027 [3d Dept 2018]

Interplay of various litigations in several courts. As relevant here, claimant, an incarcerated individual, commenced an action in the Court of Claims and Supreme Court premised upon malpractice purportedly committed by two doctors who were not DOCCS employees. The DOCCS employees moved to dismiss the Supreme Court action as duplicative of the Court of Claims action, which was commenced first. The Court refused to dismiss the Supreme Court action as duplicative of the Court of Claims action, recognizing the Court of Claims matter hinged on whether the Claimant could prove the theory of agency or control in fact, or apparent or ostensible agency. The Court noted that if the Supreme Court matter was dismissed and agency was not established in the Court of Claims matter, the injured party would be without

redress. The Court denied the Supreme Court action without prejudice and stayed the Supreme Court matter pending the outcome of the Court of Claims action.

Rothschild v State of New York, UID No. 2019-044-507 [Ct Cl, Schaewe, J., Feb. 7, 2019]

Court of Claims action referenced in Rothschild v Braselmann. Court concludes the State presented sufficient facts demonstrating the two doctors were independent contractors not under DOCCS' control. Claimant acknowledged he was aware that each of the two doctors had their own private medical practice and the procedures at issue either took place or would take place at an outside medical facility and/or office.

Snyder v State of New York, 70 Misc 3d 801 [Ct Cl 2020] [Leahy-Scott, J.]

Evaluating State's liability under a theory of agency or control in fact (focusing on the relationship between the Doctor and DOCCS) and apparent or ostensible agency discussed in Soltis and its progeny. Nothing within the service contract between DOCCS and Erie County Medical Center (ECMC) supported a theory of agency or control in fact. As for ostensible agency, claimant who was suffering chest pain appeared at the infirmary at Auburn Correctional Facility. After the nurse at the infirmary could not get the EKG machine to work, she referred Claimant to ECMC for a telemedicine consultation. Telemedicine doctors prescribed medication but did not order the EKG. It was later discovered Claimant was suffering from a myocardial infarction. Court held that there was an issue of fact as to whether the State should be held vicariously liable for the any malpractice committed by ECMC as a result of Claimant's telemedicine consultation under a theory of agency or control in fact and/or apparent or ostensible agency. The Court noted the unique situation of telemedicine (i.e., Claimant saw a third-party doctor, but remained at the State facility and was treated by DOCCS personnel in accordance with the telemedicine recommendation.) Additionally, the Claimant testified at his EBT that he saw "an outside doctor." Claimant could have been referring to the actual location of the doctor (i.e., outside the facility) or could have been referring to the affiliation of the doctor as it relates to DOCCS (i.e. an independent doctor unaffiliated with DOCCS). Claimant's prior telemedicine consultations did not clarify Claimant's deposition testimony; rather, the prior consultations may inform the reasonableness of Claimant's belief as to the relationship between ECMC and DOCCS.

Wells v State of New York, 228 AD2d 581 [2d Dept 1996], lv denied 88 NY2d 814 [1996]

Where medical issues are not within the ordinary experience and knowledge of layperson, expert medical proof is required to establish a claim for medical malpractice. Provision of medical records alone is insufficient.

Matter of Barresi v State of New York, 232 AD2d 962 [3d Dept 1996]

Distinctions between medical malpractice and medical negligence. "The distinction between ordinary negligence and malpractice turns on whether the acts or omissions complained of involve a matter of medical science or art requiring special skills not ordinarily possessed by lay persons or whether the conduct complained of can instead be assessed on the basis of the common everyday experience of the trier of the facts" (232 AD2d at 963). The Court held "the portions of claimant's first cause of action, which allege that the State (1) failed to provide/hire/staff competent medical personnel and (2) failed to promulgate rules, regulations, protocols and procedures regarding referrals, are firmly based in negligence and should not have

been classified as medical malpractice causes of action” (*id.* at 964). Conversely, “claimant’s allegations regarding the failure to train the SUNY Health Center employees subsequent to the decision to hire them and regarding the failure of the State-employed nurse to follow a de facto protocol to ensure proper diagnosis and treatment by referring patients with particular symptoms to appropriate specialized physicians are grounded in medical malpractice” (*id.*).

Fabelo v State of New York, UID No. 2019-053-011 [Ct Cl, Sampson, J., May 14, 2019]

Distinctions between medical malpractice and medical negligence. Decisions regarding treatment and any delay related thereto sound in medical malpractice. However, to the extent Claimant asserts he was forced back to work prematurely in contravention of his surgeon’s instructions, such claim sounds in medical negligence “assuming that the decision was not based on a medical judgment made at [the state correctional facility].”

Incarcerated Individual Safety

Kandrach v State of New York, 188 AD2d 910 [3d Dept 1992]

When the State, through its correctional authorities, directs an incarcerated individual to participate in a work program, it owes the incarcerated individual a duty to provide instructions for the safe operation of machinery and equipment. However, the State is not an insurer of the safety of incarcerated individuals, and negligence cannot be inferred solely from the happening of an incident.

Preston v State of New York, 59 NY2d 997, 998-999 [1983]

The Court of Appeals held that when the State invites people on to its land for a specific purpose, like swimming, it has a duty to inspect and remove hazards or to give appropriate warnings. Claimant was injured when he tripped and cut his leg while wading in a small lagoon adjacent to an island owned by the State. Claimant's accident was caused by a rusty, jagged pipe imbedded in concrete and rising to within two inches of the water's surface. Evidence at trial established that the pipe had been in place in the same condition for at least four years. The Court found under those circumstances, the State had a duty either to inspect and remove hazards from the water or to give warnings that the waters were used at the swimmer's risk.

Callahan v State of New York, 19 AD2d 437, aff’d 14 NY2d 665 [1963]

Claimant, an incarcerated individual, working in the prison workshop was injured when his hand and arm were caught between the rollers of a corrugating machine which was used to process garbage cans. The Court found the safety device on said machine was defective and inadequate and that the State knew or should have known of said defect. Additionally, the Court determined under all the circumstances that claimant established his freedom from contributory negligence.

Ortiz v State of New York, UID No. 2019-032-006 [Ct Cl, Hard, J., Mar 5, 2019]

Claimant, an incarcerated individual at Greene Correctional Facility alleged while pushing dirty trays down a metal table, his right pinky finger was severed when it became caught on an unprotected raised metal circle in the table. Defendant moved for summary judgment dismissing the claim which was granted. Defendant made prima facie showing that it did not create the dangerous condition and that it did not have actual or constructive notice of the dangerous condition. Claimant also failed to respond to the motion for summary judgment.

Palmisano v State of New York, 47AD2d 692 [3d Dept 1975]

Infant claimant who was confined to the New York State Vocational Institute at West Coxsackie, severed part of one of his fingers while working in the woodworking shop on a power machine known as a joiner-planer. The trial court found that the proximate cause of injury was the failure of the State to properly instruct claimant in the use of the joiner, the State's failure to properly enforce its safety rule regarding "push sticks", and the State's failure to properly supervise work of the claimant. The trial court properly applied to the State the standard of care which is required under section 200 of the Labor Law to protect the health and safety of employees in the use of dangerous machinery.

Muhammad v State of New York, 15 AD3d 807 [3d Dept 2005]

Claimant, an incarcerated individual at Bare Hill Correctional Facility working as a recycling porter, sustained an injury when the lid of a metal can sliced through his latex glove and cut the pinky finger on his right hand. Although claimant had performed this job without incident for over a month and had seen other inmate recycling porters wearing heavy duty safety gloves in the past, did not request safety gloves on the date of his injury. The Court found that incarcerated individuals were not required to wear safety gloves or that the job could not be performed safely without them.

Whedon v State of New York, UID No. 2019-038-103 [Ct Cl, DeBow, J., Jan. 31, 2019]

The State was found liable to claimant for injuries sustained when he was using a table saw while assigned to work in a correctional facility workshop. Defendant breached its duty to properly train claimant in how to safely use the saw. Claimant was not reckless and thus his own conduct was not the sole proximate cause of his accident, but because he failed to exercise due care, his conduct was a proximate cause. Liability apportioned 50/50.

Happ v State of New York, UID No. 2021-058-015 [Ct Cl, Leahy-Scott, J., May 11, 2021]

The Court found the State 50% responsible for Claimant's injuries and Claimant 50% responsible for his injuries as the State failed to provide Claimant, an incarcerated individual, with reasonably safe equipment to cut boards and failed to properly supervise Claimant in the use of equipment. However, Claimant failed to use ordinary care in cutting a board despite years of experience doing so. The Court found claimant's conduct was not a superseding cause barring recovery.

Daniels v State of New York, UID No. 2019-040-042 [Ct Cl, McCarthy, J., June 17, 2019]

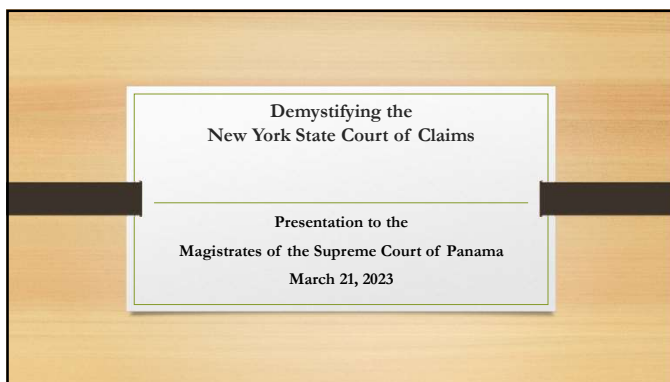
Claimant, an incarcerated individual at Eastern Correctional Facility sustained injury as he descended a stair and fell because the area was wet with water. The Court concluded that Defendant owed a duty to Claimant to maintain the stairway in a reasonably safe condition. In order to prove that Defendant breached its duty to Claimant, however, it is Claimant's burden also to prove that a dangerous condition existed and that the State had notice that the dangerous condition existed. The Court found that there was no evidence that Defendant created the condition or that the State had actual or constructive notice of the water on the floor.

Special thanks to the ***Hon. Maureen T. Liccione***, Judge of the NYS Court of Claims, ***Kathleen Anderson***, Franklin H. Williams Judicial Commission Fellow, ***Sarah E. Simpson-Baptiste***, Principal Law Clerk to the Hon. Maureen T. Liccione and ***James J. Wisniewski***, Principal Law Clerk to the Hon. Catherine E. Leahy-Scott for all their assistance in helping me with case synopses and developing these resource materials.

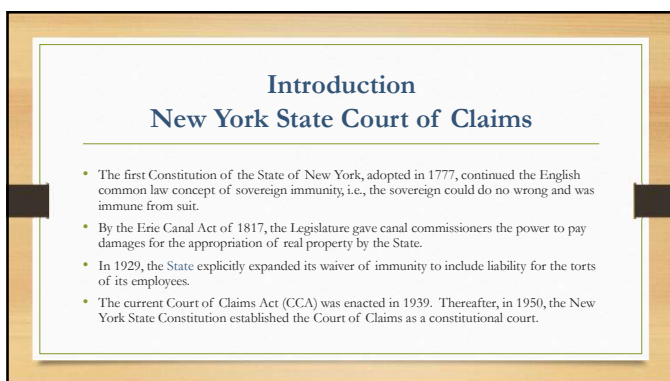
Hon. Catherine E. Leahy-Scott
Judge
NYS Court of Claims



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Erie Canal



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Erie Canal



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Attica Uprising



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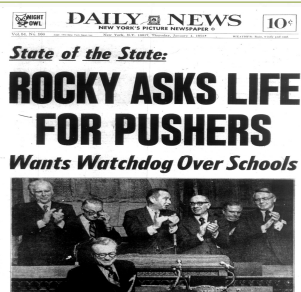


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Attica Uprising



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Organization New York State Court of Claims

Richard E. Sise
Acting Presiding Judge

Eileen F. Fazzone, Esq.
Chief Clerk

- Judges are appointed by the Governor with advice and consent of the Senate for nine-year terms. The Court currently consists of 27 Judges who preside in Court of Claims districts around the State and have statewide jurisdiction to hear and determine claims against the State, or by the State against claimants, or between conflicting claimants.
- The CCA has been amended to provide for 59 additional Judges who are designated Acting Supreme Court Justices; those Judges do not hear and determine claims against the State, but rather preside over other civil and/or criminal matters.

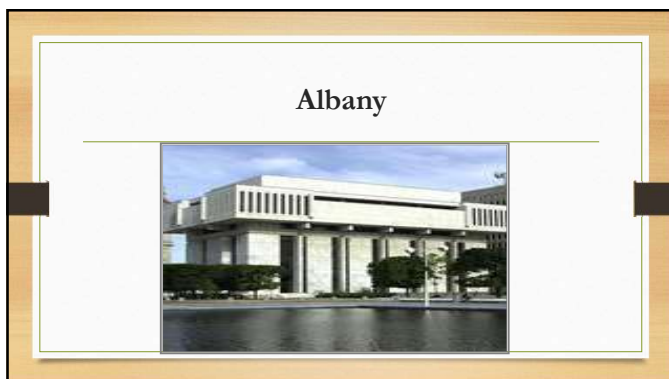
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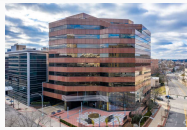


Utica



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White Plains



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Governing Law

The Law and Rules Governing Practice in the Court of Claims:

- New York Constitution
- Court of Claims Act (CCA)
- Uniform Rules for the Court of Claims (22 NYCRR Part 206) (Rules)
- Decisions of Court of Appeals
- Decisions of Appellate Division of Supreme Court
- www.nycourts.gov/decisions -Decisions - Home | NYCOURTS.GOV
- New York State Civil Practice Laws and Rules (CPLR)-to the extent there is nothing in the CCA or Rules to the contrary, the CPLR applies.

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New York State Court of Claims Home Page

<http://ww2.nycourts.gov/COURTS/nyscourtofclaims/index.shtml>

Contains important information relative to practice in the Court of Claims:

- Decisions
- Practice – CCA, Uniform Rules, Motion practice
- Frequently asked questions



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Jurisdictional Entities

- The primary defendant in a Court of Claims action is the State of New York.
- State agencies, such as the Department of Transportation, the Department of Corrections and Community Supervision (DOCCS), the Division of State Police, do not have an independent legal existence.
- There is no jurisdiction over any city, county, town or village government, or over any individual defendant.
- Where the claim is based on alleged wrongful conduct of a state agency or employee, the proper defendant is the "State of New York."

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Jurisdictional Entities (cont'd.)

- The Court of Claims also has jurisdiction over certain entities such as the New York State Thruway Authority, the City University of New York (senior colleges only), and the New York State Power Authority (appropriations claims only). Where the defendant is one of these entities, it must be named and served in addition to the Attorney General being served. CCA § 11
- The Court has jurisdiction over the Olympic Regional Development Authority (ORDA), but only as to claims arising at facilities owned by the State.

NOTE: The Court also has jurisdiction over tort and wrongful death actions against Roswell Park Cancer Institute Corporation (Roswell Park). Practitioners should be aware that actions against Roswell Park are subject to commencement procedures not otherwise applicable in the Court of Claims.

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Jurisdictional Entities (cont'd.)

- Except in the instances discussed, state public authorities are sued in Supreme Court under their own names, i.e., New York State Dormitory Authority. The enabling legislation should be consulted.
- Reference to the General Municipal Law is an indication that the Supreme Court, not the Court of Claims, has jurisdiction over the entity. In the absence of language specifically placing jurisdiction in the Court of Claims, those notice provisions evince the legislative intent to place jurisdiction in a court of general jurisdiction and not the Court of Claims.

NOTE: The Court of Claims Act governs procedures in the Court of Claims. With the exception of actions against Roswell Park sounding in tort or wrongful death, the General Municipal Law has no application in the Court of Claims.

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New York State Court of Claims Trials

- All trials in the Court of Claims are bench trials. There is no right to a jury trial. (CCA § 12[3])
- During the global pandemic trials proceeded virtually.
- Post-pandemic trials may proceed virtually, in person or a hybrid.

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Types of Claims

- The Court has jurisdiction to resolve matters in "accordance with the same rules of law as applied to actions in the Supreme Court against individuals or corporations, provided the claimant complies with the limitations of [the CCA]". CCA § 8
- The Court's jurisdiction includes claims for breach of contract, appropriation, tort, unjust conviction and imprisonment, retaliatory personnel actions, counterclaims and claims for declaratory judgment regarding the obligation of an insurer to indemnify or defend a defendant. CCA § 9, § 9-a
- Generally, the Court of Claims does not have jurisdiction over actions demanding equitable relief (although the Court may apply equitable principles and may grant some equitable relief incidental to a claim for damages).

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Types of Claims (cont'd.)

- Except for third-party claims involving the obligation of an insurer to defend or indemnify a defendant in a pending a Court of Claims action, the Court does not have jurisdiction to issue a declaratory judgment.
- The State may bring a counterclaim in the Court of Claims in which case the claimant, by bringing suit in this Court, has waived the right to a jury trial. CCA § 9(3)
- The Court has no jurisdiction to award punitive damages. Except under limited circumstances, costs, disbursements and attorney's fees are not recoverable in the Court of Claims. CCA § 27

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Obtaining Jurisdiction

- Jurisdiction over the State (or other defendant subject to Court of Claims jurisdiction) is obtained by serving and filing a claim. The claim fulfills the function of both the summons and complaint in Supreme Court practice.
- A "Notice of Intention to File a Claim" is an optional document which may be served upon the defendant(s) in many case types. A notice of intention is **not** filed with the Court. If timely and properly served, it may extend the time for serving and filing the claim.
- There is no "Notice of Claim" in Court of Claims practice with the exception of Roswell Park claims.

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Obtaining Jurisdiction (cont'd.)

- The claim must be both filed with the Clerk of the Court and served on the Attorney General and any other defendant(s) required to be separately served.
- Filing with the Clerk may be made by personal delivery, mail, e-filing via the New York State Court Electronic Filing System (NYSCEF), or facsimile transmission (with payment of the filing fee online).
- The filing fee of \$50 must accompany all claims unless an application for waiver of the fee (or an application for a reduction if the claimant is an incarcerated person) is submitted with the claim.

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Obtaining Jurisdiction (cont'd.)

- Service upon the State of New York is made upon the Attorney General. Service may be accomplished either by personal delivery or certified mail, return receipt requested.
- A claim (or a notice of intention to file a claim) is considered served, or filed, when it is received, and not when it is mailed.
- The service and filing requirements set forth in CCA § 11 are considered jurisdictional unless waived pursuant to CCA § 11 (c).

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Jurisdictional Defenses

- CCA § 11(c) provides that "Any objection or defense based upon failure to comply with (i) the time limitations contained in section ten of this act, (ii) the manner of service requirements set forth in subdivision a of this section, or (iii) the verification requirements as set forth in subdivision b of this section is waived unless raised, with particularity, either by a motion to dismiss made before service of the responsive pleading is required or in the responsive pleading, and if so waived the court shall not dismiss the claim for such failure."
- In order to preserve a verification defense, defendant must notify the opposing party with due diligence and assert the defense in the answer or a pre-answer motion.

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Time Limitations

- **Unjust Conviction and Imprisonment Act:** Two (2) years after the pardon or dismissal of the accusatory instrument upon which the claim is based. CCA § 8-b
- **Appropriations:** Three (3) years after accrual. Note, however, that where the claim is filed more than six (6) months after personal service of the notice of appropriation, interest is suspended for the period between six months from accrual and the date of filing. CCA § 10 (1); EDPL § 502
- **Wrongful death:** Ninety (90) days after the appointment of an executor or administrator, unless the claimant shall within such time serve a notice of intention to file claim, in which event the claim shall be filed within two (2) years after the death of the decedent. CCA § 10 (2)

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Time Limitations (cont'd.)

- **Unintentional tort committed by state officer or employee:** Ninety (90) days after accrual of the cause of action, unless the claimant shall within such time serve a notice of intention to file a claim, in which event the claim shall be filed within two (2) years after accrual of the cause of action. CCA § 10 (3)
- **Intentional torts:** Ninety (90) days after accrual, unless a notice of intention is served within such time, in which event the claim shall be filed within one (1) year after accrual. CCA § 10 (3-b)
- **Breach of contract** (and any other claim not otherwise provided for): Six (6) months after accrual, unless a notice of intention to file claim is served within such time, in which event the claim must be served and filed within two (2) years after accrual. CCA § 10 (4)

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Time Limitations (cont'd.)

- **Incarcerated Person (IP) Personal Property Claims:** A claim for recovery of damages for injury to or loss of personal property must be filed within one hundred and twenty (120) days after the date on which the IP has exhausted the administrative remedy provided by DOCCS. A property claim may not be filed until the IP has exhausted their administrative remedies.
- **Child Victims Act:** Extended the time which civil actions based upon certain sexual criminal conduct may be brought. The statute (CPLR 214-g) created a revival period for civil actions for which the statute of limitations has already expired (including cases that had been dismissed as time-barred). The time periods for filing claims and serving notices of intention to file claims contained in CCA § 10, have no application to such claims. CCA § 10 (10). This statutory revival period expired August 14, 2021, but there has been discussion regarding whether this revival period extended further due to the COVID pause.

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Time Limitations (cont'd.)

- **Adult Survivors Act:** Revives claims for sexual assault for a one-year period beginning November 24, 2022. Survivors of a sexual offense (sexual offenses as defined in penal law §§ 130, 255.26 or 255.27) may sue regardless of the statute of limitations if subjected to a sexual offense when they were over the age of 18. (CPLR 214-j)
- **Tolling provisions during global pandemic:** During the global pandemic "any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding as prescribed by the procedural laws of the state...is hereby tolled..." Executive Order [Cuomo] 202.8 [9 NYCRR 8.2(2)(8) et seq.]. This tolling provision was extended by additional Executive Orders and Administrative Orders expiring November 3, 2020.

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Legal Disability

- Section 10 (5) of the CCA provides that “[i]f a claimant shall be under a legal disability, the claim may be presented within two years after such disability is removed.”
- The section refers to the same disabilities that operate as an extension of statutes of limitations under CPLR 208 - infancy and insanity.

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Contents of Pleadings

- CCA § 11 (b) places five specific substantive conditions upon the State's waiver of sovereign immunity by requiring the claim to specify:
 1. the nature of the claim;
 2. the time when it arose;
 3. the place where it arose;
 4. the items of damage or injuries claimed to have been sustained; and
 5. the total sum claimed.
- The Court of Appeals has held that the provisions of CCA § 11 (b) are “substantive conditions upon the State's waiver of sovereign immunity.” The failure to satisfy any one of the requirements of section 11 (b) is a jurisdictional defect which may not be remedied by amendment.

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Verification

- Section 11(b) of the CCA requires that the claim or notice of intention to file a claim be verified in the same manner as a complaint in Supreme Court.
- Unjust Conviction and Imprisonment statute, however, mandates in CCA § 8-b (4) that “[t]he claim shall be verified by the claimant.”

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Motions

- Motion for Permission to File a Late Claim (CCA § 10 [6])
- Motion to Treat a Notice of Intention as a Claim (CCA § 10 [8])
- Motion to Amend a Claim (22 NYCRR § 206.7 [b]; CPLR § 3025 [b])
- Motion to Dismiss for Lack of Jurisdiction (CCA §§ 10, 11 [a][i])
- Motion to Dismiss for Lack of Personal Jurisdiction (CCA § 11 [a][i])
- Motion to Dismiss for Lack of Specificity (CCA § 11 [b])

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Motion for Permission to File a Late Claim

- A claimant may be permitted to file a late claim "at any time before an action asserting a like claim against a citizen of the state would be barred under the provision of article two of the [CPLR]."
- If a motion is made within the relevant statute of limitations, the Court has jurisdiction to grant relief under CCA § 10 (6). Once the statute of limitations has lapsed, the case against the State is beyond judicial redress.
- There is no late claim relief for a claim for unjust conviction and imprisonment, which must be brought within two (2) years of the pardon or dismissal of the accusatory instrument under CCA § 8-b (7), or property claims brought by incarcerated persons under CCA § 10 (9).

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Motion for Permission to File a Late Claim (cont'd.)

- CCA § 10 (6) sets forth six factors the Court "shall" consider in deciding whether to exercise its discretion to grant late filing:
 1. Whether the delay in filing the claim was excusable;
 2. Whether the State had notice of the essential facts constituting the claim;
 3. Whether the State had an opportunity to investigate the circumstances underlying the claim;
 4. Whether the claim appears to be meritorious;
 5. Whether the failure to file or serve upon the Attorney General a timely claim or to serve upon the Attorney General a notice of intention resulted in substantial prejudice to the State; and
 6. Whether the claimant has any other available remedy.

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Motion to Treat a Notice of Intention as a Claim

- This remedy is applicable when a claimant timely serves a notice of intention to file a claim but fails to timely serve or file a claim.
- The notice of intention must have been timely served and the motion must be made within the statute of limitations that would apply to a similar action against a nongovernmental entity.
- The Court may grant the motion provided the notice of intention adequately sets forth the substance of the claim, and the State is not substantially prejudiced.

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Motion to Amend a Claim

- The Rules provide that "[p]leadings may be amended in the manner provided by CPLR 3025, except that a party may amend a pleading once without leave of court...within 40 days after service of a pleading responding to it." 22 NYCRR § 206.7 (b)
- CPLR 3025 (b) also provides "[a] party may amend his or her pleading...any time by leave of court." Leave to amend a claim should be freely given absent prejudice or surprise resulting directly from the delay.
- Granting such relief is within the discretion of the court.
- A proposed amended pleading must accompany a motion to amend a claim. Failure to submit a proposed amended pleading in support of a motion to amend is a fatal defect and compels the denial of the motion.
- A motion to amend a claim cannot cure a jurisdictional defect.

Note: Many Judges deny motions to amend a claim without prejudice to a subsequent motion to amend that is accompanied by a copy of the proposed amended pleadings.

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Motion to Dismiss for Lack of Jurisdiction

- CCA §§ 10 and 11 are jurisdictional prerequisites to the maintenance of a claim and must be strictly construed.
- Court of Claims is a court of limited jurisdiction.
 - only claims against the State (CCA § 9 [2]). Where defendant is neither a state actor or a State-related entity, dismissal of the claim for lack of subject matter jurisdiction is mandated.
 - has no jurisdiction to grant strictly equitable relief. Court determines whether the essential nature of the claim is to recover money or whether the monetary relief is incidental to the primary claim.
- The review of an administrative agency's determination falls outside the subject matter of the Court of Claims.

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Motion to Dismiss for Lack of Personal Jurisdiction

- Compliance with filing **and** service is a jurisdictional prerequisite to bringing and maintaining an action in the Court of Claims. (CCA § 11 [a][i])
- A claim must be filed with the Clerk of the Court and a copy shall be served upon the Attorney General either personally or by certified mail, return receipt requested.

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Motion to Dismiss for Lack of Specificity

- Failure to comply with the pleading requirements of Court of Claims Act § 11 (b) is a jurisdictional defect mandating dismissal of a claim.
- Although exactness is not required, the claim must provide a sufficiently detailed description of the particulars of the claim to permit the defendant to investigate and promptly ascertain the existence and extent of its liability.
- The State is not required to go beyond a claim or notice of intention to investigate an occurrence or ascertain information which should be provided.

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Practice in the Court of Claims and Supreme Courts

- Court of Claims – Nonjury trials only.
- Except as otherwise provided by the CCA, rules of the Court of Claims or CPLR, the practice shall be the same as in Supreme Court. (CCA § 9 [9])
- Supreme Court must transfer cases to the Court of Claims where exclusive jurisdiction exists in the Court of Claims; Court of Claims does not have authority to transfer matters to Supreme Court. (Const Art 6, § 19 [3])
- Cases arising out of the same subject matter may be brought in both the Court of Claims and Supreme Court.

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Practice in the Court of Claims and Supreme Courts (cont'd.)

- Filing and serving a claim in the Court of Claims different from Supreme Court.
- There is a fee when initially filing a claim in the Court of Claims. There are no other fees.
- Notice of intention to file a claim is not filed with the Court; and if timely and properly served, it may extend the time for serving and filing the claim. to extend additional

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Practice in the Court of Claims and Supreme Courts (cont'd.)

- The State can, by interpleader, seek to add other potential claimants; but claimants cannot similarly implead other third-party defendants. Claimants under those circumstances must bring a companion Supreme Court action.
- Generally, the Court of Claims does not have jurisdiction over actions demanding equitable relief. Where the claim primarily involves a review of an administration decision or seeks mandamus or prohibition actions to compel or enjoin action by the State, the proper forum is an Article 78 in Supreme Court.

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Practice in the Court of Claims and Supreme Courts (cont'd.)

- Unjust Conviction and Imprisonment statute mandates in CCA § 8-b (4) that "[t]he claim shall be verified by the claimant."
- Motion Practice- Generally CPLR 3211, 3212 and 3025 motions are all subject to the same standards in both Courts, except that a party may amend a pleading once without leave of court...within 40 days after service of a pleading responding to it." 22 NYCRR § 206.7 (b)

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Practice in the Court of Claims and Supreme Courts (cont'd.)

Motion for Summary Judgment:

- Motions for summary judgment (MSJ) are permitted by CPLR 3212 and are the same for both Court of Claims and Supreme Court. Requires attaching a copy of the pleadings, providing affidavit in support, and any other documentation in admissible form.
- A MSJ is granted only where there are no issues of material fact, and the claim can be decided as a matter of law.
- On a MSJ, facts must be viewed in the light most favorable to the non-moving party.

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Practice in the Court of Claims and Supreme Courts (cont'd.)

Motion for Summary Judgment:

- Standard is the same in that a moving party must affirmatively establish the merits of its cause of action or defense and does not meet its burden by noting gaps in its opponent's proof.
- The moving party's failure to make a prima facie showing of entitlement to summary judgment requires denial of the motion, regardless of the sufficiency of the opposing papers.
- A MSJ should be filed no sooner than 30 days and not later than 120 days from the filing of a Note of Issue, unless otherwise directed by the Court.

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Incarcerated Person Pro Se Litigation General Information

- Claims brought by incarcerated persons (IP) in New York State's correctional facilities constitute a significant percentage of the Court's overall docket.
- Claims where an IP is represented by counsel are placed on Individual Assignment System (IAS) calendar of a judge. Actions brought by represented IP are assigned to an IAS calendar of a judge from the Judicial District where the Claim accrued.
- Where an IP is not represented, those claims are placed on the Court's IP Pro Se calendar where the claim accrued in a correctional facility.

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Incarcerated Person Pro Se Litigation Motion Practice, Discovery & Trials

Motion Practice and Discovery:

- Motion practice in IP pro se claims is generally the same as all other Supreme Court Complaints, except for filing fees.
- The same disclosure devices, methods, and procedures that apply to all other actions under Article 31 of the CPLR apply to IP pro se claims as well.
- Pro se litigants are not authorized to issue a subpoena without a court order (CPLR 2302[a])
- Notes of issue are not required.

Location of Trials

- Post-Covid: Utilization of video conferencing technology with IP, Assistant Attorney General, and Court in different locations utilizing Microsoft Teams.

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Incarcerated Person Pro Se Litigation Poor Person Application

Poor Person Application (CPLR Article 11)

- The procedural and substantive considerations for poor person applications in any New York State court apply in the Court of Claims. CPLR 1101; 1102
- An application must be made on proper motion papers, unless relief from that requirement is also requested, and on notice to both the attorney for the defendant (almost always the Attorney General) and the County Attorney for the county in which the actions are triable; or, if the action is triable in New York City, upon the corporation counsel of the City of New York.
- The application may be made before or subsequent to the commencement of the action although as a practical matter, given the time constraints inherent in Court of Claims, it is generally made after the claim is filed. In order to obtain specific benefits authorized by statute, the application should contain a request for those specific benefits, and not merely a general request for poor-person status.

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Incarcerated Person Pro Se Litigation Poor Person Application (cont'd.)

- Because most IP pro se claimants are indigent, the frequency of such applications may be greater in the Court of Claims than in other courts.
- Except for applications for reduction of the filing fee, the most often requested relief by most IP is for the appointment of counsel.
- Since a civil litigant in a Court of Claims action, unlike a criminal defendant, has no right to the appointment of counsel, these applications are almost always denied on the rationale that either:
 - (1) the action is not so complex as to require an attorney, or
 - (2) the action is a personal injury claim of the type normally handled on a contingency fee basis rendering claimant's financial status irrelevant.

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Incarcerated Person Pro Se Litigation Types of Claims

Types of claims:

- Bailment:
Loss or destruction of an IP's personal property.
- Wrongful/Unlawful confinement:
These claims arise in certain circumstances when an IP is confined to their cell (keeplock) or to solitary confinement (usually referred to as the special housing unit or SHU) and either
 - (1) the IP was convicted of charges and the conviction was later reversed/annulled because regulations providing for due process in disciplinary hearings resulting in confinement sanctions were violated; or
 - (3) the IP was held longer in keeplock or the SHU than the sanction imposed.

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Incarcerated Person Pro Se Litigation Types of Claims (cont'd.)

- Assaultive conduct:
The State can be held liable for assaults committed by its employees (excessive use of force) when the conduct arises within the scope of the assailant's employment. Claims are also filed as a result of IP-on-IP assault in that the State failed in its duty to provide reasonable protection against foreseeable risks of attacks.
- Medical Negligence/Medical Malpractice:
The substantive law of medical malpractice and medical negligence applies to the medical care provided to an IP.
- Incarcerated Person Safety:
Like any landowner, the State has a duty to maintain its premises in a reasonably safe condition. Premises liability claims include slip-and-fall claims. Additionally, claims may also include injuries sustained by an IP engaged in vocational programs, i.e., machine and tailor shops, etc.

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Alternative Dispute Resolution

- Alternative Dispute Resolution (ADR) is available in the Court of Claims and is free of charge.
- Mediation is conducted by mediation-trained Judges, Law Clerks, Court Attorneys and/or staff.
- Settlement conferences may be conducted by either the Judge or the Law Clerk on claims assigned to their chambers; and if requested, settlement conferences may be conducted by a Judge not assigned to the claim as well as other Law Clerks, Court Attorneys and/or staff.
- Settlement conferences in medical malpractice claims are mandatory pursuant to 22 NYCRR 206.12-a (a)(1)

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Equal Justice in the Courts

- In 2022, the New York State Court of Claims established an Equal Justice in the Courts (EJIC) Committee to ensure the fair and equitable treatment of all users and stakeholders of the New York State Court of Claims.
- As part of its mission, the Court of Claims seeks to improve equal access to justice for indigent, unrepresented litigants who come before the Court.
- Court of Claims Judges have observed that the lack of representation of IP and other indigent pro se litigants has potentially affected the prosecution of their claims. Claims have been dismissed on procedural and/or substantive grounds which may otherwise have proceeded to trial followed by a Court decision on the merits.

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Equal Justice in the Courts Attorney Representation Program

- The New York State Court of Claims EJIC Committee has prioritized the creation and implementation of an attorney representation program for IP pro se claimants as well as indigent pro se litigants.
- In its efforts to create and implement such a program, an EJIC Subcommittee was formed and tasked with this endeavor.
- The EJIC Subcommittee met with over 12 stakeholders to gauge their interest and assistance. All stakeholders were extremely receptive and professed their support for the creation of a Court of Claims indigent attorney representation program and have offered their assistance in creating an attorney panel.

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Equal Justice in the Courts Attorney Representation Program (cont'd.)

- Notably, among others, important stakeholders include:
 - New York State Department of Corrections and Community Supervision
 - New York State Attorney General's Office
 - New York State Bar Association
 - New York State Academy of Trial Lawyers
- Another priority of the EJIC Subcommittee is to provide information to associations, stakeholders and others about the New York State Court of Claims and this equal justice initiative.
- The EJIC Subcommittee is seeking to create a panel of volunteer pro bono attorneys utilizing the resources from lawyer referral services, law schools/law school clinics, bar associations, among others.

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