

Bond Case Briefs

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LIABILITY - NEW YORK

Cockburn v. Town of Mina, N.Y.

Supreme Court, Chautauqua County, New York - September 19, 2016 - N.Y.S.3d - 2016 WL 5106530 - 2016 N.Y. Slip Op. 26294

Passenger in three-wheeled motorcycle applied for leave to file a late notice of claim against a New York township, relating to motorcycle leaving the road and crashing while traveling on road straddling border between New York and Pennsylvania, and alleging a road defect from loose gravel on New York side of border.

The Supreme Court, Chautauqua County, held that leave to file late notice of claim would be granted.

Passenger in three-wheeled motorcycle would be granted leave to file late notice of claim against New York township, relating to motorcycle leaving road and crashing while traveling on road straddling border between New York and Pennsylvania, and alleging a road defect from loose gravel on New York side of border. Passenger's Pennsylvania attorneys, having filed timely notice under Pennsylvania law, promptly asked Pennsylvania State Police (PSP) to provide complete police report once attorneys were informed by Pennsylvania township's insurer that accident might have started in New York, PSP denied the request, complete report was not produced until PSP was compelled to produce it in lawsuit brought by motorcyclist's estate, and complete PSP report was based upon thoroughly documented and photographed investigation performed contemporaneous to accident.

It would be an improvident exercise of discretion for the court to deny a late notice of claim against a municipality when the claimant demonstrates: (1) she promptly commenced the proceeding after verifying the wrong entity had been served previously, and (2) the accident scene was contemporaneously memorialized by photographs of the alleged road defect and a thorough police investigation was performed.