To be argued by:
Alexander Klein
Time Requested: 10 Minutes

Supreme Court of the State of New York
Appellate Division – Fourth Department

Docket No.:
25-00958

AKIYLA POINDEXTER,
As the Administrator of the Estate of Kaazim F. Freeman,

Claimant-Respondent,

against

THE STATE OF NEW YORK,

Defendant-Appellant,

BRIEF FOR CLAIMANT-RESPONDENT

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Court of Claims - Claim No.: 137356; Motion No. M-101577; CM - 101648

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QUESTION PRESENTED BY APPEAL

Where Claimant-Respondent's amended pleadings modified original pleadings to conform not only to the evidence produced in discovery, but also to Defendant-Appellant's own investigation and determination—which were reached before the original claim had been filed—and where the amended pleadings allege the same causes of action, arising from the same place, on the same date, with the same death, triggering the same investigation, and cause no surprise or prejudice, did the Court of Claims properly permit this amendment to allow the case to be decided on the merits?

STATEMENT OF FACTS

This case involves a former prisoner of Wende Correctional Facility (the "Prison") who was found dead in his jail cell on September 6, 2019, in what New York State has described from the beginning to be a suicide. *See* R14 at ¶4; R5.[1] The circumstances of his death were suspicious on a number of fronts: three days before his death, he had been transferred to another unit within the Prison; two days before his death, he was missing from a scheduled court appearance in Family Court—having never missed a date before; the same day, and the following day, he was missing from his job in the Prison's kitchen; and by the time the decedent's family was notified of his death by suicide and a funeral director arrived at the Prison to pick up the body, his organs had already been removed. *See* R14-15 at ¶4.

After the death, operating under the cloud of uncertainty that it spawned, the decedent's family, through counsel, initiated a series of attempts to obtain information from the facility explaining what had happened. Thus, on March 2, 2021, Claimant issued a FOIL request to the New York State Commission of Correction, which sought records relating to the investigation surrounding Mr. Freeman's death. *See* R21. Claimant thereafter received a response from New York State denying the request for records entirely, as, according to the Appellant, the

[1] "R" refers to the record on appeal, as distinguished from the confidential record on appeal which will be referenced herein as "CR."

matter was "still under the Commission's investigation…." *See* R23. On March 25, 2021, Claimant appealed the denial of the FOIL request. *See* R25-28. But, again, the Appellant persisted in withholding all records of the investigation surrounding Mr. Freeman's death. *See* R30-31.

After the appointment of an administrator of Mr. Freeman's estate, Claimant filed suit against New York State interposing a series of theories of how the death occurred. *See* R33-43.

In the process of litigating the matter in the Court of Claims, Claimant issued discovery demands on March 10, 2022, and, despite repeated requests, the Appellant did not interpose a response for nearly an entire year—until February 2023. *See* R90 at ¶8.[2] *See also* R220 at ¶15.

During the course of the discovery that then ensued, Claimant was finally able to obtain the investigative files surrounding Mr. Freeman's death and to depose certain central witnesses to the incident. In the process, Claimant uncovered disturbing evidence indicating that New York State was on actual or constructive notice of the risk that Mr. Freeman would engage in self-harm but took no reasonable precautions to prevent it, culminating in his suicide.

[2] This response, in turn, was redacted in a way that required still further efforts before we could identify certain important information for purposes of depositions and related discovery and investigation.

This included multiple warnings to the on-duty correction officer, Officer Liebler, from a concerned prisoner in a cell neighboring Mr. Freeman's, whom Claimant could not depose until after receiving his name in discovery (*see* R46-54). At his deposition, this witness explained that he reported to Officer Liebler that "there seemed to be something wrong and concerning about Mr. Freeman's mental health" and the officer "basically just shrugged it off." *See* R47-48. That was "four days" before Mr. Freeman was found dead, and in the intervening time this prisoner "made several other referrals to Officer Liebler and it just got ignored." *See* R52.

In addition, discovery yielded evidence of an attempt by another Correction Officer to destroy evidence in the immediate aftermath of Mr. Freeman's death. *See* CR2. That is, the same date that Mr. Freeman was found hanging in his cell, "OSI received a call from [an identified officer] alleging that he witnessed [another identified officer] going through the grievance box looking to get rid of a grievance written by an inmate who recently committed suicide." *Id*. And discovery yielded evidence of phone calls recorded by agents of New York State during which Mr. Freeman explicitly threatened to kill himself in the days leading up to his suicide. *See* CR4.

After this delayed discovery, Claimant learned of another significant production lapse by the Appellant. Despite the fact that it claimed to produce records from DOCCS in its previous production, Claimant learned in December 2024—

more than two and a half years after interposing demands—that DOCCS had, in fact, been sent a final (and previously undisclosed) investigative report from the Commission of Correction concerning the details of Mr. Freeman's death, and that this included facts germane to Claimant's case—including that the day before he died, Mr. Freeman was found engaging in "strange or unusual behavior," appeared "nervous and fearful for no apparent reason," "appeared sad and did not speak," and was "dirty with an offensive odor"—and that, nevertheless, immediate intervention did not take place, the Appellant erroneously used an "outdated" referral for psychiatric evaluation, and, lacking any intervention, within twenty-four hours Mr. Freeman killed himself. *See* R220-21 at ¶15. *See also* R224-25. This report was addressed to DOCCS and was generated on March 29, 2022—yet it was not produced in discovery or acknowledged by the defense until December 2024.[3]

Claimant moved with dispatch to amend the claim to allege that the Appellant was negligent in failing to take reasonable precautions to prevent Mr. Freeman's foreseeable self-harm. She filed this motion on November 15, 2024—just two weeks after taking the explosive deposition of the concerned prisoner who had reported multiple ignored warnings about Mr. Freeman's deteriorating mental health, and just two days after receiving the certified transcript of that examination. *See* R220 ¶14.

[3] Notably, in the discovery Claimant had received from the Appellant up until that time, there was not only no mention of this report but also no mention of the alleged referral to mental health, and no mention of the observation of Mr. Freeman in such an alarming state.

On December 9, 2024, the Appellant filed its opposition to the motion to amend, with a cross-motion for dismissal, arguing, in relevant part, that the amended claim fundamentally altered the theory of the case and was barred by the statute of limitations. *See* R91 at ¶10. Claimant filed its joint reply and opposition on January 31, 2025 (R227); the Appellant replied on February 10, 2025 (R232); and the Court of Claims issued its decision on May 5, 2025 (R4-11). There, the Court granted leave to amend and denied the cross-motion to dismiss, reasoning that both sets of claims contain negligence-based causes of action arising from the alleged wrongful death of Mr. Freeman; that the amended claim was consistent with the Appellant's own view of how Mr. Freeman died and conforms the claim to the evidence; and that permitting the amendment would thus cause no prejudice or surprise. *See* R8.

The Court of Claims's decision was a provident exercise of its discretion and should be affirmed by this Court.

ARGUMENT

THE DECISION BY THE COURT OF CLAIMS TO GRANT LEAVE TO AMEND THE PLEADINGS, AND TO DENY THE CROSS-MOTION TO DISMISS, SHOULD BE AFFIRMED.

"[T]he decision whether to permit an amendment to a pleading is one that lies in the discretion of the trial court," where the "exercise of [such discretion] will not lightly be set aside." *U.W. Marx Inc. v. Mountbatten Sur. Co.*, 290 A.D.2d 621, 623 (3d Dept. 2002) (internal quotations and references omitted). *See also Env't Prods. & Servs. Inc. v. Briar Contracting Corp.*, 185 A.D.2d 684, 684 (4th Dept. 1992) ("Defendants' motion for leave to amend was committed to the sound discretion of the trial court, whose determination should not lightly be set aside").

Moreover, the trial court's exercise of discretion in this case concerned an area of law—the amendment of pleadings—which affords broad liberality. Statutory law governing the Court of Claims, for example, permits claimants to "amend, correct, or modify any … claim … in furtherance of justice for any error in form or substance…." *See* Court of Claims Act, ¶9(8). And this breadth tracks the liberal attitude toward amendments reflected in state trial courts more generally, *see* CPLR 3025(b) (such amendment-authority should be given "freely"), particularly amendments designed to "conform to the evidence." *See* CPLR 3025(c); Uniform

Rules for the Court of Claims, 22 NYCRR 206.7(b) ("Pleadings may be amended in the manner provided by CPLR 3025….").

To that end, as the Court of Claims and this Court have expressed repeatedly, leave to amend pleadings is "freely given unless the proposed amendments plainly lack merit or would cause the nonmoving party to suffer prejudice or unfair surprise from the delay in seeking the amendment." *See, e.g., Caldwell v. State of New York*, Claim No. 110294, UID: 2006-032-010 (Ct. Claims, Feb. 23, 2006). *See also Cicero v. O'Rourke*, 211 A.D.3d 1463, 1464 (4th Dept. 2022) (unless the "proposed amendment is patently lacking in merit," leave should be "freely granted absent prejudice or surprise"); *Powell v. Mulcahy*, 99 A.D.2d 653 (4th Dept. 1984) ("Leave to amend should be freely given in the absence of surprise or prejudice"). Framed more directly: "When no prejudice or unfair surprise exists, leave to amend pleadings … should be liberally granted." *Bielawski v. Edgewater Recreation Inc.*, 177 A.D.2d 1060, 1060 (4th Dept. 1991).

Here, Claimant easily meets these standards. The sets of pleadings allege, in relevant part, the same causes of action, arising from the same place, on the same date, with the same death, triggering the same investigation. The original and the amended claims allege common law negligence by New York State, as well as negligent hiring, training, discipline and retention of State employees;[4] both of those

[4] *Compare* R35-37 and 40-41 *with* R78-82.

theories spring from the death of a prisoner at Wende Correctional Facility on September 6, 2019;[5] both relate to the same prisoner—Kaazim Freeman; and while the amendment modifies the source of death—to *conform* with the State's own investigation and determination of a suicide[6]—the fundamental theory of the State's negligence across both claims is a failure of oversight by New York State of those under its control. Thus, while the State claims that the erroneous manner of death in the initial pleadings undermined its investigative efforts, it nevertheless fails to show how its investigation was affected. Under these circumstances, the case law is clear that a claimant's motion to amend should be granted. *See Torres v. City of New York*, 190 A.D.2d 601, 602 (1st Dept. 1993) ("Under such circumstances, where the City claims that the erroneous [description] undermined its investigative efforts, yet fails to show what investigation … was undertaken, petitioner's motion to further amend his notice of claim should have been granted").[7]

Nevertheless, the Appellant argues that the Court of Claims lacked authority to permit the amendment, and should have dismissed the case, because the amended claim did not "relate back" to the original pleadings. According to the Appellant,

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[5] *Compare* R33-35 *with* R77-78.

[6] *See, e.g.,* R93 at ¶21

[7] While *Torres* concerns an amendment to a notice of claim against a municipality, the requirement of a notice of claim under the General Municipal Law is, like a claim in the Court of Claims, a matter of jurisdictional magnitude.

the negligent failure to prevent self-harm is "completely distinct" from a negligent failure to prevent harm from others—requiring "different duties and different breaches." *See* App. Br. at 10. This analysis, it says, is fortified by a federal decision from California called *Walters v. California Dept. of Corrections and Rehabilitation*, 2018 WL 341792, at *3 (E.D. Cal. 2018) in which relation-back was denied. *See* App. Br. at 12 (arguing that "federal precedent is persuasive in applying New York's doctrine"). And in the Appellant's telling, its relation-back argument solves its biggest legal hurdle on appeal: while it suffered no prejudice or surprise by virtue of an amendment that conformed to its own theory of Mr. Freeman's death, the Appellant says that in the context of the relation-back doctrine, this lack of prejudice or surprise is simply irrelevant. *See* App. Br. at 16 ("prejudice and surprise become relevant only when a claimant has already shown that a proposed amendment relates back").

The Appellant is fundamentally mistaken. First, as set forth below, surprise and prejudice lie at the heart of the relation-back analysis, and the Appellant's failure to even claim that it suffered prejudice or surprise by virtue of the amended pleadings is devastating to their request to preclude the Freeman family from amending the claim to conform to the evidence. In truth, the amended pleadings arise from the same general set of facts as the original claim, they settle on a theory of Mr. Freeman's death that mirrors the Appellant's own theory of his death, and thus the

notion that the Appellant had a lack of notice as to the circumstances forming the basis of the claims is at odds with the reality on the ground. Second, this analysis remains intact notwithstanding the *Walters* decision, which was a decision from a federal court in California, applying California state law. Indeed, the Appellant's resort to this non-binding case helps demonstrate the lack of any governing authority to support reversal of the Court of Claims's cogent decision—which should now be affirmed.

A. Appellant's Disregard of Surprise and Prejudice in the Relation-Back Analysis is Mistaken.

Contrary to Appellant's notion that surprise and prejudice are irrelevant to the relation-back doctrine, they are actually at its heart. Taking the Appellant's reliance on federal law at face value, *see* App. Br. at 12 (claiming federal law is especially persuasive because New York relation-back is modeled on federal law), the relationship between surprise, prejudice, and relation-back has been recognized in federal courts repeatedly. "[T]he relation back doctrine is intended to prevent an unjust closing of the courthouse door to an otherwise legitimate claim," it holds, "where there is no *unfair surprise or real prejudice* to the opposing party." *See Dow Corning Corp. v. Chem. Design Inc.*, 3 F. Supp.2d 361, 365 (W.D.N.Y. 1998) (emphasis added). That is to say, "[r]elation back is liberally allowed, and the test is whether the facts alleged in the original complaint give sufficient notice of the

conduct and transactions underlying the amendment to avoid *unfair and prejudicial surprise* to the defendant." *Capitol Recs. Inc. v. Naxos of Am. Inc.*, 262 F. Supp.2d 204, 216 (S.D.N.Y. 2003).

This focus—on whether there was "prejudicial surprise"—is not just a function of case law but of the New York statute, which escalates this principle into the statutory text. While federal law asks whether the original pleading actually "sets out" the conduct, transaction, or occurrence, *see* Fed. R. Civ. P. 15(c), in New York state's statute the phrase 'sets out' is replaced with a word directly anchored to the question of surprise: "notice." *See* CPLR 203(f). *See also Pendleton v. City of New York*, 44 A.D.3d 733, 736 (2d Dept. 2007) (notice is the "sine qua non of the … doctrine"). By anchoring the relation-back doctrine to notice, the statute leaves room to consider unfair surprise to litigation-adversaries while, in its absence, paying heed to New York's "strong public policy in favor of resolving cases on the merits." *See, e.g., Acosta v. State*, 270 A.D.2d 164, 165 (1st Dept. 2000).

Thus, whether arising under state or federal law, the "driving principle behind both … rules is that a defendant should not be able to invoke the statute of limitations if he was already on notice of the events giving rise to the plaintiff's claim during the limitations period." *Best v. Bell*, 2014 WL 1316773, at *10 (S.D.N.Y. 2014).

This rule has a simple application here, as there is no question that the Appellant was "on notice of the events giving rise to the plaintiff's claim during the

limitations period" and indeed the lack of "prejudicial surprise" is so clear that even the Appellant does not claim it to exist. Nor could it. Unlike a tort committed in ordinary civilian life, the negligence here led to a death inside a state prison and thus prompted an automatic in-depth investigation as to all of its surrounding circumstances. *See, e.g.,* R23 (reporting that on March 4, 2021, more than a year after Mr. Freeman's death, the investigation still remained ongoing). As the history of the (denied) FOIL attempts proves, in fact, this investigation did not depend upon the precise theories of Claimant's allegations—for this investigation took place before Claimant was appointed as administrator of Mr. Freeman's estate and, thus, before any claims were even filed. *See, e.g.,* R43 (claim filed on January 4, 2022).

Making the lack of "prejudicial surprise" even more straightforward, the final landing place of Claimant's theory of Mr. Freeman's death—that he committed suicide—is in line with what the State has already claimed, and it forms the basis of multiple reports that the Appellant has now turned over in discovery. The party required to pivot by the receipt of this information is thus not the defense, but the Claimant.

The Appellant fashions the amended pleading as one baked in "different duties and different breaches," *see* App. Br. at 10, but it overstates its case for purposes of whether the amended pleading passes muster to let the court decide the litigation on the merits. For purposes of evaluating "notice" and "prejudicial

surprise," the "new claim need only 'concern the general fact situation alleged in the original pleading,'"[8] and this "general fact situation" has been laid out since the beginning: both sets of pleadings implicate the same duty—to safeguard prisoners against "risks of harm that are reasonably foreseeable;"[9] both sets of pleadings allege a breach of that duty resulting in the death of a prisoner at Wende Correctional Facility; both sets of pleadings allege that that breach came to pass on September 6, 2019; and both sets of pleadings relate to the same victim-prisoner—Kaazim Freeman.

Indeed, the only difference is that the new pleading changes the manner of Mr. Freeman's death to conform to what the Appellant already investigated, decided, and reported on its own. The notion that the Appellant was not on notice of this "general fact situation," or that it now presents a prejudicial surprise, is thus fanciful.

The Court of Claims's grant of leave to amend the pleadings should be affirmed.

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[8] *Rumain v. Gregoris Motors Inc.*, 2018 WL 2849704, at *2 (E.D.N.Y. 2018). *See also Nunez v. Superintendent of Elmira Corr. Facility*, 2024 WL 3278530, at *7 (W.D.N.Y. 2024) (allowing relation-back, noting "I have little doubt that Defendants have been aware of the general fact situation alleged in the original pleading").

[9] *Wassmann v. County of Ulster*, 144 A.D.3d 1470, 1471 (3d Dept. 2016) (applied to harm from others in prison); *Ianelli v. County of Nassau*, 156 A.D.3d 767, 768 (2d Dept. 2017) (applied to self-harm in prison).

B. Appellant's Reliance upon *Walters* is Misplaced.

None of this analysis reverses course because of a decision out of the District of California that, in its eight-year lifetime, has never once been cited in any state or federal court in the State of New York. That lack of precedential history is with good reason: while decided in federal court, *Walters* did not apply the federal law that Appellant claims to be the "persuasive" model for New York's doctrine;[10] instead, *Walters* applied only California state law. *See Walters*, at *2 (addressing "state law claims" and whether they are untimely under the "California Code of Civil Procedure" and the "California Government Code….").

Further underscoring *Walters* inapplicability, California law contains an express requirement for relation-back that New York does not: that the sets of pleadings refer to an injury sustained by the "same instrumentality." *Id*. at *6. This requirement was important in a case in which the amended pleadings, as here, referred to different instrumentalities of death—third parties versus oneself. *Id*. at 9. However, while that affirmative requirement spoke volumes in California, its absence speaks equally loudly here—for unlike California, New York has opted to not impose this instrumentality requirement.

Finally, *Walters* presents a different fact pattern even in terms of the fundamental question of surprise. That is because, there, the amended pleadings

[10] *See* App. Br. at 12.

alleged a type of death that the State defendants had never before settled upon—an intentional suicide—as they had previously deemed the death a mere accident (from choking on a cucumber). *See Walters* at *1. That stands in stark contrast to the dynamic here, where the administrator of Mr. Freeman's estate ultimately settled on a type of death (suicide) that did not ask the Appellant to consider something new but, instead, followed the Appellant to the conclusion it had already investigated and reached.

In sum, the Court of Claims was well within its authority to allow the Claimant to amend the pleadings in this case to conform to the evidence provided during discovery, as it arose from the same general set of facts and, as Appellant now concedes, did not cause any prejudicial surprise to the Appellant at all. The trial court's decision granting leave to amend should now be affirmed.

CONCLUSION

For these reasons, we respectfully request that the Court of Claims's decision granting leave to appeal be AFFIRMED, with costs.

Dated: Garden City, New York
December 3, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of the Second Department's Rules of Procedure, as provided in 22 NYCRR Part 670, § 670.10.3. It contains less than 14,000 words – specifically 3622; its line spacing is double-spaced; and it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, font size 14.