

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
IN RE SEPTEMBER 11, 2001 LITIGATION



21 MC 97 (AKH)  
THIS DOCUMENT RELATES TO:

Claire Miller (02-CV-3676);  
Vickie Arestigui (02-CV-7290);  
Richard Booms and Nancy Booms (02-CV-8918);  
Allan Hackel (02-7143);  
Stephen K. Holland (02-8916);  
Patricia Keating (02-CV-7156);  
Linda LeBlanc (02-CV-7155);  
Kellie B. Lee (02-CV-7271);  
Mary Bavis (02-CV-7154);  
Neda Bolourchi (02-CV-6363);  
David Brandhorst (02-CV-7151) (02-CV-7204);  
Mary Jones and Mikael Carstanjen (02-CV-7153);  
Maria Luisa Pocasangre and Alfredo Pocasangre (02-CV-7152);  
Rhonda Lopez (02-CV-0458);  
Ellen Mariani (01-CV-11628);  
Maria Koutny (02-CV-2802);  
Julie Sweeney (02-CV-1727);  
Bev Titus (02-CV-6365);  
Susanne Ward Baker (02-CV-6364)

**PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS BY CITY OF PORTLAND**

Plaintiffs hereby oppose defendant City of Portland's motion to dismiss plaintiffs' claims against the City of Portland with prejudice on the following grounds:

1. The Maine Tort Claims Act (MTC A) provides exceptions to the requirement that notice be filed within 180 days of the accrual of the cause of action;
2. The facts of the instant cases fall within the good cause exception to the 180 day limit;
3. Plaintiffs filed their claim well within 180 days of learning of the cause of action and the two year deadline;
4. Defendant will suffer no prejudice by claims made four months after the 180 day limit.

I.

**INTRODUCTION**

These consolidated actions seek damages for negligence premised, in part, on deficiencies in passenger screening and other functions that allowed an aircraft to crash into the World Trade Center as a result of regularly scheduled passenger flights for hire operating to carry terrorists from Portland, Maine's Portland International Jetport, to Boston Massachusetts' Logan Airport. Terrorist Mohammad Atta and others traveled directly from Portland to Boston and deplaned at Boston Logan Airport into the sterile area to connect with American Airlines Flight 11, which ultimately crashed into the North Tower of the World Trade Center, New York City. These terrorists may very well have brought weapons used in the hijacking of United Airlines Flight 175, as well.

Defendant City of Portland filed a Motion to Dismiss for Failure to State a Claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). The City of Portland contends that prior to the filing of any lawsuit against Portland, Plaintiffs must first comply with the administrative claims procedures set forth in the Maine Tort Claims Act. Defendant further contends that since Plaintiffs failed to timely file notices of claims against Portland, Plaintiffs are in violation of Maine's Tort Claims Act and lawsuits against Portland must be dismissed. Plaintiffs have complied with the Maine Tort Claims Act. Accordingly, Defendants' motion should be denied.

II.

**THE MAINE TORT CLAIMS ACT PROVIDES EXCEPTIONS TO THE REQUIREMENT THAT NOTICE BE FILED WITHIN 180 DAYS OF INJURY.**

The requirement for filing a Notice of Claim pursuant to the Maine Tort Claims Act are "within 180 days after any claim or cause of action permitted accrues, or at a later time within the limits of section 8110 [not exceeding two years] when a claimant shows good cause why notice could not have been reasonably filed with the 180-day limit." (14 M.R.S.A. § 8107). Pursuant to 14 M.R.S.A. § 8107, subd. 1, a claimant who learns of a claim within the 180 day limit for filing notice under the Maine Tort Claims Act is not required to take instantaneous action in an attempt to meet the 180 day limit; rather, claimant is entitled to reasonable time within which to investigate, evaluate and prepare a written notice of claim, even if such notice is outside the 180 day period. (Emphasis added.)

*See, e.g. Springer v. Seaman*, 662 F.Supp. 229 (D.Me. 1987).

In *Springer*, the issue before the Court was whether plaintiff demonstrated good cause for failure to file a Maine Tort Claims Act notice of claim within 180 days of the accrual of the claim alleged in his complaint. The Court concluded that plaintiff made such a showing.

In *Springer*, the Court concluded that the MTCA should not be interpreted as requiring claimants or their attorneys, upon learning of a claim within the 180 day limit, to take instantaneous action in an attempt to meet the 180 day limit. Rather, a claimant and his or her attorney are entitled to a reasonable time within which to investigate, evaluate, and prepare written notice of the claim.

To hold to the contrary would create undue haste in this process and would only lead to poorly drafted notices that would not be conducive to the orderly resolution of claims. A claimant who misses the 180 day limit for filing a claim because he or she has taken reasonable time to investigate, evaluate and draft the notice has “good cause” for missing the time limit, provided that the notice is filed within 180 days after claimant learns, or should have learned, of the accrual of the claim, and in no event more than two years after the accrual of the claim. *Id.* §§ 8107(1); 8110.

### III.

#### THE FACTS OF THE INSTANT ACTIONS FALL WITHIN THE GOOD CAUSE EXCEPTION TO THE 180 DAY RULE

Plaintiffs failed to file their notice of claim within the 180 days of accrual because they were unaware that the movements of these terrorists were traced back to the Portland International Jetport prior to the toll time period of 180 days. Accordingly, plaintiffs did not know they had a cause of action against the City of Portland until shortly after the 180 day limit. Plaintiffs filed their claim as soon as practical after a reasonable time to investigate, evaluate and prepare the claim, which took longer than 180 days after accrual of the cause of action. Plaintiffs herein filed their notice of claim on July 30, 2002, within two months after learning that the movements of these terrorists had been traced back to the Portland International Jetport, where these terrorists initially, and wrongfully, cleared security. *See* Declaration of John A. Greaves, attached hereto and incorporated as if fully set forth herein.

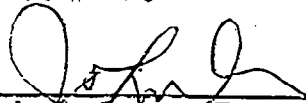
The Court should not find two months total time after becoming aware of the accrual of the cause of action against the City of Portland to be an unreasonable time for investigation, evaluation and drafting, nor should it find that Plaintiffs should have learned of the accrual of their claim any earlier than they actually did. There is no dispute that Plaintiffs filed well within the two year period established by § 8110. Defendant City of Portland can show no unfair prejudice as a result of this claim filing after the 180 day limit, but well before the two year deadline. The Court should therefore conclude that Plaintiffs had good cause for failing to file within the 180 day limit of § 8107(1). Plaintiffs further have good cause for failing to provide defendants with notice of claim under Tort Claims Act because they were unaware of information forming the basis of their complaint within the 180 day period. Further, plaintiffs filed their claims well within 180 days of learning of the cause of action and the two year deadline. *Smith v. Voisine*, 650 A.2d 1350 (Me. 1994).

#### CONCLUSION

Based on the foregoing, Plaintiffs have filed a timely administrative claim against defendant. Therefore, Plaintiffs have stated a claim upon which relief can be granted in their complaints. Accordingly, defendant's Fed.R.Civ.P. 12(b)(6) motion to dismiss should be denied.

Dated: March 4, 2003

BAUM, HEDLUND, ARISTEI, GUILFORD  
& SCHIAVO



John A. Greaves, Esq. (JG-5722)  
12100 Wilshire Blvd., #950  
Los Angeles, CA 90025-7106  
Tel: (310) 207-3233\Fax: (310) 820-7444

Attorneys for Plaintiff

**DECLARATION OF JOHN A. GREAVES IN SUPPORT OF PLAINTIFFS' OPPOSITION  
TO MOTION TO DISMISS BY CITY OF PORTLAND**

I, John A. Greaves, Esq., declare as follows:

1. I have been admitted to practice before this Court and am attorney of record for the plaintiffs specified herein. I have personal knowledge of the following facts, and if called upon as a witness, I could and would competently testify thereto under oath.

2. I first learned that Mohammad Atta and another Al Qaeda cohort alleged to be one of the hijackers on September 11, 2001, originally cleared security at the City of Portland Jetport approximately the first week of June, 2002.

3. The full investigation leading to the decision to file a claim against the City of Portland commenced and continued until the claim was filed on July 30, 2002.

4. During that period of time, we conducted legal research into the legal requirements of making a claim against the City of Portland. Further, we investigated the movement of the aircraft carrying the terrorists to Boston.

5. Over the course of the investigation, we learned that when the terrorists arrived at Boston Logan Airport, they departed the Colgan/US Airways Express aircraft directly into the sterile area of the Boston Logan Airport.

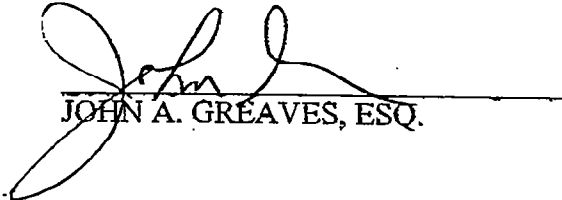
6. Further, during the course of the investigation, we learned that at Boston Logan Airport, a passenger already in the sterile area of the terminal in which American Airlines Flight 11 departed on September 11, 2001, would be able to access the terminal from which United Airlines Flight 175 departed Boston Logan Airport.

7. By the time we had completed our investigation leading to our decision to make a claim against the City of Portland in this matter, it was nearing the end of July, 2002. It took us approximately a week to actually prepare the claim once we had all the information that we needed to provide the factual and legal basis for making our claim.

8. We understood from our legal research that we were under a hard two-year deadline in which to file our administrative claim, which could be deemed timely if we filed our administrative claim

within 180 days of learning of the factual basis for making the claim. We made our claim a little less than two months after first learning that certain terrorists had cleared security at Portland Jetport. Accordingly, the hijackers could very well have brought weapons through that checkpoint, providing the basis for a cause of action against the City of Portland.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 4 day of March, 2003, at Los Angeles, California.

  
JOHN A. GREAVES, ESQ.