

center lane on Interstate 95 and that she was following a box car for about 10 miles at 60 miles per hour, when the box car suddenly moved into the right lane after signaling, at which time Jakubcin first observed plaintiffs' car. Jakubcin testified that plaintiffs' car was slow moving or became disabled and abruptly stopped in the center lane, only "seconds" in travel time ahead of Jakubcin's car. The box car had obstructed Jakubcin's view of the center lane conditions. Jakubcin quickly discerned she could not safely move into either the left or right lanes of the highway due to cars travelling in those lanes near her vehicle. Thus, Jakubcin's testimony "raises a triable issue as to whether [s]he was entitled to expect that traffic would continue unimpeded" (*Richards v Mitchell*, 172 AD3d 439, 439-440 [1st Dept 2019]; *see also Romero*, 198 AD3d at 497). Further, there was evidence that plaintiffs' car was not working and had no lights or emergency lights activated (*see Romero*, 198 AD3d at 497). While Jakubcin did not plead the emergency doctrine as an affirmative defense, she was not precluded "from raising the issue in response to [plaintiffs'] summary judgment motions" (*Richards*, 172 AD3d at 440).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 12, 2026



Susanna Molina Rojas
Clerk of the Court