SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM - PART 15

Present: Hon. Mary Ann Brigantti

MICHAEL GLAUBER, GREGORY STEINBERG and JENNIFER TICE,

DECISION/ORDER

Plaintiffs,

-against-

Index No.: 21887/2013E

C.BLACKBURN, INC. (a/k/a BLACKBURN, INC.), ORLANDO RIVERA, WERNER ENTERPRISES, INC., MARVIN HERNANDEZ, and ASUMA BEDIAKO,

Defendants.

WERNER ENTERPRISES, INC., and MARVIN HERNANDEZ,

Third-Party Plaintiffs,

-against-

MICHAEL GLAUBER,

Third-Party Defendant.

The following papers numbered 1 to 21 read on the below motion noticed on February 27, 2014 and duly submitted on the Part IA15 Motion calendar of **June 13, 2014**:

Papers Submitted	Numbered
Hernandez.' Aff. In Support, exhibits	1,2
Pls.' Aff. In Opposition, exhibits	3,4
Rivera's Aff. In Opposition, exhibits	5,6
Hernandez' Aff. In Reply and Opp.	7
Rivera's Cross-Motion for SJ, exhibits	8,9
Pls' Cross-Motion for SJ, exhibits	10,11
Bediako's Aff. In Opp., exhibits	12,13
Rivera's Cross-Motion for Leave to Amend, exhibits	14,15
Pls' Aff. In Opp.	16
Bediako's Aff. In Opp.	17

Bediako's Cross-Motion for SJ, exhibits	18,19
Rivera's Aff. In Opp., exhibits	20,21
Defs.' Aff. In reply, Exhibits	5,6

Upon the foregoing papers, the following motions are before the Court:

Defendants/Third-Party Plaintiffs Werner Enterprises, Inc. and Marvin Hernandez (the "Hernandez Defendants"), move for summary judgment, dismissing the complaint of the plaintiffs Michael Glauber ("Glauber"), Greg Steinberg ("Steinberg"), and Jennifer Tice ("Tice")(collectively, "Plaintiffs"), pursuant to CPLR 3212. The motion is opposed by Plaintiffs, as well as the defendants C. Blackburn, Inc. (a.k.a. Blackburn, Inc.), and Orlando Rivera (the "Rivera Defendants").

The Rivera Defendants have filed two cross-motions. The first cross-motion seeks an Order granting them summary judgment, dismissing Plaintiffs' complaint and all cross-claims, pursuant to CPLR 3212. This cross-motion is opposed by defendant Asuma Bediako ("Bediako"), the Hernandez Defendants, and Plaintiffs. The Rivera Defendants also cross-move for an Order granting them leave to serve an amended answer and raise an affirmative defense based on the "emergency doctrine," pursuant to CPLR 3025. This cross-motion is opposed by Bediako, and the Plaintiffs.

Defendant Bediako has filed a cross-motion for summary judgment, dismissing Plaintiffs' complaint pursuant to CPLR 3212. This cross-motion is opposed by the Rivera Defendants.

Plaintiffs cross-move for an order granting them summary judgment on the issue of liability against the Rivera Defendants. The Rivera Defendants oppose the cross-motion.

I. Background

This matter arises out of a motor vehicle accident that occurred on November 15, 2012, on the eastbound side of the Cross Bronx Expressway/ Interstate 95 in the Bronx, New York. It is undisputed that this accident occurred in the center lane of the highway, and involved four motor vehicles. The lead vehicle was a livery cab operated by defendant Bediako. The livery cab was followed by a tractor-trailer operated by defendant Hernandez, which in turn was followed by a Volvo sedan operated by plaintiff Glauber, which was followed by a tractor-trailer operated by defendant Rivera.

A certified copy of the police accident report, annexed to the motion and cross-motion papers, provides the following description of the accident:

"At t/p/o motorist of v#1 [defendant Rivera] sts while traveling in middle lane v#2 [plaintiff Glauber] came to a sudden stop causing v#1 to rear end v#2. Motorist of v#2 sts came to a stop when v#1 rear ended v#2 pushing him into v#3 [defendant Hernandez]. Motorist of v#3 sts was at stop when v#2 was pushed in hitting him pushing him into v#4 [defendant Bediako]. Motorist of v#4 sts was rear ended by v#3 due to prior vehicles hitting v#3."

Each driver has submitted an affidavit in support of the various motion and opposition papers, detailing their version of the accident.

Bediako states in his affidavit that at the time of the accident, he was traveling eastbound on the Cross Bronx Expressway in the Bronx. The roadway consisted of three travel lanes in each direction separated by a concrete median. Bediako was driving in the middle lane between the White Plains Road exit and the Castle Hill exit, and the weather was clear and dry. Bediako states that he was traveling at about 20-25 miles per hour and slowing down for traffic when he "felt someone bump" the rear of his vehicle. He looked in the rear view mirror and saw a tractor trailer, later revealed to be the Hernandez vehicle. Bediako then exited the vehicle to examine any damage to the vehicles and speak to the driver of the tractor-trailer. Bediako then saw that there were four vehicles involved in the accident. He was the first, the tractor trailer was the second, a passenger car was third, and another tractor-trailer was fourth. He noticed that the passenger vehicle was "badly damaged" in the front and rear. Bediako spoke to the police who arrived at the scene some 5-10 minutes later, and gave them his statement.

Marvin Hernandez states in an affidavit that at the time of the accident, he was traveling in the eastbound middle lane of the Cross Bronx Expressway. Hernandez was gradually slowing his vehicle for approximately one half mile before the accident due to traffic ahead of him. Hernandez states that at the time he felt the impact to the rear of his vehicle, he was traveling at approximately 5 miles per hour. At no point before the impact did he come to an abrupt or sudden stop or apply his brakes with force. After the impact, he looked in the side view mirror and realized he had been struck from behind by a Volvo. He later learned that the Volvo was struck from the rear by a tractor trailer. Hernandez reiterates that he did not come to an abrupt

stop and had been traveling at approximately 5 miles per hour when the impact occurred.

Plaintiff Glauber submits an affidavit, and states that at relevant times, he was driving eastbound on the Cross Bronx Expressway in the center lane. He then states "[a] tractor trailer owned by Defendant Werner and driven by Defendant Hernandez came to an abrupt stop directly in front of me in the middle lane without warning" and describes the Hernandez tractor trailer as "moving at a high rate of speed." He was forced to apply hard pressure to his brakes to avoid an impact with the Hernandez vehicle. Glauber states that he successfully brought his vehicle to a complete stop without making contact with the Hernandez vehicle. After stopping, however, he was hit in the rear by a tractor-trailer driven by Defendant Rivera and owned by Defendant C. Blackburn, Inc. The force of this impact caused Glauber's vehicle to move forward and strike the rear of the Hernandez vehicle. Glauber states that when he initially entered the Cross Bronx Expressway, he began travel in the center lane and did not change lanes at any time prior to an impact between the rear of his vehicle and the Rivera tractor-trailer. He also states that prior to coming to a stop, he had been traveling "at an approximate rate of speed for the Cross Bronx Expressway" and had kept a safe distance between himself and the Hernandez vehicle. In another affidavit, Plaintiff Glauber states that he "came to learn that the tractor-trailer in front of [him] came to an abrupt stop because he came in contact with the vehicle in front of him driven by defendant Bediako." He avers that Hernandez stopped abruptly and did not slow down gradually.

Finally, defendant Rivera has submitted an affidavit detailing his version of events. Rivera states that at the time of the accident, he was driving on the Cross Bronx Expressway, eastbound, by exit 5A. Rivera states that he was traveling in the middle lane, and "maintaining a safe distance" of approximately 53 feet behind a tractor-trailer operated by Defendant Hernandez. As Rivera was traveling between exit 4A and 5A, "there were a lot of potholes," and "the Hernandez tractor trailer to stop suddenly [sic]." Rivera states "[a]s I saw this occurring, I started braking." However, at the same time, a Volvo sedan came into Rivera's lane and stopped suddenly and unexpectedly in front of his vehicle, causing Rivera to make contact with the sedan. Rivera states that after the impact, the driver of the tractor-trailer, Mr. Hernandez "told me that he had to suddenly and unexpectedly stop because the Lincoln car [Bediako vehicle] ...

immediately in front of the Hernandez tractor trailer was trying to take exit 5A and cut over to the right, but no one was letting him take the exit, and the Lincoln car stopped suddenly and unexpectedly." Rivera alleges that there was no warning that the Lincoln car, the tractor-trailer, and/or the Volvo were going to stop, and that the Volvo was moving at the time of the impact. Rivera states he was not speeding or following too closely. Rivera avers that he was "faced with a sudden and unexpected circumstance and had no time for thought, deliberation, or consideration on how to prevent [his] car from making contact with the Volvo sedan." Rivera concludes that if the Hernandez vehicle had not stopped suddenly and unexpectedly, the Volvo would have had enough space to come into the middle lane, between his vehicle and the Hernandez vehicle, and Rivera would not have made contact with the Volvo.

II. Standard of Review

To be entitled to the "drastic" remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case." (*Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). The failure to make such prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers. (*Id.*, see also *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 [1986]). Facts must be viewed in the light most favorable to the non-moving party (*Sosa v. 46th Street Development LLC.*, 101 A.D.3d 490 [1st Dept. 2012]). Once a movant meets his initial burden, the burden shifts to the opponent, who must then produce sufficient evidence, also in admissible form, to establish the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). When deciding a summary judgment motion the role of the Court is to make determinations as to the existence of bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499 [2012]). If the trial judge is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied. (*Bush v. Saint Claire's Hospital*, 82 N.Y.2d 738 [1993]).

III. Applicable Law and Analysis

1. Bediako's Cross-Motion for Summary Judgment

The Court will first turn its attention to the cross-motion for summary judgment filed by defendant Bediako, the lead vehicle in this four-vehicle chain-reaction collision. Bediako argues that there is no indication that he contributed to this accident, as it is undisputed that his vehicle was struck in the rear. In opposition to the motion, Defendant Rivera argues that Bediako is not entitled to summary judgment because there is an issue of fact as to whether his "sudden stop" created an emergency situation and caused the accident. To this point, Defendant Rivera relies on his own affidavit wherein he states that after the accident, Hernandez allegedly told him that he had to stop short because the Bediako vehicle came to an abrupt stop in the center lane as it tried to cut over into a different lane and exit the highway. Rivera also argues that there are "material inconsistencies between the parties' respective affidavits and Police Report" creating credibility issues. The Court notes that co-defendant Hernandez, as well as the Plaintiffs, submit no opposition to the motion.

In this matter, Bediako satisfied his initial burden of demonstrating entitlement to summary judgment, as it is undisputed that his vehicle was struck in the rear. Rivera argues that the accident report is not in admissible form since it is uncertified. The copy provided to the Court, however, is indeed certified, and moreover, it buttresses Bediako's affidavit stating that his vehicle was rear-ended (*see Santana v. Danco, Inc.*, 115 A.D.3d 560 [1st Dept. 2014]). The burden therefore shifted to the other parties to provide evidence of a non-negligent explanation for the rear-end collision, or evidence that Bediako's negligence contributed to the accident (*Mullen v. Rigor*, 8 A.D. 3D 104 [1st Dept. 2004] *citing Jean v Xu*, 288 A.D.2d 62, [1st Dept. 2001]; *Mitchell v Gonzalez*, 269 A.D.2d 250, 251 [1st Dept. 2000]).

Rivera's contention in his affidavit that Hernandez told him that Bediako stopped suddenly and unexpectedly while attempting to quickly change lanes and make an exit, thus contributing to this accident. This statement constitutes inadmissible hearsay regarding an ultimate issue of fact (*see Fay v. Vargas*, 67 A.D.3d 568 [1st Dept. 2009]), which not, alone, defeat a motion for summary judgment (*see Rugova v. Davis*, 112 A.D.3d 404 [1st Dept. 2013],

citing *O'Halloran v. City of New York*, 78 A.D.3d 536 [1st Dept. 2010]; *Rivera v. G.T. Acquisition 1 Corp.*, 72 A.D.3d 525 [1st Dept. 2010]). On this record, Rivera provides no non-hearsay evidence that Bediako operated his vehicle in a negligent manner. The affidavit of Defendant Hernandez makes no mention of a vehicle stopping suddenly in his lane of travel before this accident. In any event, the mere allegations that Bediako suddenly stopped his vehicle does not constitute a sufficient non-negligent explanation for a rear end collision (*Chowdhury v. Matos*, 118 A.D.3d 488 [1st Dept. 2014]; *Francisco v. Schoepfer*, 30 A.D.3d 275 [1st Dept. 2006]; *Cabrera v. Rodriguez*, 72 A.D.3d 553 [1st Dept. 2010]). Moreover, the police accident report contains no statement from any party that Bediako had stopped suddenly or was attempting to change lanes prior to this accident. Rivera has not provided a sufficient affidavit in compliance with CPLR 3212(f) to demonstrate that there exist discoverable facts within the exclusive knowledge of the movant that would give rise to a triable issue (*Perez v. Brux Cab Corp.*, 251 A.D.2d 157 [1st Dept. 1998]). Motions for summary judgment cannot be defeated by the "shadowy semblance of an issue" (*see Hatzis v. Balliard*, 13 A.D.3d 106, 107 [1st Dept. 2004], citing *Capelin Assoc. v. Globe Mfg. Corp.*, 34 N.Y.2d 338 [1974]). Accordingly, Bediako's motion for summary judgment is granted and the complaint and all cross-claims are dismissed as to that defendant.

2. Hernandez' Motion for Summary Judgment

The Hernandez Defendants argue that they are entitled to dismissal of the complaint and all cross-claims, because according to the police accident report, their vehicle was struck in the rear when Plaintiff's Volvo was pushed into it by Rivera's tractor-trailer. Hernandez argues that no party can establish that he was a proximate cause of this accident. Summary judgment may not be defeated by the mere allegation that Hernandez stopped abruptly on a crowded highway.

In opposition to the motion, Plaintiffs rely on the affirmation of Glauber, who asserted that the Hernandez vehicle came to a "sudden stop." In an affidavit, Glauber states that the Hernandez vehicle was "moving at a high rate of speed" before "abruptly stopping." Glauber

was able to bring his vehicle to a complete stop without making contact with Hernandez. However, after coming to a stop, Glauber's vehicle was rear-ended by Rivera, propelling him into the rear of Hernandez. Glauber states that he "came to learn that the tractor-trailer in front of [him] came to an abrupt stop because he came in contact with the vehicle in front of him driven by defendant Bediako." He avers that Hernandez stopped abruptly and did not slow down gradually. Plaintiffs contend that discovery must proceed on this issue Rivera also opposes the motion. Rivera relies on his own affidavit, wherein he similarly alleges that Hernandez stopped his vehicle abruptly, and if he had not done so, the Plaintiffs' Volvo would have had enough room to enter the middle lane safely. Rivera also states in his affidavit that, after the accident, Hernandez told him that he had to stop suddenly because the livery cab traveling in front of him had stopped suddenly while trying to change lanes and exit the highway. Defendant Bediako does not oppose the motion.

Hernandez' affidavit, supported by the police report, establishes his prima facie entitlement to judgment as a matter of law. It is not disputed that his tractor-trailer remained in the center lane of the Cross Bronx Expressway at all times, before it was impacted in the rear by Plaintiffs' vehicle, which had been propelled into Hernandez by the Rivera tractor-trailer. The burden therefore shifts to any other party to raise a triable issue of fact as to his negligence. Plaintiffs as well as the Rivera Defendants are both alleging that Hernandez is not entitled to summary judgment because there is an issue of fact as to whether he brought his tractor trailer to a sudden stop, thus contributing to this accident. Plaintiff Glauber has averred that he "came to learn" that the Hernandez vehicle struck the Bediako vehicle first, before Glauber made contact with the rear of the Hernandez truck.

In some circumstances, the Second Department has held that the sudden stop of a lead vehicle can constitute a sufficient explanation for a rear-end collision, such as when it fails to make a proper signal *Klopchin v. Masri*, 45 A.D.3d 737 (2nd Dept. 2007). Usually, sudden stops that are coupled with other negligent acts or violations of Vehicle and Traffic Law on the part of the stopped vehicle are sufficient to rebut the presumption of negligence *Id, see also Abbott v. Picture Cars East, Inc.*, 78 A.D.3d 869 (2nd Dept 2010) (defendant vehicle made improper lane change then stopped suddenly in front of plaintiff's vehicle). The First Department has

repeatedly held, however, that a simple explanation that the plaintiff's vehicle suddenly stopped, without something more – such as a violation of Vehicle and Traffic Law – is insufficient to rebut the presumption (*see Francisco v. Schoepfer*, 30 A.D.3d 275 [1st Dept. 2006]; *Androvic v. Metropolitan Transp. Auth.*, 95 A.D.3d 610 [1st Dept. 2012], *compare Ramos v. Rojas*, 37 A.D.3d 291 [1st Dept. 2007] [summary judgment denied where evidence that the lead vehicle suddenly and without signaling swerved into the following vehicle's lane of travel]). Indeed, it is well-settled that "[a] driver is expected to drive at a sufficiently safe speed and to maintain enough distance between himself and cars ahead of him to avoid collisions with stopped vehicles, taking into account weather and road conditions" (*Malone v. Morillo*, 6 A.D.3d 324 [1st Dept. 2004], quoting *Mitchell v. Gonzalez*, 269 A.D.2d 250 [1st Dept. 2000]).

In this case, even accepting the affidavits of Glauber and Rivera, who assert that Hernandez stopped abruptly, the Hernandez Defendants are still entitled to summary judgment since there is no evidence that Hernandez violated Vehicle and Traffic Law or otherwise operated his tractor trailer in a negligent manner. The opponents to this motion provide no explanation for their failure to maintain an adequate distance between their vehicles and the Hernandez vehicle. Again, a simple explanation that the Hernandez tractor trailer came to a sudden stop is insufficient to defeat the summary judgment motion. *See Chowdhury v. Matos*, 118 A.D.3d 488 [1st Dept. 2014]; *Francisco v. Schoepfer*, *supra*). Plaintiff Glauber's statement that he "came to learn" that the Hernandez vehicle made contact with the Bediako vehicle before Glauber struck the Hernandez vehicle constitutes inadmissible hearsay, and it is unsupported by any non-hearsay evidence. Regardless, even if the Hernandez vehicle had come to a stop because it rear - ended the vehicle traveling in front of it, this would not constitute a sufficient non-negligent explanation for this accident as both Rivera and Glauber were required to maintain a safe distance behind the Hernandez vehicle (*see Profita v. Diaz*, 100 A.D.3d 481 [1st Dept. 2012], citing *Cabrera v Rodriguez*, 72 A.D.3d 553 [1st Dept. 2010]).

The Rivera defendants have proffered arguments that Hernandez created an "emergency situation" by stopping his vehicle suddenly, causing the Glauber vehicle to stop suddenly, and consequently cause Rivera to rear-end the Glauber vehicle. The situation created by Herndanez' alleged sudden stop under these circumstances did not create an "emergency" for the Rivera

vehicle. The emergency doctrine does not prevent entry of judgment in favor of Hernandez in this situation, as it is generally in applicable to "routine rear-end traffic accidents" (*Johnson v. Phillips*, 261 A.D.2d 269 [1st Dept. 1999]), because "trailing drivers are required to leave a reasonable distance between their vehicles and vehicles ahead; a trailing driver's conduct in failing to leave reasonable distance creates the possibility that a sudden stop will be necessary" (*Lowhar-Lewis v. Metropolitan Transp. Authority*, 97 A.D.3d 728 [2nd Dept. 2012]; *Williams v. Kadri*, 112 A.D.3d 442 [1st Dept. 2013]).). Rivera's allegations that Hernandez stopped suddenly and thus created an emergency situation are therefore unavailing and will not defeat this motion.

3. Rivera's Motion for Summary Judgment, and Plaintiffs' Motion for Summary Judgment

Plaintiffs move for summary judgment on the issue of liability against the Rivera Defendants. The Rivera Defendants oppose the motion and have cross-moved for summary judgment, dismissing the complaint and all cross-claims.

As noted above, it is settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle, and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate non-negligent explanation for the accident." *Cabrera v Rodriguez*, 72 A.D.3d 553 (1st Dept. 2010) *citing Tutrani v County of Suffolk*, 10 NY3d 906, 908 (2008); *Agramonte v City of New York*, 288 AD2d 75, 76 (1st Dept. 2001); *see also Dattilo v Best Transp. Inc* 79 A.D.3d 432 (1st Dept. 2010). Along the same rationale, the rear most driver in a chain-reaction collision bears the presumption of responsibility. *De La Cruz v. Ock Wee Leong*, 16 A.D.3d 199 [1st Dept. 2005], citing *Mustafaj v. Driscoll*, 5 A.D.3d 138 [1st Dept. 2004]).

Here, Plaintiffs have established prima facie that the Rivera Defendants were negligent, since it is undisputed that the Rivera tractor-trailer collided with the rear of Plaintiffs' vehicle. It is therefore incumbent on the Rivera Defendants to provide a non negligent explanation for the accident. Rivera asserts in his affidavit that he was not responsible for the accident because Plaintiffs' vehicle suddenly, and without warning, entered his lane of travel and unexpectedly

stopped, causing him to contact the Plaintiffs' sedan from the rear.

Rivera's version of the accident constitutes a sufficient non negligent explanation of this rear-end collision, and thus raises a triable issue of fact as to whether he was the sole proximate cause of the accident (*see Ramos v. Rojas*, 37 A.D.3d 291 [1st Dept. 2007]; *Figueroa v. Cadbury Util. Constr.Corp.*, 239 A.D.2d 285 [1st Dept. 1997]). Plaintiffs argue that Rivera's affidavit must be disregarded since it is self-serving and inconsistent with the statements he gave police, as recorded in the accident report. However, any inconsistency between the accident report and the affidavits submitted would not be conclusive here, but only raise an issue of credibility to be resolved by the factfinder (*see Jeffrey v. DeJesus*, 116 A.D.3d 574 [1st Dept. 2014], see also *Wein v. Robinson*, 92 A.D.3d 578 [1st Dept. 2012][weight afforded to the defendant's admission in police report versus his subsequent explanation at deposition is to be determined by a jury]). Plaintiffs' motion for summary judgment will therefore be denied. Defendant Rivera's cross-motion for summary judgment is likewise denied, as he has not established freedom from negligence as a matter of law. Even if Rivera was confronted with an "emergency," this would not automatically absolve a driver from liability for his or her conduct (*see Ferrer v. Harris*, 55 N.Y.2d 285 [1982][notwithstanding the emergency, the actor may still be found negligent if his or her actions are found to be unreasonable]).

4. Defendants' Cross-Motion for Leave to Amend

The Rivera Defendants cross-move for an Order granting them leave to file an amended answer, to raise an affirmative defense based upon the emergency doctrine. It is "fundamental that leave to amend a pleading should be freely granted, so long as there is no surprise or prejudice to the opposing party" (*Kocourek v. Booz Allen Hamilton Inc.*, 85 A.D.3d 502 [1st Dept 2011] *citing* CPLR 3025[b]). This court, however, is not required to allow an amendment where the proposed amended pleadings patiently lacks merit (*Eighth Ave. Garage Corp. v. H.K.L. Realty Corp. et al.*, 60 A.D.3d 404, 875 N.Y.S.2d 8 [1st Dept 2009]).

At this early stage of the proceedings, Plaintiffs cannot competently argue that they would suffer undue surprise or prejudice if the Rivera Defendants were permitted to amend their complaint to add the requested affirmative defense (*compare Edwards v. New York City Tr.*

Auth., 37 A.D.3d 157 [1st Dept. 2007][defendant permitted to assert emergency doctrine defense even where it was not affirmatively plead]). Moreover, considering the circumstances of the accident as alleged by Rivera, he is entitled to plead the emergency doctrine, as he has proffered evidence that his collision with the Glauber vehicle was not "routine" (*cf Johnson v. Phillips*, 261 A.D.2d 269 [1st Dept. 1999]). Whereas the parties only alleged that the Hernandez vehicle slowed down abruptly while remaining in the center lane, Rivera testified the Glauber vehicle suddenly entered his lane and slowed his vehicle, leading to the rear-end collision (*see Ramos v. Rojas*, 37 A.D.3d 291). Rivera's cross-motion for leave to amend will therefore be granted and the proposed answer deemed served on the Plaintiffs.

IV. Conclusion

Accordingly, it is hereby

ORDERED, that defendant Bediako's motion for summary judgment is granted, and the complaint and all cross-claims against Bediako are dismissed, and it is further,

ORDERED, that the Hernandez defendants' motion for summary judgment is granted, and the complaint and all cross-claims against those defendants are dismissed, and it is further,

ORDERED, that Plaintiffs' cross-motion for summary judgment is denied, and it is further,

ORDERED, that the Rivera defendants' cross-motion for summary judgment is denied, and it is further,

ORDERED, that the Rivera defendants' cross-motion for leave to serve an amended answer is granted, and the proposed amended answer annexed to the moving papers is deemed served.

This constitutes the Decision and Order of this Court.

Dated: 9/11/14

Hon. Mary Ann Brigantti, J.S.C.