

<b>Seok Yoo v Cassano</b>
2021 NY Slip Op 32921(U)
March 16, 2021
Supreme Court, Orange County
Docket Number: Index No. EF009959-2017
Judge: Sandra B. Sciortino
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To commence the statutory time  
for appeals as of right (CPLR 5513 [a]),  
you are advised to serve a copy of this  
order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
**SEOK YOO,**

Plaintiff,

-against-

**JEANNE M. CASSANO, ELIAS MALEH,  
FRANCISCA FORES, M. FLORES-SANTOS,  
DANIEL S. KEARNS, MAUREEN A. GROSS,  
SOPHIA A. FANDINO, EMILIO S. FANDINO,  
SAMUEL AVIGDOR, JOHN DOES AND  
ABC CORP (BOTH BEING FICTITIOUS  
DESIGNATIONS),**

Defendants.

-----X  
**JEANNE M. CASSANO,**

Defendant/Third-Party Plaintiff,

-against-

**GEORGE L. ROSADO, RYAN M. KIEVIT, DANIEL  
S. KEARNS, MAUREEN A. GROSS, SOPHIA A.  
FANDINO, EMILIO S. FANDINO, ABRAHAM S.  
MOSKOVITS, TRUE INFO CORP., and SAMUEL  
AVIGDOR,**

Third-Party Defendants.

-----X  
**FRANCISCA FLORES and M. FLORES-SANTOS,**

Defendants/Third-Party Plaintiffs,

-against-

**SOPHIA A. FANDINO and EMILIO S. FANDINO,**  
Third-Party Defendants.

-----X  
**MYUNG A. LEE,**

Plaintiff,

-against-

**AMENDED  
DECISION AND ORDER**

**ACTION #1**

**INDEX NO.: EF009959-2017**

**Motion Date: 1/8/21**

Sequence Nos. 4 - 15

**ACTION #2**

**INDEX NO.: EF012386-2018**

**Motion Date: 1/8/21**

**JEANNE M. CASSANO, FRANCISCA FLORES,  
SANTOS M. FLORES, ELIAS MALEH, GEORGE L.  
ROSADO, RYAN M. KIEVIT, DANIEL S. KEARNS,  
MAUREEN A. GROSS, SOPHIA A. FANDINO,  
EMILIO S. FANDINO, ABRAHAM S. MOSKOVITS,  
TRUE INFO CORP., and SAMUEL AVIGDOR,**  
Defendants.

Sequence Nos. 2-13

-----X  
**JEANNE M. CASSANO,**  
Defendant/Third-Party Plaintiff,

-against-

**SEOK YOO, ELIAS MALEH, GEORGE L.  
ROSADO, RYAN M. KIEVIT, DANIEL  
S. KEARNS, MAUREEN A. GROSS, SOPHIA A.  
FANDINO, EMILIO S. FANDINO, ABRAHAM S.  
MOSKOVITS, TRUE INFO CORP., and SAMUEL  
AVIGDOR,**  
Third-Party Defendants.

-----X  
**FRANCISCA FLORES and M. FLORES-SANTOS,**  
Plaintiffs,

**ACTION #3**

-against-

**INDEX NO. EF000829-2018**

**SOPHIA A. FANDINO and EMILIO S. FANDINO,**  
Defendants.  
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**AMENDED TO CORRECT MOTION SEQUENCE NUMBERS AND INCLUDE ONE  
OMITTED MOTION**

**SCIORTINO, J.**

Because of the extreme numbers of documents and exhibits submitted in connection with these motions, the Court will not list here<sup>1</sup>. Every document submitted by the parties in connection with these motions for summary judgment pursuant to Civil Practice Law & Rules 3211 and

<sup>1</sup>When necessary, references to documents or exhibits will be made to the NYSCEF document number.

Insurance Law §5102 has been considered.

### **Background and Procedural History**

These three actions to recover damages for personal injuries all arise out of a multi-vehicle accident which took place on February 9, 2017 on the northbound New York State Thruway (I-87) near Exit 16. Action #1 plaintiff Seok Yoo commenced this action by e-filing a Summons and Complaint on December 6, 2017. The originally-named defendants were Jeanne Cassano, Elias Maleh, Francisca Flores, M. Flores-Santos (Flores defendants) and John Doe and ABC Corp. The plaintiff asserts that, on February 9, 2017, a collision occurred between the vehicles driven by plaintiff, Cassano, Maleh, Flores and the Doe/ABC defendants. Defendants filed Answers with Cross-claims. On March 6, 2018, the Flores defendants commenced a third-party action against Sophia Fandino and Emilio Fandino (Fandino defendants); Answers with Cross-Claims were also filed. Thereafter, on May 7, 2018, defendant Cassano filed a second third-party action, naming defendants Rosado, Kievit, Kearns, Gross, Sophia Fandino, Emilio Fandino, Moskovits, True Info Corp., and Avigdor. Answers<sup>2</sup> with Cross-claims were thereafter filed, as well as Replies to the Cross-Claims and discovery demands.

On December 26, 2018, plaintiff Myung A. Lee, the wife of plaintiff Seok Yoo, commenced a separate action, now designated as Action #2, against Cassano and the Flores defendants. Issue was joined by the filing of Answers with Cross-claims. On March 12, 2019, defendant Cassano commenced a third-party action naming plaintiff Seok Yoo, Maleh, Kievit, Kearns, Gross, the

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<sup>2</sup>Defendant Kievit has never answered or appeared in any action.

Fandino defendants, Moskovits, True Info and Avigdor. After issue was joined in the third-party action, plaintiff Lee filed an Amended Complaint, naming additional defendants Maleh, Rosado, Kievit, Kearns, Gross, the Fandino defendants, Moskovits, True Info and Avigdor. Issue was joined by the filing of Amended Answers with Cross-Claims, Answers with Cross-Claims and Replies, together with discovery demands and Notices for Deposition.

During the pendency of the first action, on January 23, 2018, Flores, named defendants, commenced a separate action against the Fandino defendants. The matter was originally assigned to the Hon. Maria Vasquez-Doles, J.S.C. By So-Ordered stipulation filed October 17, 2018, that matter was transferred to this Part and joined for trial with the Yoo case. It is now designated Action #3.

Defendants/third-party defendants Kearns and Gross filed a motion to consolidate Action #1 and Action #2. At a conference before the Court on September 9, 2019, all parties agreed to join all of the matters for discovery and trial.

Finally, on January 2, 2020, plaintiff Yoo (Action #1) filed an Amended Complaint, adding defendants Kearns, Gross, the Fandino defendants and Avigdor Samuel (sic). Issue has been joined, with cross-claims, as to those defendants, as well.<sup>3</sup>

#### **Deposition Testimony (liability)**

Jeanne Cassano      Doc. 157

Defendant third-party plaintiff Jeanne Cassano was deposed on October 25, 2019. On February 9, 2017, she was involved in a motor vehicle accident on the northbound thruway right

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<sup>3</sup>All pleadings are attached to Action #1, Motion Sequence #4, as NYSCEF documents 127-156.

before the road split for Exit 16, but before the overpass. (11-12, 41) She was driving her 2016 Toyota Highlander from Fairlawn, New Jersey to her home in Chester, New York. (12, 17) It was dusk, approximately 6:00 p.m. The weather was clear at that time, but there had been an appreciable amount of snow earlier in the day. (13) Traffic was light. (15) There was snow on the shoulders of the highway, but the road was clear until she hit a portion of the Thruway where there was “a mound of snow in the right lane<sup>4</sup>.” (14) Cassano did not have the snow settings engaged on her Toyota because, until she hit that point, she had not seen any snow on the roadway. (18) The snow in the road was piled up approximately two feet. (21) She saw the snow just before she hit it. (24-35) When she hit the snow, her vehicle fishtailed toward the right, but she did not lose complete control. (20-21) She held the wheel straight and took her foot off the accelerator to brake lightly, attempting to stop. (25, 59) To her right, there was a “pretty wide” shoulder and a wall. (22) There was plowed snow against the wall. (23)

Cassano did not see any cars ahead of her, but there was a car behind her in the same lane (Lane 1) at least a car length back. (24, 79) Before she could bring her vehicle to a stop, Cassano was hit from behind. (26) Her car was struck in the middle of the rear. (28) She did not see the impact, but felt it. (29) Although she had not previously left Lane 1, the impact moved her car to the far right, close to, but not impacting with, the wall. (29) The front passenger part of her car was on the shoulder, while the rear driver’s side was in the right lane (Lane 1). (31) The vehicle that hit her remained at the scene, but she could not identify its make, model or color. (27)

There was a second impact to her car on the rear corner of the driver’s side. (33) She does

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<sup>4</sup>For purposes of the motion, the far right line will be identified as Lane 1, the next lane as Lane 2, and so forth.

not know if that driver left the scene. (34) Cassano could not say for sure, but believed the second impact was from a different car, because of the time lag between the two impacts. (35) She did not move her vehicle from where it stopped after the second impact. (44)

The operator of the vehicle that struck her came up to Cassano's vehicle a couple of minutes after the second impact and knocked on her window. He was a Caucasian man, a little older than she. (28, 36) He asked if she was ok, and told her to call 911. (45) At some point after he came over, Cassano got out of her vehicle. She saw a lot of snow in Lane 1, but the roadway was otherwise clear. (36) She did not see any other accidents when she got out of her car. (39) She did see a vehicle behind her car, and several other vehicles behind that one. (46, 66) Those cars were at least several or 3-4 car lengths back. (47, 66) She got back into her vehicle and observed other accidents in her rear-view mirror. (39) She saw several cars "flying across three lanes of traffic, spinning out." (40) She saw a vehicle hit the cement barrier on the left side. (40) She was not close enough to see any damage to those vehicles. (47) She heard multiple instances of tires screeching, then impacts, but she did not observe any of the impacts. (48) She was not involved in any other impacts. (70)

Cassano was at the scene several hours, but did not observe a white Acura or a blue minivan. She did not speak to any Spanish speaking people. (51-52) She did not see any children. (83) Cassano identified a photograph, Defendant's E, as depicting the damage to her car, a dent in the middle of the back door, a little damage on the side, and the driver's side back. (58)

George Rosado Doc. 158

Defendant/Third-party defendant George Rosado was deposed on November 14, 2019. On February 9, 2019, he was driving a red 2003 Honda CRV. (13) His accident occurred approximately 1/4 mile before Exit 16 on the northbound Thruway. An overpass was ahead and a wall alongside.

(14) There were a total of five lanes of northbound travel, but two were only for EZ Pass. (15, 17) The weather was clear, cold and windy. (16) It had snowed earlier in the day, but ended around 10:00 or 11:00 a.m. (16) Rosado was traveling in Lane 2, the middle of the three non-EZ pass lanes, from which one could either go straight to the tolls or exit. He was going about 55 mph. (17, 21) Just before the accident happened, he saw snow across all three lanes of the road. (19) He testified that “you were driving along, the highway was clear, and all of a sudden there was this big patch where the snow had blown back onto the highway. I would estimate probably 3, 4, 5 inches. It was a lot.” (19-20) The snow fully covered Lanes 1-3 for 50-70 yards. Rosado first saw the snow 10-15 seconds before the accident. (20) There were no cars in front of him in Lane 2 when he first saw the snow, but there was a small dark-colored SUV in Lane 1, possibly a Toyota, being driven by a female. That vehicle was 50-60 feet ahead of him when he first saw it starting to spin from hitting the snow. (23-24) Her brake lights were on. (65) He took his foot off the accelerator and lightly applied the brake. It was almost dark and it was difficult to see. (25) Half of the drivers’ side rear of the SUV left Lane 1 and came into Lane 2 where Rosado was traveling. He turned his wheel hard to the right to try to avoid the vehicle, but his driver’s side front left contacted the SUV’s driver’s side rear left quarterpanel. (26-28) It was a light impact. (29) He estimated his speed to be 30-35. (28) The SUV was going faster, maybe 40 mph. (64-65) He believed the impact happened in the middle of Lane 2, but he could not tell because it was snow-covered. After the impact, Rosado continued to move forward and moved his car onto the shoulder next to Lane 1. The concrete wall was to his right, and the SUV was still in the roadway between Lane 1 and Lane 2, about 20 yards away. (30-31) About thirty seconds after he stopped his car, he got out and went to talk to the SUV driver. He asked her if she was okay, and she said she was. He walked through about 4" of snow to get to the SUV. (52)

Rosado told the woman to get her car off the road onto the shoulder and he then went back to his car. He did not know why she did not do that.

As Rosado was sitting in his car, 3-4 minutes later, he heard a crash. He looked over his shoulder and saw that the SUV had been hit again. He did not get out after he heard the second impact. Rosado could not describe the third vehicle. (33) He did not speak to the driver of the third car. (33, 37-38, 51)

After his accident, Rosado heard 5-6 impacts between other cars behind him. (32) Although he was out of his car, he could not see any of the accidents. He only saw were the SUV that he hit and the third vehicle that hit the same SUV. (33) He did not see an Asian man or woman. (54) He did not speak with any Spanish-speaking male. (58)

Rosado spoke to a State Trooper who asked him how the accident happened. He told him that vehicle 1 (the SUV) hit the snow and started spinning. He tried to avoid the SUV, but could not. He told the trooper that he told the female driver to move her car; she did not and was struck again. He also told the trooper that he heard other impacts behind him. (39) He did not tell the officer that the SUV driver struck the concrete barrier, which caused him to hit her. (69)

Rosado was shown the photograph marked as Defendant's Exhibit C, but it did not depict the wall near his accident site as his vehicle was further ahead. He did not recognize the vehicles shown to him in other photographs. He recognized a bridge shown in one of the photographs as being approximately 1/4 mile behind where his accident took place. (43-45) When he was shown photographs marked at the Cassano deposition, he identified the vehicle depicted as the one that had been ahead of him and with which he had contact. (47) The site of his accident with the SUV was the furthest north of all of the accidents. (49) The other accidents were far back and he could not see

them. (63) The only vehicles he could see were his and the one he struck. (50)

Daniel Kearns Doc. 160

Kearns' deposition was held on November 14, 2019. He was involved in an accident on February 9, 2019, on the northbound thruway near Exit 16. He was driving a red Subaru vehicle which belonged to his mother, defendant Maureen Gross. (13-15) Kearns was traveling in Lane 2 of the five lanes in the area of the accident on his way to his home in Monroe. (16-17) It was dark. (17) Before his accident occurred, he did not see any snow on the roadway, although there was snow on the shoulders. There was slushy snow in the roadway where his accident happened. He did not see the snow before he felt it. (62)

After his accident, he saw snow in Lanes 1 and 2. (20) His accident happened in the location of the concrete wall.. (21) His car was in contact with two other vehicles while he was in it, and several more after he got out of it. (22) He could not describe the make, model or color of the first vehicle he had contact with. At the time, he was traveling approximately 40-45 mph. (24) He heard and felt that vehicle hit his driver's door. He did not see the vehicle before the impact and did not know what lane it had been traveling in or its speed. (23-24, 64) He believed that vehicle had been traveling behind him. (26)

There were cars in front of him at the point of his first impact, but he was not sure if there were more than one. He could not describe the make, model or color of any of them. (25, 27) He did not know if they were stopped, but he saw taillights in front of him in his lane. (28). There were no cars to the left of him. (26-27) He did not see or hear any accidents occur before the first impact to his car. (26, 28, 40)

Kearns did not have full control of his vehicle at the time of the first impact and was not sure

whether he was fully in Lane 2 at that time. (29) When he saw the taillights, he applied his brakes, but they did not function the way he was used to and he began to slide, his nose went to the left at 11:00, and his tail went to the right. (29-30, 63) He was not sure if the front of his car was in Lane 3. (31) After the first impact, which was heavy, he continued to move forward. The car straightened out, but he did not have control of his vehicle. (32)

At the time of the second impact, his car was moving forward, still sliding. The second impact was to the nose of his vehicle. (34) He could not describe the make, model or color of the car he struck in the second impact, or what part of that car he struck. (34-35) He did not know if that car had been stopped or was moving, or if it was the same car whose taillights he had seen earlier. (35-36) He was not sure what lane he was in at the second impact. (36)

After the second impact, his car came to a stop, partially in Lane 1 and partially on the shoulder. (74) His airbags had deployed after both impacts. (65) He briefly remained in the car, then got out on the passenger side. (37) He ran to the right. The only vehicle he could remember seeing was a white box truck, about 20-25 feet ahead of him, to the right. (38-39) He did not see any other vehicles. He was not sure if he ever saw the car he struck, because by the time he turned around, "it became a pile." (39)

After he ran to the right, he turned back and saw his car and several others. He could not describe the make, model or color of any of them. He saw other cars join and make contact with the cars that were already stopped. (42) He did not know how many accidents he saw. (42-43) There were several other impacts to his car, but cannot describe any of the vehicles involved. (44, 66) Some of the cars moved forward after striking his vehicle, others stayed in the general area. (67)

Kearns did not speak to any of the other drivers, but he did take photographs of the scene.

A police officer approached him and asked if he had been driving the red vehicle. He told Kearns to go see the ambulance. (45) When shown photographs marked as Exhibits C and D on October 4, 2019, he did not recognize the vehicles depicted, but the area looked familiar. (46) He did recognize his vehicle and the damage it incurred in photographic exhibits G, H and R from that date. (49, 51) He did not recognize the vehicles in other photographs he was shown, but did identify them as depicting the snow that was on the road at the time. (50-51) Kearns did not take any of the photographs he was shown. (56) Two photographs he took were marked as Kearns Exhibits A and B. They showed his vehicle. (59-60)

He did not speak to any of the occupants of the vehicles near him. (52) He did not see or speak to an Asian male or female. (74)

Sophia Fandino Doc. 161

Sophia Fandino was also deposed on November 14, 2019. On February 9, 2017, between 6:00 and 7:00 p.m., she was operating a 2011 BMW Series 3, owned by her father. (15) It had been snowing, but had stopped in the early afternoon. (19) There was snow on the shoulders of the thruway, but no snow on the roadway leading up to the accident site. (23-24) At the point where the accident happened, the entire exit roadway was covered in a relatively thick layer of slushy snow. (24) There were five travel lanes on the Thruway, with a divider separating two on the left (Lanes 4 and 5) and three on the right (Lanes 1-3). (25) Fandino intended to take Exit 16 to Route 17. (26) The accident she was involved in was at the beginning of the Exit 16 lanes. She was either in Lane 2 or Lane 1. (27-28) She had not yet turned onto the exit ramp. (34) It was dark and she had her headlights on. (30) She saw cars ahead of her, but she did not see any accidents until after her accident. (31-32)

She was traveling at about 40 mph when her car slipped on snow and she “sort of” lost control. (36) The lane was straight and flat as her car began to slip. At that point, her lane was covered with slushy snow. (38) When her car slipped on the snow, the front end began to move to the left and the back end to the right. (39-40) As her car began to slide, she noticed multiple cars in front of her with their taillights on; she did not remember seeing cars behind her. (40) Her car collided with the median on the left, which separated the lanes continuing on the Thruway from Lanes 1-3. (35) Before her collision, she only saw one car, which appeared to be an SUV, but it was dark, so she was not sure. (41) There were only a couple of seconds between when her car began to slide and her impact. She turned her wheel to the left and applied her brakes. (43-44) She felt the brakes vibrate and then the front of her car made contact with the median. (44-45) The driver’s side airbag deployed. (45) Later, Fandino testified that she braked because there was a car ahead of her in Lane 2, and she wasn’t sure what it was doing, whether it was stopped or backing up. (68-60) She was approaching it, maybe a car length away (80) and swerved left to avoid hitting it. (69) She did not contact any vehicle prior to striking the median and did not strike anything else after striking the median. (45-46, 61) She did not remember if her car bounced off the median and into the next lane. (46) When her car came to a rest, it was parallel to the road. (71) After the impact, she did not recall seeing the car she swerved to avoid rocking back and forth. (77)

After her car came to a stop, she got out and saw other vehicles on the roadway. (47) She remembered seeing 3 or 4 vehicles in Lane 1 or on the right shoulder by the concrete wall. (48) Some of the cars were in front of hers and some behind, but none were in her lane. (49) A couple of cars were stopped behind hers in Lane 1 or on the shoulder. (50) She remembered seeing a red Subaru, a white sedan and a minivan in Lane 1. (66) The white car was facing into the concrete wall. The

minivan was ahead of it. (73)

While she was out of the car, she spoke to a young man and a woman. (51) She did not know what cars they were operating. She recalled the young man bleeding a little bit. (52) The woman told her that she (Fandino) had hit her car. Fandino did not feel any impact with a car and told the woman so. (53) She had no idea what car the woman meant. (54) She could not describe the woman. (64)

She was shown exhibits marked as Defendant's E and F on October 4, 2019, and was able to recognize her car and damage to its front end. (55-56) Thereafter, she was shown photographs marked as defendant's A-F on October 25, 2019. She did not recognize the vehicles there. She did not remember seeing a blue Honda Accord. (57) She was shown defendant's Exhibit Q from October 4, 2019, and recognized a white car and a red Subaru. (58) Those cars were located at the opposite side from her. She believed they were behind her. (59, 67) She saw them from her car window after her car came to a stop. (60)

Emilio S. Fandino Doc. 162

Emilio Fandino, the father of Sophia Fandino, was also deposed on November 14, 2019. He testified that Sophia called him around 7:00 pm and told him that she had been in a motor vehicle accident, and that there had been a pile up of some sort. (13, 30) She asked him to come pick her up. (14) She said she wasn't hurt and told him where she was. (16) He asked her how the accident happened and she told him the car had slipped in the snow and hit the median. There was a massive pile of cars. (31) He and his wife went to pick her up. (16) They did not go to the scene of the accident, but picked Sophia up at a pizzeria across the street from a junkyard where the car had been towed. (17, 19) When he saw the car, he noticed extensive damage to the front end and left and right

fenders. (21) He did not notice damage to any other part of the car. (22) Sophia told her parents that she had struck the median and did not say that she had struck another car. (24)

Abraham Moskovits Doc. 163

Abraham Moskovits was deposed on November 19, 2019. He is the sole owner of defendant True Info Corp. (8) On February 9, 2019, he was operating a Honda Odyssey registered to True Info. (9, 14) He was involved in an accident at around 5:00. It was snowing a little. (9-10) He was traveling with his wife and four children. The accident occurred before Exit 16 on the Thruway. A concrete wall was on his right, about 20 feet behind him. (11, 14) He saw two cars directly in front of him, but he had contact with only one, a small car. (15, 19) He could not identify the make, model or color of either car, or whether the drivers were male or female. (16)

There was snow on the road in front of his vehicle. The area with snow was wide, but he didn't know how long it went. (17-18) At the time of the accident, he was driving in Lane 2 at about 50 mph. (18, 21) He first noticed the snow when he was already on top of it. He immediately lost control of his vehicle. (20-21) He tried to brake, but his brakes didn't work. (21) When he lost control, the two cars in front of him had already collided with each other and were stopped in Lane 2 50-100 feet away from him. He did not see or hear them impact. (22-23) He struck the rear of the second car. (23) His vehicle stopped immediately after the impact and the car he struck did not move. (24-25) The front of his vehicle was damaged and the driver's airbag deployed. (34)

He got his family out of the car, and they went over to the wall on the right..He called 911, but did not wait for the police because he was afraid vehicles behind them would crash. (33) A lady picked them up and drove them to the State Police. (25)

He did not speak to any of the drivers or occupants of the other cars. (27) Besides his accident, he did not see or hear any impacts behind his vehicle. (27-28) He had a “foggy image” of a tractor trailer at the scene, but didn’t really remember it. He did not know the name. (28-29)

Prior to his accident, he saw a snowplow and told his wife that the snowplow had left snow in the roadway. (30) He did not see an Asian man or woman. He did not recognize any vehicles in photographs shown to him or remember seeing a blue Toyota Highlander at the scene. (31)

Samuel Avigdor Doc. 164

Avigdor, sometimes referred to as Avigdor Samuel, was deposed on November 19, 2019. His accident took place on February 9, 2017 at about 6:00 p.m. (13) He was driving a black 2015 Chrysler Town & Country minivan. (14-15) Although it had snowed in the morning, the weather was clear, dry and extremely cold. (13-14) He saw no snow on the roadway until he came to the place of the accident. There were three lanes of traffic at that point (18) with concrete walls located on both sides of him. Traffic was “medium.” (17) Before the accident, Avigdor was in Lane 2. Afterwards, he was in Lane 3. (18) At the time of the accident, there were no cars to either his left or his right, but there were vehicles behind him, perhaps 5 or 6. (19-20) However, he did not see them until after the accident. (20)

Avigdor was involved in an accident with one vehicle. (20) He saw two cars spinning in front of him about 100-200 feet away.(23) They collided with each other when they were about 50 feet away from him, and then one flew across and struck him. (21, 23) When he saw the cars spinning ahead of him in Lane 2, he moved from Lane 2 to Lane 3. (22) Prior to the accident, Avigdor had been traveling at the speed limit, 65 mph. When he saw the cars spinning, he realized there was snow on the road; he estimated 2 inches. (24) When he recognized there was snow on the road, he

started to brake. When the car struck him on the passenger-side front corner, he slid about 100 feet and came to a stop next to the left wall in a pile of snow. His car got stuck, about five car lengths before the exit ramp turnoff. (26, 27, 40) He did not come into contact with the wall. (28) The impact was heavy enough for the passenger side airbag to deploy. (26) He did not have contact with any other vehicles. (29) The two spinning cars came to a stop behind his vehicle. He did not see any other cars ahead of him in Lane 3. (36) His was the northernmost car on the left side. (37) The overpass for Route 6 was behind him. (40)

After his car came to a rest, he got out of it, and called 911. He could see and hear impacts behind him. (29) One car came to rest in Lane 3, about a car length behind him. (37) He believed the others were all in Lane 1. (30) Some of them were before the Route 6 overpass, some under it and some after it. (40) He spoke to some of the drivers, but could not identify who or how many. Everyone said it was snowing and impossible to stop. (32) He crossed over to the other side of the road and went around. He may have spoken to a female, but did not know the name Jeanne Cassano. (33) He did not know and did not speak to the driver who struck his vehicle. (34) He was shown a photograph marked defendant's R from a deposition on 10/4/2019 and remembered seeing those vehicles; but he did not know whether those vehicles were involved in his accident. (34) He did not recall speaking to the driver or the passenger in the white car, or recall speaking to any Asian people. (35) He believed he saw an Asian female sitting in the white car on the right side. (43)

Elias Maleh Doc. 225

Defendant/Third-party defendant Maleh was deposed on November 19, 2019, through a Spanish interpreter. (7) His accident took place on the Thruway before Exit 16, between 6:00 and 8:00 at night. (15) There were three lanes, but he did not recall which lane he was traveling in. (16)

Traffic was “normal.” (17) He was driving a gray 2015 Toyota minivan, and traveling about 45 mph. (17, 28) The roadway had not had snow on it. (18) It was very cold and suddenly there appeared to be ice that came down from the overpass. He tried to brake. (44) His car skidded to the right and hit the wall to his right maybe 5 seconds later, with the front of his car. (19, 23, 44) He did not see ice fall, but heard that from some of the people. (19) He did not speak with any Asian people. (21) Other cars on the left side of him also skidded, but it was dark and he could not see them.

After his vehicle hit the wall, he was hit once in the back, by a car which may have been white, maybe half a minute later. (24) He was already standing outside his car when it was hit and saw the collision. (25) He had not seen the white car before it hit his. (47) He could not remember if any other cars hit the white car. When shown defendant’s Exhibits S and U from the deposition of October 4, 2019, he was able to identify his car and the white car. (26-27) His was not the first car to slide, there was at least one other to the left of him. (32) He did not see and could not remember hearing any accidents before his. (33) He did not see a Toyota Highlander or speak to Jeanne Cassano or any other female at the scene. (36)

Seok Yoo Doc. 166

Plaintiff and third-party defendant (in Action #2) Yoo was deposed on October 4, 2019, through a Korean interpreter. (9) Yoo was involved in a motor vehicle accident on February 9, 2017 between 5:00 and 6:00 pm. (19) It had snowed earlier in the day, but the weather was good at the time. (20, 24) He was driving a 2015 Acura automobile. His wife (plaintiff Myung A. Lee) was sitting next to him. (21) The accident took place on I-87 approaching Exit 16. (24) He recalled four lanes of traffic on the highway and two on the exit. His accident occurred inside the exit lanes. (25)

Yoo saw that an accident had taken place in front of him, in front of a bridge. (25-26) It was before the road curved to the right. (34) He did not know how many vehicles were involved but he saw a metallic-colored trailer (29), two minivans and a couple of cars standing there. (27, 28) He did not know the color of the minivans or the makes and models of the other cars, but knew they were American cars. (27-28) He saw a passenger car spinning and heard a bang sound, which he believed to be the spinning car colliding with another vehicle, but he did not see that because it was dark. (30) The accident was "kind of far away," more than 100 meters. (34)

Before he entered the Exit 16 exit lane, he was traveling in Lane 1. Once he saw the Exit 16 sign, he slowed down. (37) When he saw the accident in front of him, he slowed down to a complete stop. There was snow in the roadway and he could not tell how many lanes there were. (40) It appeared to him that he stopped in Lane 2. His headlights were on. There appeared to be two inches of snow in the roadway where he stopped. (43) There was a concrete wall to the right, but he could not recall whether there was any barrier on the left. (41-42) He believes he was stopped for 5-10 minutes before he was struck in the rear. (43)

The vehicle that struck him was a passenger car. He saw it spinning in his rearview mirror before it hit him with a heavy impact. (44-45). It was navy-colored, but he did not know the make or model of the car, although he thought it may have been a Honda. (44, 99) He believes that his car was hit three times, but did not know if the same car hit him more than once. (45) The next two impacts were "instantaneous, happened in an instant." (44) The impact from either the first or the second vehicle pushed his car into the concrete wall to the right. (46) He was not sure what part of the car was hit with the second impact, because his car was also spinning. (47) The impact when his car struck the wall was heavy, and all the airbags went off and the windows broke. (49)

After his car struck the wall, he helped his wife out and walked away from the cars. There was a “grandma and a grandpa” sitting in a vehicle between the site of his accident and the one Yoo had seen ahead. They took his wife in their car to rest. (53) It did not appear that those people were involved in the accidents. He did not know their names, but their car was a small, dark passenger car. (54) Yoo did not see any other accidents. (56) He took photos and a video of the scene around his accident. (56)

Yoo did not speak to any of the other drivers involved in the accident. (58) He did not speak to Jeanne Cassano. He was shown photographs marked Exhibits A and B, which he identified as photos he took, showing his vehicle and the damage it sustained. (59-61) Although Exhibit C did not show the site of the accident, he recognized the snow on the ground. (63) He did not recognize vehicles depicted in Exhibits E and F. (64) He recalled seeing a red car, which he believed had hit him from the rear. (66) That car was maybe 3-4 feet away from his. (67) He recognized a vehicle as having been in front of his, but did not know whether it had any contact with his vehicle. (67-68) He identified a minivan in front of his car, but did not recall it to be a vehicle involved in his accident. (70) Exhibits R and S also depicted the red Subaru that he believed struck his car in the rear. (73)

Myung A. Lee Doc. 224

Action #2 plaintiff Myung A. Lee, the wife of Action #1 plaintiff Seok Yoo, was also deposed on October 4, 2019, through a Korean interpreter. (9) On February 9, 2017, she was a passenger in a white Acura automobile driven by her husband. (12) The accident occurred on Route 87. It had snowed earlier, but it had stopped before the accident. (13) As she was riding, before her accident, she saw a vehicle ahead of her “bounce back from something.” (14) The vehicle, which she understood to be a sedan, was far away, and she did not see it make contact with any other vehicle

or a concrete barrier. (14-15) Lee also saw a tractor-trailer truck ahead. (15)

Her car was stopped at the time of her accident, because of the accident in front of her. (16) She believed they were stopped for about 2 minutes. (16) There were three impacts to her vehicle. She did not see the first one or the second one, but felt that they were different vehicles because of the way the impacts felt. (17-18) The first impact pushed the car forward a little. (19) She believed there was a third impact from a vehicle hitting the rear of their car. (21) She is not able to identify any of the vehicles that struck her, but they were all heavy impacts, with the second impact being the heaviest. (22-23) Immediately after the accident, her husband helped her out of the car. (25) She left the scene of the accident in an ambulance and never spoke to any of the occupants of the other cars, apart from the people who let her sit in their car. (27) She did not recall seeing a 2015 Chrysler sedan at the accident site. (58) She did not see any of the other accidents that happened after hers. (59)

Francisca Flores Doc. 168

Defendant (Actions #1 and #2) and plaintiff (Action #3) Francisca Flores was deposed on October 25, 2019. Flores was involved in the accident of February 9, 2017. (13) She was driving a blue 2003 Honda Civic, registered to her sister. (14-15) It had snowed that morning, but stopped in the afternoon. (20) She was headed toward the ticket lanes on northbound 87. (23) There were three lanes of traffic, one going to the ticket booths, and two going to Exit 16. (24) She was traveling in Lane 3, to the right of the median dividing the EZ pass lanes, at about 55 mph, because there was snow and ice on the road. (25-26) There were cars in front of her, to the right. (27) As she was approaching the toll, she got stuck in the snow. (28) She was still far from the tollbooth. (29) Within the mile before she got stuck, there were no cars traveling ahead of her, but there were at least 5 cars on the right, hitting each other. (30) She saw more than 5 accidents up ahead of her. (32) She saw

a red car ahead of her, and a van north of that stuck against the wall on the right shoulder. (33) When she saw the accidents, she slowed applying her brakes, and that is when she got stuck in snow and ice. (35) She believed the snow to be 1" deep where she got stuck. She saw more than four other cars ahead of her on the right side. (37, 39)

When she was going toward the ticket booths, she checked her mirrors and saw no cars behind her. When she got stuck, she was stopped for a couple of minutes. (40) She looked behind her and saw nothing but snow in the roadway. (41) In front of her, to her right, she saw other cars involved in accidents. (42) She got out of her car to kick snow off her back passenger tire that was spinning. (43) When she got back in the car, she looked to see if any cars were coming and saw none. (44) She began to rock her car back and forth and had freed it a little. She was moving forward, then she was struck by the passenger side of a blue BMW, which hit the back driver's side of her car. (44-47) The impact with the BMW threw her car across Lanes 2 and 1, to the concrete wall. (48) She did not attempt to brake or turn her wheel. (51) When she hit the wall, she was still far behind the cars on the right which were involved in the other accidents. When she hit the wall, she blacked out for a moment. (49) When she regained consciousness, she was facing straight ahead. (54) She saw the BMW across from her, stuck on the meridian that separated the EZPass lanes. (57)

Other than the BMW and the wall, her car did not come into contact with anything else. (53) A man pulled her out of her car a few minutes after she hit the wall (59) but she could not identify or describe him. (70) She stayed by her car, and then went across to talk to the BMW driver, who was outside of her car, talking to a man. (60) Flores yelled at her and told her that she had hit her car. The woman said "Oh my God" and walked away from the highway. (61)

She identified photographs marked Exhibits A-F as her car, which she took with her

cellphone. (64) The trunk and backdoor were damaged. (63) Exhibit C shows her front bumper hanging off. (65)

Flores never saw a blue Toyota Highlander and never spoke to anyone named Jeanne Cassano. (62) She was shown photographs marked as Exhibits B and C from the Cassano deposition, and had never seen that vehicle before. (68)

She saw a white car, while she was walking to the police officer (74) although she could not identify the model. There were other cars between it and her car. She saw an Asian woman being taken into an ambulance, but did not know what car she had been in. (69) She never saw a Chrysler sedan and did not speak with anyone named Kearns or Gross. (71) She never spoke with Avigdor. (72) She never spoke to anyone in the white car, and did not have contact with it. (72-73) She did not recall seeing a tractor-trailer. (73) She did not hear or speak to any Spanish-speaking males. (76) The car closest to her was the red car. The white car was in front of it, and the minivan in front of that. (77)

### Liability Motions

In Yoo v. Cassano, et als., the following defendants have moved for summary judgment on liability:

- Cassano (Sequence 4)
- Kearns & Gross (Sequence 5)
- Moskovits & True Info. (Sequence 6)
- Rosado (Sequence 7, combined with threshold)
- Avigdor (Sequence 8)
- Flores (Sequence 11)

- Maleh (Sequence 13)
- Fandino (Sequence 15)

In Lee v. Cassano, et als., the following defendants have moved for summary judgment on liability:

- Kearns & Gross (Sequence 2)
- Cassano (Sequence 3)
- Moskovits & True Info. (Sequence 4)
- Yoo (Sequence 5, fashioned as a dismissal motion)
- Rosado (Sequence 6, combined with threshold)
- Avigdor (Sequence 7)
- Flores (Sequence 10)
- Maleh (Sequence 12)

All motions were made returnable, after several adjournments, on January 8, 2021. No motions have been filed in Action #3.

**Motion Sequences 4 & 7 (Yoo) and 3 & 6 (Lee)**

Cassano denies having breached any duty owed to Yoo. Her vehicle was contacted only by the Rosado vehicle. She did not have any contact with plaintiffs' vehicle and was not the cause of their accident. A defendant is not the proximate cause of a plaintiff's injuries when it merely furnished the occasion or condition for the occurrence of the accident. In order to recover from Cassano, plaintiffs must establish that her negligence was a substantial cause of the events which resulted in their injuries. The deposition testimony of both Yoo and Lee establishes that their vehicle was stopped for a significant time before they felt any impact. That stop constitutes a superseding

event which negates any liability on the part of Cassano. Moreover, neither plaintiff can identify Cassano's vehicle as having been at the scene. Co-defendant Rosado testified that, when he came across the snow, it was fully across all three lanes of traffic. He turned his steering wheel hard to the right to avoid Cassano's car, but ultimately struck the driver's side rear quarterpanel. Although Rosado testified that he heard another impact to Cassano's car, his vehicle was involved in only one impact.

Plaintiff Yoo testified that when he entered the exit lanes, he saw an accident in front of him, "kind of far away." He was stopped for 5-10 minutes before the first of three impacts to his car. Lee's testimony corroborates Yoo's, with the exception of her belief that the car was stopped for only two minutes, and her belief that there were three impacts with other cars.

Every other defendant, Kearns, Fandino, Moskovits, Avigdor, Maleh and Flores, testified that the accidents involved with plaintiff's vehicle were the result of snowy and icy road conditions and had nothing to do with Cassano's vehicle. Any question of liability between Cassano and Rosado has nothing to do with either of their liability to plaintiffs.

For his part, Rosado notes that, even in the amended complaint, plaintiff Yoo sought no relief against him, although he is a named defendant in Action #2. However, the undisputed evidence shows that the impact between him and the Cassano car was unrelated to the other accidents which occurred that day. Apart from disputing that her car struck the barrier wall, Cassano's testimony, as well as police report (Lee Doc. 239), support Rosado's position. After their accident, they heard impacts several car lengths behind them, but were not close enough to see them. Under the circumstances, Rosado is entitled to shield from liability to Cassano under the emergency doctrine, and to any other party because the incidents were unrelated.

He further notes that there is no dispute that the Cassano/Rosado accident was removed from the other accidents not only by physical distance, but also by time. Cassano and Rosado each testified that their collision occurred “as it was getting dark.” All of the other drivers testified that it was dark already when their accidents happened.

Plaintiffs’ admission that their car had come to a complete stop for anywhere from 2 to 10 minutes precludes any finding of liability against Cassano and Rosado. At most, the Cassano/Rosado collision furnished a condition for the occurrence of the later accidents, but did not proximately cause them.

Rosado notes, in his reply to the Lee motion, that neither plaintiff offered a basis to deny summary judgment. Co-defendants Cassano, Avigdor and Kearns do not contest that Cassano and Rosado had no liability to plaintiffs. On that basis, Cassano and Rosado both claim they are entitled to summary judgment dismissing plaintiffs’ complaints as against them.

The motions of Cassano and Rosado for summary judgment are granted. Negligence cannot be presumed from the mere occurrence of an injury. (*Rella v. State*, 10 17 AD2d 591, 592 [3d Dept 1986]) To establish a prima facie case of negligence, a plaintiff must establish the existence of a duty owed by a defendant to the plaintiff, a breach of that duty, and that such breach was a proximate cause of injury to the plaintiff. (*Vetrone v. Ha Di Corp.*, 22 AD3d 835, 837 [2d Dept 2005]) “The act of a party sought to be charged [with negligence] is not to be regarded as a proximate cause unless it is in clear sequence with the result and unless it would have been reasonable to anticipate that the consequences complained of would result from the alleged wrongful act.” (*Saugerties Bank v. Delaware & Hudson Co.*, 236 NY 425, 425-426 [1923])

Plaintiffs and certain co-defendants argue that, in leaving her car on the roadway, Cassano violated Vehicle & Traffic Law section 1202[a][1][j], which prohibits a driver from stopping or parking a vehicle on a state interstate. Assuming, again without finding that to have been accurate, there is nevertheless an exception to the statute in case of emergency. (*See, Marsicano v. Fabrizio*, 61 AD3d 941, 942 [2d Dept 2009]) The testimony of every party to all of these actions makes it evident that the collisions were each emergency situations, happening to each driver in a span of only seconds. Cassano testified, and it was not disputed, that the second impact to her car was within minutes of the first. The Second Department has held that the failure to remove a car from a travel lane within one minute from her own collision does not constitute actionable negligence. (*Mikelinich v. Giovanetti*, 239 AD2d 471 [1997])

But even assuming, without finding, that the acts of Cassano and/or Rosado were negligent, the uncontroverted testimony regarding the physical and temporal distance between their collision and the other accidents serves as a superseding cause, sufficient to relieve them of liability to plaintiffs. (*Niewojt v. Nikko Constr. Corp.*, 139 AD3d 1024, 1026 [2d Dept 2016])

Recognizing, as plaintiff Lee argues, that there may be more than one proximate cause of an accident, our courts have held that, when a question of proximate cause involves an intervening act, “liability turns upon whether the intervening act is a normal or foreseeable consequence of the situation created by the defendant’s negligence.” (*Hain v. Jamison*, 28 NY 3d 524, 529 [2016] (internal citations omitted) Although such questions are generally for the trier of fact, there are instances where proximate cause can be determined as a matter of law because “only one conclusion may be drawn from the established facts.” (*Id.*, citing, *Derdiarian v Felix Contracting Corp.*, 51 NY 2d 308, 315-16 [1980])

The fact that plaintiffs' car was able to come to a gradual and complete stop well away from Cassano's and Rosado's vehicles evidences the intervening cause, and establishes, prima facie, their entitlement to judgment as a matter of law. (*Ianello v. O'Connor*, 58 AD3d 684, 686 [2d Dept 2009]) In *Ianello*, the Second Department held that plaintiff's stop for five seconds before she was struck in the rear demonstrated that defendant's actions were not a proximate cause of the collision in which plaintiff was injured.

Neither plaintiffs nor co-defendants have offered any evidence that there are triable issues of fact regarding the conduct of Cassano or Rosado.

In short, where the harm is caused by an occurrence that was not part of the risk or hazard involved in an actor's conduct, the actor is not liable. (*DePonzio v. Riordan*, 89 NY 2d 578 [1997]) The drivers of the cars involved in the initial accident, here, Cassano and Rosado, did not cause the drivers behind them to rear-end the car belonging to plaintiffs. They "did nothing more than furnish the condition or give rise to the occasion by which the injury was made possible and which was brought about by the intervention of a new, independent and efficient cause." (*Gregware v. City of New York*, 94 AD3d 470, 470 [1<sup>st</sup> Dept 2012])

For those reasons, the complaints are dismissed as against those defendants. Cassano's third-party complaints, and all cross-claims raised in response to them, are likewise dismissed. Motion Sequence #5 in Lee, seeking summary judgment in the third-party action, is dismissed as moot.

**Motions by all other defendants**

Sequence numbers 5, 6, 8, 11, 13 & 15 in Yoo

Sequence numbers 2, 4, 7, 10 & 12 in Lee

The summary judgment motions of the remaining defendants are granted on the basis of the emergency doctrine. It is admittedly unusual to award summary judgment on the conflicting testimony of the defendants; however, the one consistent claim throughout the testimony of every party was the sudden appearance of snow and/or ice on the Thruway. Kearns testified that he came upon slushy snow in the roadway, which he could not see before he felt it and lost control of his car. (Doc. 160 at 62) Avigdor testified that he saw two cars spinning on the road 100-200 feet away from him, while he was traveling at 65 mph. They were only 50' away when they collided and spun toward him. (Doc. 164 at 22-24) Moskovits testified that he didn't notice any snow until he was right on top of it, and tried to brake, but his brakes failed. (Doc. 163 at 20-21) Maleh testified ice came down suddenly in front of him, causing him to skid and hit the wall. Thirty seconds later, he was struck from behind. (Doc. 225 at 19-24) Flores testified that she was going 50-55 mph when she saw snow and ice on the road and saw the other accidents ahead of her before getting stuck in the snow. When she was hit, she had no control and slid across two lanes of traffic into the wall. (Doc. 168 at 40-50, *passim*) Fandino testified that, upon entering the exit lanes, she saw a thick layer of slushy snow over the entirety of the exit, while moving 40-45 mph. Her vehicle slipped on the ice and she "sort of lost control" before she impacted the wall. (Doc. 161 at 36-40) Even plaintiff Yoo testified that, having slowed his car to about 40 mph, when he entered the exit lanes, he saw 2" of snow on the roadway surface. Although he was already stopped when the first vehicle struck him, the subsequent impacts were "instantaneous." (Doc. 166 at 44-46) Plaintiffs and certain co-defendants argue that, in leaving her car on the roadway, Cassano violated Vehicle & Traffic Law section 1202[a][1][j], which prohibits a driver from stopping or parking a vehicle on a state interstate. Assuming, again without finding that to have been accurate, there is nevertheless an exception to the

statute in case of emergency. (See, *Marsicano v. Fabrizio*, 61 AD3d 941, 942 [2d Dept 2009])

“Under the emergency doctrine, when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor is not negligent if the actions taken are reasonable and prudent in the emergency context.” (*Kandel v. FN*, 137 AD3d 980, 981-82 [2d Dept 2016]) In *Kandel*, as in the matter at bar, defendant came across ice on the highway, lost control of his car and collided with another car. The testimony of defendant that he tried to steer his car to avoid other collisions, but the events transpired over mere seconds, established *prima facie*, that defendant was presented with an emergency situation and reacted as a reasonable person would, under the circumstances. (*id.* at 982)

An emergency does not automatically absolve an actor from liability for his or her conduct, if there are triable issues of fact as to whether the actor’s conduct was reasonable and prudent under the circumstances. (*Aiken v. Liotta*, 167 AD3d 826, 827-28 [2d Dept 2018]) But “[u]nder appropriate circumstances, the existence of an emergency, as well as the reasonableness of the actor’s response to it, may be determined as a matter of law.” (*Wade v. Knight Transp., Inc.*, 151 AD3d 1107, 1109-10 [2d Dept 2017], quoting, *Wu Kai Ming v. Grossman*, 133 AD3d 742 [2d Dept 2015])

Here, defendants’ almost universal testimony is that they were confronted with an emergency, not of their own making, which left them with only seconds to react, and virtually no opportunity to avoid a collision. (*Garcia v. Stewart*, 120 AD3d 1298, 1299 [2d Dept 2014])

In opposition to defendants' motions, plaintiffs (and some co-defendants) asserted that there are triable issues of fact regarding the reasonableness of the conduct of the drivers who struck plaintiffs, and whether speed or steering could have avoided it. But "speculative assertions that defendant may have contributed to the accident or may have been able to avoid it were insufficient to defeat summary judgment." (*Wu Kai Ming*, 133 AD3d at 743) Plaintiffs offered no testimony or evidence to contradict the drivers' accounts. (*Garcia*, 120 AD3d at 1299)

"In order to succeed, a cause of action must be based on more than speculation." (*Morales v. Kiamesha Concord*, 43 AD3d 944 [2d Dept 1974]) "Speculation and surmise are not a substitute for proof...where evidence is capable of an interpretation equally consistent with the presence or absence of a wrongful act, that meaning must be ascribed which accords with its absence." (*Tucker v. Elimelech*, 184 AD2d 636, 637, quoting, *DeMayo v Yates Realty Corp.*, 35 AD2d 700, *aff'd*, 28 NY 2d 894)

"Where a jury would be compelled to speculate upon various possible causes of an accident which 'may be as reasonably attributed to a condition for which no liability attaches as to one for which it does, then the plaintiff is not entitled to recover, and the evidence should not be submitted to the jury.'" (*Smith v. Wisch*, 77 AD2d 619, 619-20 [2d Dept 1980], quoting, *White v. Lehigh Val. R.R. Co.*, 220 NY 131 [1917])

In the matter at bar, recognizing that summary judgment is a drastic remedy and is appropriate only when there is a clear demonstration of the absence of any triable issue of fact, *Piccirillo v. Piccirillo*, 156 AD2d 748 [2d Dept 1989], citing *Andre v. Pomeroy*, 35 NY2d 361 [1974]), "summary resolution is possible...when the driver presents sufficient evidence to establish the reasonableness of his or her actions and there is no opposing evidentiary showing sufficient to

raise a legitimate question of fact on the issue.” (*Dawley v. McCumber*, 48 AD3d 1270, 1271 [4<sup>th</sup> Dept 2008])

Since the drivers at bar universally testified that they were confronted with an emergency not of their own making, i.e., the snow and/or ice on the roadway, even an error in judgment in responding to the emergency would be insufficient to defeat summary judgment. (*Jacino v. Sugerman*, 10 AD3d 593, 595-96 [2d Dept 2004])

On that basis, the motions of defendants Kearns & Gross (Sequence 5), Moskovits & True Info. (Sequence 6), Avigdor (Sequence 8), Flores (Sequence 11), Maleh (Sequence 13) and Fandino (Sequence 15), in Action #1 are granted.

The remaining motions for summary judgment on the basis of Insurance Law §5102 are denied as moot.

The motions of defendants Kearns & Gross (Sequence 2), Moskovits & True Info. (Sequence 4), Avigdor (Sequence 7), Flores (Sequence 10) and Maleh (Sequence 12), in Action #2, are granted.


The remaining motions for summary judgment on the basis of Insurance Law §5102 are denied as moot.

Inasmuch as no motions were filed in Action #3, that action remains. A virtual conference shall be held on the remaining matter on May 5, 2021 at 10:30 a.m. A Microsoft Teams link will be provided in advance of the conference date.

This decision shall constitute the order of the Court.

Dated: March 16, 2021  
Goshen, New York

ENTER:



HON. SANDRA B. SCIORTINO, J.S.C.

To: *Counsel of Record via NYSCEF*