Leger v Tillman
2026 NY Slip Op 30182(U)
January 12, 2026
Supreme Court, Kings County
Docket Number: Index No. 505208/2025
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of January, 2026.

P R E S E N T :

HON. WAVNY TOUSSAINT,
Justice.

CLANDE LEGER,

Plaintiff,

-against-

CLIFFORD TILLMAN, USA LOGISTIX CORPORATION and AGNLI INC.,

Defendants.

Index No.: 505208/2025
MS #1
DECISION AND ORDER

The following papers numbered 1 to read herein	NYSCEF Doc. Nos.
Notice of Motion/Order to Show Cause/ and Affidavits (Affirmations) Annexed	10-17; 19
Cross Motion and Affidavits (Affirmation) Annexed	
Answers/Opposing Affidavits (Affirmations)	28-29
Reply Affidavits (Affirmations)	30
Affidavit (Affirmation)	
Other Papers	

Upon the foregoing papers, plaintiff moves (Seq. 1) for an order: 1) pursuant to CPLR § 3212, granting summary judgment on liability as to defendants and, 2) pursuant to CPLR § 3211[b], dismissing defendants' affirmative defenses of culpable conduct, assumption of the risk, failure to wear a seat belt and emergency situation. Plaintiff also seeks an order finding that defendants were the sole proximate cause of the accident, and that plaintiff was free from comparative fault. Defendants oppose the motion.

BACKGROUND

In this motor vehicle accident case, plaintiff alleges that on October 21, 2024, while driving east bound on Linden Boulevard, at approximately five feet west from Linwood Street, in Brooklyn, New York, his vehicle was struck on the middle driver's side by the box truck operated by defendant Clifford Tillman (Tillman), who allegedly made a sudden lane change. The box truck was owned by defendants USA Logistix Corporation and Agnli Inc. Plaintiff alleges he sustained serious personal injuries when the impact with the box truck pinned his vehicle against the concrete highway pillar as it continued moving down the side of plaintiff's vehicle.

Plaintiff commenced the action by Summons and Complaint filed on February 13, 2025. Issue was joined when defendants interposed an Answer on September 21, 2023.

THE PARTIES' CONTENTIONS

Plaintiff now moves (Seq. 1) for summary judgment as to liability arguing there is no non-negligent explanation for the box truck operated by Tillman coming into contact with his vehicle. Plaintiff asserts Tillman failed to exercise reasonable care under the circumstances to avoid the collision, in violation of Vehicle and Traffic Law § 1128 [a]. Defendants contend plaintiff's Statement of Material Facts is deficient, lacking any references to record evidence. Defendants also contend the motion is premature as depositions of the parties remain outstanding, and that plaintiff's supporting affidavit is self-serving and should be rejected by the Court. In reply, plaintiff argues courts have routinely granted summary judgment in such matters prior to depositions and discovery, where such discovery would not likely result in any evidence or essential facts which would

defeat plaintiff's entitlement to summary judgment; and that defendants' insistence on such discovery amounts to mere hope and speculation. In any event, plaintiff argues the attorney affirmation of defendants' counsel is insufficient to oppose the motion.

DISCUSSION

New York Consolidated Laws, Vehicle and Traffic Law – "VTL" § 1128. "Driving on roadways laned for traffic", provides in relevant part:

> Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:
>
> (a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

"As a general matter, the operator of a motor vehicle has a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident" (*Balducci v Velasquez*, 92 AD3d 626, 628 [2d Dept 2012], *citing Filippazzo v. Santiago*, 277 AD2d 419, 420 [2d Dept 2000] and *Johnson v. Phillips*, 261 AD2d 269, 271 [2d Dept 1999]). In collisions when a vehicle that is wholly within its lane of travel is struck by a vehicle that is merging from one lane into another lane, the merging operator will be found to have been negligent as a matter of law (*Salama v Piccirillo*, 223 AD3d 692, 693 [2d Dept 2024]; *see also Deleon v Cao*, 237 AD3d 608, 609 [1st Dept 2025]). Here, "whether [defendant's] vehicle struck plaintiff's vehicle in the rear or on the side, plaintiff demonstrated that the collision occurred when [defendant] attempted to merge into plaintiff's lane, and this fact was sufficient to establish [defendant's] negligence in violating Vehicle and Traffic Law § 1128(a)" (*Id.*). Finally, a duty of explanation is

imposed on the operator of the moving vehicle who is in the best position to rebut the claim of negligence (*McKeough v Rogak*, 288 AD2d 196, 197 [2d Dept 2001]).

In support of the motion, plaintiff relies on his own affidavit, the Bill of Particulars and photographs depicting the state of the vehicles after the accident. Plaintiff states in the affidavit that while:

> "driving straight in the far right eastbound lane, fully within my lane of travel, there was a Freightliner truck moving next to me on my left side. The Freightliner truck suddenly, unexpectedly, and without warning changed lanes from the middle lane into my lane of travel. The front passenger side of the truck made contact with the middle driver's side of my vehicle, pinning my vehicle against the concrete highway pillar. The Freightliner tractor trailer kept moving, dragging down the side of my vehicle and crushing my vehicle against the pillar" (NYSCEF Doc. No. 16).

The affidavit established plaintiff's *prima facie* entitlement to judgement as a matter of law on the issue of liability, by demonstrating that he was operating his vehicle within the lane of travel and at a consistent rate of speed when it was struck by the box truck operated by Tillman, in violation of VTL § 1128 [a] (*Pena v KST Trucking, Inc.*, 206 AD3d 1007, 1007 [2d Dept 2022]).

In opposition, defendants failed to raise any triable issues of fact. Notably, defendants do not submit an affidavit from Tillman, who would be best positioned to refute plaintiff's version of the happening of the accident. Further, the attorney affirmation offered by defendants is of no evidentiary value (*Zuckerman v City of New York*, 49 NY2d 557, 563 [1980]; *Mahoney v Jackson's Marina, Inc.*, 305 AD2d 555, 555 [2d Dept 2003]).

The plaintiff also established *prima facie* entitlement to judgment as a matter of law dismissing defendants' enumerated affirmative defenses by demonstrating that he bears no

comparative fault in the happening of the accident (*Barr v Canales*, 231 AD3d 786, 788 [2d Dept 2024]). Again, this claim is unrefuted by defendants. The Court finds defendants have failed to provide a non-negligent explanation for the accident or to offer proof that plaintiff was comparatively at fault in the happening of the accident (*Barr*, 231 AD3d at 787; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion (Seq. 01) for summary judgment on the issue of liability as to all defendants, is granted; and it is further

ORDERED, that defendants affirmative defenses of culpable conduct, assumption of the risk, failure to wear a seat belt and emergency situation, as set forth in the First, Second and Tenth affirmative defenses, respectively, are all dismissed; and it is further

ORDERED, that discovery may continue as to the issue of plaintiff's damages.

This constitutes the decision and order of the Court.

ENTER

J.S.C.

HON. WAVNY TOUSSAINT
J. S. C.

FILED
JAN 15 2026
KINGS COUNTY CLERK'S OFFICE