

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X **PART 13**

EVA MOREIRA,

INDEX NO. 6760/06

Plaintiff,

-against-

MOTION DATE: 11/14/06
SEQUENCE NO. 001, 002

KRISTOPHER KAUFMAN,

Defendant.

-----X

Notice of Motion, Affs. & Exs.....	<u>1</u>
Notice of Cross-Motion, Affs. & Exs.....	<u>2</u>
2-Affirmations In Opposition & Exs.....	<u>3-4</u>

Upon the foregoing papers, it is ordered that the motion by plaintiff for an order granting summary judgment pursuant to CPLR 3212 against defendant on the issue of liability is granted as to the issue of liability.

Defendant's cross-motion for preclusion for lack of discovery order compliance is denied. The parties shall complete discovery including depositions on the question of damages.

This case involves a two-car accident which occurred on December 18, 2005 on Route 495, in the Midtown Tunnel. Plaintiff's car leased and operated by plaintiff was struck in the rear by a car owned and operated by defendant.

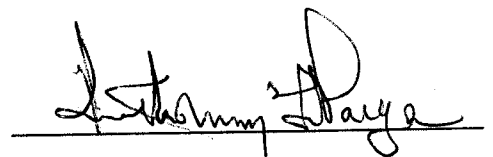
Plaintiff's sworn statement indicates that while driving through the Midtown Tunnel she was struck in the rear by the defendant.

A rear-end collision with a stopped automobile establishes a prima facie case of negligence on the part of the operator of the moving vehicle and imposes a duty on the operator of the moving vehicle to explain how the accident occurred. The operator of the moving vehicle is required to rebut the inference of negligence created by an unexplained rear-end collision, and if he or she cannot do so, the plaintiff may properly be awarded judgment as a matter of law (*Leal v. Wolff*, 224 AD2d 392 (2nd Dept. 1996)).

However, defendant in response to this motion only submitted an affirmation of counsel. CPLR 3212(b) provides that a summary judgment motion "shall be supported by affidavit" of a person "having knowledge of the facts" as well as other admissible evidence. The submission of an affirmation by counsel alone does not satisfy this requirement (*Zuckerman v. City of New York*, 49 NY2d 557 (1980)).

The parties are directed to appear on February 26, 2007 for the next scheduled conference.

Dated: January 17, 2007.



Anthony L. Parga, J. S. C.

ENTERED

JAN 23 2007

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**