

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. MARVIN E. SEGAL,

Justice

**TRIAL/IAS PART 5
NASSAU COUNTY**

AGNES JEANTY,

Plaintiff(s),

**ACTION NO. 1
INDEX NO.: 1406/01
MOTION DATE: 08/02/02
MOTION NOS.: 06-08**

- against -

**ENOS WALTERS, JAMES SENA,
JACQUELINE DEPRIMA, OCTAVE
JONES and METRO SUBN BUS CO.,**

Defendant(s).

JACQUELINE DePRIMA,

Plaintiff,

**ACTION NO. 2
INDEX NO.: 1404/01**

- against -

ENOS WALTERS,

Defendant.

VIDA TOMLINSON,

Plaintiff,

**ACTION NO. 3
INDEX NO.: 1405/01**

- against -

WALTER ENOS,

Defendant.

SANDRA CARGILL,

Plaintiff,

- against -

**ACTION NO. 4
INDEX NO. : 13112/01**

**ENOS WALTERS, JAMES GENA and
JACQUELINE M. DEPRIMA,**

Defendants.

MARIE ULYSSE and PIERRE ULYSSE,

Plaintiff,

- against -

**ACTION NO. 5
INDEX NO.:**

**ENOS WALTER, JAMES SENA and
JACQUELYN DEPRIMA,**

Defendants.

ERLINE MAINGRETTE,

Plaintiff,

- against -

**ACTION NO. 6
INDEX NO.: 6977/01**

**METROPOLITAN SUBURBAN BUS
AUTHORITY LONG ISLAND and
ENOS WALTERS,**

Defendants.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

SUZANA VOKSHI,

Plaintiff,

- against -

ACTION NO. 7
INDEX NO.: 25415/01

ENOS WALTERS,

Defendants.

ROBERT HUGHLEY,

Plaintiff,

- against -

ACTION NO. 8
INDEX NO.: 27599/01

ENOS WALTERS,

Defendant.

The following papers read on these motions for summary judgment:

Notice of Motion	1
Affirmation in Opposition	2
Affirmation in Opposition	3
Notice of Cross-Motion	4
Affirmation in Opposition	5
Notice of Cross-Motion	6

Defendants, **James Sena, Jacqueline DePrima, Metro Suburban Bus Authority** and **Octave Jones'** respective requests, pursuant to CPLR 3212, for awards of summary judgment dismissing all claims and cross-claims against them are determined as hereinafter provided.

These personal injury actions emanate out of a November 2, 1999 motor vehicle accident which occurred at approximately 12:30 P.M. at or near the intersection of Hempstead Turnpike and Jefferson Street in Franklin Square. The police report and uncontradicted deposition testimony of those parties who have been deposed aver that **Enos Walters** was travelling eastbound on Hempstead Turnpike when he underwent a “diabetic attack” and lost control of his car. His vehicle “rear ended” Defendant **James Sena’s** vehicle before crossing over into westbound traffic and striking **Ms. DePrima’s** vehicle which was propelled into Defendant **MSBA’s** bus which was being permissively operated by Defendant **Octave Jones**. **Mr. Walters’** vehicle continued onward striking, *inter alia*, **Ms. Cargill’s** vehicle. A number of passengers on the bus have also interposed claims.

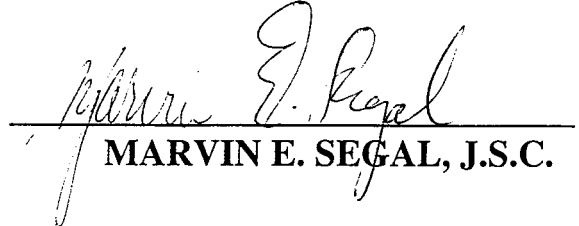
Mr. Sena’s application for summary dismissal of Action Number One (1406/01) against him together with any cross-claims is granted. A rear end accident creates a rebuttable presumption of negligence against the operator of the following vehicle (VTL § 1129; *Leal v. Wolf*, 234 AD2d 392, 638 NYS2d 110 [2nd Dept., 1996]). Neither a copy of **Mr. Walters** deposition transcript, if any, nor an affidavit from him disputing **Mr. Sena’s** version of the facts, has, however, been supplied. **Mr. Sena’s** request to dismiss Actions Number 4 (13112/01) and 5 (7837/01) against him are dismissed. Neither of those cases are currently on file in this county. (Indeed, Action Number 5, 7837/01 is a Queens County Index Number).

Ms. DePrima’s application to dismiss the initial action (1406/01) against her together with any cross-claims is likewise granted. Her uncontradicted deposition testimony (pgs. 27-28) is that she was travelling in the left westbound lane approaching a red light when **Mr. Walters’** eastbound vehicle struck **Mr. Sena’s** vehicle (p. 35) before crossing over into westbound traffic and hitting her vehicle (pgs. 38-39). She was therefore confronted with an emergency when **Mr. Walters’** vehicle crossed over into the wrong traffic direction (*Patti v. New York City Transit Authority*, 2002 NY App. Div. Lexis 7504 [2nd Dept., 2002]). Her applications as to Actions Number 4 (13112/01) and 5 (7837/01) which are not on file, are similarly dismissed.

Finally, the uncontradicted July 1, 2002 affidavit of **Mr. Jones**, the permissive operator of Defendant **MSBA’s** bus, avers, *inter alia*, that “[a]t the time of the accident I was stopped in the right lane at a bus stop on Hempstead Turnpike

(¶ 2) when the bus was struck in the side rear by the vehicle driven by **Jacqueline M. DePrima**” (¶ 3). Accordingly, Defendants **MSBA** and **Jones**’ application, pursuant to CPLR 3212, for an award of summary judgment dismissing Actions 1 (4998/00 and 1406/01) 2 (1404/01) 3 (1405/01) and 6 (6977/01) against them together with any cross-claims is granted, without opposition. Their applications with respect to Actions 4 and 5, which are not on file, are dismissed.

Dated: August 12, 2002


MARVIN E. SEGAL, J.S.C.

ENTERED

AUG 14 2002

**NASSAU COUNTY
COUNTY CLERKS OFFICE**