

2014 WL 5390994 (D.C.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of the District of Columbia,
Civil Division.

Ruby DOWNING, Plaintiff,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, Defendant.

No. 2012CA0007560.
January 22, 2014.

**Washington Metropolitan Area Transit Authority's ("WMATA") Response
Brief to Plaintiff's Memorandum of Law on the Defendant's Standard of Care**

Washington Metropolitan Area Transit Authority, Michael K. Guss# 465171, Associate General Counsel-WMATA, 600 Fifth Street, N.W., Washington, D.C. 20001, (202) 962-1468, mkguss@wmata.com.

Judge [T. Motley](#).

Cal. # 5

Next Event: Trial

10/17/14

It is undersigned counsel's understanding that the Court wanted the Plaintiff to brief the issue of whether WMATA had a duty in this case to (1) ensure that an **elderly** or disabled passenger remains seated throughout the entire trip before moving the bus and/or (2) whether WMATA had a duty to inquire-essentially ask **elderly** or disabled passengers whether they are still seated in order to ensure that those passengers are seated before moving the bus forward. Plaintiff's memorandum of law fails to offer any legal support for her argument that WMATA had an existing duty to ensure that an **elderly** or disabled passenger remains seated throughout the entire trip before moving the bus or that a bus operator should, at least, ask each **elderly** or disabled passenger if they are seated before moving the bus. Therefore, Plaintiff cannot support her above-mentioned theorized duties of care.

WMATA, as a common carrier, has a duty to use ordinary care in carrying passengers. *See Pazmino v. WMATA*, 638 A.2d 677, 678 (D.C. 1994). In the District of Columbia, WMATA is not required to offer any higher degree of care than ordinary care nor is it required to guarantee the safety of its passengers. *See Id.* WMATA does have a duty to assist disabled and/or visibly infirm passengers to board a bus; however, there is no duty once those passengers have boarded to ensure that they remain seated throughout their trip. *See Sullivan v. Yellow Cab Co.*, 212 A.2d 616, 619 (D.C. 1965). *See also Fells v. WMATA*, 357 A.2d 395, 396 (D.C. 1976) (*Common carrier's duty of ordinary care does not relieve the passenger of the duty to exercise ordinary care for their own safety*). WMATA is not liable for sudden stops, starts, jerks or jars which are no more than the necessary or usual incidents of the operation of the bus. *See Fells v. WMATA*, 357 A.2d 395, 396 (D.C. 1976). To receive damages for injuries sustained from the sudden stop of a bus, the plaintiff must prove that the bus's movement was of such unusual and extraordinary force that it reasonably would not have happened in the ordinary operation of the bus. *Id.* Plaintiff cannot rely solely on her adjectival descriptions of the sudden stop to show that the stop was unusual and extraordinary; she needs to have some other evidence to demonstrate that the sudden stop was negligent. *Id.*

In *Fells*, the 72 year old passenger fell to the floor of the bus after the bus made an unexpected stop during the passenger's attempt to change seats while the bus was in motion. The Court held that the plaintiff's sole adjectival description of the sudden

stop was not evidence of negligence. The Court added that the passenger's own conduct of changing seats as the bus was still in motion before the sudden stop was the proximate cause of her fall and resultant injuries. *See Id.*

Respectfully submitted,

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

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