SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – SECOND DEPARTMENT

JOSE AYBAR and JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR,

Plaintiffs,

and

ORLANDO GONZALES, JESENIA AYBAR as Administrator of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as Legal Guardian on behalf of K.C., a minor, ANNA AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF T.C.

Plaintiffs-Respondents,

-vs.-

U.S. TIRES AND WHEELS OF QUEENS, LLC,

Defendant-Respondent.

U.S. TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff-Respondent,

-vs.-

THE GOODYEAR TIRE & RUBBER COMPANY and FORD MOTOR COMPANY,

Third-Party Defendants-Appellants,

and

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD,

Third-Party Defendants.

Queens County Index No.: 703632/17

Docket No. 2019-12110

NOTICE OF MOTION TO ACCEPT REPLY BRIEF AS WITHIN TIME

PLEASE TAKE NOTICE that upon the annexed affirmation of Sean Marotta, dated October 13, 2020, Third-Party Defendant-Appellant Ford Motor Company, will on October 26, at 10 a.m. or as soon thereafter as counsel may be heard, move the Supreme Court, Appellate Division, Second Department, at the courthouse thereof, located at 45 Monroe Place, Brooklyn, NY 11201, for an Order accepting its joint reply brief in this matter as within time.

Washington, D.C.
October 13, 2020

Respectfully submitted,

HOGAN LOVELLS US LLP

By: /s/ Sean Marotta

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – SECOND DEPARTMENT

JOSE AYBAR and JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR, Plaintiffs, and ORLANDO GONZALES, JESENIA AYBAR as Administrator of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as Legal Guardian on behalf of K.C., a minor, ANNA AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF T.C. Plaintiffs-Respondents, -vs.- U.S. TIRES AND WHEELS OF QUEENS, LLC, Defendant-Respondent. U.S. TIRES AND WHEELS OF QUEENS, LLC, Third-Party Plaintiff-Respondent, -vs.- THE GOODYEAR TIRE & RUBBER COMPANY and FORD MOTOR COMPANY, Third-Party Defendants-Appellants, and GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD, Third-Party Defendants.	Queens County Index No.: 703632/17 Docket No. 2019-12110 **AFFIRMATION IN SUPPORT OF MOTION TO ACCEPT REPLY BRIEF AS WITHIN TIME**

I, Sean Marotta, hereby affirm:

1. I am an attorney duly admitted to practice in the State of New York. I am associated with Hogan Lovells US LLP, appellate counsel for Third-Party-Defendant-Appellant Ford Motor Company. I am fully familiar with the facts set forth herein, and I am not a party to the action. I respectfully submit this affirmation in support of Ford's motion to accept its joint reply brief submitted together with Third-Party-Defendant-Appellant The Goodyear Tire & Rubber Company as within time.

2. This is a product-liability action. A copy of the Supreme Court's order being appealed is attached as **Exhibit A** and a copy of Ford's notice of appeal and request for Appellate Division intervention is attached as **Exhibit B**.

3. On September 16, 2020, I wrote to the Clerk of the Court requesting a 10-day extension under § 1250.9(g)(1) of the Practice Rules of the Appellate Division to serve and file the joint reply brief in this matter to and including October 1. A copy of my letter is attached as **Exhibit C.** My letter stated that I represented Ford and that I was writing "on behalf of both Ford and Third-Party-Defendant-Appellant The Goodyear Tire & Rubber Company." My letter further stated that "Ford and Goodyear" requested the additional time, and that the time was being requested "to serve and file their joint reply brief."

4. The Court granted the extension request and never indicated that there was a problem with Ford requesting an extension on behalf of both Ford and Goodyear. A copy of the Court's order granting the extension request is attached as **Exhibit D**.

5. Ford and Goodyear filed their joint reply brief on October 1. A copy of the brief is attached as **Exhibit E**.

6. On October 9, I was advised by my appellate printer that the Court would not accept the joint reply brief on behalf of both Ford and Goodyear because the Court's granted extension applied only to Ford and that Goodyear should have submitted its own letter application seeking an extension of its time to file its reply brief, notwithstanding the joint request on behalf of both Ford and Goodyear. I was advised that in order for the Court to accept the joint reply brief, a motion to accept the brief as within time would be required.

7. There is good cause for the Court to accept the joint reply brief as within time. The untimeliness is due only to the technicality that Goodyear did not submit its own separate request for an extension for its reply brief, which we reasonably believed was not necessary; the brief was filed timely as to Ford; and Ford and Goodyear have always filed joint briefs in this matter, streamlining the Court's consideration of the issues presented. Furthermore, there is no prejudice to any other party because the parties believed—as Ford and Goodyear did—that the extension request and grant applied to both Ford and Goodyear and were expecting a joint reply brief from them. Moreover, I have consulted with counsel for all other parties, and all of them do not object to the relief requested in this motion.

8. I affirm under penalty of perjury that the foregoing is true and correct.

For the foregoing reasons, the motion should be granted and Ford and Goodyear's joint reply brief accepted as within time.

October 13, 2020
Washington, D.C.

/s/ Sean Marotta
Sean Marotta

EXHIBIT A

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR AS Administratrix of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as LEGAL GUARDIAN on behalf of K. C., a minor, ANNA AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF T C.,

Plaintiff(s),

-against-

US TIRES AND WHEELS OF QUEENS, LLC,,

Defendant.

US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

-agaisnt-

THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD., and FORD MOTOR COMPANY,

Third-Party Defendants.

Index No.: 703632/2017

Motion Date: May 7, 2019

Motion Seq. Nos.: 017 & 019

The following numbered papers were read on the separate motions by third-party defendant The Goodyear Tire & Rubber Company for an order, pursuant to CPLR 3211 (a) (7) and (8), dismissing the third-party complaint for failure to state a cause of action and lack of general or specific personal jurisdiction, and by third-party defendant Ford Motor Company, pursuant to CPLR 3211 (a) (8), for an order dismissing the third-party complaint for lack of general or specific personal jurisdiction; and on the cross-motion by

third-party plaintiff US Tires and Wheels of Queens, LLC, for an order amending its complaint and staying the action pending a decision on the appeals in the companion cases before the Court of Appeals regarding personal jurisdiction.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits.....	E55-60;154-163
Notice of Cross Motion - Affidavits - Exhibits....	E164-171
Answering Affidavits - Exhibits.....	E94-103;122-127 172-175;189-196
Reply Affidavits.....	E129;176-188

Upon the foregoing papers, the motions and cross-motion are determined as follows:

This action arises out of an automobile accident allegedly caused by a defective tire designed and manufactured by third-party defendant The Goodyear Tire & Rubber Company (Goodyear), and a defectively designed and manufactured Ford Explorer, designed and manufactured by third-party defendant Ford Motor Company (Ford). Plaintiff alleges that he brought the tires to defendant/third-party plaintiff US Tires and Wheels of Queens, LLC (US Tires), asked that they be inspected, tested, and, if found to be safe, installed upon plaintiff Aybar's vehicle. Plaintiff Jose Aybar purchased his Ford Explorer in New York State. The vehicle was registered and predominantly used in the State of New York. The tire(s) was purchased and installed in New York. The driver and all the occupants were residents of New York. While traveling through Virginia, the aforesaid tire exploded, the Ford Explorer flipped over, and, tragically, of the six occupants in the vehicle, three perished and three were seriously injured.

In the companion cases, *Aybar v Goodyear and Ford* and *Aybar v Aybar*, Goodyear and Ford brought separate motions in Supreme Court, Queens County, seeking to dismiss the complaint against each of them, respectively, on the grounds of lack of general jurisdiction. The Honorable Thomas D. Raffaele, pursuant to the orders dated May 25, 2016, found the defendants subject to general jurisdiction, however, those decisions were subsequently reversed on appeal by the Appellate Division, Second Department, on January 23, 2019. In a footnote to the decision, the Appellate Division, Second Department, stated it was not making a determination regarding specific jurisdiction as the plaintiffs neither presented that issue for argument nor was third-party plaintiff US Tires a party to those motions and had no significant opportunity to defend.

Ever since the sweeping decision by the Supreme Court of the United States in *Daimler AG v Bauman* (571 US 117 [2014]), the constitutional limitation upon state general jurisdiction requires that for a nonresident or foreign corporation to be subject to jurisdiction for all purposes it must have such continuous and systematic business contacts within the forum state as to be considered "at home." Less clear than the stated threshold is the manner in which a court weighs the various factors involved in ascertaining whether the foreign corporation has been shown to have met this standard. In the aforementioned companion cases, the Appellate Division has determined that defendants Ford and Goodyear are not subject to the general jurisdiction of the State of New York as the extent of their contacts here do not rise to the level of being "at home" (*see Aybar v Aybar*, 169 AD3d 137 [2d Dept 2019]). Here, third-party plaintiff has not sufficiently raised any additional issues of fact or factors to be considered requiring jurisdictional discovery. As to the ruling on general jurisdiction, this court is currently constrained to adhere to the determination by the Appellate Division, Second Department, subject to the appeal pending before the Court of Appeals of the State of New York.

Turning to specific jurisdiction, it must be ascertained whether third-party defendants fall within the reach of New York's long-arm jurisdiction statute, CPLR 302. After review, it appears that the pertinent portion of the statute is within CPLR 302 (a) (1), thereby requiring a determination as to whether third-party defendants (1) transacted business in New York, and, if so, (2) whether there is an arguable nexus or substantial relationship between the business transacted and the claim asserted (*see Al Rushaid v Pictet & Cie*, 28 NY3d 316 [2016]; *Licci v Lebanese Can. Bank, SAL*, 20 NY3d 327 [2012]; *Fischbarg v Doucet*, 9 NY3d 375 [2007]). Causation is not a requirement but merely a relatedness such that the legal claim is not completely unmoored from the former, regardless of the ultimate merits of the claim (*see Al Rushaid*, 28 NY3d 316; *Licci*, 20 NY3d 327). It is only required that the claim, in some arguable way, be connected to the transaction (*id.*).

It is undisputed that both Ford and Goodyear have considerable financial and business contacts and dealings in the State of New York and have had these contacts for a lengthy period of time. Although quite extensive, the Appellate Division, Second Department, ruled these contacts did not rise to the level of rendering both Ford and Goodyear "at home" in the State of New York. However, it is without question that these contacts satisfied the first prong of the long-arm statute, in that both third-party defendants transact business within the State of New York (*see McGowan v Smith*, 52 NY2d 268 [1981]).

With regard to the second prong, although the products at issue herein were manufactured out of state by third-party defendants, the nature of their businesses within New York State include, but are not limited to, marketing, promoting, advertising, sales, and servicing (either through corporate owned entities or independent contractors or dealers under contract) of their products. These business activities are directly targeted at the New York market, consisting of millions of resident drivers. Ford and Goodyear manufacture these vehicles and tires outside the state, but sell these vehicles and tires throughout New York State, nationally, and internationally. More specifically, both third-party defendants locate themselves throughout New York State, around the country, and the world for these purposes. Here, in the State of New York, as aforesaid, they each have numerous wholly owned or contractual relationships with independent dealers who sell their products, both new and used, to residents of New York. Both spend considerable capital on sophisticated marketing, advertising and promotional programs to sell their products and enhance their brand names in New York State. It is certainly foreseeable and anticipated by these parties that their goods and products are a large part of the used car and tire markets in the State of New York. In addition to the vast business and financial dealings by third-party defendants here in New York, both parties are registered and authorized to do business in New York.

In *McGowan* (52 NY2d 268), a fondue pot purchased in Buffalo, New York, manufactured by a Japanese company, exploded in Canada. A third-party action was brought against the Japanese manufacturer in New York. The court determined that several visits to New York State by a representative of the Japanese Company was insufficient to be characterized as purposeful activities within the state, so that specific jurisdiction under CPLR 302 (a) (1) was denied. Here, the purposeful business activities of both third-party defendants greatly exceed that required by the court in *McGowan*. Whether a specific vehicle or part was sold by the respective defendants, it is well settled that a manufacturer of defective products who places them into the stream of commerce may be held strictly liable for injuries caused by its products, regardless of privity, foreseeability, or due care (*see Codling v Paglia*, 32 NY2d 330 [1973]). Notwithstanding whether Ford or Goodyear sold the particular product directly to plaintiffs, of greater significance is whether the products manufactured elsewhere were placed into the stream of commerce as a result of the purposeful business activities of the parties in this state (*see McGowan*, 52 NY2d 268), targeted at New York residents, wound up in New York, and harmed plaintiffs, residents of New York (*id.*). As in *McGowan*, the pure happenstance in this matter is the fateful trip by plaintiffs to Virginia.

It is noted that, with similar facts, the US Supreme Court found a lack of jurisdiction when the place of occurrence, alone, did not satisfy the minimal contacts requirement of the constitution (*see World-Wide Volkswagen Corp., v Woodson*, 444 US 286 [1980]). Therein, the court stated, "[f]low of a manufacturer's products into the forum, we have explained, may bolster an affiliation germane to specific jurisdiction" (*World-Wide Volkswagen Corp.*, 444 US at 297). Both third-party defendants assure the flow of their products to New York through their myriad assortment of purposeful activities in which they partake. It is noted that a case cited by Ford, *Magill v Ford Motor Co.* (2016 CO 57, 379 P3d 1033 [2016]), while denying general personal jurisdiction over Ford in Colorado, the Supreme Court of Colorado remanded the matter to the lower court to consider whether specific jurisdiction was applicable. Further noted, in *Pitts v Ford Motor Co.* (127 F Supp 3d 676 [2015]), it was ruled that Mississippi's long-arm statute subjected Ford to specific personal jurisdiction in that state.

These purposeful activities far exceed the minimal contacts with the State of New York necessary to pass constitutional muster (*see Paterno v Laser Spine Inst.*, 24 NY3d 370 [2014]). Furthermore, the nature of the business activities of the parties satisfies the requirement for an arguable nexus and substantial relationship between that business and the causes of action revolving around the alleged defective products purchased and installed on the vehicle in New York (*see Al Rushaid*, 28 NY3d 316; *see also Thomas v Ford Motor Company*, 289 F Supp3d 941 [ED Wis 2017]; *Ford Motor Co. v Montana Eighth Judicial District Court*, 395 Mont 478 [2019]). Therefore, the provisions of CPLR 302 (a) (1) are satisfied, rendering third-party defendants subject to specific personal jurisdiction in the State of New York.

As to that branch of Goodyear's motion to dismiss for failure to state a cause of action, pursuant to CPLR 3211 (a) (7), a key element of common law indemnification is not a duty running from the indemnitor to the injured party but rather is a separate duty owed the indemnitee by the indemnitor (*see Raquet v Braun*, 90 NY2d 177 [1997]). The predicate of common law indemnification is vicarious liability, such that there is no actual fault on the part of the proposed indemnitee (*see Board of Managers of Olive Park Condominium v Maspeth Prop., LLC.*, 170 AD3d 645 [2d Dept 2019]; *Dreyfus v MPCC Corp*, 124 AD3d 830 [2d Dept 2015]). If the cause of action against third-party plaintiff is based on allegations of its own negligence, it cannot receive the benefit of the doctrine (*id.*). Since the basis of plaintiff's complaint against US Tires is that US Tires was negligent in failing to inspect or test the tires, and ascertain as to their safety prior to installation,

third party-plaintiff's cause of action for common law indemnification is dismissed.

However, a defendant may seek contribution from a third party even if the injured plaintiff has no direct right of recovery against that party, either because of a substantive legal rule or a procedural bar (*see Raquet*, 90 NY2d 177; *Bivona v Danna & Assoc., P.C.*, 123 AD3d 956 [2d Dept 2014]). The critical requirement for apportionment by contribution under CPLR 1401 *et seq.* is that the breach of duty owed a duty to the plaintiff and such breach had a part in causing or augmenting the injury for which contribution is sought (*id.*).

Accordingly, the motions by Ford and Goodyear seeking to dismiss the third-party complaint for lack of specific personal jurisdiction are denied, the branch of Goodyear's motion to dismiss the cause of action based on common law indemnification is granted. The cross-motion by third-party plaintiff to amend its answer is granted, and the amended complaint in the form proposed must be served and filed within twenty (20) days of service of a notice of entry of this order upon the respective attorneys for the parties. In all other respects, the motions and cross-motion are denied.

This constitutes the Decision and Order of the Court.

Dated: September 25, 2019

Denis J. Butler, J.S.C.

FILED
SEP 27 2019
COUNTY CLERK
QUEENS COUNTY

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

---x

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as Administrator of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as Legal Guardian on behalf of K.C., a minor, ANNA AYBAR and JESENIA AYBRA as Administratrix of THE ESTATE OF T.C.,

Plaintiffs,

- against -

US TIRE AND WHEELS OF QUEENS, LLC,

Defendant.

---x

US TIRE AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

- against –

THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD, and FORD MOTOR COMPANY,

Third-Party Defendants.

---x

NOTICE OF APPEAL

Index No. 703632/2017

SIR/MADAM:

PLEASE TAKE NOTICE, that the above named defendant, FORD MOTOR COMPANY, by its attorneys AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP, hereby appeal to the Appellate Division of the Supreme Court, Second Department, from that portion of the annexed Order of the Supreme Court, Queens County (Honorable Denis J. Butler, J.S.C.) dated September 25, 2017 and entered in the office of the clerk of the court on or about September 27, 2019, which

denied FORD MOTOR COMPANY's motion to dismiss for lack of general or specific jurisdiction, and from each and every part of said order adverse to the interests of the appealing defendant.

Dated: New York, New York
October 17, 2019

Yours, etc.,

BY: Elliott J. Zucker, Esq.
AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
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To:

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LANGDON & EMISON, of Counsel to OMRANI & TAUB, P.C.
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Attorneys for Third-Party Defendant
THE GOODYEAR TIRE & RUBBER CO.
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New York, NY 10020
(212) 335-4500

Third-Party Defendant GOODYEAR DUNLAP TIRES NORTH AMERICA was dismissed from this case in an order of October 11, 2017.

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

JOSE AYBAR, ORLANDO GONZALES, JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR, JESENIA AYBAR as Administrator of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as Legal Guardian on behalf of K.C., a minor, ANNA AYBAR and JESENIA AYBRA as Administratrix of THE ESTATE OF T.C.,

Plaintiffs,

- against -

US TIRE AND WHEELS OF QUEENS, LLC,

Defendant.

US TIRE AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

- against -

THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD, and FORD MOTOR COMPANY,

Third-Party Defendants.

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☐ Business Relationships	☐ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☐ Statutory	☐ Taxation	☒ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	☒ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
☐ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: Queens
Dated: 09/25/2019	Entered: 09/27/2019
Judge (name in full): Denis J. Butler, J.C.S.	Index No.: 703632/2017
Stage: ☒ Interlocutory ☐ Final ☐ Post-Final	Trial: ☐ Yes ☒ No If Yes: ☐ Jury ☐ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ☐ Yes ☒ No
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

This is an appeal from an order of the Supreme Court, Queens County (Butler, J.) in which that court, amongst other rulings, denied a motion by Thirty Party Defendant Ford Motor Company which sought to dismiss the third-party complaint against it general and specific jurisdictional grounds.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

It will be submitted on appeal that the court below erred in denying Ford Motor Company's motion to dismiss, that it significantly misunderstood the law and established precedent in its rulings regarding both specific and general jurisdication with regard to Ford Motor Company, and that it erred in such other ways as may be apparent from a review of the full record on appeal.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Jose Aybar	Plaintiff	
2	Orlando Gonzalez	Plaintiff	Respondent
3	Jesenia Aybar	Plaintiff	Respondent
4	Anna Aybar	Plaintiff	Respondent
5	US Tires and Wheels of Queens	Defendant 3rd-Party Plaintiff	Respondent
6	The Goodyear Tire & Rubber Company	3rd-Party Defendant	
7	Goodyear Dunlap Tires North America, Ltd.	3rd-Party Defendant	
8	Ford Motor Company	3rd-Party Defendant	Appellant
9			
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Certain & Zilberg, PLLC			
Address: 488 Madision Avenue			
City: New York	State: NY	Zip: 10022	Telephone No: (212) 687-7800
E-mail Address: mzilberg@certainlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1			
Attorney/Firm Name: Omrani & Taub, P.C.			
Address: 488 Madison Avenue			
City: New York	State: NY	Zip: 10022	Telephone No: (212) 714-1515
E-mail Address: mtaub@omraniandtaub.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 2, 3, 4			
Attorney/Firm Name: Farber Brocks & Zane, LLP			
Address: 400 Garden City Plaza, Suite 100			
City: Garden City	State: NY	Zip: 11530	Telephone No: (516) 739-5100
E-mail Address: tfrankel@fbzlaw.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 5			
Attorney/Firm Name: DLA Piper, LLP (US)			
Address: 1251 Avenue of the Americas, 27th Floor			
City: New York	State: NY	Zip: 10020	Telephone No: (212) 335-4500
E-mail Address: neal.kronley@dlapiper.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 6, 7			
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EXHIBIT C

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September 16, 2020

By NYSCEF

Aprilanne Agostino, Clerk
Supreme Court of the State of New York, Appellate Division, Second Judicial Department
45 Monroe Place
Brooklyn, New York 11201
AD2-ClerksOffice@nycourts.gov

Re: ***Aybar v. U.S. Tires and Wheels of Queens, LLC***
Second Department Docket No. 2019-12110

Dear Ms. Agostino:

We represent Third-Party-Defendant-Appellant Ford Motor Company in this matter and write on behalf of both Ford and Third-Party-Defendant-Appellant The Goodyear Tire & Rubber Company.

With the consent of all Respondents, Ford and Goodyear request an additional 10-day extension, under § 1250.9(g)(1) of the Practice Rules of the Appellate Division, to serve and file their joint reply brief, to and including October 1, 2020.

Thank you for your courtesies.

Sincerely,

/s/ Sean Marotta
Sean Marotta
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sean.marotta@hoganlovells.com

Counsel for Ford Motor Company

cc: By Email

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EXHIBIT D

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M273160
E/

ORDER ON APPLICATION

In the Matter of Applications for Extensions of Time

Parties in the following causes have filed applications pursuant to 22 NYCRR 1250.9(b),(g)(1) to extend the time to perfect or to serve and file a brief.

Upon the papers filed in support of the applications, it is

ORDERED that the applications are granted and the following parties in the following causes are granted the specified extensions of time:

Title	Docket No.	Applicant Name(s)	Extended Deadline
50 Clarkson Partners, LLC v Old Republic National Title Insurance Company	2019-08595	Old Republic National Title Insurance Company	November 13, 2020[1]
Alao v Richmond University Medical Center	2019-14391 +1	Edwin M. Chang Akella Chendrasekhar	October 8, 2020
Almendares v Area 516 Nightclub, Inc	2020-03212	Area 516 Nightclub, Inc Andre J. Watson	November 20, 2020
Alvarado v Rower	2020-02529	Eurostruct, Inc.	November 2, 2020
Aybar v US Tires and Wheels of Queens, LLC	2019-12110	Ford Motor Company	October 1, 2020
BCB Community Bank v Zazzarino	2020-03234	Louis Zazzarino T11 Funding	November 17, 2020

Title	Docket No.	Applicant Name(s)	Extended Deadline
Bennett v DA Associates, LLC	2020-00494	DA Associates, LLC	October 15, 2020
Benoit v Jamaica Anesthesiologist, P.C.	2020-00139	Jamaica Anesthesiologist, P.C.	October 9, 2020
Boyle v Brewster Central School District	2019-12534	PNWBOCES	November 9, 2020
Canyon Sterling Emerald, LLC v 4 S Development, LLC	2020-03348	4 S Development, LLC	November 17, 2020
Charles v American Dream Coaches	2020-01727	American Dream Coaches Benjamin Nieves	October 8, 2020
Deutsche Bank National Trust Company v Wentworth	2019-13463	Deutsche Bank National Trust Company	September 30, 2020
Emigrant Bank v Nicolau	2020-05085	Sotiris Nicolau	November 16, 2020
Falk v Nassau County	2020-03274	Nassau County Nassau County Department of Assessments	November 23, 2020
Franco v Morgan Stanley Smith Barney, LLC	2020-03973	Estate of Vincent Buonomo	September 29, 2020

Title	Docket No.	Applicant Name(s)	Extended Deadline
GMAT Legal Title Trust 2014-1, U.S. Bank, National Association v Kator	2020-04276	GMAT Legal Title Trust 2014 - 1, U.S. Bank, National Association	November 23, 2020
Gluck v Gluck	2020-01458	Monika Gluck	October 13, 2020
Golbal Realty Services, LLC v 4051 Hylan, LLC	2020-02353 +1	4051 Hylan, LLC Golden Hand of Staten Island, Inc. Jhong Uhk Kim	September 29, 2020
Green v Duga	2020-04622	Valley Park Estates Owners Corp.	October 23, 2020
Grossman v Federal National Mortgage Association	2020-03283	Lance Grossman Lori Grossman	November 13, 2020
HSBC Bank USA, NA v Gias	2020-00373	Ahasan K. Gias	November 23, 2020
Hauburger v Mcmane	2020-04919	Jennifer L. Amos Robert Pritchard South Orangetown Central School District	October 22, 2020
Hauburger v Mcmane	2020-04919	Sarah Mcmane	October 22, 2020
Keller v Rippowam Cisqua School	2020-01965	Kane Contracting, Inc.	October 1, 2020

Title	Docket No.	Applicant Name(s)	Extended Deadline
Koumantaros v Koumantaros	2020-00077	Christos Koumantaros Klara Koumantaros	October 23, 2020[1]
LGF Holdings, LLC v Gut	2020-03409	Nina Gut 737 Hancock St. Corp.	October 16, 2020
Laffey Fine Homes of New York, LLC v 7 Cowpath, LLC	2019-13483	7 Cowpath, LLC	November 23, 2020
Landviger v Isaac Apple Farm, Inc.	2020-06646	Isaac Apple Farm, Inc. Chee Hun Cho Frija Family Trust	October 26, 2020
Makmudova v Cohen	2020-03350	Abraham Cohen	November 20, 2020
Matter of 42-44 East Post Road, LLC v City of White Plains Urban Renew	2020-00061	42-44 East Post Road, LLC I.R. 42-44 E. Post, LLC	October 28, 2020
Matter of Earth Structures, Inc.	2019-12409	Louis DeMarco	October 13, 2020[2]
Matter of Mondiello v Deluca	2020-02801	John J. Deluca Lutheran Medical Center	October 21, 2020
Matter of Paluch v Kohn	2019-07498	Meir Mordechai Kohn Moshe Aharon Yakobowitz Mendel Meir Yakobowitz	October 23, 2020

Title	Docket No.	Applicant Name(s)	Extended Deadline
Matter of Traditional Links, LLC v Board of Assessors	2019-08693	Traditional Links, LLC	October 21, 2020
Matter of Wallace v Queens Hospital Center	2020-03300	Natasha Wallace	November 17, 2020
McLeod v St Surin	2020-02528	Jean St Surin Bangla Auto Repairs and Body Shop, Inc.	October 19, 2020
Meletis v Narula	2020-03267	Lakhbir S. Narula 14th Avenue Liquors, Inc.	November 16, 2020[1]
National Loan Investors, L.P. v New Zion Church of the Apostolic	2019-14303	National Loan Investors, L.P.	November 23, 2020
Nelson v AMF Bowling Centers, Inc.	2019-10365	Judi Nelson	September 28, 2020
New Rochelle Radiology Associates, P.C. v Pieroni	2019-12188	Sabrina Pieroni	September 28, 2020
PHH Mortgage Corporation v Shouela	2020-00716	PHH Mortgage Corporation	November 2, 2020
PNC Bank, National Association v Rosner	2020-00759 +1	Moses Rosner 580 Wythe, LLC	October 23, 2020
Panek v Panek	2020-01386	Marcin Panek	November 23, 2020

Title	Docket No.	Applicant Name(s)	Extended Deadline
People of State of New York v Belle	2020-05217	People of State of New York	October 5, 2020
People v Gamble, Marquis	2019-14587	People of State of New York	October 15, 2020
People v Mathews, Joseph, Jr.	2018-13563	People of State of New York	October 14, 2020
People v Prunesti, Joseph	2019-10458	People of State of New York	October 19, 2020
Praxis International Corporation v Prime Alliance Group, Ltd.	2020-04642	Praxis International Corporation	October 5, 2020
Rimberg v Horowitz	2019-12604	Robert Rimberg	October 26, 2020[1]
Rogoff v Long Island University	2020-02264	Edward Rogoff	October 26, 2020
Schiller v Town of Ramapo	2019-09385	Julia Schiller	October 13, 2020[1]
Sheikh v Chinatomby	2019-12395	Apple Sheikh	November 9, 2020
State Farm Fire & Casualty Company v Brooklyn Union Gas Company	2020-02934	Brooklyn Union Gas Company	November 9, 2020
Torres v Yakobov	2020-01425	Jose Torres	October 26, 2020

Title	Docket No.	Applicant Name(s)	Extended Deadline
U.S. Bank National Association v Fowkes	2019-11704	William Fowkes, Jr. Jennifer Fowkes	October 9, 2020
U.S. Bank National Association v Lucero	2020-02036	Luis A. Lucero	October 19, 2020
U.S. Bank National Association v Sallie	2019-13942	Alfred Sallie Yvonne Sallie	November 23, 2020
U.S. Bank Trust, N.A. v Langone	2019-11054	Graciela Langone	November 9, 2020
U.S. Bank, National Association v Cimino	2020-02202	Charles Cimino Joelle Cimino	October 30, 2020
Washington Mutual Bank v Brottman	2020-04741	Gilda Brottman Stanley Brottman	November 9, 2020
Weinstein v Bellin	2019-12002	Matthew Jonah Weinstein	December 8, 2020[2]
Weinstein v Gewirtz	2019-11270	Ilene Gewirtz Ilene Gewirtz, Gyn, P.C. A Woman's Way Practice of Gynecology	November 4, 2020
Wells Fargo Bank, National Association v Boakye-Yiadom	2019-14294	Wells Fargo Bank, National Association	October 23, 2020

Title	Docket No.	Applicant Name(s)	Extended Deadline
Wells Fargo Vendor Financial Services, LLC v JPMorgan Chase	2020-03336	Tahir Bhutta Feza Begum	November 16, 2020
Yakobowicz v Yakobowicz	2020-05071	Rina Yakobowicz	October 19, 2020

All briefs shall be served in accordance with section 1250.1(c) of the Rules of Practice of the Appellate Division (22 NYCRR §1250.1[c]) and via e-mail, and a digital copy with proof of service shall be deemed filed by being uploaded through the digital portal on this Court's website https://www.nycourts.gov/courts/AD2/Digital_Submission.shtml, on or before those deadlines, and hard copy filings may be made but are not required pending further order or directive of this Court.

ENTER:

Aprilanne Agostino
Clerk of the Court

1. Extension granted only to the extent indicated.
2. Opposition to this application was received.

EXHIBIT E

To be Argued by:
SEAN MAROTTA
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Second Department

JOSE AYBAR and JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR,

Plaintiffs,

– and –

ORLANDO GONZALES, JESENIA AYBAR as Administrator of THE ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR as Legal Guardian on behalf of K.C., a minor, ANNA AYBAR and JESENIA AYBAR as Administratrix of THE ESTATE OF T.C.,

Plaintiffs-Respondents,

(For Continuation of Caption See Inside Cover)

Docket No.: 2019-12110

JOINT REPLY BRIEF FOR THIRD-PARTY DEFENDANTS-APPELLANTS THE GOODYEAR TIRE & RUBBER COMPANY AND FORD MOTOR COMPANY

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Attorneys for Third-Party Defendant-Appellant Ford Motor Company

Queens County Clerk's Index No. 703632/17

– against –

U.S. TIRES AND WHEELS OF QUEENS, LLC,

Defendant-Respondent.

U.S. TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff-Respondent,

– against –

THE GOODYEAR TIRE & RUBBER COMPANY
and FORD MOTOR COMPANY,

Third-Party Defendants-Appellants,

– and –

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD,

Third-Party Defendant.

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RULES:

PRELIMINARY STATEMENT

U.S. Tires[1] cannot establish that Ford or Goodyear are subject to specific jurisdiction in New York. It contends that the New York courts can exercise jurisdiction under CPLR 302(a)(1) because this case arises from Ford and Goodyear's marketing, advertising, and selling of *other* products in New York—not the product at issue. But Ford and Goodyear's New York contacts do not have a "substantial relationship" with this case, which concerns an automobile accident occurring in Virginia involving a vehicle and tire that were designed, manufactured, and sold outside of New York. U.S. Tires also contends that the New York courts can exercise specific jurisdiction under CPLR 302(a)(3), but that is not right either. CPLR 302(a)(3) applies when a non-resident defendant commits a tort outside of New York and someone suffers injury in New York. The accident and injury in this case occurred in Virginia. Personal jurisdiction thus fails under the long-arm statute.

U.S. Tires fares no better in asserting that jurisdiction is proper under the Due Process Clause. Here, too, it contends that this case arises out of Ford and Goodyear's marketing, advertising, and selling of *other* products in New York; but

[1] This joint reply brief responds to both U.S. Tires's and Plaintiffs' briefs. Because Plaintiffs' brief adopts U.S. Tires's arguments (Plaintiffs Br. 1), for simplicity's sake, we refer to just U.S. Tires except where Plaintiffs have made arguments different from U.S. Tires.

the U.S. Supreme Court has made crystal clear that the Due Process Clause requires more than that. U.S. Tires's suggestion that the stream of commerce authorizes jurisdiction here belies a misunderstanding of that theory: It is used to determine whether a defendant has *contacts* with the forum, not whether the case *arises from* those contacts. *Arises from* is an entirely different analysis and is the material question for the specific-jurisdiction analysis here.

Plaintiffs also attempt to relitigate this Court's earlier holdings that Ford and Goodyear are not subject to general jurisdiction in New York. But this Court's prior holdings are the law of the Department. The Court should not countenance Plaintiffs' dissatisfaction with the Court's prior holding in deciding this one.

Finally, a note on the other two appeals—*Aybar v. Aybar*, 169 A.D.3d 137 (2d Dep't 2019) and *Aybar v. Goodyear Tire & Rubber Co.*, 175 A.D.3d 1373 (2d Dep't 2019)—arising from the very same 2012 Virginia accident: U.S. Tires says that "[i]n *Aybar v. Aybar* and *Aybar v. Goodyear*, Ford and Goodyear['s]" motions to dismiss for lack of *general* jurisdiction were "granted by the lower court, but reversed on appeal by this Court in its January 23, 2019 Order, which did not address the issue of specific jurisdiction." U.S. Tires Br. 3. That is false. In both *Aybar v. Aybar* and *Aybar v. Goodyear*, the Supreme Court held that it lacked *specific* jurisdiction over Ford and Goodyear, but that it could exercise *general* jurisdiction over them. *See* Opening Br. 2-3. In both cases, this Court reversed the

Supreme Court's general-jurisdiction holding, leaving untouched its specific-jurisdiction holding. *Ayabr v. Aybar*, 169 A.D.3d at 143 n.2; *Aybar v. Goodyear*, 175 A.D.3d at 1374. In *Aybar v. Aybar*, specific jurisdiction had not been raised by Plaintiffs or U.S. Tires in the trial court, and in *Aybar v. Goodyear*, Plaintiffs did not challenge the specific-jurisdiction holding on appeal. *See id.*

This Court should now reverse the Supreme Court's order because neither U.S. Tires nor Plaintiffs can establish that the Supreme Court can exercise specific jurisdiction over Ford and Goodyear in this case.

ARGUMENT

I. NEW YORK'S LONG-ARM STATUTE DOES NOT AUTHORIZE THE EXERCISE OF SPECIFIC JURISDICTION IN THIS CASE.

New York's specific-jurisdiction long-arm statute, CPLR 302, authorizes courts to exercise jurisdiction over defendants only for certain enumerated acts—and only under certain conditions. Under CPLR 302(a)(1), a court has jurisdiction over defendants who "transact[] any business within the state," provided that the cause of action "arise[s] from" *that* transaction. Under CPLR 302(a)(3), a court has jurisdiction over defendants who commit a tort "without the state," provided that that tort "caus[ed] injury to person or property within the state." Neither provision is satisfied here: The cause of action here did not "arise from" Ford and Goodyear's New York contacts under CPLR 302(a)(1), and the injury here did not occur "within the state" under CPLR 302(a)(3). U.S. Tires's attempt to advance

novel theories of the facts and the law to try to fit this case into these provisions falls far short.

A. This Case Does Not "Arise From" Ford And Goodyear's New York Contacts Under CPLR 302(a)(1).

A cause of action arises from a defendant's contacts with New York if the cause of action has a "substantial relationship with the defendant's transaction of business" in New York, *D & R Glob. Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 29 N.Y.3d 292, 298-299 (2017) (internal quotation marks omitted), or if it shares an "articulable nexus" with the defendant's New York contacts, *McGowan v. Smith*, 52 N.Y.2d 268, 272 (1981). Ford and Goodyear do not contest that they transact business in New York: They market, promote, advertise, and sell products in the State. *See* Opening Br. 11. But specific jurisdiction does not lie under CPLR 302(a)(1) because those contacts do not have a "substantial relationship" or share an "articulable nexus" with this case. *See* Opening Br. 11-14. This case instead arises from an automobile accident in Virginia that Plaintiffs claim was caused by the Ford vehicle and the Goodyear tire installed on that vehicle—a vehicle designed in Michigan, assembled in Missouri, and first sold in Ohio, R491, and a tire designed in Ohio and manufactured in Tennessee, R147. The accident did not occur in New York; the vehicle was not designed, assembled or sold in New York; and the tire was not designed, manufactured or sold in New York.

Neither the accident nor the vehicle or tire at issue has any relationship to New York.

U.S. Tires admits these facts. *See* U.S. Tires Br. 33 (admitting that Ford and Goodyear "manufactured and designed the products outside of New York."); *id.* at 21 (appearing to concede that "the specific product . . . was not sold in New York initially").[2] But U.S. Tires nonetheless argues specific jurisdiction under CPLR 302(a)(1) is appropriate here because this case arises from Ford and Goodyear's marketing, advertising, and selling of *other* products in New York both as a matter of fact and as a matter of law. U.S. Tires Br. 21-32. Neither assertion is right. Whatever relationship Ford and Goodyear's other marketing and business contacts have with this cause of action, they are not case-specific contacts and are thus " 'too attenuated' or 'merely coincidental.' " *D & R Glob. Selections, S.L.*, 29 N.Y.3d at 299 (citation omitted).

U.S. Tires sets forth an inducement theory; that somehow Ford and Goodyear "indirectly orchestrated" the sale of the Explorer and tire to Aybar "through their massive, pervasive commercial intrusion into New York" and that

[2] Plaintiffs erroneously state that the subject tire was manufactured in Kentucky, and further claim it was "not a used tire, but was the same tire that was originally mounted on the subject vehicle when it was sold brand new." Plaintiffs' Br. 5. But Plaintiffs did not allege that in their complaint, and they offer no record evidence to support their assertion—because there is none. But even Plaintiffs' evidence-less allegations would not create specific jurisdiction under CPLR 302(a)(1).

"Ford instigated the sale of the Ford Explorer to Aybar based on its New York contacts." *See* U.S. Tires Br. 31, 32. U.S. Tire's theory is somehow based upon a single 2010 article published on "Eventmarketer.com" by an unidentified source that U.S. Tires calls a "well known 'multi-cultural marketing manager at Ford' ", and then bolstered with peppered references to the 2010 U.S. Census and a "genealogy portal" that cites data from 2014. *Id.* at 11-13 & n.3-5. None of these assertions are based on fact or contained in the record, they do not speak for Ford and its corporate marketing strategies, and are completely irrelevant as to Goodyear.

Here are the facts. There is no allegation in this case that Aybar purchased the Explorer or the tire because of Ford and Goodyear's advertising and marketing in New York. *See* R45-68 (Amended Verified Complaint); R39-42 (Third-Party Complaint). Indeed, neither the Explorer nor the tire at issue were first sold in New York. Nor was there an allegation that Aybar purchased the Explorer or the tire because of Ford and Goodyear's advertising and marketing in New York in the two other cases flowing from the Virginia accident. *See* R157-162 (*Aybar v. Goodyear* Verified Complaint); R184-208 (*Aybar v. Aybar* Verified Complaint). Neither Plaintiffs nor U.S. Tires has advanced this allegation or "theory" in any other case or before any other court. Nor is U.S. Tires's theory supported by an affidavit or a declaration. U.S. Tires is not even arguing that such facts "may exist." *Coll. v.*

Brady, 84 A.D. 1322, 1323 (2d Dep't 2011). Instead, its "inducement" theory is exactly that: a theory without basis in fact. This Court should not credit it. Although a party "need only make a prima facie showing that the defendant [is] subject to the personal jurisdiction of the court," the Court makes that determination based on the "facts alleged in the complaint and affidavits in opposition to . . . a motion to dismiss." *Weitz v. Weitz*, 85 A.D. 1153 (2d Dep't 2011). U.S. Tires' unsupported inducement theory is not enough to carry its burden.

U.S. Tires appears to recognize that its inducement theory is factually untenable, because the brunt of its brief is dedicated to arguing that, as a matter of law, the marketing, advertising, and selling of *other* products in New York satisfies CPLR 302(a)'s arise-from requirement. *See* U.S. Tires Br. 21 ("The connection requirement of CPLR § 302(a)(1) is satisfied so long as the product is marketed in New York, even if the specific product . . . was not sold in New York initially."); *id.* at 22 (similar); *id.* at 26 (similar); *id.* at 28 ("Ford and Goodyear's sales of these products in general in New York satisfies the nexus requirement of [CPLR] 302(a)(1).").

But that is not the law either. For a court to exercise jurisdiction under CPLR 302(a)(1), "at least one element" of the cause of action must "arise[ ] from the [defendant's] New York contacts." *Licci v. Lebanese Canadian Bank, SAL*, 20

N.Y.3d 327, 341 (2012). Here, because Ford and Goodyear did not design, manufacture, or sell the Explorer or tire in New York, no duty arose in New York. Nor did a breach occur in New York; in a product-defect case, the "tort" occurs where the allegedly defective product is manufactured—in this case, outside of New York. *See Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 459-464 (1965). And even the injury did not occur in New York because, under the long-arm statute, "the 'situs of the injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff.' " *Paterno v. Laser Spine Inst.*, 112 A.D.3d 34, 44 (2d Dep't 2013) (citation omitted), *aff'd*, 24 N.Y.3d 370 (2014). Plaintiffs' injuries here occurred in Virginia. R9.

U.S. Tires does not address this Court's elements-based inquiry, and instead asserts (at 21-28) that its marketing-and-advertising-is-enough theory is deeply rooted in the case law. But not one of U.S. Tires's twelve cases says what U.S. Tires wants it to say.

Rushaid v. Pictet & Cie, 28 N.Y.3d 316 (2016), concerned claims arising out of a money-laundering scheme using New York bank accounts. *Id.* at 329. The Court found jurisdiction, and while, as U.S. Tires states, the court found that the "larger fraud scheme conducted by the defendants . . . took place elsewhere," (at 21), U.S. Tires fails to mention the pivotal jurisdictional fact upon which the Court

based its ruling—that "the money laundering *could not proceed without* the use of the correspondent bank account" which was located in New York. *Id.* at 330 (emphasis added). *That* is why the Court held that jurisdiction was proper; because the bank account was located in New York, not because "the product [wa]s marketed in New York." U.S. Tires Br. 21.

Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc., 15 N.Y.2d 443 (1965) *aff'g*, *Singer v. Walker*, 21 A.D. 285 (1st Dep't 1964), and *Tonns v. Spiegel's*, 90 A.D.2d 548 (2d Dep't 1982), both concerned defendants who had case-specific contacts: both had shipped defective goods *directly* to New York. *See Singer*, 21 A.D. at 287; *Tonns*, 90 A.D.2d at 549. And both courts held that this shipping of defective goods into New York had a "substantial relationship" to the causes of action arising from those defective goods. *Longines-Wittnauer Watch Co.*, 15 N.Y.2d at 466, 467; *Tonns*, 90 A.D.2d at 549-550. Neither case turned on the generic "marketing" of products in New York.

In *Robins v. Procure Treatment Centers., Inc.*, 157 A.D.3d 606 (1st Dep't 2018), the defendant was a New Jersey therapy center, and the plaintiff was a New York resident who was injured after seeking services at the center. *Id.* at 607. The court held that specific jurisdiction existed over the defendant based on its case-related contact with New York: the plaintiff was directed to the defendant "by her New York doctor . . . as part of a referral agreement" and the defendant billed the

plaintiff directly for her doctor's care. *Id.* at 607-608. So it was not that the cause of action arose from the defendant's *other* New York contacts; the cause of action *would not have happened* without the defendant's referral agreement with the plaintiff's doctor—a contact the defendant formed in New York. *See id*. at 607. Here, by contrast, nothing Ford or Goodyear did in New York caused Plaintiffs' or U.S. Tires' claims.

U.S. Tires's New York federal cases lend no support for its position. *EMI Christian Music Group, Inc. v. MP3tunes, LLC*, 840 F.3d 79 (2d Cir. 2016), and *Surdo v. Stamina Products, Inc.*, No. 15-CV-2532, 2015 WL 5918318 (E.D.N.Y. Oct. 9, 2015), do not discuss New York's long-arm statute at all and thus say nothing about that statute's arise-from requirement. *Hamilton v. Accu-Tek*, 32 F. Supp. 2d 47 (E.D.N.Y. 1998), and *State Farm Fire & Casualty Co.v. Swizz Style, Inc.*, 246 F. Supp. 3d 880 (S.D.N.Y. 2017), both turn on CPLR 302(a)(3)(ii)'s foreseeability prong, *not* CPLR 302(a)'s arising-from requirement. *See Hamilton*, 32 F. Supp. 2d at 55; *Swizz Style*, 246 F. Supp. 3d at 888-889.

But the question under CPLR 302(a)(1)—the question here—is whether a defendant's business with New York shares an "articulable nexus" with the cause of action. *McGowan*, 52 N.Y.2d at 272. Foreseeability has nothing to do with it. A defendant's expectations have nothing to do with whether an element of the cause of action arises from a defendant's contacts.

Pilates, Inc. v. Pilates Institute, Inc., 891 F. Supp. 175 (S.D.N.Y. 1995)—which *does* find jurisdiction under CPLR 302(a)(1)—undermines U.S. Tires's theory. *Pilates* was a trademark-infringement case: Pilates, Inc. owns the trademark to "Pilates," and sued Pilates Institute for infringing on that mark. *Id.* at 177-178. The district court held that it had jurisdiction over the Institute under CPLR 302(a)(1) based on the Institute's long list of case-related contacts with New York: The Institute "advertis[ed] goods using the allegedly infringing mark in at least one magazine distributed *solely* in New York"; "train[ed] an instructor to teach the Institute's version of the Pilates method in New York"; "solicit[ed] membership in the Institute from New York residents," "the sale of its allegedly infringing products from New York residents," and "a video store in New York to sell its video" that used the infringing version of Pilates; and "offer[ed] workshops on the Pilates method in New York." *Id.* at 179 (emphasis added). The defendant, in short, had infringed the plaintiff's trademark *in New York*. So the court held that the trademark-infringement cause of action was connected to the defendant's New York infringement. That logic does not translate to this case, where there are no case-related contacts—the allegedly defective products were designed, manufactured, sold, and allegedly caused injury *outside* of New York. *See supra* pp. 4-5.

Finally, U.S. Tires cites *Williams v. Summit Marine, Inc.*, 5:18-cv-216 (GLS/ATB), 2019 WL 4142635 (N.D.N.Y. Aug. 30, 2019), which, as U.S. Tires itself recognizes, "found there was no specific jurisdiction," U.S. Tires Br. 24. U.S. Tires nonetheless suggests that the *Williams*' list of pleading failures was actually a roadmap of what would be needed to satisfy the arising-from requirement in this case. But in *Williams*, unlike here, the accident occurred *in New York*. 2019 WL 4142635, at *1. And in *Williams*, contrary to U.S. Tires' claims, the court focused not on the defendant's marketing or sales of its product generally, but marketing and sales of the particular product "at issue" in the case. 2019 WL 4142635, at *3. The products at issue here—the Ford Explorer and Goodyear tire on it—are unrelated to Ford and Goodyear's New York contacts. *See supra* pp. 4-5.

Finally, U.S. Tires's two out-of-state cases are irrelevant to this case. *See* U.S. Tires Br. 26-28. Neither case concerned CPLR 302(a)(1). *See State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319 (W. Va. 2016) (West Virginia long-arm statute); *Hoagland v. Ford Motor Co.*, No. Civ.A. 06-615-C, 2007 WL 2789768 (W.D. Ky. Sept. 21, 2001) (Kentucky long-arm statute). Moreover, U.S. Tires's preferred quotation from *McGraw* is from a section of the opinion applying *federal constitutional* law, *see* 788 S.E.2d at 343; and *Hoagland* was interpreting a long-arm statute which "extend[s] to the limits of Due Process," 2007 WL

2789768, at *2 (internal quotation marks omitted). Neither case therefore has anything to say about New York's long-arm statute. *See Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 471 (1988) ("New York's long-arm statute . . . does not confer jurisdiction in every case where it is constitutionally permissible.").

Indeed, unlike here, the accident in *McGraw* occurred in the forum State. 788 S.E.2d at 343. The accident here occurred in Virginia. R9. And while *McGraw* may have rejected using "the place of sale as a per se rule to defeat specific jurisdiction," 788 S.E.2d at 343, it did not hold that West Virginia courts could exercise specific jurisdiction over Ford. It instead remanded to the trial court to determine whether the cause of action arose out of or related to Ford's contacts with West Virginia. *Id.* *McGraw* is thus inapposite three times over: It concerned different facts, it applied different law, and it did not make a definitive holding that could inform this Court's arising-from analysis.

In an outdated analysis of specific jurisdiction, the Kentucky district court in *Hoagland* held that it could exercise specific jurisdiction over Ford in a case concerning an accident that took place outside of Kentucky involving a car that was manufactured and originally sold outside of Kentucky. 2007 WL 2789768, at *2-3. The court's arising-out-of analysis was, in total, that "the plaintiff's cause of action arose from the purchase of this car in Kentucky" from a third party. *Id.* at *3. But seven years later, in *Walden v. Fiore*, the Supreme Court clarified that "the

defendant's *suit-related conduct* must create a substantial connection with the forum State," and that "the relationship must arise out of contacts that the 'defendant *himself*' creates with the forum State." 571 U.S. 277, 284 (2014). The Court likewise emphasized that "[i]n order for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.' " *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). And "[w]hen there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* *Hoagland*'s conclusion that specific jurisdiction was proper because the case arose from the *plaintiff*'s in-state contacts was abrogated by these later cases. And U.S. Tires's contention (at 35-36) that it, a New York resident, should be able to bring a third party claim against manufacturers in New York, fails because U.S. Tires's "contacts cannot be decisive in determining whether" Ford and Goodyear's "due process rights are violated." *Walden*, 571 U.S. at 285 (citation omitted).

Not one of U.S. Tires's cases supports its novel theory of specific jurisdiction. That is because the law is to the contrary: Where a defendant has *some* contacts with New York (like here) but those contacts are not case specific,

and therefore "too attenuated" from the cause of action (like here), the New York courts cannot exercise specific jurisdiction under CPLR 302(a)(1). *D & R Glob. Selections*, 29 N.Y.3d at 299 (internal quotation marks omitted). That is why this Court in *Fernandez v. DaimlerChrysler, AG*, 143 A.D.3d 765, 767-768 (2d Dep't 2016), *Krajewski v. Osterlund, Inc*., 111 A.D.2d 905, 905-906 (2d Dep't 1985), and *Pichardo v. Zayas*, 122 A.D.3d 699, 701 (2d Dep't 2014), held that defendants who did not sell the product to the plaintiff or whose New York contacts had nothing to do with the cause of action were not subject to long-arm jurisdiction in New York. *See* Opening Br. 12-14.

U.S. Tires's attempt to distinguish these three cases falls flat. U.S. Tires highlights that the *Fernandez* defendant "did not manufacture the subject vehicle involved in the accident or any of its allegedly defective component parts," (at 29) but omits *Fernandez*'s holding that jurisdiction was inappropriate because the defendant did not "sell the subject vehicle to the decedent" and that none of the "activities conducted by [the defendant] in New York had an 'articulable nexus' or a 'substantial relationship' to any of the recalls that were issued on the allegedly defective parts of the subject vehicle." 143 A.D.3d at 767. *That* is why *Fernandez* is relevant here.

U.S. Tires similarly misreads *Krajewski*. U.S. Tires portrays it as turning on the fact that the defendant "did not manufacture the truck involved in the

accident," (at 29) but again, that it is not entirely accurate. The *Krajewski* plaintiff, like U.S. Tires here, argued for jurisdiction over the defendant based on defendant's *unrelated* contacts with New York; the defendant owned the "trademarks, patents, technical data, dies, jigs and fixtures" of the truck that crashed, and it in fact sold other versions of that vehicle in New York. 111 A.D.2d at 905-906. Yet even though the defendant sold other versions of the allegedly defective product in New York—as Ford and Goodyear do here—this Court found that there was no "articulable nexus" between the defendant's New York transaction of business and the plaintiff's claims. *Id.* at 906. And U.S. Tires is just wrong when it says that "the plaintiff failed to lay a foundation establishing that [the defendant] did business in New York." U.S. Tires Br. 29. *Krajewski* noted that the "[d]efendant admitted that the truck which it had been manufacturing since 1977, 'Osterlund's Diamond Reo Giant,' is sold in the State of New York through franchised dealers." *Id.* at 906.

U.S. Tires's characterization of *Pichardo* is misleading. U.S. Tires cites the defendants' affidavits in *Pichardo* attesting to their lack of *contacts* with New York. U.S. Tires Br. 30. But *Pichardo*'s holding was not based on a lack of contacts; it was based on a lack of a *connection* between contacts and the cause of action: The "plaintiff failed to demonstrate a sufficient relationship between the

[defendants'] activities in New York and the causes of action asserted in the complaint." *Pichardo*, 122 A.D.3d at 701-702. The same is true here.

U.S. Tires offers a hodgepodge of other reasons that this case arises from Ford and Goodyear's New York contacts. U.S. Tires Br. 28. According to U.S. Tires, this case arises from Ford and Goodyear's contacts with New York because the vehicle was registered to New York residents, because it injured New York residents, because U.S. Tires serviced the tire and Explorer in New York, and because "any judgment the plaintiff may obtain against U.S. Tires would be in New York." *Id.* But in the attempt to support this court's exercise of jurisdiction over Ford and Goodyear, Plaintiffs' varied arguments are all just different ways of saying the same thing: Plaintiffs and U.S. Tires are New York residents. But "[i]t has . . . long been held that the residence or domicile of the injured party within a State is not a sufficient predicate for jurisdiction." *Fantis Foods, Inc. v. Standard Importing Co.*, 49 N.Y.2d 317, 326 (1980). This Court therefore lacks specific jurisdiction over Ford and Goodyear under CPLR 302(a)(1).

B. The Injury Here Did Not Occur "Within The State" Under CPLR 302(a)(3).

U.S. Tires also argues that the New York courts have specific jurisdiction over Ford and Goodyear under CPLR 302(a)(3). U.S. Tires Br. 32-39. They do not.

CPLR 302(a)(3) allows New York courts to exercise specific jurisdiction over nonresident defendants who "commit[ ] a tortious act without the state causing injury to person or property within the state." But U.S. Tires concedes, "[t]raditionally, in the case of personal injury or property damage, whether the injury occurred 'within the state' is determined by the location of the accident." U.S. Tires Br. 33 (citing *McGowan v. Smith*, 52 N.Y.2d 268 (1981)). U.S. Tires also concedes that "[t]he courts have consistently held that pain and suffering or discovery of damages in New York after the injury occurs in another state will not suffice." That is exactly right. *See Qudsi v. Larios*, 173 A.D.3d 920, 923 (2d Dep't 2019) ("Under CPLR 302(a)(3), '[t]he situs of the injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff.' " (quoting *Hermann v. Sharon Hosp., Inc.*, 135 A.D.2d 682, 683 (2d Dep't 1987)). The injury here occurred in Virginia. R9. CPLR 302(a)(3) is therefore not a basis for jurisdiction.

U.S. Tires suggests that "the Court of Appeals has indicated that it is open for a reconsideration of this 'first injury' rule." U.S. Tires Br. 33. Not quite. First, the 23-year-old case from which U.S. Tires gleans a potential reconsideration is about an entirely different type of injury. *Ingraham v. Carroll*, 90 N.Y.2d 592 (1997), concerned a New York resident who was referred to a Vermont doctor who "negligently failed to recognize" that the patient had cancer; the patient then

returned to New York where "her untreated cancer spread . . . and eventually caused her death." *Id.* at 596. The plaintiff, the patient's husband, sued the Vermont doctor in New York, and the Court "assum[ed], without deciding, that the alleged tortious conduct in Vermont caused injury within New York." *Id.* at 597. The dissent took the majority's "detour" around the situs-of-the-injury question as a signal that that area of law "is more of an open question than the rigid response in law up to now has indicated." *Id.* at 604 (Bellacosa, J., dissenting). But that is not necessarily true: The majority's resolution of that case on other grounds says nothing about some unspoken desire to change the situs-of-injury test. Also, the dissent's observation was made in the context of assessing "where differing, continuing or final injuries may ultimately be determined to be sited for purposes of pain and suffering and wrongful death causes of action." *Id.* at 604-605. U.S. Tires's assertion that *this* is the case the dissenting judge foresaw is thus wrong: This is not a case involving a "differing" or "continuing" injury. This is a case about an automobile accident that took place in Virginia and inflicted injuries in Virginia.

Second, whatever U.S. Tires speculates that *Ingraham* may have hinted at over two decades ago has not become the law. Only a few years ago, the Court of Appeals reiterated that "the situs of the injury in medical malpractice cases"—that is, in cases like *Ingraham*—"is the location of the original event which caused the

injury, and not where a party experiences the consequences of such injury." *Paterno v. Laser Spine Inst.*, 24 N.Y.3d 370, 381 (2014). This Court cited that case—not *Ingraham*—just last year when it explained that "[t]he situs of the injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff." *Qudsi*, 173 A.D.3d at 922. The law is settled; the situs of the injury is the original location of the injury—here, Virginia.

U.S. Tires then deviates from the text of CPLR 302(a)(3) and argues that that provision "was enacted precisely to prevent" this very situation. U.S. Tires Br. 34-35. But the plain text of CPLR 302(a)(3) makes clear that it applies to situations where the injury occurred *in the State*. U.S. Tires's legislative history only underscores this. In *Longines-Wittnauer Watch Co.*, the Court of Appeals held that the then-current long-arm statute—which did not yet include CPLR 302(a)(3)—did not authorize jurisdiction over a non-resident defendant who "improperly manufactured a tank in Kansas, even though the tank exploded in New York." *Sybron Corp. v. Wetzel*, 46 N.Y.2d 197, 203 (1978). The Court of Appeals explained that the long-arm statute simply did not cover a situation where a non-resident defendant "commits a tortious act *without* the state which causes injury within the state." *Longines-Wittnauer Watch Co*, 15 N.Y.2d at 460 (internal quotation marks omitted). The Legislature lifted that language when it added

CPLR 302(a)(3) in 1966. *See Sybron Corp.*, 46 N.Y.2d at 203. CPLR 302(a)(3) was therefore intended to cover exactly what it says it covers: situations where a non-resident defendant commits a tort outside of New York but when someone is injured in New York. That is not this case here.

U.S Tires next argues that the injury under CPLR 302(a)(3) here is not actually the Virginia accident. U.S. Tires Br. 35-36. That is wrong as well. As already discussed, "[u]nder CPLR 302(a)(3), [t]he situs of the injury is the location of the original event which caused the injury." *Qudsi*, 173 A.D.3d at 922. And the "original event" in product-liability cases is the location of the accident. *See McGowan*, 52 N.Y.2d at 274. Here, that is Virginia. R9.

DiStefano v. Carozzi North America, Inc., 286 F.3d 81 (2d Cir. 2001), is not to the contrary. *See* U.S. Tires Br. 35. *DiStefano* was an employment-discrimination suit involving a plaintiff who worked in New York for a Rhode Island company and who the company decided to fire at a New Jersey meeting that the employee did not attend. 286 F.3d at 83. The Second Circuit held that there was long-arm jurisdiction because "the 'original event' [was] [the plaintiff]'s experience of being removed from his job," which happened in New York. *Id.* at 84. *DiStefano* thus actually cuts *against* exerting jurisdiction under CPLR 302(a)(3) here. The original event is Plaintiffs' accident and injury, and that occurred in Virginia. *See supra* pp. 4-5.

U.S. Tires thus cannot satisfy CPLR 302(a)(3)'s baseline requirement that the defendant's tort "caus[e] injury to person or property within the state." That means that U.S. Tires's attempts to satisfy the provision's other requirements are beside the point. *See* U.S. Tires Br. 36-39. In fact, U.S. Tires's cited CPLR 302(a)(3)(ii) cases all illustrate what is missing here: an injury occurring in New York. *See Dingeldey v. VMI-EPE-Holland B.V.*, No. 15-CV-916-A(F), 2016 WL 6273235, at *3 (W.D.N.Y. Sept. 28, 2016) (injury occurred in New York), *report and recommendation adopted*, No. 15-CV-916A, 2016 WL 6248680 (W.D.N.Y. Oct. 26, 2016); *Darrow v. Deutschland*, 119 A.D.3d 1142, 1143 (3d Dep't 2014) (same); *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 213-214 (2000) (same); *Darienzo v. Wise Shoe Stores, Inc.*, 74 A.D.2d 342, 343 (2d Dep't 1980) (same). That U.S. Tires's cannot cite a *single* case where a court exercised jurisdiction under CPLR 302(a)(3) in a case involving an outside-of-New York injury speaks volumes.

II. THE DUE PROCESS CLAUSE DOES NOT PERMIT THE EXERCISE OF SPECIFIC JURISDICTION OVER FORD AND GOODYEAR.

The Due Process Clause allows a court to exercise specific jurisdiction over a non-resident defendant only when "the suit 'aris[es] out of or relate[s] to the defendant's contacts with the forum." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408,

414 n.8 (1984)) (alterations in original). Federal due process requires a "connection between the forum and the specific claims at issue." *Bristol-Myers Squibb* 137 S. Ct. at 1781. And, there is no such connection where "the episode-in-suit, the . . . accident, occurred" outside the forum, and the product "alleged to have caused the accident was manufactured and sold" outside the forum. *Goodyear*, 564 U.S. at 919; *see also Bristol-Myers Squibb*, 137 S. Ct. at 1781-82 (holding that the forum lacks specific jurisdiction where the "relevant conduct occurred entirely" outside the forum) (quoting *Walden*, 571 U.S. at 291) (emphasis omitted). That is exactly this case. *See* Opening Br. 17-20. The New York courts thus "lack[ ] specific jurisdiction to adjudicate the controversy." *Goodyear*, 564 U.S. at 919.

U.S. Tires does not explain how exercising specific jurisdiction here is consistent with *Goodyear*, *Bristol-Myers Squibb*, or *Walden*. *See* Opening Br. 16-20 (discussing these cases). Nor does it seriously grapple with the principles underpinning the many other federal cases cited by Ford and Goodyear finding no specific jurisdiction in cases with like fact patterns. *See* Opening Br. 20-21 & n.4. U.S. Tires instead halfheartedly attempts to distinguish a few of them. U.S. Tires Br. 53-54 (discussing *Schmitigal v. Twohig*, 413 F. Supp. 3d 458 (D.S.C. 2019), *Kommer v. Ford Motor Co.*, No. 17-CV-296 (LEK/DJS), 2019 WL 2895384 (N.D.N.Y. June 19, 2019), *Gaillet v. Ford Motor Co.*, No. 16-13789, 2017 WL

1684639 (E.D. Mich. May 3, 2017), *Progressive Cty. Mut. Ins. Co. v. Goodyear Tire & Rubber Co.*, No. 1:18CV321-LG-RHW, 2019 WL 846056 (S.D. Miss. Feb. 21, 2019), and *Cahen v. Toyota Motor Corp.*, 147 F. Supp. 3d 955 (N.D. Cal. 2015)). But these cases did not turn on the plaintiff's state of residence, where the plaintiff purchased the tire or vehicle, or whether the case was a class action. Instead, each of these courts held that specific jurisdiction did not exist over Ford or a tire manufacturer because those cases—all involving automobile accidents involving products that were not designed, manufactured, or first sold in the forum—did not arise from the company's contacts with the forum. *See* Opening Br. 20-21 & n.4.

In place of U.S. Supreme Court precedent and factually similar cases, U.S. Tires cites three New York state cases for the proposition that "Ford and Goodyear should have reasonably expected that these products could result in injury or consequences in New York based on their marketing, advertising and sale of products in New York." U.S. Tires Br. 41-42. But that argument is built on a false premise: This case does not concern an "injury or consequence[ ] in New York." *See supra* pp. 4-5. U.S. Tires's cases—all of which held that specific jurisdiction under CPLR 302(a)(3) existed because the injury occurred in New York—are thus inapposite. *See LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d at 213; *Darienzo*, 74 A.D. at 343; *Napolitano ex rel. Napolitano v. Mastic Bicycles & Fitness Co.*, 279

A.D.2d 461, 461-462 (2d Dep't 2001). Worse yet, not one of these cases grappled, at all, with the issue presented here: whether the cause of action *arose from* a non-resident defendant's contacts with New York. Instead, each case only considered whether the non-resident had sufficient "minimum contacts" with New York and whether exercising specific jurisdiction over them would be fair. *LaMarca*, 95 N.Y.2d at 216; *Darienzo*, 74 A.D.2d at 346; *Napolitano.*, 279 A.D.2d at 462. That is because these cases predated *Walden* and *Bristol-Myers Squibb*, both of which clarified that "specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (internal quotation marks omitted); *see also supra* pp. 13-14.

U.S. Tires then cites eleven out-of-state and federal cases where courts exercised specific jurisdiction over Ford, another car company, or a tire manufacturer based on the stream-of-commerce metaphor—the implication being that the Supreme Court appropriately relied on that metaphor to exercise jurisdiction over Ford and Goodyear here. U.S. Tires Br. 42-52. U.S. Tires's reliance on these cases is misplaced.

Nine of these cases concerned the exercise of specific jurisdiction over an automobile accident that occurred in the forum State.[3] Not the case here. The cases therefore have nothing to say about a case like this one—where the accident occurred outside the forum State.[4]

That matters because, as Ford and Goodyear have explained—but which U.S. Tires never directly addresses—the stream-of-commerce metaphor addresses the purposeful-availment, not the arise-out-of-or-relate-to, prong of specific jurisdiction. *See* Opening Br. 26-27. One of U.S. Tires's cases, *De Santiago*, makes this clear. *De Santiago* concerned a tire that was originally sold in the

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[3] *See Michelin N. Am., Inc. v. De Santiago*, 584 S.W.3d 114, 136 (Tex. Ct. App. 2018), *review dismissed* (Dec. 21, 2018); *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 754 (Minn. 2019), *cert. granted*, 140 S. Ct. 916 (Jan. 17, 2020) (No. 19-369); *Ford Motor Co. v. Montana Eighth Jud. Dist. Court*, 443 P.3d 407, 411 (Mont. 2019), *cert. granted*, 140 S. Ct. 917 (Jan. 17, 2020) (No. 19-368); *Antonini v. Ford Motor Co.*, No. 3:16-CV-2021, 2017 WL 3633287, at *4 (M.D. Pa. Aug. 23, 2017); *Griffin v. Ford Motor Co.*, No. A-17-CA-00442-SS, 2017 WL 3841890, at *1 (W.D. Tex. Sept. 1, 2017); *Marin v. Michelin N. Am., Inc.*, No. SA-16-CA-497-FB (HJB), 2017 WL 5494087, at *5 (W.D. Tex. July 13, 2017), *report and recommendation adopted*, No. SA-16-CA-0497-FB, 2017 WL 5505323 (W.D. Tex. Sept. 26, 2017); *Tarver v. Ford Motor Co.*, No. CIV-16-548-D, 2016 WL 7077045, at *1 (W.D. Okla. Dec. 5, 2016); *Rhodehouse v. Ford Motor Co.*, No. 2:16-CV-01892-JAM-CMK, 2016 WL 7104238, at *3 (E.D. Cal. Dec. 5, 2016); *Hatton v. Chrysler Canada, Inc.*, 937 F. Supp. 2d 1356, 1360 (M.D. Fla. 2013).

[4] Again, where an accident occurs or where a plaintiff is injured is not jurisdictionally relevant. *See* Opening Br. 18 n.3. But Plaintiffs' crash and injury occurring not in New York merely makes U.S. Tires's claims of personal jurisdiction over Ford and Goodyear "even weaker." *Bristol-Myers Squibb*, 137 S. Ct. at 1782.

forum State of Texas and then re-sold to the Plaintiff, and that allegedly caused an automobile accident in Mexico. 584 S.W.3d at 120-121. The court was careful to explain that the stream-of-commerce metaphor is a method of determining a defendant's *contacts* with the forum; the plaintiff must still establish a "nexus" between those contacts and the cause of action. *See id.* at 128-129. The court held that there was a nexus—not because of the stream of commerce—but because "the first sale" of the tire at issue "took place in Texas after Michelin transferred the tire for a first retail sale in Texas through the usual distribution pattern." *Id.* at 137. U.S. Tires's selective block quoting from that case elides that distinction. U.S. Tires Br. 44-45.

De Santiago is thus actually "on point" for Ford and Goodyear. It makes clear that a plaintiff must establish that the cause of action arises out of at least one *case-specific* contact. There is no case-specific contact here. And *De Santiago* supports Ford and Goodyear in another way too: It found the arising-from requirement satisfied based on the tire's first sale in Texas, which supports Ford and Goodyear's position that the stream of commerce ends with the product's first retail sale. *See* Opening Br. 23-26.

Thomas v. Ford Motor Co., 289 F. Supp. 3d 941 (E.D. Wis. 2017), as Ford and Goodyear have explained, got the law wrong. *See* Opening Br. 32-33. U.S. Tires block quotes that case extensively (at 42-43), but does not address Ford and

Goodyear's explanation that that case conflicts with the Supreme Court's caution in *Goodyear* that "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim *unrelated* to those sales." *Goodyear*, 564 U.S. at 930 n.6 (emphasis added); *see* Opening Br. 32-33.

In the end, none of U.S. Tires's many cases offers this Court meaningful guidance because this cause of action does not arise from contacts related to the accident or products at issue. The Court should reverse.

III. THE COURT SHOULD DECLINE TO REVISIT ITS EARLIER GENERAL-JURISDICTION HOLDINGS.

A final note: Though they join U.S. Tires's brief, Plaintiffs separately grouse that the Court's prior decision holding that Ford and Goodyear are not subject to general jurisdiction in New York is unfair to them and to other plaintiffs like them. Plaintiffs Br. 1-9. But this Court's prior well-reasoned decision in *Aybar v. Aybar* is the law of the Department unless and until the Court of Appeals decides otherwise. *See Matter of Citizens to Save Titus Mill Pond v. Planning Bd. of New Rochelle*, 150 A.D.2d 774, 774 (2d Dep't 1989) (explaining that parties "are bound by [an] earlier judgment" rejecting the same arguments on the same facts "under the principle of stare decisis"); *see also Dufel v. Green*, 198 A.D.2d 640, 640 (3d Dep't 1993) (explaining that "[o]nce this court has decided a legal issue, subsequent appeals presenting similar facts should be decided in conformity with the earlier decision under the doctrine of stare decisis, which recognizes that

legal questions, once resolved, should not be reexamined every time they are presented"). The Court should therefore reject Plaintiffs' complaints about *Aybar v. Aybar* out of hand.

CONCLUSION

For the foregoing reasons and for those in Ford and Goodyear's opening brief, the Supreme Court's order should be reversed.

Respectfully submitted,

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