

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

----- X

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

Plaintiffs,

-and-

ORLANDO GONZALEZ, 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,

-against-

NOTICE OF MOTION

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

Docket No. 2019-12110

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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SIRS / MADAMS:

PLEASE TAKE NOTICE that upon the annexed affirmation of Jay L.T. Breakstone, Esq., dated July 9, 2020, and all other papers and proceedings heretofore had or to be had herein, plaintiffs-respondents will move this Court at a term thereof, to be held at 10:00 o'clock A.M. on the 20th day of July, 2020, at the courthouse, 45 Monroe Place, Brooklyn, New York, or as soon thereafter as counsel can be heard, for an order granting an enlargement of time in which to file a respondents' brief on behalf of plaintiffs-respondents Orlando Gonzalez, *et al.*, or in the alternative, for permission to joint in the brief previously filed by third-party plaintiff respondent U. S. Tires and Wheels of Queens, LLC; and for such other and further and different relief as to the Court may seem just and proper within the premises.

*Dated: Port Washington, New York
July 9, 2020*

Yours, etc.,

PARKER WAICHMAN LLP
Attorneys for Plaintiffs-Respondents
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By: *Jay L. T. Breakstone*
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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND DEPARTMENT

----- X

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

Plaintiffs,

-and-

ORLANDO GONZALEZ, 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,

-against-

AFFIRMATION

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

Docket No. 2019-12110

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.

----- X

JAY L. T. BREAKSTONE, an attorney duly admitted to practice before the courts of the State of New York, affirms, upon information and belief, and under penalty of perjury, as follows:

INTRODUCTION

1. I am associated with and appellate counsel to Parker Waichman LLP, who has been retained as appellate counsel to plaintiffs-respondents Orlando Gonzalez, 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. in this appeal.

2. This affirmation is submitted in support of the application of plaintiffs-respondents for an order enlarging the time in which plaintiffs-respondents may file a respondents' brief.

3. This motion is made on consent of all parties.

**THIS MOTION IS MADE FOR GOOD CAUSE,
ON CONSENT, PREJUDICES NONE OF THE PARTIES,
AND ENSURES AN APPROPRIATE APPELLATE RECORD
FOR THE COURT AND ANY FURTHER REVIEW**

4. This appeal was perfected on or about February 11, 2020.

5. Due to the intervention of the coronavirus and in keeping with the orders of the Governor and this Court, the date upon which respondents' briefs were to be filed was July 6, 2020. Third-party Plaintiff-Respondent U.S. Tires and Wheels of Queens, LLC, filed its brief on that date.

6. However, as a result of the closing of the offices of plaintiffs-respondents' trial counsel, service concerns caused by service on prior appellate counsel rather than the attorney of record, and miscommunication heightened by business conditions at that time, a brief was not filed by plaintiffs-respondents by the due date.

7. Permitting plaintiffs-appellants to file an answering brief will allow the Court to have the full participation of all parties in this critical appeal. Moreover, it will allow all the parties in the matter presently before the Court of Appeals, *Aybar v. Aybar*, to come together on the inevitable question of specific jurisdiction which is not, as the Court is aware, part of the present briefing in the Court of Appeals.

8. The appellate record on this appeal may well set the foundation for further review. In fairness to all parties, that record should include the full participation of plaintiffs-appellants who, in all candor, were those who suffered death and physical injury as a result of the auto accident which forms the basis for the action itself.

9. Plaintiffs-respondents wish to thank the attorneys on both sides of the caption for their consent to this application and would ask that any order of enlargement include an extension of time for defendants-appellants to reply. Should the Court deny this motion, plaintiffs-respondents would ask that the Court permit plaintiffs-respondents to join in and adopt the answering brief of third-party plaintiff-respondent U. S. Tires and Wheels of Queens, LLC.

WHEREFORE, plaintiffs-respondents respectfully request that the Court grant this application and enlarge their time to file an answering brief up to and including July 20, 2020, with a concomitant enlargement of time for defendants-appellants to reply; in the alternative, plaintiffs-respondents ask the Court to grant them permission to join in and adopt the brief of U. S. Tires and Wheels of Queens, LLC; and such other, and further, and different relief as is just and proper within the premises.

Dated: July 9, 2020
Port Washington, New York

Jay L. T. Breakstone
Jay L. T. Breakstone

NOTICE OF APPEAL & ORDER APPEALED FROM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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 AYBAR as Administratrix of THE
ESTATE OF T.C.,

NOTICE OF APPEAL

Index No. 703632/2017

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.

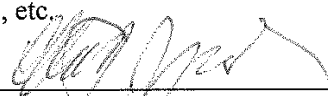
SIR/MADAM:

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.
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DEUTSCH, LLP
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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
COUNTY OF QUEENS

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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.,

Plaintiffs,

- against -

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

-----x

US TIRES 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

PLEASE TAKE NOTICE, that the above-named defendant, THE GOODYEAR TIRE &
RUBBER COMPANY, by its attorneys DLA PIPER LLP (US), hereby appeals to the Appellate
Division of the Supreme Court of the State of New York, Second Department, from that portion
of the annexed order of the Supreme Court, Queens County (Hon. Denis J. Butler, J.S.C.) dated
September 25, 2019 and entered in the office of the clerk of the court on or about September 27,

2019, which denied THE GOODYEAR TIRE & RUBBER COMPANY's motion to dismiss, and from each and every part of said order adverse to the interests of the appealing defendant.

Dated: New York, New York
October 21, 2019

DLA PIPER LLP (US)

By: /s/ Jayne A. Risk
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