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,

v.

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

Defendant-Respondent.

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

Third-Party Plaintiff-Respondent,

v.

THE GOODYEAR TIRE & RUBBER COMPANY and FORD MOTOR COMPANY,

Third-Party Defendants-Appellants,

and

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD,

Third-Party Defendant.

Docket No.
2019-12110

Queens County Clerk's
Index No. 703632/17

THIRD-PARTY DEFENDANT-APPELLANT FORD'S NOTICE OF MOTION FOR REARGUMENT OR, IN THE ALTERNATIVE, FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

PLEASE TAKE NOTICE, that upon the annexed memorandum of law and affirmation of Sean Marotta, the undersigned will move this Court, at the Courthouse located at 45 Monroe Place, Brooklyn, New York, at 10:00 a.m. on December 19, 2022, for an order providing the following relief:

(1) pursuant to CPLR 2221 and 22 NYCRR 1250.16(d)(2), granting reargument of this Court's November 2, 2022, decision and order, and, upon reargument, reversing the decision of the Supreme Court; or

(2) pursuant to CPLR 2221, CPLR 5602, and 22 NYCRR 1250.16(d)(3), granting leave to appeal to the Court of Appeals; and,

(3) any further relief that this Court deems just, proper, and equitable.

The questions of law that merit review by the Court of Appeals are:

1. Whether the New York courts can exercise specific personal jurisdiction under CPLR 302(a)(1) over a third-party defendant on a contribution claim—even when every element of the claim for which the third-party plaintiff seeks contribution occurred outside New York—because the third-party defendant generally transacts business in New York and the third-party plaintiff's allegedly negligent act occurred in New York.

2. Whether the Due Process Clause allows the New York courts to exercise specific personal jurisdiction over a third-party defendant on a contribution claim—even when every element of the claim for which the third-party plaintiff seeks contribution occurred outside New York—because the third-party defendant generally transacts business in New York and the third-party plaintiff's allegedly negligent act occurred in New York.

PLEASE TAKE FURTHER NOTICE, that pursuant to Civil Practice Law and Rules 2214(b), you are hereby required to serve copies of your answering

affidavits on the undersigned no later than the seventh day prior to the date set above for the submission of this motion.

Respectfully submitted,

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SUPREME COURT OF THE STATE OF NEW YORK
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JOSE AYBAR and JOSE AYBAR as Administrator of THE ESTATE OF CRYSTAL CRUZ-AYBAR,

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and

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(For Continuation of Caption See Inside Cover)

Docket No.
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MEMORANDUM OF LAW IN SUPPORT OF THIRD-PARTY DEFENDANT-APPELLANT FORD'S MOTION FOR REARGUMENT OR, IN THE ALTERNATIVE, FOR LEAVE TO APPEAL

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

Third-Party Plaintiff-Respondent,

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THE GOODYEAR TIRE & RUBBER COMPANY and FORD MOTOR COMPANY,

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INTRODUCTION

In 2012, Jose Aybar brought to U.S. Tires and Wheels of Queens a set of Goodyear tires he bought used from a third party and asked the tire shop to inspect and install those tires on his Ford Explorer that he also bought used from a third party. U.S. Tires did so. Two weeks later, the tread on one of the tires detached while Aybar and Plaintiffs were driving through Virginia. The result was a deadly car accident. Plaintiffs sued U.S. Tires for negligence, and U.S. Tires sought contribution from Ford and Goodyear.

U.S. Tires is a stranger to both Ford and Goodyear. U.S. Tires is not a Ford-authorized service center nor is it a Goodyear-authorized dealer. Moreover, neither the Explorer nor the Goodyear tire was manufactured, designed, or first sold by Ford or Goodyear in New York. The accident occurred in Virginia, and that is where Plaintiffs sustained their injuries as a matter of law.

This Court nonetheless held that the New York courts can exercise specific personal jurisdiction over Ford and Goodyear as to U.S. Tires' third-party claim. That holding is based on a series of misapprehensions of law and fact, is contrary to binding precedent, and warrants correction by this Court or the Court of Appeals.

Reargument is warranted for two reasons. *First*, this Court misunderstood Ford's constitutional argument. The Court believed that Ford conceded that it had

minimum contacts with New York and disputed only whether New York exercising specific jurisdiction over them was reasonable. That is a misreading of Ford's briefs. Ford recognized that it had some contacts with New York, meaning that it purposefully availed itself of the privilege of doing business in the State. But the entire constitutional question in this case—the one on which the parties joined issue—is whether those contacts are sufficiently related to U.S. Tires' cause of action such that Ford had the minimum suit-related contacts to authorize the exercise of specific jurisdiction. Far from conceding that issue, Ford extensively briefed and argued it. This Court should grant reargument to consider the arguments Ford presented.

Second, this Court referred to "the subject of this appeal" as U.S. Tires' "third-party causes of action against Ford and Goodyear for *indemnification* and contribution." Slip op. 8 (emphasis added). But the Supreme Court dismissed the indemnification claim and U.S. Tires did not appeal the dismissal. To the extent the Court's long-arm-act analysis turns on this abandoned claim, the Court should grant reargument.

In the alternative, this Court should grant leave to appeal on two issues. *First*, according to *Licci v. Lebanese Canadian Bank, SAL*, 20 N.Y.3d 327, 341 (2012), a court can exercise specific personal jurisdiction under CPLR 302(a)(1) where "at least one element" of the cause of action "arises from the [defendant's]

New York contacts." But this Court based its holding on *U.S. Tires*' negligence in New York. That alleged breach, paired with Ford's unrelated business operations in New York, was enough for this Court to hold that the New York courts had long-arm jurisdiction over Ford in this case, even though U.S. Tires' negligence did not, in any sense, arise from Ford's New York contacts. The Court's holding contravenes Court of Appeals precedent and implicates the novel and important question of the scope of the New York courts' jurisdiction over third-party defendants for negligent acts committed in New York by third-party-plaintiff independent service centers. Leave to appeal this Court's long-arm-act analysis is warranted.

Second, this Court's due-process holding conflicts with binding precedent from the U.S. Supreme Court and Court of Appeals. This Court rejected Ford's argument that the Due Process Clause requires a connection between the defendant, the forum, and the litigation, believing it subsumed into the question of whether personal jurisdiction is reasonable under the circumstances. That is exactly the opposite of what the United States and New York high courts have held. And because the First and Third Departments, as well as the Second Circuit, have faithfully followed those cases, this Court's new no-connection rule creates a split among the Departments *and* the state and federal courts sitting in the Second Department. The Court of Appeals should weigh in on these divergent cases.

For all of these reasons, the Court should grant reargument or leave to appeal.

QUESTIONS PRESENTED

1. Whether this Court misapprehended Ford's constitutional argument and mistakenly concluded that Ford conceded away the existence of minimum contacts.
2. Whether this Court relied upon a claim that was dismissed by the Supreme Court and not appealed by U.S. Tires when concluding that the New York courts can exercise personal jurisdiction over Ford under CPLR 302(a)(1).
3. Whether CPLR 302(a)(1) allows the New York courts to exercise specific personal jurisdiction over a third-party defendant on a contribution claim—even when every element of the claim for which the third-party plaintiff seeks contribution occurred outside New York—because the third-party defendant generally transacts business in New York and the third-party plaintiff's allegedly negligent act occurred in New York.
4. Whether the Due Process Clause allows the New York courts to exercise specific personal jurisdiction over a third-party defendant on a contribution claim—even when every element of the claim for which the third-party plaintiff seeks contribution occurred outside New York—because the third-

party defendant generally transacts business in New York and the third-party plaintiff's allegedly negligent act occurred in New York.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs' accident and suit. Plaintiffs allege that on July 1, 2012, while traveling in Brunswick County, Virginia, the 2002 Ford Explorer in which they were passengers left the roadway and rolled over following a tread-detachment event involving a Goodyear tire installed on the vehicle. *See* R9, R444, R446-447. Plaintiffs sued U.S. Tires—the auto service shop that installed the tire that allegedly failed in Virginia—in the Queens County Supreme Court, asserting product-liability claims. R444-472. U.S. Tires, in turn, sought indemnification and contribution from Ford and Goodyear. R474-482.

Neither Ford nor Goodyear had any New York contacts with Plaintiffs, U.S. Tires, the Explorer, or the tire installed on it. Ford is a Delaware corporation with its principal place of business in Dearborn, Michigan. R491. The Explorer was not designed or manufactured in New York. *Id.* Ford assembled the vehicle at its St. Louis, Missouri plant, and first sold it to Team Ford Lincoln, an independently owned Ford dealership in Steubenville, Ohio. *Id.* Team Ford Lincoln then sold the Explorer to a retail consumer. *Id.* According to Ford's records, the Explorer entered New York in 2009, when it was purchased by a Jose Velez without Ford's involvement. R964. Jose Aybar then purchased the Explorer sometime in late

2011. *Id.* U.S. Tires is not a Ford-authorized service center. *See* R965 (explaining that Ford-authorized servicing activities are "conducted exclusively by independent dealers").

Goodyear is an Ohio corporation with its principal place of business in Akron, Ohio. R147. The tire identified by Plaintiffs and installed by U.S. Tires was not designed or manufactured in New York. Nor could it have been, as Goodyear does not have any Wrangler AP-model tire manufacturing plants in New York. R147-148. The tire was designed in Akron, Ohio and manufactured at Goodyear's Union City, Tennessee plant. R147. Although tires do not have unique identification numbers and are not tracked the way vehicles are, Goodyear's records do not reflect that it was involved in the subject tire entering New York. *Id.* Jose Aybar apparently bought the tire used and brought it to New York, where U.S. Tires inspected and installed it on the Explorer two weeks before the Virginia accident. R446-447. Goodyear had no known ties with the tire after it left Goodyear's possession and control at the Tennessee manufacturing plant in 2002. R147. U.S. Tires is not a Goodyear-authorized service center. *See* R343-360 (listing Goodyear Auto Service Centers).

The Supreme Court's order. Ford and Goodyear moved to dismiss U.S. Tires' claims against them for lack of personal jurisdiction. *See* R8-9, R384-386, R16-18. Plaintiffs and U.S. Tires opposed the motions, arguing, among other

things, that Ford and Goodyear were properly subject to specific personal jurisdiction in New York under both state and federal law. R325-326, R710-713, R526-537.

The Supreme Court (Denis J. Butler, J.S.C.) denied the motions to dismiss. The court held that it could exercise specific jurisdiction pursuant to CPLR 302(a)(1), which authorizes jurisdiction over foreign defendants who "transact[ ] business in New York" so long as "there is an arguable nexus or substantial relationship between the business transacted and the claim asserted." R10 (citing CPLR 302(a)(1)).

The Supreme Court admitted that "the products at issue herein were manufactured out of state," but waved away the importance of "whether Ford or Goodyear sold the particular product directly to plaintiffs." R11. The court instead held that "the nature of" Ford and Goodyear's activities in New York—which included marketing in New York, selling other products in New York, and "locat[ing] themselves throughout New York," *id.*—"satisfie[d] 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," R12. The Supreme Court also held that exercising specific jurisdiction over Ford and Goodyear did not violate the Due Process Clause. *Id.*

The Supreme Court did, however, dismiss U.S. Tires' claim for indemnification. As the Court explained, "[i]f the cause of action against third-party plaintiff is based on allegations of its own negligence, it cannot" seek indemnification. *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." R12-13. U.S. Tires did not appeal the portion of the Supreme Court's order dismissing its indemnification claim.

This Court's opinion. This Court affirmed the Supreme Court's order on different grounds.

The Court first held that CPLR 302(a)(1)'s articulable-nexus requirement was satisfied because *U.S. Tires'* alleged negligence occurred in New York. The Court recognized that "the facts in the instant case and related actions demonstrate numerous ties to other states." Slip op. 8. But according to the Court, "what firmly grounds this action in New York, is the defendant, US Tires." *Id.* U.S. Tires' "alleged negligence occurred at" its "place of business, in New York." *Id.* And U.S. Tires' "third-party causes of action against Ford and Goodyear for indemnification and contribution, which are the subject of this appeal, could not exist but for" that New York negligence. *Id.* at 8-9. The Court also pointed to the fact that Ford and Goodyear do business in New York "on such a grand scale" and

"would undoubtably benefit from the sale of replacement parts and services from third-party companies." *Id.* at 9. According to the Court, in this case "the inspection and installation of th[e] parts in New York was allegedly done so negligently, and the third-party claims for indemnification and contribution are therefore, tethered." *Id.*

The Court then held that exercising specific personal jurisdiction over Ford and Goodyear in these circumstances would "comport with constitutional due process requirements." *Id.* at 10. The Court broke the due-process inquiry into two high-level steps. "First, the defendant must have 'minimum contacts' with New York such that the defendant should reasonably anticipate being 'haled' into court in New York." *Id.* at 10-11 (quoting *D & R Glob. Selections, S.L. v. Bodega Olegario Falcon Piniero*, 29 N.Y.3d 292, 300 (2017)). Second, personal jurisdiction must be "reasonable under the circumstances of the particular case." *Id.* at 11 (quoting *D & R Glob. Selections*, 29 N.Y.3d at 300).

In the Court's view, the first step was satisfied because "Ford and Goodyear concede that they had sufficient 'minimum contacts' with New York." *Id.* And the second was satisfied because "Ford and Goodyear have failed to present any compelling argument as to why the exercise of jurisdiction is unreasonable." *Id.* at 12. The Court understood Ford and Goodyear's argument that the "suit has 'no connection' with and does not 'arise out of or relate to' their contacts in this state"

to be an argument as to why jurisdiction would be unreasonable. *Id.* The Court then rejected the argument because it "completely ignor[es] the two-part due process analysis applied by the Court of Appeals to ensure that exercise of personal jurisdiction under CPLR 302 comports with federal due process." *Id.*

ARGUMENT

A case warrants reargument when the Court has "overlooked or misapprehended" relevant facts or law. CPLR 2221(d)(2). Leave to appeal, meanwhile, is warranted when an issue is novel or of public importance, presents a conflict with prior decisions of the Court of Appeals, or involves a conflict among the Departments. *See* 22 NYCRR 500.22(b)(4). This case qualifies on all fronts.

I. REARGUMENT SHOULD BE GRANTED BECAUSE THIS COURT MISAPPREHENDED FORD'S CONSTITUTIONAL ARGUMENT AND BASED ITS LONG-ARM-ACT ANALYSIS ON A DISMISSED AND ABANDONED CLAIM.

A. Contrary To This Court's Conclusion, Ford Did Not Concede The Existence Of Minimum Contacts.

The Due Process Clause requires that a defendant have "certain minimum contacts with [the forum State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *LaMarca v.*

Pak-Mor Mfg. Co., 95 N.Y.2d 210, 216 (2000) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

For specific jurisdiction, the requisite "minimum contacts" exist when a defendant (1) "purposefully avails itself of the privilege of conducting activities within the forum State" and (2) "[t]he plaintiff's claims . . . arise out of or relate to" those in-state activities. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024, 1025 (2021) (citation omitted). That is, "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 and is therefore subject to the State's regulation.' " *Bristol-Myers Squibb Co. v. Superior Ct. of California*, 137 S. Ct. 1773, 1779 (2017) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 1781. The minimum-contacts inquiry thus "focuses on the relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (internal quotation marks omitted).

"Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " *Burger King Corp. v.*

Rudzewicz, 471 U.S. 462, 476 (1985) (quoting *International Shoe*, 326 U.S. at 320). These factors include the burden on the defendant, the forum State's interest, and the plaintiff's interest. *See id.*

Before both the Supreme Court and this Court, Ford recognized that it had some "forum contacts," meaning that it purposefully availed itself of the privilege of doing business in New York. Opening Br. 16. But Ford explained to this Court that the Due Process Clause nevertheless barred the exercise of specific jurisdiction in this case because U.S. Tires' cause of action was not "*connected* to" those contacts. *Id.* Ford highlighted the many U.S. Supreme Court cases explaining that the minimum-contacts inquiry requires that the suit arise out of or relate to the defendant's forum contacts. *See id.* at 17-20 (citing *Daimler AG v. Bauman*, 571 US. 117 (2014), *Bristol-Myers Squibb*, *Walden*, and *Goodyear*). And it explained that U.S. Tires' third-party claim failed to satisfy that requirement: "This litigation does not *arise out of* any of Ford and Goodyear's New York contacts." *Id.* at 17 (emphasis added). "All of Ford and Goodyear's allegedly relevant conduct," Ford noted, "took place outside of New York." *Id.* at 20.

U.S. Tires joined issue on this point. It cited a supposedly "highly analogous case" where the court "reject[ed] the *same argument* that Ford makes here, that it did not have sufficient 'minimum contacts' with the forum state . . . because no part of its tortious conduct . . . occurred in" the forum State. Response

Br. 45 (emphasis added). Doubling down, U.S. Tires argued that "[t]he Supreme Court of Montana last year likewise rejected the *same argument* Ford makes herein," *id.* at 46 (emphasis added), pointing to a case where Ford contended that it did not have sufficient minimum contacts with the forum state because the plaintiff's "claims do not arise out of or relate to any of Ford's [in-forum] activities," *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 443 P.3d 407, 415 (Mont. 2019), *aff'd*, 141 S. Ct. 1017 (2021). These cases are factually distinct in that the accident in each case occurred in the forum State. *See* Reply Br. 26. But the point is this: Ford argued in those cases that it did not have the requisite minimum contacts with the forum State because the claims at issue did not arise out of or relate to its in-state activities and U.S. Tires recognized that that was the "same argument" Ford raised in this case.

Despite all this, this Court believed that Ford conceded that it "had sufficient 'minimum contacts' with New York." Slip op. 11. That is simply wrong. Ford narrowly conceded that it had *some* contacts with New York; it did not broadly concede that it had *sufficient minimum contacts* with New York.

This Court's mistaken conclusion that Ford conceded minimum contacts rests on a broader misapprehension of the constitutional requirements for specific jurisdiction. This Court articulated an abbreviated minimum-contacts test, one that asked *only* whether Ford had "purposefully avail[ed] itself of the privilege of

conducting activities within the forum State." Slip op. 11 (citation omitted). But the minimum-contacts inquiry does not end there. It also asks whether the plaintiff's claims "arise out of or relate to the defendant's contacts' with the forum." *Ford*, 141 S. Ct. at 1025 (citation omitted); *see also supra* p. 11. This Court overlooked that second step and jumped ahead to the third, construing Ford's constitutional argument to be that exercising specific jurisdiction over it in this case would not comport with principles of fair play and substantial justice. Slip op. 10.

Ford did not make that argument. Ford's briefs do not contain the words "fair play" or "substantial justice," nor did Ford's counsel utter those words at oral argument. Even U.S. Tires recognized that Ford did not make a fair-play argument. *See* Response Br. 55 (pointing out that "Ford and Goodyear . . . have not even attempted to" show that "exercis[ing] personal jurisdiction over them would violate 'traditional notions of fair play and substantial justice.' "). Ford focused exclusively instead on the arise-out-of-or-relate-to element of minimum contacts. But the Court never considered Ford's argument. This Court should accordingly grant reargument to consider Ford's constitutional arguments as presented to this Court and analyze those arguments under the controlling due-process framework. And, on reargument, the Court should reverse the Supreme Court's due-process holding. Opening Br. 16-23; Reply Br. 22-28.

B. Indemnification Is Not At Issue In This Appeal.

This Court should order reargument for a second reason. The Court stated that U.S. Tires' "third-party causes of action against Ford and Goodyear for indemnification and contribution . . . are the subject of this appeal." Slip op. 8. The Court's reference to indemnification, a claim dismissed by the Supreme Court and abandoned by U.S. Tires on appeal, suggests the Court misunderstood the claims asserted. To the extent the Court based its analysis on indemnification, it should grant reargument.

U.S. Tires' only cause of action left on appeal was for contribution. Although U.S. Tires had originally asserted an additional third-party indemnification claim against Ford and Goodyear, the Supreme Court dismissed it. *See* R12-13. As the Supreme Court explained, "[t]he predicate of common law indemnification is . . . that there is no actual fault on the part of the proposed indemnitee." R12. So "[s]ince the basis of plaintiffs' complaint against US Tires is that US Tires was [itself] negligent in failing to inspect or test the tires, and ascertain as to their safety prior to installation," U.S. Tires cannot seek indemnification against Ford. R12-R13.

U.S. Tires did not cross-appeal that dismissal. Moreover, neither of its "Counter Questions Presented" concern that dismissal and its prayer for relief does not include reversal. *See* Response Br. 1, 56. Its response brief does not argue that

this Court should reverse the dismissal of its indemnification claim. Under well-established law, U.S. Tires' complete failure to cross appeal or advance an indemnification argument on appeal means that it has abandoned its claim. *See, e.g.*, *Smiler v. Board of Educ.*, 15 A.D.3d 409, 410 (2d Dep't 2005); *Owner Operator Indep. Drivers Ass'n v. New York State Dep't of Transp.*, 205 A.D.3d 53, 57 (3d Dep't 2022). This Court implicitly recognized that when it "affirm[ed] the order insofar as appealed from." Slip op. 12.

Despite all this, the Court referred to U.S. Tires' indemnification claim as part of "the subject of this appeal." *Id.* at 8. And its jurisdictional analysis could be read as turning on that claim. At argument, Ford's counsel explained that U.S. Tires' claim on appeal is "a contribution claim" and that the relevant acts here are the design, manufacture, and sale of the vehicle and tires. *See* Oral Argument at 3:10:00-3:10:46, 3:08:45-3:09:21. This Court nonetheless rejected those acts in favor of what appears to be a common-law duty on the part of Ford and Goodyear to indemnify U.S. Tires for any act of negligence involving Ford or Goodyear products. *See* Slip op. 9; *see Santoro v. Poughkeepsie Crossings, LLC*, 115 N.Y.S.3d 368, 372 (2d Dep't 2019) ("[T]he key element of" an indemnification claim is a "duty owed the indemnitee by the indemnitor to reimburse the indemnitee for damages the indemnitee was compelled to pay for the wrongdoing of the indemnitor.") (internal quotation marks and citations omitted).

The Court can determine whether the "elements" of the cause of action "arise[ ] from the [defendant's] New York contacts" only if it accurately identifies the cause of action at issue. *Licci*, 20 N.Y.3d at 341. If this Court based its long-arm-act analysis on U.S. Tires' dismissed indemnification claim, then its resulting analysis is fundamentally unsound. To the extent this Court's long-arm-act analysis turns on indemnification, the Court should grant reargument.

II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT LEAVE TO APPEAL.

In the alternative, this Court should grant leave to appeal on two issues. The Court's long-arm-act analysis is in tension with Court of Appeals precedent and raises a novel and important question of how to conduct the personal-jurisdiction analysis for contribution claims. And this Court's rejection of a minimum-contacts-based arise-out-of-or-relate-to requirement breaks from controlling precedent and creates a split with the other Departments and New York federal courts. Leave to appeal is warranted.

A. This Court's Long-Arm-Act Analysis Misapplies Court Of Appeals Precedent And Raises An Important And Novel Question.

Specific jurisdiction under CPLR 302(a)(1) requires an "articulable nexus between the business transacted and the cause of action sued upon." *McGowan v. Smith*, 52 N.Y.2d 268, 272 (1981). Under *Licci*, an articulable nexus exists where "at least one element" of the cause of action "arises from the [defendant's] New

York contacts." 20 N.Y.3d at 341. This Court articulated this test but failed to properly apply it: It identified the relevant breach as U.S. Tires' inspection and installation of the tires and it held that this breach was related to Ford and Goodyear's business in New York because Ford and Goodyear "undoubtably benefit" from "services from third-party companies" like U.S. Tires. Slip op. 8-9.

This Court's identification of the relevant breach as "U.S. Tires' alleged negligence" breaks from controlling precedent. U.S. Tires' only cause of action on appeal was for contribution. *See supra* pp. 15-16. A contribution claim asserts that the party seeking contribution and the party from whom contribution is sought each committed their "own negligence," both of which contributed to the plaintiff's ultimate injury. *Glaser v. M. Fortunoff of Westbury Corp.*, 71 N.Y.2d 643, 646 (1988). The "critical requirement for" a contribution claim "is that the breach of duty by the contributing party must have had a part in causing or augmenting the injury for which contribution is sought." *Raquet v. Braun*, 90 N.Y.2d 177, 183 (1997) (internal quotation marks omitted).

Because a contribution claim alleges a *separate* act of negligence by the third-party defendant against the original plaintiff, the relevant cause of action for CPLR 302(a)(1) purposes is the separate act of negligence by the third-party defendant. *McGowan*, for instance, involved a third-party claim by a New York third-party plaintiff against a foreign third-party defendant that had exported a

defective product to the third-party plaintiff, who then sold the product at its New York store. 52 N.Y.2d at 270-271. In considering whether the New York courts could exercise jurisdiction under CPLR 302(a)(1) over the third-party defendant, the Court of Appeals considered whether the third-party defendant's New York business transactions were "sufficiently related to the subject matter of the lawsuit." *Id.* at 273. The Court held that they were not, even though "the product in question was originally purchased [in New York] by a New York consumer." *Id.* at 274. The Court thus held that the third-party claim did not arise from the third-party defendant's business in New York, even though one element of the third-party plaintiff's negligence claim—the sale of the defective product—occurred in New York.

Under *McGowan*, then, the relevant breach in this case is Ford's act of manufacturing an allegedly defective Ford Explorer. After all, U.S. Tires' contribution claim alleges that even if it is partially responsible for Plaintiffs' injuries because it negligently installed the used tire onto the Ford Explorer, Ford should still pay its fair share of Plaintiffs' damages because Ford allegedly contributed to Plaintiffs' injuries through its own actions. *Cf. D & R Glob. Selections*, 29 N.Y.3d at 299 (identifying elements of relevant cause of action by looking to what "plaintiff must show" to "prevail on this claim"). It does not matter whether an element of the plaintiff's claim against the third-party plaintiff—

in *McGowan*, the sale of a defective product; here, U.S. Tires' installation of the tires—occurred in New York. And yet that is exactly what this Court concluded gave the New York courts jurisdiction over Ford.

The Court of Appeals has also explained that CPLR 302(a) "requires a close examination of [the] *defendant's* contacts." *Al Rushaid v. Pictet & Cie*, 28 N.Y.3d 316, 328 (2016) (emphasis added). But this Court found specific jurisdiction based on the *third-party plaintiff's* contacts in New York. That not only breaks from Court of Appeals precedent. It also departs from the constitutional requirement that "it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State." *Walden*, 571 U.S. at 291. This Court should grant leave to appeal to allow the Court of Appeals to address this departure from both New York's and the Constitution's defendant-centric approach to specific jurisdiction.

Even if U.S. Tires' alleged breach could somehow be the appropriate point of analysis when considering whether the New York courts have jurisdiction over *Ford's* alleged breach, leave to appeal is warranted to address this Court's conclusion that Ford's general business transactions in New York are "tethered" to U.S. Tires' alleged negligence because Ford and Goodyear do business on a "grand scale" in New York and "undoubtably benefit from the sale of replacement parts and services from third-party companies" like U.S. Tires. Slip op. 9.

This new, looser version of the articulable-nexus requirement is contrary to Court of Appeals precedent. Long-arm jurisdiction under CPLR 302(a)(1) requires a *case-specific* nexus between the claim and the defendant's New York contacts. This is apparent from the statute's text, which requires that the "cause of action aris[e] from" the defendants' business transactions in New York. CPLR 302(a)(1); *see also Kuzmich v. 50 Murray St. Acquisition LLC*, 34 N.Y.3d 84, 91 (2019) ("[C]ourts should construe unambiguous language to give effect to its plain meaning.") (citation omitted). Applying this text, the Court of Appeals has held that jurisdiction under CPLR 302(a)(1) is appropriate where there is "an 'articulable nexus' " between "the *plaintiff's cause of action*" and "the defendant's transaction of business" in New York. *D & R Glob. Selections*, 29 N.Y.3d at 298-299 (emphasis added). Put differently, there must be "a relatedness between the transaction and *the legal claim* such that the latter is not completely unmoored from the former." *Licci*, 20 N.Y.3d at 339 (emphasis added). "[T]he relationship between *the claim* and transaction" cannot be "merely coincidental." *D & R Glob. Selections*, 29 N.Y.3d at 299 (emphasis added) (citation omitted). That is why "[i]t is not enough that a non-domiciliary defendant transact business in New York to confer long-arm jurisdiction." *Id.* at 298.

So, for example, the defendant's attendance at events in New York that led to "an exclusive distribution agreement," the defendant's breach of which led to

the lawsuit, constituted an articulable nexus. *See id.* at 296-297. Likewise, the defendant's use of a New York bank account to launder funds had a substantial relationship to the plaintiff's money-laundering-based claims. *See Al Rushaid*, 28 N.Y.3d at 330.

But the Court did not cite any similar nexus between Ford's business in New York and U.S. Tires' alleged negligence. It did not even connect Ford's business in New York *with U.S. Tires*; the record does not suggest Ford was even aware of U.S. Tires' existence before this case. The Court instead pointed to the apparent benefits Ford gleans from "third-party companies" generally. Slip op. 9. Worse, the Court did not even *articulate* the actual nexus between Ford and those third-party companies—it instead surmised that Ford "undoubtably benefit[ted]" from third-party companies. *Id.* Boiled down, the Court did exactly what the Court of Appeals has forbidden: allow long-arm jurisdiction over a foreign defendant based on that defendant's general business in New York. *D & R Glob. Selections*, 29 N.Y.3d at 298. The end result is an articulable-nexus requirement that requires neither articulation nor a nexus.

Worse still, this Court's new articulable-nexus test favors third-party plaintiffs over direct plaintiffs. Third-party claims and direct claims often "involv[e] common questions of law and fact." *Sterling Nat'l Bank & Tr. Co. v. Merchants Bank*, 48 Misc. 2d 72, 75 (Civ. Ct. 1965). That is why a direct plaintiff

can amend its complaint as of right to assert claims against a new third-party defendant. *See* CPLR 1009. Here, for example, U.S. Tires' claim for contribution involves the exact same questions as Plaintiffs' direct action against Ford for negligence: whether Ford negligently designed or manufactured the Explorer at issue. The New York courts do not have long-arm jurisdiction over that direct action. *See Aybar v. Aybar*, 2016 N.Y. Slip Op. 31139(U), 2016 WL 3389890 (Sup. Ct., Queens Cnty. 2016). And yet they now have long-arm jurisdiction over a *third-party* action alleging the *exact same* claim. There is no good reason to allow third-party plaintiffs to bring an action in New York a direct plaintiff could not.

Complicating matters further, this Court's new approach to CPLR 302(a)(1) elevates *some* third-party plaintiffs over others: local third-party companies bringing third-party actions against major foreign companies. Now, that third-party plaintiff's contacts can be used to secure long-arm jurisdiction over a foreign defendant, so long as that foreign defendant does enough business in New York. So what might be "coincidental" for some companies—the fact that they marketed their products in New York and a third-party servicer committed an act of negligence involving their products in New York—is a "substantial relationship" for others. This relaxed and unpredictable approach to specific jurisdiction opens the floodgates to third-party claims against foreign defendants and will require

extensive briefing to determine which third-party claims can proceed in New York and which cannot.

At best, whether a third-party plaintiff's breach in New York can be used to secure long-arm jurisdiction over a foreign third-party defendant that does a lot of business in New York is an unsettled question. That much is clear from this Court's opinion, which—although it purported to distinguish Ford and Goodyear's cases—did not cite a single supposedly analogous case as supporting its rule. This Court and the other Departments would benefit from the Court of Appeals having the chance to address this open issue.

B. This Court's Due-Process Analysis Broke From Controlling Precedent And Created A Split With The Other Departments.

Finally, this Court should grant leave to appeal because its decision conflicts with U.S. Supreme Court precedent and creates a split with the other Departments. This Court held that Ford and Goodyear's argument that "exercising jurisdiction over them would violate due process because this suit has 'no connection' with and does not 'arise out of or relate to' their contacts in this state . . . completely ignor[es] the two-part due process analysis applied by the Court of Appeals." Slip op. 12. The upshot of this holding is that, in the Second Department, a sufficient connection between the defendant, the forum, and the litigation is not a constitutional requirement for the exercise of specific jurisdiction. It is not part of the minimum-contacts prong, which can be satisfied by the existence of *some*

contacts with the forum. And it is not part of the reasonableness prong, which takes into account other considerations.

This Court's jettisoning of the connection requirement is a radical break from U.S. Supreme Court precedent. The requirement that the suit arise out of or relate to the defendant's forum contacts is fundamental to due process. The Supreme Court has characterized state-court attempts to evade that requirement as creating "a loose and spurious form of general jurisdiction." *Bristol-Myers*, 137 S. Ct. at 1781. And the Supreme Court only last year rejected the "view that a state court should have jurisdiction over a nationwide corporation like Ford on *any* claim, no matter how unrelated to the State or Ford's activities there." *Ford*, 141 S. Ct. at 1027 n.3. And yet that is the effect of this Court's decision.

To the extent this Court suggested it is not bound by these precedents because they are not part of the "two-part due process analysis applied *by the Court of Appeals*," Slip op. 12 (emphasis added), it would be wrong as a matter of constitutional law, *see Fletcher v. Kidder, Peabody, & Co.*, 81 N.Y.2d 623, 632 (1993) ("[W]e are bound to follow both the holding and the rationale of the Nation's highest court on . . . questions of Federal law, when, as here, there is no ambiguity in the Court's position."). It would also be wrong on its own terms. *See Williams v. Beemiller, Inc.*, 33 N.Y.3d 523, 529 (2019) (must look to defendant's

suit-related conduct); *Aybar v. Aybar*, 37 N.Y.3d 274, 288-289 (2021) (articulating the constitutional arise-out-of-or-relate-to requirement).

This Court is also now out of step with the other Departments. In the First Department, there must be "a relationship among defendant, the forum, and the litigation" before a New York court can exercise specific jurisdiction over a foreign defendant. *English v. Avon Products, Inc.*, 206 A.D.3d 404, 407 (1st Dep't 2022). The Third Department has likewise recognized that "it is well established that the suit must arise[ ] out of or relate[ ] to the defendant's contacts with the forum state." *Archer-Vail v. LHV Precast Inc.*, No. 533905, 2022 WL 14933039, at *2 (3d Dep't Oct. 27, 2022) (internal quotation marks omitted).

This Court's different approach led to a different outcome. Had this case arisen in either the First or Third Department, the Court would have dismissed it for lack of personal jurisdiction. There is no "relationship among defendant, the forum, and the litigation" here. *English*, 206 A.D.3d at 407. The products at issue were designed, manufactured, and first sold outside of New York, and the Plaintiffs' injury occurred in Virginia. *See* Opening Br. 17. For the same reasons, this suit does not "arise[ ] out of or relate[ ] to the defendant's contacts with the forum state." *Archer-Vail*, 2022 WL 14933039 at *2. This Court's opinion thus creates a patchwork system where the Due Process Clause means different things in different New York courts.

Moreover, because this is a *federal constitutional* issue, the U.S. Constitution now requires something less in one segment of New York's state courts than it requires in New York's federal courts. *See, e.g.*, *In re del Valle Ruiz*, 939 F.3d 520, 529 (2d Cir. 2019) (articulating the arising-out-of-or-relate-to requirement). That creates an opportunity for forum shopping between New York venues. After this Court's opinion, a plaintiff seeking to sue a foreign defendant for an injury occurring outside New York will now be less likely to face dismissal for lack of personal jurisdiction at Sutphin Boulevard than 60 Centre Street or Camden East Plaza—even though the U.S. Constitution governs in all three courts.

Finally, a state court's exercise of personal jurisdiction over a foreign defendant raises important constitutional questions. Personal jurisdiction raises "a variety of interests," the most important of which is the "burden on the defendant." *Bristol-Myers Squibb*, 137 S. Ct. at 1780. This burden "encompasses the . . . abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question." *Id.* Illustrating the important liberty and federalism interests at stake, the U.S. Supreme Court and Court of Appeals alike have granted review in cases over the past few years to police personal jurisdiction's outer bounds. *See, e.g.*, *Mallory v. Norfolk S. Ry. Co.*, No. 21-1168 (U.S. argued Nov. 8, 2022); *Ford Motor Co.*, 141 S. Ct. 1017; *Bristol-Myers*

Squibb, 137 S. Ct. 1773; *Aybar v. Aybar*, 34 N.Y.3d 905 (2019). This case should join these in receiving further appellate review.

CONCLUSION

For the foregoing reasons, the Court should grant reargument, and, on reargument, reverse the Supreme Court's order. In the alternative, the Court should grant leave to appeal to the Court of Appeals.

Respectfully submitted,

HOGAN LOVELLS US LLP

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** Admitted pro hac vice*

December 2, 2022

Counsel for Ford Motor Company

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,

v.

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

Defendant-Respondent.

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

Third-Party Plaintiff-Respondent,

v.

THE GOODYEAR TIRE & RUBBER COMPANY and FORD MOTOR COMPANY,

Third-Party Defendants-Appellants,

and

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD,

Third-Party Defendant.

Docket No.
2019-12110

Queens County Clerk's
Index No. 703632/17

AFFIRMATION IN SUPPORT OF THIRD-PARTY DEFENDANT-APPELLANT FORD'S MOTION FOR REARGUMENT OR, IN THE ALTERNATIVE, FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

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 for reargument or, in the alternative, for leave to appeal to the Court of Appeals.

2. Attached as **Exhibit A** is a true copy of the Supreme Court's order being appealed from.

3. Attached as **Exhibit B** is a true copy of Ford's notice of appeal and request for Appellate Division intervention.

4. Attached as **Exhibit C** is a true copy of this Court's opinion of November 2, 2022.

5. I affirm under penalty that the foregoing is true and correct.

December 2, 2022
Washington, D.C.

/s/ Sean Marotta
Sean Marotta

EXHIBIT A

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

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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.,

Plaintiff(s),

-against-

US TIRES AND WHEELS OF QUEENS, LLC,,

Defendant.

----------x

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.

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Index No.: 703632/2017

Motion Date: May 7, 2019

Motion Seq. Nos.: 017 & 019

FILED
SEP 27 2019
COUNTY CLERK
QUEENS COUNTY

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.
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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
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
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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.

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City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

EXHIBIT C

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

D70169
C/afa

_____AD3d_____ Argued - April 18, 2022

FRANCESCA E. CONNOLLY, J.P.
LINDA CHRISTOPHER
LARA J. GENOVESI
DEBORAH A. DOWLING, JJ.

2019-12110 OPINION & ORDER

Jose Aybar, etc., et al., plaintiffs, v US Tires and Wheels of Queens, LLC, defendant third-party plaintiff-respondent; Goodyear Tire & Rubber Company, et al., third-party defendants-appellants, et al., third-party defendant.

(Index No. 703632/17)

APPEAL by the third-party defendants Goodyear Tire & Rubber Company and Ford Motor Company, in an action, inter alia, to recover damages for personal injuries, from an order of the Supreme Court (Denis J. Butler, J.), dated September 25, 2019, and entered in Queens County. The order, insofar as appealed from, denied those third-party defendants' separate motions pursuant to CPLR 3211(a) to dismiss the third-party complaint insofar as asserted against each of them.

DLA Piper, LLP (US), New York, NY (Jayne Anderson Risk and Neal F. Kronley of counsel) for third-party defendant-appellant Goodyear Tire & Rubber Company, and Aaronson, Rappaport Feinstein & Deutsch, LLP, New York, NY (Elliot J. Zucker, Peter J. Fazio, and Hogan Lovells US, LLP [Sean Marotta and Michael West, pro hac vice], of counsel), for third-party defendant-appellant Ford Motor Company (one brief filed).

Farber Brocks & Zane, LLP, Garden City, NY (Lester Chanin of counsel), for defendant third-party plaintiff-respondent.

Omrani & Taub, P.C. (Parker Waichman, LLP, Port Washington, NY [Jay L.T. Breakstone], of counsel), for plaintiffs Orlando Gonzales, Jesenia Aybar, as administrator of the estate of Nelia Oliveras, as legal guardian on behalf of K.C., a minor, and as administrator of the estate of T.C., and Anna Aybar.

GENOVESI, J. This appeal presents the question of whether specific personal jurisdiction exists over the third-party defendants, two out-of-state corporations, pursuant

to New York State's long-arm statute, CPLR 302(a)(1). Specifically, this case presents an opportunity to discuss the second prong of the long-arm statute, whether there is an articulable nexus or substantial relationship between the cause of action sued upon, or an element thereof, and those third-party defendants' business transactions in New York. We conclude that here, there is specific jurisdiction over the out-of-state corporations.

I. Factual and Procedural History

A. Facts

In 2002, the third-party defendant Ford Motor Company (hereinafter Ford) manufactured a Ford Explorer in Missouri and sold the vehicle to an independently-owned Ford dealership in Ohio. In 2009, the vehicle entered New York when it was sold and registered to a New York resident by the name of Jose Velez. In 2011, Jose Aybar, Jr., a New York resident, purchased the vehicle from Velez in New York.

On or about June 17, 2012, Aybar brought the vehicle to the defendant, US Tires and Wheels of Queens, LLC (hereinafter US Tires), in New York, for service to its tires, at Aybar's request. US Tires inspected the tires and then installed them.

Two weeks later, on July 1, 2012, Aybar was driving on an interstate highway in Virginia as part of a return trip from Disney World with members of his family as passengers when one of the tires allegedly failed. Aybar lost control of the vehicle and it overturned several times. There were six passengers in the vehicle. Three, including a child, died and three were seriously injured. The tire was manufactured by the third-party defendant Goodyear Tire & Rubber Company (hereinafter Goodyear).

The accident gave rise to three lawsuits, including this one, all involving direct or third-party claims against Ford and Goodyear. Goodyear is incorporated and has its principal place of business in Ohio. Ford is incorporated in Delaware and has its principal place of business in Michigan.

B. Procedural History

1. *Aybar v Aybar* (*Aybar* I)

In *Aybar v Aybar* (169 AD3d 137, *affd* 37 NY3d 274), the injured passengers and the representatives of the estates of the passengers who died asserted negligence claims against the owner and driver, Aybar, as well as products liability and negligence claims against Ford and Goodyear. In that action, Ford and Goodyear separately moved pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against each of them on the ground of lack of personal jurisdiction (*see id.* at 140). Goodyear demonstrated that the tire was designed in Ohio and

manufactured in Tennessee. Ford demonstrated that the vehicle was manufactured in Missouri and sold in Ohio. Ford further demonstrated that it did not have manufacturing plants in New York and did not directly engage in the servicing of Ford vehicles in New York (*see id.*). In opposing the motions to dismiss, the plaintiffs argued that Ford and Goodyear were subject to general jurisdiction in New York (*see id.*).

In two orders dated May 31, 2016, the Supreme Court denied the motions to dismiss, finding that while there was no specific jurisdiction under New York's long-arm statute, CPLR 302, there was general jurisdiction under CPLR 301 (*see Aybar v Aybar*, 2016 NY Slip Op 31138[U] [Sup Ct, Queens County 2016, Raffaele, J.], *revd* 169 AD3d 137, *affd* 37 NY3d 274; *Aybar v Aybar*, 2016 NY Slip Op 31139[U] [Sup Ct, Queens County 2016, Raffaele, J.], *revd* 169 AD3d 137, *affd* 37 NY3d 274).

Ford and Goodyear appealed. On appeal, Ford and Goodyear argued that the Supreme Court erred in finding general jurisdiction. In their briefs on appeal, the plaintiffs did not argue that New York also had specific jurisdiction or long-arm jurisdiction. However, US Tires, which was not a party to the action, submitted a brief arguing that there was both general and specific jurisdiction or long-arm jurisdiction over Ford and Goodyear.

In an opinion by Justice Brathwaite Nelson, this Court first noted that the issue of whether New York could exercise specific or long-arm jurisdiction had not been raised by the plaintiffs in opposition to the motions to dismiss and that therefore, it would not consider it (*see Aybar v Aybar*, 169 AD3d at 143). This Court then reversed the orders appealed from, holding that Goodyear's and Ford's contacts with New York did not support a finding of general jurisdiction under due process principles because, despite their extensive commercial activities in New York, they were not "at home" in New York (*id.* at 146). In addition, this Court held that neither Goodyear nor Ford consented to New York's general jurisdiction by registering to do business in New York and appointing an agent for service of process (*see id.* at 152).

The plaintiffs appealed. On appeal, the Court of Appeals affirmed, but only on the issue before it, which was whether Ford and Goodyear consented to New York's general jurisdiction (*see Aybar v Aybar*, 37 NY3d 274 [2021]). The Court of Appeals declined to address the issue of specific or long-arm jurisdiction as that issue was not properly before it (*see id.* at 282). In addition, the Court of Appeals noted that "the plaintiffs have abandoned any argument that Ford and Goodyear are essentially at home in New York such that general jurisdiction exists" (*id.*). Accordingly, the Court of Appeals concluded that the only issue before it was whether Ford and Goodyear consented to general jurisdiction in New York by registering to do business and designating a local agent for

service of process in compliance with the Business Corporation Law (*see id*.). The Court of Appeals held that Ford and Goodyear did not so consent (*see id*.).

2. *Aybar v Goodyear* (*Aybar* II)

The second action, *Aybar v Goodyear Tire & Rubber Co.* (175 AD3d 1373), was commenced by Aybar, the owner and driver, against Goodyear, among others, alleging strict products liability, negligence, and breach of warranty claims. In that action, Goodyear also moved pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it for lack of personal jurisdiction. In an order dated May 31, 2016, the Supreme Court denied the motion (*see Aybar v Goodyear Tire & Rubber Co.*, 2016 NY Slip Op 33056[U] [Sup Ct, Queens County 2016, Raffaele, J.], *revd* 175 AD3d 1373). The Supreme Court found that there was no specific or long-arm jurisdiction over Goodyear under CPLR 302 (a)(1) because the strict products liability, negligence, and breach of warranty claims did not arise out of Goodyear's activities in New York (*see Aybar v Goodyear Tire & Rubber Co.*, 2016 NY Slip Op 33056[U]).

However, the Supreme Court found that Goodyear was subject to general jurisdiction under CPLR 301 because (1) its activities in New York were so continuous and systematic that it was essentially "at home" in New York, and (2) Goodyear consented to general jurisdiction by registering to do business in New York (*see Aybar v Goodyear Tire & Rubber Co.*, 2016 NY Slip Op 33056[U], **5).

Goodyear appealed and on appeal, neither Goodyear nor the plaintiffs raised the issue of specific or long-arm jurisdiction. Though not a party to that action, it was only US Tires who submitted a brief, arguing that Goodyear was subject to specific or long-arm jurisdiction. US Tires maintained that because Goodyear marketed its tires in New York and there was a connection between Goodyear's marketing its tires in New York and the accident, and since Goodyear sold the exact same model tire in New York with the same design flaws and manufacturing defects as the tire involved in the accident, Goodyear was subject to long-arm jurisdiction in New York. However, this Court, again, did not consider the issue of specific jurisdiction or long-arm jurisdiction, as it was not raised before the Supreme Court and therefore not properly before this Court. As to general jurisdiction, citing our prior decision in *Aybar* I, this Court reversed the order appealed from (*see Aybar v Goodyear Tire & Rubber Co.*, 175 AD3d at 1373-1374). This Court again found that there was no general jurisdiction over Goodyear and that Goodyear did not consent to general jurisdiction by registering to do business in New York (*see id.* at 1374).

3. *Aybar v US Tires* (*Aybar* III)

The plaintiffs, including Aybar, commenced the instant action against the defendant

US Tires, which allegedly negligently inspected and installed the Goodyear brand tires onto Aybar's vehicle in New York. US Tires commenced a third-party action against Ford and Goodyear and one other entity seeking indemnification and contribution. In their respective third-party answers, Ford and Goodyear both asserted the affirmative defense of lack of personal jurisdiction.

C. The Underlying Motion Practice

Here, Ford and Goodyear separately moved pursuant to CPLR 3211(a) to dismiss the third-party complaint insofar as asserted against each of them, on the ground, among others, that the New York court lacked personal jurisdiction over each of them. Ford and Goodyear argued that there was no general jurisdiction. Additionally, they argued that there was no specific or long-arm jurisdiction under CPLR 302. In opposing the separate motions of Ford and Goodyear, US Tires argued, among other things, that New York could exercise specific jurisdiction pursuant to CPLR 302. Some of the plaintiffs also opposed the motions to dismiss.

D. The Order Appealed From

In an order dated September 25, 2019, the Supreme Court, inter alia, denied Ford and Goodyear's motions (*see Aybar v US Tires & Wheels of Queens, LLC*, 65 Misc 3d 932 [Sup Ct, Queens County 2019, Butler, J.]). As to general jurisdiction, the court stated that it was constrained by this Court's decisions in *Aybar* I and *Aybar* II. However, as to specific jurisdiction, the court held that US Tires demonstrated that Ford and Goodyear fell within the reach of New York's long-arm jurisdiction statute, CPLR 302(a)(1), for two reasons. First, it stated, "[i]t 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" (*Aybar v US Tires & Wheels of Queens, LLC*, 65 Misc 3d at 935). Second, it stated:

> "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" (*id.* at 935-936).

The court further held that due process considerations were satisfied, even though the accident occurred in Virginia, because both Ford and Goodyear "assure the flow of their products to New York through their myriad assortment of purposeful activities in which they partake" and because "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" (*id.* at 937).

Ford and Goodyear appeal. The appeal, as limited by their joint brief, raises the question of whether a New York court can exercise specific personal jurisdiction over Ford and Goodyear, two out-of-state corporations, for claims arising out of a Virginia car accident. We conclude that it can, and affirm the order insofar as appealed from.

II. Legal Analysis

"*International Shoe* crystallized the two categories of personal jurisdiction that we now recognize, general or all-purpose jurisdiction and specific or case-linked jurisdiction. The former permits a court to exercise jurisdiction over a defendant in connection with a suit arising from events occurring anywhere in the world, whereas the latter permits a court to exercise jurisdiction only where the suit arises out of or relates to the defendant's contacts with the forum state" (*Aybar v Aybar*, 37 NY3d at 288-289 [alterations, citation, and internal quotation marks omitted]; *see Bristol-Myers Squibb Co. v Superior Court of Cal., San Francisco Cty.*, __ US __, __, 137 S Ct 1773, 1780; *Goodyear Dunlap Tires Operations, S.A. v Brown*, 564 US 915, 919; *International Shoe Co. v Washington*, 326 US 310).

"Specific jurisdiction has rapidly expanded" (*Aybar v Aybar*, 37 NY3d at 289). "'Since *International Shoe*, specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role'" (*id.*, quoting *Daimler AG v Bauman*, 571 US 117, 182 [internal quotation marks omitted]; *see Goodyear Dunlap Tires Operations, S.A. v Brown*, 564 US at 925). The United States Supreme Court has moved away from the rigid interpretation that a tribunal's jurisdiction is limited by "the geographic bounds of the forum," which was seen in *Pennoyer v Neff* (*Daimler AG v Bauman*, 571 US at 125, citing *Pennoyer v Neff*, 95 US 714). "Specific jurisdiction has been cut loose from *Pennoyer*'s sway, but [the Supreme Court has] declined to stretch general jurisdiction beyond limits traditionally recognized" (*Daimler AG v Bauman*, 571 US at 132). "The law of specific jurisdiction thus seeks to ensure that States with 'little legitimate interest' in a suit do not encroach on States more affected by the controversy" (*Ford Motor Co. v Montana Eighth Jud. Dist. Ct.*, __ US __, __, 141 S Ct 1017, 1025, citing *Bristol-Myers Squibb Co. v Superior Court of Cal., San Francisco Cty.*, __ US at __, 137 S Ct at 1780). Specific

jurisdiction "covers defendants less intimately connected with a State, but only as to a narrower class of claims" (*Ford Motor Co. v Montana Eighth Jud. Dist. Ct.*, __ US at __, 141 S Ct at 1024).

A. Statutory Framework

In New York, specific jurisdiction is obtained through New York's long-arm statute, CPLR 302 (*see Fanelli v Latman*, 202 AD3d 758). CPLR 302(a)(1) provides that "[a]s to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state[.]" "The CPLR 302(a)(1) jurisdictional inquiry is twofold: under the first prong the defendant must have conducted sufficient activities to have transacted business in the state, and under the second prong, the claims must arise from the transactions" (*Rushaid v Pictet & Cie*, 28 NY3d 316, 323).

In this case, Ford and Goodyear concede that the first prong of CPLR 302(a)(1) is satisfied. Therefore, the discussion that follows is limited to the second prong, whether US Tires' third-party claims arise from Ford's and Goodyear's business transactions in New York.

To satisfy the second prong, the statute requires an "articulable nexus" or "substantial relationship" between the cause of action sued upon, or an element thereof, and the defendants' business transactions in New York (*D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 298 [internal quotation marks omitted]; *see Licci v Lebanese Can. Bank, SAL*, 20 NY3d 327, 329; *McGowan v Smith*, 52 NY2d 268; *Lowy v Chalkable, LLC*, 186 AD3d 590; *Qudsi v Larios*, 173 AD3d 920). Importantly, "'[t]his inquiry is relatively permissive, and does not require causation'" (*Skutnik v Messina*, 178 AD3d 744, 745, quoting *Rushaid v Pictet & Cie*, 28 NY3d at 329; *see Lowy v Chalkable, LLC*, 186 AD3d at 592). There must at least be "a relatedness between the transaction and the legal claim such that the latter is not completely unmoored from the former, regardless of the ultimate merits of the claim" (*Skutnik v Messina*, 178 AD3d at 745 [internal quotation marks omitted]). Therefore, jurisdiction under CPLR 302(a)(1) "is proper even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted" (*Fischbarg v Doucet*, 9 NY3d 375, 380 [internal quotation marks omitted]). "Where this necessary relatedness is lacking, we have characterized the claim as 'too attenuated' from the transaction, or 'merely coincidental' with it" (*Licci v Lebanese Can. Bank, SAL*, 20 NY3d at 340, citing *Johnson v Ward*, 4 NY3d 516, 520).

B. Application of the Law

"The ultimate burden of proving a basis for personal jurisdiction rests with the party

asserting jurisdiction" (*Fannelli vLatman*, 202 AD3d at 759). However, in opposing a motion pursuant to CPLR 3211(a)(8) to dismiss based on lack of personal jurisdiction, a party need only make a prima facie showing that personal jurisdiction exists (*see Federal Natl. Mtge. Assn. v Grossman*, 205 AD3d 770, 771; *Lowy v Chalkable, LLC*, 186 AD3d at 590).

1. CPLR 302(a)(1)

Here, we conclude that US Tires met its burden in opposition to Ford's and Goodyear's motions by making a prima facie showing of jurisdiction pursuant to CPLR 302(a)(1) (*see Skutnik v Messina*, 178 AD3d 744; *Robins v Procure Treatment Ctrs., Inc*., 157 AD3d 606; *cf. Santiago v Highway Frgt. Carriers, Inc.*, 153 AD3d 750). As stated above, Ford and Goodyear concede that they conducted sufficient activities to have transacted business in New York, thus satisfying the first prong of CPLR 302(a)(1). As to the second prong of CPLR 302(a)(1), US Tires demonstrated that Goodyear's and Ford's activities in New York have a sufficient connection with the claims herein.

Undoubtably, the facts in the instant case and related actions demonstrate numerous ties to other states. Ford, a Delaware corporation, with its principal place of business in Michigan, manufactured the vehicle in Missouri and sold it in Ohio. Goodyear, an Ohio corporation, designed the tire in Ohio and manufactured it in Tennessee. The accident occurred in Virginia. However, what distinguishes the instant action (*Aybar* III) from the related actions (*Aybar* I and *Aybar* II), and what firmly grounds this action in New York, is the defendant, US Tires.

This action, unlike *Aybar* I and *Aybar* II, is not a direct action against Ford or Goodyear. In this action, Aybar, a resident of New York, alleges a cause of action sounding in negligence against US Tires. Based on the record before us, it appears that US Tires, an automotive mechanic shop, does not manufacture or sell its own tires. Its business centers around repairs to automobiles, as well as the sale and installation of tires from companies such as Ford and Goodyear. US Tires was tasked with inspecting and installing the Goodyear tires in question on Aybar's 2002 Ford Explorer and the plaintiffs allege that it did so negligently. The alleged negligence occurred at US Tires' place of business, in New York. Therefore, although the plaintiffs' damages, here the injuries, occurred in Virginia, in this action, the alleged breach occurred in New York.

Notably, the motions before the Supreme Court were to dismiss the third-party complaint insofar as asserted against Ford and Goodyear for lack of personal jurisdiction. US Tires' third-party complaint alleges that if it is found negligent, its liability is secondary to the negligence of Ford and Goodyear. The third-party causes of action against Ford and Goodyear for indemnification and contribution, which are the subject of this appeal, could not exist but for US

Tires' alleged negligence, which occurred in New York.

The contention of Ford and Goodyear that the claims here do not "arise out of" their New York activities is not persuasive. The inquiry before us is considered "permissive," and therefore, the claim need not "arise out of" nor be causally related to their transactions in New York. Rather, the claim need only be sufficiently related to their transactions in New York, or have some "articulable nexus" (*D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 298 [internal quotation marks omitted]). Also unpersuasive is their argument that, because they did not design, manufacture, or sell the vehicle or the tire in New York, their transactions in New York are entirely "unmoored" from the claims herein. Ford and Goodyear purposely availed themselves of the New York market to sell motor vehicles and tires. By doing so, and on such a grand scale as befitting titans in their respective industries, such as Ford and Goodyear, they would undoubtably benefit from the sale of replacement parts and services from third-party companies. Here, the inspection and installation of those parts in New York was allegedly done so negligently, and the third-party claims for indemnification and contribution are therefore, tethered.

This case may be distinguished from *Fernandez v DaimlerChrysler, AG.* (143 AD3d 765), on which Ford and Goodyear rely. In *Fernandez,* the plaintiff was driving in Pennsylvania when she allegedly lost control of her Jeep. As a result of the accident, the plaintiff commenced an action sounding in strict products liability and negligence against, among others, DaimlerChrysler, A.G., alleging defective ball joints and front lower control arms. DaimlerChrysler, A.G., moved to dismiss the complaint insofar as asserted against it pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction. In *Fernandez,* we held that the plaintiff did not establish, prima facie, that DaimlerChrysler, A.G., conducted activities in New York which bore a "substantial relationship" or an "articulable nexus" to the action (*id.* at 767). In that case, DaimlerChrysler, A.G., did not manufacture the subject Jeep or the allegedly defective parts. It did not sell the vehicle to the plaintiff.

Also distinguishable is *Krajewski v Osterlund, Inc.* (111 AD2d 905). In *Krajewski*, the plaintiff was in a motor vehicle accident in Indiana when the rear axle of a 1974 Diamond Reo truck broke loose and struck his vehicle. The plaintiff commenced an action in New York against Osterlund, Inc. (hereinafter Osterlund), a Pennsylvania corporation. The defendants moved to dismiss the complaint for lack of personal jurisdiction. In *Krajewski*, this Court found no "articulable nexus" between the alleged business transacted in New York and the cause of action sued upon (*id.* at 906). The defendant, Osterlund, did not manufacture the vehicle in question. The vehicle in question was manufactured by Diamond Reo Trucks, Inc., a Michigan corporation that

had previously filed for bankruptcy in 1975 (*see id.* at 905). Although Osterlund did manufacture other vehicles that it sold in New York, the plaintiff failed to set forth an "articulable nexus" between that business in New York and the cause of action sued upon (*id.* at 906).

Further, Ford's and Goodyear's reliance on *Pichardo v Zayas* (122 AD3d 699) is misplaced. In *Pichardo*, the plaintiff, a resident of New Jersey, allegedly was injured when cutting a piece of plywood with a circular saw in preparation for laying tile at the defendants' home in New Jersey. The defendants were served with process in New Jersey. The action was commenced in New York. The defendants moved to dismiss the complaint pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction. On appeal, this Court reversed the Supreme Court and held that the relationship between the causes of action and the defendants' activities in New York were too insubstantial to warrant a New York court's exercise of personal jurisdiction pursuant to CPLR 302(a)(1) (*see id.* at 701). In *Pichardo*, the only tie to New York was that the agreement to perform the work was reached in New York. Notably, in determining whether an "articulable nexus" or "substantial relationship" exists to meet the second prong of the CPLR 302(a)(1) inquiry, this Court looked to situs of the cause of action (*id.*). We noted that, although the agreement was reached in New York, the plaintiff's cause of action before us was not one for breach of the contract. Rather, the complaint sounded in negligence, as the plaintiff alleged that the defendants provided him with a defective saw, which occurred in New Jersey (*see id.*).

2. Due Process/Minimum Contacts

When all the requirements of CPLR 302 are met, the exercise of personal jurisdiction still must comport with constitutional due process requirements (*see International Shoe Co. v Washington*, 326 US at 310; *Williams v Beemiller, Inc*., 33 NY3d 523; *D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 299; *Rushaid v Pictet & Cie*, 28 NY3d at 330; *LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 216; *Sacco v Reel-O-Matic, Inc*., 183 AD3d 567). While there is significant overlap with CPLR 302, "because New York's long-arm statute is not coextensive with the limits of the Due Process Clause, this requires a separate inquiry" (*SUEZ Water N.Y. Inc. v E.I. du Pont de Nemours & Co.*, 578 F Supp 3d 511, 529 [SD NY]; *see D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 299-300). "[W]hile 'personal jurisdiction permitted under the long-arm statute may theoretically be prohibited under due process analysis, we would expect such cases to be rare'" (*D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 299-300, quoting *Rushaid v Pictet & Cie*, 28 NY3d at 331).

The due process analysis is twofold. First, the defendant must have "minimum contacts" with New York such that the defendant should reasonably anticipate being "haled" into

court in New York (*D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 300 [internal quotation marks omitted]; *see LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d at 216; *see also Sharbat v Iovance Biotherapeutics, Inc.*, 2021 WL 1164717, 2021 US Dist LEXIS 58328 [SD NY, 20 Civ. 1391 (ER)]). With respect to due process, "[a] non-domiciliary tortfeasor has minimum contacts with the forum State . . . if it purposefully avails itself of the privilege of conducting activities within the forum State" thus invoking the benefits and protections of the forum state's laws (*LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d at 216 [internal quotation marks omitted]; *see Hanson v Denckla*, 357 US 235, 253; *Williams v Beemiller, Inc.*, 33 NY3d at 528). "This test envisions something more than the 'fortuitous circumstance' that a product sold in another state later makes its way into the forum jurisdiction through no marketing or other effort of defendant" (*Williams v Beemiller, Inc.*, 33 NY3d at 528, quoting *World-Wide Volkswagen Corp. v Woodson*, 444 US 286, 295).

"The second element, in essence, asks whether personal jurisdiction is reasonable under the circumstances of the particular case" (*D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 300 [internal quotation marks omitted]). This is an assessment of reasonableness or whether personal jurisdiction offends "notions of fair play and substantial justice" and calls for consideration of five factors: (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies (*Rushaid v Pictet & Cie*, 28 NY3d at 331 [internal quotation marks omitted]; *see Asahi Metal Indus. Co. v Superior Court of Cal., Solano City*, 480 US 102, 113; *Burger King Corp. v Rudzewicz*, 471 US 462, 477; *Sharbat v Iovance Biotherapeutics, Inc.*, 2021 WL 1164717, 2021 US Dist LEXIS 58328). "Where minimum contacts exist, the defendant has the burden to 'present a compelling case that the presence of some other considerations would render jurisdiction unreasonable'" (*D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 300, quoting *LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d at 217-218).

Based on the record before us, the exercise of specific jurisdiction over Ford and Goodyear comports with due process (*see Ford Motor Co. v Montana Eighth Jud. Dist. Ct.*, __ US at __, 141 S Ct at 1017; *SUEZ Water New York Inc. v E.I. du Pont de Nemours & Co.*, 578 F Supp 3d 511). Initially, it is noted that, as stated above, in this case Ford and Goodyear concede that they had sufficient "minimum contacts" with New York. Therefore, the only remaining question is whether Ford and Goodyear have met their burden of presenting "a compelling case that the presence

of some other considerations would render jurisdiction unreasonable" (*LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d at 217-218; *see D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 300). We conclude that Ford and Goodyear have failed to meet this burden.

Ford and Goodyear have failed to present any compelling argument as to why the exercise of jurisdiction is unreasonable (*see D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 300). Rather, Ford and Goodyear contend that exercising jurisdiction over them would violate due process because this suit has "no connection" with and does not "arise out of or relate to" their contacts in this state, completely ignoring the two-part due process analysis applied by the Court of Appeals to ensure that exercise of personal jurisdiction under CPLR 302 comports with federal due process. They fail to present any reason why the exercise of personal jurisdiction offends traditional notions of fair play and substantial justice (*see Rushaid v Pictet & Cie*, 28 NY3d at 331).

Under the circumstances of this case, jurisdiction is reasonable. There is no discernible difference for companies such as Ford or Goodyear whether they defend an action in New York or Virginia, where the accident occurred. However, New York has an interest in adjudicating the dispute, as it is the residence of both Aybar and the defendant, US Tires, as well as the location of the alleged breach in this action.

III. Conclusion

The Supreme Court properly denied the separate motions of Ford and Goodyear pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against each of them for lack of personal jurisdiction.

Accordingly, we affirm the order insofar as appealed from.

In light of our determination, we need not reach the parties' remaining contentions.

CONNOLLY, J.P., CHRISTOPHER and DOWLING, JJ., concur.

ORDERED that the order is affirmed insofar as appealed from, with costs to the defendant third-party plaintiff-respondent payable by the third-party defendants-appellants.

ENTER:

Maria T. Fasulo

Maria T. Fasulo
Clerk of the Court