To be Argued by:
JAY L.T. BREAKSTONE.
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Second Department

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

Plaintiffs,

– and –

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

Plaintiffs-Respondents,

Docket No.: 2019-12110

(For Continuation of Caption See Inside Cover)

BRIEF FOR PLAINTIFFS-RESPONDENTS

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Queens County Clerk's Index No. 703632/17

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

Third-Party Plaintiff-Respondent,

– against –

THE GOODYEAR TIRE & RUBBER COMPANY
and FORD MOTOR COMPANY,

Third-Party Defendants-Appellants,

– and –

GOODYEAR DUNLOP TIRES NORTH AMERICA, LTD,

Third-Party Defendant.

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Preliminary Statement

This brief is submitted by plaintiffs-respondents Orlando Gonzales, et al. ["*Gonzales Plaintiffs*"], answering the opening brief of third-party defendants-appellants [*"defendants"*] The Goodyear Tire & Rubber Company [*"Goodyear"*] and Ford Motor Company [*"Ford"*].

Gonzales Plaintiffs have reviewed the answering brief of third-party plaintiff -respondent U.S. Tires and Wheels of Queens, LLC [*"U.S. Tires"*], and hereby adopt and join in the arguments contained in that brief as they pertain to Gonzales Plaintiffs here.

A R G U M E N T

POINT I

THE DECISION OF THE APPELLATE DIVISION OFFENDS TRADITIONAL NOTIONS OF FAIRNESS AND PUTS NEW YORK PLAINTIFFS AT A DISTINCT DISADVANTAGE IN LITIGATION WITH MULTINATIONAL CORPORATIONS

The trial court in initially deciding this case was correct in finding that traditional notions of fair play and substantial justice were not offended by maintaining the action against Goodyear and Ford in New York, citing the defendants' substantial, continuous and systematic business presence in New York State since the 1920's.

While the issue of general jurisdiction over large, multi-state corporations has been hotly litigated in the years following the Supreme Court's decision in *Daimler A.G. v. Bauman*, 571 US 117 [2014], the civil practice considerations with regard to third-party actions have not been adequately addressed. In the Court's supervisory role, those considerations now come face to face with the constitutional questions raised in *Daimler*, making the Supreme Court's decision a two-sided coin.

In this case, the action itself is jurisdictionally sound as placed in Queens County. The Gonzales Plaintiffs are primarily residents of Queens, New York, who brought a direct action against a New York corporate defendant with its principal place of business also in Queens County. Indeed, there was no other proper venue in which to bring the action. Naturally, a defendant in the action, U.S. Tires, brought its third-party action against defendants Ford and Goodyear in the same Queens venue as a matter of course.

Defendants argue, however, that it would be grossly unfair and unjust, to say nothing of unconstitutional, to compel these huge corporations, who have voluntarily conducted business in New York (even in Queens County itself), generally engaged in continuous and systematic business enterprises throughout the state since the 1920's, and earned significant profits from marketing and selling

their products to state residents, to defend their interests in the third-party action in Queens.

To do so, defendants performed a painstakingly detailed analysis of general versus specific jurisdiction below. However, nowhere is there any definitional requirement that personal jurisdiction be so tightly woven into one classification or the another that in protecting the due process rights of one litigant, it crushes the due process rights of the other. Which is the case here. Clearly, defendants have the resources in New York to defend their interests in New York. Instead, they attempt to capitalize on the fortuitous circumstance that their respective product just happened to be traveling on an interstate highway beyond the borders of New York when the defective and dangerous product, a tire, which was bound to eventually fail, finally did. Yet when the Court takes into account that the operative products were a motor vehicle and its tires -- products designed and manufactured for the purpose of travel -- it cannot be reasonably argued that defendants did not expect their products to cross state lines in the regular course of their productive existence.

For this reason, New York has a definable interest in protecting its residents from harm caused by defective tires and the automobiles they are mounted on, which in turn are owned and registered in the state, even where the cause of action arises on a roadway outside the state. Whether the product failure happens in the

westbound lanes or the eastbound lanes of the George Washington Bridge should not be the sole determining factor over jurisdiction. When the product is transitory, jurisdiction should appropriately follow, since the manufacturer intends the product to do so. In such a scenario, defendants would instead argue that a New York resident on the George Washington Bridge, as both owner and operator of a New York registered vehicle, would be constrained to file suit in defendant's state of incorporation or "home" state (or home country) simply because he was on the wrong side of the bridge when the vehicle failed.

Taking defendants' arguments to their natural conclusion, a defendant intending to bring a third-party action would potentially have to bring new and direct actions against third-party(s) in multiple foreign venues, and then seek to have those actions moved back to New York and consolidated. Such practice would likely be so cumbersome and costly as to substantially discourage third-party actions against foreign corporations – even where, as here, the contacts of the foreign corporation are substantial, continuous and pervasive in the forum state. For this reason, as argued below, the traditional minimum contacts test should be applied to third-party corporate defendants when seeking to bring them into an action where jurisdiction and venue are already solidly established among the parties. In the case of a motor vehicle product, which is manufactured with hundreds if not thousands of working components, it could easily lead to numerous

multi-state or even international actions. Here, alone, the third-party plaintiffs would have to file separate lawsuits in Ohio (Goodyear's home state) and Michigan (Ford's home state). Since according to Goodyear's representation, the subject tire at issue was manufactured in Kentucky, it raises the likelihood of yet an additional interstate action. These results are ludicrous, the product of form over substance, and do not seem to pass the proverbial smell test for constitutional fairness, particularly when applied to third-party actions where corporate defendants could easily satisfy the traditional minimum contacts test.

Goodyear argues that the tire at issue was not made or sold by Goodyear in New York. Yet Goodyear only providently discovered this once they learned of the tire's specifications. A third-party plaintiff would be unlikely to have such information at its disposal prior to discovery. Contrary to defendants' allegation, the subject tire was not a used tire, but was the same tire that was originally mounted on the subject vehicle when it was sold brand new. However, with millions of Goodyear tires on the roadways of New York, Goodyear wishes to turn actions, including third-party actions, into jurisdictional crapshoots, where the situs of original sale only becomes known after suit is commenced. Goodyear may suggest that this seems fair and just, but it is inherently unfair to a plaintiff, either initially or in a third-party context.

Daimler and its progeny have not specifically addressed third-party actions, leaving a void which the Court must fill. New York courts may characterize cases such as this, where jurisdiction is otherwise sound amongst the initial parties, and where a motor vehicle owned and registered in New York is involved, as an "exceptional circumstance", thereby moderating the harsh jurisdictional constraints of *Daimler*.

Defendants certainly have a valid argument that 'general' or 'all purpose' jurisdiction in New York would expose them to lawsuits based upon forum shopping by plaintiffs with no residency in New York for any cause of action, as was the case in *Daimler*, where residents of Argentina brought suits against a German corporation in the state court of California. However, defendants must, in turn, recognize a third-party plaintiff's position that allowing defendants to avoid New York jurisdiction altogether, whether classifying it under the general or specific jurisdiction label, seems equally unjust and unfair, as this case demonstrates. Such raises the likelihood of a chilling effect, discouraging third-party actions, except in the most potentially lucrative of cases. On the other hand, by carving an 'exceptional circumstance' out of the facts and circumstances of this action, where jurisdiction as to all parties is otherwise sound, a fair and just result is achieved, one which avoids a prejudicially harsh remedy affecting one side or the other.

POINT II

THE CASE OF *AYBAR v. AYBAR* PRESENTLY BEFORE THE COURT OF APPEALS MAY ASSIST THE COURT IN ITS DECISION HERE

The underlying decision does not address the arguments set forth regarding voluntary registration of the corporate defendants in New York. Concurrently, defendants do not touch upon this critical issue, at issue in *Aybar v. Aybar*, previously decided by this Court and presently pending before the Court of Appeals, concerning the plaintiffs' direct actions against Ford and Goodyear.

There is strong argument that, by voluntarily registering to do business and avail themselves of the laws of the State of New York, and simultaneously consenting to the appointment of an agent to accept service of process on their behalf, the defendants consented to general jurisdiction in New York.

Distinguishing the instant appeal, here the issue concerns a third-party complaint in a case that is already jurisdictionally sound. Here, defendants did not elect the forum, rather it was summoned to appear in it and defend. Thus, a somewhat lower standard should apply in reviewing the issue of voluntary registration, in the context of third-party complaints.

Here, Gonzales Plaintiffs and U.S. Tires were not engaged in forum shopping. They are both New York State residents. Whether or not Goodyear or

Ford is ultimately determined to be essentially at home in New York State for purposes of general (or all purpose) jurisdiction by the Court of Appeals, it should not necessarily bind this Court, because here there is an obvious nexus to the third-party cause of action. U.S. Tires is not asserting an unrelated cause of action, rather its third-party cause of action is directly related to the cause of action alleged in the complaint.

Defendants concede that their business contacts with New York are substantial, but they argue that it is statistically insignificant when compared to its entire interstate and international business volume. Yet the income from New York was apparently significant enough for defendants to make the affirmative choice over 80 years ago of duly registering with the Department of State to do business in New York and maintaining that registration. Defendants had a choice to sidestep transacting business in New York by not consenting the New York's registration requirement. Apparently, the income earned from New York residents was significant enough to induce their voluntary registration.

So be it, then. The issue of all-purpose jurisdiction may prove too broad under *Daimler*. But it should apply to New York residents (as opposed to non-residents). The act of registering to do business in New York must be held to be consent to be sued in New York courts by New Yorkers. Whether this is labeled general (all purpose) jurisdiction, or specific (case related) jurisdiction, or a form

of "modified" general jurisdiction, or an exceptional circumstance to general jurisdiction, corporations registered to do business in New York, who avail themselves of the laws, protection, economy and court system of New York State, should be held accountable to appear in New York State to defend lawsuits brought by New York State residents allegedly harmed by their products. This is fundamentally fair and just, requiring nothing more from foreign corporations authorized to do business in this state than the state requires from domestic corporations.

CONCLUSION

The court below correctly found that jurisdiction over Goodyear and Ford, in the context of the instant matter, was sound and did not violate due process. The precise labeling of such jurisdiction should not be determinative. The Court should either carve out an exception under *Daimler* or otherwise apply a more traditional minimum contacts review in finding that jurisdiction over Goodyear and Ford does not offend fair play or the goal of substantial justice.

The decision and order below should be affirmed in all respects.

Respectfully submitted,

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