

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.,

**NOTICE OF APPEAL**

Index No. 703632/2017

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  
SIR/MADAM:

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

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

Dated: New York, New York  
October 17, 2019

Yours, etc.,

  
BY: Elliott J. Zucker, Esq.  
AARONSON RAPPAPORT FEINSTEIN &  
DEUTSCH, LLP  
Attorneys for Defendants  
FORD MOTOR COMPANY  
600 Third Avenue  
New York, NY 10016  
(212) 593-6700

To:

OMRANI & TAUB, P.C.

Attorneys for Plaintiffs

ORLANDO GONZALES, 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.

488 Madison Avenue

New York, NY 10022

(212) 714-1515

LANGDON & EMISON, of Counsel to OMRANI & TAUB, P.C.

Attorneys for Plaintiffs (same plaintiffs listed above)

ORLANDO GONZALES, 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.

911 Main Street, P.O. Box 220

Lexington, MO 64067

(660) 259-9933

CERTAIN & ZILBERG, PLLC

Attorneys for Plaintiff

JOSE AYBAR

488 Madison Avenue

New York, NY 10022

(212) 687-7800

FARBER BROCKS & ZANE, LLP  
Attorneys for Defendant/Third-Party Plaintiff  
US TIRE AND WHEELS OF QUEENS, LLC  
400 Garden City Plaza, Suite 100  
Garden City, NY 11530  
(516) 739-5100

DLA PIPER LLP (US)  
Attorneys for Third-Party Defendant  
THE GOODYEAR TIRE & RUBBER CO.  
1251 Avenue of the Americas, 27th Floor  
New York, NY 10020  
(212) 335-4500

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

# Supreme Court of the State of New York

## Appellate Division: Second Judicial Department

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

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

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

Plaintiffs,

- against -

US TIRE AND WHEELS OF QUEENS, LLC,

Defendant.

US TIRE AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

- against -

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

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

### Case Type

- Civil Action
- CPLR article 75 Arbitration

- CPLR article 78 Proceeding
- Special Proceeding Other
- Habeas Corpus Proceeding

### Filing Type

- Appeal
- Original Proceedings
- CPLR Article 78
- Eminent Domain
- Labor Law 220 or 220-b
- Public Officers Law § 36
- Real Property Tax Law § 1278

- Transferred Proceeding
- CPLR Article 78
- Executive Law § 298
- CPLR 5704 Review

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

<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input checked="" type="checkbox"/> Torts

## Appeal

PaperAppealed 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.			
<input type="checkbox"/> Amended Decree	<input type="checkbox"/> Determination	<input checked="" type="checkbox"/> Order	<input type="checkbox"/> Resettled Order		
<input type="checkbox"/> Amended Judgement	<input type="checkbox"/> Finding	<input type="checkbox"/> Order & Judgment	<input type="checkbox"/> Ruling		
<input type="checkbox"/> Amended Order	<input type="checkbox"/> Interlocutory Decree	<input type="checkbox"/> Partial Decree	<input type="checkbox"/> Other (specify):		
<input type="checkbox"/> Decision	<input type="checkbox"/> Interlocutory Judgment	<input type="checkbox"/> Resettled Decree			
<input type="checkbox"/> Decree	<input type="checkbox"/> Judgment	<input type="checkbox"/> 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: <input checked="" type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury			
Prior Unperfected Appeal and Related Case Information					
<p>Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.</p> <p>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:</p>					
Original Proceeding					
<p>Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus Date Filed:</p> <p>Statute authorizing commencement of proceeding in the Appellate Division:</p>					
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					
<p>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.</p> <p>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.</p>					

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 jurisdiction with regard to Ford Motor Company, and that it erred in such other ways as may be apparent from a review of the full record on appeal.

### Party Information

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

No.	Party Name	Original Status	Appellate Division Status
1	Jose Aybar	Plaintiff	
2	Orlando Gonzalez	Plaintiff	Respondent
3	Jesenia Aybar	Plaintiff	Respondent
4	Anna Aybar	Plaintiff	Respondent
5	US Tires and Wheels of Queens	Defendant 3rd-Party Plaintiff	Respondent
6	The Goodyear Tire & Rubber Company	3rd-Party Defendant	
7	Goodyear Dunlap Tires North America, Ltd.	3rd-Party Defendant	
8	Ford Motor Company	3rd-Party Defendant	Appellant
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

## Attorney Information

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

Attorney/Firm Name: Certain & Zilberg, PLLC

Address: 488 Madison Avenue

City: New York State: NY Zip: 10022 Telephone No: (212) 687-7800

E-mail Address: mzilberg@certainlaw.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1

Attorney/Firm Name: Omrani & Taub, P.C.

Address: 488 Madison Avenue

City: New York State: NY Zip: 10022 Telephone No: (212) 714-1515

E-mail Address: mtaub@omranilandtaub.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 2, 3, 4

Attorney/Firm Name: Farber Brocks & Zane, LLP

Address: 400 Garden City Plaza, Suite 100

City: Garden City State: NY Zip: 11530 Telephone No: (516) 739-5100

E-mail Address: tfrankel@fbzlaw.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 5

Attorney/Firm Name: DLA Piper, LLP (US)

Address: 1251 Avenue of the Americas, 27th Floor

City: New York State: NY Zip: 10020 Telephone No: (212) 335-4500

E-mail Address: neal.kronley@dlapiper.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 6, 7

Attorney/Firm Name: Aaronson Rappaport Feinstein & Deutsch, LLP

Address: 600 Third Avenue

City: New York State: NY Zip: 10016 Telephone No: (212) 593-6700

E-mail Address: ejzucker@arfclaw.com

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 8

Attorney/Firm Name:

Address:

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):

Informational Statement - Civil

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 <u>Numbered</u>
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]).

FILED: QUEENS COUNTY CLERK 09/27/2019 10:36 AM

RECEIVED INDEX NYSCEF 09/27/2019

NYSCEF DOC. NO. 202

RECEIVED NYSCEF: 09/27/2019

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,

**FILED: QUEENS COUNTY CLERK 09/27/2019 10:36 AM**

RECEIVED INDEX NO. 703632/2019  
NYSCEF: 09/27/2019

NYSCEF DOC. NO. 202

RECEIVED NYSCEF: 09/27/2019

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12  
Justice

-----x  
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.,

Index No.:  
703632/2017

Motion Date:  
May 7, 2019

Plaintiff(s),

Motion Seq. Nos.:  
017 & 019

-against-

US TIRES AND WHEELS OF QUEENS, LLC.,

Defendant.

-----x  
US TIRES AND WHEELS OF QUEENS, LLC.,

Third-Party Plaintiff,

FILED  
SEP 27 2019  
COUNTY CLERK  
QUEENS COUNTY

-agaisnt-

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

Third-Party Defendants.

-----x  
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

**FILED: QUEENS COUNTY CLERK 09/27/2019 10:36 AM**

INDEX NO. 703632/2019

NYSCEF DOC. NO. 202

RECEIVED NYSCEF: 09/27/2019

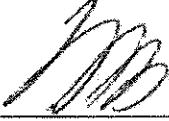
third party-plaintiff's cause of action for common law indemnification is dismissed.

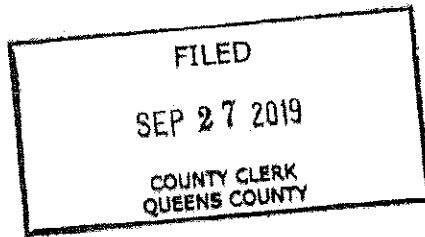
However, a defendant may seek contribution from a third party even if the injured plaintiff has no direct right of recovery against that party, either because of a substantive legal rule or a procedural bar (see *Raquet*, 90 NY2d 177; *Bivona v Danna & Assoc., P.C.*, 123 AD3d 956 [2d Dept 2014]). The 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.



AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NEW YORK )  
ss.:  
COUNTY OF NEW YORK )

Vicki McFadyen, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and resides at Kings County, New York.

That on the 17<sup>th</sup> day of October, 2019, deponent served the within Notice of Appeal Appellate Division Information Statement and Order on behalf of defendant FORD MOTOR COMPANY upon:

OMRANI & TAUB, P.C.

Attorneys for Plaintiffs

ORLANDO GONZALES, 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.

488 Madison Avenue

New York, NY 10022

(212) 714-1515

LANGDON & EMISON, of Counsel to OMRANI & TAUB, P.C.

Attorneys for Plaintiffs (same plaintiffs listed above)

ORLANDO GONZALES, 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.

911 Main Street, P.O. Box 220

Lexington, MO 64067

(660) 259-9933

CERTAIN & ZILBERG, PLLC

Attorneys for Plaintiff

JOSE AYBAR

488 Madison Avenue

New York, NY 10022

(212) 687-7800

FARBER BROCKS & ZANE, LLP

Attorneys for Defendant/Third-Party Plaintiff

US TIRE AND WHEELS OF QUEENS, LLC

400 Garden City Plaza, Suite 100

Garden City, NY 11530

(516) 739-5100

DLA PIPER LLP (US)

Attorneys for Third-Party Defendant

THE GOODYEAR TIRE & RUBBER CO.

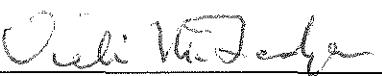
1251 Avenue of the Americas, 27th Floor

New York, NY 10020

(212) 335-4500

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

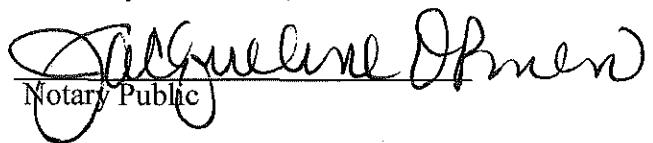
at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.



Vicki McFadyen

Sworn to before me this

17<sup>th</sup> day of October, 2019

  
\_\_\_\_\_  
Jacqueline Obrien  
Notary Public

JACQUELINE OBRIEN  
Notary Public, State of New York  
No. 01OB6288369  
Qualified in Orange County  
Commission Expires September 3, 2021

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

Index No.: 703632/2017  
*Previous Index No.: 9344/2014*

---

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 TIFFANY CABRAL

Plaintiffs,

- against -

US TIRES AND WHEELS OF QUEENS, LLC,

Defendant.

---

US TIRES AND WHEELS OF QUEENS, LLC,

Third-Party Plaintiff,

-against-

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

Third-Party Defendants.

---

**NOTICE OF APPEAL, APPELLATE DIVISION INFORMATION STATEMENT and ORDER**

---

**AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP**  
Attorneys for Third-Party Defendant  
FORD MOTOR COMPANY  
Office and Post Address  
600 Third Avenue  
New York, NY 10016  
212-593-6700

---

To: **ALL PARTIES**

---