

*Canadian General Electric Co., Ltd.*, 65 A.D.2d 39 (3d Dep't 1978), *aff'd*, 50 N.Y.2d 935. Rather, this subsection is intended to apply to defendants "'who have sufficient contacts with this state so that it is not unfair to require them to answer in this state for injuries they cause here by acts done elsewhere.'" *Ingraham*, 90 N.Y.2d at 597, citing 12th Ann Report of NY Jud Conf, at 343.

Ford and Goodyear engage in regular business in New York and derive substantial revenue from goods sold in New York. Therefore, jurisdiction is proper under CPLR §302(a)(3)(i).

**b. There is jurisdiction under 302(a)(3)(ii)**

Jurisdiction is also proper under CPLR §302(a)(3)(ii), which requires that the defendant "expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce."

Again, there should be no dispute that Ford and Goodyear "derives substantial revenue from interstate or international commerce." Ford and Goodyear argue that the other portion of this subsection is not satisfied—that they "expect or should reasonably expect the act to have consequences in the state"—because the Ford Explorer and Goodyear tire were not shipped to New York initially.

Courts have consistently held that "the place where delivery or transfer of title occurs is, under the terms of 302 (a)(3)(ii), not relevant to whether the out-of-state act was tortious with foreseeable in-state consequences." *Dingeldey v. VMI-EPE-Holland B.V.*, 2016 WL 6248680 (Oct. 26, 2016 W.D.N.Y. 2016) (finding jurisdiction under 302(a)(3)(ii) over manufacturer from Netherlands). In *Darrow v. Deutschland*, 119 A.D.3d 1142 (3d Dep't 2014), the court found jurisdiction under CPLR 302(a)(3)(ii) over a German manufacturer that sold a product in New York and other states via a distributor. This "rendered it likely that its products would be sold in New York" and the defendant should have "reasonably expected a manufacturing defect to have consequences in the state." *Id.* at 1144.

In *LaMarca v. Pak-Mor Manufacturing Co.*, 95 N.Y.2d 210 (2000), the Court of Appeals found jurisdiction under 302(a)(3)(ii), rejecting a similar argument focused on the point of the initial sale of the product. The plaintiff was a New York resident that was injured by a defective product. The defendant-manufacturer was a Texas corporation and the product was manufactured in Virginia. The defendant had no property or presence in New York, although it did advertise and sell products in New York. The defendant focused on the fact that title for the product was passed to a distributor in Virginia to argue that they could not have reasonably expected consequences in New York. The court rejected that argument because the defendant marketed the product in New York and knew that

its products would be sold in New York. *See also Darienzo v. Wise Shoe Stores, Inc.*, 74 A.D.2d 342 (2d Dept. 1980) (jurisdiction under 302(a)(3)(ii) over foreign manufacturer because it knew that some of its products would be sold in New York stores and therefore it "did or should have reasonably expected forum consequences to arise in New York."); *Napolitano v Mastic Bicycles & Fitness Co.*, 279 A.D.2d 461, 462 (2d Dept. 2001) (holding that a non-domiciliary may be subject to suit if "the sale of one of its products arises from the efforts of the manufacturer or distributor to serve directly the market for its product in other countries or States, and its allegedly defective merchandise has been a source of injury.").

Therefore, Ford and Goodyear should have reasonably expected that these products could result in injury or consequences in New York based on their marketing and sale of the products in New York in general and regular servicing and sales of those products at garages in New York like U.S. Tires.

Based on the foregoing cases and facts in the record, the Court should affirm the holding by the Court below that it has specific jurisdiction over Ford and Goodyear under the New York Long-Arm Statute, CPLR §302(a)(1)

## **POINT II**

**THE COURT BELOW CORRECTLY RULED THAT IT HAS  
SPECIFIC JURISDICTION OVER FORD AND GOODYEAR,  
CONSISTENT WITH DUE PROCESS, WHICH SHOULD BE  
AFFIRMED**

To establish that the court has specific jurisdiction it must comply with federal due process. As the Court of Appeals has explained:

Exercise of personal jurisdiction under [CPLR 302\(a\)\(1\)](#) must also comport with federal due process. We have recognized that [CPLR 302](#) and due process are “not coextensive”; nonetheless, while “personal jurisdiction permitted under the long-arm statute may theoretically be prohibited under due process analysis, we would expect such cases to be rare. Federal due process requires first that a defendant have “minimum contacts” with the forum state such that the defendant should reasonably anticipate being haled into court there, and second, that the prospect of having to defend a suit in New York comports with traditional notions of fair play and substantial justice.

*D & R Glob. Selections, S.L. v. Bodega Olegario Falcon Pineiro*, 29 N.Y.3d 292, 299–300 (2017) (citations and quotations omitted).

**A. Ford and Goodyear Had “Minimum Contacts”  
with New York Sufficient for Due Process**

A defendant may reasonably foresee the prospect of defending a suit in the forum state if it “purposefully avails itself of the privilege of conducting activities within the State.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297

(1980). As the Court below correctly found, Ford and Goodyear's "purposeful activities far exceed the minimal contacts with the State of New York necessary to pass constitutional muster" (R.12), as discussed below.

In *LaMarca v. Pac-Mor Manufacturing Co.*, 95 N.Y.2d 210 (2010), the Court of Appeals found jurisdiction under [302\(a\)\(3\)\(ii\)](#), rejecting a similar argument raised by Appellants herein, which focused on the point of the initial sale of the product. The plaintiff was a New York resident that was allegedly injured by a defective product. The defendant-manufacturer was a Texas corporation and the product was manufactured in Virginia. The defendant had no property or presence in New York, although it did advertise and sell its products in New York. The defendant focused on the fact that title for the product was passed to a distributor in Virginia to argue that they could not have reasonably expected consequences in New York. The court rejected that argument because the defendant marketed the product in New York and knew that its products would be sold in New York. *See also Darienzo v. Wise Shoe Stores, Inc.*, 74 A.D.2d 342 (2d Dep't 1980) (jurisdiction under 302(a)(3)(ii) over foreign manufacturer because it knew that some of its products would be sold in New York stores and therefore it "did or should have reasonably expected forum consequences to arise in New York); *Napolitano v. Mastic Bicycles & Fitness Co.*, 279 A.D.2d 461, 462 (2d Dep't 2001) (holding that a non-domiciliary may be subject to suit if "the sale of

one of its products arises from the efforts of the manufacturer or distributor to serve directly the market for its product in other countries or States, and its allegedly defective merchandise has been a source of injury.”).

Therefore, Ford and Goodyear should have reasonably expected that these products could result in injury or consequences in New York based on their marketing, advertising and sale of products in New York in general, their specific targeting of New Yorkers and their regular servicing and sales of those products at garages in New York like U.S. Tires.

Numerous cases involving substantially similar facts, including *Hoagland v., Ford Motor Co., 2007 WL 2789768 (W.D. Ky. Sept. 21, 2007)*, discussed at length, *supra*, at 26-27, have been found to pass Constitutional muster under the due process clause and to comport with traditional notions of fair play and substantial justice. For example, in *Thomas v. Ford Motor Co., 289 F.Supp.3d 941 (E.D. Wis. 2017)*, the plaintiffs, Wisconsin residents, who owned a 2009 Ford Flex that was primarily designed and developed in Michigan and assembled in Canada, traveled to Pennsylvania to visit their daughter, where they were involved in an accident. They sued Ford in federal court in Wisconsin, asserting claims of negligence and strict liability. Ford moved to dismiss based on a lack of personal jurisdiction, making similar arguments to those that Ford and Goodyear assert in the within action. The court denied the motion, holding that it had specific

jurisdiction over Ford, consistent with due process, based on facts and arguments on both sides substantially similar to those in the instant case:

Plaintiffs allege that Ford has been continuously licensed to do business in Wisconsin since 2003 and had designated CT Corporation System located in Madison, Wisconsin as its registered agent for service of process. They contend that Ford's advertising in Wisconsin is pervasive and its website specifically targets Wisconsin residents by allowing them to view the incentives and offers available in their locality. Although the Plaintiffs did not provide Wisconsin specific sales information, they noted that Ford has 122 dealerships located in Wisconsin that sell new and used Ford-brand vehicles. Ford certifies "pre-owned" vehicles and offers incentives for consumers that purchase a certified pre-owned Ford vehicle from one of its dealers. Plaintiffs allege that Ford is willing to serve consumers in Wisconsin and, as a result, has derived benefits from Wisconsin purchasing and owning its new and used vehicles. In sum, Plaintiffs have made a *prima facie* showing that Ford purposefully availed itself of the privilege of conducting activities in Wisconsin.

\* \* \*

The fact that Ford did not initially sell the Thomases' Ford Flex in Wisconsin is wholly irrelevant to the personal jurisdiction inquiry. Rather, it is Ford's willingness to serve and sell to Wisconsin consumers buying its products that make it reasonable for Ford to anticipate being haled into a Wisconsin court. Plaintiffs have satisfied the *due process* requirements of the personal jurisdiction inquiry. Accordingly, Ford is subject to personal jurisdiction in this court for the purposes of this action.

*Id.* at 946-948 (citations omitted).

*Michelin North America, Inc. v. De Santiago*, 584 S.W.3d 114 (Tex. Ct.

App. 2018) is also on point. In *Michelin*, the plaintiff, a Texas resident, who had purchased a second-hand Michelin tire in Texas and was involved in a rollover accident in Mexico, and sued Michelin, which manufactured the tire out of state, in a Texas court. The court held that it had specific jurisdiction over Michelin consistent with the federal due process clause:

This case exposes the limits of using the stream of commerce metaphor as a legal test. Whether this case involves one continuous stream of commerce or the portaging of an item from one stream to another is less a matter of legality and more a matter of perspective. We are inclined to believe this scenario represents the uninterrupted, albeit indirect, flow of one stream of commerce foreseeably bringing an item into a forum targeted by Michelin – a forum, we note, in which Michelin should have reasonably expected to be subject to litigation.

\* \* \*

Michelin targeted Texas. The tire hit its target. Michelin expected and wanted the tire to hit its target. Whether Michelin made money off the specific sale to Lopez is not strictly relevant to the minimum contacts theory.

The distinction Michelin draws between the tire being “new” and “used” is a distinction without a jurisdictional difference for minimum contacts purposes. The focus of a products liability case is the condition of the product at the time it left the manufacturer’s possession.

\* \* \*

In sum, Michelin has purposefully availed itself of Texas as a marketplace for its tires and it was reasonably

foreseeable that it would have to answer suit in Texas related to those tires. Minimum contacts are established.

*Id.* at 134-135.

The Minnesota Supreme Court held last year that the court has specific jurisdiction over Ford, consistent with due process, in a highly analogous case, *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744 (Minn. 2019), cert. granted, 140 S.Ct. 916 (2020). Rejecting the same argument that Ford makes here, that it did not have sufficient “minimum contacts” with the forum state (Minnesota) because no part of its tortious conduct, designing, manufacturing, warrantying or warning about the vehicle involved in the accident at issue occurred in Minnesota, the court held, with equal application to this case:

This is not a case where a 1994 Ford Grand Victoria fortuitously ended up in Minnesota. Ford has sold thousands of such Crown Victoria cars and hundreds of thousands of other types of cars to dealerships in Minnesota. Because the Crown Victoria is the very type of car that Bandemer alleges was defective, Ford’s sales to the Minnesota dealerships are connected to the claims at issue here. Bandemer’s claims are about the design of the Crown Victoria and therefore his claims are about more than one specific car. Ford also collected data on how its cars performed through Ford dealerships in Minnesota and used that data to inform improvements to its designs and to train mechanics. Part of Bandemer’s claim is that Ford failed to detect a defect in its vehicle design. Those activities, and the failure to detect, likewise relate to the claims here. Ford directs marketing and advertisements directly to Minnesotans, with the hope that they will purchase and drive more Ford vehicles. A Minnesotan bought a Ford vehicle, and it is

alleged that the vehicle did not live up to Ford’s safety claims. In determining whether a defendant has sufficient ‘minimum contacts,’ we consider the contacts alleged by the plaintiff in the aggregate and not individually, by looking at the totality of the circumstances.

\* \* \*

Because there is a substantial connection between the defendant Ford, the forum Minnesota, and the claims brought by Bandemer, Ford’s contacts with Minnesota suffice to establish specific personal jurisdiction over the company regarding Bandemer’s claims.

*Id.*, at 754-755 (citation and quotation omitted).

Ford conceded that it was reasonable to require it to appear in a Minnesota court, consistent with “fair play and substantial justice” (*Id.* at 755), given its extensive dealings in the state, as Ford and Goodyear must do in this case as well, given their extensive dealings in New York.

The Supreme Court of Montana last year likewise rejected the same argument Ford makes herein, in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 443 P.3d 407 (Mont. 2019), cert. granted, 140 S.Ct. 917 (2020), where the court held:

At its core, due process is concerned with fairness and reasonableness: Is it fair and reasonable to ask an out-of-state defendant to defend a specific lawsuit in Montana? Companies build vehicles specifically for interstate travel. Irrespective of where a company initially designed, manufactured, or first sold a vehicle, it is fair to say that a company designing, manufacturing, and selling vehicles can reasonably foresee (even expect) its vehicles to cross state lines. When a company engages in the

design, manufacture, and distribution of products specifically designed for interstate travel, it is both fair and reasonable to require the company to defend a lawsuit in a state where the product caused injury as long as the company has otherwise purposefully availed itself of the privilege of doing business in that state and if a nexus exists between the product and the defendant's in-state activity. Where a company first designed, manufactured, or sold a vehicle is immaterial to the personal jurisdiction inquiry, and focusing on those limited factors would unduly restrict courts of this state from exercising specific personal jurisdiction that comports with due process over nonresident defendants in cases such as this one.

\* \* \*

A nexus exists between Gullett's use of the Explorer and Ford's in-state activity. Ford advertises, sells, and services vehicles in Montana. Ford makes it convenient for Montana residents to drive Ford vehicles by offering maintenance, repair, and recall services in Montana. Gullett's use of the Explorer in Montana is tied to Ford's activities of selling, maintaining, and repairing vehicles in Montana. Further, Ford could have reasonably foreseen the Explorer—a product specifically built to travel—being used in Montana. We accordingly conclude that Lucero's claims "relate to" Ford's Montana activities.

*Id.* at 416.

In another similar case involving an accident in a Ford vehicle, *Antonini v. Ford Motor Co.*, 2017 WL 3633287 (M.D. Pa. Aug. 23, 2017), the court held, *inter alia*, that Ford, which it found had "directly enticed" the plaintiff to purchase a used Ford vehicle in the forum state (Pennsylvania), had the required "minimum contacts" with Pennsylvania for purposes of due process and specific jurisdiction,

even though Ford did not manufacture the vehicle in Pennsylvania or sell it to the

Plaintiff:

Defendant directly and heavily advertised in Pennsylvania over a number of years and in a variety of mediums. The purpose of this in-state activity was to entice Pennsylvanians to buy and drive Ford brand vehicles, new or used. Defendant did this, in part, by advertising the safety of its vehicles. In this way, Defendant benefited from the laws of Pennsylvania by using the state as a platform to increase the number of Pennsylvanians purchasing and driving Ford brand vehicles. This in-state activity, according to the Amended Complaint, directly enticed Plaintiff to buy a used Ford. Thus, Defendant's forum related contacts achieved exactly what Defendant was seeking to achieve: it influenced a Pennsylvania driver to choose to purchase and drive a Ford brand vehicle. Further, the claim arose because Plaintiff was allegedly injured while driving her Ford Explorer in the same state in which Defendant had influenced her decision to buy the vehicle. Accordingly, there is a direct and close relationship between Defendant seeking to entice Plaintiff and other Pennsylvanians to purchase and drive Ford brand vehicles, in part by touting the cars as safe, and Plaintiff's claim that a defect in her Ford Explorer caused her injury while she was driving in the state where she was originally influenced by Defendant's advertisements to buy the vehicle.

*Id.*, slip op. at \*4 (citations omitted).

The court held that Ford “has the required minimum contacts with Pennsylvania in this case under a stream of commerce,” reasoning:

Here, the particular vehicle was sold to a New York dealership, and eventually resold to a Pennsylvania resident. Although the claim must still relate to a defendant's contacts with the forum state for a court to

exercise personal jurisdiction over that defendant under a stream of commerce theory, the defendant does not have to put the product directly into the forum state. Here, Defendant's alleged actions showed its willingness to serve the Pennsylvania market and that Defendant derived benefits from Pennsylvanians owning new and used Ford brand vehicles. Further, as discussed above, it was Defendant's advertising in Pennsylvania that prompted Plaintiff to purchase a Ford brand vehicle.

*Id.*, slip op. at \*6 (citation omitted).

Similarly, in *Griffin v. Ford Motor Co.*, 2017 WL 3841890 (W.D. Tex. 3841890), where the plaintiff, a Texas resident, was injured in a Ford vehicle she purchased used in Texas, the court held that it had specific jurisdiction, in conformance with due process, over Ford. The court reasoned, *inter alia*:

In this case, Griffin produced evidence Ford introduced thousands of Ford Focus vehicles into the stream of commerce. *See* Ford May 2017 U.S. Sales. Ford does not contend these vehicles were not sold in Texas, just that the Vehicle at issue was originally sold in Michigan and therefore exited the stream of commerce before reaching Texas. But Ford does not dispute it directs marketing and advertising activities related to the Ford Focus vehicles in Texas; it distributes Ford Focus vehicles in Texas; or it sells part to maintain or service Ford Focus vehicles purchased by Texas consumers. Where, as here, the Vehicle was owned by a Texas resident, registered in Texas, and the defect surfaced in Texas, Ford cannot convincingly argue Griffin's claims—which are based on Ford's “promoting and/or distributing” of the Ford Focus in Texas—do not arise out of or relate to Ford's contacts with Texas.

*Id.* at \*3. Accord *Marin v. Michelin N. Am.*, 2017 WL 5505323 (W.D. Tex. 2017)

(following *Griffin* in holding that court had specific jurisdiction over Michelin with respect to a tire it manufactured outside the forum state).

In *Tarver v. Ford Motor Co.*, 2016 WL 7077045 (W.D. Okla. Dec. 5, 2016), another suit in which the court held that it had specific jurisdiction over Ford, in compliance with due process, stemming from an accident involving a Ford vehicle manufactured outside the forum state (Oklahoma). The court reasoned:

Here, it is indisputable that Ford delivered its vehicles into the “stream of commerce” with the expectation that they would be purchased by consumers in Oklahoma. The pivotal question is whether Ford engaged in any “additional conduct” such that it could be said to have purposefully availed itself of the privilege of conducting business in Oklahoma. The Court holds that Ford did engage in such activity under the test enunciated in *[Asahi Metal Indus. Co., Ltd. v. Superior Ct. of Cal., Solano County*, 480 U.S. 102 (1987)]. First, Ford designs and manufacturers its vehicles for the U.S. market, which includes Oklahoma. Second, it is undisputed that Ford vehicles, including the F-150, are the subject of a nationwide advertising campaign and that Ford specifically advertises its vehicles on a continuous basis in Oklahoma. Moreover, Ford maintains numerous dealerships throughout Oklahoma; Ford, in conjunction with these dealerships, establishes channels for providing regular advice, service, and product information to Oklahoma customers.

The Court finds unavailing Ford’s argument that personal jurisdiction does not exist because the subject vehicle was assembled in Kansas City, Missouri and later sold to an independent dealership in Indiana. The pivotal inquiry under the stream of commerce theory is whether a

defendant has attempted to serve a market and expects its product to be used there. Irrespective of the state of assembly, Ford designs, manufactures, markets, and sells products specifically built for interstate travel, which includes Oklahoma. Ford manufactured and sold the subject vehicle with the reasonable expectation it would be used in Oklahoma and this action arises from the vehicle's use in Oklahoma.

*Id.*, slip op. at \*5 (citation omitted).

In another analogous case involving an accident in a Ford vehicle, *Rhodehouse v. Ford Motor Co.*, 2016 WL 7104238 (E.D. Cal. Dec. 5, 2016), the court held that it had specific jurisdiction, consistent with due process, over Ford in the forum state (California), even though Ford did not manufacture the vehicle in California or directly sell it to the plaintiff. The court held, *inter alia*:

Given that Ford vehicles saturate California roads and dealerships and that Ford advertisements pervade California media, this Court finds that Ford has purposefully availed itself of the privilege of conducting activities in California.

\* \* \*

Ford has strong and pervasive connections to California, i.e. Ford “specifically seeks, or expects” to sell its cars in California. In light of these strong connections, the fact that the accident injured a California resident and occurred in the state of California in a California-registered vehicle sufficiently establishes a nexus between Ford’s contacts with California and Mr. Rhodehouse’s claims.

*Id.*, slip op. at \*2, \*4. See also *Hatton v. Chrysler Canada, Inc.*, 937 F.Supp.2d 1356, 1366 (M.D. Fla. 2013) (“the Court finds that Chrysler Canada purposely