

The plaintiffs did not assert that the court could exercise specific jurisdiction over these defendants in this action, and, thus, we do not consider whether jurisdiction might be exercised over them pursuant to New York's long-arm jurisdiction statute (see CPLR 302).

(R.593-94)

The Court further noted that: "The arguments of nonparty U.S. Tires that specific jurisdiction is present in this case are not properly before the Court since they were not raised before the motion court." (R.594, fn. 2)

**D. Ford and Goodyear Admit They Transact Business in New York for Long-Arm-Act Purposes and that They "Purposefully Market, Promote, Advertise, and Sell Products in New York"**

Ford and Goodyear concede "that they transacted some business in New York for long-arm-act purposes." (Appellant's Brf., at 11) They admit that this "requirement is met so long as the defendant's activities were purposeful" and that their activity in New York meets that standard because: "Ford and Goodyear purposefully market, promote, advertise, and sell products in New York." (*Id.*)

Ford and Goodyear further concede the extensive dealings the Court below found each of them have with New York, adding the meaningless qualifier that they "might" do them, which does not negate their admissions, which include:

- "Ford and Goodyear might 'market[], promot[e], advertis[e],' sell, and service their products in New York" (Appellant's Brf. at 15, quoting the September 25, 2019 Decision and Order in the Court below (Dennis J. Butler, J.) (the "Sept. 25, 2019 Order") (R.8-13, at 11);

- “Ford and Goodyear might ‘each have numerous wholly owned or contractual relationships with independent dealers who sell their products, both new and used, to residents of New York.’” (Appellant’s Brf., at 15 (quoting the Sept. 25, 2019 Order at R. 11));
- “It might have been ‘foreseeable and anticipated by these parties [Ford and Goodyear] that their goods and products are a large part of the used car and tire markets in the State of New York.’” (Appellant’s Brf., at 15 (quoting the Sept. 25, 2019 Order at R. 11));
- “Ford and Goodyear might be ‘registered and authorized to do business in New York.’” (Appellant’s Brf., at 15 (quoting the Sept. 25, 2019 Order at R. 11));
- “Plaintiffs and U.S. Tires are New York residents” (Appellant’s Brf., at 11); and that
- “Ford and Goodyear transacted business in New York.” (Appellant’s Brf., at 16)

**E. Additional Undisputed Facts the Supreme Court in *Aybar v. Aybar* Found Regarding Ford’s Involvement in the Accident and the Extent of Its Contacts with New York**

The Supreme Court in *Aybar v. Aybar* found the following additional undisputed facts pertaining to the Accident and Ford’s contacts with New York:

It is undisputed that the 2002 Ford Explorer was purchased in New York by co-defendant Jose Aybar. The subject vehicle was also registered and licensed with the Department of Motor Vehicles in New York State. The vehicle was traveling through Virginia en route back to New York when the accident occurred. Moreover, Ford maintains a continuous and substantial presence in New York. It owns property in New York (*see Exhibit 1 to opposition, \$150 million dollars invested by Ford to upgrade its Hamburg, New York plant*). It has hundreds

of dealerships selling Ford products under its brand name in New York. Since 1920, Ford has been registered with the New York State corporation.

(R.609)

The Court below in the *Aybar v. Aybar* action found additional facts pertinent to this inquiry regarding Goodyear's contacts with New York:

The plaintiffs' attorney, relying on an internet search, further alleges: "Goodyear has maintained substantial and continuous presence in New York since approximately 1924. It owns real property in New York. It owns and operates nearly one hundred storefront tire and auto service center stores located in every major city and throughout New York State, and it employs thousands of New York State residents at those stores. It also distributes its tires for sale at hundreds of additional locations throughout New York State." Defendant Goodyear does not deny these allegations.

(R.635)

Plaintiffs' internet search also found:

[A] search of Goodyear's public website conducted in June 2017 using Goodyear's website "Stores Near You" search function shows: (1) 36 registered Goodyear service facilities in Queens County alone; (2) 34 registered Goodyear service facilities within a 5 mile radius of [U.S. Tires], the registered Goodyear service facility where the Wrangler Tire and Mr. Aybar's Ford Explorer were serviced ...; and (3) 84 registered Goodyear service facilities within a 10 mile radius of U.S. Tires.

Goodyear advertises to the public that it has one or more registered Goodyear Tire Stores in at least 325 different cities within New York State.

(R.768, FN1 and 2)

**F. Plaintiffs Requested that the Court Below in the Within Action Take Judicial Notice that Ford Brand Automobiles, Both New and Used, Are Widely Sold, Serviced and Advertised Throughout New York State**

Plaintiffs in the within action asked the Court below to take judicial notice of the fact:

That thousands upon thousands of FORD brand automobiles are sold in every corner of New York State, and have been for decades. Such sales include both used vehicles and brand new vehicles, which are widely advertised, and regularly sold, leased and serviced at hundreds of FORD dealerships located throughout New York State;

(R.706)

**G. Plaintiffs in Opposition to Goodyear's Motion to Dismiss in the Court Below Argued that Goodyear Has Engaged in Extensive Dealings and Advertising, For Many Decades, in the State of New York**

Plaintiffs in the within action argued in opposition to Goodyear's motion to dismiss in the Court below, *inter alia*, that:

[GOODYEAR] reportedly owns, manages and/or essentially controls scores of business outlets through tightly controlled company owned stores and/or franchises bearing the GOODYEAR corporate name, corporate logo and corporate color scheme, and which advertise, promote and sell exclusively the corporate

products of GOODYEAR. GOODYEAR has conducted such business and derived substantial revenue from such business for several uninterrupted decades. It advertises extensively in New York. Millions upon millions of their tire products are sold and utilized on automobiles throughout New York State.

(R.334 ¶ 21)

**H. Ford Specifically Tailors Its Advertising and Marketing to Target Members of the Hispanic Community, Including Plaintiff Jose Aybar, in “Very Localized” Campaigns Purposefully Designed to “Appeal to the Local Crowd” in New York and Elsewhere**

In an article published in 2010 (the year before the Accident), Dave Rodriguez, a well-known “multi-cultural marketing manager at Ford,” admitted that Ford tailors its marketing and advertising<sup>1</sup> to “very localized” subgroups within the Hispanic community in the U.S, including the New York market.<sup>2</sup> Ford does not treat the more than 50 million persons of Hispanic descent in this

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<sup>1</sup> Ford spent \$2.28 billion dollars on advertising in the United States in 2012.

<https://www.statista.com/statistics/261535/ford-motors-advertising-spending-in-the-us/>

<sup>2</sup> While this article is not in the Record, we respectfully submit that the Court should take judicial notice of it because it is a highly relevant admission made in a public forum by a Ford representative who specializes in marketing to the Hispanic community. The Court should also consider this material because U.S. Tires has not been given an opportunity to conduct significant jurisdictional discovery, which would undoubtedly have confirmed this information. This information is also highly relevant to rebut Ford and Goodyear’s many assertions that they “did not target the Explorer and tire at New York”, that their connection with the claims is “merely coincidental,” that the Ford Explorer and subject tire wound up in New York due to “a series of fortuitous circumstances” and the claims “did not arise out of or relate to any of their New York contacts.” (See Appellant’s Brf., at 7, 16 and 25 (quotations omitted)) Contrary to their many assertions, it is abundantly clear that Ford and likely Goodyear specifically tailored and directed their extensive marketing and advertising efforts to promote their new and used products in New York, including the subject Ford Explorer and Goodyear tire.

country,<sup>3</sup> including plaintiff Jose Aybar, in a monolithic way. Quite to the contrary, Ford eschews a “cookie cutter approach” to the Hispanic community, carefully targeting subgroups in specific areas of the country, including the New York region, depending on where in Latin America most of them come from, to more effectively promote its business and sell its products. It is clear based on this admission, that Ford tailors its marketing in the New York area to the subgroups of Hispanics that predominate in New York, including persons originating from Puerto Rico and the Dominican Republic,<sup>4</sup> where the plaintiff’s surname, Aybar, is prevalent.<sup>5</sup>

The article explained how Ford specifically micro-targets Hispanics in the New York region and other regions:

A one-size-fits-all strategy just won’t cut it when it comes to reaching this varied demo. The 47 million Hispanics in the U.S. (as of July 1 2008 according to the U.S. Census Bureau) hail from 20 Spanish-speaking nations including Latin America and Spain. As Dave Rodriguez multi-cultural marketing manager at Ford puts it “The Hispanic market is very localized and targeted as it relates to specific regions of the country and it is a very

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<sup>3</sup> Based on the 2010 Census, there were more than 50 million persons of Hispanic origin living in the United States. See “Origin of Race and Hispanic Origin: 2010,” in 2010 Census Briefs, at 4 (<https://www.census.gov/content/dam/Census/library/publications/2011/dec/c2010br-02.pdf>)

<sup>4</sup> Based on the 2010 Census, New York State was the U.S. state with the largest population from the Dominican Republic by far, 674,787. See Wikipedia, the Free Encyclopedia, at [https://en.wikipedia.org/wiki/Dominican\\_Americans](https://en.wikipedia.org/wiki/Dominican_Americans) (citing statistics from the 2010 U.S. Census).

<sup>5</sup> Based on a “genealogy portal,” the plaintiff’s surname, Aybar, is most prevalent in the Dominican Republic. See Forebears.io, at <https://forebears.io/surnames/aybar>.

connected community. A cookie cutter approach isn't going to work." Ford approaches all of its multicultural marketing including Hispanic on two fronts: national and grassroots. While it connects via broad passions such as music sports or women's issues on a national level it gives each national program a regional bent. With music for example programs in New York or Miami feature artists with a Caribbean orientation that appeal to local crowds. In the Southwest or California the feeling is more Mexican.

Sandra O'Loughlin, *Targeting the Hispanic Demographic in Events*,

Eventmarketer.com (Jan. 28, 2010), at

<https://www.eventmarketer.com/article/targeting-hispanic-demographic-events/>.

## **I. Ford and Goodyear's Motions to Dismiss in the Court Below**

Ford and Goodyear moved to dismiss U.S. Tires claims against them for lack of personal jurisdiction. (R.8-9, 16-18, 384-386) Ford and Goodyear argued that neither the claims of US Tires or the Plaintiffs satisfy the New York Long Arm Statute, [CPLR §302](#), sufficient to establish specific jurisdiction. Neither disputed that they "transact[ed] any business within" the State of New York, pursuant to [CPLR §302\(a\)\(1\)](#), but both argued that neither US Tires nor the Plaintiffs' claims arise out of Ford's or Goodyear's activities or transaction of business in New York sufficient to satisfy the statute. (R.25 ¶ 22, R. 404 ¶ 40) They both also argued that the Court below did not have specific jurisdiction over them under the due process clause because Plaintiffs' claims did not arise out of or

relate to any of their New York contacts. (R.400-403, R. 32-34)

In opposition to the motions to dismiss, US. Tires argued, *inter alia*, that the CPLR §302(a)(1) requirement of some connection between the claim and the defendant's transaction of business or supply of goods or services in New York was satisfied because:

In our case, Ford sold the exact same model Ford Explorer in New York with the same design flaws and manufacturing defects as the incident Explorer. Goodyear sold this exact same model tire in New York with the same design flaws and manufacturing defects as the incident tire. That the incident Explorer was not manufactured in New York and that it was initially shipped to a dealer outside New York are irrelevant. So is the fact that the Goodyear tires were manufactured outside New York. Ford and Goodyear's sale of these products in general in New York satisfies the nexus requirement of 302(a)(1). In addition, the vehicle was registered in New York and injured New York residents. The tire was on that New York registered vehicle and allegedly serviced by U.S. Tires, a service center in Queens that regularly services Goodyear tires and Ford Explorers. It is not only the plaintiffs' claims that satisfy the nexus requirement, but also U.S. Tires' third-party claims for indemnity and contribution, which arise from New York contacts. Specifically, any judgment the plaintiffs may obtain against U.S. Tires would be in New York. U.S. Tires' contribution and indemnity claims would stem from that New York judgment. Moreover, the underlying facts of the case also connect U.S. Tires' contribution and indemnity claims to New York because the tire and vehicle were serviced in New York in a shop that regularly services Goodyear tires and Ford Explorers.

(R.529 ¶ 41)

With respect to due process, U.S. Tires argued (R.535-537), *inter alia*, that: “finding that the New York courts have jurisdiction over Ford and Goodyear does not violate due process. They marketed and sold their products in New York and therefore they should reasonably expect the products’ defects to have consequences in New York.” (R.537 ¶ 65)

#### **J. The September 25, 2019 Order by the Court Below**

In the September 25, 2019 Order (R.8-13), the Court below denied the motions to dismiss of Ford and Goodyear based on alleged lack of personal jurisdiction. (R.13). The Court below held that the first prong of CPLR §302(a)(1), whether the defendants “transacted business in New York” (R.10), was clearly satisfied sufficient to establish specific jurisdiction: “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. . . . [I]t 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.” (R.10)

The Court below also found that the second prong under CPLR §302(a)(1), “whether there is an arguable nexus or substantial relationship between the business transacted and the claim asserted” (R.10), was also satisfied sufficient to

establish specific jurisdiction over Ford and Goodyear:

With respect to the second prong, although the products at issue herein were manufactured out of state by third party defendants, the nature of their business 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.

\* \* \*

Here, the purposeful activities of both third-party defendants [within the state] greatly exceed that required by the [Court of Appeals]. 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. 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, targeted at New York residents, wound up in New York, and harmed plaintiffs, residents of New York. . . . [T]he pure happenstance in this matter is the fateful trip by plaintiffs to Virginia.

(R.11 (citations omitted))

The Court below also held that the “purposeful activities” in New York of Ford and Goodyear “far exceed” the requirements for “minimal contacts” under the due process clause of the U.S. Constitution:

Both third-party defendants assure the flow of their products to New York through their myriad assortment of purposeful activities in which they partake. . . . These purposeful activities far exceed the minimal contacts within the State of New York necessary to pass constitutional muster.

(R.12)

## **K. The Instant Appeal**

On or about October 17, 2019, Ford served and filed a Notice of Appeal from the September 25, 2019 Order. (R.3-5) On or about October 21, 2019, Goodyear served and filed a Notice of Appeal from the September 25, 2019 Order.

(R.6-7)

## **ARGUMENT**

### **POINT I**

**THE COURT BELOW CORRECTLY RULED THAT IT HAS  
SPECIFIC JURISDICTION OVER FORD AND GOODYEAR,  
PURSUANT TO CPLR §302(a), WHICH SHOULD BE  
AFFIRMED**

CPLR §302(a), which addresses specific jurisdiction, provides:

- (a) Acts which are the basis of jurisdiction. As 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, or his executor or administrator, who in person or through an agent:
  - (1) transacts any business within the state or contracts anywhere to supply goods or services in the state; or
  - (2) commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or
  - (3) commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he
    - (i) regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

- (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or
- (4) owns, uses or possesses any real property situated within the state.

**A. Ford and Goodyear are Subject to  
Specific Jurisdiction Under CPLR §302(a)(1)**

**1. The Two-Prong Test to Determine  
Specific Jurisdiction Under CPLR §302(a)(1)**

This Court recently set forth the two-prong test for determining whether the court has specific jurisdiction over a foreign domiciliary, pursuant to [CPLR §302\(a\)\(1\)](#):

In order to determine whether personal jurisdiction exists under [CPLR 302 \(a\) \(1\)](#), the court must determine (1) whether the defendant “purposefully availed itself of ‘the privilege of conducting activities within the forum State’ by either transacting business in New York or contracting to supply goods or services in New York” (\*923 *D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 297 [2017], quoting *Rushaid v Pictet & Cie*, 28 NY3d 316, 323 [2016]), and (2) whether the claim arose from that business transaction or from the contract to supply good or services (*see D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d at 297; *Rushaid v Pictet & Cie*, 28 NY3d at 323).

*Qudsi v. Larios*, 173 A.D.3d 920, 922–23 (2d Dep’t 2019).

Ford and Goodyear's dealings in New York satisfy both prongs of this test, as is discussed below.

**2. Ford and Goodyear Concede Their Extensive Dealings in New York Satisfy the "Purposeful Availment" First Prong of the Test to Determine Specific Jurisdiction, Pursuant to CPLR §302(a)(1)**

Ford and Goodyear explicitly concede that they "purposefully market, promote, advertise, and sell products in New York", in satisfaction of the first prong of the [CPLR §302\(a\)\(1\)](#) test. They admit in the Appellant's Brief:

Ford and Goodyear do not contest that they transacted some business in New York for long-arm-act purposes. The "requirement is met so long as the defendant's activities here were 'purposeful,'" *Piccoli v. Cerra, Inc.*, 174 A.D.3d 754, 755 (2d Dep't 2019) (quoting *Al Rushaid*, 28 N.Y.3d at 323), and Ford and Goodyear purposefully market, promote, advertise, and sell products in New York.

*See* Appellant's Brf., at 11.

**3. There is an "Articulable Nexus" or "Substantial Relationship" Between Ford and Goodyear's New York Activities and the Claims, Triggering the Second Prong of the CPLR §302(a)(1) Test**

**(a) The "Articulable Nexus" Standard Generally**

In *Qudsi v. Larios, supra*, this Court explained how the second prong of the [CPLR §302\(a\)\(1\)](#) test operates:

In order to satisfy the second prong of the jurisdictional inquiry, there must be an "articulable nexus" (*McGowan v Smith*, 52 NY2d at 272) or a "substantial relationship"

(*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]) between a defendant's New York activities and the cause of action sued upon.

*Id.*, 173 A.D.3d at 923.

The “articulable nexus” standard does not require a “causal link” between the claim and the defendant’s New York contacts. *Id.* The nexus requirement is “relatively permissive” and does not require causation, but merely “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.” *Licci v. Lebanses Can. Bank, SAL*, 20 N.Y.3d 327, 339 (2012). The claim need only be “in some way arguably connected to the transaction.” *Id.* at 340.

The connection requirement of CPLR §302(a)(1) is satisfied so long as the product is marketed in New York, even if the specific product that caused the injury was not sold in New York initially. In *Rushaid v. Pietet & Cie*, 28 N.Y.3d 316 (2016), the Court of Appeals found that the statute’s nexus requirement was satisfied when the bank accounts in New York were part of a larger fraud scheme conducted by the defendants that took place elsewhere, just like the sale of the Ford Explorer and Goodyear tire were part of a nationwide marketing for those products. *Id.* See also *Singer v. Walker*, 15 N.Y.2d 443 (1965) (foreign manufacturer was subject to jurisdiction under 302(a)(1) where a New York retailer sold one of its hammers to the plaintiff who was injured in an accident that