EXHIBIT H

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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ALEXANDRU BARBAYANNI,

Plaintiff,

-against-

FORD MOTOR COMPANY, PARAMUS FORD SALE, ALL AMERICAN FORD OF PARAMUS, ANDREW REINSTEIN, ROY REINSTEIN and ELIZABETH J. KLAVER,

Defendants.

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DECISION AND ORDER ON MOTIONS FOR SUMMARY JUDGMENT

Index No.: 032616/2017
(Motions #1-4)

Sherri L. Eisenpress, J.

The following papers, numbered 1 to 21, were reviewed in connection with (i) the Notice of Motion (#1) filed by Defendant Elizabeth Klaver("Klaver") for an Order, pursuant to *Civil Practice Law and Rules* § 3212, dismissing the instant negligence action as against said defendant on the ground that she has no liability for the subject accident; (ii) the Notice of Motion (#2) filed by Defendant Ford Motor Company ("Ford") for an Order, pursuant to *Civil Practice Law and Rules* § 3211(A)(8), dismissing the instant action on the grounds that there is no personal jurisdiction over defendant; (iii) Notice of Motion (#3) filed by Defendant All American Ford of Paramus ("All American") for an Order, pursuant to *Civil Practice Law and Rules* § 3211(A)(8), dismissing the instant action on the grounds that there is no personal jurisdiction over defendant; and (iv) Notice of Motion #4 filed by defendants Andrew Reinertsen and Roy Reinertsen (collectively "Reinertsen") for an Order, pursuant to *Civil Practice Law and Rules* § 3212, dismissing the instant negligence action as against said defendants on the ground that they have no liability for the subject accident:

PAPERS	**NUMBERED**
(Motion #1)	
AMENDED NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF ELIZABETH KLAVER/EXHIBITS "A-D"	1-3
AFFIRMATION IN OPPOSITION/AFFIDAVIT OF ALEXANDRU BARBAYANNI/	4-5

EXHIBITS "A-E"	
AFFIRMATION IN REPLY	6
(Motion #2)	
NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF MIKE DEYOUNG/EXHIBITS "A-C"	7-8
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NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF RICHARD SELMAN/EXHIBITS "A-G"	11-13
CORRECTED AFFIRMATION IN OPPOSITION/EXHIBITS A-H	14
AFFIRMATION IN REPLY	15
(Motion #4)	
NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF ANDREW REINERTSEN/EXHIBITS "A-C"	16-18
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AFFIRMATION IN REPLY	21

Upon a careful and detailed review of the foregoing papers, the Court now rules as follows:

This action is one for personal injuries sustained by plaintiff in a three car motor vehicle accident that occurred on June 17, 2014, on Route 304, at or near its intersection with West Nyack Road, in the Town of Clarkstown, New York. It is alleged that defendant Elizabeth Klaver was the operator of vehicle #1, which was struck in the rear by vehicle #2, owned and operated by defendants Andrew Reinertsen[1] and Roy Reinertsen. The Reinertsen vehicle was then struck in the rear by vehicle #3, which is owned and operated by Plaintiff. It is alleged

[1]Both the police report and caption list these defendants' last name as Reinsten, however the affidavit provided in support of Motion #4 lists the defendant's name as Andrew Reinertsen.

by Plaintiff that at the time of the accident, the lower steering wheel on his 2004 Ford Crown Victoria "locked up, failed, jammed" and/or otherwise caused Plaintiff to be unable to steer the wheel thereby preventing Plaintiff from avoiding a collision with another vehicle.

Plaintiff commenced the instant action by filing a Summons and Complaint on June 15, 2017, through the NYSCEF system. In addition to allegations of negligence in the operation of their vehicles made against the other drivers/owners involved in the accident, Plaintiff also commenced an action against defendants Ford Motor Company, Paramus Ford Sale and All American Ford of Paramus. The causes of action against these defendants include breach of warranty of merchantability and fitness, negligence, strict product liability, and failure to warn and/or failure to properly issue a recall call notice, in connection with the design, manufacture, production, construction, assembly, testing, inspection, display, distribution, sale and repair of the subject 2004 Ford Crown Victoria. Issue was joined as to Defendant Ford by filing of an Answer through the NYSCEF system on July 24, 2017; by Defendant Klaver on August 2, 2017, and by the Reinertsen Defendants on October 24, 2017. Defendant American Ford of Paramus filed an Answer to the Complaint on November 8, 2017, in connection with the filing of its motion to dismiss. Defendants Ford and All American raised the affirmative defense of lack of personal jurisdiction in their Answers.

Although the Court has before it four separate motions, motions #2 and #3 to dismiss, pursuant to CPLR § 3211, raise similar legal issues regarding lack of personal jurisdiction and will therefore be addressed together. Motions #1 and #4 for summary judgment, pursuant to CPLR §3212, on the ground that defendants are not responsible for the accident, also raise similar issues and legal arguments and will thus likewise be addressed together.

Motions #2 and #3 to Dismiss for lack of personal jurisdiction

With regard to personal jurisdiction over defendants Ford and All American, Plaintiff alleges that these defendants "regularly do, or solicit, business in New York." He further

avers that these defendants receive "substantial revenue from goods and/or services used or consumed, or services rendered in the State of New York."

Defendant Ford, by the timely filing of Motion #2 on September 19, 2017, moves to dismiss the Complaint against it on the ground that Plaintiff has neither general or specific personal jurisdiction over it. Ford contends that it is not subject to general personal jurisdiction under the standards announced by the United States Supreme Court in Daimler AG v. Bauman, 134 S.Ct. 746 (2014) and BNSF Ry. Co. V. Tyrrell, 137 S. Ct. 1549 (2017). Defendant Ford points out that it is incorporated in Delaware, and its principal place of business is in Michigan. Additionally, Ford asserts that it does not engage in servicing of Ford vehicles in New York. It argues that general jurisdiction does not exist because Ford is not "at home," as that is legally defined, in New York.

Defendant Ford also claims that there is no specific jurisdiction and submits the Affidavit of Mike DeYoung, who is a Retail Network Operations Manager in the Marketing Sales and Service Division of Ford in support of this contention. Mr. DeYoung asserts that Plaintiff's Ford Crown Victoria was not primarily designed or manufactured by Ford in New York. It was assembled in Canada and sold by Ford to an independently-owned Ford dealership, Bob Howard Downtown Ford, located in Oklahoma. The vehicle was subsequently purchased by a retail customer in Oklahoma on November 18, 2004. Ford was not involved in the vehicle's relocation to New York: Thus, there is no specific jurisdiction over Ford because any relevant conduct on the part of defendant occurred entirely out of state, Ford did not "purposefully avail" itself of the privileges of and benefits of New York's laws and the litigation does not arise out of defendant's purposefully availed contacts with this State. Put another way, Ford argues that Plaintiff's alleged injuries would have occurred whether or not Ford did business in New York, and thus it cannot be said that Plaintiff's claims "arise out of" Ford activities.

In opposition to Ford's motion to dismiss, Plaintiff contends that Ford consented to general jurisdiction in New York pursuant to CPLR § 301 because it is registered as a foreign

corporation and it designated a local agent for service of process. Plaintiff relies upon the lower Court cases of Bailen v. Air & Liquid Sys. Corp., 2014 NY Slip Op 32079[U] (Sup. Ct., NY County 2014) and Beach v. Citigroup Alternative Invs. LLC, 12-CV 7717 (PKC)(SDNY Mar.7, 2014). Plaintiff also argues that Ford is subject to specific jurisdiction pursuant to CPLR § 302 because it manufactured a defective part and placed it into the stream of commerce.

Defendant All American also moves to dismiss the Complaint against it on the grounds that there is no jurisdiction over it pursuant to CPLR § 302, that service was not properly made pursuant to CPLR § 306-b and Business Corporation Law § 307 and because Plaintiff's action is time barred by the Statute of Limitations.

Defendant All American contends that it is not subject to New York jurisdiction on the ground that it is incorporated in the State of Delaware, maintains its principal place of business in New Jersey, is not registered as either a domestic or authorized foreign corporation through the Secretary of State and has no connection with the State of New York of any kind. With respect to long-arm jurisdiction, All American asserts that it does not transact any business within New York State, does not supply goods or services of any kind within New York, has no employees, agents, representatives on its behalf in New York, and has not traveled outside the State of New Jersey to sell any vehicles or perform any services or functions. While Plaintiff's complaint appears to allege that the claims against All American arise from service of plaintiff's vehicle in October of 2011 at its facility in New Jersey, Defendant asserts that jurisdiction would not be property under CPLR § 302(a)(3)(1) because it does not "regularly solicit business or engage in any other persistent course of conduct nor does it derive substantial revenue from goods or services rendered in the State.

Defendant All American also asserts that it was not served with process in the action and only became aware of the action due to receiving, through the United States mail, a copy of the motions made by co-defendants Ford and Klaver. It contends that the affidavit of service only addresses service on the Secretary of State and not the second requirement, to

wit: that the unauthorized foreign corporation also be served through (i) "registered mail with return receipt requested" or (ii) personally served in its home state of New Jersey. Thus, the failure to comply with the provisions of Business Corporation Law § 307 requires dismissal. Lastly, All American claims that the Statute of Limitations for a breach of warranty claim is four years after the cause of action accrued, which in this case is 2011. With respect to the remaining causes of action, All American claims that because service was not proper, and it is more than three years since the date of the accident, these claims are now barred by the statute of limitations.

In opposition to All American's motion, Plaintiff asserts that it was not until after the accident occurred that Plaintiff came to learn that Ford had issued a safety recall involving certain 2005 through 2011 model year Ford Crown Victoria's with respect to the lower intermediate shaft corrosion and that he never received such notices from All American, which had replaced the shaft on October 24, 2011. Plaintiff alleges that although All American is not registered with the New York Department of State, it does advertise in New York State by virtue of internet advertising wherein it states that "Our Proud Local New Jersey Ford Dealership serving Mahway, Ramsey, NJ and Nanuet, NY." Plaintiff argues that All American should have known that his car would be driven in New York and Rockland County based upon Bergen County's proximity.

With regard to the allegation that Plaintiff failed to complete service in compliance with BCL § 307, Plaintiff relies upon the fact that the affidavit specifically states that said service was made pursuant to that section, "which would include a certified mailing." Plaintiff contends that they had arranged for proper service through its process server. Lastly, Plaintiff alleges that the breach of warranty claim arises out of a personal injury, and is thus three years from the date of the injury and not four years from the date of the placement of the defective part.

Legal Discussion

A plaintiff bears the burden of establishing personal jurisdiction over defendants and must prove that personal jurisdiction is proper under both the Constitution's Due Process clause and under New York's long arm statute. Bernardo v. Barrett, 57 N.Y.2d 1006, 457 N.Y.S.2d 479 (1982); LaMarca v. Pak-Mor Mfg. Co., 95 N.Y.2d 210, 213, 713 N.Y.S.2d 304 (2000). New York's long-arm statute, CPLR § 302(a), states in pertinent part:

> (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
> >
> > > (ii) 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.

Two types of personal jurisdiction, specific and general, are available against a corporate entity in New York. General jurisdiction is all-purpose jurisdiction to adjudicate disputes regardless of where they took place or whether they bear any relationship to the entity's contacts with the forum state. Goodyear Dunlop Tires Operations. S.A.v. Brown, 131 S.Ct. 2846 (2011). With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction. Daimler AG v. Bauman, 134 S. Ct. 746, 760 (2014). In Daimler, the Supreme Court specifically rejected the proposition that courts

may exercise general jurisdiction in every State in which a corporation "engages in a substantial, continuous, and systematic course of business." Id. at 761. Rather, general jurisdiction "permits a court to assert jurisdiction over a foreign corporation ' to hear any and all claims against it' only when the corporation's affiliations with the State in which suit is brought are so constant and pervasive' as to render [it] essentially at home in the forum State.' Bauman, 134 S. Ct. at 751.

In a case similar to the matter at bar, Fernandez v. DaimlerChrysler, A.G, 143 A.D.3d 765, 40 N.Y.S.3d 128 (2d Dept. 2016), an action was commenced against a German vehicle manufacturer alleging that the driver lost control of the vehicle due to allegedly defective ball joints and front lower control arms. The complaint was dismissed for lack of personal jurisdiction. Id. The Court noted that contrary to plaintiff's contention, exercising general jurisdiction over Daimler does not comport with due process. Id. at 131. In the instant matter, neither defendant Ford nor defendant All American, are incorporated in or have their principal place of business in the State of New York. Nor has Plaintiff made any showing whatsoever that either Defendants' contacts are so constant or pervasive so as to render them "at home" in this State.

Additionally, this Court rejects Plaintiff's contention that there exists general jurisdiction over Ford on the ground that it consented to jurisdiction because it is a registered foreign corporation that designated a local agent for service of process. While it appears that some Courts in this State found this to be a basis for jurisdiction before the Supreme Court's decision in Bauman, since then, lower courts who have addressed this issue found that such a determination would offend due process considerations. See Amelious v. Grand Imperial LLC, 64 N.Y.3d 855 (Sup. Ct., New York County, 2017); Wilderness USA, Inc. v. DeAngelo Brothers LLC, 265 F.Supp.3d 301, 312 (W.D.N.Y 2017); Famular v. Whirlpool Corp., 2017 WL 2470844 (S.D.N.Y 2017); Chatwal Hotels & Resorts LLC v. Dollywood Co., 90 F.Supp.3d 97 (S.D.N.Y. 2015). The Courts in these cases note that registration statutes like New York's do not

explicitly notify foreign corporations that registration to do business will open the door to unlimited personal jurisdiction in the State; that such an exercise of jurisdiction is coercive and incommensurate with the amount of power a State reasonably needs to have over foreign corporations doing business in order to protect its citizens; registration to do business here is a relatively minor ministerial act; and registration does not require the corporation to make any kind of statement that it is consenting to general jurisdiction. For these reasons, this Court rejects this argument and finds that Plaintiff has not demonstrated general personal jurisdiction over the moving defendants.

Specific jurisdiction, sometimes referred to as long-arm jurisdiction, refers to jurisdiction over an individual or entity for the purpose of adjudicating a particular controversy that arises from the entity's contacts with the forum State. See Fischbarg v. Doucet, 9N.Y.3d 375, 849 N.Y.S. 501 (2007).CPLR 302(a) is a "singe act statute" and "proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted." America/International 1994 Venture v. Mau, 146 A.D.3d 40, 52, 42 N.Y.S.3d 188 (2d Dept. 2016). Under New York's long-arm statute, "purposeful activities are those with which a defendant, through volitional acts, avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of the law." Id."Whether a non-domiciliary has engaged in sufficient purposeful activity to confer jurisdiction in New York requires an examination of the totality of the circumstances." Id.

In the instant matter, Plaintiff asserts that defendant Ford is subject to specific jurisdiction because of the "stream of commerce theory" in that a defective part manufactured by Ford was put into the stream of commerce to be distributed throughout the United States and Ford was aware of the possibility of a lawsuit in New York since it issued a recall notice for vehicles that were either originally sold or are currently registered in New York. However, a

seller's knowledge that its product may be destined for a particular forum is an insufficient basis for that forum to sustain jurisdiction over the seller. Paradise Products Corp. V. Allmark Equipment Co., Inc., 138 A.D.2d 470. 526 N.Y.S.2d 119 (2d Dept. 1988). Moreover, the proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way. Walden v. Fiore, 134 S.Ct. 115, 1123 (2014). The Court finds that Defendant Ford did not purposefully avail itself of the privileges of conducting business in New York so as to confer specific jurisdiction, as Plaintiff points to no further act connected to New York other than placing a product in the stream of commerce. Since Plaintiff has failed to establish personal jurisdiction over Defendant Ford, the complaint as against it must be dismissed.

With respect to Defendant All American, Plaintiff alleges that specific jurisdiction exists based upon its solicitation of business in New York on its website and its proximity to Rockland County resulting in its service of New York residents. For the following reasons, Plaintiff has failed to demonstrate that defendant transacted business in New York so as to establish jurisdiction over it. It is axiomatic that solicitation of business alone will not suffice to establish presence in the State. Cardone v. Jiminy Peak ,245 A.D.2d 1002, 667 N.Y.S.2d (3d Dept. 1997)(defendants activities including advertisements on New York radio stations, televisions stations and print media; billboards; the mailing of promotional literature to certain groups and individuals in New York; and attendance at promotional events deemed insufficient to assert jurisdiction.); Zaveri v. Condor Petroleum Corp., 2009 WL 2461092 (W.D.N.Y. 2009)(fact that company sent promotional materials to New York investors, invited New York residents to Louisiana and solicited investments from New York residents failed to establish defendant conducted business in state.);Holness v. Maritime Overseas Corp. 251 A.D.2d 220, 676 N.Y.S.2d 540 (1st Dept. 1998); Chamberlain v. Jiminy Peak, 176 A.D.2d 1109 575 N.Y.S.2d 410 (3d Dept. 1991). In the instant matter, the existence of defendant's website alone constitutes nothing more than solicitation and is insufficient to confer jurisdiction.

Nor is there any merit to Plaintiff's contention that because New York residents avail themselves of All American's services, defendant is deemed to have transacted business in New York. In O'Brien v. Hackensack Univ. Med. Ctr., 305 A.D.2d 199, 760 N.Y.S.2d 425 (1st Dept. 2003), the Court noted that treatment of New York residents at defendant hospital does not provide a strong case for finding that defendant transacted business in New York. Moreover, the Court noted that the situs of the injury is the location where the event giving rise to the injury occurred, and not where the resultant damages occurred. Id. Likewise, in the instant matter, the situs of the accident is New Jersey and other than the website and proximity to New York, defendant has no other contacts with New York. Since Plaintiff has failed to establish personal jurisdiction over Defendant All American, the action against it must be dismissed.

The Court notes that even if personal jurisdiction was found over defendant All American, the action would still require dismissal for Plaintiff's failure to comply with Business Corporation Law § 307. In addition to service upon the Secretary of State, a Plaintiff must also send the foreign corporation notice of the service and a copy of the process by registered mail with return receipt requested, or by personal delivery. An affidavit of compliance, together with a return receipt or other official proof of service, must be filed within a specified time period. There is no evidence that this was done in the instant case and Plaintiff failed to even show proof of compliance in opposition to the instant motion. Failure to proceed in the precisely delineated sequence set forth in the statute is a jurisdictional defect requiring dismissal. Flannery v. General Motors Corp.,86 N.Y.2d 771, 631 N.Y.S.2d 135 (1995); Van Norden v. Mann Edge Tool Co., 77 A.D.3d 1157, 910 N.Y.S.2d 189 (3d Dept. 2010).

Motions #1 and #4 for summary judgment

Defendants Elizabeth Klaver, Roy Reinertsen and Andrew Reinertsen all move to dismiss the action on the ground that their vehicles were stopped when struck in the rear, and as such, cannot be found liable for the subject accident. In support of her motion, defendant

Klaver submits an affidavit in which she avers that prior to the accident her vehicle was stopped at the intersection of Route 304 and West Nyack Road for a police vehicle that was sounding its horn. She states that her vehicle was stopped in the left turning lane when she felt an impact to the rear of her vehicle. Andrew Reinersten submits an affidavit in support of his summary judgment motion in which he contends that the vehicle in front of him stopped short due to a police vehicle crossing into the intersection which caused him to come into contact with the Klaver vehicle. He states that after impact, he was stopped and shifting his vehicle into park when the vehicle in back of him struck his vehicle at a high rate of speed. Defendants contend that they were struck in the rear while stopped, and as such, cannot be liable as a matter of law.

In opposition to the summary judgment motions, Plaintiff submits an affidavit that he was traveling approximately 45 mph and maintained a distance of approximately 60-65 feet behind the vehicle in front of him. He contends that he observed the Ford pick-up directly in front of him come to an abrupt and sudden stop so he jammed his brakes and struck that vehicle. He claims that he attempted to swerve in order to avoid the collision with the vehicle in front of him but his steering wheel locked up, preventing him from turning it. Plaintiff further contends that the vehicle owned by defendant Klaver abruptly changed lanes and stopped in front of the middle car immediately prior to the emergency vehicle crossing Route 304. Plaintiff argues that there is a triable issue of fact as to defendants' negligence, or in the alternative, that said motion should be denied as premature as no depositions have been taken.

Legal Discussion

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. Giuffrida v. Citibank Corp., *et al*., 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986). The failure to do so requires a denial of the

motion without regard to the sufficiency of the opposing papers. Lacagnino v. Gonzalez, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. Gonzalez v. 98 Mag Leasing Corp., 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing Alvarez, supra, and Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988); Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

It is well-settled that a rear-end collision with a stopped or stopping vehicle creates a prima facie case of liability with respect to the operator of the moving vehicle, unless the operator of the moving vehicle can come forward with an adequate, non-negligent explanation for the accident. See Smith v. Seskin, 49 A.D.3d 628, 854 N.Y.S.2d 420 (2d Dept. 2008); Harris v. Ryder, 292 A.D.2d 499, 739 N.Y.S.2d 195 (2d Dept. 2002). The inference of negligence may be rebutted by proof that the accident was caused by the lead vehicle's abrupt change of lanes in front of the rear vehicle, and then slowing down or coming to a sudden stop. Greenidge v. United Parcel Service, 153 A.D.3d 905, 60 N.Y.S.3d 421, 424 (2d Dept. 2017); Reitz v. Seagate Trucking Inc., 71 A.D.3d 975, 898 N.Y.S.2d 173 (2d Dept. 2010); Ortiz v. Hub Truck Rental Corp., 82 A.D.3d 725, 918 N.Y.S.2d 156 (2d Dept. 2011).

When a motion for summary judgment stemming from a rear-end collision is opposed with conflicting affidavits as to how and why the accident occurred, and no discovery has taken place, the motion may be denied as premature, with leave to renew after completion of discovery. See Bernstein v. New York Transit Authority, 153 A.D.3d 897, 61 N.Y.S.3d 113 (2d Dept. 2017); Cardone v. Poidamani. 73 A.D.3d 828, 902 N.Y.S.2d 121 (2d Dept. 2010). "A party should be afforded a reasonable opportunity to conduct discovery prior to a determination of a motion for summary judgment." Okula v. City of New York, 147 A.D.3d 967, 48 N.Y.S.3d

191 (2d Dept. 2017).

Given the conflicting affidavits submitted as to how the accident occurred, the Court shall deny moving defendants' summary judgment motion without prejudice and with leave to renew after completion of discovery in this matter. Plaintiff and the remaining defendants shall appear for a Preliminary Conference on **Wednesday, June 6, 2018, at 9:45 a.m.** so that discovery may proceed in an expeditious manner.

Accordingly, it is hereby

ORDERED that the Notice of Motion (#1) filed by Defendant Elizabeth J. Klaver is DENIED without prejudice and with leave to renew upon completion of discovery; and it is further

ORDERED that the Notice of Motion (#2) filed by defendant Ford Motor Company is GRANTED, and the complaint dismissed as against this defendant; and it is further

ORDERED that the Notice of Motion (#3) filed by defendant All American Ford of Paramus is GRANTED, and the Complaint dismissed as against this defendant; and it is further

ORDERED that the Notice of Motion (#4) filed by defendants Roy Reinertsen and Andrew Reinertsen is DENIED without prejudice and with leave to renew upon completion of discovery; and it is further

ORDERED that the remaining parties are to appear before the undersigned for a preliminary conference on WEDNESDAY, JUNE 6, 2018, at 9:45 a.m.

The foregoing constitutes the Decision and Order of this Court on Motion #'s 1 through 4.

Dated: New City, New York
May 23, 2018

HON. SHERRI L. EISENPRESS
Acting Justice of the Supreme Court

To: All parties via e-filing