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# New York Court of Appeals Confirms Registration To Do Business Under Business Registration Statute Does Not Constitute Consent to General Jurisdiction

**For more than a century, companies that registered to do business under state business registration statutes were deemed to have consented to general personal jurisdiction — i.e., jurisdiction over all disputes — in that state, regardless of any link between the alleged misconduct and the forum. That was thrown into doubt in 2014, when the Supreme Court of the United States held in *Daimler AG* v. *Bauman*[1] that, except in extraordinary cases, a corporate defendant is only subject to general jurisdiction where it is "at home," meaning where it is incorporated or has its principal place of business.[2]**

**Before *Daimler*, courts, including those in New York, had consistently held that registering to do business provided a basis for general jurisdiction.[3] Since *Daimler*, companies have argued that business registration statutes can no longer provide a basis for consent to general jurisdiction. Courts that have considered the question have, with few exceptions, agreed.**

**On October 7, 2021, in *Aybar* v. *Aybar,*[4] the New York Court of Appeals definitively resolved this question, holding that registering to do business and consenting to service of process under the New York Business Corporation Law ("NYBCL") do not constitute consent to general personal jurisdiction. While the decision focused on an interpretation of the NYBCL, its reasoning strongly suggests that in New York, registration to do business under any statute does not amount to consent to general jurisdiction.**

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[1] 571 U.S. 117 (2014).

[2] *Id.* at 137-39.

[3] *See Aybar* v. *Aybar*, 93 N.Y.S.3d 159, 169 (2019) *aff'd*, 2021 WL 4596367 (N.Y. Oct. 7, 2021) (collecting cases).

[4] *Aybar* v. *Aybar*, 2021 WL 4596367 (N.Y. Oct. 7, 2021).

## I. Background

In 2014, the U.S. Supreme Court in *Daimler* dramatically changed the law of general jurisdiction. The *Daimler* court rejected the practice of exercising general jurisdiction over a company whenever it conducted substantial business activities in the forum and instead limited general jurisdiction over a company to only those forums where it is "at home,"[5] which it defined to be the corporation's principal place of business and state of incorporation in all but the most extraordinary of cases.[6]

The *Daimler* decision brought into doubt a line of cases dating back to 1917 that held that companies registered to do business under statutes that contained consent to service of process provisions automatically consented to general jurisdiction in that state. In *Pennsylvania Fire Ins. Co.* v. *Gold Issue Mining Co.*,[7] a Pennsylvania company insured buildings in Colorado under a policy issued in Colorado. Seeking to recover on the policy, the policyholder sued the insurer in Missouri, where the insurer had obtained a license to conduct business. In applying for the license, the insurer had filed with the Missouri insurance superintendent "a power of attorney consenting that service of process upon the superintendent [of insurance] should be deemed personal service upon the company. . . ."[8] The Court concluded that this statutory power of attorney subjected the Pennsylvania company to general personal jurisdiction in Missouri.[9] *Pennsylvania Fire* and the case law that followed highlighted an expansive approach to personal jurisdiction that continued until *Daimler*.

Since *Daimler*, with few exceptions,[10] courts have rejected the *Pennsylvania Fire* line of cases.[11] For example, in 2016, the United States Court of Appeals for the Second Circuit, in *Brown* v. *Lockheed Martin Corp.*,[12] held that registration under Connecticut's business registration statute and appointment of an in-state agent did not confer general jurisdiction. The Second Circuit stated that the "'essentially at home' test enunciated in *Goodyear* and *Daimler* . . . suggests that federal due process rights likely constrain an interpretation that transforms a run-of-the-mill registration . . . statute into a corporate 'consent' . . . to the exercise of general jurisdiction by state courts."[13] In so holding, the court made clear that it would not find any business registration statute to constitute consent to general

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[5] 571 U.S. at 137-39.

[6] *See, e.g.*, 571 U.S. 117, 130 (2014) (citing *Perkins* v. *Benguet Consol. Mining Co.*, 342 U.S. 437, where a Philippines-based company temporarily shifted its principal operations to Ohio during World War II because of the Japanese occupation of the Philippines as an example of an exceptional case).

[7] 243 U.S. 93 (1917).

[8] *Id.* at 94.

[9] *Id.* at 95-96.

[10] *See, e.g., In re Syngenta AG MIR 162 Corn Litig.*, 2016 WL 2866166, at *1 (D. Kan. May 17, 2016) (explaining that *Daimler* did not overrule earlier decisions supporting consent jurisdiction and that the Supreme Court has continued to sanction the "viability of jurisdiction through consent"); *Brieno* v. *Paccar, Inc.*, 2018 WL 3675234, at *4 (D. N.M. Aug. 2, 2018) (finding, despite the analysis in *Brown*, that defendant's registration under New Mexico's business registration statute to constitute consent to general jurisdiction); and *Bors* v. *Johnson & Johnson*, 208 F. Supp. 3d 648 (E.D. Pa. 2016) (finding defendant's registration under Pennsylvania's business registration statute to constitute consent to general jurisdiction).

[11] *See, e.g.*, *Waite* v. *All Acquisition Corp.*, 901 F.3d 1307, 1319 & n.5 (11th Cir. 2018) ("[W]e reject the exercise of general personal jurisdiction based on such implied consent"; "an overly broad interpretation of a registration scheme as providing consent might be inconsistent with the Supreme Court's decision in "*Daimler*"); and *Astrazeneca AB* v. *Mylan Pharms., Inc.*, 72 F.Supp.3d 549, 556 (D. Del. 2014) (holding compliance with registration statutes that are mandatory for doing business in the state cannot constitute consent to jurisdiction following *Daimler*).

[12] 814 F.3d 619 (2d Cir. 2016).

[13] *Id.* at 631.

jurisdiction "in the absence of a clear legislative statement" or "a definitive interpretation by the [state's highest court]" to that effect.[14]

The Second Circuit left open the possibility that some business registration statutes could satisfy this test, and specifically cited the NYBCL as one that likely would satisfy it.[15] However, in the years that followed, the Appellate Divisions of the First, Second, and Fourth Departments read the NYBCL differently, holding that registering to do business in New York alone does not establish general jurisdiction over a party.[16]

The Second Circuit joined the New York appellate courts in *Chen* v. *Dunkin' Brands, Inc.*[17] by holding that a company does not subject itself to the general jurisdiction of New York state and federal courts simply by registering to do business under the NYBCL. In *Chen*, plaintiffs argued that Dunkin' Donuts consented to general jurisdiction in New York by registering as a foreign corporation under § 1301 of the NYBCL.[18] The Second Circuit disagreed, holding that "a foreign corporation does not consent to general personal jurisdiction in New York by merely registering to do business in the state and designating an in-state agent for service of process under NYBCL § 1301(a)."[19] The Second Circuit acknowledged that pre-*Daimler*, New York courts had interpreted registration under NYBCL § 1301(a) as consent to general jurisdiction,[20] but nevertheless held that post-*Daimler* a corporate defendant is only "at home" where it is incorporated or maintains its principal place of business, except in truly exceptional cases.[21] For that reason, it had "little trouble" affirming the District Court's dismissal.[22] Notably, in its opinion, the *Chen* court cited favorably the Appellate Division's decision in *Aybar* v. *Aybar*[23] that "a corporate defendant's registration to do business in New York . . . does not constitute consent by the corporation to submit to the general jurisdiction of New York for causes of action that are unrelated to the corporation's affiliations with New York."[24]

*Chen*, however, did not definitively resolve the issue, because the plaintiffs in *Aybar*, the principal decision relied on by the Second Circuit in *Chen*, appealed the First Department's decision to the New York Court of Appeals.

## II. The Court of Appeals' Decision in *Aybar*

In *Aybar*, survivors of a motor vehicle accident in Virginia brought an action in New York against the driver, the car manufacturer, and the manufacturer of the tires that allegedly failed, causing the accident. The driver was a New York resident, while both the manufacturer, Ford, and the tire manufacturer, Goodyear, were incorporated and maintained principal places of business outside of the state. With no in-state conduct to establish jurisdiction, plaintiffs argued that the court had jurisdiction over both Ford and Goodyear because, by registering to do business in

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[14] *Id.* at 641.

[15] *Id.* at 640.

[16] *See Best* v. *Guthrie Med. Group, P.C.*, 110 N.Y.S.3d 1, 2 (N.Y. App. Div. 1st Dept. 2019); *Aybar* v. *Aybar*, 93 N.Y.S.3d 159, 166 (N.Y. App. Div. 2d Dept. 2019); *Fekah* v. *Baker Hughes Incorporated*, 107 N.Y.S.3d 258, 260 (N.Y. App. Div. 4th Dept. 2019).

[17] 954 F.3d 492 (2d Cir. 2020).

[18] *Id.* at 496.

[19] *Id.* at 499.

[20] *Id.* at 498.

[21] *Id.*

[22] *Id.* at 499.

[23] 93 N.Y.S.3d 159 (2019).

[24] *Chen*, 954 F.3d at 499 (citing *Aybar*, 93 N.Y.S.3d at 170).

New York and appointing an in-state agent for service of process, both companies consented to general jurisdiction in the state's courts.

The only issue before the New York Court of Appeals was whether Ford and Goodyear consented to general jurisdiction in New York by registering to do business there and appointing a local agent for service, in compliance with the NYBCL. In concluding that they did not, the Court of Appeals observed that the NYBCL lists certain requirements that foreign corporations must comply with to do business in the state, but the law does not "condition the right to do business on consent to the general jurisdiction of New York Courts or otherwise afford general jurisdiction to New York courts over foreign corporations that comply with these conditions."[25]

The Court of Appeals also held that its 1916 decision in *Bagdon* v. *Philadelphia & Reading Coal & Iron Co* did not compel a different result.[26] In *Bagdon*, the plaintiff, a New York resident, sued the defendant, a Pennsylvania corporation, for breach of contract. There, defendant's designated in-state agent was served with process, and the issue before the court was limited to whether consent to that service conferred jurisdiction over the defendant for causes of action unrelated to the business it transacted within the state. The *Bagdon* court ruled that registration did provide a basis for jurisdiction. In reviewing its prior decision in *Bagdon*, the *Aybar* court held that the defendant's designation of an in-state agent, in compliance with the statute, could only be read as consent to in-state service, not consent to general jurisdiction.

In reconciling *Bagdon* with its decision in *Aybar*, the Court of Appeals noted that the U.S. Supreme Court's personal jurisdiction analysis has evolved in the century since *Bagdon*. Under the precedent at the time, the defendant's consent to service conferred general jurisdiction. The Court of Appeals observed that *Daimler* now defines the contours of general jurisdiction, and that outside of the exceptional case, a corporation is only subject to general jurisdiction in the locations where it has its principal place of business or is incorporated.[27]

## III. Conclusion

The New York Court of Appeals decision in *Aybar* definitively holds that registration under the NYBCL is not a consent to general jurisdiction under New York law. The decision also reflects a prevailing consensus that, after *Daimler*, registering to do business in a state cannot by itself establish general jurisdiction over out-of-state companies.

*Aybar* may not, however, be the last word on this issue. In June 2021, the New York State legislature passed a bill that explicitly provides for consent to general jurisdiction by registering to do business in the state, which the governor subsequently vetoed. *See* S. 7253, 2021-2022 Leg., Reg. Sess. (N.Y. 2021) (vetoed 2021). There is nothing to prevent the New York state legislature from pursuing similar legislation again.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg (Partner) at 212.701.3120 or jkurtzberg@cahill.com or Adam S. Mintz (Counsel) at 212.701.3981 or amintz@cahill.com; or email publications@cahill.com.

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[25] *Aybar* v. *Aybar*, 2021 WL 4596367, at *2 (N.Y. Oct. 7, 2021).

[26] 217 N.Y. 432, 111 N.E. 1075 (1916).

[27] *Id*. at 6 (citing *Daimler*, 571 U.S. at 137).