

Second Circuit Confirms Registration To Do Business Under New York’s Business Registration Statute Does Not Constitute Consent To General Jurisdiction

For the better part of the last 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, in all but the most extraordinary cases, a defendant is only subject to general jurisdiction where it is “at home,” which generally means where a company is incorporated or has its principal place of business.²

Since *Daimler*, companies being sued in forums for conduct that occurred elsewhere have argued that various state business registration statutes cannot provide a basis for consent to general jurisdiction. The courts that have considered the question have, with few exceptions, agreed.

On March 31, 2020, in *Chen v. Dunkin’ Brands, Inc.*,³ the Court of Appeals for the Second Circuit continued this trend 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 New York’s business registration statute. Previously, in its 2016 decision in *Brown v. Lockheed Martin Corp.*,⁴ the Second Circuit had suggested in *dicta* that the New York business registration statute likely requires companies to consent to general jurisdiction. In *Chen*, however, the Court definitively held that the statute does not so require and, therefore, companies from across the country and around the globe that do business in New York can do so without broadly exposing themselves to litigation for conduct that lacks a connection to New York.

I. Background

In the 2014 *Daimler* decision,⁵ the Supreme Court dramatically changed the law of general jurisdiction and 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 to those forums where it is “at home.”⁶

Daimler brought into doubt a line of cases dating back to the Supreme Court’s 1917 decision in *Pennsylvania Fire Ins. Co. v. Gold Issue Mining Co.*,⁷ which held that companies that registered to do business under statutes that contained consent to service of process provisions automatically consented to general jurisdiction in that state. There, 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. To attain 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. . .” *Id.* at 94. The Supreme Court concluded that this statutory power of

¹ 571 U.S. 117 (2014).

² *Id.* at 137-39.

³ 954 F.3d 492 (2d Cir. 2020).

⁴ 814 F.3d 619 (2d Cir. 2016).

⁵ 571 U.S. 117 (2014).

⁶ *Id.* at 137-39.

⁷ 243 U.S. 93 (1917).

attorney subjected the Pennsylvania company to general personal jurisdiction in Missouri.⁸ *Pennsylvania Fire* and the case law that followed highlighted an expansive approach to personal jurisdiction that continued until *Daimler*.

Since *Daimler*, courts have rejected the *Pennsylvania Fire* line of cases. For example, in 2016, the Second Circuit confronted the issue in *Brown v. Lockheed Martin Corp.*,⁹ a case that addressed Connecticut's business registration statute. The Second Circuit held that the defendant's registration under the Connecticut statute and its appointment of an in-state agent did not confer general jurisdiction. Notably, the Second Circuit stated that the "'essentially at home' test enunciated in *Goodyear*¹⁰ 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."¹¹ In light of *Daimler*'s concerns, the Second Circuit read the Connecticut business registration statute to not require consent to general jurisdiction, but rather only to cases arising out of conduct in Connecticut (i.e., specific jurisdiction). In so holding, the Court made clear that it would not find any business registration statute to require consent to general jurisdiction "in the absence of a clear legislative statement" or "a definitive interpretation by the [state's highest court]" to that effect.¹²

Significantly, the Second Circuit left open the possibility that some business registration statutes could satisfy this test, and specifically cited the New York registration statute as one that probably would satisfy it. The Court specifically contrasted the New York statute with Connecticut's, noting that "[j]urisdictions other than Connecticut have enacted registration statutes that more plainly advise the registrant that enrolling in the state as a foreign corporation and transacting business will vest the local courts with general jurisdiction over the corporation" and that "[t]he registration statute in the state of New York has been definitively construed to accomplish that end, and legislation has been introduced to ratify that construction of the statute."¹³ However, the Second Circuit also recognized, without deciding, that even if there were statutes that required companies to consent to general jurisdiction they might be unconstitutional.¹⁴

⁸ *Id.* at 95-96.

⁹ 814 F.3d 619 (2d Cir. 2016).

¹⁰ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

¹¹ *Id.* at 637.

¹² *Id.* at 641.

¹³ *Id.* at 640.

¹⁴ *Id.* at 641. One court has found that registration statutes that require consent to general jurisdiction constitute an unconstitutional condition. *In re Asbestos Products Liab. Litig. (No. VI)*, 384 F. Supp. 3d 532, 543 (E.D. Pa. 2019) ("For all of these reasons, the Pa. Statutory Scheme allows Pennsylvania to impermissibly extract consent at a cost of the surrender of a constitutional right."). And at least one court has found that such a statute violates the dormant commerce clause *See In re Syngenta AG MIR 162 Corn Litig.*, 2016 WL 2866166, at *6 (D. Kan. May 17, 2016) (finding business registration statute requiring consent to general jurisdiction in violation of the dormant commerce clause); *but see Hegna v. Smitty's Supply, Inc.*, 2017 WL 2563231, at *5 (E.D. Pa. June 13, 2017) (the defendant has "not identified any authority in which a registration statute that imposes general personal jurisdiction over foreign corporations that register to do business in a state has been found to violate the dormant Commerce Clause in a lawsuit brought by a state resident.").

While there have been a handful of exceptions,¹⁵ most courts have held that the business registration statutes they considered did not subject the companies that registered under them to general jurisdiction.¹⁶

II. The Second Circuit's Decision in *Chen*

After *Brown* suggested that New York's business registration statute might satisfy the standard for requiring consent to general jurisdiction, New York state courts began interpreting *Daimler* as requiring an interpretation that rejects that result. In *Aybar v. Aybar*,¹⁷ the Second Department adopted *Brown*'s reasoning about requiring a "clear legislative statement" before finding that the New York business registration statute could permit consent to general jurisdiction but rejected *Brown*'s suggestion that the New York statute contained such a clear directive. While the *Aybar* court recognized longstanding precedent in New York state and federal courts holding that registering to do business in New York and appointing an agent for service of process constitutes consent to general jurisdiction, it found *Daimler* did away with that.¹⁸ The First Department in *Fekah v. Baker Hughes Incorporated*¹⁹ and the Fourth Department in *Best v. Guthrie Med. Group, P.C.*²⁰ reached the same conclusion, as did at least one federal court.²¹

In the context of these decisions and the broader line of cases rejecting most registration statutes as a basis for general jurisdiction, the Second Circuit in *Chen*²² addressed whether companies that registered to do business under New York's business registration statute thereby consented to general jurisdiction. It held that, "under New York law, the act of registering to do business under § 1301 of [New York's Business Corporation law (the "BCL")] does not constitute consent to general personal jurisdiction in New York."²³

In *Chen*, the plaintiffs commenced a class action alleging that Dunkin' Donuts, a Delaware registered company with a principal place of business in Massachusetts, deceptively marketed two of its products. The District

¹⁵ 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 persuasive 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).

¹⁶ 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"; "[A]n 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*).

¹⁷ 93 N.Y.S.3d 159, 166 (N.Y. App. Div. 2d Dept. 2019).

¹⁸ *Id.* at 166.

¹⁹ 107 N.Y.S.3d 258, 260 (N.Y. App. Div. 4th Dept. 2019) (holding that the defendant hospital did not consent to the general jurisdiction of New York courts by registering as a foreign corporation with the New York State Department of State).

²⁰ 110 N.Y.S.3d 1, 2 (N.Y. App. Div. 1st Dept. 2019).

²¹ *Wilderness USA, Inc. v. DeAngelo Brothers LLC*, 265 F. Supp. 3d 301, 312 (W.D.N.Y. 2017) ("[I]t is clear that New York's registration statute does not provide an express requirement of consent to general jurisdiction as a condition for a foreign corporation to become authorized to transact business within the state."); see also *Sae Han Sheet Co., Ltd. v. Eastman Chem. Corp.*, 2017 WL 4769394, at *6 (S.D.N.Y. Oct. 19, 2017) (corporations do not consent to general jurisdiction when they register under the various New York registration statutes).

²² 954 F.3d 492 (2d Cir. 2020).

²³ *Id.* at 496.

Court dismissed the complaint for lack of personal jurisdiction.²⁴ Plaintiffs appealed, arguing that the District Court erred in dismissing the claims because Dunkin’ Donuts consented to general jurisdiction in New York by registering as a foreign corporation under § 1301 of the New York Business Corporation Law.²⁵

The Second Circuit affirmed the District Court’s dismissal, 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 BCL § 1301(a).”²⁶ The Court recognized that, before *Daimler*, New York courts had interpreted the act of registering under BCL § 1301(a) as consent to general jurisdiction,²⁷ but held that *Daimler* mandates that, except in a truly exceptional case, a corporate defendant may be treated as essentially “at home” only where it is incorporated or maintains its principal place of business.²⁸ For that reason, it had “little trouble” affirming the District Court’s dismissal.²⁹

The Court also acknowledged its earlier suggestion in *Brown* that the New York statute had been “definitively construed” to allow for consent to general jurisdiction and that “legislation [had] been introduced to ratify that construction of the statute.”³⁰ But the Court noted that things had changed since *Brown*: “The legislation referenced in *Brown* . . . never passed, and the ‘definitive[ness]’ of New York law interpreting registration under BCL § 1301(a) as consenting to general jurisdiction in New York is no longer settled.” Noting that the three intermediate appellate courts that have addressed the issue have rejected the suggestion in *Brown* that the New York registration statute clearly allows for consent to general jurisdiction, the Court concluded that, under the test set forth in *Brown*, the New York statute could not be read to permit such broad consent.

III. Conclusion

Daimler made it clear that a court has general jurisdiction over a company generally only in the states where a company is incorporated or has its principal place of business. Since then, courts have considered whether several state business registration statutes can still be read as requiring consent to general jurisdiction and generally held that they do not. Most recently, the Second Circuit in *Chen* confirmed that New York’s business registration statute does not require companies to consent to general jurisdiction.

Chen confirms that companies can register to do business in New York without fear of subjecting themselves to lawsuits in New York that have no connection to the state. The decision also poses serious questions as to the continued viability of business registration statutes as a basis for establishing general jurisdiction over out-of-state companies. The question remains, however, as to whether state legislatures can, consistent with due process, try to circumvent *Daimler* by amending their business registration statutes so as to require companies to consent to general jurisdiction.

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²⁴ *Id.* at 495.

²⁵ *Id.* at 496.

²⁶ *Id.* at 499.

²⁷ *Id.* at 498.

²⁸ *Id.*

²⁹ *Id.* at 499.

³⁰ *Id.* at 498 (quoting *Brown*, 814 F.3d at 640 and citing 2015 N.Y. Senate Assembly Bill S4846, A6714).

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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, please do not hesitate to call or email authors Joel Kurtzberg at 212.701.3120 or jkurtzberg@cahill.com, Adam Mintz at 212.701.3981 or amintz@cahill.com, or G. Kevin Judy II at 212.701.3499 or Kjudy@cahill.com or email publications@cahill.com.

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