

### “Registered to Do Business” Alone is No Longer Enough to Confer Personal Jurisdiction Over Foreign Corporations in New York

On January 23, 2019, the Appellate Division, Second Department issued a decision in *Aybar v. Aybar*, \_\_A.D.3d\_\_, 2019 NY Slip Op 00412 (2019). The Second Department's holding substantially narrows the grounds for establishing personal jurisdiction over corporate defendants. In *Aybar*, the plaintiffs brought an action in Queens County to recover damages for personal injuries and wrongful death arising from an automobile accident that occurred in Virginia. Defendants Ford Motor Company and Goodyear Tire & Rubber Company are incorporated and have their principal places of business outside of New York State, but are registered to do business in New York. The plaintiffs argued that the court had personal jurisdiction over Ford and Goodyear under the substantial and continuous presence standard because the companies are registered New York businesses and operate dealerships and service centers in New York.

Ford and Goodyear filed motions to dismiss for lack of personal jurisdiction. The trial court denied the motions, finding the exercise of personal jurisdiction to be proper, and the defendants appealed. The companies each argued that their business contacts in New York were inconsequential in the context of their substantial worldwide business, and therefore they were not “at home” in New York. While it may seem illogical to find that companies of the sizes of Ford and Goodyear, whose products and services seem to be found in every county in New York would not be subject to personal jurisdiction in New York, the Second Department ruled just that. The court reversed the trial court's denial of the motions to dismiss, holding instead that Ford and Goodyear were not subject to general personal jurisdiction in New York. The court reasoned that neither company was incorporated in New York, they did not have their principal places of business in New York, nor were their contacts with New York sufficient to establish that they were “at home” in the state.

The Second Department is the first New York state court to adopt and provide in-depth discussion of the limited doctrine of personal jurisdiction established by the Supreme Court in *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Prior to *Daimler*, a long line of cases in New York had held that continuous and systemic business within New York was sufficient to subject a corporate party to general personal jurisdiction in New York State courts. *Daimler* limited general jurisdiction over corporations to forums where (1) the corporation is incorporated, (2) has its principal place of business, or (3) the “exceptional case” where the corporation's operations are so substantial that the corporation is essentially “at home” in that forum.

The Court of Appeals for the Second Circuit similarly held in a recent decision that personal jurisdiction over corporate defendants only exists in the three limited *Daimler* circumstances: “Aside from ‘an exceptional case,’ a corporation is at home (and thus subject to general jurisdiction, consistent with due process) only in a state that is the company's formal place of incorporation or its principal place of business.” *DeLorenzo v. Viceroy Hotel Group, LLC*, 2018 U.S. App. LEXIS 32910, at \*3 (2d Cir. 2018). The New York Court of Appeals hinted at this same doctrinal shift in a footnote in *Motorola v. Standard Bank*, noting that “general jurisdiction exists only if the corporation is ‘essentially at home in the forum State’ ... typified by ‘the place of incorporation and principal place of business.’” 24 N.Y.3d 149, 160 n.4 (2014).

The Aybar decision is an important reminder that conducting in-state business, registering to do business in New York, and appointing an agent in New York for service of process are no longer sufficient contacts to establish general personal jurisdiction over a corporation. It is more important than ever to consider the impact of *Daimler*, *DeLorenzo* and *Aybar* when entering into agreements with suppliers, customers, consultants and other corporate entities, particularly when one party resides outside of New York. To ensure the ability to litigate disputes in your home forum, contracts should be written to include the parties' unequivocal consent to personal jurisdiction in New York State and/or federal courts, as well as an agreed upon venue in New York and a provision establishing your preferred choice of law. If litigation ensues, courts typically enforce such contractual provisions, so costly motion practice over such issues at the outset is more likely to be avoided.

If you have any questions about this information memo, please contact [Suzanne M. Messer](#), [Taylor E. Reynolds](#), or the attorney in the Firm with whom you are regularly in contact.



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