

# What are the Jurisdictional Risks of Registering to do Business in North Carolina?

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North Carolina's business communities are thriving and many foreign business entities regularly register to do business in North Carolina. Unless an exception applies, a foreign business entity may not transact business in North Carolina until it registers with the Secretary of State. What risk does this pose for the foreign business entities, specifically does registering to conduct business in a foreign state result in a business ultimately consenting to general jurisdiction within that state?

In the 2014 United States Supreme Court decision of Daimler AG v. Bauman, 571 U.S. 117 (2014), the Supreme Court held that a corporation is only subject to general jurisdiction in a particular state when its contacts with that state are so continuous and systematic as to render them essentially at home in the forum state. While a foreign business entity may subject themselves to general jurisdiction in North Carolina by having "continuous and systematic contacts" with the state, the Supreme Court has not ruled on the specific issue of whether registering to conduct business in a foreign state results in the business consenting to general jurisdiction.

While this result has been rejected by a majority of the courts after Daimler, a few jurisdictions have held Daimler did not eliminate registration as a basis for consent. Federal and State courts have generally focused on the language of the individual state's registration statute, and whether it provides consent for general jurisdiction.

In a federal North Carolina case, Sebastian v. Davol, Inc., 2017 WL 3325744, at \*8 (W.D.N.C. Aug. 3, 2017), the court examined this exact issue. In Sebastian, the Plaintiff unsuccessfully argued that since the Defendant had registered with the North Carolina Secretary of State to conduct business in North Carolina, the Defendant thereby consented and subjected itself to general personal jurisdiction in North Carolina. Id. at 10.

In granting the Defendant's motion for lack of personal jurisdiction, the court held that the Plaintiff had not alleged that "North Carolina has a statute, either for general jurisdiction, registration or licensing, requiring a corporation to consent to personal jurisdiction prior to actually exercising its right to conduct business in North Carolina." Id. at 11. The court reasoned that North Carolina's long-arm statute contains no reference to jurisdiction by consent, and that the Plaintiff had not cited any state or federal decision that construed North Carolina's registration or licensing statutes to extend personal jurisdiction over registered businesses. Id.

As the Sebastian case illustrates, foreign business entities do not subject themselves to jurisdiction merely by registering to do business in North Carolina. North Carolina's business registration statutes and the required forms do not suggest a contrary result. However, this is an area of law that state legislatures may seek to amend so it is important to stay aware of any registration-as-consent language being introduced during legislative sessions.

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