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Seventh Circuit Denies Discovery in Support of Private Arbitration

On September 22, 2020, the United States Court of Appeals for the Seventh Circuit unanimously ruled in *Servotronics, Inc. v. Rolls-Royce PLC, et al*, No. 19-1847, 2020 WL 5640466 (7th Cir. Sept. 22, 2020), that 28 U.S.C. § 1782(a) (**Section 1782**) may not be invoked in aid of foreign private commercial arbitrations. This decision marks the first time the Seventh Circuit has spoken on the issue of whether Section 1782 authorizes a district court to provide discovery assistance to foreign arbitral tribunals, and further deepens the circuit split on the issue. The decision is at odds with recent decisions from the Fourth¹ and Sixth Circuits² holding that Section 1782 may be utilized in aid of foreign private arbitrations, and aligns itself with decisions of the Second³ and Fifth Circuits.⁴

Background

The *Servotronics* case involved a private arbitration between Servotronics, Inc. (**Servotronics**) and Rolls-Royce PLC (**Rolls-Royce**).⁵ Rolls-Royce alleged that Servotronics supplied it with defective engine valves which caused significant damage to engines it manufactured and supplied to The Boeing Company (**Boeing**) for the Boeing 787 Dreamliner aircraft. Rolls-Royce initiated arbitration proceedings against Servotronics in the United Kingdom (**UK**) pursuant to the parties' contract. The arbitration was commenced under the rules of the Chartered Institute of Arbitrators.

Servotronics filed an application in the United States District Court for the Northern District of Illinois asking the court to issue a subpoena compelling Boeing to produce documents for use in the London arbitration. After the district court granted Servotronics's *ex parte* application, Rolls-Royce and Boeing moved to quash the subpoenas on the basis that Section 1782 does not authorize a court to provide assistance in private foreign arbitrations. The district court granted Rolls-Royce's and Boeing's motion, relying on precedent from the Second and Fifth Circuits, e.g. *Nat'l Broad. Co., Inc., v. Bear Stearns & Co., Inc.*, 165 F.3d 184 (2d Cir. 1999) and *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880 (5th Cir. 1999), as well as its prior holding in *In re Arbitration*



between Norfolk S. Corp., Norfolk S. Ry. Co., & Gen. Sec. Ins. Co. & Ace Bermuda Ltd., 626 F. Supp. 2d 882 (N.D. Ill. 2009), to hold that Section 1782 may not be used in aid of private commercial arbitrations.⁶ Servotronics appealed.

The Decision

The Seventh Circuit acknowledged the circuit split between the Fourth and Sixth Circuits, on one hand, and the Second and Fifth Circuits, on the other.

The Seventh Circuit outlined “several reasons” for why it chose to align with the Second and Fifth Circuits interpretations of Section 1782.⁷ First, it explained that the word “tribunal” is not defined in the statute, and that dictionary definitions unambiguously conclude that “the word ‘tribunal’ means ‘a court,’” notwithstanding the fact that “some [dictionary definitions] are more expansive, leaving room for both competing interpretations.”⁸ The Court’s canvassing of other legal and nonlegal definitions of the term “foreign or international tribunal” was inconclusive as to whether that term necessarily included – or excluded – a private commercial arbitral tribunal.⁹

Second, the Court sought to understand the statutory context of Section 1782 and found that “[o]nce [one] situate[s] the word ‘tribunal’ in its proper statutory context, the more expansive reading of the term – the one that includes private arbitrations – becomes far less plausible.”¹⁰ The Court analyzed the proposed text of the statute and found that the word “tribunal” appears three times: (1) in the operative sentence authorizing a district court to order discovery; (2) in the next sentence authorizing the court to act on a letter rogatory issued by “a foreign or international tribunal;” and (3) two sentences later, providing that the court’s discovery order “may prescribe the practice and procedure, which may be in whole or in part *the practice and procedure of the foreign country or the international tribunal.*”¹¹ On that basis, the Seventh Circuit considered that the “more limited reading of § 1782 is probably the correct one” finding that “a ‘foreign tribunal’ in this context means a governmental, administrative, or quasi-governmental tribunal operating pursuant to the foreign country’s ‘practice and procedure.’”¹²

Third, the Seventh Circuit chose to apply a more limited interpretation of Section 1782 to “avoid[] a serious conflict with the Federal Arbitration Act.”¹³ The Court noted that “the FAA permits the arbitration panel – but not the parties – to summon witnesses before the panel to testify and produce documents and to petition the district court to enforce the summons.”¹⁴ By contrast, it noted that Section 1782 “permits both foreign tribunals *and litigants* (as well as other ‘interested persons’) to obtain discovery orders from district courts.”¹⁵ The Court therefore posited that if Section 1782 permitted federal courts to provide assistance in private foreign arbitrations, then those litigants would have access to “much more expansive discovery than litigants in domestic arbitrations” and found it “hard to conjure a rationale for giving parties to private foreign arbitrations such broad access . . . while precluding such discovery assistance for litigants in domestic arbitrations.”¹⁶ Moreover, because the FAA applies to some foreign arbitrations, the Seventh Circuit concluded that there would be a potential conflict between a broad interpretation of Section 1782 and the FAA.¹⁷

Finally, the Seventh Circuit analyzed the Supreme Court’s analysis of Section 1782 in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, (2004) (*Intel*).¹⁸ Although the Court acknowledged the Supreme Court’s reference to Hans Smit’s quote that “[t]he term ‘tribunal’ [in § 1782(a)] . . . includes investigating magistrates, administrative and arbitral tribunals, and quasi-judicial agencies, as well as conventional civil, commercial, criminal, and administrative courts,”¹⁹ it found that the quote had “taken on outsized significance” as a mere “part of an explanatory parenthetical.”²⁰ The Court found that, in the absence of any indication that the term “arbitral tribunals” was meant to include **private** arbitral tribunals, there is “no reason to believe that the Court, by quoting a law-review article in a passing parenthetical, was signaling its view that § 1782(a) authorizes district courts to provide discovery assistance in private foreign arbitrations.”²¹



Effect of the Decision

Over the past two years, the issue of whether Section 1782 assistance may extend to private arbitral tribunals has become the subject of a cascade of federal circuit court decisions. These decisions have created a deep circuit split, with the Seventh Circuit becoming the latest federal circuit to weigh in.

The circuit split is poised to further deepen, as the issue has been raised in an appeal pending before the Ninth Circuit.²² Until there is an authoritative ruling from the Supreme Court, parties and practitioners will continue to have to analyze their ability to utilize Section 1782 in aid of private arbitrations on a circuit-by-circuit basis.

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¹ *Servotronics Inc. v. Boeing Co.*, 954 F.3d 209 (4th Cir. 2020).

² *Abdul Latif Jameel Transp. Co. v. FedEx Corp.*, 939 F.3d 710 (6th Cir. 2019).

³ *Hanwei Guo v. Deutsche Bank Securities Inc., J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Stanley & Co. LLC.*, No. 19-781, 2020 WL 3816098 (2nd Cir. July 8, 2020); *National Broadcasting Co. v. Bear Stearns & Co.*, 165 F.3d 184 (2d Cir. 1999).

⁴ *El Paso Corp. v. La Comision Ejecutiva Hidroelectrica Del Rio Lempa*, 341 F. App'x 31 (5th Cir. 2009); *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880 (5th Cir. 1999).

⁵ Servotronics filed another 1782 application in the District of South Carolina in connection with the same arbitration. The district court's decision to grant that application was affirmed by the Fourth Circuit, which held that Section 1782 could be utilized in aid foreign private arbitrations. See *Servotronics Inc. v. Boeing Co.*, 954 F.3d 209, 210 (4th Cir. 2020) ("[W]e conclude that the arbitral panel in the United Kingdom is indeed a foreign tribunal for purposes of § 1782 . . .").

⁶ *In re Servotronics, Inc.*, No. 18-CV-7187, 2019 WL 9698535, at *3 (N.D. Ill. Apr. 22, 2019), *aff'd sub nom. Servotronics, Inc. v. Rolls-Royce PLC*, No. 19-1847, 2020 WL 5640466 (7th Cir. Sept. 22, 2020).

⁷ *Id.* at *4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at *5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at *6.

¹⁵ *Id.* (emphasis in original).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*



¹⁹ *Id.* (quoting *Intel*, 542 U.S. at 258 (quoting *International Litigation Under the United States Code*, 65 COLUM. L. REV. 1015, 1026 n.71 (1965))).

²⁰ *Id.*

²¹ *Id.*

²² See e.g., *HRC-Hainan Holding Co., LLC v. Yihan Hu*, No. 19-MC-80277-TSH, 2020 WL 906719 (N.D. Cal. Feb. 25, 2020).