

Articles + Publications | September 27, 2021

# SCOTUS to Dismiss 28 U.S.C. § 1782(a) Case: No Resolution (For Now) as to Whether the Section Applies to Private, Commercial, International Arbitrations

## WRITTEN BY

Matthew H. Adler | [Leslie Davis](#) | [Jeremy Heep](#) | [Jack Thomas](#) | [Victoria A. Alvarez](#)

---

The *Servotronics Inc. v. Rolls-Royce PLC et al.* case accepted by the U.S. Supreme Court has been settled and withdrawn, with the matter now removed from the Court's October 2021 argument calendar. As reported in our [March 23 article](#), the Court granted a petition for writ of certiorari to hear *Servotronics* to finally resolve the circuit split on whether 28 U.S.C. § 1782(a) applies to private, commercial, international arbitrations. Thus, at least for now, the question as to whether U.S. federal courts can order discovery for private, commercial arbitrations seated abroad will remain unanswered.

By way of recollection, *Servotronics* challenged the Seventh Circuit's ruling, rejecting a Section 1782 petition for permission to subpoena Boeing to turn over documents for a multimillion-dollar arbitration brought by Rolls-Royce PLC in London under the rules of the Chartered Institute of Arbitrators. The Seventh Circuit sided with the Second and Fifth circuits in favor of a narrower definition of Section 1782's usage of "foreign or international tribunal," which states in pertinent part:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal . . . .

The Fourth and Sixth circuits read the definition "foreign or international tribunal" more broadly, finding the Section 1782 does authorize U.S. discovery for private international arbitrations.

Perhaps, there will be other opportunities for the Supreme Court to weigh in on the circuit split. *In re HRC-Hainan Holding Co. LLC*, No. 20-15371 (9th Cir. March 4, 2020), pending in the Ninth Circuit, is currently being held in abeyance pending disposition of the now-dismissed *Servotronics* action.

Additionally on September 17, counsel for third-party defendants-appellants AlixPartners LLP and Simon Freakley filed an [emergency motion](#) in the Second Circuit, seeking a stay pending the filing and disposition of a petition for a writ of *certiorari* to the Supreme Court. Appellants informed the court that they will file the writ on an expedited basis no later than October 7. See *In re: the Application of the Fund v. AlixPartners*, No. 20-2653 (2nd Cir. August 7, 2020).

For more information on this issue, please see our [December 9, 2020 discussion](#) or [July 7, 2020 discussion](#) on the circuit split as to whether parties in private, commercial, international arbitrations can avail themselves of 28

U.S.C. § 1782(a) (Section 1782) to obtain discovery through U.S. federal courts.

## **RELATED INDUSTRIES + PRACTICES**

- Business Litigation
- Insurance + Reinsurance
- International
- International Arbitration