U.S. Supreme Court to Decide, Can Federal Courts Order Discovery in Foreign Arbitrations'

March 26, 2021

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It is a common occurrence in international arbitrations with a U.S. element. There is a pending arbitration outside of the United States. One of the parties wants to ask a U.S. federal district court to order discovery from someone in the court's district for use in the foreign arbitration. Can the district court order the discovery? In the Second, Fifth and Seventh Circuits, the answer is no. In the Fourth and Sixth Circuits, the answer is yes. On March 22, 2021, the U.S. Supreme Court granted certiorari to resolve the split in authority.

The case is *Servotronics, Inc. v. Rolls-Royce PLC et al*., (7th Cir. 2020), cert. granted, _ S.Ct. _, 2021 WL 1072280 (U.S. Mar. 22, 2021) (No. 20-794). The Court framed the issue as, "Whether the discretion granted to district courts in 28 U.S.C. § 1782(a) to render assistance in gathering evidence for use in "a foreign or international tribunal" encompasses private commercial arbitral tribunals."

How the Court rules could have implications for certain private commercial arbitrations being conducted outside of the U.S. because U.S. courts typically allow for more discovery than international arbitration tribunals.

Read the full alert here.

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