

US Supreme Court Denies Discovery Under 28 U.S.C. § 1782 in Aid of Arbitration

By William J. Morrissey

The U.S. Supreme Court recently ruled that federal courts are not authorized to order discovery pursuant to the request of parties to private international arbitration panels. In ZF Automotive US, Inc., the Court held that 28 U.S.C. § 1782 – which allows U.S. federal district courts to order the production of certain discovery “for use in a proceeding in a foreign or international tribunal” – does not provide authority for federal court to issue discovery in aid of international arbitration.

The Supreme Court held that *only* a governmental or intergovernmental adjudicative body is a “foreign or international tribunal” under 28 U.S.C. § 1782. See ZF Automotive US, Inc. et al. v. Luxshare, Ltd. et al., 142 S.Ct. 2078 (2022). The Court’s holding restricts parties involved in private international arbitration from seeking discovery orders under 28 U.S.C. § 1782.

In the ZF Automotive case, the Court considered whether private adjudicatory bodies, such as arbitration panels, count as a “foreign or international tribunal.” The Court reasoned, in part, that if § 1782 were to apply to private bodies, it would offer broader discovery than the Federal Arbitration Act, which governs domestic U.S. arbitration, and therefore, it would be unlikely that Congress intended to give parties to private foreign arbitration broader discovery provisions than parties to private domestic arbitration.