
Case Name and Number: *ZF Automotive US, Inc. v. Luxshare, Ltd.*, No. 21-401; *AlixPartners, LLP v. Fund for Protection of Investors' Rights in Foreign States*, No. 21-518

Introduction: Under 28 U.S.C. § 1782(a), a federal district court may authorize discovery to produce documents “for use in a proceeding in a foreign or international tribunal.” Today, the Supreme Court unanimously held that a private adjudicatory body, such as a private arbitration panel, is not “a foreign or international tribunal” under Section 1782.

Background: Section 1782 authorizes federal district courts to order the production of documents to be used in foreign or international proceedings only if the proceeding occurs before “a foreign or international tribunal.” 28 U.S.C. § 1782(a).

In the first case, a party filed an application for discovery in federal district court in Michigan for use in a proceeding before a private arbitration panel in Germany. In the second case, a Russian corporation initiated a foreign arbitration proceeding against Lithuania, then sought discovery in federal district court in New York for use in the arbitration. The Sixth Circuit and the Second Circuit both allowed the discovery.

Issue: Whether a private adjudicatory body, such as a private arbitral panel, qualifies as a “foreign or international tribunal” under 28 U.S.C. § 1782.

Court's Holding: In a 9-0 opinion authored by Justice Barrett, the Supreme Court held that the phrase “foreign or international tribunal” in Section 1782 includes “only governmental or intergovernmental bodies,” and it excludes “private adjudicative bodies,” such as private arbitration panels.

The Court reasoned that the word “tribunal” by itself could refer to a private adjudicatory body, but several factors show that it carries a narrower meaning in Section 1782. The “tribunal” must be a “foreign or international tribunal,” which typically refers to governmental and intergovernmental bodies. Further, the statute’s history demonstrates an intent to limit the reach of Section 1782 to bodies exercising governmental authority. The Court also noted that extending Section 1782 to include private bodies would be in significant tension with the Federal Arbitration Act, which authorizes only limited discovery in private domestic arbitrations. Applying that rule, the Court next held that Section 1782 does not authorize discovery in the consolidated cases because both of the adjudicative bodies at issue are private.

Accordingly, individuals and businesses may not be compelled under Section 1782 to provide discovery in the United States for use in private foreign proceedings, such as private arbitrations.

Read the opinion [here](#).