

## **1782 Discovery Blog: The Sixth Circuit Upholds §1782 Discovery For International Arbitration**

Under 28 U.S.C. §1782, the U.S. offers a very powerful litigation tool to parties to non-U.S. court proceedings allowing them to obtain bank records, documents and witness testimony from sources within the U.S., even if such evidence is unobtainable through the home forum's own discovery procedures. The types of evidence that can be obtained include International Wire Transaction Records (U.S. Dollar wires typically transit through the U.S.), emails, correspondence, phone and travel records, accounting, banking, credit card and corporate documents such as shareholder and board meeting records.

In *Abdul Latif Jameel Transp. Co. v. FedEx Corp.*, 939 F.3d 710 (6th Cir. 2019), the Sixth Circuit overruled a district court's denial of an application by a Saudi corporation to take discovery from U.S. based FedEx Corporation for use in an arbitration proceeding in Dubai, under the rules of the Dubai International Financial Centre-London Court of International Arbitration ("DIFC-LCIA"). The Court analyzed whether the DIFC-LCIA is a "Foreign or International Tribunal" for which §1782 discovery may be permitted. It held that based upon the statutory text of §1782, the meaning of that text based on common definitions and usage of the language at issue, and the statutory context and history of §1782(a), that this provision permits discovery for use in the private DIFC-LCIA arbitration at issue. The Court was not persuaded by earlier decisions from the Second and Fifth Circuits, *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880 (5th Cir. 1999) and *National Broadcasting Co., Inc. v. Bear Stearns & Co., Inc.*, 165 F.3d 184 (2d Cir. 1999) which held that only "state sponsored" arbitrations fall within the scope of §1782. The Sixth Circuit rejected this stance not allowing statements in congressional reports to color its view of the statute and indicated that further inferences based upon §1782's legislative history would be speculation.



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