

THIRD-PARTY DISCOVERY IN ARBITRATION: JUDICIAL AND ARBITRAL PERSPECTIVES



Arbitration offers several advantages over litigation. One of them is time and expense, a benefit that partly comes from a curtailed scope of potential discovery against third parties. Creative lawyering over the past few decades has begun to change this. The Federal Arbitration Act (9 U.S.C. § 7) empowers arbitrators to issue third-party subpoenas, and 28 U.S.C § 1782 has been interpreted to allow parties in international arbitrations to ask federal courts to do the same. The scope of these provisions, however, has given rise to splits of authority among courts across the United States. This event will bring together academics, arbitrators, and counsel to discuss strategic considerations, best practices, and the legal discord in procuring third-party discovery in aid of arbitration.

APRIL 21, 2022 | 1-5 P.M.
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW

Barco Law Building, 3900 Forbes Ave, Pittsburgh, PA 15260

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CLE will be available

This event celebrates the official launch of the Pennsylvania and Ohio Chapter of the Chartered Institute of Arbitrators.

All are welcome to this networking and educational event, which will serve to gather our Chapter members, introduce CI Arb to the local bar and business community, and attract new members, including law students.

SPEAKERS, PANELISTS, AND MODERATORS



Bates Crist Edsall Kotuby Pinney Taylor Torres-Fowler Tuchmann Wang

Panel 1: AN ARBITRATOR'S POWER TO ISSUE THIRD-PARTY SUBPOENAS UNDER THE FEDERAL ARBITRATION ACT

An arbitrator's power to issue third-party subpoenas in U.S.-seated arbitrations has long been a vexing issue for counsel, arbitrators, and judges. At least four federal circuits have repudiated that power, while two have approved it. This panel will include current arbitrators and former judges to discuss where the law currently stands, where it is headed, and how critical third-party evidence can be secured for parties arbitrating both domestic and international disputes with a U.S. seat.

Panelists: Tom Crist, Zack Torres-Fowler, and Liz Taylor
Moderated by Albert Bates Jr. FCI Arb, Partner, Troutman Pepper

Panel 2: DOES SECTION 1782 CONTEMPLATE COURT ORDERED DISCOVERY FOR INTERNATIONAL ARBITRATION

Federal courts have granted and denied hundreds of third-party subpoenas in aid of arbitrations over the years, leading to a circuit split on whether Section 1782's reference to a "foreign or international tribunal" includes an international arbitral tribunal. On December 10, 2021, the Supreme Court granted certiorari and

consolidated two cases: ZF Automotive US, Inc. v. Luxshare, Ltd. and AlixPartners, LLP v. The Fund for Protection of Investors' Rights in Foreign States. The Supreme Court will hear the cases in March and will soon decide whether parties in commercial and treaty arbitration can avail themselves to Section 1782. This panel will include leading counsel and scholars to discuss the history of Section 1782, its utility and drawbacks, and recommendations on how arbitrators and institutions might address the issue should the Supreme Court allow the discovery.

Panelists: John Pinney FCI Arb, Graydon; Caroline Edsall Littleton, Jones Day; Professor Yanbai Andrea Wang, University of Pennsylvania School of Law
Moderated by Professor Charles T. Kotuby Jr. FCI Arb, University of Pittsburgh School of Law

Keynote: Eric Tuchmann, Senior Vice President, General Counsel and Corporate Secretary for the American Arbitration Association (AAA) and the International Centre for Dispute Resolution (ICDR)



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