

INSIGHTS

Federal discovery in international arbitration may be headed for Supreme Court

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Charlotte Litigation Member Jim McLoughlin's article titled, "Federal discovery in international arbitration may be headed for Supreme Court" was published by *North Carolina Lawyers Weekly* on July 24.

The article

Federal law authorizes federal courts to provide discovery assistance to a "foreign or international tribunal" and litigants with an interest in those proceedings. The 2nd Circuit's July 2020 decision holding that "foreign or international tribunal" doesn't encompass private arbitration panels in *In re Application and Petition of Hanwei Guo v. Deutsche Bank Securities Inc.* exacerbates the existing split among the circuits on this issue.

The 2nd Circuit reaffirmed an earlier ruling that had been called into question by some in light of the U.S. Supreme Court's ruling in *Intel Corp. v. Advanced Micro Devices, Inc.*, in which it expanded the law's scope to include a European Commission Directorate-General's antitrust investigation. There is now a sharp rift among the circuits that has a potentially dramatic impact on international arbitration tactics and strategy when evidence may be found in the U.S.

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