

TRANSPORTATION

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This article addresses the importance of the U.S. Supreme Court's decision to take up the case of ServoTronics, Inc. v. Rolls-Royce, PLC No. 20-794, 2021 WL 1072280 (U.S. Mar. 22, 2021) for decision. The Court's holding in this case will have sweeping implications internationally as it involves the ability for private commercial arbitrations (seated or venued anywhere in the world) to request the U.S. District Courts to aid in and enforce discovery orders.

U.S. Supreme Court grants *Writ of Certiorari* in *Boeing/Rolls Royce* case to consider arguments on interpretation of 28 U.S.C. §1782

ABOUT THE AUTHORS



Mica Worthy serves as legal counsel to clients in the aviation and global supply chain industries, representing airports, general aviation companies, FBOs, and manufacturing, technology, and service companies. She has experience providing analysis of issues involving aviation expert witness challenges, aircraft valuation and damages, and contract dispute resolution. Mica assists clients through pre-suit negotiations, mediation, arbitration and litigation in State and Federal Courts. She serves on the CSH Law COVID-19 Response Team. Mica is a founding Board Member of the Charlotte International Arbitration Society ("CIAS"), and currently serves as the Chair of the CIAS. She has also served as Chair of the N.C. Bar Association's International Law & Practice Section. She is also currently a member of the Carolinas World Trade Association. Mica has been a member of the International Association of Defense Counsel (IADC) since 2018. She can be reached at mworthy@cshlaw.com.



Susan Hofer serves as the Chair of the firm's Aviation Litigation Practice Group. Susan has been litigating since 1988 and is licensed to practice law in North Carolina. She has also been admitted to practice Pro Hac Vice in many other jurisdictions. She joined the Cranfill Sumner & Hartzog LLP (CSH Law) team in 2014 and serves on the CSH Law COVID-19 Response Team. In addition to her extensive litigation experience, Susan is an FAA certificated pilot, holding commercial and certified flight instructor, small unmanned aircraft system, remote pilot, instrument airplane, and glider certificates. This combined expertise, along with a technical background from extensive patent research experience, enables her to effectively and successfully analyze and litigate aviation, products liability, and other technically-based cases. She can be reached at shofer@cshlaw.com.

ABOUT THE COMMITTEE

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On March 22, 2021, the U.S. Supreme Court granted the petitioner's request for *Writ of Certiorari* in the Servotronics, Inc. v. Rolls-Royce, PLC case.¹

The Servotronics case is actually a tale of two cases arising from the same arbitration. The supplier, Servotronics, supplied a valve to Rolls-Royce PLC ("Rolls-Royce") in May 2015 that Rolls-Royce installed in an aircraft engine that it manufactured for The Boeing Company ("Boeing"). In January 2016, while testing the engine at Boeing's plant in South Carolina, the engine caught fire, causing significant damage to Boeing's aircraft. After Rolls-Royce settled Boeing's claim for damages, it sought indemnification from Servotronics, contending that a malfunction of Servotronics' valve caused the fire. On Servotronics' rejection of the claim, Rolls-Royce commenced an arbitration proceeding in the United Kingdom, as required by the contract between the parties ("the Agreement")².

In support of its defense, Servotronics sought discovery from witnesses at the Boeing plant in Charleston, South Carolina and for documents from Boeing headquarters in Chicago, Illinois. It filed applications for discovery under 28 U.S.C. §1782 ("Sec. 1782") in both South Carolina and Illinois. The orders went up on appeal and the Fourth Circuit held that Sec. 1782 allowed the court to give assistance to the party in the foreign, private commercial arbitration, to assist the U.K. tribunal.

However, the Seventh Circuit held that Sec. 1782 only applies to governmental tribunals and not specifically to private commercial arbitration, based solely on the parties' contractual rights.

These divergent interpretations of the term "Tribunal" exemplify the circuit court split in the U.S. on the discovery enforcement rule in Sec. 1782. The Fourth Circuit followed the Sixth Circuit case law and applied Sec. 1782 to the private international arbitration tribunal. The Ninth Circuit is likely to agree with the Fourth and the Sixth Circuits based on lower court decisions. However, the Second, Fifth and now the Seventh Circuit reject this interpretation and held that a private international commercial arbitration is not a foreign tribunal under Sec. 1782.

The Seventh Circuit Servotronics case was appealed to the U.S. Supreme Court via *Writ of Certiorari*. The U.S. Supreme Court's acceptance of the appeal means that the table is set for the Court to hear or consider the arguments and set a standard applicable to all circuit courts. The ruling on this issue will affect all U.S. witnesses and companies in custody of evidence to be used in international arbitrations – as discovery is such an important tool in the strategy and presentation of a parties' case and/or defenses, this ruling will have sweeping implications for international businesses including those in the auto, aviation, trucking, and rail industries with witnesses here in the U.S., as they may be found

¹ *Servotronics, Inc. v. Rolls-Royce PLC*, No. 20-794, 2021 WL 1072280 (U.S. Mar. 22, 2021)

² *Servotronics, Inc. v. Boeing Co.*, 954 F.3d 209, 210 (4th Cir. 2020)



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