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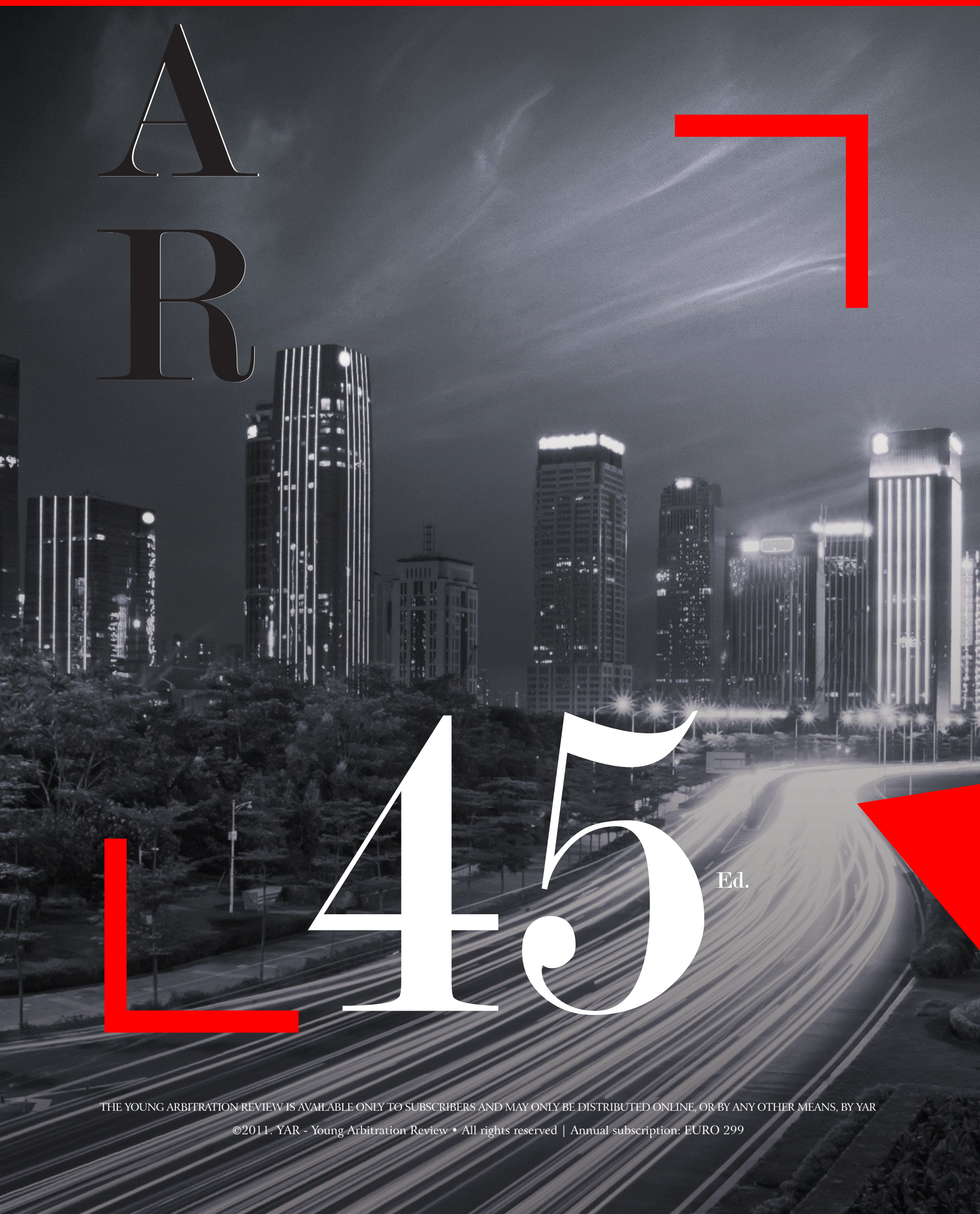

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CHAPTER II

ARTICLES

F. WHAT NOW? PRELIMINARY THOUGHTS ON OBTAINING EVIDENCE IN THE U.S. UNDER SECTION 7 OF THE FEDERAL ARBITRATION ACT IN THE AFTERMATH OF ZF AUTOMOTIVE

By Ava Borrasso C.Arb

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By now, advocates are aware of the severe limits imposed on obtaining evidence in the U.S. to support international arbitration proceedings pursuant to 28 U.S.C. § 1782. In ZF *Automotive US, Inc. v. Luxshare, Ltd.*, 596 U.S. ___, 142 S. Ct. 2078 (2022) ("*ZF Auto*"), the United States Supreme Court unanimously foreclosed a party's ability to obtain evidence from a non-party through Section 1782 for use in non-governmental international arbitrations.[1] *ZF Auto* held that only a governmental or intergovernmental adjudicative body qualifies as a "foreign or international tribunal" for purposes of Section 1782. As a result, an interested party can no longer obtain evidence located in the U.S. from non-parties to support private international arbitrations and many investor-state disputes.

Before this ruling, the U.S. Circuit Courts of Appeal were split as to whether an interested person could secure evidence for use in a foreign or international tribunal, including international commercial arbitrations. In *Intel Corp. v. Advanced Micro Devices, Inc*. 542 U.S. 241 (2004) while not deciding the issue, the U.S. Supreme Court left open the possibility of obtaining evidence to support foreign private tribunals sparking an ensuing increase in applications made under Section 1782. The Courts of Appeal were split on the issue: the Fourth and Sixth Circuits permitted some discovery within the parameters established by Section 1782 while taking due consideration as to whether such discovery was welcomed by the arbitral tribunal.[2] By contrast, the Second, Fifth and Seventh Circuits declined to grant such applications.

In *ZF Auto*, the Supreme Court ultimately took the later view, substantially foreclosing access to evidence pursuant to Section 1782. While a robust body of case law interpreting Section 1782 has developed over the last twenty years, that door has now closed for many disputes. Meanwhile, developments under Section 7 of the Federal Arbitration Act ("FAA") have been relatively minor. Until now. Just weeks after the Supreme Court issued its ruling in *ZF Auto*, the Ninth Circuit weighed in on enforcement of arbitral subpoenas issued pursuant to Section 7 to obtain evidence to support an international commercial arbitration. The import of this decision will be determined in time but, without question, Section 7 is now the main vehicle to obtain evidence located in the U.S. in the hands of a non-party for non-governmental international arbitrations.

This article examines alternate means of obtaining evidence located in the United States in cases where Section 1782 is no longer viable, primarily through Section 7 of the FAA, as well as a few additional bases discussed below.

I. 9 U.S.C. § 7 Arbitral Subpoenas

Section 7 of the FAA is titled "Witnesses before arbitrators; fees; compelling attendance" and provides in pertinent part:

> The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. . . . Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.[3]

The notable features of Section 7 are: (a) arbitrator(s) can subpoena witnesses to testify and provide documents; (b) service of an arbitral subpoena must comply with the rules applicable to subpoenas for court proceedings (notably Federal Rule of Civil Procedure 45); and (c) enforcement of an arbitral subpoena is effectuated through the United States district courts.

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[1] ZF Automotive US, Inc. v. Luxshare, Ltd., was consolidated for hearing with AlixPartners v. The Fund for Prot. of Inv. Rights in Foreign States, an investor-state dispute.

[2] Arguably, the Eleventh Circuit leaned in this direction, first holding private international arbitration tribunals constitute "proceedings" pursuant to Section 1782 but then retracting that finding and ruling on narrower grounds. See, In re Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc., 685 F.3d 987, 996 (11th Cir. 2012), vacated sua sponte and replaced, 747 F.3d 1262, 1270 n.4 (11th Cir. 2014) ("We decline to answer [whether the private arbitration is a 'tribunal'] on the sparse record found in this case. ... Thus we leave the resolution of the matter for another day.").

[3] 9 U.S.C. § 7.

Section 7 is contained in the "general provisions" of the FAA set forth in Chapter 1. It applies to international arbitrations pursuant to Chapter 2 which implements the New York Convention.[4] Specifically, Section 208 of the FAA provides that Chapter 1 applies to any proceeding brought under the New York Convention absent a conflict with the Convention.

Certain issues that arise enforcing domestic arbitration subpoenas are largely absent in the international arena. Significantly, subject matter jurisdiction, personal jurisdiction and venue require independent grounds in domestic cases. While those same requirements also exist for international cases, the FAA has simplified them as detailed below. As such, much of the discourse regarding these factors that arise in domestic arbitrations are not in play in the international arena. Some issues, however, remain relevant in enforcement of arbitral subpoenas in connection with international arbitrations and are addressed below.

Against the backdrop of Section 7, courts have grappled with the following issues: (a) can an arbitrator subpoena a non-party to produce documents without testimony? (generally, no); (b) must an arbitrator attend a hearing at which a subpoenaed non-party will testify, and, if required, produce documents? (usually); (c) can an arbitrator compel attendance of a witness in a location other than the seat? (generally, no); (d) can an arbitrator compel attendance of a witness at a virtual hearing (it depends).

Each of these points is addressed below. But first, the recent decision of the Ninth Judicial Circuit Court of Appeal puts these issues in context.

II. *Day v. Orrick Herrington*

In *Day v. Orrick Herrington & Sutcliffe, LLP*, 42 F.4th 1131 (9th Cir. 2022) ("*Day*"), the Ninth Circuit Court of Appeal reversed a district court decision that refused to enforce an arbitral subpoena.[5] The Jones Day law firm sought to enforce an arbitral summons in connection with an international arbitration concerning a partnership dispute. The arbitration was seated in Washington D.C., but the subpoena sought to compel non-party Orrick's appearance before an arbitrator appearing in San Jose, California (Orrick's corporate residence). Jones Day argued the arbitrator was "sitting" in the California district for purposes of the hearing. The district court rejected the argument holding the arbitrators could "sit" in just one location – the seat. Because Section 7 required enforcement of subpoenas to occur where the "arbitrators are sitting" rather than where compliance is sought, the California district court denied the petition as beyond its authority.[6]

On appeal, the Ninth Circuit reversed and ordered Orrick to comply with the summons. Notably, *Day* is one of the few cases to address enforcement of arbitral subpoenas issued by an international tribunal. The Court first noted that, in contrast to domestic proceedings, Chapter 2 of the FAA provides an independent basis of subject matter jurisdiction to the district courts to enforce arbitral subpoenas. Specifically, 9 U.S.C. § 203 provides that federal district courts have original jurisdiction over proceedings or actions that fall within the New York Convention.

The Court handily held it had subject matter jurisdiction:

> We join our sister circuits in holding that (1) if the underlying arbitration agreement or award falls under the Convention, and (2) the action or proceeding relates to that agreement or award, then the federal district court has jurisdiction over the action or proceeding.[7]

The Court then addressed where an action for enforcement could be brought. Again, the FAA provided the answer, this time through Section 204 addressing venue. Section 204 provides that an action "may" be brought in the seat, or, where the action could have been brought absent the arbitration agreement.[8] The Court determined that if a court lacked personal jurisdiction over the party "against whom enforcement is sought," at the seat, then any district in which the general venue statute (28 U.S.C. § 1391) requirements were met, could hear the matter.[9]

As a result, the Circuit Court reversed the district court and enforced the summons. The Court determined that Section 7 does not conflict with New York Convention, but rather furthers it:

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[4] 9 U.S.C. § 201 provides: "The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter."

[5] Day was decided August 1, 2022, two months after the Supreme Court's opinion in ZF Auto.

[6] Day v. Orrick, 42 F.4th at 1134. By way of background, Jones Day originally sought enforcement of the arbitral summons in Washington D.C., but the D.C. district court denied enforcement because it lacked personal jurisdiction over Orrick in San Francisco. Jones Day requested, and the arbitrator agreed, to issue a subpoena for a hearing to take place in California where the arbitrator would appear in person. When Orrick failed to comply, Jones Day filed suit in California, but the district court there declined to enforce it reasoning that the action had to be pursued at the seat.

[7] Day v. Orrick, 42 F.4th at 1133.

[8] 9 U.S.C. § 204 provides: An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

[9] 28 U.S.C. § 1391 titled "Venue generally" provides that suit may be filed where the defendant resides, the events occurred, or where any defendant is subject to personal jurisdiction regarding the action.

> Recognizing and enforcing arbitration agreements includes facilitating the arbitration process and providing arbitrators - in both domestic and international arbitrations - with access to the ancillary actions and proceedings necessary to arrive at an arbitration award. This includes arbitral subpoenas and their enforcement.
>
> Thus, under 9 U.S.C. § 203, the district court had subject matter jurisdiction to enforce the petitions to comply with the arbitral summonses.[10]

Rather than reading Section 204 as mandatory or exclusive, the Court determined it to be permissive by its use of the term "may" thereby supplementing the general venue statute.

This distinction substantially expands the enforceability of arbitral subpoenas issued by international arbitral tribunals in the U.S. Importantly, *Day* recognizes enforcement of arbitral subpoenas where the subpoenaed party is found or at the seat. By doing so, the situation where the subpoenaed party is beyond the jurisdiction of the seat should no longer provide a roadblock to enforcement of arbitral subpoenas issued in international proceedings. By contrast, with respect to enforcement of subpoenas issued in domestic arbitrations, courts have held they lacked jurisdiction to enforce subpoenas when the arbitrators were "sitting" more than 100 miles from where the subpoenaed party is located (the territorial limit of Rule 45, Federal Rules of Civil Procedure, discussed below).[11]

III. Some General Parameters

For the most part, the confines of Section 7 have been determined in the context of domestic proceedings. In many instances, those parameters will apply in the international arena. For example, while an arbitrator can issue a subpoena pursuant to Section 7, a party cannot.[12] Also, the consensus among circuits that have addressed the issue require subpoenas to provide for a hearing to occur before the arbitrators.[13] Subpoenas for deposition taken by opposing counsel are generally not enforced, even where an arbitrator agrees to attend remotely.[14] This is in line with the general view that court forms of discovery are less available in favor of the streamlined procedures of arbitration.

Also, while document subpoenas without testimony (akin to requests for production) are generally not enforced,[15] the Eighth Circuit has taken a contrary, minority view. In *In re Security Life Ins. Of America*, the Court allowed discovery under the guise of efficiency finding implicit in the arbitration panel's "power to subpoena relevant documents for production at a hearing is the power to order the production of relevant documents for review by a party prior to a hearing."[16] Similarly, the Fourth Circuit appears an outlier in that it takes the position that the court lacks authority to compel a nonparty to comply with an arbitral subpoena of any form "absent a showing of special need or hardship."[17]

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[10] *Day v. Orrick*, 42 F.4th at 1139.

[11] *See e.g., Managed Care Advisory Group, LLC v. Cigna Healthcare, Inc.*, 939 F.3d 1145, 1160 (11th Cir. 2019) (arbitral subpoena requires appearance where arbitrators are sitting, non-party witnesses located throughout the country could not be compelled to appear by videoconference for hearing before arbitrator sitting in Miami); *Broumand, M.D. v. Joseph*, 522 F. Supp. 3d 8, 22, 24 (S.D.N.Y. 2021) (court lacked authority to enforce a subpoena for video appearance issued by arbitrator sitting in New York over witnesses located in California and Virginia, noting that "[t]he Second Circuit has not addressed whether the geographical limits found in Rule 45(c) apply not only to subpoenas in civil litigation but also to arbitral subpoenas issued under Section 7 of the FAA" finding "that the arbitral subpoenas, even as modified to require video testimony, are unenforceable because they seek to compel respondents to 'attend' an evidentiary hearing that is located outside the geographical limits set forth in Rule 45(c)").

[12] *Sharbat v. Muskat*, 2018 WL 4636969 at * 10 (E.D.N.Y. Sept. 27, 2018) (unreported) (party subpoena to witness for documents was unenforceable under FAA).

[13] *Washington Nat'l Ins. Co. v. OBEX Group LLC*, 958 F.3d 126, 136 (2d Cir 2020) (enforcing subpoena issued to nonparty to appear at hearing before arbitrators with documents); *Managed Care*, 939 F.3d at 1159 ("we agree with the Second, Third, Fourth, and Ninth Circuits and hold that the plain language of the statute is unambiguous in requiring witnesses to appear before an arbitrator and bring any documents with them, thus prohibiting pre-hearing discovery from non-parties"); *CVS Health Corp. v. Vividus, LLC*, 878 F.3d 703, 708 (9th Cir. 2017) (summarizing cases and holding Section 7 "does not grant arbitrators the power to order third parties to produce documents prior to an arbitration hearing"); *Life Receivables Trust v. Syndicate 102 at Lloyd's of London*, 549 F.3d 210, 212 (2d Cir. 2008) (Section 7 requires production of documents by testifying witness and "does not enable arbitrators to issue pre-hearing document subpoenas to entities not parties to the arbitration proceeding"); *Stolt-Nielsen SA v. Celanese AG*, 430 F.3d 567, 578 (2d Cir. 2005) (subpoenas to bring documents and testify in presence of arbitrators before final hearing were enforceable where the testimony was not a deposition and became part of arbitration record); *Hay Group, Inc. v. EBS Acquisition*, 360 F.3d 404, 411 (3d Cir. 2004) (arbitrators cannot subpoena documents from non-party outside of a hearing before arbitrators). *Accord, J.B. Hunt Transp. Inc. v. BNSF Railway Co.*, 2019 WL 13126951 at *5 (D.C. 2019) (slip opinion) (denying enforcement of subpoena for documents outside hearing before arbitrators); *Bailey Shipping Ltd. v. American Bureau of Shipping*, 2014 WL 3605606 at *2 (S.D.N.Y. July 18, 2014) (unreported) (enforcing subpoena issued by arbitrators to nonparty for testimony and documents); *Odfjell ASA v. Celanese AG*, 348 F. Supp. 2d 283, 287 (S.D.N.Y. 2004) (Section 7 of the FAA "plainly contemplates that not every appearance before an arbitrator will consist of a full-blown trial-like hearing, for it provides that the arbitrators may summon the witness to come *'before them or any of them.'* In practical terms, this means that, while the necessity of appearing before at least one arbitrator will prevent parties to an arbitration from engaging in the extensive and costly discovery that is the bane of civil litigation, at the same time preliminary proceedings can proceed expeditiously before a single arbitrator to deal with preliminary questions of admissibility, privilege, and the like before the full panel hears the more central issues," emphasis in original).

[14] *Depuy Synthes Sales, Inc. v. Smith & Nephew, Inc.*, 2022 WL 79812 at *4 (S.D. Ohio Jan. 7, 2022) (no authority to subpoena a nonparty for deposition outside presence of arbitrator); *Westlake Vinyls Inc. v. Cooke*, 2018 WL 4868993 at *3 (W.D. Ky. Aug. 20, 2018) (unreported) (subpoena for witness to appear for deposition with documents was invalid despite fact that arbitrators would appear by telephone or video).

But see, International Seaway Trading Corp. v. Target Corp., 2021 WL 672990 at *5 (D. Minn. Feb. 22, 2021) (slip opinion) (enforcing subpoena for remote deposition in St. Louis with arbitrator appearing remotely in Minneapolis).

[15] *CVS Health Corp. v. Vividus, LLC*, 878 F.3d at 708.

[16] 228 F.3d 865, 870-71 (8th Cir. 2000). *Security Life* was expanded in *International Seaway Trading Corp. v. Target Corp.*, 2021 WL 672990 at *4 (district court within Eighth Circuit upheld application for documents to also permit subpoena of nonparty for deposition).

[17] *COMSAT Corp. v. Nat'l Science Foundation*, 190 F.3d 269, 278 (4th Cir. 1999).

Courts have differed with respect to where a proceeding can take place and the viability of remote proceedings. The weight of authority holds that the seat is the location where the arbitrator sits for purposes of Section 7. While most courts require enforcement of a subpoena where the arbitrator is sitting,[18] others recognize that nothing precludes an arbitrator from conducting a hearing in more than one location.[19]

In addition, courts have split on whether remote attendance is permissible. While some courts have upheld subpoenas where arbitrators have agreed to appear at a properly noticed hearing by videoconference,[20] others have declined to find that a remote appearance satisfies the "in person" requirement contained in Section 7.[21] Even during Covid-19, courts have remained reluctant to alter the physical presence requirement. In *Broumand v. Joseph*, the court rejected the argument that "the extraordinary circumstances presented by the current pandemic" now renders videoconferencing "a necessity, not a convenience."[22] The court declined to ignore the physical presence requirement imposed "to force an arbitrator to think twice before issuing an arbitral subpoena."[23]

Many cases address the service requirements of Section 7 ("and shall be served in the same manner as subpoenas to appear and testify before the court"). This requires compliance with Rule 45, Federal Rules of Civil Procedure. Prior to 2013, service of subpoenas was geographically limited. However, Rule 45 was amended (effective December 1, 2013) to provide for nationwide service of process.[24] Accordingly, earlier analysis on geographic limits of service no longer applies.[25] Nonetheless, the issue of the proper geographical enforcement of arbitral summons remains.[26]

Notably, in *Day v. Orrick*, the Court bypassed the issue distinguishing enforcement pursuant to Chapter 1 from Chapter 2:

The district court's analysis was focused on the specific venue provision set forth in 9 U.S.C. § 7, the Chapter One provision that governs petitions to compel compliance with an arbitrator's summons filed in district court. Section 7 provides for enforcement of an arbitral summons in the "district in which such arbitrators, or a majority of them, are sitting." The court reasoned that because it is undisputed that Washington D.C. is the "seat of the underlying arbitration," it lacked jurisdiction to enforce the summons. But the district court did not consider the specific venue provision applicable here, 9 U.S.C. § 204, nor did it consider whether that provision was exclusive or permissive.

Finding the venue provision permissive the Court determined it "need not resolve the parties' dispute as to whether 9 U.S.C. § 7 provides for venue (or where)."[27]

In the event the reasoning of *Day* prevails, challenges in enforcing subpoenas for domestic proceedings in locations beyond where the arbitrators "are sitting," will be largely absent in the international context.

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[18] *Depuy*, 2022 WL 79812 at *3 (arbitrator sits where case is administered); *Alliance Healthcare v. Argonaut*, 804 F.Supp.2d 808, 812 (N.D. Ill. 2011) (only court at seat can enforce arbitral subpoena).
Rembrandt Vision Tech., LP v. Bausch & Lomb, Inc., 2011 WL 13319343 (N.D. Ga. Oct. 7, 2011) at *3 (court lacked authority to enforce subpoena to nonparty to appear before an arbitrator in Georgia where the arbitration was administered in New York, rejecting contention that arbitrators could hold hearing in multiple districts).

[19] *Washington Nat'l*, 958 F.3d at 139-40 (enforcing subpoena for witness to appear in New York at the arbitral seat, and rejecting contention that holding a previous hearing in another jurisdiction limited enforcement "[w]hether the arbitrators were sitting in the Eastern District of Pennsylvania at another time or in connection with a separate summons is not relevant to our inquiry"); *Seaton Ins. Co. v. Cavell USA*, 2007 WL 9657277 at *2 (D. Conn. March 21, 2007) (in dicta, noting "[t]he fact that the location of the arbitration hearing will be held at a location other than the one designated by the arbitration agreement does not have any bearing on the propriety of the subpoenas issued pursuant to section 7. Indeed, the defendants have not identified nor can the court find any statute or rule that prevents the parties to an arbitration agreement from mutually agreeing to move the arbitration to a location other than the one designated in an arbitration agreement, even when the sole reason for doing so is to obtain testimony and documents from witnesses who would not be subject to subpoenas in the contractually designated location. Accordingly, absent such authority and under the standard set forth in *Stolt-Nielsen*, the subpoenas are enforceable. Because the arbitration is taking place in Hartford, and thus within this district, this court may enforce the subpoenas pursuant to Fed. R. Civ. P. 45.")

[20] *International Seaway Trading Corp. v. Target Corp.*, 2021 WL 672990 at *5 (subpoena for remote deposition by zoom of witness in St. Louis while arbitrator was in Minneapolis complied with Fed. R. Civ. P. 45 allowing nationwide service of process and requiring compliance limitations as within 100 miles of witness location); *Moyett v. Lugo-Sanchez*, 321 F. Supp. 3d 263, 267 (D. Puerto Rico 2018) (subpoena for testimony by videoconference before FINRA arbitrators located in Georgia was enforced despite fact that seat and witnesses were in Puerto Rico noting FINRA rules permit testimony by video and arbitrators "sit" in Puerto Rico "with the aid of videoconferencing technology").

[21] *Managed Care*, 939 F.3d at 1160 ; *Broumand v. Joseph*, 522 F. Supp. 3d at 24; *Dodson Int'l Parts, Inc. v. Williams Int'l Co., Inc.*, 2019 WL 5680811 at *2 (E.D. Mich. June 26, 2019) (unreported) (rejecting contention that "testifying and transmitting documents by remote uplink is equivalent to appearing 'before the arbitrator'" and holding "[i]n no meaningful sense is a third-party in Connecticut 'before' an arbitrator in Michigan"); *Westlake Vinyls Inc. v. Cooke*, 2018 WL 4868993 at *5 (appearance of arbitrator by telephone or video is contrary to plain meaning of physical presence requirement); *Ping-Kuo Lin v. Horan Capital Mgt., LLC*, 2014 WL 3974585 at *2 (S.D.N.Y. 2014) (unreported) (denying enforcement of subpoena for testimony by videoconference).

[22] 522 F. Supp. 3d at 25.

[23] *Id.*

[24] Federal Rule of Civil Procedure 45(b)(2) provides "Service in the United States. A subpoena may be served at any place within the United States."

[25] *E.g. Dynergy Midstream Servs. v. Trammochem*, 451 F.3d 89, 96 (2d Cir. 2006) (holding arbitrators sitting in New York could not subpoena witness in Houston because Section 7 did not "authorize nationwide service of process" and lacked personal jurisdiction over witness) *superseded by Rule 45* (eff. Dec. 1, 2013).

[26] *See Managed Care*, 939 F.3d at 1160; *Broumand v. Joseph*, 522 F. Supp. 3d at 24.

[27] *Day v. Orrick*, 42 F.4th at 1142 at n.4.

IV. Conclusion

In the aftermath of *ZF Auto*, Section 7 of the FAA appears to be the main battleground to obtain documents located in the U.S. for international arbitrations. Yet, it is not the only method to secure evidence likely to be explored. For example, UNCITRAL Model Law Section 27 (Court assistance in taking evidence) allows arbitrators or a party with tribunal approval to request court aid in obtaining evidence.[28] Some states have largely adopted the UNCITRAL model law, including California, Connecticut, Florida and Louisiana.[29] Other states have similar provisions, even without adoption of the UNCITRAL Model Law.[30] As a result, one factor that may be important in determining whether evidence located in the U.S. is available may be the location of the arbitral seat – a factor to consider in seat selection. A U.S. seat will allow for nationwide service of process and, if the rationale of *Day* holds, provide multiple avenues to obtain evidence – either at the seat, where the witness is located, or elsewhere.

During the heightened attention paid to 28 U.S.C. § 1782 over the last 20 years, alternate methods of obtaining evidence have taken a backseat. Now that Section 1782 has been substantially foreclosed, examination of the state of play (somewhat forestalled) through arbitral subpoenas bears a fresh look. It is unlikely that parties will simply forego evidence they deem critical to their case and may increasingly turn to arbitrators for assistance in obtaining evidence located in the U.S. through requests for issuance of arbitral subpoenas.

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[28] Article 27 provides:
"The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. This court may execute the request within its competence and according to its rules on taking evidence."
[29] By way of example, Section 684.0038 of the Florida International Commercial Arbitration Act provides:
Court assistance in taking evidence. —The arbitral tribunal, or a party upon the approval of the arbitral tribunal, may request assistance in taking evidence from a competent court of this state. The court may execute the request within its competence and according to its rules on taking evidence.
[30] New York Civil Practice Law § 7505 states:
Powers of arbitrator. An arbitrator and any attorney of record in the arbitration proceeding has the power to issue subpoenas. An arbitrator has the power to administer oaths.

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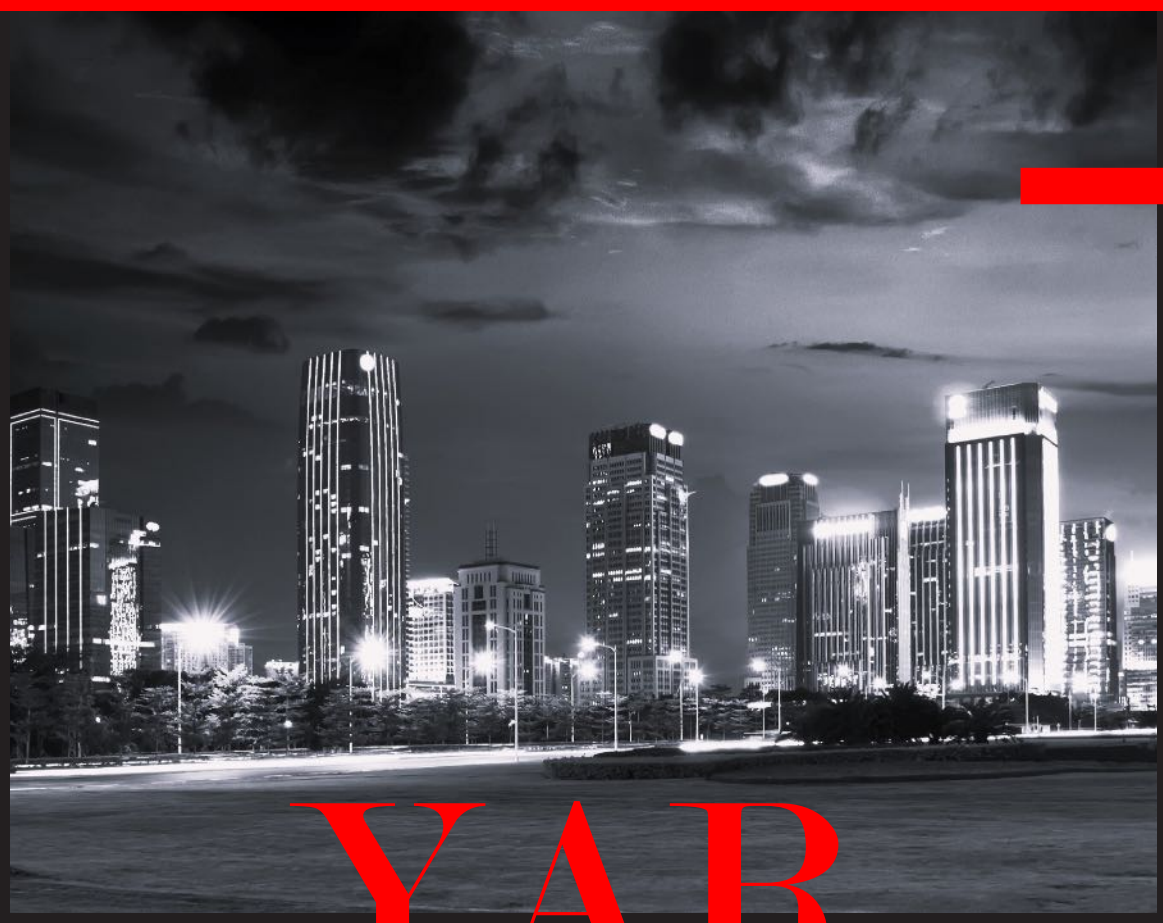

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