

Third Circuit Affirms Lower Court's Denial of Non-U.S. Litigant's § 1782 Discovery Request

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On July 31, 2024, the Third Circuit Court of Appeals decided *SPS Corp. v. General Motors Co.*, affirming the denial of a Brazilian entity's request to subpoena General Motors (GM) and other U.S. companies under 18 U.S. § 1782.^[1] Section 1782 empowers U.S. district courts to compel U.S. entities or individuals to provide documents or testimony to aid litigation before an international or non-U.S. court.

The provision can be a powerful tool for non-U.S. litigants (or potential litigants) to obtain discovery from a U.S. person or entity that would normally be beyond a non-U.S. court's jurisdiction. But, as the Third Circuit's decision illustrates, applicants must meet § 1782's requirements, as well as those imposed by U.S. courts' interpretation of the statute.

Factual Background

The Third Circuit case arose out of a dispute between GM Brazil and SPS ("*SPS Corp I - Fundo de Investimento em Direitos Creditórios Não Padronizados*") over reimbursement for tax overpayments made by GM Brazil. GM Brazil passed on the cost of the overpayments to car dealerships,^[2] thirty-five of whom assigned their claims to SPS.^[3]

GM Brazil won the right to recover the tax overpayments from the Brazilian government and filed a claim to confirm the overpayments' value with Brazil's tax collection agency (*Receita Federal do Brasil* – RFB).^[4] Before RFB had completed its review, SPS commenced an action in Brazil to recover its share of the overpayments.^[5] In March, 2020, the 1st Civil Court of São Caetano do Sul found that SPS lacked standing to pursue its claims until RFB finished its calculations.^[6]

Despite this setback, SPS initiated a Brazilian discovery proceeding in February 2021 against GM Brazil. Before the Brazilian proceeding concluded, SPS also commenced a § 1782 action before the U.S. District Court for the District of Delaware against GM's U.S. entity and GM's auditors.^[7]

On August 30, 2022, the district court denied SPS's § 1782 request.^[8] The Brazilian court adjudicating the preliminary discovery dispute denied SPS's request for additional documents two days later.^[9] SPS appealed the § 1782 denial to the Third Circuit Court of Appeals.

Third Circuit Affirms the District Court's Judgement

Writing for a three-judge panel, Judge Porter affirmed the district court's decision denying SPS's § 1782 application. While the application met § 1782's three basic requirements (which the district court had not addressed)^[10], the Third Circuit concluded the district court had not abused its discretion by denying SPS's request.

SPS Satisfied § 1782's Three Basic Requirements

Section 1782 gives district courts discretion to aid non-U.S. litigation by compelling discovery from U.S. individuals or entities. But this discretion requires three conditions: "(1) the person from whom discovery is sought 'resides or is found' within the district; (2) the discovery is 'for use in a proceeding in a foreign or international tribunal'; and (3) the application is made by an 'interested person.'"^[11]

The court found that the first condition was met, rejecting GM's argument that SPS sought discovery from GM Brazil, rather than the company's U.S. entity.^[12] The statute only required that SPS was pursuing information from the U.S. entity, and that the U.S. entity was present in the court's district.^[13]

Second, the court concluded that SPS sought information "for use" in a foreign proceeding. SPS could not commence its litigation against GM Brazil while the Brazilian tax authority's review was ongoing. But the court determined that § 1782's "for use" clause only required that the requested information would be used in future litigation.^[14]

Third, SPS was clearly an "interested party," as it would be a litigant in the merits phase of its suit against GM Brazil. Therefore, the Third Circuit concluded SPS had satisfied § 1782's three basic requirements.^[15]

District Court Correct to Decline SPS's Request

U.S. courts consider four factors when determining whether they should grant a § 1782 request, which stem from the U.S. Supreme Court case *Intel Corp. v. Advanced Micro Devices, Inc.*^[16]

1. Whether the non-U.S. court can obtain the discovery without § 1782 assistance
2. The receptivity of the non-U.S. court to a U.S. court's assistance with discovery
3. Whether the request is an attempt to circumvent the non-U.S. legal system's restrictions on gathering foreign evidence
4. Whether the request is "unduly" burdensome

The Third Circuit found these factors weighed against SPS's request.

First, SPS *could* obtain the information it sought without § 1782 assistance. GM Brazil possessed the information and was within the jurisdiction of Brazilian courts.^[17] The "only sense" in which the requested information was unobtainable^[18] "stemm[ed] from SPS's repeated litigation defeats," in Brazil.^[19]

Second, the Third Circuit evaluated whether the "receptivity" factor supported granting SPS's request. The district court did not err by concluding that Brazilian courts were not receptive to extraterritorial discovery, given that they had rejected SPS's similar discovery requests from GM Brazil.^[20]

Third, the § 1782 request would circumvent the non-U.S. jurisdiction's rules on foreign evidence gathering. The Third Circuit noted that adverse discovery rulings in the non-U.S. jurisdiction are not

always fatal to a § 1782 application.^[21] But here, Brazilian courts had “erected a solid wall” against SPS’s discovery actions, weighing against SPS’s § 1782 request.^[22]

Fourth, the court concluded that SPS’s § 1782 application was not unduly burdensome.^[23] But, that consideration was outweighed by the first three factors, “all of which favor GM in this case.”^[24]

The Third Circuit, therefore, affirmed the district court’s denial of SPS’s § 1782 request.

Key Takeaways for Non-U.S. Litigants

SPS Corp. v. General Motors Co. illustrates the promise and perils of § 1782 for non-U.S. litigants. The Third Circuit’s conclusion that GM’s U.S. entity met § 1782’s basic statutory requirements (even though it was not a party to the Brazilian litigation) demonstrates § 1782’s substantial reach. However, even when the statute’s basic requirements are met, U.S. district judges have wide discretion to grant or deny § 1782 requests. Non-U.S. litigants should carefully tailor § 1782 applications to the four *Intel* factors.

^[1] *SPS Corp I, Fundo de Investimento em Direitos Creditorios Nao Padronizados v. Gen. Motors Co.*, No. 22-3331, 2024, WL 3590063, at *1 (3d Cir. July 31, 2024).

^[2] *Id.* at 2-3.

^[3] *In re Letter of Request from SPS Corp I*, No. 21-MC-00565-CFC, 2022 WL 3908067, at *1 (D. Del. Aug. 30, 2022), *reconsideration denied sub nom. In re Letter of Request from SPS Corp 1*, No. 21-MC-565-CFC, 2022 WL 16739786 (D. Del. Nov. 7, 2022), *aff’d sub nom. SPS Corp I, Fundo de Investimento em Direitos Creditorios Nao Padronizados v. Gen. Motors Co.*, No. 22-3331, 2024 WL 3590063 (3d Cir. July 31, 2024).

^[4] *SPS Corp I*, 2024 WL 3590063, at *3-4.

^[5] *Id.*

^[6] *Id.* at *4.

^[7] *Id.* at *5.

^[8] *In re Letter of Request from SPS Corp I*, 2022 WL 3908067, at *4.

^[9] *SPS Corp I*, 2024 WL 3590063, at *5.

^[10] *In re Letter of Request from SPS Corp I*, 2022 WL 3908067, at *3.

^[11] *SPS Corp I*, 2024 WL 3590063, at *7.

^[12] *Id.*

^[13] *Id.*

^[14] *Id.* at *8.

^[15] *Id.* at *8-9.

^[16] 542 U.S. 241, 264 (2004).

^[17] *SPS Corp I*, 2024 WL 3590063, at *9-10.

^[18] While the Third Circuit decision suggests that § 1782 applications are more likely to succeed when jurisdictional / geographical limitations prevent access to the requested information, non-U.S. litigants need not fruitlessly exhaust discovery mechanisms in their own jurisdictions before seeking § 1782 assistance. *Id.* at *11.

[19] *Id.* at *10.

[20] *Id.* at *12-14.

[21] *Id.* at *15 (citing *Intel*, 542 U.S. at 253).

[22] *Id.*

[23] *Id.* at *15 n.5.

[24] *Id.*