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ABA Publishes Elizabeth Wolicki's Article on 11th Circuit's Holding: A Foreign Arbitration Panel Is a Tribunal

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Elizabeth Wolicki

An article by Novack and Macey LLP attorney Elizabeth Wolicki on foreign arbitration panels has been published by the American Bar Association Section of Litigation, Alternative Dispute Resolution.

The article discusses a recent ruling of the Eleventh Circuit Court, allowing a party to an arbitration proceeding in Ecuador to obtain discovery through 28 U.S.C. 1782. The court held that a foreign arbitration panel is a tribunal under the statute.

Ms. Wolicki wrote: "This ruling, based on the Supreme Court's 2004 decision in *Intel Corp. v. Advanced Micro Devices, Inc.*, is at odds with decisions from the Second and Fifth Circuits, which predate the *Intel* decision." The ruling "may dramatically expand the scope of discovery in international arbitrations," she

explained.

"[T]he Second and Fifth Circuits have held that private arbitral panels are not covered by section 1782," Ms. Wolicki noted. "It remains to be seen if other Circuits will follow the Eleventh Circuit's reasoning and permit 28 U.S.C. § 1782 to be used to obtain discovery in private international arbitrations, or if the concerns articulated by the Second and Fifth Circuits will prevail."

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