Second Circuit Addresses Enforceability of Non-Party Discovery Under Federal Arbitration Act

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Parties seeking to enforce arbitral subpoenas in federal court through section 7 of the Federal Arbitration Act ("FAA") "must establish a basis for subject matter jurisdiction independent of the FAA." *Doscher v. Sea Port Group Securities, LLC,* 832 F.3d 372, 386 (2d Cir. 2016). On May 1, 2020, the United States Court of Appeals for the Second Circuit published an important decision detailing how diversity jurisdiction of the federal courts is evaluated in cases concerning discovery aimed at non-party witnesses in arbitration.

In *Washington National Insurance Co. v. OBEX Group LLC, and Randall Katzenstein,* --- F.3d ----, 2020 WL 2092597 (2d Cir. May 1, 2020), the Court affirmed the district court's enforcement of a summons for documents and testimony issued to non-party witnesses in an arbitration case. The Second Circuit determined that diversity jurisdiction in cases arising from the FAA depends on the citizenship of the parties involved in the petition — not the citizenship of the parties to the underlying arbitration — and confirmed that Fed. R. Civ. P. 45 ("Rule 45") does not require the reviewing district court to consider the non-party's objections to the scope and manner of the arbitral discovery.

Given the increasing trend toward arbitration of claims and the corresponding need to obtain non-party discovery relevant to the underlying arbitration, the Second Circuit's decision provides greater clarity regarding the proper methods of obtaining non-party discovery and enforcing summonses issued by an arbitration panel.

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