

Ga. Arbitration Society Wants 11th Circ. To Uphold Precedent

By **Caroline Simson**

Law360 (August 16, 2022, 8:12 PM EDT) -- The Atlanta International Arbitration Society wants the Eleventh Circuit not to overturn its precedent barring courts from vacating international arbitral awards rendered in the U.S. under broader domestic standards, saying its interpretation of the issue enhances the jurisdiction's appeal for international parties.

The society is urging the appeals court not to review its **May decision** declining to vacate an arbitral award issued in a dispute over an ill-fated Guatemalan power plant construction project. In a **proposed amicus brief** filed with the court on Monday, the society argues that the international treaty that governs the enforcement of international arbitral awards, the New York Convention, makes clear that international awards can only be vacated using the more narrow grounds enumerated within it.

The award, issued by an International Chamber of Commerce tribunal in Miami, ordered Corporación AIC SA to return about \$7 million in advance payments made by Hidroelectrica Santa Rita SA after the power plant project folded. Corporación AIC SA asked the Eleventh Circuit in June to rehear the case, pointing to the judges' criticism in the opinion of the circuit precedent in question.

That rehearing petition remains pending, but it appears that there may be some interest among the judges in taking another look at the case after the appeals court held off on sending it back to the district court last month.

The society argued in its brief Monday that although the New York Convention allows a court to refuse to recognize an award that has been vacated by a court in the jurisdiction in which it was issued, that doesn't mean U.S. courts should look to domestic law when considering whether to vacate an arbitral award issued in the U.S. in a dispute that involves an international component.

Instead, the convention's more narrow standards have been incorporated into U.S. arbitration law, the society argues. It wants the Eleventh Circuit not to overturn the precedent at issue, contained in the appeals court's 1998 ruling in *Industrial Risk Insurers v. M.A.N. Gutehoffnungshütte GmbH*, saying its take on the issue more closely aligns with international practice than do rulings in other circuits.

"Industrial Risk's interpretation of the [Federal Arbitration Act] ... makes it easier for American parties seeking to persuade foreign counterparties to agree to arbitrate in the U.S.," according to the brief. "Non-U.S. parties contemplating arbitration in the U.S. generally are more comfortable having vacatur governed by the international standards to which they are accustomed, and these are also familiar to most U.S. companies involved in international business."

The society's brief still must be officially accepted for filing with the appeals court.

Counsel for the parties to the suit and for the society did not immediately respond to requests for comment on Tuesday.

In its bid to vacate the award, Corporación AIC argued that the panel had exceeded its powers by, among other things, improperly turning a blind eye to alleged bribes Hidroelectrica Santa Rita made to corrupt local government officials that the construction company claims contributed to the project's downfall.

But the Eleventh Circuit panel said in its opinion that the lower court had correctly denied the petition before deciding on that claim, saying circuit precedent bars courts from vacating "nondomestic" arbitration awards — a term that refers to international arbitration awards issued by U.S.-seated panels — on that basis.

The precedent cited by the panel was a ruling made by the Eleventh Circuit in a 2019 case involving a Monaco-based Del Monte unit and a Costa Rican pineapple farm, *Inversiones y Procesadora Tropical Inprotsa SA*, finding

that nondomestic awards can only be set aside under international standards, not the broader standards contained in U.S. federal arbitration law.

The Inprotsa case expanded on the precedent established in the Industrial Risk case.

Corporación AIC SA is represented by George J. Fowler III, Luis E. Llamas, Edward F. Lebreton III and Andrew R. Lee of Jones Walker LLP.

Hidroelectrica Santa Rita SA is represented by Jaime A. Bianchi and Sheldon A. Philp of White & Case LLP.

The Atlanta International Arbitration Society is represented by Glenn P. Hendrix of Arnall Golden Gregory LLP, R. David Gallo of Krevolin & Horst LLC, Shelby S. Guilbert Jr. of McGuireWoods LLP, Rebecca Lunceford Kolb of Gunnemann & Chally LLC, Brent Clinkscale and Shelby R. Grubbs.

The case is Corporación AIC, SA v. Hidroelectrica Santa Rita SA, case number 20-13039, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Rich Mills.