

## Second Circuit Vacates SDNY Order Enforcing Arbitration Award Against Reinsurer

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In the latest iteration of a complex reinsurance dispute, the U.S. Court of Appeals for the Second Circuit vacated a 2018 district court order enforcing an arbitration award against IRB Brasil Resseguros S.A. (IRB). We previously blogged about the district court order [here](#). The arbitration award required IRB to indemnify National Indemnity Co. (NICO) against a claim by Companhia Siderurgica Nacional S.A. (CSN). NICO and CSN settled CSN's claim in a settlement agreement to which IRB was not a party. The agreement provided that CSN would receive \$5 million of the \$9 million NICO owed, but that the funds would come from IRB through a lawsuit that NICO would commence against it, i.e., this action.

IRB appealed the 2018 district court order, arguing that the NICO/CSN settlement agreement could not have established its liability. The Second Circuit agreed. It held that IRB cannot be responsible for paying an amount determined by a contract to which it was not a signatory.

IRB next went a step further, arguing that the NICO/CSN settlement extinguished any obligation IRB had to indemnify NICO pursuant to the arbitration award. But the Second Circuit found IRB went too far in this regard. The court held that IRB is still potentially liable for the \$5 million based on the arbitration award, which had already been [confirmed in 2016, and affirmed in 2017](#). The court rejected IRB's suggestion that a private contract between NICO and CSN could override obligations established by the arbitration award. The court strongly implied that a judgment determining NICO's liability to CSN could trigger IRB's indemnity obligations to NICO.

[\*Nat'l Indem. Co. v. IRB Brasil Resseguros S.A.\*](#), No. 18-534-cv (2d Cir. Apr. 18, 2019)

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