

New York Court of Appeals Holds Upholds Broad Choice of New York Law Provision in Contract Even in Absence of Contacts With New York

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In [IRB-Brasil Resseguros, S.A. v. Inepar Investments, S.A.](#), No. 191, 2012 WL 6571286 (N.Y. Dec. 18, 2012), the Court of Appeals of the State of New York held that a broad choice of law provision in a contract precludes any need for conflict of law analysis. This decision increases the predictability of corporate contracts containing a New York choice of law provision: New York law *will* apply irrespective of whether any other jurisdiction's law *could* apply.

This case began as a routine breach of contract claim. IRB-Brasil Resseguros, S.A. ("IRB") sued Inepar Investments, S.A. ("IISA") and Inepar S.A. Industria e Construções ("ISAIC") for breach of a loan agreement and note that was made by IISA and guaranteed by ISAIC. The contract at issue contained a choice of law provision which stated, in pertinent part, that "[t]his Agreement, the Notes, and the Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflict of laws principles." The guarantee agreement also contained a choice of law provision which stated, in pertinent part, that it would be "governed by, and . . . be construed in accordance with, the laws of the State of New York."

The Commercial Division trial court (Kornreich, J.) awarded IRB judgment against IISA and ISAIC, and a judicial hearing officer then [determined](#) that the amount owed to IRB according to the contract was \$27,772,409.86 with an interest rate of 9.9%.

ISAIC appealed the trial court decision, arguing that the New York choice of law provision required the courts to do a conflict of law analysis applying New York conflicts law — in other words, ISAIC asserted that the choice of law provision did not mean that New York law necessarily applied to the contract, but only that New York law would be applied to the facts of the case to determine whether New York law actually trumped the laws of any other eligible jurisdiction (in this case, Brazil).

When a choice of law analysis is done in a breach of contract action, the New York court looks to apply the law of the jurisdiction "with the most significant relationship to the transaction and the parties." ISAIC claimed that a New York conflict of law analysis would find that the law of Brazil applied, despite the existence of the New York choice of law provision. ISAIC then argued that under

Brazilian law, ISAIC could not be found liable because the two officers that signed the guarantee lacked actual authority. Under New York law, the officers would be considered to have such authority and ISAIC would therefore be liable for the officers' actions.

The Appellate Division, First Department, in a decision dated April 26, 2011, [2011 Slip Op 03275](#), nominally reduced the interest rate from 9.9% to 9% (the New York statutory interest rate for contract claims is 9%), and otherwise unanimously affirmed the trial court decision. ISAIC then appealed the First Department's decision to the Court of Appeals.

The Court of Appeals upheld in full the First Department's decision, finding that the New York choice of law provision meant that New York law should be applied to the substantive issues in dispute in the litigation — no conflicts analysis should be done. The Court of Appeals explained that the rationale for its ruling flowed from two provisions in the New York General Obligations Law ("NY-GOL").

[NY-GOL 5-1401](#) states that any contract, agreement or undertaking arising out of a transaction with a value of at least \$250,000.00 may have a New York choice of law provision, "whether or not such contract, agreement or undertaking bears a reasonable relation to this state." [NY-GOL 5-1402](#) then provides that any foreign corporation, non-resident, or foreign state can be sued in New York as long as the transaction has a value of at least \$1,000,000.00, and the contract "contains a provision [as contemplated by NY-GOL 5-1401] ... whereby such foreign corporation or non-resident agrees to submit to the jurisdiction of the courts of this state."

The Court of Appeals explained that the NY-GOL provisions are intended to "eliminat[e] uncertainty regarding the governing law," in order to "promote and preserve New York's status as a commercial center and to maintain predictability for the parties." The courts of New York should not disregard any choice of law provision in a contract, even if the parties lack sufficient contacts with New York State. Further, "parties are not required to expressly exclude New York conflict-of-law principles in their choice-of-law provision in order to avail themselves of New York substantive law." Both of the choice of law provisions here were found valid by the Court of Appeals, which noted that there was no substantive difference between the provisions in the main agreement and the guarantee agreement.

Under the *IRB* decision, any provision stating that a contract "shall be governed by, and construed in accordance with, the laws of the State of New York" is sufficient to designate New York as a proper venue. In other words, even if the parties do not explicitly designate New York courts as a location for any litigation, venue is proper under NY-GOL 5-1402 as long as there is a choice of law clause that meets the requirements of NY-GOL 5-1401 and the matter in controversy is worth at least \$1,000,000.00.

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