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# Hughes Hubbard & Reed

## Hughes Hubbard Secures Rare Reversal of Arbitration Award Confirmation from D.C. Circuit

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Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership  
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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**Sept. 24, 2025** – Hughes Hubbard successfully convinced the U.S. Court of Appeals for the D.C. Circuit to vacate the lower court’s enforcement of an arbitration award, achieving a rare outcome in favor of the Republic of Equatorial Guinea.

On Sept. 23, the D.C. Circuit reversed the confirmation of an arbitration award rendered in Switzerland against Equatorial Guinea. In previously confirming the arbitration award, the lower court had deferred to the arbitral panel’s interpretation of the dispute resolution clause in a contract between the parties, which referenced litigation in Equatoguinean courts in competing Spanish and German translations.

Equatorial Guinea argued before the arbitral panel and the lower court that the dispute resolution clause required any litigation to be brought before Equatoguinean courts first, with arbitration available to internationalize the dispute in the event of a “denial of justice,” a long-recognized concept in international law seldom cited today owing to the rise of investment treaties.

Writing for a unanimous Panel, U.S. Circuit Judge Gregory G. Katsas credited Equatorial Guinea’s interpretation of the relevant dispute resolution clause and found that the lower court wrongly deferred to the arbitrators’ interpretation of the local litigation requirement.

The Court situated its analysis within a lengthy discussion of the U.S. Supreme Court’s 2014 decision in *BG Group v. Argentina*, which upheld the confirmation of an arbitration award issued despite noncompliance with a similar local litigation requirement from a governing investment treaty. Because the dispute resolution clause in Equatorial Guinea’s case arose from a bilateral contract between the parties rather than an investment treaty, the Court reasoned that “[t]he local-litigation provision here functions as more than just a claims-processing rule.” (Opinion at 11). Instead, the Court determined that the local litigation requirement implicated the substantive arbitrability of the dispute, because it determined not just when a party may arbitrate, but what claims they may submit to arbitration. (Opinion at 12)

The Court's nuanced distinction reinforced bedrock principles of U.S. arbitration law, including that courts rather than arbitrators must decide threshold questions of the arbitrability of a dispute, and that any delegation of questions of arbitrability to arbitrators rather than courts must be clear and unmistakable.

While the Court's decision remands the case for consideration of additional issues, it opens up a pathway for the lower court to decline to enforce the arbitration award under Article V(1)(c) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (New York Convention), 330 U.N.T.S. 38, 21 U.S.T. 2517. In the United States, only a handful of courts have declined to enforce an arbitration award because of Article V(1)(c) of the New York Convention, which allows for the refusal of recognition of an arbitration award in cases where an award "deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration."

The Hughes Hubbard team representing Equatorial Guinea is led by Remy Gerbay. Malik Havalic argued the case before the D.C. Circuit, with assistance from Michael DeBernardis, Carter Rosekrans and Shayda Vance.

[Law360](#) and [Global Arbitration Review](#) reported on the reversal.

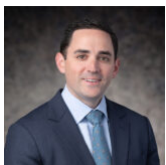
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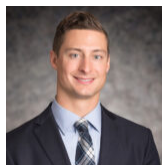
**Remy Gerbay**



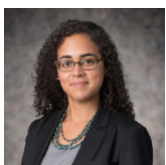
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