

GIBSON DUNN

Judgment & Arbitral Award Enforcement Update

May 27, 2026

## Third Circuit Confirms District Courts' Authority and Obligation to Resolve Jurisdictional Disputes in Arbitral Award Enforcement Disputes

*Soceidad Concesionaria Metropolitana de Salud S.A. v. Webuild S.p.A.*,  
No. 24-3005 – Decided May 18, 2026

On May 18, 2026, the Third Circuit vacated and remanded the Delaware District Court's order dismissing SMCS's action to enforce a foreign arbitral award in Delaware for lack of personal jurisdiction. Gibson Dunn represented the prevailing party, Sociedad Concesionaria Metropolitana de Salud S.A. (SCMS).

*"Because we agree with SCMS that Shaffer v. Heitner, 433 U.S. 186, 210 n.36 (1977), authorizes the exercise of traditional quasi in rem jurisdiction in an action to collect on an already adjudicated liability, we will vacate and remand."* Fisher, J., writing for the Court.

The Third Circuit's holding resolved an issue of "first impression" in the circuit, holding that award creditors can enforce arbitral awards in any jurisdiction where the debtor's property may be found. That path-marking decision resolves confusion about the vitality of "quasi in rem jurisdiction"—i.e., property-based personal jurisdiction—in arbitral award enforcement actions after the Supreme Court's decision in *Shaffer v. Heitner*, 433 U.S. 186 (1977). *Shaffer* held that the "mere presence of property owned by a non-resident defendant in the forum state is insufficient to support quasi in rem jurisdiction for a claim unrelated to the property." But the Court recognized in a footnote that "[o]nce it has been determined by a court of competent

jurisdiction that the defendant is a debtor of the plaintiff,” a creditor may still pursue “an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.” *Id.* at 210 n.36.

The Third Circuit held that “the logic of” *Shaffer’s* footnote 36 “extends to an action to confirm and enforce an arbitral award under the New York Convention.” And the Third Circuit recognized that the same rule holds even when a foreign losing party to a foreign arbitration merges into *another entity* that has property in the United States. Together, these holdings confirm that arbitral award debtors cannot avoid their obligations to pay binding awards through restructuring or by strategically transferring assets to U.S. entities unconnected to the underlying dispute.

### **Background:**

SCMS, a Chilean entity, holds an indisputably valid \$140 million arbitral award against Astaldi, an Italian construction conglomerate, from the Santiago Center for Arbitration and Mediation. Astaldi refused to pay. Pursuant to the New York Convention, a treaty that binds United States courts to enforce international arbitration awards, SCMS thus sought to enforce the award in the United States District Court for the District of Delaware against Webuild, another Italian construction company and Astaldi’s alleged successor-in-interest. To support personal jurisdiction, SCMS invoked the court’s *quasi in rem* jurisdiction over Webuild’s shares in its wholly-owned Delaware subsidiary.

Webuild moved to dismiss, arguing that the Supreme Court subjected all exercises of personal jurisdiction to the “minimum contacts” test in *Shaffer*, and that the underlying construction dispute that gave rise to the arbitral award bears no nexus to its Delaware-based property. The district court agreed and dismissed for lack of personal jurisdiction, holding (1) that *Shaffer* required a nexus between the Delaware asset and the underlying dispute for the court to exercise personal jurisdiction, and (2) that the court had no jurisdiction to determine whether Webuild’s property belonged to Astaldi, as its putative successor-in-interest.

### **Issues Presented:**

1. Does *Shaffer* footnote 36 permit a district court to exercise *quasi in rem* jurisdiction to enforce a valid foreign arbitral award based on the debtor’s forum-based property, without regard to whether the debtor has sufficient minimum contacts with the forum state?
2. Did the district court err by refusing to consider whether Webuild was Astaldi’s successor-in-interest for purposes of *quasi in rem* jurisdiction?

### **Court’s Holding**

Yes, on both counts. The Third Circuit vacated the order of the district court and remanded for it to decide whether Webuild’s is Astaldi’s successor, in which case the award should be confirmed and judgment entered against Webuild.

The Third Circuit explained that *Shaffer’s* thirty-sixth footnote “expressly acknowledged that the Due Process clause’s fairness requirement is less stringent in an action on an already adjudicated judgment” and that it therefore “embrace[d] a rear-view mirror approach to

jurisdiction” for actions to enforce a court’s judgment. The court found “no principled reason” to treat foreign arbitral awards any differently than final court judgments. Like judgments, the court reasoned, arbitral awards stem from proceedings with proper procedural protections and give rise to “a new cause of action that is *res judicata*” and may be enforced in summary proceedings. Accordingly, the Third Circuit concluded that the New York Convention “imposes on United States courts an obligation to ‘recognize arbitral awards as binding and [to] enforce them,’” so “a court can exercise attachment jurisdiction based on the mere presence within the forum of an arbitral-award debtor’s property, and the property does not need any relation to the underlying cause of action.”

The Third Circuit deemed it irrelevant that the arbitral award was against Astaldi, not Webuild—its alleged successor in interest. The court recognized that whether Webuild may be held liable for Astaldi’s debts bears on the award’s enforceability against Webuild, but that merits question was inextricably intertwined with the *jurisdictional* issue whether Astaldi (through Webuild) had property in Delaware that could support *quasi in rem* jurisdiction. And although jurisdictional issues are ordinarily antecedent to merits issues, courts always have jurisdiction to determine jurisdiction—“even when the ‘merits and jurisdiction come intertwined.’” The Third Circuit therefore held that the district court was obligated to resolve the successor-liability question as part of its jurisdictional inquiry, rather than dismiss for lack of jurisdiction merely because Webuild was not named in the arbitral award.

#### **What It Means:**

The Third Circuit has confirmed that it remains a critical forum for the confirmation and enforcement of foreign arbitral awards and preserves the critical role that *quasi in rem* jurisdiction plays in enforcing arbitral awards against foreign defendants who will often lack sufficient connections with the United States to establish contacts-based personal jurisdiction. The Third Circuit’s recognition of these principles is particularly significant because many U.S.-based subsidiaries of foreign companies are incorporated in Delaware. The Third Circuit’s decision confirms that foreign companies cannot hold assets in Delaware and yet simultaneously claim to be beyond the reach of Delaware courts to confirm liability for their arbitral award obligations.

*Gibson Dunn represented the prevailing party, SCMS. Partner Miguel Estrada argued the appeal on behalf of SCMS. He was joined by Rahim Moloo, Jason Myatt, Zachary Kady, Jeff Liu, and Lavi Ben Dor.*

**The following Gibson Dunn lawyers prepared this update: Miguel Estrada, Rahim Moloo, Jason Myatt, Zachary Kady, Jeff Liu, Pablo Garrido, Lavi Ben Dor, Vanessa Ajagu, Luke Wearden.**

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. For additional information about how we may assist you, please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm's Judgment & Arbitral Award Enforcement practice group, or the authors:

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