Prevention is Better Than Cure: Remoteness of Damages Revisited

January 26, 2021

PRACTICES International, Litigation, International Arbitration

Introduction

In *Attorney General of the Virgin Islands v Global Water Associates Ltd (British Virgin Islands)* [2020] UKPC 18, the Privy Council held that a contractor's claim for damages for breach of a construction contract could include the profit it would have made if it had completed the facility and operated it under a related operation and maintenance agreement. The judgment is of practical interest as it applies existing principles of remoteness of damages in the context of major engineering projects.

Background

The Government of the British Virgin Islands entered into two contracts with Global Water Associates Ltd ("**GWA**") in September 2006 relating to a proposed water reclamation treatment plant. The first contract was a Design Build Agreement under which GWA agreed to design and build a 250,000 US gallons per day water reclamation treatment plant. The second contract was a Management, Operation and Maintenance Agreement ("**MOMA**") by which the Government engaged GWA to manage, operate and maintain that plant. Clause 3.1 of the MOMA provided that the agreement was for a period of 12 years from the commencement date, which was the date the plant would first be capable of achieving the level of water processing for which the Government contracted in the DBA.

The dispute between the parties arose out of a breach of contract by the Government. The Government failed to provide a suitably prepared project site to enable the construction and installation of the plant, as it was required to do under the DBA. Absent a site, the plant was unsurprisingly never built. As a result of this breach of the DBA, GWA was not able to earn the profits which it would have made from managing, operating and maintaining the plant during the 12-year term of the MOMA.

To read the full article, click here.