THE SOVEREIGN ACTS DOCTRINE

Because COVID-19 cases are raging in the United States, there may be more claims and Requests for Equitable Adjustment ("REAs") relating to government contracts where the government delays or otherwise impedes a contractor. One of the basic principles of government contract law, the Sovereign Acts Doctrine, is discussed in this blog. The two principal cases here are *Horowitz v. United States,* 267 U.S. 458 (1925) and *Conner Bros. Const. Co, Inc. v. Geren,* 550 F.3d 1368 (Fed. Cir. 2008).

The Sovereign Acts doctrine provides that when sued as a contractor, the United States cannot be held liable for an obstruction to the performance of the particular contract that results from its public and general acts as a sovereign. The doctrine is an affirmative defense that is an inherent part of every government contract, and is based on the government's dual roles as both contractor and sovereign. The doctrine is designed to balance the government's need for freedom to legislate with its obligation to honor the contracts it makes.

There are a few important points and limitations to this doctrine:

1. The governmental act must be "public and general" (not specifically targeted).

2. Private contractors that deal with the United States should not be treated more favorably than if they had contracted with a private party.

3. Legislative elimination of agreed-upon benefits to a plaintiff constitutes a breach by the U.S. of its contractual obligation for which the government is liable.

4. The sovereign act defense is unavailable where the governmental action is specifically directed at nullifying contractual rights.

5. When considering whether an alleged sovereign act is exclusively directed to aborting performance of government contracts, courts addressing the doctrine have looked to the extent which the governmental action was directed to relieving the government of its contractual obligations.

6. A factor relevant to the "public and general" inquiry mentioned above is whether the governmental action applies exclusively to one contractor or more broadly to include other parties not in a contractual relationship with the government.

7. The public and general nature of an action does not turn on the number of contracts that is actually obstructed. Governmental actions affecting a single contractor may be shielded by the sovereign act doctrine as long as the effect on the contractor's rights is incidental to a broader governmental objectives.

8. The sovereign act defense will be rejected where the government has a "change of heart" and unilaterally terminates a single contractor after deciding that performance of that contract would be unwise.

Of course, there are numerous cases on the sovereign act defense in the Federal Circuit, however the above points give a sense of when the defense will be allowed and not accepted.

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