

has chosen a date to start measuring the damages that is improper from a legal point of view (for example, a previous date instead of the date when the act causing the injury has occurred).

However, a party cannot challenge an arbitral award if the challenge is directed against the factual elements taken into account in determining the fair market value of the investment at the time the damage occurred—even if the evidence supporting the tribunal’s factual conclusions stems from a date before the act causing the damage.

2.7 A party cannot state a viable claim that an arbitral tribunal’s assessment of damages violates public policy by transgressing the “just compensation” principle of the Fifth Amendment’s Taking Clause (pages 25-26)

A party cannot challenge an arbitral tribunal’s damages award as a violation of public policy on the ground that it contravenes the principle of “just compensation” as set forth in the Taking Clause of the Fifth Amendment because an arbitral tribunal is not an arm of government and hence cannot accomplish a taking. Moreover, because no clear standard exists as to what constitutes a “judicial taking”, the public policy claim is not based on a “well defined and dominant” public policy and hence fails.

3. *Decision*

The Court dismissed Argentina’s request to deny recognition and enforcement of the Award because the Argentina failed to demonstrate the strict conditions required by New York Convention Articles V(1)(c) and V(2)(b). Therefore, the Court concluded that the Award should be recognized and enforced, and that BG Group is entitled to damages, along with interest, arbitration costs and attorneys’ fees.