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5 Fundamental Diferences Between U.S. and U.K. Construction Law

Kilpatrick Townsend's Larry Prosen recently joined other expert panelists at a Washington Building Congress webinar to discuss the topic of "So Close and Yet So Far – Some Fundamental Differences Between U.S. and U.K. Construction Law." There are similarities, highlighted by substantial differences, between U.S. and U.K. litigation.

Below are just brief highlights of some of these differences– which go much deeper than the following selections:

1. There is a difference between due process in the U.S. arising out of the U.S Constitution and natural law in the U.K., because the U.K. does not have a constitution.
2. The Spearin doctrine recognizes that the owner impliedly warrants the plans and specs versus the U.K. which has a "fitness for purpose" requirement which is less favorable inthat generally a contractor cannot rely upon owner-furnished information.
3. U.S. design liability utilizes a reasonable standard of care as does the U.K. but the U.K. adds a second, more onerous, requirement of the "fitness for purpose" requirement –discussed in the prior takeaway.
4. The U.S. relies heavily on arbitration to resolve construction disputes. While the U.K. also has arbitration it also has a number of other judicial processes and procedures which tend to make disputes more expensive to resolve. This includes items such as crystallization -- this U.K. doctrine states that the parties must give notice, exchange information (there is much more limited discovery in the U.K.), and negotiate before seeking judicial intervention. And then that intervention must be made upon a refined and discreet set ofissues. In contracts, under the doctrine of comprehensive resolution, all disputes arising out of a project or contract can proceed in one overall proceeding.
5. Under the American rule, each party pays its own attorney's fees and costs absent a contractual or statutory provision to the contrary, or a finding of bad faith. In the U.K., the British rule holds that the loser pays.