

# **Agreed Damages or Unenforceable Penalties – Drafting to Affirm the Former and Avoid the Latter**

Glenn West, writing in Weil, Gotshal & Manges LLP's **Global Private Equity Watch**, says that agreed damages provisions are a staple of many commercial contracts.

But their enforceability is frequently questioned because of the common law's requirement that the damages payable for breach of contract not exceed the amount required to compensate the non-breaching party for the foreseeable losses it actually sustained by virtue of the breach.

West discusses a case that he says presents an important practical reminder: practitioners seeking to ensure that agreed damages provisions are enforceable should avoid limiting the items of loss for which the agreed damages are providing compensation and constitute a legitimate pre-estimation.

**Read the article.**