

Indemnification: Are Attorneys' Fees Incurred in Claims Between Contracting Parties Covered?

Unlike most contractual disputes, it is not just merely the language used but also the circumstances in which the parties were contracting that will be determinative of whether direct claims are covered by the indemnity (and thus whether there will be reimbursement of legal fees), write **Richard Levine, Peter Feist** and **Jessica Djilani** in Weil, Gotshal & Manges LLP's **Global Equity Watch**.

The authors write that “even a winning litigant in the U.S. typically cannot recover its attorneys’ fees and expenses – a principle known as the ‘American Rule.’ Indemnification provisions typically reverse the American Rule by providing that the indemnified party can recover its attorneys’ fees and expenses from the indemnitor. Thus, whether an indemnification provision applies to claims between the contracting parties – say for breach of a representation or warranty – is often heavily litigated.”

This article is the first in a series on the subject.

Read the article.