

Indemnification as an Exclusive Remedy

“Merger and acquisition purchase agreements generally include indemnification provisions, pursuant to which a given party (‘indemnitor’) agrees to defend, hold harmless, and indemnify the other party or parties (‘indemnitees’) from specified claims or damages. These typically include claims arising from a breach of the indemnitor’s representations and warranties or covenants set forth in the purchase agreement, or with respect to other specific matters. Often the indemnification provisions are agreed to as between the parties as an exclusive remedy for asserting claims (also referred to as an ‘exclusivity of remedies’ or ‘EOR’ provision),” writes Daniel R. Avery in Goulston & Storrs’ *What’s Market Blog*.

The article reviews the use of EOR provisions in private company M&A transactions.

Read the article.