

Indemnify is a Funny Word Carrying Historical Baggage—Be Aware and Use with Care

“An indemnification remedy against sellers (subject to a cap) continues to find its way into many private company acquisition agreements,” explains Glenn D. West in Global Private Equity Watch’s **Glenn West Musings**.

He writes “absent an exclusive remedy provision, a non-breaching party is entitled to damages under the common law for a breaching party’s failure to abide by the terms of the contract irrespective of whether that contract contains an indemnification clause.” Further “the historical fact that indemnification was not normally associated with direct (or first party) claims continues to cause courts some confusion and requires care by deal lawyers to avoid misunderstandings and unintended results.”

Read the article.