

No-Third-Party-Beneficiary Clauses and the “Ever- Evolving Contractual Arms Race”

“... a recent Delaware decision suggests that we cannot be reminded too often of the importance of carefully modifying the standard no-third-party-beneficiary clause so that it ... does not do more harm than good,” warns Glenn D. West in *Global Private Equity Watch’s Features*.

“Most acquisition agreements contain provisions intended to benefit affiliates (and officers, directors and employees, whether or not technically affiliates) of the contracting parties, who may be impacted by the sale in some manner (indemnification and the non-recourse clause are just two examples). An unexamined, boilerplate “no-third-party-beneficiary clause” can wreak havoc on those provisions if not carefully modified to make clear that the benefits of certain provisions of the agreement are indeed intended to benefit non-party affiliates (and perhaps others).”

Read the article.