

# Freedom of Contract? An Agreed Damages Clause May Not Actually Be Agreed

The celebrated “freedom of contract” is not absolute, writes **Glenn West** for Weil, Gotshal & Manges LLP’s **Global Private Equity Watch**.

“The right of contracting parties to obligate themselves to one another has always been subject to certain statutory limitations, as well as those imposed by the common-law principles that govern the enforcement of contracts generally. A recent decision by the United States Court of Appeals for the Seventh Circuit, *Caudill v. Keller Williams Realty, Inc.*, 2016 WL 3680033 (7th Cir. July 6, 2016), serves as a reminder of one of those common-law principles—the idea that, as a general rule, parties should not be penalized for breaching a contract,” he writes.

“Parties relying on agreed damages clauses on both sides of the Atlantic should continue to draft such provisions based upon the current interpretation, in the applicable jurisdiction, of the ancient principle of the common law that abhors a penalty for a contractual breach,” West advises.

**Read the article.**