

Principles for the Settlement of Post Closing Third Party Disputes

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I. Principle:

The existence of third party claims for which the seller is liable to recourse must be decided with in principle binding effect between seller and buyer in the liability proceeding.

II. Principle:

Target must litigate the liability proceedings.

III. Principle:

In order to subrogate against the seller buyer must involve seller in the liability proceedings, i.e. give seller the possibility to assist target.

IV. Principle:

In the recourse proceedings seller can raise pleas suggested by seller but disallowed by target in the liability proceeding.

V. Principle:

Seller bears the ordinary and general risk of litigation.

VI. Principle:

In the recourse proceedings seller is excluded with defenses against the third party claim seller had failed to raise in the liability proceedings.

VII. Principle:

In the recourse proceedings seller can raise pleas suggested by seller but disallowed by target in the liability proceedings.

VIII. Principle:

In the recourse proceedings seller can raise pleas unknown to seller at the time which target deliberately or grossly negligently had not presented in the liability proceedings.