TABLE OF CONTENTS

Introduction ix

Part 1: Procedural Law 1
1. INTRODUCTION 1
2. EUROPE 1
2.1. The Duty to Reimburse 1
2.1.1. Introduction with Regard to Switzerland 1
2.1.2. Introduction with Regard to France 2
2.1.3. The General Rule 4
2.1.4. Other Principles 6
2.1.5. Withdrawal / Acceptance 6
2.1.6. Modifications 8
2.1.6.1. Unnecessary Attorney's Fees 9
2.1.6.2. Partial Win 10
2.1.6.3. Settlement 12
2.1.6.4. Equity 14
2.2. The Scope and Amount of Reimbursement 18
2.2.1. Introduction 18
2.2.2. Switzerland 18
2.2.2.1. Current Situation 18
2.2.2.2. New Federal Code of Civil Procedure 20
2.2.3. Germany 21
2.2.3.1. Introduction 21
2.2.3.2. Trial Attorney's Fees 22
2.2.3.3. Pre-Trial Attorney's Fees 22
2.2.4. England 23
2.2.4.1. Introduction 23
2.2.4.2. Attorney's Fees of the Case 24
2.2.4.3. Conditional Fee 27
2.2.5. France 29
2.2.5.1. Introduction 29
2.2.5.2. Trial Attorney's Fees 30
2.2.5.3. Pre-Trial Attorney's Fees 36
2.3. Parties' Agreement 36

3. UNITED STATES OF AMERICA 37
3.1. Introduction 37
3.2. (No) Duty to Reimburse 38
3.2.1. The American Rule 38
3.2.2. Exceptions 40
3.2.2.1. The Common-Fund Doctrine 40
3.2.2.2. The Substantial-Benefit Doctrine 43
3.2.2.3. Sanctionable Behavior 46
3.2.2.4. Statutory Authorization 51
3.3. The Scope and Amount of Reimbursement 60
3.3.1. Introduction 60
3.3.2. Under the Common-Fund and Substantial-Benefit Doctrine 61
3.3.3. Under Sanctionable Behavior 63
3.3.3.1. Under the Bad-Faith Exception 63
3.3.3.2. Under Rule 11 FRCP 64
3.3.4. Under Statutory Authorization 64
3.3.4.1. Introduction 64
3.3.4.2. Determination of the Attorney's Fees 65
3.3.4.3. Prevailing Respondents 67
3.4. Parties' Agreement 68
3.5. Summary 69
4. COMPARISON / DISCUSSION 70
5. GENERAL FEE-SHIFTING RULE 71

Part 2: International Arbitration Rules 75
1. INTRODUCTION 75
2. THE DUTY TO REIMBURSE 76
2.1. Applicable Rules 76
2.1.1. Parties' Agreement 76
2.1.2. International Arbitration Rules 80
2.1.2.1. Costs Follow the Event? 80
2.1.2.2. Circumstances of the Case 81
2.1.3. National Rules 114
2.2. Summary 116
3. THE SCOPE AND AMOUNT OF REIMBURSEMENT 117
3.1. Introduction 117
3.2. Applicable Rules 117
3.2.1. Parties' Agreement 117
3.2.2. International Arbitration Rules 117
3.2.2.1. Scope: The Parties' Legal Costs 118
3.2.2.2. Amount: Reasonable / Appropriate / Necessary Attorney's Fees 126
3.2.3. National Fee Schedules and National Rules 137
3.2.4. Sufficient Proof / Evidence of Scope and Amount 142
3.3. Summary 144

Part 3: Substantive Law 147
1. INTRODUCTION 147
2. QUALIFICATION OF ATTORNEY'S FEES AS DAMAGES 148
2.1. Head of General Damages 148
2.1.1. National Laws 148
2.1.2. CISG 152
2.2. Head of Special Damages 152
2.2.1. Contract and Tort 152
2.2.2. Breach of Arbitration Agreement 155
2.3. Comments 157
2.3.1. National Laws 157
2.3.2. CISG 160
2.3.3. Breach of Arbitration Agreement 163

Concluding Remarks 167

Index of Abbreviations 169

Index of Authorities 175

Index of Cases 187

Index 195