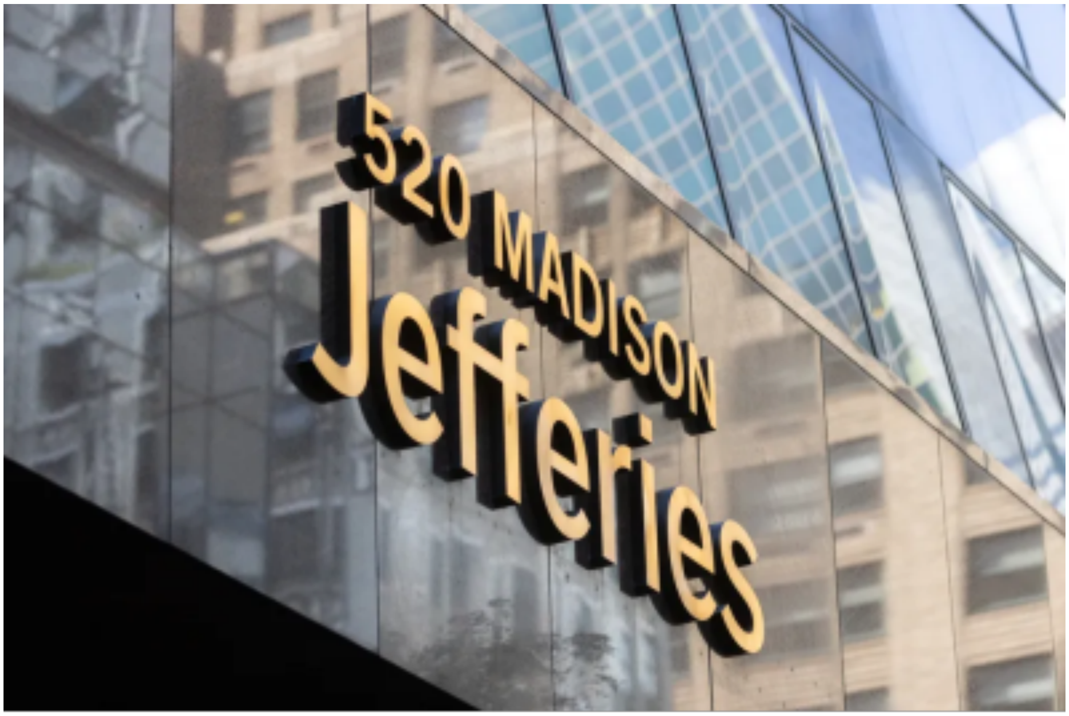
Management & Work + Wealth

Bankers Hit With Millions in Breakup Fees for Ditching Nev Jobs

- Jefferies is seeking to collect $4 million from banker
- Damages clauses becoming more common in recruitment deals



Jefferies headquarters in New York *Photographer: Jeenah Moon/Bloomberg*

By Tom Schoenberg and Austin Weinstein
April 17, 2024 at 7:05 AM EDT

Bankers are applying the idea of a "breakup fee," a longtime fixture in corporate takeovers, to a very different kind of acquisition target: each other.

This story begins happily enough, with a nearly $10 million offer from Jefferies Fina Group Inc. The lucky hire was Dean Decker, a rainmaker at Credit Suisse Group AG

The catch: If Decker reneged before he started, a clause in his nine-page offer letter read, he'd have to pay Jefferies what amounted to a personal breakup fee. The price walk away: $4 million. Walk away Decker did.

Seven years later, the legal fallout is still raining down. A federal appeals court in California is now poised to rule on whether the Jefferies maneuver was legal or, as Decker's camp has contended, tantamount to ransom. During a hearing on April 12 of the three judges on the panel appeared to express skepticism about Decker's argument.

How this saga ends might well shape the way financial companies and other emplo from police departments to hospitals, to the news media – recruit talent. That's particularly so in California where Decker was employed.

At stake, too, are the personal financial risks people might face if they accept an off and then - shocker - try use it to squeeze more money out of their current employe

Wall Street banks have long used mechanisms to keep people in place, including tr to claw back pay from defectors. But Jefferies' approach, also used by hedge funds, lead to millions of dollars in damages for employees who back out before ever rece a paycheck.

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Hundreds of pages of legal documents related to the Jefferies episode filed in court provide an unusually candid view into the running war for talent on Wall Street.

Text messages from various parties, including Richard Handler, Jefferies' chief exec officer, show the lengths to which the hard-charging New York-based firm went to l stars.

"I want you to know how much I believe in what you and your team can do on our to keep their side of the bargain. One Jefferies executive testified that the clause is necessary because recruiting bankers is time consuming and expensive. (Jefferies c have had to pay more than $10 million to Decker if it backed out.)

Just how widespread are these provisions on Wall Street? It's difficult to say. Individ employment agreements are rarely disclosed – Decker's was as part of the case. Bu employment lawyers say these clauses have been proliferating in finance.

"It's super aggressive," said Ross Intelisano, a founding partner of the law firm Rich Intelisano & Katz in New York, of the trend. "I can't imagine advising an employee t sign this."

It wasn't supposed to be this way at Jefferies. Back in 2016, the firm was looking to p senior bankers away from competitors, according to testimony filed in the case. Cre Suisse – which would ultimately collapse into the arms of UBS Group AG - seemed target-rich environment.

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Decker had brushed aside earlier overtures from Jefferies. Not this time. He made $ million at Credit Suisse in 2015, his lowest take-home in years, according to docume entered in the court dispute. And Credit Suisse shares were sucking wind - bad new employees whose compensation included stock.

Before long, Decker and several colleagues began talking to Jefferies about making a jump. Whether they all really intended to go is still up for debate.

One colleague messaged Decker in June 2016, asking if they should consider a move

Decker's response: "Play it out."

"It certainly doesn't hurt to know options," the gaming-industry banker wrote. "I'm going to play all the way out unless serious. I know they are willing to pay big."

Legal Action

On Monday, January 2 – a public holiday because New Year's Day that year fell on Sunday - Decker took in the annual Rose Bowl college football game in Pasadena. T he made his way to Jefferies' offices near the Westwood section of Los Angeles. A te of bankers and lawyers was waiting. The offer letter Decker signed guaranteed him about $10 million in salary and bonuses for the first year with a payout of $2 millio following year.

The breakup clause was the brainchild of Ben Lorello, then head of investment ban the court filings show. Over a decades-long Wall Street career, Lorello had orchestr major acquisitions, notably in health care. Many of those deals employed breakup f Now he was applying his M&A playbook to hiring a new banker. Attempts to reach Lorello, who left the firm in 2020, through contact information listed in public records and via Jefferies were unsuccessful.

Decker later testified that Lorello told him the clause was non-negotiable. It was the the Jefferies banker told him, to prevent hires from leveraging offers into fatter paychecks from their current bosses, a tactic known as a "bid-back."

A recruiter hired by Jefferies warned his colleagues at the time that the provision m not stick.

"It's unlikely the clause is enforceable in most states (if anywhere)," the recruiter sa an email included in court filings, "but the threat of legal action is usually enough t dissuade anyone from accepting a bid-back."

Another Credit Suisse rainmaker, capital-markets specialist Jonathan Moneypenny, similarly negotiating to bring his leveraged-finance unit to Jefferies.

The news reached Credit Suisse in Zurich.

"Does this mean Moneypenny is gone," Tidjane Thiam, then CEO of the Swiss bank

Moneypenny, now 51, wasn't gone. He was negotiating a better deal for himself at tl
Swiss bank. He declined to comment for this story.

"I was really pissed," Decker subsequently testified in the arbitration. He told an industry arbitration panel that he fully intended to join Jefferies. But when Moneyp balked, he got cold feet, he said.

And so, no sooner had Jefferies appeared to snag several big hires than its grand pla began to unravel. Handler tried to contain the damage. Lorello ordered a subordina find a way to reach Decker by that evening.

A Jefferies executive messaged the casino specialist: "All the reasons to come are sti place, and same for the reasons you wanted to leave."

In the end, only three of the eight Credit Suisse bankers - Joseph Kieffer, John Bowr Brad Capadona - ended up moving to Jefferies.

Breakup Fees

By 5 p.m. on January 3, less than 24 hours after Decker signed his offer letter, he wa negotiating with Credit Suisse for more money and a promotion. Jefferies promptly sought to collect its breakup fees (Moneypenny's was $5 million, even more than Decker's $4 million.)

Per standard industry practice, the disputes went to different arbitration panels. Moneypenny and two of the other bankers prevailed. Another won on liquidated damages but was ordered to pay almost $900,000 in other damages. Decker lost.

Now, the matter has gone to the courts. The outcome could have its biggest impact California, said Zoe Salzman, an employment lawyer at the firm ECBAWM.

Jefferies' argument is simple: Decker failed to live up to his contract and his career "greatly enhanced" by the offer from Handler's firm.

"His compensation increased substantially, and he received a promotion solely bec he signed the agreement with Jefferies," Jefferies said in a court filing last Novembe fact, the only winner was Decker — both Jefferies and Credit Suisse were gamed (pu intended)."

Credit Suisse agreed to cover his legal bill — and any damages. Now, UBS will have t pick up the tab. UBS declined to comment.

have since departed for Banco Santander SA.

– With assistance from Rachel Graf