

Breaking Up (and Getting Paid) Is Hard to Do

April 1, 2010 | Articles & Books

A “break – up fee” is a very common deal - protection mechanism, both inside and outside of chapter 11, designed to compensate an initial bidder in an auction for its efforts in connection with the transaction, thereby inducing the bidder to make its bid in the first instance. In the chapter 11 context, break - up fees are particularly important because courts often require debtors to conduct an auction process in connection with the sale of any material assets. While break-up fees differ in the myriad ways they can be triggered, it is common for a break-up fee to become payable in the event that the parties do not complete the sale at no fault of the buyer, or in cases where the seller ultimately decides to complete the transaction with a different buyer.

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