



Robin Gibbs represents Huntsman Corp. in its suit against Credit Suisse Securities (USA) LLC and Deutsche Bank Securities.

A Deal Undone

Company Takes on Banks It Alleges Backed Out Of Funding Merger

by BRENDA SAPINO JEFFREYS

The latest courthouse showdown in one of the biggest business disputes of the decade kicks off this month in Conroe as Huntsman Corp. seeks as much as \$4.65 billion in damages from two banks that backed out on financing a merger between Huntsman and Hexion Specialty Chemicals Inc. in 2008.

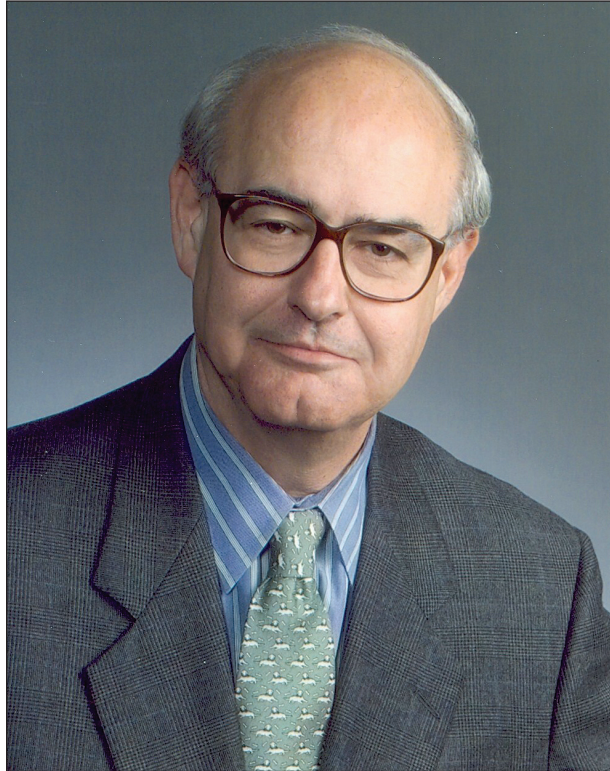
In *Huntsman Corp. v. Credit Suisse Securities (USA) LLC, et al.*, Huntsman brings allegations including fraud and tortious interference against Credit Suisse and Deutsche Bank Securities Inc., the banks that committed to put up \$15.5 billion to finance the merger of the two chemical companies.

In its 2008 petition filed in Montgomery County, Huntsman alleges the banks conspired with each other and with Apollo Global Management and Apollo Management Holdings to interfere with Huntsman's merger agreement with Hexion and usurp "for their own benefit the substantial and valuable rights that belonged to Huntsman."

Hexion, based in Columbus, Ohio, is owned by an affiliate of private equity firm Apollo Management LP. Huntsman is based in The Woodlands.

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COMPANY TAKES ON BANKS IT ALLEGES BACKED OUT OF FUNDING MERGER



Irvin Terrell alleges the banks didn't fund the deal because Huntsman failed to provide a reasonably satisfactory solvency certificate as required in the financing commitment letter.

The defendants deny the allegations, and defense attorney Irvin Terrell, a partner in Baker Botts in Houston, alleges the banks didn't fund the deal because Huntsman failed to provide a reasonably satisfactory solvency certificate as required in the financing commitment letter.

"The reason we didn't fund was because we didn't think they were solvent, and they had to be solvent under the commitment letter," he says. "We didn't receive a certificate that the combined entity with that [\$15.5 billion] debt would be solvent."

But Huntsman has a different take on it. The plaintiff's attorney Robin Gibbs, a partner in Gibbs & Bruns in Houston, alleges the banks failed to fund the deal because the credit markets turned bad in 2008.

"They decided they would take great losses if

they decided to fund these loans," he alleges. "They interfered with our contract in order to destroy the merger agreement and to eliminate their commitment to the borrower at closing."

Huntsman brings several causes of action against the banks, including common-law fraud in connection with a prior merger agreement with Dutch company Basell AF, tortious interference with its merger agreement with Hexion, negligent misrepresentation and civil conspiracy. Gibbs says Huntsman will seek \$4.65 billion in damages on the tortious interference claim and \$3.65 billion on the fraud claim.

While *Huntsman* only names Credit Suisse and Duetsche Bank as defendants, 9th District Judge



Kathy Patrick, who represents Huntsman, says Montgomery County will provide a good jury pool for the plaintiff's case.

Fred Edwards on May 12 designated several responsible third parties, and jurors may be asked to assign responsibility to them when deliberating the verdict. Those entities include Hexion, a number of Apollo entities, and Apollo senior partners Leon Black and Joshua Harris.

However, whether any of those entities appear on the jury charge along with defendants Credit Suisse and Deutsche Bank and plaintiff Huntsman won't be decided until the jury charge conference, say Terrell and plaintiff's attorney Kathy Patrick.

Lots of Money

The trial in Montgomery County isn't the first big legal battle stemming from the failed high-profile merger, which garnered a huge amount of attention in 2008 because of its size.

In June 2007, Huntsman announced that it would merge with Basell. But by the next month, Huntsman said that it had terminated the agreement with Basell and agreed instead to merge with Hexion. According to a press release issued by Huntsman on July 12, 2007, Hexion would acquire Huntsman for about \$10.6 billion, including the assumption of debt.

The deal was supposed to close by July 2008, but it was still pending when Apollo Management and Hexion sued Huntsman in the Delaware Court of Chancery in June 2008 seeking an order that would allow Hexion to get out of its obligation to proceed with the transaction.

In September 2008, in *Hexion Specialty Chemicals Inc., et al. v. Huntsman Corp.*, Vice Chancellor Stephen Lamb found that Hexion willfully breached its merger agreement with Huntsman.

Huntsman filed the Conroe suit in the wake of that court ruling.

In December 2008, Huntsman settled its claims against Hexion, Apollo Management and certain of Apollo Management's affiliates for \$1 billion, and agreed to terminate the merger agreement with Hexion. Huntsman received the money in December.

That settlement also resolved Huntsman's claims against Apollo and its affiliates related to Huntsman's prior agreement to merge with Basell.

Peter Loscocco, vice president of public affairs for Hexion, declines comment. So does Steve Anreder, a spokesman for New York-based Apollo Management. Black and Harris did not return telephone calls seeking comment before presstime May 4.

Harry Reasoner, a partner in Vinson & Elkins in Houston who represented Huntsman in the Delaware suit, declines comment on the Conroe suit because of a client conflict — the firm represents Credit Suisse and Deutsche Bank, and is not involved in the Conroe litigation.

Voir dire for the trial was expected to begin on June 10 — Edwards has called 160 prospective jurors to fill out questionnaires — with opening statements scheduled for June 15. Patrick says Montgomery County will provide a good jury pool for the plaintiff's case.

"I don't think there's a bad juror for us . . .," Patrick says. "This is a good county — honest people, fair-minded, and as a plaintiff, you can't ask for more than that."

Terrell says the trial should last six weeks, while Patrick is looking for a five-to-six week trial.

Richard Clarey, head of the litigation department at Cravath, Swaine & Moore in New York, is leading the defense team along with Terrell.

In addition to lawyers from Gibbs & Bruns, the plaintiff's team includes Dan Downey, a former state district judge in Houston who now is a solo practitioner in Austin, and lawyers from Beck, Redden & Secrest of Houston.

Although the courthouse in Conroe is only about an hour's drive from downtown Houston, both trial teams have set up satellite offices in Montgomery County.

"It's like we were out of town in another state," Gibbs says. "The logistics are significant. We will move our lawyers, our support staff up there for the whole time."

Commercial litigator Jeff Tillotson, a shareholder in Lynn Tillotson Pinker & Cox in Dallas, says *Huntsman* is attracting attention because a "bucket load" of money is in dispute, and because other failed deals may be the subject of similar litigation over the next couple of years.

Notes Tillotson, "I also think there's some interest in it because of the uncertainty in the M&A community and the inability to keep some of these deals together. It may shed some light on whether or not some claims exist in other deals."

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