

A Genial Peter Huntsman Fends off Irv Terrell on Cross-Examination in Huntsman's \$4.65 Billion Case Against Banks

By Amy Kolz

Editor's Note: It's been a few days since opening arguments in the \$4.65 billion Huntsman trial against Deutsche Bank and Credit Suisse Group, so we thought we'd check in on developments in Conroe, Texas, via Courtroom View Network. And who better to do the checking than The American Lawyer's Amy Kolz, who wrote the definitive account of the busted merger between Huntsman and Hexion Specialty Chemicals that the banks were supposed to have financed? Here's Kolz's account.

Thursday was not a day of dramatic moments, but one of a talented lawyer, G. Irvin Terrell of Baker Botts, questioning an equally skilled witness, Peter Huntsman, the president and CEO of the Woodlands, Texas, chemical company.

Few if any points were really won by either side, but it was fascinating to watch the delicate dance between two articulate but steadfast courtroom veterans (Huntsman, who came across as practiced and genial, qualifies as a veteran after his company's Delaware litigation against Apollo last fall). Terrell persistently questioned a polite but unyielding Huntsman on everything from his company's deteriorating results over the course of late 2007 and 2008 to Huntsman's insistence on contract language that included the right to compel Hexion to sue the banks if they breached their commitment to fund the merger.

The former line of questioning, of course, was Terrell's attempt to support the banks' claims that the Hexion-Huntsman merger would have created an insolvent company, and thus they had a right not to fund the deal. In the latter, Terrell was chipping away at a point made in opening argument by Robin Gibbs and Kathy Patrick of Gibbs & Bruns: Huntsman executives trusted the banks to bridge their mistrust of Apollo during merger negotiations in 2007.

In virtually every exchange, Huntsman held up well, neither appearing hostile nor ceding any points to Terrell. Terrell asked, for instance, why Huntsman pushed for the right to sue the banks if he trusted them. Huntsman answered that in any contract for a \$10.6 billion transaction, you build in protections for all parties.

When Terrell asked whether anyone had ever told Huntsman that there were binding side agreements between the banks

and Apollo over the terms of the financing, Huntsman said, "No, that's precisely why we're here today." Huntsman was calm, ready to smile, and on more than one occasion, made direct eye contact with the jury while answering. It's easy to see a jury finding him likable and direct.

There were, however, moments when Terrell scored points. Huntsman couldn't recall that his father, company founder Jon Huntsman, told him in a June 2008 e-mail that the company was in a "horrible financial war." But when shown that e-mail, Peter Huntsman only begrudgingly admitted that by "war," the senior Huntsman was talking about the impact of the U.S. recession on Huntsman's results, as well as the meltdown in the credit markets. Huntsman was also a little too resistant to admit that the chemical company saw real pain in the summer and early fall of 2008. In fact, he repeated several times that the company's October 2008 financial results were the strongest Huntsman had since it signed the merger agreement with Hexion.

We're guessing that the banks chose Terrell--who sported a light-beige spring suit along with his slight Texan accent--to question Huntsman in an effort to counter the notion that New York banks had betrayed a local Texas company. (Co-lead counsel Richard Clary of Cravath, Swaine & Moore led the defendants' opening remarks, to the surprise of some courtroom observers.) But we're not entirely sure that Terrell always struck the right tone. At times, he sounded condescending, as when he asked Huntsman whether he had attended the World Economic Forum in Davos, the site of a January 2008 meeting between Apollo and its bankers, and whether Huntsman was on any global economic councils. And it wasn't clear whether Terrell's question about whether Huntsman recalled the presidential election last fall was intended to be humorous or just patronizing. Both episodes might play poorly with a Texas jury.

We had to jump off before the afternoon concluded and thus missed most of the testimony of Gibbs & Bruns's next witness, a video deposition of Christopher Towery, a banker at Deutsche Bank. Most of Towery's responses were of the "I don't recall" or "I don't know" variety. But since Towery was the author of an internal banking e-mail that said, "[Huntsman] should just sue us now," on the day the commitment letter was signed in July 2007, he's probably a witness worth watching.