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In Opening Arguments at $4.65 Billion Trial, Gibbs & Bruns Tells Texas Jury that Banks Betrayed Huntsman

By David Bario

It's always a pleasure to see great lawyers at the top of their games, and that's just what we got in Monday's opening arguments at Huntsman's $4.65 billion Texas state court showdown with Deutsche Bank and Credit Suisse Group.

As the first day of trial in Judge Fred Edwards's Conroe courtroom came to a close, two things were already clear. It's going to be tough to walk the jury through the excruciatingly complex history of Huntsman's doomed merger with Hexion Specialty Chemicals. And with Huntsman's lawyers at Gibbs & Bruns taking gleeful advantage of the public's current anger at Wall Street, it's going to be especially tough for the banks.

First, the windup: An affable (and lightly accented) Robin Gibbs began by outlining how warily Huntsman's board approached the deal with Hexion in 2007. Gibbs told jurors that Huntsman--still smarting from the previous year's failed negotiations with Hexion's parent, Apollo Management--was determined to get the tightest financing commitment possible. Apollo, he said, brought Deutsche Bank and Credit Suisse into talks to reassure Huntsman, whereupon the banks began driving the negotiations themselves in anticipation of a $250 million arrangers' fee.

Gibbs left it to his partner, Kathy Patrick, to bring the populist fire to Huntsman's case. When Patrick took over, she told jurors that the banks never planned to honor the $6.5 billion merger agreement. "John and Peter Huntsman and the board had every reason to believe there was cause for celebration" on the eve of the contract signing, Patrick said, winding up for the dramatic pitch. "They had found what they thought would be good stewards of what they had built. What they did not know was on that very day the banks intended to betray their trust."

In case her point was (somehow) lost on the jury, Patrick spelled it out. "These banks gave Huntsman a commitment that they never intended to honor. If they had just told Huntsman the truth, none of us would be here." She promised jurors they would see documents that would show how "these enormous investment banks wield enormous power," and how their private discussions about Huntsman (filled with "harsh words" and "expletives") revealed their true intentions. By the time she began walking jurors through the endless rounds of haggling (and litigation) between the parties before and after the deal, their heads must have been spinning.

Cravath, Swaine & Moore's Richard Clary, looking and sounding the part of the patrician New York lawyer, followed Patrick with the banks' defense. Clary did his best to boil the case down in stark and simple terms for the jury. "They took a gamble, and it didn't work out for them, and they've tried to blame various people for that," he said. As Patrick and Gibbs had predicted, Clary insisted the Huntsman case was built on sound bites, and said that Huntsman was fully aware of the risks it was taking when it chose to merge with Hexion, rather than Basell Holdings BV, for an additional $700 million. "Huntsman has to live with its calculated decisions," Clary told jurors.

For Clary, and for the banks' co-lead counsel G. Irvin Terrell of Baker Botts, the challenge will be to convince the jury that the voluminous e-mail exchanges and discussions that their clients had with Apollo about crafting the merger and then mitigating their losses were nothing unusual for lenders and their private equity clients. Clary made a strong start Monday, but we predict he and Terrell are going to have a long few weeks in Conroe if Huntsman and the banks can't settle this one.

The Litigation Daily previewed the trial last week. Thanks to our friends at Courtroom View Network, we got to watch it live from the comfort of our downtown Manhattan office, but for those who don't have that luxury, the Deal Professor, Steven Davidoff, is live-blogging the early going for Dealbook.

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