

# Ruby Pipeline Clashes With Noteholders On Asset Bids

By **Rick Archer**

Law360 (December 6, 2022, 9:43 PM EST) -- Ruby Pipeline asked a Delaware bankruptcy judge Tuesday to approve a \$236 million stalking horse bid for its pipelines from an equity sponsor while noteholders complained the company had rejected what they said was their own superior offer.

Over the course of the six-hour hearing before U.S. Bankruptcy Judge Craig T. Goldblatt, both sides claimed the other's proposal would hurt bidding on the Texas-based company's assets, with the noteholders arguing the equity bid was premised on a sweetheart insider settlement and Ruby saying the noteholders had access to insider information.

A joint venture between Kinder Morgan and Pembina Pipeline Corp., Ruby Pipeline filed for bankruptcy in April, just hours before \$475 million in senior unsecured notes were set to mature and trigger a repayment of the principal and nearly \$20 million in interest.

In July it **reached a deal** with the unsecured creditors committee, its equity sponsors, and an ad hoc group of unsecured noteholders under which the company was to close an asset sale by Jan. 4 and emerge from Chapter 11 by Jan. 30 with either a court-approved sale or a restructuring that would hand control to the noteholders.

Ruby was seeking the court's approval to accept a \$236 million stalking horse bid for its pipeline assets from an affiliate of Kinder Morgan, with a 1.75% breakup fee and up to \$2.3 million in expenses.

In objections to the motion, the U.S. Trustee's Office, the committee and the noteholders questioned the need for and size of the bid protections, with the trustee saying Kinder Morgan's insider status meant the protections should get more scrutiny.

The committee and the noteholders also focused on the fact the bid would be conditioned on Ruby accepting a \$135 million settlement of claims against Kinder Morgan and Pembina.

The committee's counsel Robert Stark said the claims were worth between \$190 and \$300 million and joined the noteholders in questioning the independence of the independent directors appointed by the sponsors to oversee the case.

"It seems pretty clear somebody's doing something for the equity sponsors," he said.

Kinder Morgan counsel Thomas Lauria said his client and Pembina had given up control of Ruby and that none of the objectors had presented any evidence otherwise.

Noteholder counsel Damian Schaible argued the sponsor-favorable settlement would discourage other parties from bidding.

"They'd be concerned KMI will always have more in their pockets," he said. "How much more will they bid to maintain that settlement?"

He argued the two bids the noteholders had submitted — a \$524.5 offer for all the assets and a \$236 million offer for the pipeline, neither with bid protections and both premised on Ruby rejecting an equity settlement — were better offers but had been rejected, and asked Judge Goldblatt to order

Ruby to accept them.

Counsel for Ruby, however, claimed the bids did not follow the rules set for the auction, failing to include cash or a deposit. The noteholders had also been consultation parties on the bidding, and their access to insider information would discourage other bidders, they said.

The noteholders denied learning anything useful to their bidding and argued that, because the proceeds of the auction are earmarked to pay back the notes, the other bid conditions shouldn't apply.

"Like the cash, any deposit we put forward just gets round-tripped back to us," Kevin Glodowski, investment banker for the committee, said in the witness stand.

Judge Goldblatt noted that Ruby and the noteholders are currently disputing how much interest the noteholders are owed, and that the bid and the settlement would give Ruby just enough cash to pay what Ruby claims it owes.

"It feels like an odd coincidence that the amount of the bid and the amount of the settlement come together in a way that most benefits the sponsor and harms the creditor group," he said.

Ruby counsel Sunny Singh argued objections to the fairness of the settlement and arguments on the interest payments can be raised elsewhere in the case.

"They don't need to go to the auction to make these issues live," he said.

Judge Goldblatt said he would rule on the bid motions Wednesday morning.

Ruby Pipeline is represented by Ray C. Schrock, Sunny Singh, and Jared R. Friedmann of Weil Gotshal & Manges LLP and Kevin Gross, Daniel J. DeFranceschi, John H. Knight, Brendan J. Schlauch, David T. Queroli, J. Zachary Noble and Emily R. Mathews of Richards Layton & Finger PA.

Kinder Morgan is represented by Joseph J. Farnan Jr. and Michael J. Farnan of Farnan LLP and Thomas Lauria, Michael Shepherd, Laura Femino and Samuel Kava of White & Case LLP.

The committee is represented by Robert J. Stark, Michael Winograd, Bennett S. Silverberg, Kenneth Aulet, and Andrew M. Carty of Brown Rudnick LLP and Jennifer R. Hoover, Kevin M. Capuzzi, John C. Gentile of Benesch Friedlander Coplan & Aronoff LLP.

The noteholders are represented by Damian S. Schaible, Elliot Moskowitz, Darren S. Klein, Aryeh Ethan Falk of Davis Polk & Wardwell LLP and Robert J. Dehney, Matthew B. Harvey and Matthew O. Talmo of Morris Nichols Arsht & Tunnell LLP.

The U.S. Trustee is represented in-house by Timothy J. Fox Jr.

The case is In re: Ruby Pipeline LLC, case number 1:22-bk-10278, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Vince Sullivan and Leslie A. Pappas. Editing by Marygrace Anderson.