



H.S. Grace & Company, Inc.

## **Breach of Contract & Damages: Creative Services**

### **Allegations**

H.S. Grace & Company, Inc. (HSG) was engaged by counsel for a creative artist who had created an innovative electronic media work based on a well-known book for a publishing and distribution company (Company) pursuant to a contract with the Company. While the contract provided for only minimal monetary compensation, the anticipated successful marketing of the work would have provided substantial visibility and renown for the artist and his future reputation in the field. The Company failed to publish and distribute the work and was sued by the artist for the losses the artist suffered as a result of such failure.

HSG was retained (1) to examine the duties, interrelationships and responsibilities of the Company and the artist under the contract, as well as the actions of certain related parties whose roles impacted the situation, and (2) to quantify the damages suffered by the artist as a result of the Company's failure to perform its obligations under the contract.

### **Analysis**

HSG examined the contract, affidavits, depositions, tax returns, correspondence and other documents to identify the relevant events and factors preceding and during the transaction. We used the information produced by our examination to analyze the issues regarding the working relationships between the artist and the Company and its corporate parent, and the impact of those working relationships on the failure of the Company to perform. Our analysis identified a number of inappropriate operational factors involving the Company and its parent that contributed to the Company's failure to fulfill its commitments to the artist. These factors included: (1) changes in the specifications for the work; (2) shifts in corporate strategies, policies and responsibilities; (3) acquisitions by the Company's parent of other companies and confusion as to the role of the acquired companies in connection with the project; and (4) personnel changes associated with a re-engineering project within the corporate family of the Company. Our Report demonstrated how such factors contributed to the Company's failure to publish and distribute the artist's work as required by the contract.

Our Report calculated and supported the artist's claim for damages which included damages based on (1) the unpaid contractual compensation (including royalties); (2) compensation for additional work requested by the Company; (3) the lack of enhancement to the artist's professional reputation that would have occurred had the Company published and distributed the work as contracted for; and (4) the loss of income from alternative employment.

### **Result**

Counsel for the artist utilized our Report to negotiate a favorable out-of-court settlement for the artist.

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*H.S. Grace & Company, Inc. is a team of senior executives who diagnose and resolve critical corporate problems in business governance, operations, finance and control. With more than 1,000 years of experience, our goal is to help companies enhance shareholder value, protect reputation and their long-term ability to succeed, avoid and manage litigation, and navigate major changes such as mergers and acquisitions or bankruptcies. We often serve as consulting and testifying experts, identifying and analyzing critical business issues.*

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