



H.S. Grace & Company, Inc.

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With the significant shifts in energy supply and prices in the United States over the last few years and with increasing leverage in oil and gas companies, energy-related issues in litigation are on the rise. H.S. Grace & Company, Inc. (HSG) has a broad range of experience both in analyzing energy investment agreements and relationships and in determining damages potentially arising from investment decisions. HSG has served as an expert witness in numerous energy industry disputes involving an array of energy industry participants and their directors and officers, including, oil and gas exploration companies, wholesale electric suppliers, offshore refineries, crude oil transporters, and power generation facilities. These disputes have involved issues relating to exploration and development agreements, energy financing arrangements, purchase and sale agreements, power generation blackouts, drilling rig construction contracts, and bankruptcy-related issues. The following HSG case involving an international oil and gas financing and development agreement demonstrates how HSG's experience in both energy-related matters and in financing arrangements can prove instrumental in examining and analyzing complex energy transactions.

BREACH OF LOAN AGREEMENT AND AGREEMENT TO PROVIDE REMEDIATION SERVICES

Allegations

Plaintiff Private Investor and defendant U.S. Oil Company (HSG client), the owner of a major offshore oil field in Asia, entered into an agreement pursuant to which Private Investor agreed to fund, plan and provide remediation services for the field and to loan money to U.S. Oil company for purchase of an oil storage vessel. Private Investor provided the funds for the purchase of the storage vessel, but failed to perform the engineering and remediation study and services it had agreed to do. Private Investor sued U.S. Oil Company for moneys allegedly due under the loan agreement and for possession of the crude oil storage vessel under the terms of a collateral marine agreement. U.S. Oil Company counterclaimed contending that Private Investor had materially breached the loan agreement by failing to fund and provide the remediation services. U.S. Oil Company retained HSG to investigate the allegations and to analyze the economic damages suffered by U.S. Oil Company as a result of Private Investor's failure to fund and provide the remediation services, which would likely have resulted in substantial increased production from the field.

Analysis

The HSG team included the former CFO of a major oil company, a former chief credit officer of a major European bank, and the former treasurer of one of the world's largest port authorities. The team found:

1. Private Investor appeared to have intentionally breached its obligations to fund and provide engineering and remediation services to U.S. Oil Company so that U.S. Oil Company would be unable to repay its loans in a timely manner. Private Investor did this in an effort to force U.S. Oil Company to sell the field to Private Investor at a diminished price.
2. Private Investor - contrary to its representations to U.S. Oil Company - did not have sufficient funds to finance the remediation operations it had agreed to plan, execute and fund.

3. Private Investor had agreed that the repayment of the initial investment, including the financing of the purchase of the storage vessel, and subsequent expenditures would only come from anticipated increases in production attributable to the remediation work.
4. Private Investor's actions deprived U.S. Oil Company both of the production stream and the cash flow stream needed to continue its operations in the field. U.S. Oil Company was damaged by Private Investor's failure to provide the agreed upon funding and remediation services.
5. U.S. Oil Company's damages included two components, *i.e.* lost production revenues through the date on which U.S. Oil Company sold a majority interest in the field to a third party and the diminution in the sale price of the field upon the sale to the third party.
6. Using Private Investor's estimates of increased production from the field to be achieved by the remediation operations, HSG calculated a range of damages at various production levels, oil prices, and capital costs.

Results

A satisfactory resolution was reached after expert reports were filed.

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H.S. Grace & Company, Inc. (HSG) has served as a consulting and testifying expert in more than 75 cases involving complex business judgment and decision-making issues, including business and investment decision-making analysis, business practice and process issues, corporate governance issues, SEC disclosure and fraud analysis, financial issues, contract issues, bankruptcy-related issues and causation and damage analysis. HSG has about 30 consultants, who have served as senior executives (CEOs, COOs, CFOs, SVPs, Treasurers) and/or board members of both public and private companies in a wide variety of industries. Many of HSG's consultants hold advanced degrees: Ph.D.'s, J.D.'s, M.B.A.'s, and masters' in finance. HSG has represented banks and other financial institutions, real estate partnerships, energy companies, pharmaceutical firms, healthcare companies, insurance carriers, retailers, technology companies and others in a broad array of complex commercial litigation. HSG has worked on behalf of corporations, indenture trustees, corporate directors and officers, bankruptcy examiners and trustees, shareholders, partners and bondholders.

Representative Issues Examined

- Lender Liability
- D&O
- Corporate Split-off
- Family Trust
- Health Care
- Professional Services
- Intellectual Property
- International Structured Finance Transaction
- Fraud
- Pension Fund Investments
- SEC White Collar Defense
- Stock Option Backdating
- Oil & Gas
- Real Estate
- Fiduciary Issues
- Contract Dispute
- Fund Management
- Market Timing Allegations
- Financial Derivatives
- Portfolio Management
- Special Purpose Corporation

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