

Defining the Difference #100



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A FAVORABLE SETTLEMENT IN A CRITICAL M&A



HSG's analysis allows merger to proceed as planned

Companies pursuing mergers and acquisitions face the risk that investors will challenge the deal. This "Defining the Difference" highlights how H.S. Grace & Company, Inc.'s (HSG) expertise can help prevail in a derivative action against directors and officers in a large merger.

Allegations

- Plaintiff shareholder sued ABC Company and certain of its officers and directors to enjoin a proposed acquisition of ABC by XYZ Company.
- Plaintiff shareholder contended that ABC and its officers and directors had breached their fiduciary duties by:
 - 1) Failing to include material disclosures in the proxy for the proposed acquisition;
 - 2) Failing to include key provisions in the merger agreement;
 - 3) Agreeing to an unfair transaction price; and
 - 4) Failing to address alleged conflicts of interest in the transaction.

HSG was retained by ABC, its officers and directors and their counsel to analyze these allegations.

Analysis

HSG's team of senior management executives was able to review and evaluate these detailed allegations and demonstrate their lack of credibility in the short time frame

dictated by the injunction process. Specifically, HSG determined:

- The Board and management acted properly; they were well-informed and demonstrated reasonable and proper business practices and processes in reaching and executing the merger agreement.
- The pertinent terms of the merger agreement were consistent with reasonable business practices in mergers of this type.
- The transaction price was fair, and the fairness opinions relied on by the Board were reasonable and consistent with normal business practices.
- The disclosures in the proxy were appropriate.

Result

Following the deposition testimony of Stephen Grace on the results of HSG's analysis, counsel for ABC and its directors and officers negotiated a favorable settlement, allowing the merger to proceed essentially as planned.

If you would like to know more...

If you would like to know more about this case, or about the kinds of business-based analysis of claims and damages available from [H.S. Grace & Company](#), you are invited to contact members of our group, [Al Fenichel](#), [Charles Fischer](#), [Steve Grace](#), and [H. Stephen Grace, Jr.](#), at (713) 572-6800.

H. S. Grace & Company, Inc. (HSG) is a litigation support and consulting firm established in 1993 that works with in-house counsel, outside counsel, insurance carriers and corporate attorneys, as well as company boards and senior management. HSG specializes in assisting clients both before and during litigation in analyzing and assessing the validity of claims involving representations and warranties, directors and officers responsibilities, financial reporting, business judgment, merger and acquisition disputes and other complex issues. The firm provides expert testimony from our detailed analyses of the business decisions and actions, issues reports of how the actions of all parties involved affect causation and evaluation of damages and provides guidance to support settlement strategies and negotiations. HSG has approximately 30 consultants, including experienced testifying experts, who have had significant experience as senior executives (e.g., CEOs, COOs, CFOs, SVPs, treasurers, technical professionals and board members), many of whom hold advanced degrees and professional certifications. Our experienced team members look deeply into claims and allegations to determine not only what happened, but how and why, to speak authoritatively about appropriate business practices, and to assist clients in achieving favorable outcomes. 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

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