

Defining the Difference #101

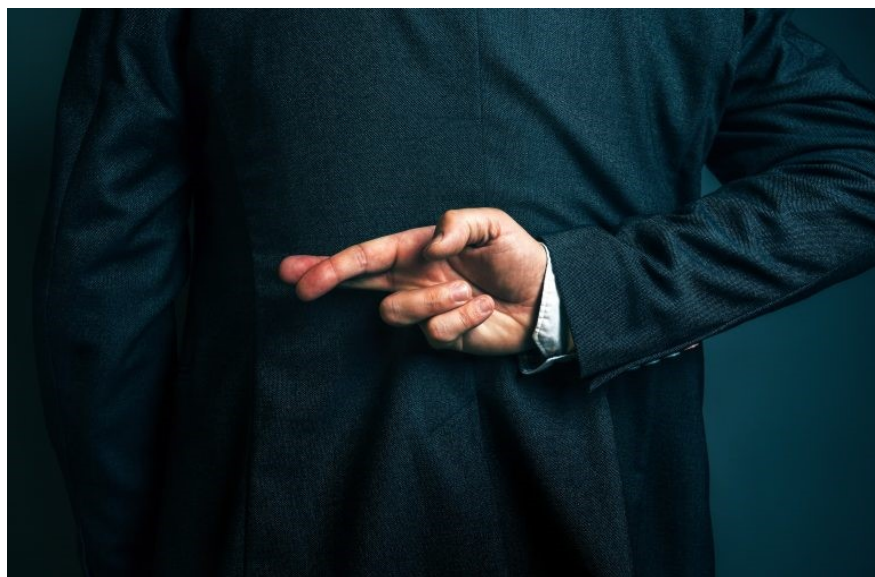


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ARE ALL PARTIES IN IT TOGETHER AFTER THE AGREEMENT?



Protecting Shareholder Value in M&A: HSG & Co. recaptures value for minority shareholders

[H.S. Grace & Company](#) (HSG & Co) was engaged on behalf of minority shareholders of a small capitalized company to determine whether the value of their investment was intentionally devalued over the course of a seven-year period by the company's senior management. Seven years earlier, the defendants' company had acquired plaintiffs' company. At the time, the two were similar in size and valuation.

The Issue

HSG & Co uncovered evidence of corporate governance problems that effectively allowed the acquiring company to increase its value 16-fold while reducing the market value of the acquired company by 75 percent.

How the Relationship Went Sour

The two companies were relative equals, with the acquiring company interested in two US regions where the acquisition target had a strong market presence. Following acquisition, the president and the CFO of the acquired company were relegated to handling lower-level financial and administrative duties, reporting to defendants' senior management. In this structure, the board, controlled by the defendants, proceeded to make decisions that violated the fundamentals of corporate governance structures where majority and minority stockholder groups exist.

How Does Corporate Governance Play a Role?

If the defendants had shared joint opportunities appropriately, the value of the acquired company would have increased significantly. While the majority of the value still would belong to the defendants as they were the majority shareholders, the minority shareholders would have reaped a fair percentage. This was not the case. Instead, the defendants instead diverted value to the parent company, thus depriving the minority shareholders of the acquired company of their fair share. Additionally, the defendants acted to reduce the minority shareholders percentage ownership in the acquired company as well as to misrepresent its intentions through a plan of action submitted to the banks that financed the acquisition contrary to what was disclosed in public filings. Furthermore, the defendants made a series of financial and operational decisions that effectively forced the acquired company to liquidate valuable assets to pay above market interest rates on notes held by the parent company.

HSG Findings

HSG & Co found governance problems in the financial, operational and management practices of the defendants. The defendants intentionally pursued a course of action that would diminish the value of the acquired company and the associated minority shareholder interests while greatly enhancing the value of their own company.

Result

After the expert report and deposition of H. Stephen Grace, the defendants' attorney suggested that settlement discussions should be initiated. After brief negotiations, a settlement was reached that was favorable for the plaintiffs.

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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Defining the Difference #101 - Are All Parties in it Together After the Agreement?

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