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Complex Financial Transaction Issues - Part II

Questions around complex financial transactions and the roles and responsibilities of corporate officers and directors, financial institutions and others often lie at the heart of litigation, bankruptcy proceedings and other legal disputes. [H.S. Grace & Company, Inc.](#) (HSG) team of [senior management level executives](#) can help unravel the often-complicated corporate structures, relationships, financial instruments and operating connections involved, with in-depth experience across a range of industries.

This is the second of two e-mails discussing representative situations in which HSG has been charged with the complex task of dissecting and interpreting the business decisions behind financial disputes. Case studies illustrate the depth and breadth of our team's expertise to successfully unravel:

- complicated inter-affiliate financing and structural questions
- mortgage company's use of interest rate swaps
- partner's ability to meet funding requirements in a complex commercial transaction, and

- determination of whether a financial transaction was an undeclared dividend.

Offshore Bankruptcy: Appointment by Examiner

Overview: A court-appointed examiner selected HSG to help review complex commercial issues and transactions arising from the bankruptcy of an offshore energy firm, including analysis of corporate structures, financing, inter-company agreements, sale and buyback transactions among related parties, payments to owners, related-party loans, going concern and consolidation accounting, valuation, solvency concerns and refinery construction issues.

Result: Based on HSG's findings, both the major creditor and the United States Trustee entered motions to request that the bankruptcy court appoint a trustee to manage the debtor's affairs. In response to the motion, the debtor paid the major creditor in full and made an initial payment to other creditors of 70 cents on the dollar.

Directors' and Officers' Role in Mortgage Company Bankruptcy

Overview: A large mortgage company with a subsidiary that acted as a clearinghouse for other mortgage companies entered into bankruptcy for the second time. Plaintiffs claimed that certain senior management and directors had mishandled investments and hidden risks with speculative interest rate swaps.

Result: HSG's analysis showed that the investment activities were appropriate, losses were market driven and management had kept the board properly advised of actions and associated risks. After mediation, the parties reached a settlement favorable for the defendant.

Financial Institution's Liability for Providing Information

Overview: Seller of a major league sports team sued a financial institution (HSG client) for fraud and negligent misrepresentation for allegedly providing false information regarding the financial capability of a client. The client had negotiated purchase of part of the team, but failed to close, and a few months later, seller sold 100 percent of his interest to another party. Subsequent to the sale, the team's value rose. Seller contended that the financial institution's actions had caused him to sell the entire business, depriving him of appreciation in the minority interest he had planned to retain.

Result: HSG determined that the seller's inability to fund his share of financing responsibilities for the team would have likely resulted in a step-down of the seller's interest to zero, and that the seller's damage model was inappropriate, among other issues. A satisfactory settlement was reached after extensive discovery.

Special Purpose Entity: Undeclared Dividends

Overview: Employees holding a controlling interest in a "special purpose" corporation sued the defendant parent corporation (HSG client), asserting that funds upstreamed through the special purpose corporation were undeclared dividends.

Result: HSG's analysis identified errors in the plaintiffs' underlying business model and damage calculations, determining that the payments were not dividends and plaintiffs were not entitled to a portion of those cash flows. Favorable out-of-court settlement for our client.

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 that can be obtained 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. Follow [H. S. Grace & Company, Inc.](#) on

[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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