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## **How a Fact-Based Business Analysis Resulted in the Dismissal of a Securities Action During Mediation**

### **Background**

Plaintiffs alleged damages by Defendants in a securities action due to the drop in the stock price. The initial mediation went poorly in the eyes of the primary D&O carrier. The D&O carrier requested H.S. Grace & Company ("HSG") review the matter and develop Preliminary Findings for presentation to the subsequent mediation.

### **Limited Review**

HSG performed a fact-based, business-focused, limited review of the actions by the Defendants and other relevant parties, including adequacy of disclosures of financial, operating, product and other risks, as well as the actions of the directors and management during the period subject to the claim. A particular matter reviewed was that the stock experienced two distinct drops, both resulting from tests of the Defendant Company's only product which appeared to have disappointed the marketplace. The possibility of such outcomes was always made clear by Defendants.

### **Preliminary Findings: HSG Conclusions**

"Based on the review and analysis of materials undertaken, as described in the Report, we do not believe the Defendants were casually related to the Plaintiffs' alleged damages. The Defendants appear to have been fully forthcoming in the disclosure of the risks facing the Company, and they appear to have operated the company within the bounds of customary and ordinary good business practice guidelines. Additionally, the activities of the Defendants were approved and monitored by the FDA, and outside parties conducted the trials and related studies. It appears that any losses incurred by the Plaintiffs were due to fluctuations in the marketplace of a speculative stock, for which there were numerous disclosures made by the Defendants."

### **Outcome**

HSG's Preliminary Findings were presented at a second mediation session with little opposition. Subsequently, Defense Counsel filed a motion to dismiss which was granted. This matter is a further example of how the HSG advisors, with their combined senior management experiences in varied disciplines, offer an unparalleled breadth and depth of expertise to address client issues.

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### **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 LinkedIn

[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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