



H.S. Grace & Company, Inc.

Detrimental Split-Off Transaction

Legal Issues

1. Fiduciary responsibility of corporate officers.
2. Independence of public accountants.
3. Responsibilities of outside counsel to the corporation.

Allegations

Management of a surviving corporation had “engineered” a split off from a sister corporation to the detriment of the shareholders of the sister corporation.

1. H.S. Grace & Company, Inc. (HSG) was hired by a Litigation Trust set up by the creditors of a corporation that had entered into bankruptcy soon after the corporation had been “split-off” from a sister company which was owned by management.
2. Management of the surviving corporation had allegedly taken the proper steps in preparing for the split-off, which seemed to be “fair” to all concerned parties.

Analysis

HSG confirmed the suspicions of the lenders and the counsel for the litigation trust. In part, they proved that:

1. The management team, in directing the split-off transaction, committed numerous violations of customary and ordinary business practices.
2. Outside counsel and the public accountants had conflicts of interest and did not appropriately disclose their roles to the board of directors.
3. Management manipulated the relative valuation of the entities to be split-off by “rigging” the forecasts used by the independent investment bankers.
4. Management of the surviving corporation hid significant problems in the sister company, prior to the split-off, which ultimately led to its demise.

Result:

After the report was issued by HSG, it submitted approximately 2,500 documents in support of its findings at deposition. A Daubert challenge was defeated and, despite earlier concerns of Plaintiff’s counsel that the defendants would never settle, the case was settled and resulted in a nine-digit settlement for HSG’s client.

H.S. Grace & Company, Inc. is a team of senior executives who diagnose and resolve critical corporate problems in business governance, operations, finance and control. With more than 1,000 years of experience, our goal is to help companies enhance shareholder value, protect reputation and their long-term ability to succeed, avoid and manage litigation, and navigate major changes such as mergers and acquisitions or bankruptcies. We often serve as consulting and testifying experts, identifying and analyzing critical business issues.

Houston: 4615 Southwest Freeway, Suite 625, Houston, TX 77027
(713) 572-6800 • FAX (713) 572-6806

New York: 300 E. 57th Street, #18A, New York, NY 10022
(212) 644-8620 • FAX (212) 813-1779

Email: hsgraceco@hsgraceco.com
Visit us at: <http://www.hsgraceco.com>