



H.S. Grace & Company, Inc.

Dot Com Bankruptcy

Legal Issues

1. Fiduciary responsibility and duty of care by the corporate officers.
2. Duties of officers to creditors during “Zone of Insolvency”

Alleged Facts:

Management of a failed “dot com” wasted corporate assets, engaged in insider dealings and had failed in their fiduciary duties to creditors while in the “Zone of Insolvency.”

Background of Case:

1. An experienced bankruptcy trustee and his counsel filed suit against the former Officers and Directors seeking the proceeds of the firm’s D&O coverage.
2. The management of the failed company “burned” through approximately \$90 million of investors’ cash in less than two years and, at the time of the bankruptcy, the company owed creditors in excess of \$35 million.
3. The deposition of the company’s founder confirmed that the company had a number of unresolved operational problems.
4. The founder of the company had been replaced as CEO and his deposition was not complimentary of the current CEO and other officers.
5. Defense counsel and the underwriter of the Directors and Officers insurance policy hired H.S. Grace & Company, Inc. (HSG).
6. Prior to the mediation, there was considerable uncertainty that the matter would settle in mediation.

Analysis

HSG was able to demonstrate that:

1. A number of bankruptcies in the dot com segment were occurring at the same time.
2. Many dot coms depended on the next round of venture capital funding to continue operations.
3. Prior to March of 2000, the investment criterion was primarily based on revenue streams. Soon thereafter, the criteria shifted to profitability and cash flow.
4. Consequently, funding virtually dried up after the NASDAQ market peak in March 2000.
5. The issues raised by the Litigation Trustee/Plaintiff and his counsel were either without merit or were not causally related to the firm’s failure.

Result

The defense attorney assimilated the legal and business issues of the case in a compelling presentation, assisted by HSG. The matter settled favorably for the client at mediation. The senior claims officer commended legal counsel and HSG, stating the case settled “*for an amount that I was actually happy about.*”

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.

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