



H.S. Grace & Company, Inc.

## **Liability for Providing Financial Capability Information By Financial Institution in Sports Franchise Sale**

### **Allegations**

H.S. Grace & Company, Inc. (HSG) was engaged by counsel for a financial institution which had provided information to the seller (Seller) of a major league sports team regarding the financial capability of a client of the institution. The client was one of two “finalist” purchasers of a 50% interest in the team. When the transaction with the institution’s client failed to close within the very tight timeframe desired, the Seller sold the entire team to the other “finalist” purchaser several months later. Following the sale, the value of the team substantially appreciated and the Seller sued the institution claiming that the false information provided by the institution caused the Seller to expend time negotiating with the institution’s client in reliance upon the information and forced the Seller to have to sell the entire team, rather than the 50% interest in the team that it could have sold. The Seller claimed that the sale of the entire team resulted in a loss to it of the appreciation in value of the 50% interest it could have retained.

### **Analysis**

HSG examined various documents (letters, agreements, term sheets, affidavits, meeting minutes, press reports, etc.) regarding the transaction and negotiations between the Seller and the ultimate purchaser, including depositions of the individuals involved in the negotiations. HSG also examined documents relating to the relationship of the Seller (and its 90%+ owner) with the lender providing financing to the owner secured in part by liens on the Seller’s assets and the financial difficulties of the owner that gave rise to the issues that had arisen between the owner and the lender. Documents involving negotiations with other potential purchasers over several years were also examined.

Our Report, based on the analysis of the information resulting from our examination, demonstrated that the failure of the transaction to close by the date sought and the sale of the entire interest, rather than a partial interest, was the result of factors other than reliance on the financial capability information provided by the financial institution. Such factors included the financial difficulties of the owner and the demands of the lender with respect to the interest in the team being sold; the ultimate purchaser’s not being willing to purchase less than the entire interest as demonstrated by various documents; and the inability of the owner to fund its share of 50% of future obligations making a partial ownership interest unattractive to any potential purchaser.

### **Result**

Counsel for the institution utilized our Report to negotiate a favorable settlement just prior to the scheduled trial.

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*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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