



H.S. Grace & Company, Inc.

Offshore Energy Bankruptcy

Legal Issues

1. Fiduciary Duty of Financial Institution under an Indenture
2. Fiduciary Duty of Pension Fund Board of Directors
3. Duty of Disclosure of Pension Fund Board of Directors
4. Multiple Conflicts of Interests; Self-Dealing

Allegations

The Pension Fund asserted that the Bank had: (1) failed to thoroughly examine the borrower's certifications and other documents submitted in accordance with the Indenture; (2) failed to trigger a default when the borrower did not deliver various documents within the "cure" period provided by the Indenture; (3) failed to have a working "follow-up" system and training programs to support the Indenture Trustee; and (4) been negligent and had breached its fiduciary duty.

Potential Liability

The Bank faced (1) actual calculated damages in excess of \$200 million with prejudgment interest of 10% due for several years, (2) an extremely adverse venue since the Plaintiff's retirement recipients would comprise approximately 80% of any jury, (3) a state legislature that was loathe to raise taxes to correct any shortfall in the Fund, and (4) the State Supreme Court that had overruled 75 years of prior jurisprudence to ensure that the case would be tried in the state capitol which contained the highest percentage of current and potential recipients.

Analysis

H.S. Grace & Company, Inc. (HSG) found that the Bank had serious deficiencies with systems and training its corporate indenture trustees. However, its analysis proved that the Bank had neither the obligation nor the factual basis to precipitously call a default, and that other allegations of negligence and mismanagement were contradicted by the facts.

In addition, HSG's analysis of the environment surrounding all business and personal dealings of the directly relevant persons indicated that the Chairman of the Pension Fund had engaged in serious conflicts of interest that tainted the decision making process which led to the initial and subsequent investments made by the Pension Fund. Further, the Pension Fund had numerous flaws in their management and investment processes which contributed significantly to their losses.

Result

Upon presentation of the Bank's key evidence, supported by an independent regulatory expert located by HSG, the Pension Fund dismissed its case against the Bank.

It is noteworthy that the State's Office of the Attorney General, operating at the direction of the Governor, had failed in its exhaustive investigation to uncover the conflicts and self-dealing of the Chairman of the Pension Fund due to its inability to leverage any significant experience in both forensic accounting and financial operations.

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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