



H.S. Grace & Company, Inc.

Complex Financial Transaction Issues – Part II

This is the second of two e-mails discussing representative situations in which H.S. Grace & Company, Inc. (HSG) has examined and analyzed complex financial transaction issues. The issues discussed below include complicated inter-affiliate financing and structural questions, the appropriateness of the use of interest rate swaps by a mortgage company, the ability of a partner to meet its funding requirements in a complex commercial transaction, and a determination of whether a financial transaction was an undeclared dividend. HSG's team of senior management level executives has extensive hands-on experience in analyzing financial transactions in a variety of industries.

Offshore Bankruptcy: Appointment by Examiner

Overview: A court-appointed examiner selected HSG to assist in the review of a number of complex commercial issues and transactions arising from an offshore energy-related bankruptcy. These issues included analysis of corporate structures, financing, inter-company agreements, sale and buyback transactions among related parties, payments to owners, related-party loans, going concern and consolidation accounting, valuation, solvency concerns and refinery construction issues.

Result: HSG raised a number of issues for the examiner to include in his report and as a result, both the major creditor and the United States Trustee entered motions to request that the bankruptcy court appoint a trustee to manage the debtor's affairs. In response to the motion, the debtor paid the major creditor in full and made an initial payment to other creditors of 70 cents on the dollar.

Directors' and Officers' Role in Mortgage Company Bankruptcy

Overview: A large mortgage company with a subsidiary that acted as a clearinghouse for other mortgage companies entered into bankruptcy for the second time. Plaintiffs claimed that certain senior management and directors had mishandled investments and hidden risks through use of speculative interest rate swaps. HSG's analysis showed that the investment activities were appropriate, that the losses were market driven and that management had kept the board properly advised of actions and associated risks.

Result: Favorable settlement for defendant following mediation.

Financial Institution Liability for Providing Information

Overview: Seller of a major league sports team sued a financial institution (HSG client) for fraud and negligent misrepresentation for allegedly providing false information regarding the financial capability of a client of the institution, who had negotiated for the purchase of part of the team but failed to close. A few months later, seller sold 100% of his interest in the business. Subsequent to the sale, the value of the business rose. Seller contended that the financial institution's actions had caused him to sell the entire business rather than the 50% he had

originally intended to sell and deprived seller of the appreciation in the minority interest which was to be retained. HSG's analysis determined, among other issues, that the seller's inability to fund his share of financing responsibilities for the team would have likely resulted in a step-down of the seller's interest to zero. HSG also determined that seller's damage model was inappropriate.

Result: A satisfactory settlement was reached after extensive discovery.

Special Purpose Entity: Undeclared Dividends

Overview: Employees (plaintiff) holding a controlling interest in a "special purpose" corporation sued the defendant parent corporation (HSG client), asserting that funds upstreamed through the special purpose corporation were undeclared dividends. HSG's analysis identified errors in the plaintiffs' underlying business model and in their damage calculations. HSG's analysis demonstrated that the payments were not dividends and that the employees who were the majority owners of the special purpose entity were not entitled to a portion of those cash flows.

Result: Favorable out-of-court settlement for our 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.

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