



H.S. Grace & Company, Inc.

Complex Financial Transaction Issues

Questions involving complex financial transactions and the roles and responsibilities of corporate officers and directors, financial institutions and others in these transactions arise in many different legal contexts, including litigation, bankruptcy proceedings, and other legal disputes. Issues ranging from Ponzi schemes to complex structured finance transactions to the fairness of spin-offs must be examined. To analyze these issues, corporate structures and relationships must be unraveled, financial instruments reviewed, and operating connections evaluated. H.S. Grace & Company, Inc.'s (HSG) team of senior management level executives has extensive hands-on experience in analyzing these types of financial transactions in a variety of industries. This is the first of two e-mails discussing representative situations in which HSG has examined and analyzed financial transaction issues.

Financial Institution's Role In Failed Ponzi Scheme

Overview: Investors sued a financial institution (HSG client), which had provided custodial account services in connection with a bankrupt investment limited partnership. The investors claimed that the financial institution had made fraudulent representations, provided false financial reports, allowed investors' funds to be commingled with the promoter's funds, and vouched for the promoter. Investors sued for fraud, negligent misrepresentation, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty and fraud. HSG's analysis showed that the financial institution generally played no part in the investors' initial decision to invest and that the financial institution's role with respect to the investors was very limited. HSG also determined there was no causal relationship between the investors' losses and any actions of the financial institution.

Result: A satisfactory settlement was reached after extensive discovery.

International Multi-Billion Dollar Structured Finance Transaction

Overview: An oil-rich developing company had planned a major infrastructure project and HSG client (plaintiff) arranged financing through a large, financially sophisticated entity. Defendant backed off its obligation to provide financing at the last minute, asserting the financial structure was too complex. Plaintiff sued for bad faith breach of contract. HSG's analysis demonstrated the economic viability of the transactions and broke down a highly complex series of transactions to a simple analogy that the jury was able to understand.

Result: Substantial eight-digit jury verdict for our client.

Corporate Divestiture, Valuation & Structure Issues From Spin-Off

Overview: A litigation trust funded by six banks (plaintiff) sued certain directors and officers (defendants) of a corporation and their advisors, alleging that a spin-off had been intentionally structured to benefit the defendants. Attorneys for the plaintiff litigation trust hired HSG, which had worked for opposing parties in another complex commercial matter. HSG's analysis identified numerous areas in which the designated directors and officers and certain of their

advisors had operated outside of customary and normal business practices and determined that the board did not have appropriate checks and balances in place to insure fair treatment of both parties. The analysis also showed that management had improperly controlled the relative valuation of the entities to be split-off by manipulating the forecasts used by the independent investment bankers and that management had hidden significant problems in the company, which was spun off, ultimately leading to its demise.

Result: The client attained a nine-digit settlement from the specified directors and officers, the surviving company and certain of its advisors.

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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