



H.S. Grace & Company, Inc.

Corporate Control Issues

Questions of corporate control arise in many different legal contexts, including piercing and alter ego claims, fraud claims, antitrust litigation, securities lawsuits, and affirmative defenses, such as *in pari delicto* claims. These allegations frequently involve complex analysis of parent-subsidary, corporation-shareholder/director/officer, and intra-affiliate relationships. To analyze these claims effectively, complex corporate structures and relationships must be unraveled, financial arrangements examined, operating connections evaluated, and contractual relationships assessed, all in the context of customary and normal business practices. H.S. Grace & Company, Inc.'s (HSG) team of senior management level executives has extensive experience in analyzing corporate control issues in a variety of industries and in different legal contexts. The following assignment demonstrates how HSG's experience in examining and assessing complicated corporate control issues can prove useful in resolving litigation.

Claim of Corporate Control against Affiliate of a Broker/Dealer

Allegations

Plaintiff securities broker/dealer sued Broker/Dealer A, owned by a major international investment bank, contending that it and others had participated in a complex stock lending manipulation scheme. Plaintiff also sued Broker/Dealer B, an affiliate of Broker/Dealer A, arguing that it directly and improperly controlled Broker/Dealer A. HSG was retained by Broker/Dealer B to address the relationships between the two corporate affiliates and the parent holding company in the context of customary and ordinary business practices among affiliated entities.

Analysis

Using their extensive experience in oversight and management of interrelated business enterprises, the HSG team determined based on the specific facts at issue:

- Creation of a holding company structure in which the holding company owns a number of subsidiaries is a common form of business organization.
- It can be prudent and customary business practice for holding companies to establish standards, guidelines, policies and procedures for operations that generally apply to the lines of business undertaken by the holding company and its subsidiaries.
- A holding company may elect to locate basic support services at either a holding company level and make them available to all subsidiaries or may position all or part of these support services in a particular subsidiary.
- The holding company structure in this specific case, which located certain support services in Broker/Dealer B allowed for the effective and efficient use of resources and expertise in the form of shared service agreements by positioning certain support services at a subsidiary level.
- The specific factual circumstances in this case did not indicate that Broker/Dealer B "controlled" Broker/Dealer A but rather that Broker/Dealer B provided certain services consistent with normal and customary business practices.

Result

The case resulted in a favorable settlement for HSG's 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.

Houston: 4615 Southwest Freeway, Suite 625, Houston, TX 77027
(713) 572-6800 • FAX (713) 572-6806

New York: 300 E. 57th Street, #18A, New York, NY 10022
(212) 644-8620 • FAX (212) 813-1779

Email: hsgraceco@hsgraceco.com
Visit us at: <http://www.hsgraceco.com>