



H.S. Grace & Company, Inc.

## Defending a Derivative Lawsuit

### Legal Issues

1. Breach of fiduciary duty by the corporate directors and officers.
2. Waste of corporate assets and unjust enrichment.

### Allegations

A major electricity producer failed to maintain its equipment and facilities properly resulting in a blackout over a highly populated area. The company had also restated its earnings and been subject to several investigations by regulatory authorities. The conduct of the board of directors caused over \$500 million of damages to the company.

### *Background of Case:*

1. An experienced plaintiff's attorney filed suit against the directors seeking the proceeds of the firm's D&O coverage, extensive company funds and the individual defendants' net worth.
2. Plaintiffs contended the directors failed to oversee major safety policy, procedure and management issues with the company; plaintiffs also contended management and the board hid various safety issues from regulatory authorities.
3. Plaintiffs also contended the directors of the company had various conflicts of interest and took excessive compensation from the company.
4. Finally, plaintiffs asserted the directors failed in their duties to ensure an adequate financial reporting system was in place at the company, resulting in a significant accounting restatement which damaged the company's reputation and reduced its value.
5. Defense counsel hired H.S. Grace & Company, Inc. (HSG).
6. Prior to the mediation, there was considerable uncertainty that the matter would settle in mediation.

### Analysis

HSG's analysis demonstrated that:

1. The board was properly informed and had properly exercised its oversight responsibilities with respect to safety policies and procedures at the company relating to the company's operations. In fact, the equipment shutdown was part of a normal maintenance cycle and could not have been prevented.
2. The accounting restatement was at least partially attributable to a change in auditors and did not change the total write off over time, but only the interim periods.
3. The regulatory authorities had been properly notified of the issues with regard to equipment.
4. The board had appropriately fulfilled its corporate governance responsibilities.

### Result

The defendant outside directors obtained a settlement for a fraction of the amount that the plaintiffs alleged as damages.

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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.*

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

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

**Email:** [hsgraceco@hsgraceco.com](mailto:hsgraceco@hsgraceco.com)

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