



H.S. Grace & Company, Inc.

## Fraud: Derivatives Scheme

### Legal Issues

1. Scope of Third-Party Agent's Liability.
2. Principal's Liability for Agent's Conduct - Express and Implied.

### Allegations

A third-party agent fraudulently wrote insurance coverage backing derivative contracts of major corporate and institutional entities. The insurance company claimed that 1) it was not liable for payment under various derivatives contracts, 2) the bank was defrauded by the insurance agent, and 3) the bank's practices were not sufficient to uncover the fraud.

### Potential Liability

The bank, claiming that it was injured, sought reimbursement from the insurance company.

### Analysis

The insurance company engaged H.S. Grace & Company, Inc. (HSG) to work with its law firm to examine claims and counterclaims between itself and the bank. HSG's analysis demonstrated various breakdowns in the opposition bank's operating practices and established that the insurance company had taken the appropriate steps throughout the course of the various transactions at issue. HSG also developed a fact-based story of how the bank's own practices were not adequate to detect that it was being defrauded.

HSG's assigned team included two principal participants. One had been the senior credit officer worldwide at a major international bank. The other had been the former senior vice president and treasurer for a major insurance brokerage firm. HSG's banking consultant recognized that various bank credit practices were less than satisfactory, and worked closely with the client's law firm to describe those weaknesses. The insurance consultant provided the law firm and HSG's banking consultant with insurance expertise to help insure that their case was sound from insurance as well as a banking standpoint.

### Result

Favorable out-of-court settlement for our client that confirmed that the client's defense was sound.

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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.*

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