



**H.S. Grace & Company, Inc.**

With M&A activity – and related lawsuits – increasing, we wanted to share with you our experience on a major case, as outlined below.

## **Mergers and Acquisitions**

Mergers and acquisitions are on the rise as cash-heavy corporations find ways to spend their excess cash. As M&A activity increases, investor lawsuits alleging that the prices or terms of the deal are unfair to shareholders are also on the rise. A recent *Wall Street Journal* article, citing Securities Class Action Services, reported that the number of investor lawsuits challenging deals filed in state and federal court had increased from 36 in 2008 to 216 in the first ten months of 2010. H.S. Grace & Company, Inc.'s (HSG) team of senior management level executives and board members offers a wide range of actual, real-life experience in business-decision making and process and governance issues in a wide variety of industries and situations. The following is a recent example of HSG's expertise in a derivative action against directors and officers involving a large merger.

### **Allegations**

Plaintiff shareholder sued ABC Company and certain of its officers and directors to enjoin a proposed acquisition of ABC by XYZ Company. Plaintiff shareholder contended that ABC and its officers and directors had breached their fiduciary duties by 1) failing to include material disclosures in the proxy for the proposed acquisition; 2) failing to include key provisions in the merger agreement; 3) agreeing to an unfair transaction price; and 4) failing to address alleged conflicts of interest in the transaction.

HSG was retained by ABC and its officers and directors and their counsel to analyze these allegations.

### **Analysis**

Drawing on their extensive experience with and understanding of complex merger and acquisition transactions, HSG's team of senior management executives was able to review and evaluate these detailed allegations and demonstrate their lack of credibility in the shortened time frame dictated by the injunction process. Specifically, HSG determined:

- The Board and management acted properly; they were well-informed and demonstrated reasonable and proper business practices and processes in reaching and executing the merger agreement.
- The pertinent terms of the merger agreement were consistent with reasonable business practices in mergers of this type.
- The transaction price was fair, and the fairness opinions relied on by the Board were reasonable and consistent with normal business practices.
- The disclosures in the proxy were appropriate.

### **Result**

Counsel for ABC and its directors and officers negotiated a favorable settlement, allowing the merger to proceed basically as planned, shortly after the deposition testimony of Stephen Grace.

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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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