



H.S. Grace & Company, Inc.

Shareholder Oppression Claims

Minority shareholder oppression claims are becoming more commonplace in many jurisdictions whether couched as breach of fiduciary duty actions or as a separate cause of action for shareholder oppression. These and similar claims frequently arise in the context of closely held corporations, LLC's and limited partnerships where a majority owner is accused of trying to freeze out or squeeze out the minority shareholders or owners by a variety of actions. These actions include removing the minority shareholder from management or the board, refusing to declare dividends when the company is profitable, denying the minority shareholder access to information, siphoning off earnings to a majority shareholder, engaging in recapitalizations or mergers to dilute or eliminate the minority shareholders, and usurping corporate opportunities. Corporate governance and related financial issues involving the reasonableness and fairness of the majority's actions and the minority's expectations are common in these cases. H.S. Grace & Company's (HSG) team of senior management level executives and board members offers a wide range of actual real life experience in these types of situations. The following HSG case demonstrates how corporate governance issues and customary business practice and process issues can play a key role in the resolution of these types of claims.

Allegations

Plaintiff shareholder on behalf of a class of minority shareholders sued defendant majority shareholder asserting claims for breach of fiduciary duty, minority shareholder oppression and fraud. Plaintiff alleged that defendant through its control of the board and day-to-day operations of XYZ corporation had abused its control of XYZ in order to squeeze out the minority shareholders. Plaintiff asserted that defendant's actions had not only resulted in the dilution of the minority interest from 49% to 15% but had also caused a 75% decline in the value of their stock. Plaintiff and his counsel engaged HSG to examine the defendant's actions and determine resulting damages.

Analysis

HSG's analysis confirmed that defendant through its control of the board and day-to-day operations of XYZ corporation had acted in a manner designed to squeeze out the minority shareholders and that defendant's actions were inconsistent with customary and normal business practices and resulted in unfair treatment of the minority shareholders. These actions included, for example:

Defendant majority shareholder— which was a corporation in a similar business to XYZ corporation — acquired 100% of XYZ corporation's principal competitor and then undertook a series of financial and operational decisions to shift economies and efficiencies from XYZ to the competitor, which it now owned. Defendant also used its management and control over XYZ to direct business and opportunities in XYZ's marketplace to itself (as the new owner of XYZ's competitor) resulting in significant benefits to itself and detriment to XYZ corporation and its minority shareholders.

Defendant manipulated the conversion ratio of its preferred stock to XYZ common stock resulting in dilution of the minority shareholders.

Defendant charged excessive interest rates and fees on loans to XYZ corporation ultimately requiring XYZ to sell assets to repay the loans and thereby effectively liquidating XYZ in part to benefit defendant after it acquired XYZ's competitor.

These and other actions by defendant resulted in a significant increase in defendant's value through growth in the value of the acquired competitor and a concomitant diminution in the value of the minority shareholder interest in XYZ, resulting in 9 figure damages to the minority interest.

Result

After extensive discovery, including expert depositions, the case was favorably settled by plaintiff.

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.

Representative Issues Examined

- Lender Liability
- D&O
- Corporate Split-off
- Family Trust
- Health Care
- Professional Services
- Intellectual Property
- International Structured Finance Transaction
- Fraud
- Pension Fund Investments
- SEC White Collar Defense
- Stock Option Backdating
- Oil & Gas
- Real Estate
- Fiduciary Issues
- Contract Dispute
- Fund Management
- Market Timing Allegations
- Financial Derivatives
- Portfolio Management
- Special Purpose Corporation

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