

## Defining the Difference #107



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## **COMPLEX FINANCIAL TRANSACTION ISSUES**

The current economic and legal environments are evolving. The COVID-19 pandemic has impacted the economics of a broad range of businesses including law firms and insurance carriers, as well as the operations of the courts. All involved parties are challenged to develop approaches to achieve appropriate resolutions of disputes whether such disputes were attributable to the pandemic, current operations, bankruptcies/restructurings or business/financial transactions.

[H.S. Grace & Company, Inc.](#) ("HSG") focus is to assist clients and their counsel in addressing traditional litigation, as well as litigation attributable to COVID-19. We can enter a case at any point during its evolution and provide our services quickly, thoroughly and cost efficiently. Our focus is to assist in evaluating damages, liabilities and causation from a business perspective, as well as developing alternative resolution strategies and, where required, providing expert testimony in mediation, arbitration and courts.

The following are examples of how HSG assisted clients and their counsel in complex financial transaction issues.

### **Financial Institution's Role in Failed Ponzi Scheme**

**Overview:** Investors sued a financial institution (HSG client), which had provided custodial account services in connection with a bankrupt investment limited

partnership. The investors claimed that the financial institution had made fraudulent representations, provided false financial reports, allowed investors' funds to be commingled with the promoter's funds, and vouched for the promoter. Investors sued for fraud, negligent misrepresentation, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty and fraud. HSG's analysis showed that the financial institution generally played no part in the investors' initial decision to invest and that the financial institution's role with respect to the investors was very limited. HSG also determined there was no causal relationship between the investors' losses and any actions of the financial institution.

**Result:** A satisfactory settlement was reached after extensive discovery.

### **International Multi-Billion Dollar Structured Finance Transaction**

**Overview:** An oil-rich developing country had planned a major infrastructure project and HSG client (Plaintiff) arranged financing through a large, financially sophisticated entity (Defendant). Defendant backed off its obligation to provide financing at the last minute, asserting the financial structure was too complex. Plaintiff sued for bad faith breach of contract. HSG's analysis demonstrated the economic viability of the transactions and broke down a highly complex series of transactions to a simple analogy that the jury was able to understand.

**Result:** Substantial eight-digit jury verdict for our client.

### **Corporate Divestiture, Valuation & Structure Issues from Spin-Off**

**Overview:** A litigation trust funded by six banks (Plaintiff) sued certain directors and officers (Defendants) of a corporation, the Corporation and its advisors, alleging that a spin-off had been intentionally structured to benefit the Defendants. Attorneys for the Plaintiff litigation trust hired HSG, which had worked for opposing parties in another complex commercial matter. HSG's analysis identified numerous areas in which the designated directors and officers and certain of their advisors had operated outside of customary and normal business practices, and determined that the board did not have appropriate checks and balances in place to insure fair treatment of both parties. The analysis also showed that management had improperly controlled the relative valuation of the entities to be split-off by manipulating the forecasts used by the independent investment bankers, and that management had hidden significant problems in the company, which was spun off, and ultimately failed.

**Result:** The client attained a nine-digit settlement from the specified directors and officers, the surviving company and certain of its advisors.

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#### **If you would like to know more...**

If you would like to know more about this case, or about the kinds of business-based analysis of claims and damages that can be obtained from H.S. Grace & Company, Inc., you are invited to contact members of our group, [Al Fenichel](#), [Charles Fischer](#), [Steve Grace](#), and [H. Stephen Grace, Jr., Ph.D.](#) at (713) 572-6800.

H. S. Grace & Company, Inc. (HSG) is a litigation support and consulting firm established in 1993 that works with in-house counsel, outside counsel, insurance carriers and corporate attorneys, as well as company boards and senior management. HSG specializes in assisting clients both before and during litigation in analyzing and assessing the validity of claims involving representations and warranties, directors and officers responsibilities, financial reporting, business judgment, merger and acquisition disputes and other complex issues. The firm provides expert testimony from our detailed analyses of the business decisions and actions, issues reports of how the actions of all parties involved affect causation and evaluation of damages and provides guidance to support settlement strategies and negotiations. HSG has approximately 30 consultants, including experienced testifying experts, who have had significant experience as senior executives (e.g., CEOs, COOs, CFOs, SVPs, Treasurers, technical professionals

and board members), many of whom hold advanced degrees and professional certifications. Our experienced team members look deeply into claims and allegations to determine not only what happened, but how and why, to speak authoritatively about appropriate business practices, and to assist clients in achieving favorable outcomes. HSG has represented banks and other financial institutions, real estate partnerships, energy companies, pharmaceutical firms, healthcare companies, insurance carriers, retailers, technology companies and others in a broad array of complex commercial

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