



H.S. Grace & Company, Inc.

4615 Southwest Freeway, Ste. 625
Houston, Texas 77027
713.572.6800

100 Park Avenue, Ste. 1600
New York, NY 10017
212.644.8620

The Interplay Between Corporate Governance Issues and Litigation: What Is Corporate Governance and How Does It Affect Litigation?

Part I - Breach of Letter Agreement and Operating Agreement

Corporate governance is the system of rules, practices, and processes by which a company is directed and controlled.¹ Corporate governance essentially involves balancing the interests of a company's many stakeholders, such as shareholders, management, customers, suppliers, financiers, government, and the community. Given that corporate governance also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate Disclosure.

Corporate governance issues often lay at the heart of complex commercial litigation that seeks to establish fault and responsibility for losses, or more technically, litigation that seeks to determine liability, causation, and damages.

This three part series will focus on the adequacy of the structures and processes in an organization and how the business conduct of its board, management, and employees can have a significant effect on the outcome of a business dispute. This series will discuss the interplay of corporate governance issues with both plaintiff and defendant strategies in litigation, and describe how governance issues affected the ability of litigants and their counsel to prevail.

Case: Plaintiff ABC oil company sued defendant XYZ oil company under a letter agreement and operating agreement involving the purchase and subsequent operation of an oil field. ABC contended that XYZ, the operator, had intentionally hindered ABC's efforts to participate in development of the field by various actions, including failure to provide access to data in breach of both the letter agreement for purchase of the field and the operating agreement. ABC asserted that the resulting delay in development of the field allegedly caused by defendant XYZ's actions had injured ABC by lowering its stock price in a subsequent public offering. XYZ retained an expert team to analyze these allegations and the damages calculated by ABC's expert. The expert team consisted of four senior executives with energy - related experience. Using available information on the financial and operational condition of both XYZ and ABC, and drawing upon their extensive knowledge of the oil and gas industry and financial experience in damage calculation, the expert team concluded:

- Plaintiff ABC Oil Company was in dire financial straits and was not capable of financing the proposed development program.
- Defendant XYZ Oil Company had operated in a manner that benefitted both ABC and XYZ.
- Plaintiff ABC expert's stock pricing model damage calculation based on historic cashflows violated generally accepted valuation techniques and ignored accepted factors used in valuation, e.g., the timing and amount of future cash flows.

The result in this case was that, after extensive discovery, including production of expert reports and depositions, the plaintiff filed an amended petition basically eliminating the allegations challenged by the expert team. A satisfactory settlement was reached.

Click [here](#) for the full article, as published in Business Law Today by [By H. Stephen Grace](#), John E. Hauptert, and [Susan Koski-Grafer](#).

¹ Definition source: [Investopedia](#)

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](#), you are invited to contact members of our group, [Al Fenichel](#), [Steve Grace](#), and [H. Stephen Grace, Jr.](#), at (713) 572-6800. Follow, [H.S. Grace & Co., Inc.](#), on LinkedIn. [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 litigation](#).