



Securities Litigation ADVISORY ■

OCTOBER 31, 2016

Jury Applies Georgia's Business Judgment Rule

By Robert Long, Tod Sawicki, Elizabeth Gingold Clark and Lauren Tapson Macon

On October 25, 2016, a jury in the U.S. District Court for the Northern District of Georgia rejected the Federal Deposit Insurance Corporation's (FDIC) argument that former directors and officers of The Buckhead Community Bank were personally liable for the approval of the majority of loans at issue in the case.

The FDIC brought the lawsuit against the defendants in 2012, seeking \$25 million in unpaid principal loss and prejudgment interest based on the alleged negligent approval of commercial real estate loans made by the bank during 2005–2008.

After four years of litigation, including a certified question to the Georgia Supreme Court regarding the applicability of Georgia's business judgment rule to bank directors and officers, the case was tried for two weeks before a jury of seven women and five men. After two-and-a-half days of deliberation, the jury rejected many of the FDIC's theories entirely and rejected their arguments about the vast majority of the FDIC's claimed losses. In the end, the jury awarded the FDIC only \$5 million – just 20 percent of what the FDIC sought at the outset of the case.

In the first interpretation of the Georgia Supreme Court's July 2014 ruling confirming that the business judgment rule insulates directors and officers from claims of negligence concerning the wisdom of their judgment, the court instructed the jury that "bank officers and directors are only expected to exercise the same diligence and care as would be exercised by ordinarily prudent officers and directors of a similarly situated bank. The reference to ordinary diligence, care and skill refers to the care required with respect to the process by which a decision is made, most notably the diligence due to ascertain the relevant facts, rather than the wisdom of the decision."

The defendants took the case to trial because they have always maintained they did nothing wrong. During the trial, the jury heard testimony from each of the defendants. Also testifying for the defense were Kevin B. Hagler, commissioner of the Georgia Department of Banking and Finance, and the directors and officers' expert witness on Georgia community banking, James A. Walker. Hagler and Walker defended the industry-standard loan approval practices implemented by the bank and similarly situated banks during 2005–2008. The FDIC was unable to point to any specific rule or law violated by the directors and officers in their loan approval process.

Based on the verdict, it appears the jury had no concern about the reasonableness of the bank's loan approval process since the jury rejected the FDIC's claims about many of the loans. Although the remaining loans underwent the exact same loan process, it seems that the jury went beyond the evaluation of the loan approval process and questioned the wisdom of the defendants' decisions to approve them.

The jury verdict confirms that Buckhead Community Bank's loan processes, which met the standards of similarly situated community banks in Georgia, were neither flawed nor actionable. This vindicates the practices of Georgia community banks that follow the standard loan approval processes that have been long established in Georgia.

The defendants are represented by Robert R. Long, Theodore J. Sawicki, Elizabeth Gingold Clark and Lauren E. Tapson of Alston & Bird LLP. The matter is *FDIC v. Loudermilk, et al.*, No. 1:12-cv-04156 (N.D. Ga).

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