



Securities Litigation / Corporate Governance ADVISORY ■

MAY 10, 2017

Strengthening the Georgia Business Judgment Rule

Yesterday, May 9, 2017, Governor Nathan Deal signed [HB 192](#) into law, amending the Georgia Business Corporation Code and corresponding provisions in the Financial Institutions Code of Georgia. HB 192 strengthens and clarifies the business judgment rule applicable to Georgia corporations and financial institutions by confirming that, when courts consider claims regarding directors' and officers' decision-making processes, the relevant standard for liability is gross negligence.

HB 192 is a response to the Georgia Supreme Court's decision in *FDIC v. Loudermilk*,¹ which confirmed the applicability of the business judgment rule in Georgia and its strong protections against claims for good-faith business decisions that are based on simple negligence. However, *Loudermilk* also held that because neither the relevant statutes nor the common law precluded claims for decisions that were the result of a negligent decision-making process, those claims were still viable under Georgia law.

As revised, the Business Corporation and Financial Institutions Codes make clear that the process that a director or officer followed in arriving at a decision shall be presumed to be in good faith and that the director or officer has exercised ordinary care. This presumption may be rebutted by evidence that such process constitutes gross negligence by being a "gross deviation of the standard of care of a director or officer in a like position under similar circumstances."

HB 192 brings Georgia law into conformity with other jurisdictions, such as Delaware, that apply a gross negligence standard for process claims. We applaud Governor Deal and the General Assembly for confirming the vitality of the business judgment rule for Georgia corporations and financial institutions.

¹ *FDIC v. Loudermilk*, 761 S.E.2d 332 (Ga. 2014). Alston & Bird LLP was counsel of record for the defendants in *FDIC v. Loudermilk*. John L. Latham, a member of Alston & Bird's Securities Litigation Group, testified before the House Judiciary Committee in support of HB 192.

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