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ELEVENTH CIRCUIT WILL HEAR APPEAL ON SCOPE OF GEORGIA'S BUSINESS JUDGMENT RULE

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In August, the Northern District of Georgia reaffirmed its prior ruling in the *Integrity Bank* case that Georgia's version of the Business Judgment Rule shields former directors and officers from FDIC claims for ordinary negligence. In doing so, the district court acknowledged that there was "substantial ground for difference of opinion," on the issue, and it granted the FDIC's request to petition the Eleventh Circuit Court of Appeals for an interlocutory appeal.

On November 16th, the Eleventh Circuit *granted* the FDIC's petition, paving the way for an interlocutory appeal on the district court's ruling. The parties will brief their respective arguments in the coming weeks, and it is likely that several interested non-parties will also seek to file amicus ("friend of the court") briefs. The Eleventh Circuit may elect to hear oral argument on the issue, but it is not required to do so. A decision will likely come down within the next year.

The Eleventh Circuit's ruling is expected to have a significant impact on the scope of claims that the FDIC may assert against former directors and officers of failed banks in Georgia. If the Court affirms the district court below, then the FDIC will be limited to prosecuting claims for gross negligence, which involves a much higher standard of care. If the Eleventh Circuit reverses, then the FDIC will continue to pursue D&O claims for ordinary negligence based on a lower threshold of negligent conduct. Either way, the Eleventh Circuit's decision should be a significant turning point for FDIC claims in Georgia.

MEET THE TEAM



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