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Judicial Opinion Ensures NC to Remain Business Friendly: *Decision Shields Officers and Directors from Personal Liability*

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North Carolina's reputation as a pro-business state received strong backing when the NC Business Court issued a significant 70-page opinion outlining the protections from personal liability afforded to officers and directors of NC corporations. The decision has profound implications for the statewide business community.

The Business Court's decision in [State ex rel. Commissioner v. Custard](#) of Insurance openly acknowledges how faulty decision-making by officers and directors of major corporations led directly to the current economic crisis. Nevertheless, the Court concluded that officers and directors cannot be held personally liable for taking on risks they believed in good faith were in the company's best interests, even if those decisions:

- 1) are proven "wrong, stupid, or egregiously dumb" and
- 2) led to results which proved "disastrous" to the company's shareholders or creditors.

The opinion holds that officers and directors are immune from personal liability in the absence of a "showing of reckless indifference, improper motive, personal advantage, or deliberate disregard of corporate interests." Chief Business Court Judge Ben F. Tennille expressed his concern that holding officers and directors accountable for poor decisions leading to ruinous consequences would improperly focus on hindsight analysis and would "limit business opportunity" and impede the entrepreneurial engine that drives the state's and nation's economy. His opinion promotes a business-friendly environment in which corporate executives will be given wide latitude to make decisions regarding growth strategies and entrepreneurial risk-taking.

Judge Tennille dismissed all claims asserted against the former officers and directors of an insolvent insurance company through which the NC Commissioner of Insurance as liquidator sought to collect over \$40 million to reimburse policyholders and creditors. He reasoned that bad business decisions do not equate to malice, and corporate officers cannot be held accountable for bad decisions, or even negligent mismanagement, if they acted in good faith. He also held that the officers and directors were protected by their reliance on the judgments made by a highly respected outside consultant, Ernst & Young, and by the insurance company's president and chief financial officer. Although the officers and directors clearly failed in their quintessential business decisions and operations, he stated, exposing them to personal liability for the company's demise would promote company executives in all industries adopting overly conservative, risk-averse strategies, thereby stalling the engine that drives North Carolina's economy.

At a time when the decisions of corporate executives of major institutions are being examined under the microscope of the media, Congress, and regulatory bodies, this opinion will surely solidify North Carolina's reputation as a pro-

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business state, one in which executives are provided ample latitude to make judgments and decisions they deem best for the companies they serve.



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