

# **Bond Case Briefs**

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## **BONDS - OHIO**

### **Kozel v. Andrews**

**Court of Appeals of Ohio, Fifth District, Tuscarawas County - October 28, 2014 - Slip Copy - 2014 -Ohio- 4793**

In October, 2010, Twin City Hospital - a small, rural acute-care facility - filed Chapter 11 Bankruptcy. The Bankruptcy Trustee subsequently sued Twin City's former board members, alleging that they had acted improperly by issuing approximately \$17.3 million in tax exempt revenue bonds to fund new construction and renovations to Twin City and to refinance the hospital's outstanding long-term obligations while its finances were in poor condition.

The trial court entered summary judgment in favor of the defendants. Trustee appealed, claiming that issues of fact existed that should be resolved by a jury. Trustee argued that the trial court's finding that defendants proved their case by a preponderance of the evidence precluded summary judgment and that it was error for the trial court to factor the trial standard of clear and convincing evidence into its decision to grant defendants' motion for summary judgment.

The Court of Appeals held that:

- The trial court did not err in considering the "clear and convincing" burden of proof at trial.
- Trustee was required to present sufficient evidence that members of the board consciously disregarded the risk that approval of the capital project in this matter would result in injury/damage to the hospital and that Trustee failed to satisfy this burden.
- Trustee failed to demonstrate a genuine issue of material fact that would require submitting any of his claims to a jury.