

# **Bond Case Briefs**

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## **BONDS - LOUISIANA**

### **Woman's Hosp. Foundation v. National Public Finance Guarantee Corp.**

**United States Court of Appeals, Fifth Circuit - May 14, 2013 - Slip Copy - 2013 WL 1955884**

WHF operates a hospital in Baton Rouge, Louisiana. In 2005, WHF issued \$39.7 million of tax-exempt bonds (the "Series 2005 Bonds").

WHF executed a trusteeship agreement with the Bank of New York Trust Company (the "Trustee"). This trusteeship was memorialized and organized by a Master Trust Indenture, executed by WHF and the Trustee.

WHF also contracted with Financial Guaranty Insurance Co. ("FGIC") to insure the payments of principal and interest due to the holders of the Series 2005 Bonds (the "Insurance Contract"). The Insurance Contract contained a number of restrictions on the ability of WHF to issue further debt during the term of the Series 2005 Bonds. In particular, Section 2.2(f) of the Insurance Contract provided that WHF would not incur any new indebtedness unless the debt met certain "stress-test" conditions, and Section 2.6 provided that WHF could not amend or supplement the Master Trust Indenture without FGIC's consent.

In 2008, WHF decided to build an entirely new hospital. To achieve this goal, WHF planned to issue \$350 million in new bonds (the "Series 2010 Bonds"). It intended that these bonds would be secured under the terms of the Master Trust Indenture. In December 2009, pursuant to Section 2.6 of the Insurance Contract, WHF asked FGIC's successor-in-interest, National Public Finance Guarantee Corp. ("National"), for its consent to supplement and amend the Master Trust Indenture to cover this new bond issue.

The issuance of the Series 2010 Bonds was a time-sensitive matter. WHF believed that the first quarter of 2010 was its ideal window for marketing the bonds. Despite the Series 2010 Bonds meeting the stress-test conditions of Section 2.2(f) of the Insurance Contract, National refused to give its consent immediately. It requested that WHF schedule a site visit and otherwise sought to condition its consent on further concessions on the part of WHF.

Realizing that it would not be able to issue the Series 2010 Bonds in January as planned if it continued to try to obtain National's consent, WHF instead defeased the Series 2005 Bonds in their entirety, incurring prepayment penalties in excess of \$2.5 million. WHF believed National's withholding of consent was a deliberate ploy to force exactly this course of action, which had the effect of relieving National of its responsibilities under the Insurance Contract far earlier than would otherwise have been the case. WHF also believed that National's withholding of consent was without authority under the Insurance Contract - it interpreted the Insurance Contract to require National's consent under Section 2.6 for supplements and amendments covering new debt issues so long as the new debt would meet the stress-test requirements of Section 2.2(f).

In December 2010, WHF brought an action against National in Louisiana state court, alleging

breach of contract, breach of the duty of good faith, abuse of rights based on improper motives, and detrimental reliance.

National argued that the insurance contract provided it with an unqualified right of consent to proposed supplements and amendments to the Master Trust Indenture and that as a result it had not breached its contract with WHF. National further contended that it withheld consent for economic reasons that, as a matter of law, cannot constitute bad faith or an abuse of rights. Finally, National argued that the WHF's pleadings by their own terms defeated any claim of detrimental reliance.

The appeals court held that:

- The district court correctly stated that National's right of consent was without "qualifications or exceptions" with respect to the Series 2010 Bonds;
- That the district court did not err in concluding that National was within its rights to withhold its consent as a matter of law, notwithstanding the fact that the Series 2010 Bonds met the stress-test conditions of Section 2.2(f) of the Insurance Contract; and
- That the district court correctly dismissed WHF's claims.