# Bond Case Briefs

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**MUNICIPAL FINANCE - ILLINOIS**

## Village of Sugar Grove v. F.D.I.C.

**United States District Court, N.D. Illinois, Eastern Division - June 27, 2013 - Slip Copy - 2013 WL 3274583**

Benchmark Bank issued a Letter of Credit ("LOC") in favor of the Village of Sugar Grove in the amount of $2,454,807.00 and a second LOC in favor of the Village in the amount of $4,538,634.00. The two LOC's secured the obligation of Hannaford Farm, LLC ("Hannaford"), the bank's customer, to construct certain property improvements. The LOC's obligated Benchmark to pay the Village upon demand certifying that Hannaford had defaulted in the manner described in the LOC's.

The Village, citing defaults by Hannaford, presented sight drafts to Benchmark demanding payment pursuant to the LOC's. Benchmark did not honor the Village's drafts, prompting the Village to file a lawsuit for wrongful dishonor in state court. The Illinois Department of Financial and Professional Regulation subsequently closed Benchmark and the FDIC was appointed as its receiver. The FDIC, as receiver for Benchmark ("FDIC–R"), removed the case to this court after it was substituted for Benchmark as the defendant.

Meanwhile, the Village submitted a proof of claim to the FDIC–R predicated on Benchmark's failure to honor the Village's drafts. The FDIC–R allowed the Village's claim in the full face amount of the LOC's as a "Tier 3" general creditor claim. The Village disputed that categorization, arguing that it should instead be treated as a depositor.

The FDIC denied the Village's deposit-insurance claim, reasoning that the LOC's were not "deposits" as that term is defined by 12 U.S.C. § 1813.

The court concluded that there was nothing arbitrary or capricious about the FDIC's reasonable conclusion that the notes backing the LOC's were "contingent," and thus not deposits.

The FDIC also stated that tax-exempt bonds backed by unfunded LOC's would become taxable if those LOC's were deemed "deposits," as bonds are not eligible for tax exemption if they are federally guaranteed). This could, the FDIC reasoned, negatively impact the market for municipal bonds, which are often backed by unfunded letters of credit.

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