

Documentary Credit

WORLD

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■ **LC FRAUD: SOLO INDUSTRIES**

The highly complex fraudulent dealings of Solo Industries and their impact on bank instruments linked to this multi-million dollar fraud has been the subject of considerable litigation. In this issue, *DCW* abstracts the lengthy English decision, *Standard Bank v. Canara Bank*. The Guarantor contended that because the underlying contract was a sham, it was not obligated to honor a demand. The court properly concluded that a transferee of a performance guarantee is entitled to claim notwithstanding fraud by the first beneficiary.

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... 2002 Overview of Letter of Credit Law & Practice

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UPDATES



Year's First ISBP Seminar Held in Singapore

International Standard Banking Practices (ISBP) – “A First Look”, attracted 75 LC specialists in Singapore, 7-8 January 2003.

The two-day ISBP Seminar, sponsored by the Institute of International Banking Law & Practice (IIBLP) and the Association of Banks in Singapore (ABS), generated important discussion on the finer points of the new standards and how the guidelines will influence the future of letter of credit practice.

Professor James E. Byrne, *DCW* Editor-in-Chief and IIBLP Director, and Soh Chee Seng, ABS Consultant, conducted a comprehensive overview of the ISBP and examined “real world” letter of credit scenarios that specialists encounter on a regular basis. Exercises and situations presented to attendees by Byrne and Soh included:

- Drafts drawn on Issuer 60/30/10 days from date of B/L;
- Draft where written term amount and numeral amount differ;
- Whether refusal is appropriate if air waybill fails to state name of carrier;
- Whether a forwarder's B/L is a transport document under UCP500;

- Compliance of documents with terms of credits;
- Whether refusal is justified under various scenarios.

“Having participated in the drafting process of ISBP, I knew that bankers would have to look at certain situations in a completely different light with respect to ISBP,” said Byrne. Following the seminar Byrne added, “It's clear to me that the valuable discussion generated among LC specialists will go a long way toward grasping the principles contained in ISBP.”

In conjunction with its 2003 Annual Survey of Letter of Credit Law & Practice in the U.S. and Europe, IIBLP will conduct special full-day ISBP Seminar sessions in Washington, DC (Wednesday, 12 March) and in Vienna, Austria (Wednesday, 19 March). Details of all upcoming Annual Survey conferences and ISBP Seminars appear on the IIBLP website at www.iiblp.org.

ICC Austria Sponsors First-Ever ISBP Seminar

Less than a month after approval of ISBP by the International Chamber of Commerce Banking Commission, ICC Austria played its part in ushering in the ISBP era by sponsoring a full-day seminar on the new standards on 20

November 2002. Heinz Hertl (retired, BankAustria/Creditanstalt) and Thomas Katzenberger (BankAustria/Creditanstalt) served as instructors for the German language seminar.

According to Hertl, a member of the ISBP Task Force, even though the approved ISBP text was not yet available in published format, the session served as a useful opportunity for both bankers and customers to become familiar in advance with what they may expect once ISBP is published and begin considering any necessary preparations or internal arrangements.

JPMorgan Chase Settles Surety Bond Dispute

Under terms of its settlement with 11 insurance companies announced 2 January, JPMorgan Chase will receive approximately US\$569 million plus rights of action against an additional US\$85 million.

The settlement stems from a highly publicized dispute over more than US\$1 billion in claims by JPMorgan Chase under surety bonds issued by the insurance companies covering defaulted oil and gas with the bankrupt Enron Corp.

Under a contractual arrangement with Enron, two companies, Mahonia Limited and Mahonia Natural Gas

Limited ("Mahonia") paid Enron US\$1.1 billion in advance for subsequent deliveries of oil and gas. To assure performance, Mahonia obtained contractual guarantees and six suretyship bonds.

The bonds were issued by the following insurers: Liberty Mutual Insurance Company; Travelers Casualty and Surety Company; St. Paul Fire and Marine Insurance Company; Continental Casualty Company; National Fire Insurance Company of Hartford; Fireman's Fund Insurance Company; Safeco Insurance Company of America; The Travelers Indemnity Company; Federal Insurance Company; Hartford Fire Insurance Company; and Lumbermen's Mutual Casualty Company.

When Enron defaulted, JPMorgan Chase, acting on behalf of Mahonia, demanded payment of US\$1.1 billion on the bonds but the insurers refused. Accordingly, JP Morgan Chase sued the insurers in the U.S. District Court for the Southern District of New York but its motion for summary judgment was denied (*DCW*, March 2002, p. 3).

Citing the large amount of money at stake, the court ordered discovery to continue. JPMorgan Chase's fraud claims against the insurers were subsequently dismissed, but

the bank's original claim for breach of the surety bonds remained.

Shortly before the case was due to go to jury in January 2003, JPMorgan Chase and the 11 insurers announced a settlement in which the insurers agreed to pay around 60% of the US\$965 million principal amount of the claims and JPMorgan Chase agreed to forgo the balance.

Commenting on the settlement, counsel for JPMorgan Chase said the bank agreed to compromise the claims because of "the uncertainty of jury verdicts in complex matters".

This dispute and settlement have important implications for the LC industry, revealing the weakness of a competitive product, suretyship undertakings issued by insurers to cover defaults in gas and oil deliveries.

JPMorgan Chase Sues Over US\$500 Million LC

In an attempt to recover under a US\$500 million LC that it extended to Enron Corp. in 2001, JPMorgan Chase has filed suit for US\$184 million drawn down from the LC.

The letter of credit was issued to an Enron subsidiary, National Energy Production Company (Nepco), to finance the construction of five power plants. The suit claims that Nepco's parent company

seized US\$184 million following Enron's bankruptcy filing. According to the suit, "No part of the project funds are property of Enron's bankruptcy estate".

In two other actions, JP Morgan Chase has also sued Cogentrix Energy Inc. and subsidiaries for breach of contract, breach of warranty, and unjust enrichment to recover more than US\$55 million drawn by Cogentrix companies from JPMorgan Chase against Enron LCs.

SWIFT to Revisit XML Trade Services Strategy

In December 2002, SWIFT approved formation of a group to assist SWIFT in developing its trade services strategy for the banking community.

The Trade Services Advisory Group (TSAG), as the group will be known, will be comprised of senior trade bank executives and SWIFT Board members.

According to SWIFT Head of Trade Finance Standards Development Paul Miserez, the idea came as a result of informal trade finance discussions SWIFT held with a number of trade bank representatives who suggested creation of a working group to report to the SWIFT Board's Banking and Payments Committee.

To fully capitalize on the

LC (MIS)USES

Zambia's US\$1.8 Million Disappearance

Government officials in the African country of Zambia are looking into the disappearance of US\$1.8 million drawn from a US\$1.9 million LC intended to supply raw materials to Nitrogen Chemicals of Zambia (NCZ).

"To the best of my knowledge no one did a dubious thing, there might have been people who are incompetent, but I don't think that there is anyone who stole the money," said Chuulu Kalima, currently suspended from his position as the company's chief executive officer.

According to *The Post* (Zambia) which reported the story, however, Kalima and his finance manager altered the LC reference number after a Zambian government official instructed Zambia National Commercial Bank to cancel the LC. Said the official in a letter to the bank: "You should not allow money to be drawn on this LC neither should you allow any amendments on the LC." The government official reportedly made the request out of concern that agents for the supplier, Fundi Projects and Distributors, failed to meet contractual obligations of the first consignment.

In spite of the government official's instructions, Kalima said cancellation of the LC was not possible because it was irrevocable. After the suspension of Kalima, NCZ management gave authority through "numerous amendments" of the LC for the withdrawal of US\$1.9 million in favor of the supplier.

Kalima admitted having made alterations to the LC in order to allow the suppliers to deliver the raw materials as the situation was becoming desperate. According to documents cited by *The Post*, the suppliers indirectly received US\$ 200,000 as commitment fee while an advance payment of US\$ 796,000 through telegraphic transfer was directly paid to the suppliers. Kalima said although some people could have been concerned money would be lost, he explained that conditions contained in the LC compelled Fundi Distributors' bank, Amalgamated Bank of South Africa Merchant Bank to refund Zambia National Commercial Bank on behalf of NCZ. "If those people fail to supply the raw materials, the money will be refunded by their bank, I don't think there is a question of them running away," Kalima said.

group's insight and approach toward standards development, "SWIFT has temporarily halted all trade XML standardization activities pending the finalization of the trade services strategy", Miserez said.

Banks Penalized from Ssangyong LC Debacle

South Korea's Financial Supervisory Commission (FSC) penalized three banks on 10 January in connection with a Korean company's document-fabrication scandal uncovered in September 2002.

According to the *Korea Times*, the FSC issued a censure-level warning against the five executives of the Pusan (Korea) branches of Chohung Bank, Woori Bank and the Bank of New York. The action follows reprimands against 28 Chohung Bank employees, five bankers at Woori, and three Korea First Bank officials. In addition, officials of Kookmin, Industrial Bank of Korea, and Daegu have been subject to sanctions from regulators.

Korean company Ssangyong Corp., now under creditor-led restructuring, obtained 113.7 billion won (US\$ 94.78 million) over 13 years, starting 1989, with 443 bogus trade documents.

Two officials at the Pusan branch of Ssangyong made 443 forged export LCs and attracted US\$ 94.78 million from domestic and foreign banks, including



Annual Survey of LC Law & Practice

Chohung, Woori, Kookmin, Korea First, Daegu, Industrial Bank of Korea, and the Bank of New York.

Chohung Bank's Pusan branch was found to have extended Ssangyong loans amounting to 67.3 billion won (US\$ 56.1 million), followed by Woori's Pujon-dong branch with 39.3 billion won and Korea First's Sasang branch with 2.5 billion won.

Korea's Financial Supervisory Service (FSS) reportedly has yet to decide whether it will investigate the accounting firms that conducted audits of Ssangyong. The firms are Samil Accounting Corp, the local member firm of PricewaterhouseCoopers, and the now-defunct San Tong & Co.

Oil Refiners Step up LC Use

According to a recent industry report, letters of credit are playing a much bigger role among U.S. oil suppliers seeking ways to assure they will be paid if their buyer goes bankrupt.

As a result of poor refining

The Premier LC Event of the Year is Coming to North America in March!

Click logo for details or see page 20.

margins and a string of bankruptcies among U.S. companies, a greater number of purchasers have turned to banks in order to lock in credit agreements with higher LC amounts, says *Oilgram News*.

To meet the demands of suppliers from all corners of the globe, one oil refiner has had to double the amount of LCs available under its credit facility from US\$50 million to \$25 million based on statistics reported in the article and another refiner has satisfied requests for guaranteed payment through a combination of LCs, early payments, and "netting agreements to sell back crude or product."

Meanwhile, one refiner mentioned in the article has reportedly opted to sign a long-term supply agreement with one provider based on open credit terms instead of augmenting its LC commitments. "Not that we had an issue with (LCs), but we like to preserve liquidity because markets have been extremely volatile," said a representative for the refiner.



Vienna
2003
*Annual Survey
of LC Law & Practice*

FCIB Study Shows Preference for LCs

According to a survey conducted by the Finance Credit and International Business (FCIB), the letter of credit remains the preferred financing vehicle for much of Eastern Europe, the Middle East, and portions of Latin America.

Within Latin America, the FCIB's survey of more than 10,000 trades in 150 countries for the April-June period supported the notion that most international transactions in Mexico, Honduras, the Dominican Republic, Ecuador, and Paraguay are entirely financed entirely through multinational-bank-backed LCs.

Technology Updates

S1 Trade Finance Purchase Order Processing System, software developed through an alliance between S1 Corp. and Bank of America, allows banks to receive purchase order information and LC applications over the Internet from business customers. The system will also help reconcile data from the

The Premier LC Event of the Year is Coming to Europe in March!

Click logo for details or see page 20.

seller's invoice against the buyer's purchase order.

Trade Key Online, a system currently under production at FleetBoston Financial Corp., will enable business customers to view images of trade documents related to commercial LCs and other cross-border transactions, thereby accelerating the clearing of merchandise and the settlement of payments. The system's imaging product was developed with American Management Systems Inc.

International Updates

CHINA: In October 2002, the Industrial and Commercial Bank of China (ICBC) conducted US\$49.98 million in LC business with local Taiwan banks and Taiwan branches of foreign banks according to bank statistics reported in *Asia Pulse*. Earlier in 2002, ICBC received approval of the Peoples Bank of China to establish correspondent relations with Taiwan-based banks.

PHILIPPINES: Aiming to provide medium-sized local commercial banks in the Philippines with access to higher credit limits for the issuance of confirmed LCs, the International Finance Corp. has established a \$ 20 million Philippine Trade Facility. The program is the seventh such facility put in place by IFC since 1997. East West Banking Corp. has been selected as one of the banks chosen to participate in the Philippine Trade Facility.

SINGAPORE: Effective 29 January, Singapore's Terrorism Suppression of Financing Act will permit authorities to target assets like letters of credit, bank credits, cheques, money orders, shares, securities, bonds, and drafts when they are suspected of being used to finance terrorist activities.

THAILAND: Thailand will set up a new Islamic bank in January with 12 branches in its Muslim southern region, according to the *Bangkok Post*. Citing a Thai deputy finance minister, 500 million baht (\$11 million) in start-up capital for the bank will be supplied by the Government Savings Bank and state pension funds. The bank will be permitted to issue LCs and provide other commercial banking services to Muslim and non-Muslim clients. ■



THE READERS SPEAK

Final Collection under an LC

A DCW Reader Writes:

We find ourselves in the middle of a “collection” problem. The details:

- We are Beneficiary of an unconfirmed irrevocable LC issued direct to us, from a European bank
- Collection of 100% of LC is done in two separate submissions of documents.
- We’ve collected 90% of LC under the provisional submission of documents.
- Bank cited “discrepancies” on second set of documents (for 10%)
- We re-submitted documents which, in our opinion, satisfy the discrepancies cited.
- Delivery service confirmed the European bank received documents 16 January at 8:05am.
- To date we have received no response from the bank regarding disposition of the new documents.
- Per UCP500, they have seven working days to communicate the status to us (would be 28 January; 22 January is a holiday in country where bank is located).
- Per UCP500, if they do not respond to us within the seven working days, they cannot cite discrepancies and therefore will have to pay the 10% remaining under the LC
- LC expires 1 February which is also last day to

submit documents

The only documents we re-submitted were the ones involved in the discrepancies. The only changes made to the new documents related only to settling the discrepancies. (The discrepancies were title changes on a couple of documents). Can the bank come up with “new” discrepancies to back us into the expiration date? If the bank does not respond to us within seven working days, how might we proceed? Do situations like this occur?

DCW Responds:

It is, of course, not entirely satisfactory to provide a response without seeing the actual documents and communications but, based on what you have told us, consider the following:

As to the time for examination, you are correct that seven days is the maximum time that a bank has. UCP500 Article 13 provides that the time is “reasonable” not to exceed seven banking days. If less than seven days is reasonable, the time would be shorter. Note that you must exercise care in counting the time. What was the banking day of receipt? If the documents were received after normal banking hours, you would not start counting until the next banking day. You do not start the count until the next banking day following the banking day of receipt. As

you are aware, you can only count banking days and must exclude weekends and holidays.

If the documents were received at 8:05am on 16 January and if Friday is a working day (we are assuming that it is, although it might not be), then Friday is Day 1 and the seventh banking day following the banking day of receipt would be 28 January. We agree that the determination must be made by the end of the 28th and notice must be given promptly thereafter.

As to the ability of the issuer to raise new discrepancies, the UCP is not explicit but we believe that the best interpretation of it (and standard banking practice) is that the issuer is precluded from raising discrepancies that should have been noted in the initial examination. This restricts the discrepancies which may be raised to those contained in the corrected documents, inconsistencies with other documents, and problems which may arise

because of the lapse of time (e.g. staleness). While the UCP is not express on this point, ICC publications have given this interpretation and ISP98 has made it explicit. Of course, there is some scope for discrepancies within this framework and any corrections must be undertaken with the entire presentation in mind.

If there is no decision by the end of the seventh day or if notice is not promptly given, the bank is precluded from asserting any discrepancies in the cured documents under the UCP.

As to how you might proceed, that is more difficult to answer because it involves business judgments and legal advice which we are not in a position to provide because each transaction is unique. On a practical level, you need to be in communication with the bank and to state your position. I suspect that the bank will wait until the last day. Is there something going on with the underlying transaction which would make

the applicant seek to avoid payment? Have you been in contact with the applicant regarding this problem? Have you provided for direct notification of further discrepancies and given instructions regarding the documents in the event that there are such discrepancies? We would suggest that you put a strategy in place to handle such a contingency in the event that it arises that would enable you to make a further cure should the need arise prior to the expiration date. You might attempt to have one of your banks with a strong international department communicate with them. Should there be a dishonor and the credit expire, there are several strategies open to you but for the time being, the best strategy is to try to work matters out with the issuer through communication and pressure.

As to whether such things happen, the answer, unfortunately, is "yes". That is why beneficiaries resort to confirmations as you know.

Missing Back Issues?

Previous issues of *Documentary Credit World* are available for purchase at www.doccreditworld.com or contact *DCW* at 1-301-330-1970.



LITIGATION DIGEST

Hamada v. Far East National Bank 291 F.3d 645 (9th Cir. 2002) [U.S.A.]

- Topics:** Subrogation; Insolvency; Independence
- Type of Lawsuit:** Issuer of LC sought subrogation to the non-dischargeable status accorded Judgment Creditor regarding a judgment whose stay of execution was collateralized by a supersedeas bond that was, in turn, secured by the LC.
- Parties:** Appellant/Debtor/Applicant– James S. Hamada (Counsel: David A. Tilem and Casey White, Tilem & White, LLP.)

Appellee/Issuer– Far East National Bank (Counsel: Adam A. Lewis, Morrison & Foerster)

Beneficiary/Bond Issuer– Fidelity and Deposit Company of Maryland
- Underlying Transaction:** Securing a supersedeas bond pending appeal of a judgment.
- LC:** Standby LC for US\$ 1,200,000. Silent as to governing rules.
- Decision:** The U.S. Circuit Court of Appeals for the Ninth Circuit, Sidney R. Thomas and Johnnie B. Rawlinson, JJ., and Sandra Brown Armstrong, JJ., in an opinion by Thomas, J., Armstrong, J., dissenting, reversed the decision of the U.S. District Court for the Central District of California, Letts, J., who had reversed the decision of the Bankruptcy Court in favor of judgment debtor/applicant.
- Rationale:** The issuer of an LC is not entitled to be subrogated to the right of the beneficiary against third parties.
- Factual Summary:** To induce a bonding company to issue a supersedeas bond staying execution of a judgment against him pending appeal in

an action brought by a former medical partner for breach of fiduciary duty and fraud, Judgment Debtor/Applicant obtained a standby LC from Issuer payable to Beneficiary/Bonding Company.

The Judgment Debtor/Applicant lost the appeal and subsequently filed for bankruptcy protection. Judgment Creditor petitioned the Bankruptcy Court and obtained an order indicating that the award in the judgment was not dischargeable. He then claimed under the bond. Beneficiary/Bond Issuer subsequently drew on the LC, which was honored. In connection with the drawing, Beneficiary assigned its rights against the Judgment Debtor to Issuer. One year later after the time had lapsed to seek discharge of the debt owed it, Issuer sued applicant to be subrogated to the rights of the Judgment Creditor against the Judgment Debtor.

The Bankruptcy Court found that the Issuer was not entitled to have its debt classified as non-dischargeable. The intermediate appellate court reversed on appeal, finding Issuer was entitled to subrogation of the non-dischargeable Judgment Creditor's claims. On appeal, reversed and the judgment against Issuer reinstated.

Legal Analysis:

1. Statutory Subrogation: LC Issuer argued that it was entitled as issuer to statutory subrogation to the rights of the Judgment Creditor under 11 USCA Section 509(a) which provides that “an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.” Issuer contended that it was “liable with the debtor on, or has secured, a claim of a creditor against a debtor.” The court agreed that the bonding company which was beneficiary of the credit was liable with the debtor. It disagreed, however, that the issuer of the LC that provided assurance to the bond issuer that it would be repaid was in the same position. Quoting from *Tudor Dev. Group, Inc. v. United States Fidelity & Guaranty Co.*, 968 F.2d 357, 362 (3d Cir. 1992), it stated that “[t]he key distinction between letters of credit and guarantees is that the issuer’s obligation under a letter of credit is primary whereas a guarantor’s obligation is secondary – the guarantor is *only* obligated to pay if the principal defaults on the debt the principal owes.” The appellate court concluded that “issuers of letters of credit are not ‘liable with’ the debtor on the obligation owed to the

creditor; therefore, letter of credit issuers are not eligible under Section 509 for statutory subrogation in this context,” quoting from *Slamans v. First Nat’l Bank & Trust Co. (In re Slamans)*, 69 F.3d 468, 475-76 (10th Cir. 1995). As distinct from the guarantor, the appellate court suggested that the LC issuer is not liable until after some event occurs and, in paying, it is satisfying its own obligation. Although it noted some case law to the contrary and other case law that was supportive, the court concluded that the issuer of a LC was not entitled to statutory subrogation under Section 509.

2. Equitable Subrogation: LC issuer also argued that it was entitled under equitable principles to be subrogated to the rights of the Beneficiary/Bond Issuer. The appellate court rejected this argument. The court noted that under California law a party seeking subrogation must have paid a debt owed to the creditor to protect its own interest, not have acted as a volunteer, not have been primarily liable for the debt, must have paid the entire debt, and must not work an injustice to other creditors. The court concluded that the issuer had a legal duty to pay the LC and, accordingly, acted for its own interest and not as a volunteer, that it paid the entire debt and

that there was a plausible argument that the equities were in its favor. The court, however, stated that the issuer was primarily liable on the LC and, so, could not qualify as a surety. Quoting the California Supreme Court in *Western Sec. Bank v. Superior Court*, 15 Cal. 4th 232, 62 Cal.Rptr.2d, 253, 933 P.2d 507 (Cal. 1997) (citations omitted), the court noted that “the rules applicable to surety relationships do not govern the relationships between the parties to a letter of credit transaction Nor does the beneficiary of a credit owe any obligations to the issuer; literal compliance with the letter of credit’s terms for payment is all that is required.”

Dissent:

In a closely reasoned dissent, it was urged that the Issuer was entitled to exercise equitable subrogation. In particular, the dissent noted that the majority concluded that the debt was not one for which the subrogee was not primarily liable. As to the “primary” nature of the LC obligation, the Dissent noted that this rationale “derives from authority which erroneously equates an issuer’s primary obligation to pay on a letter of credit with the ‘primarily liable’ inquiry germane to equitable subrogation.” The Dissent suggested that this analysis “collapsed the ‘independent’

liability of the issuer to pay upon demand with ‘primary’ liability required under the doctrine of equitable subrogation.” Describing this analysis as “flawed”, the Dissent stated that “the mere fact that a letter of credit imposed upon the issuer an independent obligation to make payment once a demand is made does not convert the issuer to the ‘primary’ obligor within the meaning of the equitable subrogation doctrine.” It also noted that “to focus solely on [the Insurer’s] obligations attendant to the letter of credit is inconsistent with the purposes of equitable subrogation, which is to place the burden for a loss on the party ultimately responsible for the loss. As such in the content of equitable subrogation, the proper focus should be on which party is primarily liable for payment of the underlying obligation. In this case, the underlying obligation of [the Judgment Debtor] judgment – an obligation [for which the bond was issued] for which [the Judgment Debtor] should bear a primary responsibility. Therefore, it is [the Judgment Debtor] – not [the Issuer] who should be deemed ‘primarily liable’ for satisfaction of the judgment.”

Comment:

1. This decision is another in

the line of cases that over-narrowly construe the notion of subrogation as it applies to letters of credit and, particularly, with respect to insolvency. While there is little that can be said about the policies related to the bankruptcy statute in part because they defer to applicable commercial law, but, there is much to be said about their application to letters of credit.

2. If the statute permits the issuer of a bond or guarantee to be subrogated to the rights of the beneficiary, it is hard to understand why the issuer of a letter of credit would not be in a similar position.

3. The reasons given here, that the LC differs from the guarantee or surtyship undertaking embodied in the bond or guarantee, are not persuasive. There is, of course, a difference between the two. The obligation of the issuer of the LC is abstracted from the defenses that might be available to the guarantor. The reasoning would then seem to be that, because the promise of the guarantor is more porous, it also admits to subrogation to the rights of the principal. Were subrogation to affect adversely the obligations of the issuer of a letter of credit, it should not be permitted. Subrogation, however, only becomes relevant to LCs after

they have been honoured. Subrogation does not impact the finality of the obligation of the issuer to the beneficiary. It provides the issuer with another means of recovery of its funds.

4. By reciting the doctrine of independence, surely the courts do not mean to suggest that they would not enforce an assignment of rights from the beneficiary to the issuer. What is the difference between the enforcement of an assignment and the enforcement of subrogation, whether equitable or statutory? To say that the LC is independent with respect to the beneficiary does not provide an adequate answer for the distinction.

5. In some respects, LCs differ from dependent guarantees. These respects are vital to the nature of the LC. In other respects, however, they are similar. Functionally, they serve the same purpose and can be used interchangeably with one another and are so regarded by the market. In both cases, the entity making the undertaking does not expect to bear the cost of payment but to be reimbursed by the person requesting the undertaking. The difference between them goes to the hardness of their promises to the beneficiary. Once that promise is satisfied, it makes little sense to erect an artificial distinction based on a

doctrinal point that has a different focus unless it affects the money-like character of that right. Since granting an issuer subrogation to the rights of the beneficiary against the applicant or another third party does not affect the nature of the promise to the beneficiary, subrogation should not be impeded by LC policy.

6. In recognizing that the majority and the cases on which it relies confuse and confound the LC doctrine of independence with the equitable doctrine of primary liability regarding subrogation, The Dissent has the better argument. ■



NEWLY DECIDED LC CASES

Hong Kong v. Chan Kin Chung

2002 HKCU LEXIS 1529; [2002] 1131 HKCU 1 [HK]
24 September 2002

Johannesen (In re:)

2002 A.C.W.S.J. LEXIS 4258 [Canada]
16 August 2002

Malaysian International Trading Corp. v. Interamerica Asia Pte Ltd.

2002-4 SLR 537; 2002 SLR LEXIS 156 [Singapore]
30 August 2002

Sirius International Insurance Corp. v. FAI General Insurance Co Ltd.

[2002] 2 All ER (Comm) 745 [England]
23 July 2002

FEATURE

Standard Bank London Ltd. v. Canara Bank [2002] EWHC 1574 (Q.B. Comm. 2002) [England]

- Topics:** Performance Guarantee; Fraud; Sham Contracts; Independence; Disclaimers; Fraudulent Inducement; Rights to Assignee; Assignment; Independent Guarantee; Avoidance
- Type of Lawsuit:** Beneficiary's Assignee sued Issuer for wrongful dishonor.
- Parties:**
- Plaintiff/Assignee of Beneficiary– Standard Bank London, Ltd., as trustee for a syndicate of lending banks (Counsel: J. Higham QC and L. Parsons)
- Defendant/Guarantor– Canara Bank (Counsel: I. Hunter QC and N. Eaton)
- Buyer/Beneficiary– Solo Industries Ltd., a British company
- Seller/Principal– Dravya Industrial Chemicals Ltd, an Indian company
- Underlying Transaction:** Contract for the periodic sale of tin ingots over 36 months.
- Guarantee:** Demand performance guarantee for US\$ 10 million. Not subject to rules of practice.
- Decision:** The Queen's Bench Division (Commercial Court), Moore-Bick, J., ruled in favor of the Assignee.
- Rationale:** A contract that supersedes a sham contract is not necessarily a sham agreement and may give rise to enforceable rights under a related performance guarantee. The transferee of a guarantee is entitled to claim notwithstanding fraud by the first beneficiary.

Factual Summary:

Seller, an Indian company forming part of the Hamco group of companies controlled by B.M. Patel, entered into a contract for the sale of tin ingots to Buyer, an English company trading in metals controlled by Patel's son, Madhav Patel. By the terms of

the contract, Buyer was to provide a US\$10 million pre-export advance to Seller from funds loaned by Standard Bank. The advance was paid through Seller's bank. As collateral for the advance, Seller obtained a US\$10 million demand performance guarantee issued by its bank

(Guarantor) in favor of Buyer, which subsequently assigned it to Standard Bank as security. The pre-export advance was to be repaid in equal installments based on each shipment, and Guarantor's liability under the performance guarantee would be reduced accordingly. Instead of releasing the full

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amount of the pre-export advance to Seller as the parties had contemplated, Guarantor retained the funds as cash collateral for the performance guarantee.

As issued, the independent guarantee contained the following clause:

“Our liability under this guarantee shall not be reduced, discharged or otherwise adversely affected by any invalidity, illegality, unenforceability, irregularity, frustration or discharge by operation of law or any actual or purported illegality of [the purchase contract], or [of] any security held from [Seller/Principal] or any other person in connection with, the purchase contract.”

After 20 months, Seller and Buyer entered into a new supply contract that was to supersede the first. At that time, Guarantor returned to Standard Bank that portion of the pre-export advance that had not yet been released to Seller and repaid. By the terms of the second contract, Buyer provided a US\$20 million pre-export advance to Seller. Buyer financed the advance through a syndicate of lenders led by Standard Bank based on the strength of a pending off-take (re-sale) agreement with a third party purchaser to whom Buyer made spot sales

when Buyer received shipments under the first supply contract. The advance was again routed through Guarantor which provided a new US\$10 million demand performance guarantee in the form of an amendment to the original, which had been assigned to Standard Bank.

Unbeknownst to the financing parties, the first supply contract was a sham, the fruits of which were to have been the pre-export advance funds. Since the funds were retained by Guarantor, the plan was defeated. Evidence showed that Seller, Buyer and other related companies “were engaged in a widespread and systematic fraud by which vast sums of money were obtained from a number of banks throughout India and the Gulf” during the entire period of their contractual relationship, including insurance frauds, shipping frauds and letter of credit frauds. It appeared that the third party purchaser with whom Buyer had the off-take agreement that the lending syndicate had relied on when extending financing, was already engaged in a long-term supply contract with Seller for the purchase of tin. The third party regarded Buyer as an agent of Seller, and was content to accept shipments and shipping documents from either party. The third party supply

contract was ultimately canceled just prior to the institution of the off-take agreement. It did not appear that Seller had had the potential to produce enough tin to satisfy its supply contracts with both the third party supplier and Buyer. Instead, goods that were initially committed to the third party were passed through Buyer, which added its own invoice to the shipping documents and forwarded the documents on to the third party supplier.

The discovery of this fraud was noted by the court:

“The fraud was organised in a complex and highly sophisticated manner, involving the production by Solo UAE and other companies working in conjunction with it of substantial numbers of false documents, such as bills of lading, freight invoices, insurance certificates and correspondence purporting to emanate from a variety of commercial concerns. The scheme took a variety of forms, but one of the principal methods adopted was the so-called ‘import’ fraud. Hamco or one of its associated companies would purport to enter into a contract with a foreign company controlled by Madhav Patel or one of his associates for the purchase

FEATURE

of goods for import into India on cif terms. A letter of credit would be opened under a facility negotiated with a commercial bank, but the contract was sham and no goods were shipped. In order to obtain the funds represented by the letter of credit false documents were created by Solo UAE which were tendered to the bank to obtain payment. Funds representing the face value of the letter of credit thus passed into the hands of Hamco's accomplices. In some cases funds were obtained by discounting bills of exchange. In order to conceal the fact that no goods existed further documents were created to give the appearance that the goods had been lost in transit and that a claim had been made against the cargo insurers. Funds derived from previous fraudulent transactions were remitted to Hamco under the guise of insurance proceeds. Part of the funds was used by Hamco to discharge its liability to the bank and the remainder for its own purposes. Since this scheme required a constant recycling of funds, ever-increasing amounts of money were required to keep the process going. Another aspect of the fraud, though one which is of less immediate significance to

the present action involved the creation of false export contracts under which goods were sold by Solo UAE and other members of the group to companies controlled by Madhav Patel or his associates. Again, false documents were created to give an appearance of genuine export contracts being performed in the usual way. All this activity called for a sophisticated means of creating false documents and an effective system for controlling the flow of funds in order to keep the operation running. That was provided by Solo UAE from its office in Sharjah. Eventually the Indian banking authorities became concerned at the extent of Hamco's apparent failure to file documents evidencing the import of goods as required under Indian legislation. They began to make enquiries and as a result of their investigations the fraud eventually came to light."

After several months of operation, the supply contract collapsed. When Standard Bank made a demand on Guarantor's performance guarantee, Guarantor refused payment, claiming that the underlying contract was a "sham" and that the guarantee had been procured by fraud. Standard Bank subsequently

sued for wrongful dishonor. Judgment for Standard Bank against Guarantor.

Legal Analysis:

1. Fraud: Guarantor argued that the first contract was a sham designed to net Seller the US\$10 million pre-export advance. When Guarantor retained the funds as collateral for the performance guarantee, Buyer and Seller were forced to obtain a greater pre-export advance that was secured by a lesser performance guarantee. It contended:

"[T]he guarantee was void by reason of the failure of an implied condition precedent that the contract in support of which it was issued was a genuine and valid contract which the parties intended to perform in accordance with its terms; alternatively, that it had been induced to enter into the guarantee by an implied representation to that effect on the part of [Seller] and that since the contract was in fact a sham it was entitled to avoid the guarantee on the grounds of fraud."

The court, however, was not prepared to rule that the second supply contract was necessarily a sham agreement merely because the first was undoubtedly so. While the court seemed to believe that Buyer obtained financing for

the advance to Seller through fraudulent conduct, the off-take agreement with the third party required that legitimate goods be produced and delivered to Buyer for resale to Seller. Despite mounting financial pressures on the parties resulting from their other commercial frauds, the court noted that an active mining and mineral trading business was still in place and that 5,670 metric tons of tin had been exported from India from 1996-1998. Even though the court recognized that a primary motive behind the refinancing of the second Seller supply contract was to “obtain further funds to prop up the group generally rather than to invest in [Seller’s] mining project” it did not necessarily follow that the contract was a sham. The court stated that “it is ... important that evidence of dishonesty in other transactions, even on the scale demonstrated in this case, should not lead the court to find dishonesty where none in fact exists.”

Since Guarantor’s entire defense under the performance guarantee was that the underlying contract was a sham, its defense failed, and the court ordered recovery in favor of Standard Bank for US\$10 million.

2. Independence:

Guarantor argued that it was an express condition of the

guarantee that there be a genuine contract in place between the principal and the beneficiary. The appellate court examined the terms of the guarantee and noted that:

“It is well established that demand guarantees of this kind are normally intended to operate as autonomous contracts in the sense that the guarantor’s obligation to pay is not linked to the underlying transaction but depends only on the making of a demand which conforms to the requirements of the guarantee.”

It also noted that the guarantee contained a provision that expressly referred to the underlying contract. The court stated that:

“It is apparent from this clause that the parties to the guarantee had turned their minds to the possibility that the purchase contract might fail for various reasons, some within and some outside the control of the parties to it. More importantly, perhaps, they contemplated the possibility that the contract might be altogether invalid or unenforceable as a matter of law. They agreed, however, that in none of these cases should [Guarantor’s] liability under the guarantee

be affected. This is the strongest of indications not simply that the guarantee was intended to be independent of the purchase contract, but that it was intended to be independent of the legal efficacy of the purchase contract. The fact that [Guarantor’s] liability was to remain unaffected by the invalidity, illegality or unenforceability of the purchase contract is a clear indication that the existence of unenforceability of the purchase contract is a clear indication that the existence of enforceable obligations between [Seller] and [Buyer] under the purchase contract was not in any sense a prerequisite of its liability under the guarantee.”

Noting that the purpose of the contract was to secure a pre-export advance, the court observed that the performance or validity of the contract itself would not be relevant.

“Its purpose was to ensure that if the purchase contract failed for whatever reason the lender had a means of recovering the loan, albeit only in part. It is difficult to see why the position should be different in a case where the purchase contract, although apparently genuine, is nothing but a sham.”

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3. Assignment: The court recognized that the beneficiary of the guarantee, the Seller, could not make a demand on the guarantee “not because the claim would fall outside the terms the guarantee, but because it was itself a party to the fraud” but went on to state “[b]ut I see no reason why Standard as an assignee having no knowledge of the fraud could not do so.” Although recognizing that the position of an assignee would normally not be better than that of the assignor, the court stated that “but as a matter of principle it is open to the parties to provide by contract for the protection of assignees”. After being advised of the assignment, Guarantor amended the guarantee to the effect that:

“Re: All of the assignor’s rights, title and interest in a guarantee given by [Guarantor] to [Buyer] ... dated 13th May 1996 and amendment dated 16th December 1997 (the Assigned Property).

We hereby acknowledge receipt of a notice of assignment made between [Buyer] (Assignor) and Standard Bank London Limited (Assignee) pursuant to which, inter alia, the Assignor assigned the Assigned Property to the Assignee.

1. We agree to pay all amounts payable by us pursuant to any provision of or otherwise in relation to the Assigned Property to the Assignee and to only accept instructions or demands in respect of the Assigned Property from the Assignee until the Assignee notifies us to the contrary.

2. ...

3. We agree with the Assignee that all sums payable by us to the Assignee pursuant to the Assigned Property shall be paid in full without any set-off or counterclaim and free and clear of all deductions or withholding on account of taxes.

All other terms and conditions contained in our letter of guarantee ... dated 13th May and amendment to the subject guarantee dated 16th December 1997 remain unchanged.”

Standard Bank argued that this communication had the effect of establishing a direct obligation running to it and was not merely an acknowledgment of the assignment. The court opined that there was nothing to suggest that there was a novation in favor of the assignee, but stated that: “The real question, however, is

whether they intended the assignment to be on terms that [Guarantor] should not be entitled to rely on defences that would have been available against [Buyer].”

Considering the terms of the amendment, the court concluded that “Reading the amendment as a whole I am satisfied that it was the parties’ intention that Standard should take the benefit of the assignment free of cross-claims of any kind, including any claim by [Guarantor] to avoid the guarantee on the grounds of fraud on the part of [Seller] and [Buyer].”

4. Disclaimer; Independence; Rights of Assignee: Although the issue was moot, the court felt

obligated to offer its opinion as to what the legal effect of the guarantee *would* have been had the second supply contract between Buyer and Seller been a sham. Guarantor had argued that it was an express or implied condition of the guarantee that that a genuine contract existed between Seller and Buyer.

The court noted that there was an expectation between the Principal/Seller and the beneficiary, Solo, that the guarantee would be assigned to Standard. The court noted a letter that “not only shows that there had been a request that the guarantee should

contain a clause permitting its assignment, but that the bank was aware that if the guarantee were capable of being assigned it might become an essential part of the security supporting the financing of the underlying

was intended to operate autonomously of the underlying contract. While the court noted that Buyer itself could not have made a valid demand, itself a party to the fraud, Standard Bank would not have been so prevented,

The transferee's rights were independent of any fraud on the part of the original beneficiary of the guarantee.

transaction.”

The court disagreed, noting that the language of the guarantee and the relationship of the parties indicated that the independence of the guarantee should be preserved. Looking to a disclaimer clause in the guarantee, it appeared to the court that the parties had contemplated that the underlying contract might fail for various reasons, including unenforceability as a matter of law, but that the guarantee was intended to be effective independent of the efficacy of the underlying contract.

Furthermore, given that the loan agreement between Standard Bank and Buyer required that the performance guarantee be assignable and Guarantor knew that the guarantee might become an “essential part of the security supporting the financing of the underlying transaction”, it was more likely that the guarantee

since it was an assignee with no knowledge of the fraud.

5. Fraudulent Inducement; Avoidance: Guarantor argued, that if the underlying contract was a sham, it was induced by fraud to issue the guarantee and was entitled as against Buyer and any subsequent assignees to avoid the obligation. While the court noted this was the traditional rule, the parties were free to contract for the protection of assignees and had in fact done so here. When notified of the assignment by Buyer to Standard, Guarantor amended the guarantee to recognize Standard as the assignee. The amendment indicated that the parties intended for Standard to take assignment of the guarantee free of defenses that Guarantor might have asserted against Buyer, and therefore Guarantor would not have been entitled to avoid the guarantee under the guise of fraud.

Comment:

1. Although the court uses the term “assign” to describe the relationship between the guarantor and Standard Bank, it will be apparent when considering the amendment to the guarantee that it was transferred to Standard Bank and that Standard Bank became the guarantor. The paucity of such transactions in guarantee practice and the utter failure of the URDG to even address them does not help. Nonetheless, by analogy to standby practice, it should be apparent that by virtue of the amendment the transferee had the right to draw on the guarantee and, as such, its rights were independent of any fraud on the part of the original beneficiary of the guarantee. Such an explanation is far more satisfactory that the notion that abstraction of this sort could be created by contract and is far more in alignment with international banking practice.

2. Understood in light of an action by the transferee of an independent guarantee on the guarantee, the decision makes perfect sense and should not have required the almost 40 pages that were devoted to it.

3. Nor would it matter whether or not the second contract also was a “sham”. The only question would be whether the transferee (“assignee”) of the guarantee acted in good faith. ■



2003 Annual Survey of Letter of Credit Law & Practice

Where the LC World Comes Together ... at 5 Locations Around the Globe!

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Related Event:
19/3 ISBP session!

2003 Annual Survey Program

Requested
CDCS Credits: 12

Day 1

8:30-9:00 Check-in and Registration

9:00-10:30 Hot Topics

As Determined by Attendees and Industry Professionals.
Visit www.iiblp.org to Vote. Likely Topics Include:

- Statements Regarding Waiver in Notices of Refusal
- Enron Fallout for LCs
- Lost Originals: Beneficiary Requests
- USA PATRIOT Act
- Non-Documentary Conditions
- Applicant-Controlled Documents

10:30-11:00 Break

11:00-11:30 Welcome Speech

Vienna – Andre Horovitz,
Member of the Managing Board of Erste Bank

11:30-12:30 International Standard Banking Practices

12:30-1:30 Lunch

1:30-2:30 Reactions to Recent ICC Opinions

ICC Technical Adviser Gary Collyer

2:30-3:00 The Impact of eCommerce on LC Practice

The eUCP, SWIFT, Bolero, and Other Developments

3:00-3:30 Break

**3:30-4:30 Troublesome LC Practice Trends, Positive Picks,
and UCP Topics**

Based on Poll of the Participants. Likely Topics Include:

- Non-Bank Issuance of LCs
- Doc. Prep. by Banks and Other Third-Parties' Negotiation
- Transport Documents
- Interpretation of Ambiguous LCs

4:30-6:00 UCP Revision

Open Forum: Participants Speak and the Panel Responds

6:00 Cocktail Reception and Dinner

Day 2

8:30-9:30 Overview and Update: The LC Year in Review

Brief Summaries of Critical Aspects of LC Practice

- Certification
- UN Convention
- URDG
- URC
- Local Issues
- Regulatory Developments
- Security Interests in LCs
- DC-PRO
- Frauds & Scams
- Bank to Bank Reimbursement
- SWIFT Issues
- LC Assignments

9:30-10:00 Break

10:00-12:00 Major LC Cases

Critiqued and Discussed to Tell You What You Need to Know

- *Voest Alpine* (sufficiency of refusal)
- *CIC v. China Merchants Bank* (sufficiency of refusal)
- *Montrod* (innocent beneficiary may avoid forged document defense)
- *Mid-America Tire v PTZ* (fraud injunction against issuer)
- *Intrinsic Values* (foreign applicant fraud injunction against issuer and then confirmer)
- *Commco* (bankrupt applicant fraud injunction against issuer)
- *IMC Canada Limited v. Enron Canada Corp.*
- *Nissho Iwai Europe v. Korea First Bank*

12:00-1:30 Lunch

1:30-3:00 Current Issues in Standby Practice

Possible Topics: Using ISP98, Automatic Reinstatement, Inoperative LCs, and Other Pertinent Hot Topics

3:00-4:30 The LC Open Forum

Participants can Comment or Ask Questions of the Entire Panel of Experts

*Final program subject to change. For further details & hotel information, visit www.iiblp.org

Sue Auerbach

Michael Evan Avidon

James G. Barnes

Johan Bergamin

Alan Bloodgood

Prof. James E. Byrne

Neil Chantry

Gary Collyer

Invited* Annual Survey Speakers Include:

Warren Dennis

Marten de Pagter

Carlo DiNinni

Prof. E.P. Ellinger

Roger Fayers

Clyde Fletcher

Dieter Frühwirth* See IIBLP website for current status.

Irmgard Griss

Gerold Herrmann

Heinz Hertl

George Hisert

Jin Saibo

Roger Jones

Ole Malmqvist

Vincent Maulella

Karl Mayrl

Paul Miserez

Dennis Noah

Vincent O'Brien

Bryan O'Sullivan

Jorge Luis Riva

Neville Sawyer

Jernej Sekolec

Don Smith

Bernhard Spalt

Dan Taylor

Steve Thompson

Dennis Wood

Alexander Zelenov



STATISTICS

U.S. BANKS

DCW reports the most current data on top US commercial banks in terms of LC activity. Net Financial LCs and Net Performance LCs reflect net after subtracting respective amounts conveyed to others. Net LCs reflect totals for Net Financial LCs, Net Performance LCs and Commercial & Similar LCs. Note: Numbers are in US\$ 1,000s.

3RD QUARTER 2002

Institution	City	State	Net Financial Standby LCs	Net Performance Standby LCs	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
JPMORGAN CHASE BK	NEW YORK	NY	35,845,000	4,413,000	40,258,000	3,035,000	43,293,000
CITIBANK NA	NEW YORK	NY	28,697,000	4,995,000	33,692,000	5,188,000	38,880,000
BANK OF AMER NA	CHARLOTTE	NC	28,377,000	3,584,000	31,961,000	4,184,000	36,145,000
WACHOVIA BK NA	CHARLOTTE	NC	17,239,000	3,304,000	20,543,000	1,546,000	22,089,000
FLEET NA BK	PROVIDENCE	RI	7,787,000	3,899,000	11,686,000	2,225,000	13,911,000
BANK ONE NA	CHICAGO	IL	10,237,000	2,229,000	12,466,000	619,000	13,085,000
BANK OF NY	NEW YORK	NY	8,353,185	650,911	9,004,096	1,124,819	10,128,915
U S BK NA	CINCINNATI	OH	8,570,738	323,345	8,894,083	551,438	9,445,521
SUNTRUST BK	ATLANTA	GA	8,196,547	388,631	8,585,178	147,274	8,732,452
COMERICA BK	DETROIT	MI	5,604,488	375,496	5,979,984	153,184	6,133,168
HSBC BK USA	BUFFALO	NY	1,199,587	3,181,219	4,380,806	709,623	5,090,429
WELLS FARGO BK NA	SAN FRAN.	CA	1,197,000	3,121,000	4,318,000	385,000	4,703,000
PNC BK NA	PITTSBURGH	PA	2,959,408	861,281	3,820,689	154,559	3,975,248
LASALLE BK NA	CHICAGO	IL	3,363,732	221,315	3,585,047	214,087	3,799,134
KEYBANK NA	CLEVELAND	OH	1,676,389	1,721,800	3,398,189	91,148	3,489,337
STATE STREET B&TC	BOSTON	MA	2,865,949	6,015	2,871,964	119,751	2,991,715
UNION BK OF CA NA	SAN FRAN.	CA	2,099,912	283,797	2,383,709	254,760	2,638,469
AMSOUTH BK	BIRMINGHAM	AL	2,138,288	261,604	2,399,892	60,826	2,460,718
NORTHERN TC	CHICAGO	IL	2,202,252	75,926	2,278,178	51,587	2,329,765
FIFTH THIRD BK	CINCINNATI	OH	2,067,293	96,057	2,163,350	11,977	2,175,327
MELLON BK NA	PITTSBURGH	PA	1,256,978	739,074	1,996,052	41,406	2,037,458
HARRIS T&SB	CHICAGO	IL	1,567,124	209,057	1,776,181	41,160	1,817,341
NATIONAL CITY BK	CLEVELAND	OH	1,470,174	213,916	1,684,090	99,529	1,783,619
ALLFIRST BK	BALTIMORE	MD	1,236,365	362,993	1,599,358	52,684	1,652,042
COMERICA BK CA	SAN JOSE	CA	1,350,546	191,359	1,541,905	56,477	1,598,382
AMERICAN NB&TC CHICAGO	CHICAGO	IL	1,522,333	864	1,523,197	0	1,523,197
BANK ONE NA	COLUMBUS	OH	1,167,000	117,000	1,284,000	0	1,284,000
SOUTHTRUST BK	BIRMINGHAM	AL	1,194,550	33,121	1,227,671	53,714	1,281,385
DEUTSCHE BK TC AMERICAS	NEW YORK	NY	1,163,000	115,000	1,278,000	0	1,278,000
STANDARD FED BK NA	TROY	MI	907,438	96,133	1,003,571	15,010	1,018,581
M&I MARSHALL & ILSLEY BK	MILWAUKEE	WI	888,746	87,098	975,844	50,664	1,026,508
REGIONS BK	BIRMINGHAM	AL	987,274	56,579	1,043,853	30,866	1,074,719
HUNTINGTON NB	COLUMBUS	OH	779,620	100,145	879,765	139,232	1,018,997
NATIONAL CITY BK MI/IL	BANNOCKBURN	IL	867,351	4,021	871,372	4,400	875,772
MANUFACTURERS & TRADERS TC	BUFFALO	NY	720,963	102,599	823,562	29,807	853,369
COLUMBUS B&TC	COLUMBUS	GA	825,215	17,478	842,693	2,428	845,121
MERRILL LYNCH BK USA	SALT LAKE CITY	UT	721,799	110,515	832,314	6,334	838,648
WELLS FARGO BK TX NA	SAN ANTONIO	TX	115,910	390,345	506,255	11,121	517,376
FIFTH THIRD BK	GRAND RAPIDS	MI	394,280	372,557	766,837	8,965	775,802
BRANCH BKG&TC	WINSTON-SALEM	NC	743,612	0	743,612	26,019	769,631
BANK OF TOKYO-MITSUBISHI TC	NEW YORK	NY	649,401	15,390	664,791	1,090	665,881
CITIZENS BK OF MA	BOSTON	MA	529,065	30,416	559,481	31,590	591,071
BANK OF THE WEST	SAN FRAN.	CA	450,197	84,049	534,246	67,768	602,014
SILICON VALLEY BK	SANTA CLARA	CA	572,414	7,256	579,670	5,497	585,167
UNION PLANTERS BK NA	MEMPHIS	TN	349,871	54,854	404,725	171,754	576,479

STATISTICS

Institution	City	State	Net Financial Standby LCs	Net Performance Standby LCs	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
BANK ONE KY NA	LOUISVILLE	KY	448,475	51,024	499,499	0	499,499
COMERICA BK-TX	DALLAS	TX	432,610	16,477	449,087	6,255	455,342
FIRST TENNESSEE BK NA MMPHS	MEMPHIS	TN	432,935	33,674	466,609	10,587	477,196
HIBERNIA NB	NEW ORLEANS	LA	374,185	23,303	397,488	2,560	400,048
NATIONAL CITY BK OF PA	PITTSBURGH	PA	314,573	38,602	353,175	5,164	358,339
NATIONAL CITY BK	LOUISVILLE	KY	290,642	5,918	296,560	14,702	311,262
GREENPOINT BK	NEW YORK	NY	364,381	0	364,381	0	364,381
CITIZENS BK OF PA	PHILADELPHIA	PA	241,880	54,643	296,523	2,040	298,563
FULTON BK	LANCASTER	PA	278,336	59,946	338,282	667	338,949
CITY NB	BEVERLY HILLS	CA	284,241	4,062	288,303	40,973	329,276
COMMERCE BK NA	KANSAS CITY	MO	218,439	64,957	283,396	35,435	318,831
FIFTH THIRD BK IN	INDIANAPOLIS	IN	293,562	15,831	309,393	5,451	314,844
ISRAEL DISCOUNT BK OF NY	NEW YORK	NY	125,749	2,094	127,843	183,521	311,364
SKY BK	SALINEVILLE	OH	223,457	83,798	307,255	3,104	310,359
FIRST HAWAIIAN BK	HONOLULU	HI	224,911	55,245	280,156	9,279	289,435
EAST-WEST BK	SAN MARINO	CA	278,373	0	278,373	21,363	299,736
WELLS FARGO HSBC TRADE BK	SAN FRAN.	CA	16,110	25,205	41,315	222,962	264,277
PROVIDENT BK	CINCINNATI	OH	148,568	128,264	276,832	10,850	287,682
FIRST CMRL BK	BIRMINGHAM	AL	201,803	9,099	210,902	5,396	216,298
COMMERCE BK NA	CHERRY HILL	NJ	204,976	64,564	269,540	3,987	273,527
BRANCH B&TC OF VA	RICHMOND	VA	250,754	0	250,754	11,644	262,398
ASSOCIATED BK NA	GREEN BAY	WI	134,658	58,977	193,635	58,105	251,740
WELLS FARGO BK MN NA	MINNEAPOLIS	MN	6,002	189,558	195,560	24,571	220,131
FIRSTMERIT BK NA	AKRON	OH	220,168	10,589	230,757	2,115	232,872
BANK OF OK NA	TULSA	OK	205,010	15,586	220,596	2,490	223,086
BANKNORTH NA	PORTLAND	ME	195,137	47,092	242,229	1,832	244,061
WHITNEY NB	NEW ORLEANS	LA	172,192	20,868	193,060	5,325	198,385
COMPASS BK	BIRMINGHAM	AL	193,867	22,481	216,348	15,419	231,767
BANK LEUMI USA	NEW YORK	NY	106,459	10,000	116,459	59,371	175,830
BANK ONE IL NA	SPRINGFIELD	IL	172,029	16,342	188,371	0	188,371
COLONIAL BK	MONTGOMERY	AL	198,329	23,668	221,997	6,073	228,070
INDUSTRIAL BK OF JAPAN TC	NEW YORK	NY	204,297	0	204,297	2,917	207,214
NATIONAL CITY BK IN	INDIANAPOLIS	IN	166,509	19,165	185,674	4,308	189,982
WILMINGTON TC	WILMINGTON	DE	90	201,790	201,880	2,509	204,389
MORGAN STANLEY DEAN WIT.	W. VALLEY CITY	UT	203,121	0	203,121	0	203,121
VALLEY NB	PASSAIC	NJ	142,754	26,041	168,795	32,242	201,037
S&T BK	INDIANA	PA	158,181	42,473	200,654	0	200,654
BANCO SANTANDER PR	HATO REY	PR	184,144	0	184,144	12,390	196,534
FIFTH THIRD BK KY	LOUISVILLE	KY	179,036	9,655	188,691	2,912	191,603
AMCORE BK NA	ROCKFORD	IL	161,445	22,740	184,185	1,711	185,896
UMB BK NA	KANSAS CITY	MO	169,963	0	169,963	7,040	177,003
SOUTHWEST BK OF TX NA	HOUSTON	TX	127,527	24,831	152,358	20,389	172,747
RBC CENTURA BK	ROCKY MOUNT	NC	42,222	82,658	124,880	3,116	127,996
FIFTH THIRD BK NORTH. KY	COVINGTON	KY	155,034	8,361	163,395	0	163,395
MERCANTILE-SAFE DEPOSIT	BALTIMORE	MD	0	150,297	150,297	3,300	153,597
FROST NB	SAN ANTONIO	TX	140,802	9,423	150,225	2,905	153,130
NATIONAL BK OF COMMERCE	MEMPHIS	TN	65,140	83,166	148,306	1,998	150,304
CITIZENS BK	FLINT	MI	31,922	5,635	37,557	112,238	149,795
NORTHERN TR BK OF FLORIDA	MIAMI	FL	111,608	5,730	117,338	23,944	141,282
SAFRA NB OF NY	NEW YORK	NY	133,654	0	133,654	6,339	139,993
ZIONS FIRST NB	SALT LAKE CITY	UT	87,770	34,992	122,762	6,980	129,742
FIRSTBANK PR	SAN JUAN	PR	27,526	0	27,526	102,055	129,581
NORTH FORK BK	MATTITUCK	NY	69,537	29,775	99,312	21,084	120,396
WELLS FARGO BANK WEST NA	DENVER	CO	59,625	56,623	116,248	3,976	120,224
1ST SOURCE BK	SOUTH BEND	IN	82,479	35,580	118,059	872	118,931

Institution	City	State	Net Financial Standby LCs	Net Performance Standby LCs	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
BANCO POPULAR DE PR	SAN JUAN	PR	36,000	28,000	64,000	16,000	80,000
CALIFORNIA B&TC	SAN DIEGO	CA	83,802	22,582	106,384	7,955	114,339
FIRST BK	SAINT LOUIS	MO	88,605	8,699	97,304	16,658	113,962
GENERAL BK	LOS ANGELES	CA	39,166	11,045	50,211	62,296	112,507
WELLS FARGO BK IA NA	DES MOINES	IA	130	111,931	112,061	429	112,490
OLD NB	EVANSVILLE	IN	48,197	29,632	77,829	33,426	111,255
FIRST NB OF OMAHA	OMAHA	NE	30,416	46,363	76,779	13,561	90,340
RIGGS BK NA	MCLEAN	VA	55,722	4,763	60,485	42,365	102,850
WELLS FARGO BK ARIZONA	PHOENIX	AZ	32,745	65,168	97,913	164	98,077
CITY NB OF FLORIDA	MIAMI	FL	64,413	28,352	92,765	4,827	97,592
WASHINGTON MUTUAL BK	SEATTLE	WA	64,000	8,000	72,000	23,000	95,000
PNC BK DE	WILMINGTON	DE	49,893	24,631	74,524	159	74,683
BRANCH BKG&TC OF SC	GREENVILLE	SC	85,855	0	85,855	2,327	88,182
BANK OF HAWAII	HONOLULU	HI	62,914	8,795	71,709	16,252	87,961
CHARTER ONE BK NA	CLEVELAND	OH	86,033	0	86,033	0	86,033
JOHNSON BK	RACINE	WI	45,540	20,718	66,258	615	66,873
PACIFIC NORTHWEST BK	SEATTLE	WA	51,762	11,692	63,454	16,330	79,784
CITIZENS BK RI	PROVIDENCE	RI	68,393	8,294	76,687	2,770	79,457
CIB BK	HILLSIDE	IL	68,619	10,138	78,757	0	78,757
BANK ONE WV NA	HUNTINGTON	WV	65,614	12,564	78,178	0	78,178
CHITTENDEN TC	BURLINGTON	VT	74,940	1,496	76,436	781	77,217
HUDSON UNITED BK	MAHWAH	NJ	16,472	35,684	52,156	14,593	66,749
FIRST MIDWEST BK	BUFFALO GR.	IL	66,270	7,666	73,936	1,379	75,315
WELLS FARGO BK ND NA	FARGO	ND	10,444	22,102	32,546	0	32,546
TRUSTMARK NB	JACKSON	MS	8,276	39,503	47,779	21,343	69,122
CITIZENS BK NH	MANCHESTER	NH	56,405	5,825	62,230	7,320	69,550
FIRST B&TC	SAN FRAN.	CA	47,377	765	48,142	19,719	67,861
NATIONAL BK OF SC	SUMTER	SC	60,515	6,427	66,942	0	66,942
BANK ONE OKLAHOMA NA	OKLA. CITY	OK	44,254	14,148	58,402	0	58,402
FIRST INTRST BK	BILLINGS	MT	17,962	36,845	54,807	9,977	64,784
UNITED BK	PARKERSBURG	WV	27,941	12,155	40,096	2,608	42,704
WELLS FARGO BK IN NA	FORT WAYNE	IN	20,322	43,146	63,468	0	63,468
COLE TAYLOR BK	WHEELING	IL	24,221	36,886	61,107	1,484	62,591
WELLS FARGO BK NORTHWEST	OGDEN	UT	19,949	41,264	61,213	1,158	62,371
OCEAN BK	MIAMI	FL	30,815	14,636	45,451	16,597	62,048
TEXAS ST BK	MCALLEN	TX	21,898	34,544	56,442	4,143	60,585
INTERNATIONAL BK OF CMRC	LAREDO	TX	42,998	13,088	56,086	3,742	59,828
CAROLINA FIRST BK	GREENVILLE	SC	39,101	16,040	55,141	4,034	59,175
INTRUST BK NA	WICHITA	KS	56,698	818	57,516	1,634	59,150
BANK TX NA	DALLAS	TX	18,993	35,728	54,721	783	55,504
BANCORPSOUTH BK	TUPELO	MS	44,428	12,881	57,309	210	57,519
WASHINGTON TR BK	SPOKANE	WA	31,104	23,775	54,879	475	55,354
VECTRA BK COLORADO NA	FARMINGTON	NM	33,364	9,355	42,719	10,732	53,451
ATLANTIC BK OF NY	NEW YORK	NY	1,851	27,797	29,648	22,326	51,974
MELLON 1ST BUS BK	LOS ANGELES	CA	38,442	5,706	44,148	6,233	50,381
GUARANTY B&TC	DENVER	CO	37,139	11,114	48,253	257	48,510
BANK OF NORTH GEORGIA	ALPHARETTA	GA	48,129	0	48,129	0	48,129
UNITED CMRL BK	SAN FRAN.	CA	26,144	0	26,144	21,693	47,837
BANK OF LANCASTER CTY NA	STRASBURG	PA	13,261	34,206	47,467	0	47,467
WELLS FARGO BK NM NA	ALBUQUERQUE	NM	2,721	44,717	47,438	0	47,438
FIRST IN BK NA	INDIANAPOLIS	IN	46,086	1,074	47,160	0	47,160
UNITED STATES TC OF NY	NEW YORK	NY	45,347	1,651	46,998	0	46,998
PROVIDENT BK OF MD	BALTIMORE	MD	0	44,691	44,691	1,454	46,145
PACIFIC CAP BK NA	SANTA BARBARA	CA	0	44,980	44,980	361	45,341
CATHAY BK	LOS ANGELES	CA	15,042	1,009	16,051	29,241	45,292

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Institution	City	State	Net Financial Standby LCs	Net Performance Standby LCs	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
FIRST AMER BK	CRPNTRSVILLE	IL	32,450	11,991	44,441	771	45,212
STERLING NB	NEW YORK	NY	20,331	9,062	29,393	14,474	43,867
WELLS FARGO BK NE NA	OMAHA	NE	20,517	13,539	34,056	3,142	37,198
UNION ST BK	NANUET	NY	0	43,585	43,585	0	43,585
BLUE BALL NB	BLUE BALL	PA	16,396	25,651	42,047	164	42,211
FARMERS & MRCH BK	LONG BEACH	CA	41,304	0	41,304	115	41,419
BREMER BK NA	SO. ST. PAUL	MN	3,267	12,601	15,868	25,401	41,269
FIRST NB OF PA	GREENVILLE	PA	40,986	0	40,986	0	40,986
WELLS FARGO BK SD NA	SIOUX FALLS	SD	20,443	19,777	40,220	525	40,745
F&M B&TC	TULSA	OK	40,270	25	40,295	412	40,707
MERCANTILE NB IN	HAMMOND	IN	25,453	1,498	26,951	0	26,951
MERCANTILE BK WEST MI	GRAND RAPIDS	MI	35,114	5,197	40,311	0	40,311
BANCO BILBAO VIZCAYA ARGENT.	SAN JUAN	PR	3,683	0	3,683	36,591	40,274
UNITED BK	FAIRFAX	VA	2,654	35,955	38,609	502	39,111
WELLS FARGO BK MT NA	BILLINGS	MT	5,817	30,229	36,046	0	36,046
SOUTH HOLLAND T&SB	SO. HOLLAND	IL	18,816	0	18,816	0	18,816
PRIVATEBANK & TC	CHICAGO	IL	36,608	0	36,608	21	36,629
NATIONAL PENN BK	BOYERTOWN	PA	26,239	9,209	35,448	975	36,423
UNION SAFE DEP BK	STOCKTON	CA	25,567	10,472	36,039	0	36,039
MID-STATE B&TC	ARROYO GR.	CA	555	35,097	35,652	52	35,704
WELLS FARGO BK ALASKA NA	ANCHORAGE	AK	103	19,997	20,100	1,595	21,695
FIFTH THIRD BK FLORIDA	NAPLES	FL	14,134	723	14,857	0	14,857
AMALGAMATED BK	NEW YORK	NY	34,055	311	34,366	0	34,366
ASSOCIATED BK MN NA	MINNEAPOLIS	MN	18,540	14,701	33,241	929	34,170
REPUBLIC BK	LANSING	MI	34,117	0	34,117	0	34,117
FIRST FNCL BK NA	HAMILTON	OH	34,029	0	34,029	0	34,029
MELLON UNITED NB	MIAMI	FL	17,751	919	18,670	14,788	33,458
HANMI BK	LOS ANGELES	CA	5,910	14	5,924	27,037	32,961
FIRST COMMONWEALTH BK	INDIANA	PA	24,969	7,878	32,847	20	32,867
BANK OF AMER FORK	AMER. FORK	UT	375	31,621	31,996	0	31,996
NARA BK NA	LOS ANGELES	CA	4,378	498	4,876	26,848	31,724
WEST SUBURBAN BK	LOMBARD	IL	2,056	26,597	28,653	2,986	31,639
REPUBLIC B&TC	LOUISVILLE	KY	28,126	3,479	31,605	0	31,605
SUN NB	VINELAND	NJ	0	31,534	31,534	0	31,534
HABIB AMER BK	NEW YORK	NY	6,908	0	6,908	24,235	31,143
AMERICAN T&SB	DUBUQUE	IA	24,426	0	24,426	0	24,426
BANK CALUMET NA	HAMMOND	IN	26,852	4,121	30,973	0	30,973
CHINATRUST BK USA	TORRANCE	CA	400	7,409	7,809	23,116	30,925
PARK BK	MILWAUKEE	WI	27,172	2,593	29,765	1,063	30,828
VANGUARD B&TC	VALPARAISO	FL	29,208	1,557	30,765	0	30,765
FIRST VA BK	FALLS CHURCH	VA	577	27,206	27,783	2,749	30,532
COMMUNITY FIRST NB	FARGO	ND	9,647	10,779	20,426	9,709	30,135
NBT BK NA	NORWICH	NY	11,009	10,783	21,792	8,313	30,105
FARMERS FIRST BK	LITITZ	PA	15,829	14,191	30,020	0	30,020
COMMERCEBANK NA	CORAL GABLES	FL	0	16,259	16,259	13,700	29,959
FIRST ESSEX BK	LAWRENCE	MA	24,196	5,524	29,720	0	29,720
SUSQUEHANNA BK	BALTIMORE	MD	9,531	18,089	27,620	0	27,620
WESBANCO BK	WHEELING	WV	21,897	7,692	29,589	0	29,589
PEOPLES BK	BRIDGEPORT	CT	17,565	9,321	26,886	2,339	29,225
PACIFIC UNION BK	LOS ANGELES	CA	1,160	19,979	21,139	7,902	29,041
BANCO POPULAR NA	NEW YORK	NY	27,795	0	27,795	893	28,688
NATIONAL EXCHANGE B&T	FOND DU LAC	WI	24,600	0	24,600	0	24,600
FIRST CMRL BK OF HUNTS.	HUNTSVILLE	AL	27,405	0	27,405	0	27,405
FIRST-CITIZENS B&TC	RALEIGH	NC	21,051	4,098	25,149	2,238	27,387
CENTRAL PACIFIC BK	HONOLULU	HI	23,979	0	23,979	2,948	26,927

Institution	City	State	Net Financial Standby LCs	Net Performance Standby LCs	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
STERLING BK	MONTGOMERY	AL	0	1,662	1,662	0	1,662
FAR EAST NB	LOS ANGELES	CA	4,575	5,011	9,586	16,931	26,517
AMERICAN BUS BK NA	DENVER	CO	1,294	14,884	16,178	10,331	26,509
TEXAS CAP BK NA	DALLAS	TX	20,554	4,487	25,041	225	25,266
CITIZENS BK OF CT	NEW LONDON	CT	18,369	5,075	23,444	2,523	25,967
SOUTHERN PACIFIC BK	LOS ANGELES	CA	25,718	0	25,718	23	25,741
MARQUETTE BK	CHICAGO	IL	7,583	17,977	25,560	0	25,560
INDEPENDENT BK	BAY CITY	MI	13,596	0	13,596	0	13,596
WILMINGTON TR OF PA	VILLANOVA	PA	15	25,374	25,389	0	25,389
FIRST NB OF FLORIDA	NAPLES	FL	25,349	0	25,349	0	25,349
FIRST NB OF JASPER	JASPER	AL	25,195	0	25,195	0	25,195
NORTHERN TR BK OF TX NA	DALLAS	TX	24,855	10	24,865	0	24,865
BANCFIRST	OKLA. CITY	OK	24,487	0	24,487	336	24,823
FIRST NAT CMNTY BK	DUNMORE	PA	1,449	23,248	24,697	0	24,697
BANKERS TC NA	DES MOINES	IA	23,015	36	23,051	735	23,786
TCF NB	MINNEAPOLIS	MN	17,717	5,703	23,420	0	23,420
NATIONAL BK OF ARIZONA	TUCSON	AZ	4,625	19,046	23,671	0	23,671
WELLS FARGO FNCL BK	SIOUX FALLS	SD	23,600	0	23,600	0	23,600
IRWIN UNION B&TC	COLUMBUS	IN	12,724	10,467	23,191	0	23,191
GOLD BK	LEAWOOD	KS	21,130	58	21,188	1,998	23,186
FARMERS & MECHANICS BK	FREDERICK	MD	0	22,881	22,881	0	22,881
SANDY SPRING BK	OLNEY	MD	18,507	4,237	22,744	9	22,753
CORUS BK NA	CHICAGO	IL	22,750	0	22,750	0	22,750
COMMUNITY TR BK NA	PIKEVILLE	KY	15,428	7,300	22,728	0	22,728
NLSB	NEW LENOX	IL	0	22,699	22,699	0	22,699
STERLING BK	HOUSTON	TX	22,691	0	22,691	0	22,691
LAREDO NB	LAREDO	TX	15,688	3,470	19,158	3,269	22,427
LAFAYETTE AMBASSADOR BK	EASTON	PA	0	22,070	22,070	0	22,070
MB FNCL BK NA	CHICAGO	IL	10,513	8,315	18,828	3,220	22,048
WELLS FARGO BK NEVADA NA	LAS VEGAS	NV	387	21,189	21,576	112	21,688
UNIZAN BANK NA	CANTON	OH	20,465	1,186	21,651	0	21,651
LOS ALAMOS NB	LOS ALAMOS	NM	3,576	17,899	21,475	0	21,475
ARVEST BK	FAYETTEVILLE	AR	10,031	11,265	21,296	0	21,296
COMMUNITY BKS	MILLERSBURG	PA	1,670	19,564	21,234	0	21,234
TRUST CO OF NJ	JERSEY CITY	NJ	1,936	18,584	20,520	558	21,078
INTERNATIONAL BK OF MIAMI	CORAL GABLES	FL	0	13,720	13,720	5,410	19,130
NEVADA ST BK	LAS VEGAS	NV	18,196	1,617	19,813	1,037	20,850
COLUMBIA BK	COLUMBIA	MD	1,354	19,411	20,765	0	20,765
CALIFORNIA CTR BK	LOS ANGELES	CA	3,356	210	3,566	16,943	20,509
NATIONAL BK OF CMRC	BIRMINGHAM	AL	19,336	1,055	20,391	0	20,391
WESTAMERICA BK	SAN RAFAEL	CA	19,547	0	19,547	788	20,335
MANUFACTURERS BK	LOS ANGELES	CA	11,122	0	11,122	9,093	20,215
BSB B&TC	BINGHAMTON	NY	0	19,939	19,939	0	19,939
COMMUNITY BK NA	CANTON	NY	19,302	0	19,302	0	19,302
HILLCREST BK	OVERLAND PK.	KS	18,046	1,249	19,295	0	19,295
FIRST BK	LEXINGTON	TN	18,839	0	18,839	0	18,839
SIGNATURE BK	NEW YORK	NY	0	15,729	15,729	2,911	18,640
YARDVILLE NB	YARDVILLE	NJ	1,407	14,865	16,272	2,358	18,630
R-G PREMIER BK OF PR	SAN JUAN	PR	18,463	0	18,463	0	18,463
COLUMBIA ST BK	TACOMA	WA	7,598	9,471	17,069	1,211	18,280
HARRIS BK JOLIET NA	JOLIET	IL	3,207	14,900	18,107	0	18,107
PULLMAN B&TC	CHICAGO	IL	5,195	1,710	6,905	11,200	18,105
SECOND NB	WARREN	OH	18,045	0	18,045	0	18,045
ENTERPRISE BK	CLAYTON	MO	7,325	10,275	17,600	275	17,875
SAN DIEGO NB	SAN DIEGO	CA	6,102	11,750	17,852	0	17,852

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Institution	City	State	Net Financial Standby LCs	Net Performance Standby LCs	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
UNION NB&TC SOUDERTON	SOUDERTON	PA	9,968	7,638	17,606	0	17,606
STATE BK COUNTRYSIDE	COUNTRYSIDE	IL	0	17,527	17,527	0	17,527
FIRST NB OF ST LOUIS	CLAYTON	MO	17,470	0	17,470	0	17,470
ROSLYN SVG BK	ROSLYN	NY	17,455	0	17,455	0	17,455
FIRST AMER BK SSB	BRYAN	TX	0	17,350	17,350	0	17,350
MONROE BK & TR	MONROE	MI	17,177	0	17,177	0	17,177
HUMBOLDT BK	EUREKA	CA	0	17,162	17,162	0	17,162
MARINE BK	WAUWATOSA	WI	5,629	7,730	13,359	47	13,406
MOODY NB	GALVESTON	TX	16,368	0	16,368	0	16,368
OAK BROOK BK	OAK BROOK	IL	7,777	8,583	16,360	0	16,360
FRONTIER BK	EVERETT	WA	2,250	13,976	16,226	60	16,286
HILLTOP NB	CASPER	WY	16,186	0	16,186	0	16,186
FRANKLIN NB	FRANKLIN	TN	3,028	13,152	16,180	0	16,180
ALLEGIANC BK	SAINT LOUIS	MO	8,937	7,201	16,138	0	16,138
UNITEDTRUST BK	BRIDGEWATER	NJ	4,116	11,966	16,082	0	16,082
SUBURBAN B&TC	ELMHURST	IL	13,917	2,141	16,058	0	16,058
COASTAL BANC SSB	HOUSTON	TX	10,058	5,917	15,975	0	15,975
COMMERCE BK PA NA	PHILADELPHIA	PA	7,453	8,277	15,730	0	15,730
COMMUNITY BK OF FLORIDA	HOMESTEAD	FL	0	15,571	15,571	73	15,644
U S TC NA	LOS ANGELES	CA	10,617	4,818	15,435	0	15,435
BESSEMER TC NA	NEW YORK	NY	15,421	0	15,421	0	15,421
TOMPKINS TC	ITHACA	NY	15,292	0	15,292	0	15,292
BANK OF PENSACOLA	PENSACOLA	FL	15,004	242	15,246	0	15,246
WELLS FARGO BK IL NA	GALESBURG	IL	1,079	9,846	10,925	0	10,925
STANDARD B&TC	HICKORY HILLS	IL	1,105	13,923	15,028	0	15,028
BAY VIEW BK NA	SAN MATEO	CA	15,007	0	15,007	0	15,007
PNB FNCL BK	LUBBOCK	TX	14,991	0	14,991	0	14,991
TROY SVG BK	TROY	NY	1,235	13,644	14,879	0	14,879
BUSEY BK	URBANA	IL	12,126	2,578	14,704	0	14,704
CENTRAL IL BK	CHAMPAIGN	IL	7,273	7,215	14,488	25	14,513
CITIZENS B&TC OF W. GEORGIA	CARROLLTON	GA	13,464	667	14,131	381	14,512
KEY B&TC	OWINGS MILLS	MD	0	11,320	11,320	3,108	14,428
CITIZENS BUS BK	ONTARIO	CA	13,540	10	13,550	691	14,241
HANCOCK BK OF LOUISIANA	BATON ROUGE	LA	14,174	0	14,174	0	14,174
BANK OF ALBUQUERQUE NA	ALBUQUERQUE	NM	1,146	250	1,396	423	1,819
TOTALS			217,213,334	41,878,170	259,091,504	23,737,282	282,828,786

15 of the Top 25 Banks were Represented at Last Year's Annual Survey of LC Law & Practice ...

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STATISTICS

U.S. BRANCHES/AGENCIES OF NON-U.S. BANKS

DCW reports the most current data on top US branches and agencies of non-US banks in terms of LC activity. Net Standby LCs reflect net after subtracting respective amounts conveyed to others. Net LCs reflect totals for Net Standby LCs and Commercial & Similar LCs. Note: Numbers are in US\$ 1,000s.

3RD QUARTER 2002

Institution Branch	City	State	Standby LCs to US addresses	Standby LCs to Non-US addresses	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
DEXIA CR LOCAL NY AGY	NEW YORK	NY	14,613,183	100,532	13,974,653	0	13,974,653
BNP PARIBAS NY BR	NEW YORK	NY	3,156,755	591,714	3,664,205	9,246,392	12,910,597
BAYERISCHE HYPO VEREINS NY BR	NEW YORK	NY	6,108,494	2,353,224	7,594,322	8,977	7,603,299
ABN-AMRO BK NV CHICAGO BR	CHICAGO	IL	8,923,924	807,852	7,173,308	331,171	7,504,479
COMMERZBANK AG NY BR	RYE	NY	5,160,415	184,363	4,762,551	265,658	5,028,209
BAYERISCHE LANDESBANK NY BR	NEW YORK	NY	5,127,039	346,490	4,879,237	0	4,879,237
DEUTSCHE BK AG NY BR	NEW YORK	NY	4,007,825	617,322	4,467,685	267,274	4,734,959
WESTLB AG NY BR	NEW YORK	NY	5,695,691	298,685	4,324,857	0	4,324,857
LANDESBANK HESSEN-THURIN NY BR	NEW YORK	NY	4,020,558	589,317	3,951,837	0	3,951,837
MIZUHO CORPORATE PARK AVE BR	NEW YORK	NY	3,625,889	107,837	3,686,382	57,416	3,743,798
DANSKE BK A/S NY BR	NEW YORK	NY	2,322,412	1,102,461	3,424,873	0	3,424,873
SUMITOMO MITSUI BKG NY BR	NEW YORK	NY	2,104,762	1,070,152	3,113,873	79,831	3,193,704
SOCIETE GENERALE NY BR	NEW YORK	NY	3,022,309	67,725	2,692,489	379,578	3,072,067
BANK OF TOKYO-MITSUBISHI NY BR	NEW YORK	NY	2,368,965	609,769	2,768,016	158,166	2,926,182
ROYAL BK OF CANADA NY BR	NEW YORK	NY	2,183,293	708,859	2,823,802	0	2,823,802
LLOYDS TSB BK PLC NY BR	NEW YORK	NY	2,591,024	170,294	2,761,318	0	2,761,318
STANDARD CHARTERED BK NY BR	NEW YORK	NY	1,521,669	1,222,864	2,539,533	166,667	2,706,200
BARCLAYS BK PLC NY BR	NEW YORK	NY	7,160,875	2,574,495	2,705,256	0	2,705,256
CREDIT SUISSE FIRST BOST NY BR	NEW YORK	NY	2,903,778	46,687	2,682,207	1,945	2,684,152
SVENSKA HANDELSBANKEN AB NY BR	NEW YORK	NY	1,934,361	476,359	2,410,720	248,815	2,659,535
ALLIED IRISH BKS NY BR	NEW YORK	NY	2,351,030	0	2,315,868	458	2,316,326
KBC BANK NV NY BR	NEW YORK	NY	2,484,379	10,341	2,204,344	270	2,204,614
SANPAOLO IMI SPA NY BR	NEW YORK	NY	2,454,172	50,846	2,195,885	2,063	2,197,948
BANK OF NOVA SCOTIA NY AGY	NEW YORK	NY	1,969,987	67,134	1,858,086	104,896	1,962,982
MIZUHO CORPORATE BK NY BR	NEW YORK	NY	1,896,071	184,498	1,896,697	0	1,896,697
BANK OF MONTREAL CHICAGO BR	CHICAGO	IL	1,240,784	755,647	1,781,527	47,463	1,828,990
CREDIT LYONNAIS NY BR	NEW YORK	NY	2,020,248	242,401	1,725,303	1,081	1,726,384
AUSTRALIA & NEW ZEALAND NY BR	NEW YORK	NY	1,607,619	58,907	1,666,526	28,213	1,694,739
INTESABCI SPA NY BR	NEW YORK	NY	1,225,770	254,505	1,480,275	20,037	1,500,312
MIZUHO CORPORATE BK BRDWAY BR	NEW YORK	NY	1,271,903	227,716	1,361,109	21,162	1,382,271
BANCO SANTANDER CENTRAL NY BR	NEW YORK	NY	1,446,102	454,993	1,344,095	16,734	1,360,829
BANK OF NOVA SCOTIA ATL AGY	ATLANTA	GA	1,301,401	89,416	1,179,357	82,493	1,261,850
BNP PARIBAS SF BR	SAN FRAN	CA	1,776,085	5,269	1,247,865	1,564	1,249,429
RABOBANK NEDERLAND NY BR	NEW YORK	NY	1,085,364	559,161	1,172,254	57,637	1,229,891
LANDESBANK BADENWURT NY BR	NEW YORK	NY	1,189,031	0	1,189,031	0	1,189,031
NATIONAL AUSTRALIA BK NY BR	NEW YORK	NY	1,138,370	5,142	1,143,512	0	1,143,512
BNP PARIBAS HOUSTON AGY	HOUSTON	TX	1,054,839	0	1,030,952	0	1,030,952
ROYAL BK OF SCOTLAND PLC NY BR	NEW YORK	NY	675,278	217,757	892,285	0	892,285
BANK TOKYO-MITSUBISHI LA BR	L. ANGELES	CA	1,023,472	0	828,072	15,179	843,251
DRESDNER BK AG NY BR	NEW YORK	NY	1,017,308	179,439	812,105	4,103	816,208
UFJ BK NY BR	NEW YORK	NY	593,653	118,827	707,370	83,874	791,244
UBS AG FIFTH AVE BR	NEW YORK	NY	12,731	733,137	745,868	409	746,277
UBS AG CT BR	STAMFORD	CT	913,430	107,955	665,868	190	666,058
NORDDEUTSCHE LANDESBANK NY BR	NEW YORK	NY	559,373	55,373	614,746	9,956	624,702
SOCIETE GENERALE DALLAS AGY	DALLAS	TX	668,730	0	612,559	7,125	619,684

Institution Branch	City	State	Standby LCs to US addresses	Standby LCs to Non-US addresses	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
CANADIAN IMPERIAL BK NY AGY	NEW YORK	NY	950,573	43,259	616,078	0	616,078
NATEXIS BANQUES POP NY BR	NEW YORK	NY	249,120	334,277	583,397	9,963	593,360
INTERNATIONAL CMRL BK NY AGY	NEW YORK	NY	15,423	7,542	22,965	546,399	569,364
UFJ BK LA BR	L. ANGELES	CA	98,301	459,773	558,074	11,207	569,281
CREDIT INDUS ET CMRL NY BR	NEW YORK	NY	544,181	0	544,181	0	544,181
BANK OF NOVA SCOTIA SF AGY	SAN FRAN	CA	750,066	15,047	496,347	334	496,681
BK TOKYO-MITSU CHICAGO BR	CHICAGO	IL	480,548	0	477,217	15,673	492,890
BANCO BILBAO VIZCAYA ARG NY BR	NEW YORK	NY	37,329	441,965	479,294	321	479,615
BNP PARIBAS CHICAGO BR	CHICAGO	IL	518,695	38,997	471,079	0	471,079
DZ BK AG DEUTSCHE ZENTRA NY BR	NEW YORK	NY	469,107	1,431	470,538	0	470,538
UNICREDITO ITALI NY BR	NEW YORK	NY	438,998	25,873	464,871	3,305	468,176
BANCA NAZIONALE DEL LAVO NY BR	NEW YORK	NY	357,649	66,608	421,742	563	422,305
INTERNATIONAL CMRL BK CH LA BR	L. ANGELES	CA	13,000	0	13,000	400,682	413,682
BANCO ESPANOL CREDITO NY BR	NEW YORK	NY	154,808	224,423	379,231	119	379,350
CREDIT AGRICOLE INDOSUEZ NY BR	NEW YORK	NY	438,863	10,526	354,389	18,746	373,135
BANK OF SCOTLAND NY BR	NEW YORK	NY	432,747	11,065	353,769	0	353,769
ERSTE BK OESTERREICHISCH NY BR	NEW YORK	NY	300,000	0	300,000	0	300,000
NATIONAL WESTMINSTER BK NY BR	NEW YORK	NY	338,402	103,188	295,991	0	295,991
ARAB BK PLC NY BR	NEW YORK	NY	254,060	9,135	263,195	31,278	294,473
DEXIA BK BELGIUM SA NY BR	NEW YORK	NY	255,635	53,777	282,524	0	282,524
BANCA POPOLARE DI MILANO NY BR	NEW YORK	NY	279,476	0	279,476	0	279,476
GULF INTL BK NY BR	NEW YORK	NY	258,515	0	258,515	20,001	278,516
MITSUBISHI TR & BKG CORP NY BR	NEW YORK	NY	251,121	40	251,161	0	251,161
BANK TOKYO-MITSUBISHI HOU AGY	HOUSTON	TX	209,788	4,315	214,103	26,906	241,009
BANK TOKYO-MITSUB PORTLAND BR	PORTLAND	OR	100,918	0	92,838	142,216	235,054
SUMITOMO TR BKG NY BR	NEW YORK	NY	152,273	75,905	228,178	0	228,178
DRESDNER BK LATEINAMER MIA AGY	MIAMI	FL	82,381	56,104	138,485	80,288	218,773
RIYAD BK HOUSTON AGY	HOUSTON	TX	216,853	0	216,853	1,268	218,121
BANK HAPOALIM BM NY BR	NEW YORK	NY	180,018	11,444	191,462	7,956	199,418
CREDIT AGRICOLE INDSZ CHGO BR	CHICAGO	IL	407,599	0	194,775	1,296	196,071
T C ZIRAAT BANKASI NY BR	NEW YORK	NY	167,265	17,539	184,804	6,412	191,216
BANCA MONTE DEI PASCHI NY BR	NEW YORK	NY	144,540	31,976	170,413	55	170,468
SHIZUOKA BK LA BR	L. ANGELES	CA	160,000	0	160,000	0	160,000
DEN NORSE BK ASA NY BR	NEW YORK	NY	116,593	32,405	148,998	0	148,998
ARAB BKG CORP NY BR	NEW YORK	NY	1,525	102,358	103,883	32,435	136,318
BANK NOVA SCOTIA PORTLAND BR	PORTLAND	OR	153,473	350	129,594	362	129,956
NORDEA BK FINLAND PLC NY BR	NEW YORK	NY	35,791	64,414	100,205	12,318	112,523
NORINCHUKIN BK NY BR	NEW YORK	NY	90,236	22,069	112,305	0	112,305
BANK HAPOALIM BM PLAZA BR	NEW YORK	NY	99,781	1,515	100,546	192	100,738
BANK OF CHINA NY BR	NEW YORK	NY	78,051	5,264	83,315	12,204	95,519
MIZUHO CORPORATE BK LA AGY	L. ANGELES	CA	75,898	0	75,898	12,382	88,280
SHINHAN BK NY BR	NEW YORK	NY	54,726	0	54,726	32,500	87,226
ROYAL BK OF CANADA MIAMI AGY	MIAMI	FL	0	80,669	80,669	5,874	86,543
COMMONWEALTH BK OF AUS NY BR	NEW YORK	NY	113,681	0	85,298	0	85,298
CAIXA GERAL DE DEPOSITOS NY BR	NEW YORK	NY	32,802	48,584	81,386	513	81,899
KOREA EXCH BK NY BR	NEW YORK	NY	7,983	0	7,983	64,777	72,760
NATIONAL BK OF CANADA NY BR	NEW YORK	NY	54,930	13,580	68,149	952	69,101
BANK AUSTRIA AG GREENWICH BR	GREENWICH	CT	59,337	688	60,025	5,002	65,027
SHANGHAI CMRL BK NY BR	NEW YORK	NY	2,829	0	2,829	59,319	62,148
BANCA DI ROMA CHICAGO BR	CHICAGO	IL	53,136	7,669	60,805	0	60,805
NATIONAL BK EGYPT NY BR	NEW YORK	NY	18,442	16,250	34,692	23,451	58,143
BANCA DI ROMA NY BR	NEW YORK	NY	56,883	0	56,883	815	57,698
NATIONAL BK KUWAIT SAK NY BR	NEW YORK	NY	44,204	750	44,954	11,605	56,559
BANCO IND DE VENEZUELA NY AGY	NEW YORK	NY	0	518	518	55,418	55,936
WESTPAC BKG CORP NY BR	NEW YORK	NY	55,896	0	55,896	0	55,896

Institution Branch	City	State	Standby LCs to US addresses	Standby LCs to Non-US addresses	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
BANCO ITAU SA NY BR	NEW YORK	NY	0	50,008	50,008	0	50,008
WOORI BK LA AGY	L. ANGELES	CA	1,560	0	1,560	48,214	49,774
KOREA EXCH BK LA AGY	L. ANGELES	CA	1,500	19,217	20,717	25,419	46,136
NATIONAL BK OF PAKISTAN NY BR	NEW YORK	NY	2,500	0	2,500	42,985	45,485
LLOYDS TSB BK PLC MIAMI AGY	MIAMI	FL	0	19,629	19,629	25,586	45,215
KOREA DEVELOPMENT BK NY BR	NEW YORK	NY	38,626	0	38,626	5,463	44,089
BANK OF BARODA NY BR	NEW YORK	NY	2,926	33,750	36,676	6,784	43,460
BANCO NACIONAL MEXICO NY AGY	NEW YORK	NY	0	43,032	43,032	0	43,032
BANCA ANTONIANA POP VEN NY BR	NEW YORK	NY	36,076	0	36,076	2,139	38,215
SHIZUOKA BK NY AGY	NEW YORK	NY	37,571	0	37,571	0	37,571
BANCO LATINOAMERICANO NY AGY	NEW YORK	NY	0	2,241	2,241	34,696	36,937
SWEDBANK FORENINGSSPARB NY BR	NEW YORK	NY	36,666	0	36,666	0	36,666
BANCO INTERNACIONAL DE MIA AGY	C. GABLES	FL	335	6,361	6,696	29,244	35,940
BANK HAPOALIM BM CHICAGO BR	CHICAGO	IL	34,494	0	34,494	0	34,494
BANQUE SUDAMERIS MIAMI AGY	MIAMI	FL	13,375	19,261	32,636	752	33,388
BANCO DE SABADELL SA MIAMI AGY	MIAMI	FL	0	26,182	26,182	6,862	33,044
CHANG HWA CMRL BK NY BR	NEW YORK	NY	32,541	0	32,541	122	32,663
UNITED MIZRAHI BK LA BR	L. ANGELES	CA	0	0	0	32,421	32,421
UNITED OVERSEAS BK NY AGY	NEW YORK	NY	556	28,953	29,509	26	29,535
CHOHUNG BK NY BR	NEW YORK	NY	13,285	477	13,762	15,563	29,325
DOHA BK NY BR	NEW YORK	NY	0	204	204	28,922	29,126
BANK OF EAST ASIA NY BR	NEW YORK	NY	7,148	0	7,148	21,736	28,884
DEVELOPMENT BK SINGAPOR LA AGY	L. ANGELES	CA	12,640	6,150	18,790	9,483	28,273
BANCO BILBAO VIZCAYA MIA AGY	MIAMI	FL	14	22,914	22,928	2,680	25,608
MASHREQBANK PSC NY BR	NEW YORK	NY	0	5,438	5,438	20,162	25,600
CITIC KA WAH NY BR	NEW YORK	NY	20,408	0	20,408	3,003	23,411
LAND BK OF TAIWAN LA BR	L. ANGELES	CA	18,195	0	18,195	4,131	22,326
BANCA DI ROMA SPA SF AGY	SAN FRAN	CA	21,436	0	21,436	0	21,436
ABN AMRO BK NV MIAMI AGY	MIAMI	FL	186	20,589	20,775	519	21,294
HUA NAN CMRL BK NY AGY	NEW YORK	NY	20,833	0	20,833	0	20,833
SHANGHAI CMRL BK LA BR	ALHAMBRA	CA	8,475	0	8,475	12,312	20,787
GUNMA BANK NY BR	NEW YORK	NY	20,467	0	20,467	0	20,467
BANK TOKYO-MITSUB SF BR	SAN FRAN	CA	20,074	0	18,650	1,658	20,308
BANK OF MONTREAL NY BR	NEW YORK	NY	0	0	0	19,590	19,590
CHIAO TUNG BK NY AGY	NEW YORK	NY	4,663	0	4,663	14,387	19,050
BANCO COMERCIAL PORTUG NY BR	NEW YORK	NY	2,641	14,620	17,261	1,417	18,678
FIRST CMRL BK LA BR	L. ANGELES	CA	6,504	0	6,504	11,329	17,833
BANK OF COMMUNICATIONS NY BR	NEW YORK	NY	8,617	0	8,617	8,849	17,466
BANCO DE CHILE MIAMI AGY	MIAMI	FL	0	16,535	16,535	473	17,008
BANK JULIUS BAER & CO NY BR	NEW YORK	NY	16,009	917	16,926	0	16,926
BANCO DE CHILE NY BR	NEW YORK	NY	3,000	12,908	15,908	702	16,610
BANCO DO BRASIL SA NY BR	NEW YORK	NY	0	25	25	16,446	16,471
HSBC BK CANADA SEATTLE BR	SEATTLE	WA	15,926	360	16,286	0	16,286
OVERSEA-CHINES BKG CORP NY AGY	NEW YORK	NY	6,678	0	6,678	9,508	16,186
BANCO SANTANDER CENTRA MIA AGY	MIAMI	FL	0	15,000	15,000	0	15,000
BANCO ATLANTICO SA MIAMI AGY	MIAMI	FL	19	6,876	6,895	6,992	13,887
ABU DHABI INTL BK WA BR	WASH.	DC	13,546	0	13,546	0	13,546
UBS AG CHICAGO BR	CHICAGO	IL	20,256	0	12,334	0	12,334
TAIPEIBANK CO LA BR	L. ANGELES	CA	12,250	0	12,250	0	12,250
SEOULBANK NY AGY	NEW YORK	NY	12,114	0	12,114	0	12,114
BANCO PROVINCIA BUENOS NY AGY	NEW YORK	NY	0	11,679	11,679	0	11,679
MALAYAN BKG BERHAD NY BR	NEW YORK	NY	2,956	0	2,956	8,515	11,471
CAJA DE AHORROS DE VAL MIA AGY	MIAMI	FL	10,315	482	10,797	0	10,797
INDUSTRIAL BK OF KOREA NY BR	NEW YORK	NY	1,798	180	1,978	8,482	10,460
E SUN CMRL BK LA BR	INDUSTRY	CA	7,728	0	7,728	2,188	9,916

Institution Branch	City	State	Standby LCs to US addresses	Standby LCs to Non-US addresses	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
BANK OF CHINA LA BR	L. ANGELES	CA	6,223	0	6,223	3,335	9,558
BANCO DO BRASIL SA MIAMI AGY	MIAMI	FL	2,359	210	2,569	6,910	9,479
BANK SINOPAC LA BR	L. ANGELES	CA	3,430	0	3,430	5,974	9,404
STATE BANK INDIA CHICAGO BR	CHICAGO	IL	4,555	0	3,898	5,404	9,302
ABN0AMRO BK NV NY BR	NEW YORK	NY	8,561	0	8,561	0	8,561
BANK OF INDIA NY BR	NEW YORK	NY	5,518	0	5,518	2,882	8,400
BNP PARIBAS MIAMI AGY	MIAMI	FL	0	7,250	7,250	724	7,974
WOORI BK NY AGY	NEW YORK	NY	0	0	0	7,866	7,866
HSBC BK CANADA PORTLAND BR	PORTLAND	OR	2,624	0	2,624	4,685	7,309
SHANGHAI CMRL BK SF BR	SAN FRAN	CA	108	0	108	6,857	6,965
KOREA EXCH BK BROADWAY BR	NEW YORK	NY	2,411	0	2,411	4,392	6,803
FIRST CMRL BK NY AGY	NEW YORK	NY	1,400	0	1,400	5,394	6,794
NATIONAL BK OF PAKISTAN WA BR	WASH.	DC	0	0	0	6,721	6,721
CITIC KA WAH BK LA BR	ALHAMBRA	CA	5,000	0	5,000	1,653	6,653
CHIAO TUNG BK SAN JOSE BR	SAN JOSE	CA	5,479	0	5,479	736	6,215
BANK OF EAST ASIA MIDTOWN BR	NEW YORK	NY	567	0	567	5,540	6,107
BANCO MERCANT CORAL GABLES AGY	C. GABLES	FL	45	2,000	2,045	3,114	5,159
HUA NAN CMRL BK LA BR	L. ANGELES	CA	2,540	0	2,540	2,241	4,781
STATE BK OF INDIA NY BR	NEW YORK	NY	1,996	60	1,915	2,844	4,759
BANK POLSKA KASA OPIEKI NY BR	NEW YORK	NY	25,560	0	4,010	76	4,086
TURKIYE VAKIFLAR BK NY BR	NEW YORK	NY	1,612	345	1,957	1,379	3,336
BANK OF EAST ASIA LA BR	L. ANGELES	CA	0	0	0	3,202	3,202
INTERNATIONAL CMRL BK CHGO BR	CHICAGO	IL	700	0	700	2,461	3,161
BANCO MERCANTIL BANCO NY AGY	NEW YORK	NY	0	1,620	1,620	1,100	2,720
CORP BANCA CA BANCO UNIV NY BR	NEW YORK	NY	0	2,503	2,503	0	2,503
BANCO BRADESCO SA NY BR	NEW YORK	NY	42	1,057	1,099	1,237	2,336
CHANG HWA CMRL BK LA BR	L. ANGELES	CA	0	0	0	2,279	2,279
UNITED OVERSEAS BK LA AGY	L. ANGELES	CA	209	0	209	2,045	2,254
CHINATRUST COMMERCIAL BK NY BR	NEW YORK	NY	2,222	0	2,222	0	2,222
OVERSEA-CHINESE BKG LA AGY	L. ANGELES	CA	2,217	0	2,217	0	2,217
KOREA EXCH BK CHICAGO BR	CHICAGO	IL	674	0	674	1,536	2,210
INTESABCI SPA LA AGY	L. ANGELES	CA	2,188	0	2,188	0	2,188
PHILIPPINE NB LA BR	L. ANGELES	CA	0	0	0	2,181	2,181
UNITED BK AFRICA NY BR	NEW YORK	NY	0	2,097	2,097	57	2,154
BANCO IND DE VENEZUELA MIA AGY	MIAMI	FL	50	0	50	1,721	1,771
BANCO DE CREDITO E INV MIA BR	MIAMI	FL	0	1,150	1,150	615	1,765
STATE BK OF INDIA LA AGY	L. ANGELES	CA	7	0	7	1,573	1,580
HABIB BK NY BR	NEW YORK	NY	131	0	131	1,167	1,298
BANGKOK BK PUBLIC CO NY BR	NEW YORK	NY	550	0	550	537	1,087
BANCO NACION ARGENTINA NY BR	NEW YORK	NY	0	1,025	1,025	57	1,082
FARMERS BK CHINA SEATTLE BR	SEATTLE	WA	0	0	0	1,070	1,070
WING LUNG BK LA BR	L. ANGELES	CA	50	0	50	968	1,018
NANYANG CMRL BK SF BR	SAN FRAN	CA	630	0	630	348	978
BANCO REPUBLICA ORIENTAL NY BR	NEW YORK	NY	0	338	338	640	978
PT BK CENTRAL ASIA NY BR	NEW YORK	NY	0	0	0	883	883
BANCO DEL PICHINCHA CA MIA AGY	MIAMI	FL	0	646	646	186	832
KOOKMIN BK NY BR	NEW YORK	NY	0	0	0	809	809
UNITED WORLD CHINESE BK LA AGY	L. ANGELES	CA	697	0	697	0	697
UBS AG MIAMI AGY	MIAMI	FL	0	682	682	0	682
CAIXA DE AFORROS MIAMI AGY	MIAMI	FL	450	0	450	0	450
BANCO GALICIA Y BUENOS NY BR	NEW YORK	NY	438	0	438	0	438
BANK LEUMI LE-ISRAEL BM NY AGY	NEW YORK	NY	413	0	413	0	413
LIU CHONG HING BK SF BR	SAN FRAN	CA	0	0	0	256	256
PHILIPPINE NB NY BR	NEW YORK	NY	37	0	37	204	241
METROPOLITAN B&TC NY BR	NEW YORK	NY	0	0	0	234	234

Institution Branch	City	State	Standby LCs to US addresses	Standby LCs to Non-US addresses	Net Standby LCs	Commercial & Similar LCs	Net Letters of Credit
BANCO DE BOGOTA SA MIAMI AGY	MIAMI	FL	0	220	220	0	220
BANCO DE LA NACION ARG MIA AGY	MIAMI	FL	0	196	196	0	196
ATLANTIC SCTY BK MIAMI AGY	MIAMI	FL	0	117	117	75	192
P T BK NEGARA INDO PER NY AGY	NEW YORK	NY	0	0	0	185	185
STATE BK OF INDIA BROADWAY BR	NEW YORK	NY	0	0	0	167	167
CREDIT LYONNAIS MIAMI AGY	MIAMI	FL	0	136	136	0	136
BANK OF TAIWAN LA BR	L. ANGELES	CA	100	0	100	0	100
BANCO COMERCIAL PORT MIA AGY	MIAMI	FL	0	100	100	0	100
BANK OF INDIA SF AGY	SAN FRAN	CA	20	0	20	76	96
P T BK RAKYAT INDONESIA NY AGY	NEW YORK	NY	0	0	0	55	55
KRUNG THAI BK LA AGY	L. ANGELES	CA	0	0	0	41	41
FARMERS BK OF CHINA LA BR	L. ANGELES	CA	38	0	38	0	38
BANCO DE CRE CORAL GABLES AGY	C. GABLES	FL	0	0	0	13	13
KOREA EXCH BK SEATTLE BR	SEATTLE	WA	0	0	0	7	7
TOTALS			133,083,558	21,272,497	132,063,989	13,968,376	146,032,365

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TEXT



[DCW's Textual Digests provide the texts of important documents in a condensed version. Summations focus on matters of importance to the letter of credit community and omit procedural analysis, irrelevant citations, and edit redundant or unessential data so as to provide the essence of the text for condensed reading. The deletion of significant portions of text is marked by [...] but not the deletion of citations, footnotes, or similar references. Editorial insertions for clarity are enclosed in brackets: []].

KOREA FIRST BANK v. KOREA EXPORT INSURANCE CORPORATION*

SUPREME COURT, 3RD DIVISION JUDGMENT

Closing of Pleadings: Dec. 19, 2000

Judgment of the First Instance: Judgment No. 99GAHAB11392 on Nov. 19, 1999 by Seoul District Court

Index No. & Name of the Action: 2000 DA 63691 Sales Proceeds

Plaintiff: Korea First Bank
100, Gongpyeong-dong, Chongro-gu, Seoul [Korea]
Chief Executive Officer: Robert Cohen

Intervener by Succession, Appellee: Korea Asset Management Corporation
814, Yeoksam-dong, Kangnam-gu, Seoul [Korea]
Legal Representative: Jaeryong Cheong, President
Attorney for Appellee: Kee Seob Kim

Defendant, Appellant: Korea Export Insurance Corporation
33, Seorin-dong, Chongro-gu, Seoul [Korea]
Legal Representative: Young Woo Lee, President
Attorney for Appellant; Lee & Ko

Attorneys in charge Keong Hee Ryu, Yong Suk Yoon, Yeo Kyoon Yoon, Jin Young Jung, Duk Kyou Hyun, Min Hee Kim, In Sook Kim, Eun Young Jung, Joong Hoon Kwak, Sun Chang

Judgment of the Trial Court: Judgment No. 99 NA 71619 on October 10, 2000 by Seoul District Court

* Translation of full text provided by Yang-Kon Kim, Manager, Compliance Office, Korea Exchange Bank, Seoul, South Korea. He earned an LL.M. degree from Southern Methodist University (Dallas, Texas) in May 1997.

HOLDING

1. The appeal to this court shall be dismissed.
2. Costs of the appeal to this court shall be borne by the defendant.

RATIONALE

Reasons for appeal are examined hereafter.

1. According to the judgment and records of the court below, the facts can be recognized as follows.

A. The plaintiff entered into the export bills comprehensive insurance agreement with the defendant around 1996 that [the plaintiff] would insure itself for the export bills insurance within the acceptance limit of USD200,000 in case the plaintiff purchased the documentary drafts issued by Sangwoon Moon, the co-defendant of the first instance, from the export transaction based upon the L/C with 45 days or less [of usance duration].

B. This agreement says that if the plaintiff gives notice of negotiation of the documentary drafts in writing to the defendant within 10 business days after the plaintiff's negotiation date of the documentary drafts from Sangwoon Moon, the individual export bills insurance relationship comes into existence on that

negotiation date and that the defendant should pay according to the standard export bills insurance agreement the loss incurred by the plaintiff due to the emergency risk or credit risk (the drawee's refusal or inability of acceptance, the drawee's refusal or inability of payment, drawee's late payment) of the documentary drafts, that is, the sum insured amounting to 90% of what the plaintiff cannot get to receive on the maturity date of the documentary drafts (§4, §19): *Provided*, That all or part of the sum may not be paid for the loss incurred by intention or negligence of the insured, their agents or employees. (§7 para. 2, cl.1).

C. On November 21, 1996, the plaintiff entered into the export transaction agreement with condition of export bills insurance with Sangwoon Moon, based upon which the plaintiff negotiated the shipping documents such as the documentary draft for export for USD 57,802.08 and the letter of credit issued by Sangwoon Moon in the course of export of the textile to Weihai Imp. & Exp. Corporation in China.

D. Uniform Customs and Practice for Documentary Credits, ICC Publication No. 500 was incorporated into [the text of] this credit, which

demanded as documents required 3 Copies of Signed Commercial Invoices, 3 Copies of Packing Lists/Weight Memos, 1 Original Copy of Inspection Certificate issued by Mr. Liu Yue Hong of Weihai Imp. & Exp. Corporation stamped by Weihai Imp. & Exp. Corp.

E. On November 21, 1996, based upon the export [bills] comprehensive insurance agreement relationship with the plaintiff, the defendant decided and gave notice of the acceptance limit of export bills insurance with Sangwoon Moon as drawer, Weihai Imp. & Exp. Corp. as drawee, USD 200,000 as acceptance limit, Citic Industrial Bank in China as L/C issuing bank, L/C method payment within 45 days [of usance duration] as payment terms.

F. The plaintiff demanded the payment of letter of credit proceeds to the Citic Industrial Bank in China, the issuing bank of this letter of credit, which refused the payment of letter of credit proceeds because the documents presented were not in compliance with the L/C terms & conditions [as follows]: '1) there were no original marks in Commercial Invoices, Packing Lists and Inspection Certificates, 2) there was no stamp of the Weihai Imp. & Exp. Corp. as required in the

letter of credit.

G. In fact, there were no original marks in any of the commercial invoices, packing lists and inspection certificates that the plaintiff submitted to the Citic Industrial Bank in China after receiving from Sangwoon Moon at time of negotiation of L/C documents and documentary drafts. And the commercial invoices and packing lists *provided* were made out by the typewriter, and, in the inspection certificates, the personal seal of Liu Yue Hong was affixed with his signature instead of the stamp of Weihai Imp. & Exp. Corp., but the phrase “of Weihai Imp. & Exp. Corp. Huatai Branch” was marked just behind the signature of Liu Yue Hong.

H. The plaintiff transferred to the intervenor by succession on July 9, 1999, the insurance claim on the defendant based on the export bills comprehensive insurance agreement concluded with the defendant within the acceptance limit of USD 200,000 in connection with L/C export method of Sangwoon Moon, and gave notice of the transfer of the [insurance] claim to the defendant on August 22, 2000. It was not until the trial court stage that the intervenor by succession intervened by reason that it acquired by transfer the

insurance claim of the plaintiff.

2. Conclusion of the Trial Court

A. In response to the claim of the intervenor by succession who acquired the insurance claim of the plaintiff by transfer, the trial court held that the defendant may not pay all or part of the sum insured according to the terms and conditions [of the export bills comprehensive insurance agreement] because the plaintiff was negligent in overlooking the discrepancy although the plaintiff should cure [the discrepancy] or refuse the negotiation when it found the inspection certificate not in compliance with the terms and conditions of L/C after examining it at the time of negotiation of the documentary drafts [on the following assumptions].:

[1] The refusal of payment for L/C proceeds and drafts of the Citic Industrial Bank, the issuing bank of this L/C, which comes under the credit risk covered by the export bills comprehensive insurance agreement between the plaintiff and the defendant, and [one of the] reasons for refusal by the issuing bank that the invoice and the packing list had no “original” marks, considering that these documents come under the original documents according

to the UCP 500 as far as they are all type-written, and need no additional “original” marks on them, are unjust; and, on the other hand,

[2] The inspection certificate attached to the L/C in this case which was prepared by the word-processor is not an original, and certainly needs the “original” mark on it. But it does not have such a mark and neither the seal of the Weihai Imp. & Exp. Corporation which the L/C [in this case] requires. Therefore it is not in compliance with the terms and conditions of the L/C, and the refusal of the payment of the L/C issuing bank is just.

B. On the assumption that the plaintiff was deemed to be negligent in the negotiation process of the L/C-related documents and the drafts, the court below proceeded to limit the defendant’s responsibility ratio to 50%, judging that the defendant cannot be exempt from all the responsibility due to the plaintiff’s negligence [considering the following points].

[a.] The refusal of payment by the Citic Industrial Bank is deemed to be so-called the “market claim”.

[b.] It is not easy to distinguish practically whether the documents were prepared by the typewriter or word-

processor.

[c.] The inspection certificate the plaintiff received is not in compliance with the terms and conditions as the original one stipulated in the L/C [in this case], but has the signature and the seal of Mr. Liu Yue Hong on it. So it was generally handled as an original document.

[d.] The refusal of the payment of the Citic Industrial Bank comes under the credit risk of the terms and conditions [of the export bills comprehensive insurance agreement].

[e.] other characteristic or feature of the export insurance.

3. Conclusion of This Court

A. According to the defendant's standard insurance agreement applied to the export bills insurance relation between the plaintiff and the defendant, the defendant indemnifies the loss suffered in case the documentary draft negotiated by the foreign exchange bank (hereinafter referred to as "the insured") in relation to the export transaction becomes irrecoverable (§1), and [the defendant] may not pay all or part of the sum insured or may demand the return of all or part of the sum insured already paid as to the loss which took place by intention or negligence of the insured,

insurance beneficiary, their agent or their employee (§7, para. 2, cl.1). It is reasonable to interpret this provision as meaning that the negotiating bank is negligent if the bank [as] the insured negotiated the documents not in compliance with the terms and conditions of the L/C as a result of the non-performance of duty of care to be performed in the ordinary L/C transaction in the course of negotiation of the [documentary] drafts issued in the letter of credit method export transaction and L/C issuing bank refused the payment; if the degree [of negligence] is as serious as corresponds to the intention, the defendant is exempted from the responsibility; and if [negligence] does not reach such a degree, [the defendant] can be partially exempted according to the degree. Therefore, hereinafter are discussed whether **the plaintiff bank** is really negligent in negotiating the L/C-related documents & [documentary] drafts, and if so, what the degree may be.

B. Whether the documents attached to this L/C need the "Original" mark on them

(1) Regarding the concept and the standard of the recognition of the "original" document in the international L/C transaction, Article 20(b) of the Uniform Customs and

Practice for Documentary Credits (ICC Publication No. 500 Effective January 1, 1994 (hereinafter referred to as "UCP 500")) which is applicable to the L/C in this case provides [as follows]:

Unless otherwise stipulated in the Credit, banks will also accept as an original document(s), a document(s) produced or appearing to have been produced:

- i. by reprographic, automated or computerized systems;
 - ii. as carbon copies; provided that it is marked as original and, where necessary, appears to be signed.
- A document may be signed by handwriting, by facsimile signature, by perforated signature, by stamp, by symbol, or by any other mechanical or electronic method of authentication.

And Article 20(c)i provides that "[u]nless otherwise stipulated in the Credit, banks will accept as a copy(ies) a document(s) either labelled copy or not marked as an original - a copy(ies) need not be signed.

(2) In relation to the interpretation of the provision as to the original document in UCP 500, the International Chamber of Commerce Commission on Banking

Technique and Practice (hereinafter referred to as “ICC Banking Commission”) decided in policy statement “The determination of an ‘Original’ document in the context of UCP 500 sub-Article 20(b), 12 July 1999, Document No. 470/871 Rev. 29 July 1999” [as follows]:

The “marked as original” proviso in sub-Article 20(b) is satisfied by any marking on a document or any recital in the text of a document that indicates that the issuer of the document intends it to be treated as an original rather than a copy. Accordingly, a document that appears to have been printed on plain paper from electronically stored text is “marked as original” under sub-Article 20(b) if it also states that it is original or includes letterhead or is hand marked.

Accordingly, unless a document indicates otherwise, it is treated as original if it:

- (A) appears to be written, typed, perforated, or stamped by the document issuer’s hand; or
- (B) appears to be on the document issuer’s original stationery; or
- (C) states that it is original

...

All this is determined by

international standard banking practice.

(3) Considering that sub-Article 20(b) does not seem to be the comprehensive or exclusive provision distinguishing the original document from the copy in recognizing the original **characteristic** in light of the intention of the determination heretofore of the ICC Banking Commission and the meaning of the word “also” in the sub-Article 20(b), it must be decided from the viewpoint of whether the maker of the document made it with the real intention of making it as original in deciding the original **characteristic** of the document in the L/C transaction through the interpretation of UCP. Therefore, in case that such intention by the document maker to make it out as original is expressed on the face of the document, it is reasonable for the original mark not to be necessary regardless of the sub-Article 20(b) of UCP 500. So, for example, hand signed documents by the document maker, the document with the electronic signature treated same as the hand-signed signature (ex., facsimile signed documents), or other documents with the mark recognized as the signature of the document maker, stamp, label of the maker, or the

document with the letterhead of the maker and maker’s signature or with the original mark by the handwriting, are treated as original in the letter of credit transaction, and “original” mark required in sub-Article 20(b) of UCP 500 should not be deemed necessary.

(4) In this case, among the L/C-related documents that the plaintiff sent to the issuing bank, the invoice and the packing list were prepared by typewriter with the stamp signature by the document maker. And the inspection certificate which the defendant is disputing seemed to be prepared by word-processor not by typewriter, but was the document prepared on the form with the letterhead of Weihai Import & Export Corp., shown as the maker of the document and signed by handwriting of Mr. Liu Yue Hong indicated as the maker of the document in the terms and conditions of the L/C with the personal seals impressed. Therefore, the additional mark of “original” on the face of the document is not necessary, and the part of the conclusion of the court below that the mark “original” is needed cannot but be illegal due to the misunderstanding on the “originality” rule of the documents in the letter of credit transaction.

C. Whether it is a discrepancy that the inspection certificate in this case does not have the stamp of its maker corporation on it

(1) The dealings by the letters of credit are the dealings with documents not those with goods, so letter of credit transactions are treated as completely separate transactions from the sales contract on which they may be based and its performance requires the strict accordance with the terms and conditions of the letter of credit in form. Therefore, L/C issuing bank, in the position of paying the sales proceeds to the seller in place of the buyer as the applicant [of the L/C], has the duty to investigate and examine the documents presented to it with reasonable care to ascertain whether or not they are strictly in accordance with the terms and conditions of the L/C in form, and gets exempted from its responsibilities by performing such duty. Reasonable care means the objective and rational care which should be taken as the banker having the general knowledge and experience, not the specific knowledge on the dealing of goods, and the banker, with this kind of care, has the duty to distinguish whether or not [the documents are] in accordance with the terms and conditions of the L/C by

strictly interpreting in form the writing on the L/C and other documents but doesn't have the duty of substantial examination (See Supreme Court Judgment 1985.5.28. No.84 DAKA 696,697 etc.).

(2) UCP 500 also expresses in its sub-Article 13(a) such intention by providing that "Banks must examine all documents stipulated in the Credit with reasonable care, to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the Credit. Compliance of the stipulated documents on their face with the terms and conditions of the Credit, shall be determined by international standard banking practice as reflected in these Articles. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with terms and conditions of the Credit."

(3) But for the documents attached to the L/C to be strictly in accordance with the terms and conditions of the L/C does not necessarily mean that they must be completely in compliance with each other letter to letter: When there exists a little difference in words and phrases which is slight but the bank, if taking reasonable care, can

understand that it does not cause the [grave] difference and does not harm the terms and conditions of the letter of credit at all from its face, it must be regarded as in accordance with the terms and conditions of the letter of credit (See Supreme Court Judgments 1992.2.25. 91 DA 30026, 1985.5.28. 84 DAKA 696,697) and such a decision must be according to whether or not the difference from the terms and conditions of the letter of credit is acceptable in light of international standard banking practice under concrete circumstances.

(4) The intention that the stamp of Weihai Import & Export Corp. was required on the inspection certificate as the terms and conditions of letter of credit should be deemed in order [for the bank] to be sufficiently able to confirm by the examination of documents only that the inspection certificate was made in reality by the person representing this company. As to inspection certificate in this case, the form was marked to be the Weihai Import & Export Corp.'s by the letterhead, and, in addition to the signature and personal seal of Mr. Liu Yue Hong, maker [of the inspection certificate], the phrase "of Weihai Imp. & Exp. Corp. Huatai Branch" was marked just behind the signature of Mr. Liu Yue Hong, which

means that Mr. Liu Yue Hong signed and sealed as a representative of the company not in his individual capacity. If so, in light of the international standard banking practice, although the inspection certificate in this case does not have the [corporation] stamp on it, the fact that this document was duly made by the person representing the company can be understood simply by the document review, and it is reasonable not to regard the inspection certificate as against the terms and conditions of the letter of credit even if it has no stamp of the corporation on it.

It cannot but be originated from the illegality of misunderstanding the legal principle as to the compliance

of the documents with terms and conditions of the letter of credit that the court below judged that having no stamp of the corporation on the inspection certificate is against the terms and conditions of the letter of credit.

D. Therefore, it cannot be acknowledged that, in conclusion, the plaintiff bank as the negotiating bank of the letter of credit document and draft has breached the duty of care in the course of ascertaining whether or not the documents are in compliance with the terms and conditions of the letter of credit and the conclusion of the trial court in the opposite position is unreasonable. But, in this case, only the defendant appealed on the assumption

that the plaintiff is negligent by violating the duty of care, so we cannot but maintain the judgment of the trial court according to the **no imposition of harsher sentence rule**.

4. Final Conclusion

Therefore, the appeal to this court shall be dismissed and the cost of appeal shall be borne by the loser. It is so held as the holding by unanimous opinion of the judges involved.

June 28, 2002

Chief Justice:

Justice Jae Sik Yoon

Judgment by:

Justice Jin Hoon Song

Justice Jae Seung Byun

Justice Kyu Hong Lee

SCAM SURVEY



SEC v. Asset Recovery and Management Trust SEC Litigation Release No. 17920 (7 Jan. 2003)

Topics: Prime Bank; High Yield Trading Programs; Roll Program

Defendants: Asset Recovery and Management Trust (Costa Rica); Frank R. Johnson (Alabama); Milton E. Vaughn (Alabama); Carlos Fernandez Alfaro (Costa Rica)

Total Funds: At least US\$ 900,000

Time Span: November 1999-July 2002

The Pitch: SEC complaint alleges defendants targeted victims of previous scams by claiming Asset Recovery and Management Trust (ARM Trust) would help recover their lost funds. Defendants then reportedly lured investors by promising exorbitant returns through high yield trading programs operated by ARM Trust.

International Connection: ARM Trust is a Costa Rican entity and Alfaro a Costa Rican national.

Of Note: Johnson, while awaiting sentencing for his 1999 conviction for defrauding investors in another prime bank scheme called the International Benevolent Fund Trust ("IBFT"), told IBFT victims that he had retained ARM Trust to help them recover the money they lost in the IBFT trading programs.

Status: SEC civil fraud charges filed 16 December 2002 in the U.S. District Court for the Middle District of Alabama. On 18 December 2002, court ordered defendants' assets frozen.

SEC v. Blairtorbett SEC Litigation Release No. 17919 (7 Jan. 2003)

Topics: Advance Fee; Prime Bank Trading Programs; Ponzi

Defendants: Dianna Blairtorbett (Tennessee); McMinn Consultants, Limited.

Total Funds: US\$ 7.7 million

Victims: Nearly 100 investors from 13 U.S. states

The Pitch: SEC complaint alleges defendants offered and sold unregistered securities by promising extravagant rates of return from prime bank trading programs and other investments. Blairtorbett reportedly represented that an initial investment of \$50,000 would be worth approximately \$1.7 million in three years and

\$22 million in five years. SEC contends Blairtorbett knowingly or recklessly failed to disclose that a significant percentage of investor funds would be used to pay the “returns” of earlier investors.

Of Note: Defendants falsely represented that McMinn’s investments were secured by

approximately \$7 billion in gold and other precious metals.

Status: Complaint Filed. SEC seeks orders of permanent injunctions, disgorgement of ill-gotten gains with prejudgment interest, and civil penalties against defendants.

SEC v. Kerr
SEC Litigation Release No. 17908 (20 Dec. 2002)

Topics: Prime Bank; Medium Term Bank Notes

Defendants: William R. Kerr (Los Angeles, California); China Investment Group, Ltd. (British Virgin Islands corporation headquartered in Los Angeles)

Total Funds: Over US\$12 million

Victims: More than 60 investors in U.S. and Canada

The Pitch: SEC complaint alleges Kerr, a former stockbroker, falsely promised his fraudulent investment program would yield exorbitant returns within a matter of weeks or months. Complaint contends that Kerr posed as a wealthy, politically connected businessman and made numerous false and materially misleading representations including claims (i) that Kerr had control of a \$200 million trust; (ii) that Kerr could use the trust as leverage to trade in medium term bank notes (“MTNs”);

(iii) that this MTN trading would yield profits of more than 13,000% of the amount invested; (iv) that Kerr’s company, China Investment Group, conducted the MTN trading; (v) that the World Bank supported Kerr’s trading program; and (vi) that Kerr’s investment program was safe and was backed by Kerr’s personal guarantee.

Of Note: Kerr has agreed to enter a guilty plea to mail fraud and securities fraud charges stemming from this

scheme according to the U.S. Attorney’s Office for the Central District of California. A related SEC case against four Virginia unregistered brokers who solicited investor victims for Kerr’s program and similar fraudulent programs is pending.

Status: SEC securities fraud charges filed 19 December 2002 in the U.S. District Court for the Central District of California. SEC seeks injunctions, disgorgement of ill-gotten gains with interest, and civil penalties against defendants.

Cooperative Effort: The SEC credits the U.S Attorney’s Office for the Central District of California, the Los Angeles Office of the Federal Bureau of Investigation, the California Department of Corporations, and the Division of Securities of the Utah Department of Commerce for their assistance.

SEC v. George

SEC Litigation Release No. 17918 (7 Jan. 2003)

Topics: Prime Bank; Bank Debentures; 13-Month Trading Programs

Defendants: James L. George (North Carolina); Paul E. Brodhagen (Nebraska); Michael J. Wright (Georgia, U.S.)

Total Funds: US\$ multi-million

Victims: More than 200 U.S. investors

The Pitch: SEC complaint alleges defendants, acting as Tri-Star Facilitators, fraudulently offered and sold prime bank type and other unregistered securities as part of a larger scheme in which Louis M. Lazorwitz, J. Charles Reives, and Tri-Star sold securities interests in Tri-Star to over 900 investors in at least 35 states and raised over \$15 million. Tri-Star, through Lazorwitz and Reives, initially represented that Tri-Star would invest in bank debentures and later claimed that it might invest in other international trade opportunities. SEC also

believes George, Brodhagen, and Wright offered and sold Tri-Star directly and led investors to expect profits of 20% per month in so-called 13-month trading programs, after an initial 90-day waiting period.

Of Note: Complaint is a companion case to SEC action against Lazorwitz, Reives, Tri-Star Investment Group, L.L.C., and Lazor, Ltd. for related securities fraud (see *DCW*, Nov/Dec 2002 p. 41).

Status: Complaint Filed. SEC seeks orders of permanent injunction, disgorgement of ill-gotten gains along with prejudgment interest, and civil penalties against defendants.

United States v. Dowdell

SEC Litigation Release No. 17905 (19 Dec. 2002)

Topics: Prime Bank; Ponzi

Defendants: Terry L. Dowdell; Vavasour Corporation (Bahamian company)

Total Funds: At least US\$23 million

Time Span: 1998-2002

The Pitch: Through the Bahamian company he controlled, Dowdell operated a fictitious investment program (the Vavasour Program) which required investors to sign an investment contract with the company termed a "Discretionary Investment Management Agreement" The agreement falsely represented that investor funds would be maintained in a bank account

registered as "Vavasour Corp. for the benefit of (Client name)".

The agreement committed Vavasour: "to use its best efforts to achieve anticipated profits ... in an amount equal to or exceeding Four Percent (4%) of the Client's funds under management for each week in which trading occurs. [Vavasour] shall use its best efforts basis to cause trading of Client's funds in a minimum of forty weeks during each fifty-two week Agreement term."

International Connection:

Dowdell admitted that other foreign nationals, including Shinder Gangar and Alan White (both of the United Kingdom), raised investor funds in connection with the Vavasour program. Dowdell admitted that various foreign banks have been used in furtherance of the fraud, including Overseas Development Bank & Trust and Investors Bank & Trust (Dominica), the Bank of Ireland (Ireland), Banamex Bank (Mexico), Butterfield Bank (Guernsey), Investec Bank (Israel), Fortis Bank (Belgium) and Cathay Bank (Belize).

Of Note: Dowdell now admits, there were no “trades” or “investments” made by Vavasour, but rather investors were paid “profits” in a typical Ponzi scheme fashion from new investor funds diverted to Dowdell’s AmSouth accounts.

In October 2002, the Serious Fraud Office (United Kingdom) and the Leicestershire (UK) Constabulary arrested Gangar, White, and two others suspected of involvement of the Vavasour Program and other fraudulent investment programs. The Financial Services Authority (UK) filed civil charges and obtained a worldwide asset freeze against White, Gangar, and their accounting firms “Dobb White & Co” and “Morris White & Co.”, accusing them of running an unlawful investment scheme.

Prior History: On 19 November 2001, U.S. District Court for the Western District of Virginia entered a Temporary Restraining Order prohibiting Dowdell and his associates from raising any additional funds for the Vavasour Program. On 4 June 2002, Dowdell admitted to the

fraud in the SEC’s action in a Consent and Stipulation and the Court permanently enjoined Dowdell from future violations of antifraud provisions of U.S. Securities Law.

Status: On 19 December 2002, Dowdell pled guilty to 20 felony charges, including securities fraud, money laundering and wire fraud before Judge James H. Michael, Senior U.S. District Court Judge for the Western District of Virginia, Charlottesville Division.

Cooperative Effort: The SEC and U.S. Department of Justice have been coordinating their enforcement efforts with the Serious Fraud Office (United Kingdom), the Leicestershire (UK) Constabulary, the Financial Services Authority (UK), the Antwerp Police, and the Criminal Asset Bureau (Ireland).

The Pitch: SEC complaint alleges Jones, acting as the primary broker and wholesaler of a fraudulent bank-instrument trading program through R&D Marketing, dispatched a network of local agents around the U.S. to solicit investors for the program. The SEC contends that Jones supplied agents with fraudulent representations

SEC v. Jones
SEC Litigation Release No. 17909 (23 Dec. 2002)

Topics: Prime Bank Investment Scheme

Defendants: Russell W. Jones (Utah); R&D Marketing, Inc. (Utah corporation)

Total Funds: At least US\$1.9 million

Time Span: 1997-2002

echoed to investors: (1) that investors' funds would be used to trade in European bank instruments; (2) that this activity would yield returns in excess of 200% within forty-five days; and (3) that the International Monetary Fund ("IMF") sponsored the program. Rather than investing collected funds in such a bank-instrument trading program, the SEC believes Jones unilaterally decided to wire the funds to an altogether different fraudulent program, supposedly involving the purchase and re-sale—at rapid and exorbitant profits—of assets from estate auctions in Europe. Jones apparently failed to inform the investors or obtain their consent and the funds disappeared shortly after Jones wired them in June

1997. Thereafter and continuing into 2002, the SEC maintains Jones lulled investors by assuring them that they would still realize the promised returns by sharing in the proceeds of yet another fraudulent program.

Of Note: In related criminal prosecution arising from the same fraudulent scheme, the U.S. Attorney's Office for the Western District of Virginia announced the indictment of Jones and others on 12 September 2002, charging securities fraud, mail fraud, wire fraud, money laundering, and witness tampering. In another related criminal prosecution, Jones' Virginia promoter Lytle Foglesong entered a guilty plea on 24 October 2002. SEC action

against Foglesong and three other Virginia brokers is pending.

Status: SEC securities fraud charges filed 23 December 2002 in the U.S. District Court for the Western District of Virginia. SEC seeks injunctions, disgorgement of ill-gotten gains with interest, and civil penalties against both defendants.

Cooperative Effort: The SEC acknowledges the U.S. Attorney's Office for the Western District of Virginia, the Federal Bureau of Investigation, the U.S. Postal Inspection Service, the Internal Revenue Service, and the Virginia State Corporation Commission for their assistance.

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LC TRADE NEWS



■ **Allied Irish Bank** issued US\$ 6,400,000 LC, revenue bonds, dated Dec. 16, 2002, due Nov. 1, 2022.

■ **Allied Irish Bank** issued US\$ 10,500,000 LC, revenue bonds, dated Dec. 16, 2002, due Nov. 1, 2032.

■ **Allied Irish Bank** issued LC backing US\$ 20,500,000 UPI project, weekly variable rate demand revenue bonds, dated Dec. 19, 2002, due Jan. 1, 2025.

■ **American Bank of St. Paul** issued LC backing US\$ 1,700,000 Regatta Community project, weekly variable rate demand multi-family housing revenue bonds, dated Jan. 2, 2003, due Jan. 1, 2038.

■ **Bank of America, N.A.** issued LC backing US\$ 19,900,000 Community School of Naples, Inc. project, weekly variable rate demand educational facilities revenue bonds, Series 2002, dated Dec. 18, 2002, due Oct. 1, 2022.

■ **Bank of America, N.A.** issued LC backing US\$ 7,200,000 Price Companies, Inc. project, weekly variable rate demand industrial development revenue bonds, Series 2002A, dated Dec. 12, 2002, due Dec. 1, 2017.

■ **Bank of America, N.A.** issued US\$ 41,430,000 LC, variable rate demand special revenue and refunding bonds, Series 2002, dated Dec. 19, 2002, due Dec. 1, 2009.

■ **Bank of America, N.A.** issued LC backing US\$ 7,350,000 STI

project, weekly variable rate demand industrial development revenue bonds, Series 2002, dated Dec. 19, 2002, due Dec. 1, 2020.

■ **Bank of America, N.A.** issued LC backing US\$ 42,885,000 The Institute For Genomic Research, Inc. Facility project, daily variable rate economic development revenue bonds, Series 2002, dated Dec. 17, 2002, due Nov. 1, 2023.

■ **Bank of America, N.A.** issued LC backing US\$ 6,000,000 Annie Wright School project, daily variable rate demand nonprofit revenue bonds, Series 2002, dated Dec. 13, 2002, due Dec. 1, 2023.

■ **Bank of America, N.A.** issued LC backing US\$ 27,500,000 Shell Point Village project, variable rate demand healthcare facilities revenue bonds, Series 2002A, dated Dec. 23, 2002, due Nov. 1, 2032.

■ **Citibank, N.A.** issued LC backing US\$ 7,965,000 Leland Polk Senior Community project, monthly variable rate demand multi-family housing revenue bonds, Series 2002A, dated Dec. 23, 2002, due Dec. 1, 2019.

■ **Citibank, N.A.** issued LC backing US\$ 17,000,000 Carter Terrace Apartments project, monthly variable rate demand multi-family housing revenue bonds, Series 2002B, dated Dec. 23, 2002, due Mar. 1, 2036.

■ **Citibank, N.A.** issued LC backing US\$ 11,650,000 Derek Silva Apartments project, monthly variable rate demand multi-family housing revenue bonds, Series

2002D, dated Dec. 23, 2002, due Dec. 1, 2019.

■ **Citizens Bank New Hampshire** issued LC backing US\$ 28,000,000 Catholic Medical Center project, weekly variable rate hospital revenue bonds, Series 2002B, dated Dec. 19, 2002, due Jul. 1, 2032.

■ **Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A.** issued LC backing US\$ 4,000,000 River Ranch Fresh Food, LLC projects, weekly variable rate demand industrial development refunding revenue bonds, Series 2002, dated Dec. 19, 2002, due Dec. 1, 2021.

■ **Fifth Third Bank** issued US\$ 7,500,000 LC, weekly variable rate healthcare equipment loan program bonds, Series C, "Installment 1", dated Jan. 8, 2003, due Dec. 1, 2032.

■ **LaSalle Bank** issued LC backing US\$ 29,165,000 Vantage House Facility project, variable rate demand/fixed rate refunding revenue bonds, dated Dec. 18, 2002, due Jun. 1, 2032.

■ **LaSalle Bank** issued LC backing US\$ 8,990,000 Vantage House Facility project, variable rate demand/fixed rate revenue bonds, Series 2002B, dated Dec. 18, 2002, due Jun. 1, 2032.

■ **LaSalle Bank** issued LC backing US\$ 25,155,000 Regatta Community project, daily variable rate demand multi-family housing revenue bonds, dated Jan. 2, 2003, due Jan. 1, 2038.

■ **LaSalle Bank** issued LC backing US\$ 50,000,000 Friendship Village of Tempe project, variable rate demand senior living revenue bonds, Series 2002C, dated Dec. 19, 2002, due Dec. 1, 2027.

■ **M&I Bank** issued LC backing US\$ 27,000,000 Meriter Hospital project, daily variable rate demand revenue bonds, Series 2002, dated Dec. 17, 2002, due Dec. 1, 2032.

■ **M&I Bank** issued LC backing US\$ 3,500,000 Riverside Foods, Inc. project, weekly variable rate demand industrial development revenue bonds, Series 2002, dated Dec. 6, 2002, due Dec. 1, 2022.

■ **Sovereign Bank** issued LC backing US\$ 11,750,000 Jewish Seniors Agency of Rhode Island project, variable rate demand health facilities revenue bonds, Series 2002, dated Dec. 17, 2002, due Dec. 1, 2032.

■ **Sovereign Bank** issued LC backing US\$ 35,000,000 Wesley Affiliated Services, Inc. Obligated Group project, retirement community revenue bonds, Series 2002C, dated Dec. 20, 2002, due Jan. 1, 2035 to 2037.

■ **Suntrust Bank** issued LC backing US\$ 8,975,000 Bridgewater Club Apartments project, weekly variable rate demand multi-family mortgage revenue bonds, Series 2002L-1, dated Dec. 10, 2002, due Jun. 1, 2034.

■ **Suntrust Bank** issued LC backing US\$ 645,000 Bridgewater

Club Apartments project, weekly variable rate demand multi-family mortgage revenue bonds, Series 2002L-2, dated Dec. 10, 2002, due Jun. 1, 2034.

■ **Union Bank of California** issued US\$ 13,755,000 LC, weekly variable rate lease revenue bonds, Series 2002, dated Dec. 19, 2002, due Jul. 1, 2033.

■ **USB Inc.** issued LC backing US\$ 6,100,000 Ramsgate Inc. project, weekly variable rate demand revenue bonds, dated Dec. 19, 2002, due Dec. 1, 2022.

■ **US Bank, N.A.** issued LC backing US\$ 6,380,000 Total Long Term Care project, variable rate demand revenue bonds, Series 2002, dated Dec. 18, 2002, due Nov. 1, 2013.

■ **US Bank, N.A.** issued LC backing US\$ 14,525,000 Heatherford Apartments project, daily variable rate demand multifamily revenue bonds, Series 2002A, dated Dec. 11, 2002, due Jan. 1, 2035.

■ **US Bank, N.A.** issued LC backing US\$ 6,825,000 Heatherford Apartments project, daily variable rate demand multifamily revenue bonds, Series 2002B, dated Dec. 11, 2002, due Jan. 1, 2035.

■ **US Bank, N.A.** issued LC backing US\$ 2,900,000 Dutchland Plastics Corp. project, weekly variable rate demand industrial development revenue bonds, Series 2002, dated Dec. 5, 2002, due Dec. 1, 2017.

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