

MEMORANDUM

To: Subscribers to *The Law of Letters of Credit*

From: A.S. Pratt & Sons

Subject: Highlights

Enclosed you will find your new Cumulative Supplement to *The Law of Letters of Credit, Fourth Edition*.

This supplement brings the Fourth Edition up to date by incorporating significant recent developments. It includes cases, articles, and commentary dealing with:

- **ISP98.** Although many standby credit issuers incorporate UCP 600 as the rules that govern the standby, some standby issuers incorporate “International Standby Practices” (ISP98), a set of clear, readable rules crafted specifically for standby credits. ISP98 now appears in Appendix L. *See also* ¶ S4.09. [Note: Appendix L has been added to the appendixes in the main volume, but the text of chapters in the main volume of the Fourth Edition have not been changed.]
- **Subrogation.** Ignoring the implications of UCC 5-117 and relying on the fact that a surety’s obligation arises out of the *same contract* that governs the principal’s obligation, a Bankruptcy Court sitting in Illinois and applying Texas law rejected letter of credit cases as authority for denial of subrogation. The letter of credit issuer’s obligation arises under an *agreement separate* from that which governs the principal’s obligation, the court held as justification for its ruling. *See* ¶¶ S2.10[1]; S7.05[2][a].
- **Issuer Liability for Nonissuance.** Courts are willing to impose liability on issuers that fail to issue credits if the intended beneficiary can make a case of promissory estoppel, tortious interference, or the like. *See* ¶ S6.08[2].

- **Right of Reimbursement.** Normally, a letter of credit issuer obtains reimbursement from the applicant under the reimbursement agreement. Arguably, however, no agreement is necessary, since UCC Article 5 provides a statutory basis for reimbursement. *See* ¶ S2.09[7].
- **The Bankruptcy Code’s Lease Cap.** Courts and commentators continue to erode any argument that landlords can use a standby letter of credit to avoid the Bankruptcy Code’s lease cap. *See* ¶ S7.03[3][j].
- **Injunctions.** A majority of courts continue their firm policy of refusing to enjoin payment of or draws under letters of credit when applicants claim that the payment will harm their reputation or otherwise fail to show that the payment will cause irreparable injury, but exceptions remain. *See* ¶¶ S7.04[1], S11.05[2][b], S11.05[2][c], S11.05[6].
- **Breach of Warranty.** Often, litigants sue in fraud or deceit, tort causes of action that are difficult to satisfy, but ignore the cause of action for breach of the letter of credit warranty, a cause of action that is relatively easier to satisfy. *See* ¶¶ S6.07, S9.04[3].
- **Excess Credit Proceeds.** When a beneficiary draws on a credit and obtains more than it is entitled to retain under the terms of the underlying contract, the applicant, even an applicant in bankruptcy, but not the bank issuer, ought to be entitled to return of the excess. *But see* ¶ S7.03[3][1].
- **Bankruptcy Court Jurisdiction.** When a party expecting to be named beneficiary sued a bank issuer that failed to issue the letter of credit for an applicant in bankruptcy, the court exercised non-core/related to jurisdiction in virtue of the fact that the bank had an indemnity arrangement with the applicant. *See* ¶ S11.02[5].
- **Jurisdiction Over Out of State Beneficiaries.** Generally, courts refuse to find personal jurisdiction over letter of credit beneficiaries whose only contact with a state is their counterparty’s presence there. *See* ¶ S11.02[1][b].
- **Letters of Credit in Complex, Multiparty Transactions.** Sophisticated commercial parties use letters of credit in connection with the financing of multiparty agreements. *See* ¶ S1.03[2].

- **Issuer Good Faith.** Issuers should not police the underlying transaction, but one court imposed heavy liability on a bank that failed to do so. *See* ¶ S6.08[3].
- **“Fully Workable Credit” and “Present.”** These are terms used in commercial letter of credit transactions, the latter when shipment is by oceangoing vessel. *See* Glossary.
- **Adequate Assurance of Performance.** A party seeking adequate assurance of performance should think twice before rejecting its counterparty’s offer to post a letter of credit. *See* ¶ S3.07[2].

FILING INSTRUCTIONS

VOLUME 1

- Remove 5/07 Summary of Contents, pages xiii and xiv. Insert 4/08 Summary of Contents, pages xiii and xiv. [The only change in the Summary of Contents is to reflect new Appendix L.]
- Remove 5/07 pages xxvii and xxviii. Insert 4/08 pages xxvii and xxviii. [The only change in the Contents is to reflect new Appendix L.]

VOLUME 2

- Remove 5/07 Summary of Contents, pages iii and iv. Insert 4/08 Summary of Contents, pages iii and iv. [The only change in the Summary of Contents is to reflect new Appendix L.]

Tab: Appendixes

- Remove old pages APP.-i and APP.-ii. Insert 4/08 pages APP.-i and APP.-ii. [The only change in the Appendixes contents is to reflect new Appendix L.]
- Remove main volume pages APP. C-1 and APP. C-2. Insert new pages APP. C-1 and APP. C-2.
- After main volume page APP. K-54, insert new Appendix L, pages APP. L-1 through APP. L-30.

- Remove and discard the 2007 Supplement, but retain all of the green tabs.

Tab: Supplement

- After the green tab: **Supplement**, insert 4/08 title page through page S12-2.

Tab: Appendixes

- After the green tab: **Appendixes**, insert pages SAPP. C-1 through SAPP. D-4.

Tab: Glossary and Bibliography

- After the green tab: **Glossary and Bibliography**, Insert pages SG-1 through SB-4.

Tab: Cumulative Tables and Index

- After the green tab: **Cumulative Tables and Index**, Insert Cumulative Table of Uniform Commercial Code Citations, Cumulative Table of Uniform Customs and Practices, Cumulative Table of Cases, and Cumulative Index, pages UCC-1 through I-26.

Please keep these instructions filed in your binder.

Your copy of *The Law of Letters of Credit, Fourth Edition*, should now consist of the following:

1. Volume 1: Main volume Chapters 1 through 12 (including frontmatter bearing a copyright date of 2007; also including replaced pages xiii, xiv, xxvii, and xxviii).
2. Volume 2: Main volume Appendixes, Glossary, and Bibliography (including frontmatter bearing a copyright date of 2007; also including replaced pages iii, iv, APP.-i, APP.-ii, APP. C-1, APP. C-2, and new Appendix L); the 2008 Supplement No. 1, including supplement frontmatter, supplement Chapters 1 through 12, supplement Appendixes, supplement Glossary and Bibliography, and the Cumulative Tables and Index.

Consult *The Law of Letters of Credit* only in conjunction with the supplement. If you have any comments or questions about this product, or want information about other A.S. Pratt products, please call our customer service representatives at 1-800-572-2797. Please visit us online at www.aspratt.com.

