Comparative Research on the Legal Nature of the L/C:

with a Focus on the Revolving Standby L/C*

(회전보증신용장을 중심으로 본 신용장의 법적 성격에 관한 비교법적 고찰)

Yong Eui Kim**

Table of Contents

I. Introduction

II. Legal Definition of the Letter of Credit and its Nature

1. General Definition and Nature

2. Nature of Standby L/C

III. Review of a Revolving Standby L/C through the Case

1. The Issues

2. Key Facts

3. Analysis in the Case

(1) Legal Relationships in the L/C

(2) Applicable Rules and Principles

(3) Evaluation of the Parties’ Contentions

(4) The Court’s Policy of Strict Construction

IV. Conclusion

<Key Words>
I. Introduction

Letters of credit ("L/C") are so widely and commonly used in international business transactions. It would be quite natural for people to believe that there are well settled (written) rules for them not only in Korea but in almost all the countries in the world. In the US, the provisions in Article 5 of Uniform Commercial Code ("UCC") as adopted by the states are the rules on the L/C in the form of state statutes. Of course there are rules internationally recognized under the name of Uniform Customs and Practices (UCP) provided by International Chamber of Commerce (ICC). The UCP have become general rules recognized globally reflecting the rules of UCC on the L/C since the World War II (the time the US influence on the global economy became absolutely strong). Now it is well known that the banks in more than 160 countries in the world have adopted the UCP.\(^1\)

This article focuses on the US courts' application of the UCC rules to the issues of L/C. The L/C rules under UCC are almost identical to the ones in UCP which Korean courts are more familiar with. In addition, for the purpose of finding the resolution of a specific issue which was not frequently presented in Korea, this article presents the readers a chance to compare the US courts' reasoning with the Korean courts' via a review of a seminal case\(^2\) (the "Case" herein) with respect to the legal nature of the revolving standby L/C. The Case is one of seminal cases in the sense that it is cited in many other cases following its same holding and thus it is still binding in terms of the nature of the L/C including the revolving standby L/C.\(^3\) In the Case, the plaintiff was a Korean bank "Korea First Bank." In the sense that the US court in the Case analyzed the

---

* This article was written with the financial support of Dong-A University Research Fund.
** Professor at Dong-A Univ. Law School, Attorney at Law (Member of the State Bar of Arizona)

3) This case was cited by the US courts more than 100 times for the purpose of defining the L/C and its nature including the most recent case BasicNet S.p.A. v. CFP Services Ltd., 2014 WL 2765806, *4+, 2014 N.Y. Slip Op. 04585, 04585+ (N.Y.A.D. 1 Dept. Jun 19, 2014) (NO. 12418, 653266/11) HN: 7 (N.Y.S.2d), 2 (N.Y.2d). For further information visit the Westlaw data base (www.westlaw.com visited by the writer on June 20,2014)) with the key cite "782 N.E.2d 55"
issues not only with the rules of UCP but the rules of UCC together, it will be of good value to the Korean scholars and practitioners as well.

II. Legal Definition of the Letter of Credit and its Nature

1. General Definition and Nature

The importance of L/C in international trade and financing cannot be too much emphasized. At least five separate sets of model laws have been promulgated to govern their use: (1) article 5 of the UCC, (2) the Uniform Customs and Practice for Documentary Credits (UCP 500 or UCP 600), (3) the United Nations Convention on Independent Guarantees and Standby Letters of Credit, (4) the Uniform Rules for Demand Guarantees, and (5) the International Standby Practices 1998 (ISP98). Korean banks are already familiar with all of the above five model laws only except the article 5 of the UCC.

In Korea, there is no statute to govern the issues regarding L/C unlike the US which has UCC. In most of the cases where issues arose out of L/C, Korean courts applied the rules of UCP. Though there are not so many academic writings so far regarding the nature of L/C compared with other area of business law, there are variety of academic views regarding the nature of L/C in Korea. The majority view seems to be that UCP is considered as a kind of commercial customary law in Korea. For practical purpose, this article omits the analysis of the academic views but rather focuses on the courts' views. The Korean Supreme Court interpreted the legal nature of L/C as a unilateral expression of intent to take the obligation to pay. This view is shown by its holding that the issuing bank's obligation to pay according to the L/C is created by the bank's legal conduct of guaranteeing the payment as stated in the L/C. However, in the US, L/C is viewed as an instrument where three distinct contractual relationships are usually present when it is issued. Of course this article focuses on the courts' views regarding the nature of the L/C in the US, and this approach would be valuable and practicable considering the US is a state of common law jurisprudence. According to the US courts'

4) This statement would be supported by the fact that Korean courts have rarely cited UCC in its analysis where the issues arose out of L/C.
5) This is the majority view in France as well (Cass. Fr., 1981.10.14 Dalloz 301). Of course, there is another view that UCP are standard terms and conditions because they apply only when the parties incorporated into the letters of credit by reference; 임홍근, 해외신용장의 법적 구조 [삼지원, 1991] p. 80 (Hong Geon Lim, Legal Structure of the Letters of Credit, [Samjiwon, 1991] at 80). In Germany, UCP is viewed commercial usage or standard terms and conditions as is stated at the article 346 of German Commercial Law (HGB) [Eberth, "Documentary Credits in Germany and England, JBL (1977), 30.
6) 대법원 1997.5.9., 95다34385 (Korean Supreme Court 1997.5.9., 95Da34385)
views, the key relationship in an L/C transaction is the bilateral agreement between the applicant and the issuer. This is most different aspect of the views between the courts of the two countries. For this, the detail is stated hereunder at the fifth paragraph of this section II and the first paragraph of the subsection 3 in the section III of this article.

Variety of the US cases give the definition of L/C by stating that L/C is a commercial instrument that provides a seller or lender, the “beneficiary,” with a guaranteed means of payment from a creditworthy third party, the issuer, in lieu of relying solely on the financial status of a buyer or borrower, the “applicant.”8) Commercial or documentary L/C9) is used as a substitute for money in a sales contract. The bank which issues it pays the beneficiary upon certification of satisfactory performance in the underlying agreement.

2. Nature of Standby L/C

The Standby L/C was originally developed in the US and used in the US more than any country.10) In addition to serving a sales contract, L/C often times serves objective of providing security in the event of a default in payment owed under a separate agreement, such as a loan. Such L/C is well defined as a standby L/C by variety of cases and academic writings11) because it is payable only upon proof of the applicant’s nonperformance or default. Commercial L/C substitutes the primary means of payment. On the other hand, a standby L/C is used secondarily after the beneficiary fails to obtain payment from the applicant. Putting it another way, a commercial letter of credit substitutes the primary means of payment, while a standby letter of credit is used

9) These “commercial” or “documentary” letters of credit are used as a substitute for money in a sales contract; the issuing bank pays the beneficiary upon certification of satisfactory performance in the underlying agreement (Centrifugal Casting, 966 F.2d at 1350 n. 1; Dolan, The Law of Letters of Credit: Commercial and Standby Credits P 1.04, at 1-22 [update 2002 no. 1]) Wayne State University Law School Research Paper No. 07-36. Available at SSRN: (http://ssrn.com/abstract=1020705 (visited on April 30, 2014)
10) 박석재, 독립적 보증 및 스탠바이 신용장에 관한 유엔협약, 상사법연구 제 22권 제 5호, 2004, 한국상사법학회 [No English translation is available for the title of the article or the name of the journal] (Seokjae Park, “United Nations Convention on Independent Guarantees and Stand-by Letters of Credit”)
11) Letters of credit have evolved to serve an additional purpose to provide security in the event of a default in payment owed under a separate agreement, such as a loan (see 6B Hawkland UCC Series Rev. s 5-101.2, at Rev. Art. 5-7-5-8). A letter of credit serving this objective is referred to as a “standby” letter of credit because it is payable only upon proof of the applicant’s nonperformance or default (Brenntag Intl. Chms., Inc. v. Bank of India, 175 F.3d 245, 251 [2d Cir.1999]; Nelson Enonchong, The Independence Principle of Letter of Credit and Demand Guarantees, (2011, Oxford Press) at p.22: see also Dolan, The Law of Letters of Credit (1996, updated 2002, Boston) P 1.04, at 1-22
secondarily after the beneficiary fails to obtain payment from the applicant. 12) In Korea the standby L/C is also commonly defined as similar as is stated above. 13) Of course, there is another type of document which is called the “independent guarantee” used for the purpose of guarantee of payment in variety of business transactions in Korea and there are academic views emphasizing on the different features between the independent guarantee and standby L/C. Though this article omits the detail analysis regarding the comparative review between the independent guarantee and standby L/C, it has the same view with another article 14) written in Korea on the same issue stating that “The two are similar in their legal nature and function, but they are different with each other in their forms. The independent guarantee does not have typical form, usually contains the words ‘letter of guarantee’, and the content is generally complex, but the standby L/C has typical form and its content is more simple.” In short, it can be said that the standby L/S is an independent guarantee having the form of a latter of credit. 15)

13) 정찬형, 상벌강의<下>, 제10편, 박영사, 167면: "보증신용장(保證信用狀)은 채무자가 금융이나 채무 이행의 보증을 위하여 은행에 신청하고 채권자를 수익자로 하여 발행되는 무상환신용장을 말한다." (Chanhyung Jeong, Commercial Law Lecture II, 10th version, Parkyoung Press, at 167: "Standby L/C is the clean L/C which is issued by a bank upon the application by a debtor to guarantee financing or the payment of a debt for the benefit of the creditor.") See also, Seonkook Kim, A little review on Standby L/C, General Research Journal of Business Administration and Law Vol. 1, Korean Academy of Society of Business Administration and Law, at 589) "Standby L/C, whatever it is named, means any arrangement or similar commitment issued by an issuer for the beneficiary to guarantee the return of money loaned or advanced to its client or for the client’s account, or to guarantee the client’s payment in case of non-performance of the duty of payment by the client because of the debt caused by the client." [In Korean: 보증 신용장은 그것이 어떠한 명칭이든 고객에게 대여되거나 선급된 또는 그의 계산을 위한 금전의 반환, 고객에 의하여 발생한 채무를 이유로 한 지급의무의 불이행시의 고객의 지급을 보증하기 위해 발행한 이 수익자에게 부담하는 모든 종류의 또는 유사한 약정을 의미한다(김선국, 보증신용장에 관한 소고, 경영 법률 연구총서 제1권, 한국경영법률학회, 589쪽).]
See also the term as is defined in Korean by the Korea International Trade Association at its website (This content is available only in Korean at the website):

Both commercial and standby L/C can "revolve" by periodically replenishing credit lines upon the occurrence of a specified condition or event. It allows the beneficiary to make additional draws in satisfaction of sums still owed by the applicant.\textsuperscript{16} Because L/C depends upon the certainty of payment to the beneficiary, the issuer's obligation is independent of the rights and liabilities of the parties to the underlying contract; payment must be made irrespective of any allegations of breach of warranty or nonconformity.\textsuperscript{17}

Three distinct contractual relationships are usually present when a letter of credit is issued\textsuperscript{18}: first one is the underlying agreement between the applicant and the beneficiary; second one is the contractual obligation arising between the issuer and its applicant regarding the terms of the letter of credit and extent of funds to be made available; finally, there is issuance of letter of credit, the agreement embodying issuer's commitment to honor drafts or other demands for payment presented by the beneficiary or a transfer beneficiary upon compliance with the terms and conditions specified in the credit. Letters of credit must be strictly construed and performed in compliance with their stated terms.

By conditioning payment solely upon the terms set forth in the L/C, the justifications for an issuing bank's refusal to honor the credit are severely restricted, thereby assuring the reliability of L/C as a payment mechanism. To make issuing bank's payment obligation conditional, the parties to L/C must clearly and explicitly set forth that requirement on the face of the L/C. Ambiguity in written agreement does not arise from silence, but from what was written so blindly and imperfectly that its meaning is doubtful.

Revolving standby L/C is the one that would be revolved and reinstated every certain period of time within the period of validity.\textsuperscript{19} The term "revolving" in revolving standby L/C does not inherently precondition credit renewal upon the applicant's repayment of funds previously disbursed by L/C's issuer, where renewal was based upon the passage of time, not upon repayment by the borrower.\textsuperscript{20} In Korea, the revolving L/C is recognized by the Korea International Trade Association in such meaning as follows: "When it is expected that the same kind of sale of goods will continue for substantial

\textsuperscript{16} Dolan, The Law of Letters of Credit P 109, at 1-62
\textsuperscript{18} First Commercial Bank v. Gotham Originals, 64 N.Y.2d 287, 294, 486 N.Y.S.2d 715, 475 N.E.2d 1255 [1985]
\textsuperscript{20} del Busto, ICC Guide to Documentary Credit Operations for the UCP500, at 48; Givray et al., Survey: Uniform Commercial Code, Letters of Credit, 46 Bus. Law 1579, 1606 [1991] [noting the distinction between "automatic" and "conditional" revolving letters of credit]
period of time between the exporter and importer, the issuance of a letter of credit at every time the sales occurs or a letter of credit covering all the payments of the sales during the period of time would cause lots of problems and inconveniences such as too much expenses, requirement of too heavy collateral deposit, and exceeding the applicant’s limit of credit. To remove such burdens, the revolving letter of credit is issued for the purpose of using it again by being renewed automatically for a certain period of time for the credit amount. The methods to decide the renewal time are ① at the time there is the notice of payment of the draft ② when there is no notice of default after a considerable time passed since the negotiation of the draft ③ periodic renewal at every certain period of time. There is one type of revolving credit called “cumulative credit” by which the shipment is made including the quantity to have been shipped previously and another type called “non-cumulative credit by which shipment is made excluding the quantity to have been shipped previously.”[21]

III. Review of a Revolving Standby L/C through the Case

In the Case, the beneficiary (the Nissho Iwai Europe PLC; “Nisho” hereinafter) of a revolving standby L/C brought action against issuing bank (the Korean bank Korea First Bank; “KFB” hereinafter) for dishonor of a demand for payment and for anticipatory dishonor of future demands. The Supreme Court, New York County, granted plaintiff’s motion for summary judgment, and bank appealed. The Supreme Court, Appellate Division, affirmed, and bank appealed. The Court of Appeals (the highest court in the state of New York: the “Court” herein) held that letter of credit revolved automatically each quarter, and future draws were not contingent on borrower's repayment of funds previously disbursed by the issuing bank.

1. Issues

The main issue in the Case was whether the renewal of a revolving standby L/C is implicitly contingent on the repayment of funds previously disbursed by the issuing bank.

2. Key Facts

In September 1994, plaintiff agreed to loan $150 million to Daewoo Hong Kong Ltd.

[21] See the term as is defined in Korean by the Korea International Trade Association at its website at(This content is available only in Korean at the website): [http://www.kita.net/jsp/wiki/WIKI002.R01.cmd?charSet=Y&n_dirid=1&ckval=0&cmd_id=WIKI002.R01](http://www.kita.net/jsp/wiki/WIKI002.R01.cmd?charSet=Y&n_dirid=1&ckval=0&cmd_id=WIKI002.R01) visited on May 1, 2014) [This term, however, is defined only in Korean and the context is translated by the writer of this article as stated above in the main text of this article]
in separate installments of $125 million and $25 million. Daewoo was required to pay
interest for three years after the first disbursement, to be followed by repayment of
principal and accumulated interest in 15 equal quarterly installments of approximately
$10.7 million. Daewoo provided two forms of security for the loan, a guarantee by
Daewoo's parent corporation and an irrevocable standby L/C issued by defendant KFB.

The standby L/C, drafted by Nissho, states that KFB opened an “irrevocable revolving
letter of credit” in favor of Nissho on behalf of Daewoo for “up to USD 11,500,000.00”
to cover any principal and interest that was past due under the Nissho-Daewoo loan
agreement. The document further provides that the “letter of credit shall be revolved
and reinstated every three months within the period of validity." The L/C was valid from
November 3, 1994 "until November 9, 2001, but became drawable up to USD
3,750,000.00 from November 9, 1994 until February 9, 1998 and up to USD 11,500,000
from February 10, 1998 until November 9, 2001." The parties agreed that the instrument
would be construed in accordance with New York law and the 1993 version of the
International Chamber of Commerce's Uniform Customs and Practice for Documentary
Credits (commonly referred to as the UCP 500).

Daewoo timely repaid its loan from Nissho until it missed the scheduled November
9, 1999 payment of principal and interest. The next day, Nissho notified Daewoo of the
default and accelerated the outstanding balance of the loan. Nissho then demanded
that KFB cover the late payment pursuant to the L/C. KFB complied with that request
and transferred about $10.7 million to Nissho. Several weeks later, KFB disbursed
$761,171.87 to Nissho, the balance of quarterly funds available under the letter of
credit. After these two payments were made, Daewoo's unpaid principal loan balance
was approximately $74 million.

Around the time of the default, rumors began to circulate of KFB's intention to
terminate its operations in the United States and this gave rise to concerns about the
effect that would have upon the L/C. This prompted the Republic of Korea and the
Korea Deposit Insurance Corporation (which control KFB) to notify the New York
Superintendent of Banks that the KFB L/C provided the beneficiary, Nissho, with a
maximum aggregate credit limit of $11.5 million, to be reinstated quarterly in proportion
to any payments made by Daewoo. Similar notice was sent to Nissho.

Despite KFB's interpretation that repayment by Daewoo was necessary before further
draws against the L/C would be honored, at the beginning of the next quarter
(December 1999), Nissho demanded another draw in the amount of $11.5 million. Upon
KFB's refusal to pay, Nissho initiated this action for wrongful dishonor and anticipatory
repudiation. Supreme Court (the first trial court in the state of New York) granted
summary judgment to Nissho. It concluded that the L/C required the $11.5 million to
be made available each quarter regardless of Daewoo's failure to reimburse KFB for
previously extended credit. The court awarded Nissho the full amount of principal and interest due on the Daewoo-Nissho loan, approximately $82 million. The Appellate Division affirmed, finding that the quarterly reinstatement of the $11.5 million credit was unconditional and automatic.

3. Analysis

(1) Legal Relationship in the L/C

The Court in the Case also noticed that three distinct contractual relationships are usually present when a L/C is issued. There is the underlying agreement between the applicant (here, Daewoo) and the beneficiary (Nissho). The second contractual obligation arises between the issuer (KFB) and its applicant (Daewoo) regarding the terms of the letter of credit and the extent of funds to be made available. Finally, there is the issuance of the L/C, the agreement embodying the issuer’s commitment to “honor drafts or other demands for payment presented by the beneficiary or a transfer beneficiary upon compliance with the terms and conditions specified in the credit”.

In the Case, there was no disagreement that KFB issued a revolving L/C or that Nissho had complied with the requirements of the letter. The focus of the dispute was whether the L/C revolved automatically or conditionally. More specifically, did the terms of the L/C require that subsequent draws be honored by KFB without regard to repayment by Daewoo, or were future draws contingent on Daewoo’s repayment of funds disbursed during the prior quarter. KFB’s position was that the instrument was unclear as to whether an additional $11.5 million was automatically available at the beginning of each three-month interval or was conditioned upon Daewoo’s repayment of previously utilized credit. The document did not set forth the total amount of the Nissho-Daewoo loan ($150 million), but referred only to $11.5 million. As a result, KFB maintained that its exposure was limited to the latter amount. Furthermore, although KFB conceded that a repayment condition did not appear in the L/C, it nevertheless asserted that the use of the term “revolved” in a standby L/C implicitly imposed a duty upon the applicant to reimburse the issuing financial institution for utilized credit before further credit could be renewed and reused by the beneficiary. Consequently, KFB claimed that the document was ambiguous because it was susceptible of both interpretations. The Court disagreed to these points.

(2) Applicable Rules and Principles

23) Id., and see also supra at 17 Mennen, 91 N.Y.2d at 20, 666 N.Y.S.2d 975, 689 N.E.2d 869; Wood v. R.R. Donnelley & Sons Co., 888 F.2d 313, 317-318 [3d Cir.1989]
The Court have long adhered to the principle that L/C must be strictly construed and performed in compliance with their stated terms. The reason for this rule (so called "the doctrine of strict compliance") is rooted in the very purpose of a L/C: "[b]y conditioning payment solely upon the terms set forth in the letter of credit, the justifications for an issuing bank's refusal to honor the credit are severely restricted, thereby assuring the reliability of letters of credit as a payment mechanism." Thus, to make an issuing bank's payment obligation conditional, the parties must clearly and explicitly set forth that requirement on the face of the letter of credit. A corollary to these rules, as with all written agreements, is that ambiguity does not arise from silence, but from "what was written so blindly and imperfectly that its meaning is doubtful."

In the Case, the Court pointed out that: The language of the instrument - this "letter of credit shall be revolved and reinstated every three months within the period of validity" - unequivocally establishes that Daewoo's credit line of $11.5 million was automatically renewed in relation to time, specifically the beginning of each of the 15 fiscal quarters; Significantly, no conditions are placed upon this cycle of revolution and reinstatement; The L/C did not require that Daewoo repay previously utilized credit before KFB renews its credit line; and The document also did not expressly limit the aggregate amount of credit that Nissho could draw upon during the entire period of the letter's validity. Although it is true, as KFB contends, the Court viewed that the instrument refers to a credit limit "up to" $11.5 million rather than the total amount of the Nissho-Daewoo loan, that reference must be read in conjunction with the automatic quarterly renewal period. Calculating KFB's maximum obligation then becomes a simple matter of multiplying $11.5 million by the number of fiscal quarters covered by the letter of credit. Therefore, a literal reading of the instrument, as required by the precedent (Matter of Supreme Mdse. v. Chemical Bank, 70 N.Y.2d at 352, 520 N.Y.S.2d 734, 514 N.E.2d 1358), lead the Court to conclude that Nissho was entitled to draw up to $11.5 million per quarter under the automatically revolving standby letter of credit irrespective of Daewoo's failure to reimburse KFB for previous payments made to Nissho. To compared with this Case, the Court referred to another L/C in Philadelphia Gear

---

25) Korean Supreme Court also confirmed this doctrine in the same way at such cases as 대법원 1997.8.29, 96다37879 (Korean Supreme Court 1997.8.29, 96다37879) and 대법원 2002.10.11, 2002다60296 (Korean Supreme Court 2001.10.11., 2002다60296).
Corporation v. Federal Deposit Insurance Corporation. The L/C there was determined to be ambiguous regarding the aggregate amount of available credit, lacked a definitive time frame for renewal or any other way of determining the amount ultimately due and thus lead to a different decision.

(3) Evaluation of the Parties’ Contentions

KFB’s contention that this interpretation was viewed as unreasonable because it produces a potential cumulative $221 million credit liability was not persuasive. The record evidence revealed that the total amount of the Nissho-Daewoo loan was over $220 million (including interest), the contract for that loan was specifically referenced in the L/C, and the purpose of the L/C was to guarantee the loan. Based on Reiss v. Financial Performance Corporation and with these given facts, the Court found that it seemed unlikely that the parties intended this source of security to be limited to five percent of the loan’s value in the event of a default.

The Court also rejected KFB’s suggestion that the term “revolving” inherently preconditions credit renewal upon the applicant’s repayment of funds previously disbursed by the issuer of the letter of credit. That term, as experts for both parties acknowledged, was also viewed not to have a single accepted definition. The Court followed the international practices to find that its meaning should be derived from the context in which the term is used. The Court also cited various precedents to find that an L/C can revolve in different ways—in relation to time, value, repayment or the presentation of certain documents—or by a combination of factors, depending upon the language used in the instrument. In the Case, viewing the word “revolving” in the context in which it appears in the L/C, the Court found that it was clear that renewal was based upon the passage of time, specifically three months. There was simply no reference in the instrument to repayment by Daewoo. By contrast, the L/C in Philadelphia Gear Corporation v. Federal Deposit Insurance Corporation was determined to be ambiguous regarding the aggregate amount of available credit, lacked a definitive time frame for renewal or any other way of determining the amount ultimately due.

On the other hand, it seems that KFB’s reliance on one sentence in a leading treatise—The Law of Letters of Credit authored by John F. Dolan was viewed by the Court to be misplaced. The Court viewed that, although the treatise’s glossary definition

---

29) The case is cited as 751 F.2d 1131, 1139-1140 [10th Cir.1984], revd. 476 U.S. 426, 106 S.Ct. 1931, 90 L.Ed.2d 428 [1986].
32) del Busto, ICC Guide to Documentary Credit Operations for the UCP500, at 48; Givray et al., Survey: Uniform Commercial Code, Letters of Credit. 46 Bus. Law 1579, 1606 [1991] [noting the distinction between “automatic” and “conditional” revolving letters of credit]
33) The case is cited as 751 F.2d 1131, 1139-1140 [10th Cir.1984], revd. 476 U.S. 426, 106 S.Ct. 1931, 90 L.Ed.2d 428 [1986].
of "revolving credit" (id. at G-35) suggests that an issuer is not obligated to honor a subsequent draft until it is reimbursed by the applicant, it is entirely silent on the question of whether such a repayment condition should be implied when it is not explicitly incorporated into the instrument itself. In addition, it seems that the Court also found that the cases cited under the definition can be differentiated because they address commercial L/C involving the sale or delivery of goods which contained express conditions affecting the extension or reinstatement of credit 34) In this Case, however, it is clear in its holding that the Court concluded that the document did not condition the renewal of the credit.

(4) The Court's Policy of Strict Construction

The Court's policy of strict construction is found to be consistent with the non-documentary conditions doctrine embodied in article 13 of the UCP 500 providing that "[i]f a credit contains conditions without stating the document(s) to be presented in compliance therewith, banks will deem such conditions as not stated and will disregard them" (UCP500 art 13[c]). The L/C in this Case was found to have specified one document that must be presented along with the sight draft drawn on the letter - a signed statement by Nissho attesting that (1) the amount drawn on the letter equals the amount of principal and interest that was past due on the Daewoo-Nissho loan, (2) Daewoo had not satisfied its past due obligation and (3) funds received from KFB would be used to satisfy Daewoo's outstanding balance. The instrument required nothing further; it did not call for Nissho to supply proof that Daewoo repaid KFB for the previous quarter's credit, nor did it make KFB's credit obligation to Nissho contingent on reimbursement from Daewoo covering prior draws.

The Court also recognized that a repayment schedule was absent from the instrument in this Case and that a borrower's duty to reimburse was necessarily implied in any credit transaction.35) However, to construe that implicit understanding as a prerequisite to the renewal of Daewoo's credit line would require the Court "to read into the letter of credit something which is not there"36)and to condition unambiguous, explicit terms with an unwritten requirement. This was not acceptable by the Court.

VI. Conclusion

36) Maurice O'Meara Co. v. National Park Bank of N.Y., 239 N.Y. at 397, 146 N.E. 636
In finding and understanding the key definitions made by the US courts and scholars with respect to the L/C and their legal implications, this article wants the Korean scholars and practitioner to have a chance to do a comparative review of the legal nature of L/C. In addition, this article presented a US court's resolution of a specific issue which Korean courts are not so familiar with (i.e., whether the renewal of a revolving standby L/C is implicitly contingent on the repayment of funds previously disbursed by the issuing bank) to help the Korean courts and lawyers have a chance to look at the issue. Viewing the arguments made by KFB in the Case, it seems that the Korean bank (KFB) had an implicit understanding that a borrower's duty to reimburse was necessary in a revolving standby L/C by the mere word of revolving. This article shows that it is a misunderstanding in view of the US courts and under the well-established rules of L/C.

This article also tried to show through the Case various holdings the US courts have maintained on the variety of other issues regarding L/C till this Case came out. This article shows that the US courts applied the rules under the UCC and general principles underlying each rule in the same manner and context with the rules under UCP. Furthermore, the Court in the Case analyzed various other issues as well under the principles of the rules of UCC citing various cases where the rules of UCC applied even though the parties in the Case agreed that the instrument would be construed in accordance with New York law (UCC) and the 1993 version of the UCP 500. This seems like that the Court viewed the context of the rules of UCP and the underlying principles are same in terms of many issues reviewed by the Court including the main issue of revolving standby L/C in the Case.

In practical sense, it can be said that the L/C to be governed by the rules of UCC will have almost the same legal effect with the L/C to be governed by the rules of UCP when disputes arise from the L/C. Putting another way in furtherance of this logic, it can be said that the US courts' decisions applying the L/C rules of UCC can be a good reference to the Korean courts' decisions on the analogous issues arising out of L/C though they apply the rules of UCP.

Considering the volumes and long-time history of international transactions and interstate transactions involving L/C (which are similar to the international transactions in terms of Korean business) in the US, the holdings and reasoning of the US courts can be of great value to the Korean courts' decisions on the various issues of which the Korean courts have not yet enough applicable precedents.

<Key Words>
Letter of Credit, Documentary Credit, Standby Letter of Credit, Revolving Standby Letter of Credit, UCP, Article 5 of UCC. Nature of Letter of Credit, Nature of Standby Letter of
Credit, Nature of Revolving Standby Letter of Credit

<Key Words in Korean; 한글 주제어>
신용장, 회전신용장, 스탠바이신용장, 회전보증신용장, 신용장통일규칙, 통일상법전, 신용장의 성질, 보증신용장의 성질

<References>
Statutes, Commercial Customs and Treaties

- Article 5 of UCC
- UCP (500 and 600)
- The International Standby Practice [ISP98]

Articles, Books and Academic Journals

-del Busto, ICC Guide to Documentary Credit Operations for the UCP500
-Dolan, Analyzing Bank Drafted Standby Letter of Credit Rules
-Dole, Warranties by Beneficiaries of Letters of Credit under Revised Article 5 of the UCC: The Truth and Nothing but the Truth, 39 Hous. L. Rev. 375 [2002].
-6B Hawkland UCC Series Rev.
-임홍근, 하환신용장의 법적 구조 [삼지원, 1991] (Hong Geon Lim, Legal Structure of the Letters of Credit, [Samjiwon, 1991])
US Cases

-Brenntag Intl. Chems., Inc. v. Bank of India, 175 F.3d 245 [2d Cir.1999]
-Voest-Alpine Intl. Corp. v. Chase Manhattan Bank, 707 F.2d
Korean Cases

-대법원 1997.5.9., 95다34385 (Korean Supreme Court 1997.5.9., 95Da34385)
-대법원 1997.8.29., 96다37879 (Korean Supreme Court 1997.8.29., 96Da37879)

< Abstract in Korean; 한글 초록>

신용장은 국제거래에서 광범위하게 그리고 일상적으로 사용되는 수단이다. 그러므로 그 신용장에 대하여는 한국뿐만 아니라 전 세계의 거의 모든 나라에서 활용되고 있는 규칙과 법규가 존재한다고 보면는 매우 자연스러운 것이다. 미국에는 통일상법전(UCC) 제 5조가 거의 모든 주에서 채택되어 신용장에 관한 성문법규로서 사용되고 있다. 물론 국제적으로 널리 인정되고 있는 신용장 규칙인 UCP도 미국뿐만 아니라 한국과 다른 많은 나라에서 인정되고 있는 규범이다. 2차 세계대전 이후 지금까지 세계 경제를 주도해온 미국의 영향으로 UCP 역시 많은 부분에서 UCC의 규정들을 반영하고 있다. 우리나라의 국내규제로 정한 신용장 규범은 없으나 무역 실무 분야와 여러 판례에서 UCP를 그 주된 규범으로 적용하고 있다.

본 논문은 미국의 법원들과 학자들이 해석하고 적용해 온 신용장의 개념과 신용장에 도입되어 있는 여러 가지 개념들에 대한 판례와 학설을 한국의 그것들과 비교하여 설명했다. 이 논문은 신용장의 성질에 대하여 미국의 법원과 학자들이 가진 견해들에 대하여 미국 및 한국의 학자들과 실무가들이 한국의 경우와 비교하여 고찰할 수 있는 기회를 제공하고자 한다.

특별히 본 논문은 실무적으로 자주 사용되는 신용장이지만, 그 것에 관하여 발생하는 쟁
점에 관하여는 아직 한국에서는 학술적 논문도 많지 않을 뿐 아니라 한국의 법원들도 아직은 익숙하지 않은 ‘회전보증신용장’과 관련된 중요 쟁점에 관하여 미국의 판례를 가지 고 그 특수한 쟁점과 더불어 신용장과 관련된 다양한 개념에 대한 미국 법원과 학자들의 입장을 비교법적으로 설명하고자 했다. 이 판례는 최근까지 신용장의 개념과 성격에 관하여 미국에서 대단히 많이 인용되는 영향력 있는 판례인데 거기에서도 구체적으로 특수한 쟁점은 사건 당사자였던 한국의 제일은행이 주장한 바와 같이 “회전보증신용장의 지급보증은 그 자체로서 발행은행이 그 신용장에 의하여 지급 보증된 이전 보증분의 지급이 이행된 것을 전제조건으로 한 것이나”라는 것이었다. 미국 법원의 결정은 신용장에 명시적으로 그러한 조건이 나타나 있지 않는 한 그러한 조건이 미리 준비되어 있는 새로운 지급보증의 전제 조건이 될 수 없다는 것인데 이것은 소위 신용장 해석에 있어서 ‘엄격 일치의 원칙’을 구체 적인 사실 관계를 통하여 재확인한 것이었다. 본 논문은 미국 법원이 이 구체적 쟁점을 도출하여 결정에 이르는 분석에서 신용장의 개념과 특성을 밝히거나 그것을 위하여 인용한 여러 판례들과 학설들을 소개하고 설명하였다. 본 논문은 이를 통하여 한국의 학자들과 실무가들의 신용장 관련 규칙과 법의 비교법적 이해에 기여하고자 하였다.