

Legal Alert

October 21, 2014

Michael R. King
mking@gbllaw.com
602-256-4405

QUESTION: HOW DO I MAKE SURE WE GET PAID FOR THE STUFF WE DELIVER HALF WAY AROUND THE WORLD?

ANSWER: BE VERY CAREFUL WITH EVERY ASPECT OF YOUR LETTERS OF CREDIT.

How picky are Banks and Courts about letters of credit?

Stemcor UK Limited shipped about \$8 million worth of containerized scrap to SESA International Limited only to have Indian Overseas Bank refuse to honor five letters of credit totaling approximately \$8 million. One of many document discrepancies raised by Indian Overseas Bank was a change of the word “Our” to “Issuing Bank’s” as to the cost of air courier service to send original shipping documents. The Court said the “certificate was plainly discrepant....” *Fortis Bank and Stemcor v. Indian Overseas Bank*, [2011] EWCA Civ 58 (Royal Courts of Justice, 1/31/11).

Flexus Computer Technology Inc. was turned down by Bank of China when it sought to draw on a letter of credit in the amount of \$1,547,840. One of the allegedly non-compliant documents presented described the goods as “STN” rather than “TFT.” I have no idea what either set of letters means. The Court didn’t explain, but said the document was “non-compliant.” Another of the documents incorrectly listed an address as “Unit 05B” instead of “Unit 058.” *China New Era International Limited v. Bank of China (Hong Kong) Limited & Anor-[2009] HKCU 2012.*

Pro-Fab, Inc. sent its \$437,325 worth of metal discs to Taiwan before a Taiwanese bank rejected its presentation on a letter of credit as non-conforming. “The ... three deficiencies were: a prohibited partial shipment, no oceangoing bills of lading, and no inspection certificates.” The circumstances of the deal showed that everyone knew there would be more than one shipment. Moreover, the bank had the inspection certificates and

bills of lading. The problem was they were not presented by Pro-Fab. “The beneficiary must strictly conform to the requirements of the letter of credit, because the bank is bound to adhere to them and not look beyond the face of the documents presented. If the beneficiary does not comply, the bank is not required to pay.” *Pro-Fab v. Vipa, Inc.*, 772 F.2d 847 (11TH Cir. 1985).

Seemingly small problems can prevent payments!

How do you keep your letters of credit from being rejected by the banks?

While the law concerning both domestic and international letters of credit can be very complex, start with the following list of considerations.

1. Is the issuer financially sound?
2. Does the issuer have a U.S. Branch at which you can present the letter of credit for payment and have you had the branch confirm the credit? If not, is there a United States confirming Bank that is financially sound?
3. Is the letter of credit for a sufficient amount in the proper currency?
4. Is the term sufficient to ensure that timely draws can be made?
5. Can you easily obtain all documents needed to make a draw, executed by the required persons, in the appropriate form?
6. Does the letter of credit state it is irrevocable?
7. Does the credit state it is subject to the Uniform Customs and Practices for Documentary Credits established by the International Chamber of Commerce? (UCP 600).
8. Does the credit permit partial draws/shipments to be made? If the credit provides for installments, can a less than full draw on one installment be carried over to the next installment? (See Articles 31 and 32 UCP.)
9. If the credit is to be renewed, does the extended credit state that draw requests made on the original will be honored under the renewed credit?

These are only some of the more significant issues to be considered when dealing with letters of credit.

Both international and domestic credit transactions are common for all types of manufacturers and distributors. If your company is considering a significant shipment before payment, please call me in advance to discuss ways you can protect your company from non-payment.

This article may be distributed with attribution but may not be excerpted or modified without the permission of the author. Copyright © 2014.