AN ISSUING BANK'S DUTY OF PAYMENT UNDER AN IRREVOCABLE LETTER OF CREDIT: ASOCIACION DE AZUCAREROS DE GUATEMALA v. UNITED STATES NATIONAL BANK OF OREGON

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A fundamental principle of the law of irrevocable letters of credit is that the issuing bank's duty to honor the seller's drafts depends only upon the written promise embodied in a letter of credit and is independent of the underlying sales agreement.[1] This principle is founded on the consideration that a free, uninhibited flow of international commercial transactions requires that credit instruments furnish a high degree of certainty of the bank's promise to pay.[2]

When the parties to commercial transactions operate thousands of miles apart litigation arising from a contractual default would be highly impractical. The irrevocable letter of credit helps to avoid this problem. In most instances it allows the seller to receive payment before the goods are actually received by the buyer. Consequently, he promptly receives the necessary capital to continue his operations and need not be concerned with the difficult and time-consuming task of repossessing the goods should

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1 A letter of credit has been defined as "a formal promise by a bank or another party of known solvency to accept and pay, or just to pay, the draft or the demand of payment by a beneficiary, whose compliance with the terms of the credit is a prerequisite of the enforceability of the promise." B. KOZOLCHYK, COMMERCIAL LETTERS OF CREDIT IN THE AMERICAS 9 (1966) [hereinafter cited as KOZOLCHYK]. The transactions involved in a commercial letter of credit situation are not complicated. Once the buyer and the seller have entered into a sales contract, the seller requests the credit letter as a method of payment and the buyer engages a bank to promise to pay the amount specified in the drafts drawn by the seller. The seller obtains payment by presenting the bank the documents specified in the letter. Section 5-103 of the UNIFORM COMMERCIAL CODE (Official Text 1962) [hereinafter cited as U.C.C.] lists and defines the three primary parties involved in the typical transaction:

> An 'issuer' is a bank or other person issuing a credit. U.C.C. § 5-103(1)(c).
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> A 'beneficiary' of a credit is a person who is entitled under its terms to draw or demand payment. *Id.* (d).
>
> A 'customer' is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer. *Id.* (g).

For general discussions of the law of letters of credit, see Gewolf, *The Law Applicable to International Letters of Credit*, 11 VILL. L. REV. 742 (1966); Hershey, *Letters of Credit*, 32 HARV. L. REV. 1 (1918); Comment, *Damages for Breach of Irrevocable Commercial Letters of Credit: The Common Law and the Uniform Commercial Code*, 25 U. CHI. L. REV. 667 (1958); Comment, *Letters of Credit Under the Proposed Uniform Commercial Code: An Opportunity Missed*, 62 YALE L.J. 227 (1953).

2 KOZOLCHYK, *supra* note 1, at 394-95.

the buyer default. On the other hand, the buyer can be reasonably certain that he will receive his goods and that they will conform to contract specifications. Rigid judicial enforcement of the principle of independence between the credit letter and the underlying contract has accounted, at least in part, for the fact that "[t]he irrevocable letter of credit represents the maximum degree of certainty that can be achieved in the realm of banking credit instruments."[3]

The letter of credit eliminates the seller's risk of not receiving payment and assures the buyer that payment under the letter will be made only upon the seller's compliance with the terms stipulated in the buyer's instructions to the issuing bank.[4] If, by contrast, an issuing bank's duty to honor the seller's drafts were dependent upon compliance with the underlying contract, the seller's assurance of receiving payment would be reduced and the buyer would no longer be assured of the seller's compliance as a prerequisite to payment. Furthermore, requiring an issuing bank to verify the parties' compliance with the contract, by inspecting goods before advancing payment, for example, would render the bank's participation in such transactions unprofitable, if not impossible.[5] The adage that "bankers deal in documents and not in goods" consequently has emerged as a matter of necessity.[6]

In *Asociación de Azucareros de Guatemala v. United States National Bank of Oregon*,[7] however, the Court of Appeals for the Ninth Circuit did not adhere to the general rule, but held that the issuing bank was under a duty to verify the buyer's complaint that the goods did not conform to contract specifications.[8] The decision thus raises perplexing questions concerning the remedies available to a beneficiary-seller when an issuing bank goes beyond its normal duty of payment under a letter of credit and, at the customer's request, transmits the beneficiary a communication which proves to be erroneous and upon which the benenficiary relies to his detriment. This comment will examine *Asociación de Azucareros* in light of the law applicable to irrevocable letters of credit. An attempt will be made to demonstrate that the Ninth Circuit has misapplied a well-settled and justifiable principle of law, and to define the issuing bank's duty of payment under letter of credit law.

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[3] *Id.* at 394.

The legal certainty of an irrevocable letter of credit is a combination of three principles. The first of these demands the issuer's inability to modify or cancel the credit without the consent of the customer and the beneficiary. The second principle requires a literal and strict interpretation of the terms of the credit, especially with regard to the beneficiary's compliance. The third principle establishes the separation and independence of the promise embodied in the letter of credit from the underlying transactions. *Id.* at 394-95.

[4] *Id.* at 11-12.

[5] *Id.* at 457.

[6] *Id.*

[7] 423 F.2d 638 (9th Cir. 1970).

[8] *Id.* at 640.

The appellant-bank issued an irrevocable letter of credit to the Asociación pursuant to an agreement under which the Asociación was to ship a specified quantity of raw sugar to the buyer. Under the letter of credit and the accompanying documents, the bank was obligated to pay 90 percent of the invoice value of the sugar upon receipt of documents showing a shipment of "5,000 Long Tons . . . basis 96 degrees minimum polarization."[9]

The Asociación shipped the sugar and transmitted the documents required in the credit letter. The bank in turn forwarded them to another bank which had issued a second letter of credit covering the buyer's intended resale of the sugar. As a result of these transactions, the appellant-bank received full payment from the second bank and credited the original buyer's account accordingly.[10]

Alleging that the sugar failed to comply with contract standards, the original buyer requested the National Bank of Oregon to seek the seller's authorization to modify the credit letter to provide payment for 75 percent of the invoice value instead of the 90 percent.[11] Without verifying the validity of the buyer's request, the bank sent the requested cable. The Asociación interpreted the request to mean that the sugar had polarized at less than 94 degrees.[12] It therefore agreed to the reduction in the amount of payment. After the appellant-bank had paid the reduced amount, however, it was discovered that the average polarization of the shipment was in excess of 95 degrees, well above the minimum acceptable in the industry.[13] The Asociación brought suit to recover the difference between 90 percent and 75 percent of the invoice value arguing that its agreement to modify the original letter of credit was based upon the bank's misrepresentation.

The Ninth Circuit, affirming the lower court decision,[14] held the

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[9] *Id.* at 639. The term polarization refers to the degree of purity of raw sugar. Sugar polarized at 96 degrees in the raw sugar industry is recognized as including all sugar polarized between 94 and 98 degrees. By trade custom, the term serves as a basis for determining the sales price on the basis of the purity of the delivered sugar. Ninety-six degree polarization is the standard of purity for the agreed price. Sugar polarized at less than 96 degrees is subject to deductions while sugar polarized in excess of 96 degrees receives premiums. *Id.* at n.2.

[10] *Id.* at 639.

[11] *Id.*

[12] *See* note 9 *supra.*

[13] 423 F.2d at 640.

[14] The United States District Court for the District of Oregon, in an unreported opinion, found that the Asociación had relied upon the bank's misrepresentation and was therefore entitled to the difference between the 90 percent invoice value in the original letter of credit and the 75 percent invoice value agreed to by the seller in reliance upon the bank's cable. The Ninth Circuit agreed with the lower court's finding that the use of the word "minimum" with reference to the 96 degree polarization was superfluous. Although the sugar was polarized at less than 96 degrees, its average purity was in excess of 94 degrees, the minimum acceptable polarization in the industry for sugar described as polarized "basis 96 degrees." Consequently, both courts agreed that the issuing bank had misrepresented the truth in its cable to the Asociación. *Id.*

seller was entitled to recission of its agreement to reduce payment and that the National Bank of Oregon had not been relieved of its duty to pay the original 90 percent of the invoice value. With regard to the duty of the bank in transmitting the requested cable, the court concluded:

> Inasmuch as the Bank was dealing with rather large sums of money in this transaction, it is not onerous to hold that it, as writer of the letter, should have known (if necessary, by making inquiries as to the meaning of its letter of credit) that sugar polarized at 95 degrees was 'raw sugar' within the meaning of its letter. The Bank therefore should have known that the Association would reasonably take its statement that the sugar was polarized below credit requirement to mean that the sugar was polarized below 94 degrees. Since the sugar was in fact polarized well above that figure, the cable misreprented the truth.[16]

DUTY OF AN ISSUING BANK

By holding the issuing bank liable for its failure to investigate the meaning of 96 degree polarization as that term was understood in the raw sugar industry, the court has not only misconstrued a basic principle of letter of credit law, but also has ignored the underlying policy of insuring the rapid and uninhibited flow of commercial transactions. It has been well established that the issuing bank's responsibilities extend only to a verification of the documents on their face and not to an inspection of the goods described in the underlying sales contract.[16]

The issue was presented as early as 1925 in *O'Meara Co. v. National Park Bank*[17] where the Court of Appeals of New York had to determine whether an issuing bank was under a duty to examine goods prior to making payment under an irrevocable letter of credit. The letter required that the bank be presented documents which described newsprint paper as conforming to a certain weight, size and tensile strength. Although the drafts were accompanied by the proper documents, the bank refused to pay them on the ground that the goods the buyer received failed to conform to the tensile strength stipulated in the letter. Ordering a judgment for the seller's assignor on the ground that the bank had no right to insist that a tensile strength test be made before paying the drafts, the court stated:

> The bank issued to plaintiff's assignor an irrevocable letter of credit, a contract solely between the bank and plaintiff's as-

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[15] *Id.* (footnote omitted).

[16] *See, e.g.*, Dulien Steel Prods. Inc. v. Bankers Trust Co., 298 F.2d 836 (2d Cir. 1962); American Steel Co. v. Irving Nat'l Bank, 266 F. 41 (2d Cir. 1920), *cert. denied*, 258 U.S. 617 (1922); Laudisi v. American Exch. Nat'l Bank, 239 N.Y. 234, 146 N.E. 347 (1924); Bank of Italy v. Merchants Nat'l Bank, 236 N.Y. 106, 140 N.E. 211 (1923), *cert. denied*, 264 U.S. 581 (1924); Sztejn v. J. Henry Schroeder Banking Corp., 177 Misc. 719, 31 N.Y.S.2d 631 (Sup. Ct. 1941); First Wis. Nat'l Bank v. Forsyth Leather Co., 189 Wis. 9, 206 N.W. 843 (1926).

[17] 239 N.Y. 386, 146 N.E. 636 (1925).

> signor, in and by which the bank agreed to pay sight drafts to a certain amount on preesntation to it of the documents specified in the letter of credit. This contract was in no way involved in or connected with, other than the presentation of the documents, the contract for the purchase and sale of the paper mentioned. . . . *Whether the paper was what the purchaser contracted to purchase did not concern the bank and in no way affected its liability. It was under no obligation to ascertain, either by a personal examination or otherwise, whether the paper conformed to the contract between the buyer and seller.* The bank was concerned only in the drafts and the documents accompanying them.[18] (emphasis added).

The principle set forth in *O'Meara* was approved recently by the District Court for the Southern District of New York. In *Dulien Steel Products, Inc. v. Bankers Trust Co.*,[19] the buyer brought suit against the issuing bank to recover amounts the bank paid to the beneficiary under an irrevocable letter of credit. The buyer contended that the bank was aware of amendments to the letter which authorized withholding payment of the beneficiary's drafts. Denying the buyer's motion for summary judgment, the court held that such amendments were void in the absence of the beneficiary's consent. With regard to the issuer's duty to pay the drafts upon proper presentment by the beneficiary, the court ruled that "a bank issuing or conforming a letter of credit is not concerned with the underlying contract between the buyer and seller in the absence of appropriate provisions in the letter of credit."[20]

A more recent affirmation of this principle appeared in *Banco Español de Crédito v. State Street Bank & Trust Co.*[21] where Court of Appeals for the First Circuit, referring to an ambiguous description of goods in the credit letter and documents, stated, "Further reading of the document indicates clearly that the phrase was directed to the underlying dispute between buyer and seller, *which could not be the concern of the advising bank.*"[22]

In addition to the wide judicial recognition accorded this rule,[23] the doctrine has been codified in section 5-109 of the *Uniform Commercial Code* which deals with the issuer's obligations to its customer.[24] Under

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18 *Id.* at 395-96, 146 N.E. at 639.
19 298 F.2d 836 (2d Cir. 1962).
20 *Id.* at 841.
21 385 F.2d 230 (1st Cir. 1967).
22 *Id.* at 237 (emphasis added).
23 *See* cases cited in note 16 *supra.*
24 U.C.C. § 5-109(1):

> An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility
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> (a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or
>
> (b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document

section 5-109(1), the bank is not responsible for performance of the underlying contract unless it has exercised control over its formation or the selection of the beneficiary under the letter of credit.[25] Normally, neither fact arises in a typical irrevocable letter of credit transaction.[26]

The reasoning employed by the Ninth Circuit in *Asociación de Azucareros* is contrary, therefore, to the great weight of authority supporting the general proposition that a bank issuing an irrevocable letter of credit assumes no liability under the underlying agreement. Interestingly, this conclusion emerges not only from the tenor of judicial precedents and the provisions of the *Uniform Commercial Code,* but also from the *Asociación* court's own treatment of a related issue in the second portion of its opinion.

The secondary issue involved a mutual release of claims agreement between the beneficiary and the original customer.[27] The court held that the release did not operate simultaneously to release the issuing bank of its liability under the original irrevocable letter of credit:

> The issuer is not concerned with the state of affairs between the buyer and seller. He is concerned only with the evidence of shipment and is bound to honor his promise 'regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary.'[28]

This language is wholly inconsistent with the court's initial conclusion that the bank was under a duty to investigate the quality of the sugar being purchased, and that by its failure to do so it had wrongfully misrepresented the truth in its cable to the beneficiary-seller.

The fact that the issuing bank is not under a legal obligation to investigate contractual controversies between the customer and beneficiary, however, in no way negates those duties which the bank is required to perform in a transaction based upon a letter of credit. Initially, the bank is under a duty to verify the seller's formal compliance with the documentary requirements set forth in the letter of credit.[29] Where a beneficiary has failed to comply strictly with the stipulations and requirements set forth in the letter, it has generally been held that the issuer is under no duty to pay the drafts presented by the seller.[30] If it is apparent, how-

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in transit or in the possession of others; or
(c) based on knowledge or lack of knowledge of any usage of any particular trade.

25 U.C.C. § 5-109, Comment 1.

26 *See* KOZOLCHYK, *supra* note 1, at 457.

27 Initially, the Asociación had brought suit against both the issuing bank and the original buyer. Subsequent to a counterclaim by the buyer and a judgment entered against the bank, the Asociación and the buyer mutually agreed to release their claims. 423 F.2d at 641.

28 *Id., quoting* U.C.C. § 5-114(1) *and citing* Dulien Steel Prods., Inc. v. Bankers Trust Co., 298 F.2d 836 (2d Cir. 1962).

29 KOZOLCHYK, *supra* note 1, at 12.

30 The rule has been discussed in the following terms: "[A] Bank which issues a

ever, that the seller has complied with the documentary requirements, the bank incurs an affirmative obligation either to pay or accept the seller's demand for payment.[31] Failure to do so exposes the bank to a potential suit by either the customer or the beneficiary. In *American Steel Co. v. Irving National Bank*[32] the bank had issued the beneficiary a letter of credit which covered tin plates it was to ship to the buyer. Holding that a federal regulation prohibiting the buyer's export of tin was no defense to the bank's refusal to honor the beneficiary's drafts,[33] the court concluded that the bank had an affirmative duty to honor a beneficiary's draft:

> The liability of the bank on the letter of credit as agreed upon between plaintiff and defendant was absolute from the time it was issued, and it was quite immaterial whether the defendant could export the tin or not. The law is that a bank issuing a letter of credit . . . cannot justify its refusal to honor its obligations by reason of the contract relations existing between the bank and its depositor.[34]

In addition to a bank's duty either to pay or accept the seller's draft upon the latter's strict compliance, an issuing bank is also under a duty to refrain from paying or accepting the seller's demand for payment where it is apparent that he has failed to comply with the terms of the letter of credit.[35] A typical illustration of the obligation not to pay occurs where the customer has been defrauded by the beneficicary, and evidence of the fraud is brought to the attention of the issuing bank prior to the time that the bank receives the documents requiring payment.[36]

A classic example of seller fraud giving rise to an issuer's duty to refrain from payment arose in *Sztejn v. J. Henry Schroder Banking Corp.*[37] The purchaser had contracted with the seller to buy a quantity of desig-

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letter of credit is liable to the person in whose favor the credit is issued only upon strict compliance with the requirements therein stated." North Am. Mfrs. Export Ass'n v. Chase Nat'l Bank, 77 F. Supp. 55, 56 (S.D.N.Y. 1948); "We have heretofore held that these letters of credit are to be strictly complied with, which means that the papers, documents, and shipping descriptions must be followed as stated in the letter. There is no discretion in the bank or trust company to waive any of these requirements." Anglo-South Am. Trust Co. v. Uhe, 261 N.Y. 150, 156-57, 184 N.E. 741, 743 (1933). For further discussions of the doctrine of strict compliance, *see generally* KOZOLCHYK, *supra* note 1, at 255-77; Note, *Foreign Trade—Letters of Credit—Uniform Customs—Strict Compliance with the Terms of Letters of Credit is Required*, 3 TEXAS INT'L L. FORUM 359 (1967).

[31] *E.g.*, Midland Bank Ltd. v. Seymour, [1955] 2 Lloyd's List L.R. 147; Urquhart Lindsay & Co. v. Eastern Bank, [1922] 1 K.B. 318, 322-23. *See also* U.C.C. § 5-106(2).

[32] 266 F. 41 (2d Cir. 1920).

[33] *Id.* at 43.

[34] *Id.*

[35] *See, e.g.*, Laudisi v. American Exch. Nat'l Bank, 239 N.Y. 234, 146 N.E. 347 (1924); Equitable Trust Co. v. Dawson Partners, Ltd., [1926] 25 Lloyd's List L.R. 90. *See also* U.C.C. § 5-109(2).

[36] On this notion of fraud, *see generally* Campbell, *Guaranties and the Suretyship Phases of Letters of Credit*, 85 U. PA. L. REV. 261, 271-72 (1937); Note, *Sales—Letters of Credit—Buyer May Enjoin Payment of Seller's Drafts on Ground of Fraud*, 42 COLUM. L. REV. 149 (1942).

[37] 177 Misc. 719, 31 N.Y.S.2d 631 (Sup. Ct. 1941).

nated bristles. The defendant-bank issued an irrevocable letter of credit in the seller's favor. After receiving worthless cowhair instead of the requested bristles, however, the buyer communicated the apparent fraud to the bank, which refused to pay the seller upon presentment of the documents. The court held that the bank rightfully refused payment and noted an exception to the general rule that the letter of credit is independent of the underlying agreement:

> No hardship will be caused by permitting the bank to refuse payment where fraud is claimed, where the merchandise is not merely inferior in quality but consists of worthless rubbish, where the draft and the accompanying documents are in the hands of one who stands in the same position as the fraudulent seller, where the bank has been given notice of the fraud before being presented with the drafts and documents for payment, and where the bank itself does not wish to pay pending an adjudication of the rights and obligations of the other parties. . . . Although the bank is not interested in the exact detailed performance of the sales contract, it is vitally interested in assuring itself that there are some goods represented by the documents.[38] (citations omitted).

REMEDIES FOR ISSUER'S BREACH: THE INADEQUACIES OF SECTION 5-115 OF THE UNIFORM COMMERCIAL CODE

Notwithstanding the decision in *Asociación de Azucareros*, it is clear, according to the law governing the rights and liabilities of parties to a commercial transaction utilizing the irrevocable letter of credit, that the appellant-bank was not under a duty either to transmit the requested cable or investigate the meaning of the trade term "96 degree polarization." Importantly, however, the remedies which are generally available to the beneficiary for an issuing bank's breach of its duty of verification are unrelated to affirmative acts such as that undertaken by the issuing bank in *Asociación de Azucareros*. For example, section 5-115 of the *Uniform Commercial Code*, which designates the beneficiary's remedies for an issuer's breach, provides no remedy to a seller in the position of the appellant in *Asociación de Azucareros*. Section 5-115 protects the beneficiary only in those cases in which the issuing bank has either improperly dishonored or anticipatorily breached its duty either to pay or accept the docu-

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[38] *Id.* at 723, 31 N.Y.S.2d at 635. *See also* U.C.C. § 5-114(2)(a) which places upon the bank the obligation to honor the seller's demand for payment where the party presenting the draft enjoys the status of a holder in due course as defined in U.C.C. § 3-302.

This application of letter of credit law to cases involving fraud on the part of the seller has received staunch judicial approval since the 1941 *Sztejn* opinion. *See, e.g.*, Dulien Steel Prods., Inc. v. Bankers Trust Co., 298 F.2d 836 (2d Cir. 1962); Balbo Oil Corp. v. Zigourakis, 40 Misc. 2d 710, 243 N.Y.S.2d 806 (Sup. Ct. 1963); Kingdom of Sweden v. New York Trust Co., 197 Misc. 431, 96 N.Y.S.2d 779 (Sup. Ct. 1949). The *Sztejn* case and subsequent interpretations of the opinion have been thoroughly analyzed. *See* KOZOLCHYK, *supra* note 1, at 285-92.

ments specified in an irrevocable letter of credit.[39] Consequently, a damaged seller who finds himself unable to claim an improper dishonor or an anticipatory repudiation by the issuing bank is forced to look beyond letter of credit law for an adequate remedy. Professor Kozolchyk has suggested, with qualification, that the law of torts may provide the desired remedy:

> Presumably [the] question [of the remediless seller] is to be answered by the general principles of the laws of negligence of the different jurisdictions, but it is doubtful whether this solution will suffice, especially if courts may otherwise be unaware of the existence and extent of the mercantile injury.[40] (footnote omitted).

Aside from the failure of the *Uniform Commercial Code* to provide a remedy to a seller who has been damaged by an unverified and erroneous transmission by an issuing bank, section 5-115 appears to be destructive of cardinal principles of letter of credit law even in those cases where its remedial application is obvious. The basis of such a criticism is that the remedies available to a damaged seller under section 5-115 are dependent upon whether the beneficiary has learned of the issuer's dishonor "in time reasonably to avoid procurement of the required documents."[41] Under subsection (1), if the seller has not received notice of the bank's repudiation in a reasonable time to avoid obtaining the necessary documents, he may recover the exact amount of the credit from the issuer.[42] Subsection (2), on the other hand, provides that a seller who has learned of the issuer's repudiation in a reasonable time to avoid procurring the documents, will have various remedies specified in the sales article of the Code.[43]

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[39] U.C.C. § 5-115(1), (2).

[40] KOZOLCHYK, *supra* note 1, at 403.

[41] U.C.C. § 5-115(2). *See also* Comment, *Damages for Breach of Irrevocable Commerical Letters of Credit: The Common Law and the Uniform Commercial Code*, 25 U. CHI. L. REV. 667, 673-74 (1958).

[42] U.C.C. § 5-115(1):

> When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (Section 2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages . . . and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

[43] *Id.* (2):

> When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under Section 2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

This subsection relegates the seller to the general index of seller's remedies contained in U.C.C. § 2-703. These remedies include resale (U.C.C. § 2-706), damages for non-acceptance (U.C.C. § 2-708) or, in special cases, an action for the price (U.C.C. § 2-709).

The possibility for abuse of section 5-115 is obvious. Should a bank choose to dishonor a demand for payment, it could preclude the seller from recovering the amount of the credit by immediately notifying him of its cancellation. Although the seller could still claim damages under the sales article of the Code pursuant to section 5-115(2), those damages are usually nominal where there has been only a short lapse of time between the issuer's dishonor and its subsequent notification of cancellation to the beneficiary. In certain instances, therefore, the practical effect of section 5-115 is to allow the issuing bank to choose the remedy which will be available to the beneficiary whom it has damaged. The anomaly thus created has led to the conclusion that section 5-115 operates to "destroy not only the notion of establishment of the credit in the U.C.C., but also the certainty of the irrevocable promise."[44]

CONCLUSION

The holding that a bank issuing an irrevocable letter of credit is under a legal obligation to inquire into the terms of the sales agreement inexplicably overlooks an essential tenet of the law of irrevocable letters of credit. If banks were required to undertake this obligation, the result would be a destruction of the certainty of the promise embodied in the letter of credit. The seller's risk of nonpayment would be increased and the buyer would be denied the assurance that the seller would not receive payment until he has presented to the bank the documents required in the credit letter.

Because the duty of an issuer of an irrevocable letter of credit extends only to the obligation either to honor or refuse payment on a draft presented by the seller,[45] it is submitted that the issuing bank is not obligated to transmit a cable to the seller at the customer's request. Unfortunately, should the bank choose to go beyond the scope of its duty under letter of credit law, the *Uniform Commercial Code* offers no remedy to a seller who is ultimately damaged should the bank's transmission prove to be erroneous. Consequently, the beneficiary, rather than being provided a remedy under letter of credit law, will be forced to rely upon tort or perhaps quasi-contract remedies. In this regard, contractual notions of reliance and estoppel and the standard of care imposed upon the "officious intermeddler" under the law of torts might provide the bases for more suitable remedies.

In light of the economic realities of the banking relationship, it is logical to assume that a bank may feel compelled to honor a customer's request to engage in various communications with the seller-beneficiary.

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[44] KOZOLCHYK, *supra* note 1, at 445 (footnote omitted).

[45] This depends upon whether the beneficiary has complied with the requirements as set forth in the letter. *See* notes 29-38 and accompanying text *supra*.

The bank's conduct in the instant case may well represent common practice rather than an isolated incident. The probable regularity of such practices combined with the need for legal certainty in commercial credit transactions necessitates legislative or judicial reappraisal of the *Asociación* holding. In the absence of such reappraisal, the case must not be deemed reflective of the basic principles of letter of credit law.