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Defining Good Faith Letter of Credit Practices

James G. Barnes

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*James G. Barnes**

I. INTRODUCTION

Letter of credit specialists cringe when reading an opinion that sets out to apply contract law to a letter of credit, because that approach misconceives the nature of the undertaking and frequently leads to the wrong result.[1] Nonspecialist transactional lawyers, litigators, and judges frequently apply contract law principles and methodology rather than the principles and specific practices peculiar to letters of credit, in part because codification of letter of credit law in the Uniform Commercial Code (UCC) is limited in scope.[2] Believing that nonspecialists would be helped if UCC Article 5 were more expansive in its articulation of the peculiarities of letter of credit undertakings, letter of credit specialists have favored the UCC Article 5 revision.[3]

The American Bar Association/U.S. Council on International Banking, Inc. (ABA/USCIB) Task Force Report that launched the pending effort of the National Conference of Commissioners on Uni-

* Mr. Barnes is a partner of Baker & McKenzie in Chicago, Illinois. He chairs the Letter of Credit Subcommittee of the Uniform Commercial Code Committee of the American Bar Association's Business Law Section. He is also an advisor to the National Conference of Commissioners on Uniform State Laws Drafting Committee to revise Uniform Commercial Code Article 5 and a delegate to the United Nations Commission on International Trade Law Working Group on Standby Letters of Credit and Independent Guarantees.

1. This is common ground among those (James E. Byrne, Albert J. Givray, and me) with primary responsibility in recent years for the letter of credit segment of *The Business Lawyer*'s annual Uniform Commercial Code (UCC) survey. *See, e.g.*, Albert J. Givray et al., *Letters of Credit*, 47 BUS. LAW. 1571, 1574-75 (1992). *See generally* JOHN F. DOLAN, THE LAW OF LETTERS OF CREDIT ¶ 2.01 (2d ed. 1991 & Supp. 1994) (distinguishing letters of credit from other contracts); TASK FORCE ON THE STUDY OF U.C.C. ARTICLE 5, AN EXAMINATION OF U.C.C. ARTICLE 5 (LETTERS OF CREDIT) ¶ 8 (1989), *reprinted in* 45 BUS. LAW. 1521, 1561-63 (1990) [hereinafter ABA/USCIB TASK FORCE REPORT] (Task Force was comprised of members of both American Bar Association's Business Law Section and U.S. Council on International Banking, Inc.) (stating law should reflect unique characteristics of letters of credit).

2. *See* official comments to U.C.C. §§ 5-101, -102(3) (1990).

3. Revision of UCC Article 5 was not favored by all. *See, e.g.*, Henry Harfield, *In Defense of Present Letter of Credit Law: A Plea in Confession and Avoidance*, 9 GEO. MASON U. L. REV. 211 (1987).

form State Laws (NCCUSL) to revise UCC Article 5 was developed by letter of credit specialists: two law professors, five practicing lawyers, and three bankers.[4] The lawyer members of the ABA/USCIB Task Force viewed letters of credit as unique undertakings and letter of credit law as law merchant. We viewed the UCC as an appropriate home for letters of credit, because the UCC codifies the law of other mercantile specialties and is generally oriented toward commercial rather than consumer concerns—and letters of credit clearly do not raise consumer concerns.[5] Given that law merchant is derived not from courts or ivory towers but from commercial practice, we greatly valued the bankers' explanations of practice, as well as their perspectives as large scale processors of letter of credit applications and drawings. We viewed recognition of, and alignment with, the Uniform Customs and Practice for Documentary Credits (UCP)—which has the effect of assuring compatibility with non-U.S. letter of credit law—as critical to the success of UCC Article 5 revision. Developing an international, practice-based framework for analyzing questions, as well as looking to standard practice for specific answers, is basic to the ABA/USCIB Task Force Report.[6]

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4. The Task Force on the Study of UCC Article 5 report was presented to the Letter of Credit Subcommittee of the Uniform Commercial Code Committee of the American Bar Association's Business Law Section and to the U.S. Council on International Banking, Inc. by American Bar Association members: Professor James E. Byrne (George Mason University School of Law), Chair, Professor Boris Kozolchyk (University of Arizona College of Law), Michael Evan Avidon (Moses & Singer), James G. Barnes (Baker & McKenzie), Arthur G. Lloyd (Citibank, N.A.), Janis S. Penton (Rosen, Wachtell & Gilbert), and Richard F. Purcell (Connell Rice & Sugar Co., Inc.); and by U.S. Council on International Banking, Inc. members: Alan Bloodgood (Morgan Guaranty Trust Co.), Charles del Busto (Manufacturers Hanover Trust Co.), and Vincent Maulella (Manufacturers Hanover Trust Co.). *See* cover page to ABA/USCIB TASK FORCE REPORT, *supra* note 1 (cover page to report not reproduced in volume 45 of *The Business Lawyer*).

5. UCC Article 5 competes with non-UCC law in New York and three other states by virtue of an opt-out provision enacted in those states for letters of credit made subject to the Uniform Customs and Practice for Documentary Credits (UCP). *See* ALA. CODE § 7-5-102(4) (1993); ARIZ. REV. STAT. ANN. § 47-5102(D) (1988); MO. ANN. STAT. § 400.5-102(4) (Vernon 1994); N.Y. U.C.C. LAW § 5-102(4) (McKinney Supp. 1994). It also competes with non-U.S. law in the case of letters of credit issued outside the United States and in due course will compete with a convention on independent guarantees and standby letters of credit being drafted under the auspices of the United Nations Commission on International Trade Law (UNCITRAL). *See* James E. Byrne, *Domestic and International Harmonization of Letter of Credit Law: UCP, UCC Article 5 and the UNCITRAL Convention—An Evaluation at Midstream*, *in* COMMERCIAL LAW ANNUAL 325 (Louis F. Del Duca & Patrick Del Duca eds., 1993). However, the UCC does not compete with federal legislation or regulation. *See* 12 C.F.R. § 7.7016 (1994) (stating that national banks may issue letters of credit subject to UCC or UCP).

6. For example, the ABA/USCIB Task Force suggested that a three-day examination period was too short, particularly if all defenses could be precluded for failure to act within

Revision of UCC Article 5, as undertaken by the NCCUSL Drafting Committee that first met in January 1991, is now approaching completion. Draft Revised UCC Article 5[7] is generally viewed by letter of credit specialists as significantly expanding and improving current UCC Article 5. We appreciate its recognition that observance of "standard practice" provides an important norm for letter of credit issuers dealing with named beneficiaries and also successor beneficiaries claiming a right of substitution by operation of law.[8] We worry, however, that general UCC principles, notably the UCC section 1-203 principle that every contract or duty within the UCC imposes an obligation of good faith in its performance or enforcement, will be applied to letter of credit undertakings as if they were contracts. We oppose adding "and observance of reasonable commercial standards of fair dealing" to the current "honesty in fact" definition of "good faith."[9] Accordingly, we were active in the debate over the appropriate defini-

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that time period. This suggestion was influenced by the fact that the UCP would not likely embrace a three-day examination period, nor would the New York banks engage in processing of large numbers of draws under commercial letters of credit because their practices were UCP-oriented, and the typical turnaround time was five days, not three. *See* ABA/USCIB TASK FORCE REPORT, *supra* note 1, ¶ 27, *reprinted in* 45 BUS. LAW. at 1599-1603.

7. A copy of the August 1994 draft revision of UCC Article 5, in the form recommended at the 1994 NCCUSL Annual Meeting, is on file with the *Loyola of Los Angeles Law Review*. The draft revised statutory language resulted from the NCCUSL Drafting Committee meeting in New York on March 11-13, 1994, and abbreviated meeting in Chicago on July 30-31, 1994, with a few changes made during the reading on August 1, 1994, at the NCCUSL annual meeting in Chicago. This copy of the draft revision of UCC Article 5 will be referred to in this Essay as "Draft Revised" UCC Article 5. The 1990 version of the UCC will be referred to as "current UCC."

8. *See* Draft Revised U.C.C. §§ 5-108(e), -112(b)(2), -113(b) (containing references to "standard practice of financial institutions that regularly issue letters of credit").

9. U.C.C. § 1-201(19) (1990) (" 'Good faith' means honesty in fact in the conduct or transaction concerned."). By "we," I mean lawyers who think of themselves as letter of credit specialists as distinguished from UCC specialists. There are surely exceptions, but on the topic of keeping the "honesty in fact" definition of "good faith" for purposes of letter of credit law, the letter of credit specialists are in substantial agreement. *See, e.g.*, Attachments to Memorandum from Carlyle C. Ring, Jr., Chair, to the NCCUSL Drafting Committee (Jan. 12, 1994) (on file with the *Loyola of Los Angeles Law Review*). This memorandum contained supplemental materials for the 1994 San Francisco meeting, including: Memorandum from James G. Barnes to James J. White (Jan. 8, 1994) (comments of USCIB) (favoring narrow definition); Letter from James G. Barnes to Donald J. Rapson (Dec. 29, 1993) (favoring narrow definition); Letter from John F. Dolan to James J. White 3 (Jan. 4, 1994) (favoring narrow definition); Letter from Donald J. Rapson to James G. Barnes 3 (Jan. 5, 1994) (favoring expanded definition); Summary of January 7, 1994, Meeting of New York State Bar Association Subcommittee on Letters of Credit 1 (attached to Letter from Michael E. Avidon to Carlyle C. Ring, Jr. and James J. White (Jan. 11, 1994)) (favoring narrow definition); Memorandum from Paul S. Turner to Carlyle C. Ring, Jr. and James J. White 3-6 (Jan. 5, 1994) [hereinafter Turner Memorandum] (favoring expanded

tion of good faith for UCC Article 5 purposes, and we applaud the decision of the NCCUSL Drafting Committee to keep the current honesty in fact definition for revised UCC Article 5.[10]

The debate over the definition of good faith applicable to letters of credit is part of a larger debate about whether a single UCC definition of good faith is desirable and, more generally, whether a revised UCC should strive to set forth a single set of core principles. This Essay proceeds on the basis that, at least as applied to letters of credit, the UCC should stay focused on identifying the practices that are accepted in the marketplace, on facilitating those practices, and not on developing abstract legal principles for general application to contracts and mercantile specialties. Accordingly, this Essay focuses on the particular letter of credit practices to which an obligation to exercise good faith might be applied, including: (1) beneficiary demands for payment against documents that the beneficiary knows or should know are noncomplying or untruthful; (2) issuer honor of documents that the issuer knows or should know are fraudulent—or presented in bad faith; (3) issuer dishonor of a beneficiary's demand for which the issuer clearly has no defense;[11] (4) applicant refusal to reimburse when the applicant clearly has no defense; and (5) applicant assertion of groundless claims of beneficiary fraud—or bad faith—for the purpose of delaying honor by the issuer. In these critical contexts, expansion of the definition of good faith would confuse and conflict with existing domestic and foreign letter of credit law and practice based on strict compliance, strict preclusion, strict performance of the issuer's undertaking to pay, the limited fraud exception to the indepen-

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definition). I have been engaged to represent the USCIB in connection with UCC Article 5 revision since September 1993 and was so acting when I wrote to Donald J. Rapson.

10. This debate was summarized by the chair of the NCCUSL Drafting Committee as follows:

> Summarized below are policy issues that the Drafting Committee has resolved in a manner acceptable on balance to issuers, beneficiaries and applicant representatives but on which there was a minority that hold strong contrary opinions:
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> "*Good Faith" definition.* This draft uses the Article 1 definition of "honesty in fact" (Subjective Standard). Issuers (particularly Banks) believe that adding "fair dealing" will undermine certainty of payment by inviting courts to look into the underlying transaction, thereby seriously eroding the "independence" principle and the "strict compliance" standard essential to the commercial effectiveness of Letters of Credit. The Drafting Committee supports this view.

Memorandum from Carlyle C. Ring, Jr., Chair, to NCCUSL 2 (May 25, 1994) (regarding UCC Article 5 policy issues) (on file with the *Loyola of Los Angeles Law Review*).

11. The proponents of an expanded definition of good faith for UCC Article 5 are focused primarily on making consequential or punitive damage remedies available in cases of bad faith dishonor by an issuer. *See* Turner Memorandum, *supra* note 9, at 1-3.

dence principle, and the availability of specific enforcement and summary judgment remedies.

II. Bad Faith Demand for Payment by a Beneficiary

Letter of credit beneficiaries prepare and procure the documents that are required to perform their contractual obligations to the applicant *and* to satisfy the conditions of the letter of credit securing the applicant's payment obligations to the beneficiary. In order to comply with the documentary requirements of the letter of credit, beneficiaries frequently present documents containing false statements. Sometimes the beneficiary duly, or at least substantially, performs the underlying contract but presents a document that misdescribes the quantity, quality, or timing of its own performance of the underlying contract. This may occur because the parties did not draft the letter of credit to match the terms of the underlying contract or the terms of the underlying contract are amended but not the letter of credit. Sometimes the false statement is conclusory and the beneficiary has some basis for believing it to be true or otherwise defensible in the context of the beneficiary's contractual relationship with the applicant. In most cases the beneficiary is apparently, if not actually, motivated to present the document containing a false statement because deleting or qualifying the false statement would make the document facially noncomplying under the letter of credit. Suffice it to say that a surprising number of presentations that are facially complying benefit from back dating, unauthorized signing, misdescription of contractual performance, and the like. Also, there is considerable variation in their effects on issuers and applicants[12] and in the extent to which the beneficiary is aware of those effects.

Under current UCC section 5-114(2), "fraud" justifies dishonor of an apparently complying demand for payment under a letter of credit. The question of what kind of fraud is required has been frequently litigated, particularly by way of applicant actions seeking to enjoin presentation by the beneficiary and honor by the issuer. Most of the concerns and criticisms with this aspect of letter of credit law

12. If correcting the false statement would make the document facially nonconforming under the letter of credit, then the false statement is material to the beneficiary's obtaining payment under the letter of credit even if it is immaterial to the beneficiary's right to payment on the underlying contract. Materiality may also be determined by reference to the effect of the false statement on the value of the document to any holder, for example, the extent to which a negotiable bill of lading indorsed in blank overstates the quantity shipped.

and practice have been that too many unjustified fraud claims have been asserted by applicants with the effect of unjustifiably delaying payment and forcing the beneficiary to litigate in the applicant's home court.

Consistent with the opinion of the ABA/USCIB Task Force,[13] the NCCUSL Drafting Committee decided to keep extraordinary defenses against honor narrow, whether raised by way of applicant injunction action or issuer defense. Accordingly, Draft Revised UCC section 5-109 keeps the words "fraud" and "forgery," found in current UCC section 5-114(2), for purposes of defining the scope of extraordinary defenses against honor of facially conforming documents. Adding "observance of reasonable commercial standards of fair dealing" to the definition of good faith would in time enlarge the scope of extraordinary defenses against honor either by adding to the definition of fraud, or by adding another type of extraordinary defense—like "illegality"—which courts sometimes recognize.[14]

Draft Revised UCC section 5-110(a)(1) provides that the same fraud which would justify dishonor would also support a post-honor warranty claim. The NCCUSL Drafting Committee decided not to create a post-honor warranty action for presentations that were untruthful but not fraudulent. That decision was based on the proposition that U.S. law should not differ from non-U.S. law and that letter of credit law should not recognize claims based on the presentation of documents under a letter of credit that would not also be recognized on the presentation of documents in any cash-against-documents transaction.[15] An expanded definition of good faith for Article 5 purposes would undercut that decision.

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13. ABA/USCIB TASK FORCE REPORT, *supra* note 1, ¶ 32, *reprinted in* 45 BUS. LAW. at 1614-16.

14. *See, e.g.*, Western Sec. Bank v. Superior Court, 21 Cal. App. 4th 156, 25 Cal. Rptr. 2d 908 (1993), *review granted*, 871 P.2d 203, 29 Cal. Rptr. 2d 151 (1994). In this case an issuer was excused from honoring a drawing that was deemed "fraudulent" within the meaning of current UCC § 5-114(2) because the letter of credit proceeds were to be applied in violation of California's antideficiency statutes. *Id.* at 179-80, 25 Cal. Rptr. 2d at 921.

15. Warranty on the transfer of documents is thus left to the law applicable to the particular document, UCC § 7-507, for example, whether transferred under a letter of credit or for collection. This means that most disputes over documents will be mooted or resolved in the context of deciding disputes over performance of the underlying contract. In enforcing the underlying contract, an expanded definition of good faith, as set forth in current UCC § 2-103(1)(b), may be applicable. This is as it should be because the letter of credit is independent of the underlying contract and is expected to be performed or, if necessary, enforced without regard to most contract law principles and equitable doctrines.

There is another kind of possible bad faith presentation by a beneficiary. In *Philadelphia Gear Corp. v. Central Bank*,[16] the majority opinion stated that the beneficiary's knowing presentation of noncomplying documents was, among other things, a breach of the UCC section 1-203 obligation of good faith.[17] As a result of that breach, the issuer was permitted to defend its dishonor on the basis of facial noncompliance which the issuer had not specified in a timely notice of dishonor.[18] Draft Revised UCC section 5-108(c) provides for preclusion, rather than estoppel, against issuers that do not give timely and specific notice of dishonor. Here, too, expanding the definition of good faith would undercut the strictness of the preclusion approach, exposing beneficiaries to a type of defense or claim based on bad faith that is not now recognized in practice or the courts—apart from the *Philadelphia Gear* majority opinion.

III. Bad Faith Honor by an Issuer

Letter of credit issuers are frequently put on notice that the beneficiary's demand for payment is fraudulent. The notice is frequently supported by some indication of irregularity in the documents and by some extrinsic evidence of fraud. Issuers typically ignore such "evidence" of fraud, taking the position that the applicant must timely persuade a court as to the merits of its fraud claim and obtain an injunction against presentation or honor.[19] In this regard, issuers typically will not delay honor by even a day or two, notwithstanding applicant representations that further fraud evidence or a court injunction will be forthcoming shortly.

Current UCC sections 5-114(2)(b) and 5-114(3) provide that an issuer "acting in good faith" may honor a fraudulent presentation by

16. 717 F.2d 230 (5th Cir. 1983).

17. *Id.* at 238.

18. *Id.* at 238-40. The *Philadelphia Gear* letter of credit was subject to the UCP, which precludes issuers from raising defenses that are not timely notified to the presenter. Preclusion is different from contract law concepts of waiver and estoppel. Preclusion occurs without regard to the issuer's intent to waive any defense or to the beneficiary's detrimental reliance on the issuer's action or inaction. *See* James G. Barnes, *Nonconforming Presentations Under Letters of Credit: Preclusion and Final Payment*, 56 Brook. L. Rev. 103, 106-07 (1990).

19. Current UCC § 5-114(2)(b) and Draft Revised § 5-109(b) expressly authorize injunctions against honor. Were UCC Article 5 to make injunctive relief unavailable, then it might be appropriate to reconsider the extent to which issuers may be required to evaluate all evidence of fraud that is timely presented to the issuer. Under current practice, issuers generally decline to exercise whatever discretion they may have to dishonor a demand that is fraudulent.

the beneficiary and still be entitled to reimbursement from the applicant. As noted above, issuers routinely exercise the right to honor and then claim reimbursement, and they have proved invulnerable to applicant claims that they did not act in good faith.[20] Indeed, applicants are well advised not to waste time or money litigating this issue, and in fact they do not litigate this issue much.

The NCCUSL Drafting Committee did not wish to change this practice or the law on which it is based.[21] Accordingly, Draft Revised UCC section 5-109(a)(2), in combination with section 5-108(i)(1), entitles an issuer to reimbursement for honoring a fraudulent presentation if the issuer was "acting in good faith."

Also in this context, enlarging the definition of good faith would change the effect of current section 5-114, reversing the decision of the NCCUSL Drafting Committee to retain the current law and practice. It would put an issuer's right of reimbursement at risk and thereby induce issuers to dishonor in many more instances than is now the case. This would have obvious consequences for the standing of U.S. bank letters of credit in domestic and international commerce.

IV. Bad Faith Dishonor by the Issuer

In everyday practice, issuers dishonor presentations that do not "strictly" comply with the terms and conditions of the letter of credit. A substantial percentage of all presentations made under letters of credit, particularly commercial letters of credit, do not strictly comply.[22] Most discrepancies are timely cured by the beneficiary or waived by the issuer—typically backed by a general or specific waiver by the applicant.

Current UCC Article 5 does not provide whether compliance should be "strict," "substantial," or "reasonable." Compliance issues are frequently litigated, however, and the clear weight of judicial au-

20. There were two reported decisions on this issue in 1993 and none in 1992. *See* Michigan Nat'l Bank v. Metro Institutional Food Serv., 497 N.W.2d 225, 227-28 (Mich. Ct. App. 1993) (majority held issuer acted in good faith as matter of law, but dissent would have remanded for trial as to issuer's good faith); Merchants Nat'l Bank v. Terry, No. C4-93-440, 1993 Minn. App. LEXIS 1127, at *4 (Minn. Ct. App. Nov. 8, 1993) (jury found that issuer acted in good faith).

21. The ABA/USCIB Task Force saw no problem with this aspect of the UCC and therefore expressed no opinion about it.

22. *See* Barnes, *supra* note 18, at 108.

thority supports a strict compliance standard.[23] Moreover, worldwide practice is to require beneficiaries to meet a strict-compliance standard.[24] On that basis, the ABA/USCIB Task Force recommended that the revised UCC Article 5 expressly recognize practice and provide for a standard of strict compliance as practiced by banks.[25] The NCCUSL Drafting Committee decided that revised UCC Article 5 should provide a norm of strict compliance determined by "standard practice."[26]

Requiring issuers to observe "reasonable commercial standards of fair dealing" when examining a presentation that does not strictly comply in accordance with standard practice would create confusion, weaken the role of practice, and unsettle case law in the much-litigated area of facial compliance. Accordingly, expanding the definition of good faith would undercut, if not contradict, the substantive decision that compliance should be strict rather than reasonable and should be based on standard practice rather than fair dealing.

In due course beneficiary lawsuits for wrongful dishonor would be accompanied by a separate count for bad-faith dishonor. This would permit the beneficiary to discover and introduce evidence as to whether application of the strict-compliance rule was unreasonable and unfair in light of the beneficiary's ignorance of letter of credit practice, the beneficiary's substantial performance of the underlying contract, or the applicant's efforts to influence the issuer's decision to dishonor.[27] This kind of evidence, of course, would be immaterial and irrelevant in an ordinary wrongful dishonor case, where the liability issues are limited to whether the presentation strictly complied and

23. *See, e.g.*, Alaska Textile Co. v. Chase Manhattan Bank, 982 F.2d 813, 816 (2d Cir. 1992); ABA/USCIB TASK FORCE REPORT, *supra* note 1, ¶ 30, *reprinted in* 45 BUS. LAW. at 1608.

24. *See Alaska Textile Co.*, 982 F.2d at 816 n.1 ("Over 140 countries use the [UCP]."). The UCP is regularly interpreted as requiring "strict compliance." *See* Board of Trade v. Swiss Credit Bank, 728 F.2d 1241, 1243 (9th Cir. 1984).

25. *See* ABA/USCIB TASK FORCE REPORT, *supra* note 1, ¶ 30, *reprinted in* 45 BUS. LAW. at 1609.

26. *See* Draft Revised U.C.C. § 5-108(a).

27. Issuers are subject to attack from both the applicant and beneficiary for any issuer action or inaction that affects the dispute between them, particularly in cases where the applicant's claim of beneficiary fraud appears to have some merit but attracts a response from the beneficiary, or the beneficiary's bank, to the effect that the applicant is acting in bad faith in making such a claim. It is ironic that an expanded good faith obligation is expected to deter misuse of the fraud defense but not expected itself to be misused. There is a much greater potential for misusing "fair dealing" than "fraud."

whether the issuer preserved its defenses by timely notice of dishonor.[28]

Discouraging dishonor of documents that strictly comply in accordance with standard letter of credit practice is a worthy goal. Draft Revised UCC Article 5 pursues this goal by codifying the preclusion rule[29] excluding beneficiary warranties that the documents are truthful,[30] eliminating beneficiary duties to mitigate damages,[31] mandating payment to the successful claimant of interest from the date of dishonor, and authorizing payment to the prevailing party of attorneys fees and expert witness expenses.[32] Draft Revised UCC Article 5 should greatly facilitate specific performance of an issuer's undertaking by way of summary judgment. Expanding the definition of "good faith" would not facilitate summary judgment, and therefore can only be justified on the grounds that it would induce issuers to pay voluntarily. So would adoption of a "reasonable compliance" standard, but the protection of applicant expectations is an equally valid concern as is the need to keep issuers out from the middle of applicant-beneficiary disputes.[33]

There is an obvious appeal to having a single definition of good faith applicable to all articles of the UCC, but the "uniform" in UCC refers to enactment in all states of the same law, not the same law for all of the mercantile specialties covered by the UCC. Changing letter of credit law by expanding the definition of good faith puts adoption of revised UCC Article 5 at serious risk, particularly in New York and the three other states that provide that letters of credit subject to the UCP are not governed by the UCC.[34]

V. CONCLUSION

This Essay focused on particular letter of credit practices and the negative effects on those practices of requiring "observance of reasonable commercial standards of fair dealing," notably the effects of

28. Correspondingly, the issuer's defenses based on the discrepancies raised in its notice of dishonor would be supplemented by a separate defense of bad faith presentation so as to permit the issuer to discover and introduce evidence as to whether the beneficiary knew the presentation was facially noncomplying or that the documents were untruthful.

29. *See* Draft Revised U.C.C. § 5-108(c); *see also supra* note 18 (containing discussion of preclusion).

30. *See* discussion of warranty, *supra* note 15.

31. *See* Draft Revised U.C.C. § 5-111(a).

32. *See id.* § 5-111(d).

33. *See* Kerry L. Macintosh, *Letters of Credit: Curbing Bad-Faith Dishonor*, 25 UCC L.J. 3 (1992).

34. *See supra* note 5.

broadening the fraud defense[35] and narrowing the strict-compliance defense.[36] The tendency to generalize from contract law to letter of credit law is not confined to the topic of good faith or to the realm of law revision.

Contract law principles are among the first learned and most often applied by U.S. lawyers. Moreover, the UCC has been successful in codifying and developing contract law. UCC sections 1-205 (course of dealing), 2-609 (adequate assurances), 2-615 (force majeure), and 9-318 (assignment of accounts) are but a few instances of UCC concepts and language that have come to pass among practicing lawyers as the modern law of contracts. It may be that UCC drafters now view the articulation of general contract law principles in the UCC as a goal in light of the extent to which UCC language has been applied by analogy or simply borrowed for use in drafting ordinary contracts. That would be understandable but unfortunate because the UCC's primary goal should be to differentiate the laws applicable to the various mercantile specialties, particularly given the tendency of the marketplace to develop ever more differentiated financial and commercial products.

35. *See supra* parts II-III.
36. *See supra* part IV.