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HANIL BANK V. PT. BANK NEGARA INDONESIA: THE PROBLEM WITH FORM OVER SUBSTANCE IN DOCUMENTARY COMPLIANCE RULES

Todd Conley

A letter of credit is a written undertaking of a bank, which gives rise to an obligation, such as payment of a sum of money, when the bank is presented with certain required documents. These documents, which are the key to the letter of credit transaction, must conform to the conditions stipulated in the letter of credit. As a general rule, if documents presented to the issuing bank are not in compliance with the terms and conditions of the letter of credit, a bank may refuse to honor its obligation under the letter of credit. Because it is estimated that ninety percent of all documents initially tendered contain discrepancies, a court's ability to discern which discrepancies constitute grounds for dishonoring the transaction is an issue of the utmost importance in letter of credit law.

Most courts determine if a document is discrepant by employing the strict compliance standard. One interpretation of this standard is the

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2. See id. at 94 (stating that even a small discrepancy in the documents could cause problems).
5. See Steven C. Rattner, Comment, Letters of Credit: A Return to the Historical Documentary Compliance Standard, 46 U. PIT. L. REV. 457, 466 (1985) (noting that strict compliance means that every “t” must be crossed and every “i” dotted for a document to
mirror image rule, connoting the fact that any deviation in documents presented, no matter how slight, is an unacceptable discrepancy. While the mirror image rule, a rigorous and detail-oriented standard, is fitting in some circumstances, in many others it is much too burdensome.

Strict compliance, in its most extreme form, would permit a bank to dishonor a letter of credit when documents presented clearly contain a typographical error, for example, if “Smith” was spelled “Smithh.”

A case that dealt with this issue is Hanil Bank v. PT. Bank Negara Indonesia. In Hanil, the District Court for the Southern District of New York held that an inconsistency between the spelling of the beneficiary’s name in the letter of credit and the presented documents was a valid discrepancy on which to base dishonor.

A letter of credit is not a traditional contract, but rather a mercantile instrument, and therefore part of the law merchant. Because a letter of credit is a mercantile instrument, contract law and relevant equitable principles are inapplicable. Thus, payment obligations should be enforced without any vestige of contractual discretion. Additionally, because a letter of credit is not a contract per se, to apply equitable principles of contract law would serve only to dilute the certainty

6. See Kozolchyk, supra note 4, at 50. Kozolchyk goes on to say that applying the mirror image principle to concrete documentary tenders becomes “blurred” in practice. See id. One example articulated by Kozolchyk when no mirror image could possibly be discerned occurs when documents contain shorthand formulations. See id. The formulations cannot be determined by simply examining the face of the documents, as strict compliance demands, but rather by referencing various sources that define the short hand formulations. See id.

7. See JAMES G. BARNES ET AL., THE ABCS OF THE UCC ARTICLE 5: LETTERS OF CREDIT 34 (1998) (explaining that strict compliance requires a bank to nitpick some things, such as the description of goods in a commercial invoice, and ignore others, like the content of a document not stipulated by the letter of credit).

8. See Beyene v. Irving Trust Co., 762 F.2d 4, 6 (2d Cir. 1985) (holding that the misspelling of “Soran” for “Sofan” would not obviously be recognized as an error).


10. See id. at *4.

11. See James G. Barnes, Defining Good Faith Letter of Credit Practices, 28 LOY. L.A. L. REV. 101, 102 (1994). Because the law merchant derived from practice, and not from courts or “ivory towers,” letter of credit law is shaped by banker’s explanation of the practice. See id. See also Alaska Textile Co., Inc. v. Chase Manhattan Bank, 982 F.2d 813, 816 (2d Cir. 1992) (explaining that letters of credit are sui generis, woven into the common law by Lord Mansfield as he fashioned the law merchant to meet the needs of the eighteenth century industrial revolution).

12. See Jonathan D. Thier, Note, Letters of Credit: A Solution to the Problem of Documentary Compliance, 50 FORDHAM L. REV. 848, 856-57 (1982) (explaining that a mercantile characterization of a letter of credit means the issuer is only empowered to execute the applicant’s terms in a literal fashion).
necessary for a completely paper transaction.13

Starting from the premise that a letter of credit is a mercantile payment instrument, its development since the Middle Ages from a simple bill of exchange into an instrument payable to a specific person is not surprising.14 The letter of credit owes its longevity to its dual functions: to provide security of payment and to offer an extension of credit.15 The manner in which a letter of credit fulfills these functions is by substituting a bank's credit for the buyer's credit.16 The need for a letter of credit arises, particularly in international commercial transactions, because individuals and companies deal with partners from distant and often unstable countries about whom they know very little.17

13. See id. at 854 (noting that a letter of credit is only a conduit for payment and that documents are meant to evidence the fact that the beneficiary has performed various conditions).

14. See Grassi, supra note 1, at 85. The use of bills of exchange developed in Europe as early as the Twelfth Century in order to lessen the danger of transporting gold. See id. Basically, "the buyer gave to the seller an order from himself, as a creditor, to one of his debtors directing the payment of the debt to a third party, the third party being the seller." Id. at 85 n.5. It was not until the Seventeenth Century that this type of transaction matured into the form known today as a letter of credit. See id.

15. See id. at 85-86 (noting that payment security is the principal and most important task of the letter of credit, followed closely by its ability to serve as an instrument of finance).

16. See Arthur Fama, Jr., Letters of Credit: The Role of Issuer Discretion in Determining Documentary Compliance, 53 FORDHAM L. REV. 1519, 1521 (1985). Fama notes that by substituting a bank's credit for a buyer's credit, a letter of credit eliminates three major risks for the seller in a transaction. See id. First, because a seller is to receive payment directly from a bank, the risk of buyer insolvency is eliminated. See id. Second, a seller is protected from a dishonest buyer who wrongfully refuses payment because a better bargain is found elsewhere. See id. Third, the honest-dispute risk is avoided because the bank will objectively examine documents without looking to the underlying contract, where the dispute most likely arose. See id.

17. See Grassi, supra note 1, at 85 (explaining that the trend toward less familiarity with one's business partners has increased with growing economic interdependence and new transportation possibilities in today's market).

A letter of credit transaction facilitates interactions between unfamiliar parties by structuring three distinct obligations. See Carsella, supra note 3, at G-6. The first is the underlying contract for the sale of goods between a buyer and seller. See id. The underlying contract is the basic starting point for the letter of credit transaction. See id. Here the buyer and seller define the terms of their contract and agree to the execution of a letter of credit to guarantee payment against presentation of stipulated documents. See Grassi, supra note 1, at 102.

The second obligation is between the buyer/applicant and the issuing bank for the issuance of a letter of credit. See Carsella, supra note 3, at G-6. Generally, the buyer/applicant will contact his bank to apply for the issuance of a letter of credit in favor of the seller/beneficiary. See Grassi, supra note 1, at 102. Because the issuing bank will view the application to issue the letter of credit as equivalent to an application to lend money to a customer, the applicant must have the financial ability to reimburse the issuing bank. See Carsella, supra note 3, at G-6. The application will set out the terms and
Essentially, a letter of credit will offer parties in such situations a guarantee of payment at a specified time.  

The most important characteristic of a letter of credit is that “all parties concerned deal with documents, and not with goods, services and/or other performances to which the document may relate.” The documents against which payment will be made are specified in the application and generally include the essential terms of the invoice, transport documents, and any other document that evidences the performance of the underlying transaction. Because documents evidence the underlying transaction and are all that are required to guarantee payment, the need for documents to correspond to what is called for in the credit is of utmost importance in letter of credit law and practice.

Most courts judge documents by the standard of strict compliance. Judicial interpretations of strict compliance have varied, but the basic concept can be succinctly described by the statement: “there is no room

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conditions for both the letter of credit and the reimbursement agreement. See id. Generally, however, the terms and conditions of the letter of credit are decided unilaterally by the issuing bank. See Grassi, supra note 1, at 102.

The third obligation is the undertaking by the issuing bank to pay the seller/beneficiary upon presentation of conforming documents in a timely manner. See Carsella, supra note 3, at G-7. In addition to payment by the issuing bank, in most letter of credit transactions, the security of the letter of credit can be augmented by the addition of a confirming bank that is also obligated to make payment against complying documents. See id.

18. See Grassi, supra note 1, at 85 (noting that the dynamic nature of today’s economy makes it absolutely necessary to have payment guaranteed at a certain time and in a certain amount). According to Grassi, the dynamic nature of today’s market is a function of growing economic interdependence and new transportation possibilities, which have created a market without any frontiers. See id. This fact, in and of itself, creates a need for security on the part of a buyer and seller. See id.

19. Uniform Customs and Practice for Documentary Credits, (1993 Revision), ICC Publication No. 500, Art. 4 (May 1993). The entire statement made in the publication is: “In Credit operations all parties concerned deal with documents, and not with goods, services, and/or other performances to which the documents may relate.” Id.

20. See Barnes, supra note 7, at 20. Other documents which can be required by a letter of credit include the bill of exchange, insurance documents, certificate of origin, certificate of inspection, certificate of weight, packing list, consular invoice, and analysis certificate. See Grassi, supra note 1, at 95-97.

21. See Uniform Customs and Practice for Documentary Credits, (1993 Revision), ICC Publication No. 500, Art. 2 (May 1993) (stating that honor shall occur “against stipulated document(s), provided that the terms and conditions of the Credit are complied with”).

22. See Revised U.C.C. § 5-108(a) (1995) (stating that the issuer shall honor a presentation that “appears on its face strictly to comply with the terms and conditions of the letter of credit”). Section 5-108(a) continues by providing that “unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.” Id.
for documents which are almost the same or which will do just as well."
This concept has been characterized as "strict mechanical compliance,"
and is evidenced in the rationale of the Hanil court.

In Hanil, Kodeco Electronics Indonesia (Kodeco) applied to PT. Bank
Negara Indonesia (BNI) for a letter of credit for the benefit of "Sung Jun
Electronics Co., Ltd." BNI issued the letter of credit, mistakenly
naming the beneficiary as "Sung Jin Electronics Co., Ltd." The
beneficiary (Sung Jun) did not request amendment to the letter of credit,
and subsequently sold the documents to Hanil Bank, the negotiating
bank. When Hanil presented the documents to BNI for payment, BNI
discovered that the spelling of the beneficiary's name on the documents
did not match the spelling on the letter of credit, and thus refused
payment. This error was subsequently deemed material by the United
States District Court for the Southern District of New York, which found
that BNI was justified in basing dishonor of the letter of credit on the
inconsistency.

This Comment first tracks the evolution of various compliance
doctrines in statutory regimes, rules of practice, and court decisions.
Next, this Comment analyzes the hollow rationale of the Hanil court.
This Comment then criticizes the court's decision because it both relies
on inapplicable case law, and ignores international rules of banking
practice. Finally, this Comment advances a compliance test based on
standard banking practice as employed by a reasonable document
checker.

(H.L.) (1926).
24. See Rattner, supra note 5, at 458 (explaining that strict mechanical compliance
requires unforgiving precision or exacting conformity between the documents and
the terms of the letter of credit). See also Banco Gen. Runinahui, S.A v. Citibank Int'l, 97
F.3d 480, 484 (11th Cir. 1996) (holding that strict compliance is the standard by which to
judge documentary compliance which means that the fact that a defect is a mere
technicality does not matter); Alaska Textile Co. Inc. v. Chase Manhattan Bank, 982 F.2d
813, 816 (2d Cir. 1992) (noting that documents which are nearly the same as in the letter of
credit are unacceptable).
26. See id. at *1.
27. See id.
28. See id.
29. See id.
30. See id. at 5.
I. DOCUMENTARY COMPLIANCE: A STANDARD IN NEED OF CLARIFICATION

The revised Article Five of the Uniform Commercial Code (UCC), governs letter of credit transactions in the United States. While the Revised UCC Article Five generally governs letter of credit law, in most cases, a letter of credit will incorporate rules of practice that will, in effect, supercede Article Five. The Uniform Customs and Practice for Documentary Credits (UCP) is a set of rules promulgated by the International Chamber of Commerce (ICC) that are often incorporated into a letter of credit. Although the

31. See Carsella, supra note 2, at G-8. Carsella also points out that the UCC is the only uniform statutory regime which governs letters of credit. See id. In 1995 the Revised UCC was formerly released, see Revised U.C.C. Article 5 (1995), thus supplanting the original Article 5 which was first promulgated in 1953, see U.C.C. Article 5 (1953).

The following represents a list of the states which have enacted the Revised UCC in whole or in part: Alabama, January 1, 1998; Alaska, January 1, 2000; Arizona, July 20, 1996; Arkansas, August 1, 1997; California, January 1, 1997; Colorado, July 1, 1996; Connecticut, October 1, 1996; Delaware, October 1, 1998; District of Columbia, April 9, 1997; Florida, July 1, 1999; Hawaii, July 1, 1996; Idaho, July 1, 1996; Illinois, January 1, 1997; Indiana, July 1, 1996; Iowa, July 1, 1996; Kansas, July 1, 1996; Louisiana, January 1, 2000; Maine, September 19, 1997; Maryland, October 1, 1997; Massachusetts, March 19, 1998; Michigan, January 4, 1999; Minnesota, August 1, 1997; Mississippi, July 1, 1996; Missouri, August 28, 1997; Montana, May 5, 1997; Nebraska, January 1, 1997; Nevada, October 1, 1997; New Hampshire, January 1, 1999; New Jersey, January 19, 1998; New Mexico, July 1, 1997; New York, November 1, 2000; North Carolina, October 1, 1999; North Dakota, August 1, 2000; Ohio, July 1, 1998; Oklahoma, January 1, 1997; Oregon, January 1, 1998; Puerto Rico, January 1, 1998; Rhode Island, January 1, 1998; South Dakota, July 1, 1999; Tennessee, July 1, 1998; Texas, September 1, 1999; Utah, July 1, 1997; Vermont, January 1, 1999; Virginia, January 1, 1998; Washington, July 27, 1997; West Virginia, July 1, 1996; and Wyoming, July 1, 1997. See U.C.C. Article 5 Table of Enactment, DOCUMENTARY CREDIT WORLD 26, (June-July 2000).

32. See Revised U.C.C. § 5-116(c) (1995). Section 5-116(c) provides: Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. Id.

33. See Grassi, supra note 1, at 104. Because the UCP does not have the force of law, its private character makes it applicable only when it is explicitly incorporated into the letter of credit. See id. The International Chamber of Commerce (ICC) was founded in 1919, and today has thousands of member companies and associations in over 130 countries. See International Chamber of Commerce, About ICC, at http://www.iccwbo.org/home/intro_icc/introducing_icc.asp (last visited June 11, 2001). The ICC touts itself as the world’s business organization; “the only representative body that speaks with authority on behalf of” business organizations from all over the world. See id. The ICC members are companies and associations engaged in international business, which gives the ICC unrivaled authority in developing rules of practice. See id. The ICC is able to promulgate rules by drawing on the experience of business leaders and experts from its membership.
UCP does not have the force of law, it represents standard banking practice. In addition to the UCP, the Institute of International Banking Law and Practice, Inc., promulgated an alternative set of rules known as the International Standby Practices (ISP98), which are sanctioned by the ICC. ISP98 governs standby letters of credit, as opposed to the UCP, which was intended to govern commercial letters of credit. A standby letter of credit can be defined as an instrument "issued to support payment, when due or after default, of obligations based on money loaned or advanced, or upon the occurrence or non-occurrence of another contingency." Similar to the UCP, for the ISP to be operative, the rules must be incorporated into the standby letter of credit. In

on a broad range of technical and sectoral subjects. See id.

The ICC's Commission on Banking Technique and Practice is the body that acts to prepare new uniform rules, as well as update existing rules of practice for documentary credits. See International Chamber of Commerce, Commission on Banking Technique and Practice, at http://www.iccwbo.org/home/banking/commission.asp (last visited June 11, 2001).

34. See Grassi, supra note 1, at 104. The UCP cannot even be viewed as le mercatoria, but due to its worldwide acceptance, it is perceived as having just such a character. See id. The reason the UCP does not have the character of law merchant is because it is issued by a private organization, the ICC. See id. However, the UCP has attained worldwide acceptance because it is normally expressly incorporated into a letter of credit. See id.

35. See International Standby Practices: ISP98, in STANDBY LC RULES & LAWS: CRITICAL TEXTS 2 (James E. Byrnes et al. eds., 1998) (noting that the ISP98 is the product of the ISP working group under the auspices of the Institute of International Banking Law & Practice, Inc.).

36. See id. The ISP98 was adopted because of the growing significance of standby letters of credit. See id. In fact, amounts outstanding of standbys greatly exceed that of commercial letters of credit. See id.

37. Id. Standby letters of credit, for convenience, are classified by their function in the underlying transaction. See id.

A "Performance Standby" supports an obligation to perform rather than to pay money. See id. A performance standby can be issued for the purpose of covering losses arising from the failure of an applicant to complete the underlying transaction. See id. An "Advance Payment Standby" supports an obligation where an advance payment is made by the beneficiary to the applicant. See id. A "Bid Bond/Tender Bond Standby" supports an obligation of the applicant to execute a contract if awarded a bid. See id. A "Counter Standby" supports the issuance of another standby. See id. A "Financial Standby" supports an obligation to pay or repay money. See id. A "Direct Pay Standby" supports payment when due of another obligation, typically a financial standby. See id. An "Insurance Standby" supports an insurance obligation of an applicant. See id. A "Commercial Standby" supports an obligation to pay for goods or services in the event that payment is not made by other means. See id.

38. See id. To incorporate the ISP98 into a standby letter of credit, the undertaking should include language to the effect, "This undertaking is issued subject to the International Standby Practices 1998" or simply "Subject to ISP98." Id.
short, in the United States, letter of credit transactions are generally
governed by the interaction of Revised UCC Article 5 and various rules
of practice, most notably the UCP or ISP98, depending on whether a
commercial or standby letter of credit is issued.99

Because Revised UCC Article 5 defers much of its governance to rules
of practice, courts often must refer to these rules to judge documentary
compliance.40 Under the most recent version of the UCP (ICC
Publication No. 500), “banks must examine all documents stipulated in
the Credit with reasonable care to ascertain whether or not they appear,
on their face, to be in compliance with the terms and conditions of the
Credit.”41 The UCP also states, “[c]ompliance of the stipulated

99. See Barnes, supra note 11, at 102 (noting that the alignment of the UCP and UCC
Article 5 ensured compatibility between non-U.S. and U.S. letter of credit law).

40. See Revised U.C.C. § 5-116(c) (1995) (stating that a letter of credit is “governed
by any rules of custom or practice, such as the Uniform Customs and Practice for
Documentary Credits, to which the letter of credit . . . is expressly made subject.”). While
rules of practice will govern if incorporated, certain provisions of Article 5 cannot be
varied. See Revised U.C.C. § 5-103(c) (1995). Section 5-103(c) states:

With the exception of this subsection, subsections (a) and (d), Sections 5-
102(a)(9) and (10), 5-106(d) and 5-114(d), and except to the extent prohibited in
Section 1-102(3) and 5-117(d), the effect of this article may be varied by
agreement or by a provision stated or incorporated by reference in an
undertaking. A term in an agreement or undertaking generally excuses liability
or generally limiting remedies for failure to perform obligations is not sufficient
to vary obligations prescribed by this article.

Id. See, e.g., Revised U.C.C. § 5-103(a) (1995) (stating that “[t]his article applies to letters
of credit and to certain rights and obligations arising out of transactions involving letters of
credit’’); Id. § 5-103(d) (stating that “[r]ights and obligations of an issuer to a beneficiary
or a nominated person . . . are independent of the existence, performance, or
nonperformance of a contract or arrangement out of which the letter of credit arises . . .”);
Id. § 5-102(a)(9) (stating that “[I]ssuer’ means a bank or other person that issues a letter
of credit, but does not include an individual who makes an engagement for personal,
family, or household purposes”); Id. § 5-102(a)(10) (stating that “[l]etter of credit’ means
a definite undertaking . . . by an issuer to a beneficiary at the request or for the account of
an applicant . . . to honor a documentary presentation by payment or delivery of an item of
value’’); Id. § 5-106(d) (stating that “[a] letter of credit that states that it is perpetual
expires five years after its stated date of issuance, or if none is stated, after the date on
which it is issued’’); Id. § 5-114(d) (stating that “[a]n issuer or nominated person has no
obligation to give or withhold its consent to an assignment of proceeds of a letter of credit,
but consent may not be unreasonably withheld . . .”); Id. § 1-102(3) (1951) (stating that
“[p]rovisions of this Act may be varied by agreement, except as otherwise provided in this
Act and except that the obligations of good faith, diligence, reasonableness and
care . . . may not be disclaimed . . . but the parties may . . . determine the standard by which
performance . . . is . . . measured if not . . . unreasonable’’); Id. § 5-117(d) (stating that “[t]he
rights of subrogation . . . do not arise until the issuer honors the letter of credit . . . and the
rights in subsection (c) do not arise until the nominated person pays . . . until then, the
issuer, nominated person, and the applicant do not derive . . . present or prospective
rights’’).

41. Uniform Customs and Practice for Documentary Credits, (1993 Revision), ICC
documents on their face with the terms and conditions of the Credit, shall be determined by international standard banking practice, as reflected in these articles."

Similar to the UCP, the *International Standby Practices: ISP98* (ISP98) states that "[w]hether a presentation appears to comply is determined by examining the presentation on its face against the terms and conditions stated in the standby as interpreted and supplemented by these Rules which are to be read in the context of standard standby practice." ISP98, however, differs from the UCP, by permitting the standby letter of credit to specify the required level of compliance. First, if the standby requires a statement without specifying exact wording, then the wording must appear to convey the same meaning as the standby letter of credit. Second, if the standby letter of credit requires specified wording by the use of quotation marks, or blocked wording, then typographical errors in spelling, punctuation, or spacing, which are apparent, need not be duplicated in the presented documents. Third, if a standby letter of credit requires "specified wording by the use of quotation marks [or] blocked wording, . . . and also provides that the specified wording be ‘exact’ or ‘identical,’ then the wording in the documents presented must duplicate” the wording in the standby, including any typographical errors. In addition, ISP98 contains numerous other rules detailing the examination of documents.

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42. *Id.* Article 13(a) (1993).

43. *INTERNATIONAL STANDBY PRACTICE ISP98* § 4.01(b) (International Chamber of Commerce 1998). The preceding subsection of the of the ISP98 states very generally: "demands for honour of a standby must comply with the terms and conditions of the standby." *Id.* § 4.01(a).

44. *Id.* § 4.09.

45. *Id.* § 4.09(a) (providing that if a standby requires "a statement without specifying precise wording, then the wording in the document presented must appear to convey the same meaning as that required by the standby").

46. *Id.* § 4.09(b) (providing that if a standby requires "specified wording by the use of quotation marks, blocked wording, or an attached exhibit or form, then typographical errors in spelling, punctuation, spacing, or the like that are apparent when read in context are not required to be duplicated").

47. *Id.* § 4.09(c) (1998) (providing that if a standby requires "specified wording by the use of quotation marks, blocked wording, or an attached exhibit or form, and also provides that the specified wording be ‘exact’ or ‘identical’, then the wording in the documents presented must duplicate the specified wording, including typographical errors in spelling, punctuation, spacing and the like").

Rules of practice, particularly the UCP, are not only interpreted by courts, but also by the ICC’s Commission on Banking Technique and Practice.\(^9\) The Commission on Banking Technique and Practice is made up of distinguished members of the letter of credit community, both academics and bank professionals.\(^50\) The opinions issued by the Commission, while having no legal force, do represent a formulation of international standard banking practice.\(^51\)

A. Strict Compliance: A Mirror Image?

The meaning of strict compliance in letter of credit transactions was announced nearly a century ago by Lord Sumner’s decree that "there is no room for documents which are almost same or which will do just as well."\(^52\) Courts in the United States have taken heed of this decree as can be seen in *Courtaulds North America, Inc. v. North Carolina National Bank*\(^53\) and *Beyene v. Irving Trust Co.*\(^54\)

In *Courtaulds*, the North Carolina National Bank issued a letter of credit to cover the purchase of acrylic yarn.\(^55\) The terms of the letter of credit stipulated a commercial invoice stating that it covered "100% acrylic yarn."\(^56\) Upon presentation of the documents, the issuing bank refused payment on the grounds that the invoice represented the goods as "Imported Acrylic Yarn."\(^57\) Based on this discrepancy, the United States Court of Appeals for the Fourth Circuit allowed the issuer to
dishonor the letter of credit, ruling that the terms of the credit must be met precisely if the beneficiary is to exact performance from the issuer.58

Like Courtaulds, Beyene was also a case employing strict compliance.59 In Beyene, a letter of credit was issued by a Yemen Bank for the account of a “Mohammed Sofan.”60 When the documents were presented to the bank, the bank refused payment because the bill of lading listed the party to be notified by the shipping company as “Mohammed Soran” instead of “Mohammed Sofan.”61 The United States Court of Appeals for the Second Circuit found that while some misspellings are so insignificant, such as “Smithh” for “Smith,” as not to relieve the issuer of its obligation to pay, the misspelling of Soran for Sofan was not such a case.62 To the court, the misspelling was material because Soran would not obviously be recognized as a misspelling of Sofan.63

B. Equitable Responses to Strict Compliance

In an attempt to mitigate the harshness of strict compliance, courts frequently apply principles of equity and contract law to letter of credit transactions.64 The most important of these principles is the doctrine of substantial compliance.65 In addition to substantial compliance, Gerald T. McLaughlin has identified other principles that, when used in conjunction with strict compliance, weaken the strict standard.66 The principles include: the rule of contra proferentem, the “render performance possible” rule, the “plain meaning rule,” the reformation of the written terms of a letter of credit, the parol evidence rule, waiver,

58. See id. at 805-06. The Court continued by stating that, failing such compliance, there can be no recovery. See id. at 806. The court further reasoned that the quality of the yarn was not a frivolous concern. See id. Important to the court was the fact that the defect in the description was not superficial, but went to the quality of the yarn. See id.
59. See Beyene, 762 F.2d at 6.
60. See id. Sofan, a resident of the Yemen Arab Republic, had the letter of credit issued in order to finance the purchase of two prefabricated houses. See id. at 5-6.
61. See id. at 6.
62. See id. The court based its decision first on the fact that the name intended was not “unmistakably clear despite what [was] obviously a typographical error,” and second, because a notifying party is not an inconsequential figure in the transaction. See id. at 6-7.
63. See id. at 6-7. The court also pointed out that in the Middle East “Soran” would not obviously be recognized as a misspelling of the surname “Sofan.” See id. at 6.
64. See Gerald T. McLaughlin, On the Periphery of Letter-of-Credit Law: Softening the Rigors of Strict Compliance, 106 BANKING L.J. 4, 9-10 (1989) (stating that equitable principles, which are sometimes used in conjunction with strict compliance, serve to dilute the stringency of the standard and actually determine whether the beneficiary or the issuing bank prevail in a lawsuit).
65. See Kozolchyk, supra note 4, at 68.
66. See McLaughlin, supra note 64, at 9-10.
estoppel, course of dealing and performance, banking customs, good faith, duty to notify of oppressive terms, and the UCC presentment warranty.  

67. See id. The rule of contra proferentem is a basic rule in contract law that requires ambiguity in a written instrument be interpreted against the drafter. See id. at 10. In the case of a letter of credit transaction, this would mean the issuer. See id. at 10-11.

The "render performance possible rule" dictates that when a contract is susceptible to various interpretations, the interpretation which makes performance possible should be preferred. See id. at 15. This rule is used by courts to determine if strict compliance has been satisfied. See id.

The "plain meaning rule" is a doctrine of construction whereby a word will be given its ordinary meaning. See id. at 17. This will be true unless the contract presents a strong reason for giving the word a different meaning. See id.

Reformation of the written terms of a letter of credit is the remedy by which a letter of credit is altered to conform to the actual agreement of the parties. See id. at 19. This principle is nearly impossible to reconcile with the fundamental tenet of letter of credit law which espouses the total independence to the letter of credit in regards to the underlying agreement. See id. at 20.

The parol evidence rule generally does not allow prior written or oral agreements to vary the terms of a written contract. See id. at 22. However, the rule does not preclude a written contract from being modified by a contemporaneous agreement executed at the same time as the contract. See id. The rule becomes an issue in a letter of credit transaction if a side covenant is entered into by the issuing bank and the beneficiary. See id.

Waiver is an intentional release of a known right. See id. at 24. Thus in the letter of credit context, the equitable doctrine of waiver allows an issuing bank, by word or action, to intentionally surrender its right to demand strict compliance. See id.

Estoppel is an equitable doctrine that can be broken down into two sub-categories: notice estoppel and prior conduct estoppel. See id. at 25. Notice estoppel requires the issuing bank to give expeditious notice of discrepancies to the beneficiary; failure to do so will preclude the issuing bank from employing those discrepancies to justify dishonor. See id. Prior conduct estoppel arises when an issuing bank has consistently accepted nonconforming documents in the past. See id. at 26. The acceptance of nonconforming documents will preclude the issuing bank from relying on the same discrepancies to justify dishonor in the future. See id.

Course of dealing, in regards to a letter of credit transaction, involves a sequence of previous conduct between an issuing bank and a beneficiary regarding prior letters of credit; course of performance, on the other hand, involves repeated performance under a single letter of credit. See id. at 28-29. Basically, these two concepts work together to bar an issuing bank from relying on discrepancies to justify dishonor, which in the past they have disregarded. See id.

Banking custom, like course of dealing and performance, will effect the manner in which courts interpret strict compliance. See id. at 30. To prove a banking custom the court must rely on expert testimony. See id.

Good faith in letter of credit law is a duty of the issuing bank to honor a beneficiary's presentation of documents that appear on their face to comply with the terms and conditions of the letter of credit. See id. at 31. Thus, if a beneficiary can prove that an issuing bank has acted dishonestly by basing dishonor on trivial discrepancies, a court may find that the bank has violated its duty of good faith. See id.

The duty to notify the beneficiary of oppressive terms becomes an issue when a letter of credit conditions payment on receipt of a document which only the applicant can
As noted, substantial compliance, a doctrine based on judicial desire to promote equity to the beneficiary, is the strongest rival to strict compliance. The substantial compliance test basically allows deviations from the literal terms of the letter of credit and permits courts to consider whether the deviation creates an uncertainty, or whether it could mislead an issuing bank's document checker into thinking there was compliance with the credit.

Some courts that have employed the substantial compliance doctrine generally fail to recognize the distinction between a letter of credit and a contract. These courts mistakenly equate substantial performance of a contract with substantial compliance under a letter of credit. This comparison is flawed, however, because substantial performance is designed to prevent unjust enrichment by one party when the other party has fulfilled substantially all of the duties under the contract. In a letter of credit transaction, the issuing bank, which rightfully dishonored, is not unjustly enriched. The issuing bank is merely a payment intermediary and has little to gain by either honor or dishonor.

A good example of the doctrine of substantial compliance is *Crocker Commercial Services, Inc. v. Countryside Bank*. The court in *Crocker* focused on whether it was reasonable for documents to be rejected issue. See *id.* at 32. By including such a condition in a letter of credit, the applicant essentially can revoke an otherwise irrevocable letter of credit. See *id.* Little case law has addressed this issue, but obviously a problem arises when a supposed irrevocable payment instrument can be revoked. See *id.*

Prior to revision, UCC Section 5-111(1) provided that a beneficiary who presented documents to an issuing bank warranted to all interested parties that the necessary conditions of the letter of credit had been complied with. See *id.* at 34. While this section does not deal directly with strict compliance per se, it does presumably force the beneficiary to bear the loss from presentation of noncompliant documents. See *id.*

68. See Fama, *supra* note 16, at 1528. According to Fama, substantial compliance was advanced to provide protection from the "unregenerate" bankers who tried to extricate themselves from their payment obligations by making hyper-technical arguments. See *id.*

69. See Kozolchyk, *supra* note 4, at 68-69 (explaining that reasonable compliance asks "whether after taking into account the transactional context of the credit, it was reasonable to read the credit requirements literally").

70. See Rattner, *supra* note 5, at 471.

71. See *id.* (noting that the contractual doctrine of substantial performance is designed to prevent forfeiture by a promisee when the promisor has received substantially all for which he has bargained).

72. See *id.* (providing that under substantial performance the court will enforce a contract to protect the justifiable expectations of the harmed party).

73. See *id.*

74. See *id.* (noting that when a bank dishonors a letter of credit, the beneficiary suffers no forfeiture; the beneficiary will either retain ownership or the customer waives the discrepancies and accepts delivery).

because they contained the beneficiary’s previous corporate name. After stating that it had turned away from the “traditional standard” of strict compliance, the United States District Court for the Northern District of Illinois held the rejection of such documents to be wrongful. The court based its decision on the fact that Crocker United Factors was the same entity as Crocker Commercial Services. Because the same company was involved, the minor name change did not negate reasonable compliance. 

*Flagship Cruises, Ltd. v. New England Merchants National Bank* illustrates a common problem in the judicial interpretation of documentary compliance: courts claiming adherence to strict compliance but applying something more akin to substantial compliance. In *Flagship*, the issuing bank dishonored presentation because documents were drawn by the wrong party (Flagship Cruises, Inc. instead of Flagship Cruises, Ltd). The court made short shrift of the issuing bank’s position, stating that because Flagship Cruises, Inc. was the general agent of Flagship Cruises, Ltd., as evidenced by the letterhead on the submitted documents, it was unreasonable for the issuer to reject the documents. The court did not consider its decision a retreat from the rigorous compliance requirements of letter of credit law, but rather recognized that variations between documents are not necessarily fatal, particularly when there is no possibility that the documents will detrimentally mislead the issuing bank.

Although substantial compliance is the preeminent rival to strict compliance, other equitable rivals based on contract law, such as the rule...
of *contra proferentem* and the plain meaning rule, have emerged.\(^\text{86}\) Both of these rules of construction only apply, however, if a court misconstrues a letter of credit as a contract.\(^\text{86}\)

*Contra proferentem* is a basic rule of contract interpretation requiring ambiguity in the language of the contract to be interpreted against the drafting party.\(^\text{87}\) *Marino Industries, Inc., v. Chase Manhattan Bank*\(^\text{88}\) provides an example of the erosion of the strict compliance doctrine. In *Marino*, the beneficiary was required to present a certificate of receipt signed by a Mdica representative.\(^\text{89}\) Mdica was the Saudi Arabian entity responsible for signing documents that confirmed the arrival of materials at the job site.\(^\text{90}\) The beneficiary presented the signed receipt, but the signature of the Mdica representative was not one of the signatures on file at the issuing bank.\(^\text{91}\) The issuing bank subsequently dishonored the presentation based on strict compliance.\(^\text{92}\) The United States Court of Appeals for the Second Circuit rejected the issuing bank’s rationale for dishonor, and held that because there was ambiguity as to who at Mdica was authorized to sign the receipts, the letter of credit should be interpreted against its drafter, the issuing bank.\(^\text{93}\)

The plain meaning rule provides that a word used in a contract is given its ordinary meaning unless the contract reveals a strong reason for giving it a different meaning.\(^\text{94}\) In *Travis Bank & Trust v. Texas*,\(^\text{95}\) a

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85. See McLaughlin, *supra* note 64, at 4; See also *supra* note 67 (discussing other principles derived from contract law, equity and banking custom which serve to modify and weaken strict compliance).

86. See *id.* at 10 (noting that although courts frequently refer to a letter of credit as a special contract, they still treat it as a simple contract).

87. See *id.; supra* note 67 (explaining *contra proferentem* as well as various other principles).

88. 686 F.2d 112 (2d Cir. 1982).

89. See *id.*

90. See *id.* More specifically, Mdica was the Saudi Arabian joint venture whose representative was to sign the certificates of receipt when the material arrived on the job sight at Kassim. See *id.*

91. See *id.* Chase only had the signature samples of three authorized Mdica representatives. See *id.* However, Chase never informed Marino that only those three signatures would be acceptable. See *id.*

92. See *id.*

93. See *id.* at 117. The circuit court stated that if Chase required the signature of only three specific Mdica officials, it should have advised Marino of that requirement. See *id.* Further, on remand, the circuit court instructed the district court to rule in favor of Marino as long as it was shown that the signature on the receipt was that of a Mdica representative. See *id.*

94. See McLaughlin, *supra* note 64, at 17. See also *supra* note 67 (explaining the plain meaning rule as well as the various other principles).

95. 660 S.W.2d 851 (Tex. App. 1983).
standby letter of credit required the presentation of drafts. When the beneficiary presented nonnegotiable drafts, the issuing bank dishonored the letter of credit by claiming a negotiable draft was required by the letter of credit. The Court of Appeals of Texas found that the issuing bank wrongfully dishonored the letter of credit, ruling that the ordinary meaning of “draft” encompasses both negotiable and nonnegotiable drafts. Thus, strict compliance with the letter of credit was overridden by the plain meaning rule.

II. **Hanil Bank v. PT. Bank Negara Indonesia:** Continuing the Confusion

Hanil Bank v. PT. Bank Negara Indonesia, a case that provides an opportunity to clarify the confusion associated with documentary compliance principles in letter of credit law and practice, merely succeeded in reinforcing the uncertainty in determining what truly constitutes a non-conforming presentation of documents. In fact, Hanil was simply a continuance of the judicial struggle to give meaning to the phrase “documents which appear on their face to conform to the terms and conditions of the letter of credit . . .”

The controversy in Hanil arose when PT Kodeco Electronics Indonesia (Kodeco) applied to PT. Bank Negara Indonesia (BNI) for a letter of credit in the amount of $170,955.00 for the benefit of Sung Jun

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96. See id. at 852. There were two letters of credit in question which called for the beneficiary to draw upon the letter of credit by use of drafts. See id. See generally Barnes, supra note 7, at 7 (explaining that a standby letter of credit differs from a commercial letter of credit in that standbys typically do not call for negotiable bills of lading or other transport documents and do not effect payment for the purchase price of goods).

97. See Travis, 660 S.W.2d at 854. The issuing bank also refused payment because the State’s letter to the bank was not, as required by the letter of credit, marked with “Drawn Under Letter of Credit No. 140” and “Drawn Under Letter of Credit No. 184.” Id. The State’s letter did, however, contain the notation “Irrevocable Letters of Credit No. 140 and 184.” See id.

98. See id. at 855. The court also refused to acknowledge the issuing bank’s second reason for dishonor by employing the rationale of Flagship Cruises Ltd. v. New England Merchants Nat’l Bank, 569 F.2d 699 (1st Cir. 1977). See Travis, 660 S.W.2d at 856. To the court, the difference in notation from “Drawn Under Letter of Credit” No. 140 and 184, and “Irrevocable Letter of Credit No. 140 and 184” should not cause reasonable interpretation problems. See id. at 856.

99. See Mclaughlin, supra note 64, at 17. The Travis court applying the plain meaning rule, determined that the beneficiary’s presentation of a nonnegotiable draft did strictly comply with the terms and conditions of the letter of credit. See id.


101. See Case Updates, DOCUMENTARY CREDIT WORLD 17, 19 (July-August 2000).

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Electronics, Co., Ltd. (Sung Jun). BNI issued the letter of credit and misspelled the name of the beneficiary as Sung Jin Electronics Co. Ltd. ("Sung Jin"). Kodeco failed to request amendment of the letter of credit, and later sold the documents to Hanil Bank for $157,493.00. Hanil then submitted these documents to BNI to receive payment under the letter of credit in the amount of $170,955.00. BNI rejected the documents, alleging four discrepancies, the most important of which was that on the letter of credit the beneficiary was listed as "Sung Jin" and not "Sung Jun," the correct name that appeared on the various documents. Hanil subsequently brought suit for wrongful dishonor

103. See id. at *1. The court failed to specify the transaction the letter of credit was intended to support. See id.
104. See id.
105. See id. (representing the face amount of the draft, minus Hanil's commission). Technically speaking, this transaction cast Hanil as the negotiating bank. See DOCUMENTARY CREDIT WORLD, supra note 101, at 17. Negotiation is the giving of value for documents. See Carsella, supra note 3, at G-7. The negotiating bank can be named in the letter of credit, or if the credit is freely negotiable, any bank can assume the role. See id. at G-7 to G-8.

While Hanil was a negotiating bank, in a letter of credit transaction a bank can play a number of different roles including: confirming bank, nominated bank, advising bank, paying bank and accepting bank. See id. at G-7. A confirming bank is typically a local bank known to the beneficiary. See id. at G-6. The confirming bank guarantees payment when the beneficiary presents conforming documents. See id. The beneficiary thus has two banks, both the issuing and confirming banks, guaranteeing the letter of credit, allowing a much more secure transaction. See id. In short, the confirming bank undertakes a credit obligation on behalf of the issuing bank, which then reimburses the confirming bank when payment is made. See id.

A nominated bank is stipulated in all letters of credit, unless the credit is freely negotiable, allowing any bank to negotiate. See id. A nominated bank may pay drafts, accept drafts, or negotiate payment. See id. A nominated bank, however, has no obligation to act unless it is also the issuing or confirming bank. See id.

An advising bank is a correspondent bank in the country where the beneficiary is located which advises the beneficiary whether or not the letter of credit is authentic. See id. The advising bank then delivers the original letter of credit to the beneficiary in the foreign country where it is located. See id.

The paying bank must be named in the letter of credit. See id. at G-8. This is the bank to which sight drafts must be drawn. See id.

An accepting bank is used when the letter of credit calls for a time draft. See id. The accepting bank is named in the letter of credit as the bank to which a time draft is drawn. See id. The accepting bank then reviews and negotiates the draft by accepting the documents for eventual payment. See id. Usually, the accepting bank is the issuing or confirming bank. See id.

106. Hanil, 2000 WL 254007, at *1. The documents that Hanil purchased and then presented to BNI included a draft, a commercial invoice, a bill of lading, an insurance policy, a packing list, and a fax advice. Id.

107. Id. at *1-2. The other three alleged discrepancies were: the packing list's failure to indicate the content of each carton as required by the letter of credit, the packing list's failure to specify that the goods were of "export quality," and the bill of lading designation
alleging breach of contract, breach of the UCP, unjust enrichment, and breach of the implied warranty of good faith and fair dealing.\(^{108}\) Subsequently, both parties moved for summary judgment.\(^{109}\)

In deciding each party's motion for summary judgment, the United States District Court for the Southern District of New York first determined that the letter of credit incorporated the UCP.\(^{110}\) This meant that New York's version of UCC Article 5 would not apply, and instead the UCP would govern the transaction.\(^{111}\) After first discussing the basic tenets of letter of credit law, the court established the standard of compliance to be employed.\(^{112}\) Espousing strict compliance, the court stated that "[t]he essential requirements of a letter of credit must be strictly complied with... which means that the papers, documents, and shipping description must be as stated in the letter."\(^{113}\) The court did, however, qualify this formulation by stating that "some variations... might be so insignificant as not to relieve the issuing [bank]... of its obligation to pay."\(^{114}\) Applying this test, the court granted BNI's motion for summary judgment.\(^{115}\)

as "Freight Bill of Lading" rather than the required "Ocean Bill of Lading." Id. Because the "misspelling" discrepancy was dispositive, the court did not determine the validity of these three discrepancies. Id. at *5.

108. Id. at *2. Hanil originally brought suit in a New York state court, but BNI removed the case to the U.S. District Court for the Southern District of New York. Id.

109. Id. In ruling on each party's motion, the court advanced the following standard of summary judgment stating, "[a]lthough summary judgment is never lightly granted, letter of credit disputes generally present legal issues, rather than questions of fact, and are thus often appropriate for final adjudication upon submission of papers and affidavits." Id. at *3 (quoting E & H Partners v. Broadway Nat'l Bank, 39 F. Supp. 2d 275, 280 (S.D.N.Y. 1998)).

110. Id. at *3.

111. See N.Y. U.C.C. § 5-102 (4) (stating that "[u]nless otherwise agreed, this Article 5 does not apply to a letter of credit... if by its terms or by agreement... such letter of credit... is subject in whole or in part the Uniform Customs and Practice for Commercial Documentary Credits fixed by the Thirteenth or by any subsequent Congress of the International Chamber of Commerce").

The reason New York adopted § 5-102(4) resulted from New York bankers' vehement opposition to the adoption of the 1956 version of UCC Article 5. See Thier, supra note 12, at 853 n.26. The bankers felt that the UCP was adequate to meet the needs of international letter of credit transactions, and thus sufficient to regulate domestic letters of credit. See id. The New York Law Revision Commission found that legislation in letter of credit practice, even if it purported to be declaratory of existing law, should not be adopted unilaterally by American jurisdictions. See id. [DELETE – relevance??See also Ala. Code § 7-5-102(4) (1975)].


113. Id. at *2 (quoting Marino Indus., v. Chase Manhattan Bank N.A., 686 F.2d 112, 114 (2d Cir. 1982)).

114. Id. at *3 (quoting Beyene v. Irving Trust Co., 762 F.2d 4, 6 (2d Cir. 1985)).

115. Id. at *6.
To the court, the facts in this case were indistinguishable from those in *Beyene v. Irving Trust*,\textsuperscript{116} where the name of a party was also misspelled ("Soran" for "Sofan").\textsuperscript{117} The court followed Beyene's rationale, stating that this was not a case in which it was unmistakably clear that the misspelling of the beneficiary's name was immediately recognizable as a typographical error.\textsuperscript{118} Because the misspelling could not be readily identified, the court determined that it was not merely an insignificant error.\textsuperscript{119} The court also noted that, like the situation in *Beyene*, the misspelling of "Sung Jin" for "Sung Jun" would not be obviously recognized as an error in the Far East.\textsuperscript{120}

Hanil Bank argued that the situation at bar was different from that in *Beyene*, because in its case the issuing bank made the error, while in *Beyene*, it was the beneficiary who made the error.\textsuperscript{121} The court rejected this argument citing *Mutual Export Corp. v. Westpac Banking Corp.*,\textsuperscript{122} a case in which an expiration date was incorrectly transcribed by the issuing bank.\textsuperscript{123} In *Mutual Export*, the court determined that even though the issuing bank had issued a letter of credit with the incorrect expiration date, it was the duty of the beneficiary to detect any error that would keep the credit from meeting its commercial ends.\textsuperscript{124} Applying the reasoning of *Mutual Export*, the Hanil court determined it was Sung Jun's duty to detect the error and have the credit amended prior to negotiating the letter of credit to Hanil.\textsuperscript{125} In essence, Hanil assumed the risk of purchasing documents that did not exactly match the requirements set forth in the letter of credit, as the documents correctly spelled the beneficiary's name, but the letter of credit did not.\textsuperscript{126}

\begin{itemize}
\item 116. 762 F.2d 4 (2d Cir. 1985).
\item 117. Id. at 5-6.
\item 119. Id. In determining that the misspelling was not easily recognized, the court employed the reasoning of *Beyene* to determine that the difference between "Sung Jin" and "Sung Jun" was qualitatively different than the difference between "Smithh" and "Smith." *Id.*
\item 120. *Id.* In *Beyene*, the court noted that Soran would not obviously be recognized as a misspelling of Sofan. See *Beyene*, 762 F.2d at 6.
\item 122. 983 F.2d 420 (2d Cir. 1993).
\item 123. *Id.* at 423.
\item 124. *Id.* The *Mutual Export* court continued its analysis by stating that "it is more efficient to require the beneficiary to conduct that review of the credit before the fact of performance...and the beneficiary that performs without seeing or examining the credit should bear the cost." *Id.* (quoting JOHN F. DOLAN, THE LAW OF LETTERS OF CREDIT § 6.03 (2d ed. 1991)).
\item 125. *Hanil*, 2000 WL 254007, at *4-5.
\item 126. *Id.* at *5. The court also noted that it was not the duty of BNI to determine that
Also important to the court's decision was the fact that there were no internal inconsistencies in the actual letter of credit. This fact allowed the court to distinguish Hanil from Bank of Montreal v. Federal National Bank & Trust Co., where the letter of credit contained two internally inconsistent spellings of the party to whom the indebtedness was secured. In Bank of Montreal, the first paragraph of the letter of credit referred to "Blow Out Products, Ltd.," while the second paragraph referred to "Blow Out Prevention, Ltd." Because the letter of credit was inconsistent, and thus ambiguous, the ambiguity was resolved against the drafter of the letter of credit. Thus the United States District Court for the Western District of Oklahoma ruled that the bank should have honored the letter of credit. Considering the internal inconsistency in the letter of credit the court determined there was no ambiguity in the letter of credit. Therefore, the internal inconsistency rule announced in Bank of Montreal was inapplicable.

Finding that the difference in the spelling of the name of the beneficiary was a significant error not easily recognizable, the Hanil court determined that BNI was justified in rejecting Hanil Bank's documents. For this reason, BNI's motion for summary judgment was granted.

the beneficiary was Sung Jun, not Sung Jin, because an issuing bank is to look "solely at the letter and the documentation the beneficiary presents to determine whether the documentation meets the requirements in the letter." Id. (quoting Marino Indus. v. Chase Manhattan Bank, N.A., 686 F.2d 112, 115 (2d Cir. 1985)).

127. Id. at *5. In the letter of credit issued by BNI, the name of the beneficiary was consistently misspelled "Sung Jun." Id. at *1.


129. Id. at 8. The letter of credit was for the benefit of Bank of Montreal and was issued to secure advances made from the Bank of Montreal to the applicant's various companies. Id.

130. Id. at 8-9.

131. Id. (holding that where language in the letter of credit is ambiguous the ambiguity must be resolved against the drafter; thus, the issuer was not justified in refusing documents which contained the name "Blow Out Products" as opposed to "Blow Out Prevention").

132. Id. at 10.


134. Id.

135. Id. at *4.

136. Id. at *6. In granting defendant's motion for summary judgment, the court also found that BNI did not violate its duty of good faith and fair dealing by going to the applicant, Kodeco, and requesting waiver of the discrepancy, a request, which Kodeco subsequently denied. Id. at *5. The court determined that BNI did not dishonor the letter of credit upon Kodeco's instruction rather, it simply requested waiver, which is expressly permitted by UCP Article 14(c). Id.
III. CONTINUING THE CONFUSION: OBVIOUSLY UNCLEAR

Strict compliance, as applied in *Hanil*, was too mechanical and formalistic. ¹³⁷ Essentially, the *Hanil* court, by adhering to questionable precedent, derived a test whereby a discrepancy would be deemed material if it could not be obviously recognized as an error.¹³⁸ This conclusion begs the question: what is obvious and who decides?¹³⁹

A. Strict Compliance: Better than the Alternative

The *Hanil* court based its decision on a very exacting interpretation of strict compliance.¹⁴⁰ Unlike many other courts, the *Hanil* court did not give into the temptation of espousing strict scrutiny, while at the same time applying a less exacting standard in order to facilitate a seemingly more equitable result.¹⁴¹

Whether characterized as substantial compliance or not, numerous problems arise when courts apply something less than strict compliance.¹⁴² The most significant shortcoming of substantial compliance is that it violates the spirit of letter of credit law and practice as defined by the both UCP and UCC Article 5.¹⁴³ Under both the UCP

¹³⁷. *Id.* at *3* (stating that"[t]here is no room for documents which are almost the same, or which will do just as well") (quoting Alaska Textile Co., Inc. v. Chase Manhattan Bank, N.A., 982 F.2d 813, 816 (2d Cir. 1992)).

¹³⁸. *Id.* at *4*. *See*, e.g., Beyene v. Irving Trust, 762 F.2d 4, 5 (2d Cir. 1985) (holding that “Soran” would not be obviously recognized as a misspelling of “Sofan”).

¹³⁹. See discussion infra Part IV (discussing the need for judicial interpretations of documentary compliance to be based on standard banking practice as defined by the reasonable document checker).

¹⁴⁰. *See* Thier, *supra* note 12, at 856 (stating that if a letter of credit is to retain its utility as a financing device strict compliance must be enforced). Thier clarifies that strict compliance is needed to ensure, prior to honor, that the beneficiary has performed the protective conditions the applicant prescribed, while at the same time protecting the issuer from disputes unrelated to its ministerial function. *Id.*


¹⁴². *See* Rattner, *supra* note 5, at 470-72. Substantial compliance is a standard inapplicable to letter of credit law and practice because it “implicitly grant[s] the issuer discretion to waive those terms . . . that it believes are unimportant.” *Id.* This undermines the purpose of the transaction because the issuer is not a party to the contract with the beneficiary and thus it has no discretion to alter terms. *Id.* at 472.

¹⁴³. *See* Charles M.R. Vethan, *The Sacred Cow of Equity and Strict Compliance in Letter of Credit Law: Recent Trends and Projections*, 6 INT’L LEGAL PERSP. 45, 52 (1994) (noting that substantial compliance requires an issuing bank to look to the underlying contract to determine whether a condition is material; this compromises the independent obligation owed by the issuing bank to the beneficiary).
and the UCC a bank has the duty to simply examine presented documents. By allowing an issuing bank to determine whether a discrepancy is reasonable, courts undermine the pre-eminence of documents in a letter of credit transaction. Requiring issuing banks to look to the underlying contract to determine whether a mistake or a discrepancy is reasonable vitiates the intent of the parties entering into the letter of credit by not enforcing the conditions the applicant believes to be necessary to ensure proper tender on delivery. In addition to nullifying the parties’ intent, substantial compliance requires the issuing bank to acquire extrinsic evidence to supplement or explain the meaning of the underlying contract. Invariably, this causes substantial delay in payment.

As stated, the Hanil court applied strict, not substantial compliance. The court determined that because a letter of credit transaction is strictly documentary, the documents presented “must be as stated in the letter.”

Contra proferentem would also have been an unacceptable standard to apply in Hanil. Contra proferentem is not applicable to letter of credit law because a letter of credit is not a contract; it is instead a mercantile instrument, and as such, it should not be governed by contractual principles.

While the Hanil court refused to apply contra proferentem, it is unclear if its failure to do so was either because the court found no ambiguity in the letter of credit, or because the court correctly determined that this
principle is inapplicable to letter of credit transactions.\textsuperscript{153} It would seem that the court relied on the former rationale, given the fact the court found no internal inconsistencies and thus, no grounds to interpret the letter of credit against the drafter.\textsuperscript{154} Simply put, while equitable principles, such as substantial compliance and \textit{contra proferentum}, seek to enable courts to make fair decisions, such principles hurt letters of credit as financial instruments by causing unnecessary delay and uncertainty.\textsuperscript{155}

\textbf{B. The Misapplication of Strict Compliance: Empty Reasoning}

Although \textit{Hanil} employed strict compliance, the court failed to realize that an empty application of that standard can be just as detrimental to letter of credit law as substantial compliance, or any other equitable standard.\textsuperscript{156} Judicial interpretations of strict compliance are flawed predominantly because courts do not take into account the differing significance of the various documents employed in a letter of credit transaction.\textsuperscript{157} For example, under the UCP, there is a difference in the exactitude required in a commercial invoice as compared to all other documents.\textsuperscript{158} Descriptions of goods in a commercial invoice must correspond to the descriptions in the letter of credit, whereas in all other documents goods may be described in more general terms.\textsuperscript{159} Accordingly, something closer to the mirror image rule is needed when examining a commercial invoice, while less exacting scrutiny can be used in regard to other documents.\textsuperscript{160}

When courts fail to make distinctions of this sort, and yet still attempt

\begin{itemize}
\item\textsuperscript{153} \textit{See} McLaughlin, supra note 64, at 10 (asserting that a letter of credit should not be construed as a contract).
\item\textsuperscript{154} \textit{Hanil}, 2000 WL 254007, at *5 (finding no internal inconsistencies, meaning the beneficiary's name was misspelled in the same way throughout the letter of credit).
\item\textsuperscript{155} Vethan, supra note 143, at 52-53 (stating the ultimate effect of forcing an issuing bank to go beyond presented documents would be to cause unnecessary delay and uncertainty in payment).
\item\textsuperscript{156} \textit{See generally} supra Part I. A-B (describing the shortcomings of both strict compliance and its "equitable" alternatives).
\item\textsuperscript{157} Kozolchyk, supra note 4, at 61 (stating that before declaring a discrepancy, an issuer must determine the significance of various documents for each individual letter of credit).
\item\textsuperscript{158} \textit{See Uniform Customs and Practice for Documentary Credits, (1993 Revision)}, ICC Publication No. 500, Art. 37 (May 1993) (describing the rules for commercial invoices).
\item\textsuperscript{159} \textit{Id.} UCP article 37(c) states: "The description of the goods in the commercial invoice must correspond with the description in the Credit. In all other documents, the goods may be described in general terms not inconsistent with the description of the goods in the Credit." \textit{Id.}
\item\textsuperscript{160} \textit{Id.} at 37(a), (c).
\end{itemize}
to employ a mirror image interpretation of strict compliance, all documents which do not exactly replicate the terms and conditions of the letter of credit will be judged discrepant. The problem with this formulation is apparent: no matter how few documentary requirements are present, invariably an error, perhaps as minute as a misspelling, will occur. To allow dishonor under such circumstances in the name of strict compliance tips the scale in favor of the applicant, who will no longer have to reimburse the issuing bank and against the beneficiary, who has likely fulfilled its obligations under the letter of credit.

The outcome of Hanil, which was based on whether or not an error is obvious, clearly was derived from an overzealous application of strict compliance, akin to the mirror image rule. For courts to make the determination that documents do not comply with a letter of credit because a misspelled name would not be obviously recognized, is not only hollow; it also offers little guidance to other courts that must judge compliance in the future.

C. Empty Decision: Misapplied and Just Plain Missing

Notwithstanding the overly formalistic interpretation of strict compliance, the Hanil court's decision was also improper because it relied on an inapplicable case, Mutual Export Corp. v. Westpac Banking Corp. Further, the court did not consider the role of the UCP in defining a discrepancy.

The Hanil court relied on Mutual Export for the proposition that it is the beneficiary's duty both to inspect the letter of credit and to detect errors that will prevent the credit from being honored. In Mutual Export, the beneficiary failed to detect an incorrect expiration date that

161. Kozolchyk, supra note 4, at 50. Kozolchyk notes that strict compliance, on one hand, offers an unambiguous standard, but on the other hand, requires documents to essentially replicate to the last minute detail of the credit's terms and conditions. Id.
162. Id. at 53-54 (noting that a missing comma or asterisk could give rise to dishonor).
163. Id. at 54 (noting that dishonor in this manner is a bad faith practice).
165. Id. at *4. The court blindly followed the "Smithh" for "Smith" rationale in Beyene. Id.
166. 983 F.2d 420 (2d Cir. 1993). See Documentary Credit World, supra note 101, at 19.
168. Id. at *4. See also Mut. Export, 983 F.2d at 423.
was much earlier than what was needed or requested by the applicant.\(^{169}\)

In such an event, a beneficiary would be expected to object to the incorrect date and not simply present documents after expiration.\(^ {170}\) While an incorrect expiration date would clearly keep the letter of credit from meeting its commercial ends, in that it would cancel the credit prematurely,\(^ {171}\) the same cannot be said for the simple misspelling of a name. Because a misspelled name would not keep a letter of credit from meeting its commercial ends, the inspection rule of Mutual Export is inapplicable to Hanil.\(^ {172}\)

The Hanil decision also was inept because it completely ignored the UCP, even though these rules were explicitly incorporated by the letter of credit.\(^ {173}\) The UCP was particularly important because one of the documents presented was a commercial invoice.\(^ {174}\) According to the UCP, commercial invoices “must appear on their face to be issued by the Beneficiary named in the credit.”\(^ {175}\) This clear mandate is not only plain from the text of the UCP, but additionally, it has been reaffirmed by a recent opinion of the ICC Commission on Banking Technique and Practice, which determined that the UCP provided a clear requirement that the commercial invoice must appear to be issued by the “NAMED” beneficiary in the credit.\(^ {176}\) In Hanil, a question could arise as to whether...
it appeared as if the beneficiary actually issued the commercial invoice.\textsuperscript{177} However, the \textit{Hanil} opinion is completely bereft of any discussion of the UCP or the applicable banking commission opinion, instead it simply posits the glib conclusion that the error was not obvious.\textsuperscript{178}

\textbf{III. A NEW STANDARD: THE REASONABLE DOCUMENT CHECKER}

Judicial interpretation of documentary compliance, whether it be strict compliance or one of its equitable rivals, is not adequate to insure the reliability of the letter of credit instrument.\textsuperscript{179} Because nearly all possible ramifications of having documents issued by someone other than the beneficiary. \textit{Id.} Before requesting clarification from the ICC, Company T asked various banks and received responses varying from complete approval of the practice to absolute prohibition. \textit{Id.}

The Banking Commission addressed Company T's query by focusing only on one particular document: the commercial invoice. \textit{Id.} at 49. Relying on UCP article 37(a)(1), the Banking Commission stated that a commercial invoice must appear on its face to be issued by the beneficiary named in the credit. \textit{Id.} at 49. Because a number of ICC committees requested this requirement, it was specifically added to the UCP. \textit{Id.} at 49. Thus, “bank[s] would be justified in rejecting a commercial invoice issued in the name of ABC Division where the beneficiary” was Company T. \textit{Id.} at 49.

A similar conclusion was reached a few years earlier by the Banking Commission in opinion R 213. See \textsc{Opinions of the ICC Banking Commission 1995-1996: Responses to Queries on the UCP 400, UCP 500, and the URC 322}, at 36 (Gary Collyer ed., ICC Publishing S.A. 1997). Under the facts in this opinion, the shipper's name on a letter of credit was “X native produce, and animal by products import and export corporation, Country A, China” while the shipper's name on the commercial invoice was “X national native produce, and animal by products import and export corporation country A.” \textit{Id.} The question addressed in the opinion was whether the inclusion of the word “national” prior to “native” in the commercial invoice was a discrepancy because it did not appear in the letter of credit. \textit{Id.}

In responding to the query, the Banking Commission first stated that it must be determined if the shipper in this case was also the beneficiary. \textit{Id.} If the shipper was the beneficiary, then according to UCP article 37(a)(1) the document would be discrepant because it would not appear as if the commercial invoice was issued by the beneficiary. \textit{Id.} However, regardless of whether the shipper was the beneficiary or not the commercial invoice was discrepant under UCP article 14(b) because it had not been issued in compliance with the terms and conditions of the credit. \textit{Id.} See \textit{generally Uniform Customs and Practice for Documentary Credits, (1993 Revision)}, ICC Publication No. 500, Art. 14(b) (May 1993) (stating that “[u]pon receipt of the documents the Issuing Bank . . . must determine on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and conditions of the Credit”).

\textsuperscript{177} The question would arise because the commercial invoice was issued by “Sung Jun,” while the beneficiary named in the credit was “Sung Jin.” \textit{Hanil}, 2000 WL 254007, at *1.

\textsuperscript{178} \textit{Id.} at *4. The court repeatedly stresses that the error was not obvious, but does not once mention UCP article 37. \textit{Id.} at 3-5.

\textsuperscript{179} \textit{Compare supra} Part III. A (detailing the shortcomings of the equitable rivals to strict compliance), \textit{with supra} Part III. B (explaining the inadequacy of overly formalistic judicial interpretations of strict compliance).
documents are in some way discrepant, a standard must be adopted which can consistently discern the difference between a meaningless error and a true discrepancy.\textsuperscript{180} 

A possible solution to the judicial misapplication of documentary compliance, particularly strict compliance, would be for courts to look to standard banking practice as employed by reasonable document checkers.\textsuperscript{181} This standard, advanced by Dr. Boris Kozolchyck, is meant to increase both predictability and fairness in letter of credit transactions.\textsuperscript{182}

Fairness in a commercial transaction is normally a function of the reasonable expectations of the parties.\textsuperscript{183} Most judicial interpretations of strict compliance fail the fairness test because courts do not define "strict" by examining the expectations of the parties defined by reasonable banking practice.\textsuperscript{184} In a practical sense, this standard means that strict compliance can only be determined by the reasonable expectations of an individual who regularly checks documents for an issuing bank.\textsuperscript{185} The applicable test for compliance should be whether an experienced and knowledgeable document checker would find that documents are in compliance, despite the fact that they are not mirror images of each other.\textsuperscript{186}

The reasonable document checker standard is also predictable because it is an \textit{a priori} standard. Courts look to already determined banking practice when determining the compliance of documents.\textsuperscript{187}

\textsuperscript{180} See Kozolchyk, supra note 4, at 48 (stating that ninety percent of documents initially tendered are in some way discrepant). See also supra note 4 and accompanying text (stating that between eighty-five and ninety percent of documents presented are in some way discrepant). Kozolchyk notes that there is a universal fear in the letter of credit community of being victimized by judicially imposed overly strict compliance. Kozolchyk, supra note 4, at 48.

\textsuperscript{181} Id. at 72.

\textsuperscript{182} Id. Kozolchyk notes that the dual tests of predictability and fairness have not been satisfied by the various judicial interpretations of documentary compliance. Id.

\textsuperscript{183} Id. Kozolchyk explains the reasonable expectation standard by stating that "[t]he most common standard of fairness in commercial transactions law requires that one party treat the other or others as a regular participant in that transaction would wish to be treated when viewing its own advantage." Id.

\textsuperscript{184} Id.

\textsuperscript{185} Id. (explaining that courts must look to what a reasonable document checker would do under the circumstances).

\textsuperscript{186} Id. at 74. Other factors which are important to the reasonable document checker standard would include the time, skill, and knowledge generally used in a particular document check. Id.

\textsuperscript{187} Id. at 73. Commercial and "banking law [have] had a long and fruitful" relationship with other \textit{a priori} standards, the most famous of which is the "honest or decent merchant" standard. See id. Under this standard, depending on the degree of care
Accordingly, courts should determine strict compliance by examining what a reasonable document checker would do under the same circumstances. 188

There are guidelines to which a document checker’s testimony should adhere. 189 These guidelines are found in internationally accepted rules of practice, such as the UCP or ISP98. 190 Additionally, the International Financial Services Association has promulgated the Standard Banking Practice for the Examination of Letter of Credit Documents. 191 These rules are consistent with the UCP and ISP98 and are meant to provide a more in depth elaboration of standard banking practice. 192 These rules describe very general guidelines, which apply to all documents, and also detail the various compliance requirements of the most common documents. 193 The application of the principles in the Standard Banking Practice for the Examination of Documents, in conjunction with the UCP or ISP98, and each bank’s internal operating policies and procedures, required, a model merchant or banker “may be required to rise above the existing norm.” Id.

188. Id. at 75. The reasonable document checker standard would continue to accept the truism that strict compliance is what a court says it is, but would add one caveat; courts must determine strict compliance by first establishing what a reasonable document checker, employing standard banking practice, would do. Id.

189. Id. at 74. The guidelines are simply the safe and sound practices of the document checkers industry (the banking industry). Id. UCP article 13(a) also directs compliance to be judged in adherence with banking practice by stating that “[c]ompliance of the stipulated documents on their face with the terms and conditions of the [letter of] Credit, shall be determined by international standard banking practice as reflected in these Articles.” See Uniform Customs and Practice for Documentary Credits, (1993 Revision), ICC Publication No. 500, Art. 13(a) (1993).

190. Kozolchyk, supra note 4, at 74. Banking practices are shaped by both bankers and banking lawyers and over time become formal written custom. Id. This is the case with the UCP. Id.


192. Id. The introduction cautions that these rules are not the sole point of reference for examiners. Id. A reasonable document checker must also be familiar with internal banking procedures, and any government regulation of law affecting letters of credit. Id.

193. See generally id. The documents that are detailed in these rules include: the actual letter of credit and any subsequent amendments; the draft; the commercial invoice; the ocean/marine/port to port bill of lading; the non-negotiable sea waybill; the charter party bill of lading; the multimodal transport document; the air transport document; the road, rail, or inland waterway transport document; the forwarder’s cargo receipt, consolidator’s receipt; the post receipt of certificate of posting; the courier, or expedited delivery service document; the insurance document; the consular invoice, the certificate of origin; the packing list; the weight certificate/list; the inspection certificate; and the certificate of analysis. Id.
should allow a reasonable document checker the ability to determine the compliance of documents in nearly every circumstance.\footnote{194}{Id. (noting that no restatement of standard practice can fully substitute for a document checker's good judgment).}

A recent case, which has looked to standard banking practice in determining documentary compliance is \textit{Voest-Alpine Trading USA Corp. v. Bank of China}.\footnote{195}{No. 95-4945, slip op. at 16 (S.D. Tex. Mar. 13, 2000). In \textit{Voest-Alpine}, Voest-Alpine Trading USA Corporation (Voest-Alpine) entered into a contract with Jiangyin Foreign Trade Corporation (JFTC) for the sale of 1,000 metric tons of styrene monomer. \textit{Id.} To finance the purchase, JFTC applied to Bank of China for a letter of credit for the benefit of Voest-Alpine. \textit{Id.} The letter of credit issued by Bank of China had numerous typographical errors, namely the credit listed the beneficiary's name as “Voest-Alpine USA Trading Corp.,” instead of “Voest-Alpine Trading Corp.” \textit{Id.} In addition, the credit misspelled the destination port, “Zhangjiang” instead of “Zhangjiangang.” \textit{Id.} Finally the credit was subject to the UCP 500. \textit{Id.}} In \textit{Voest-Alpine}, the United States District Court for the Southern District of Texas ruled that an issuer is to honor a presentation that, as determined by standard banking practice, appears on its face to strictly conform to the terms and conditions of the letter of credit.\footnote{196}{Id. at 17 (noting that what constitutes standard practice is a matter of}}

According to standard banking practice, when judging whether

\footnote{194}{Id. (noting that no restatement of standard practice can fully substitute for a document checker's good judgment).}

\footnote{195}{No. 95-4945, slip op. at 16 (S.D. Tex. Mar. 13, 2000). In \textit{Voest-Alpine}, Voest-Alpine Trading USA Corporation (Voest-Alpine) entered into a contract with Jiangyin Foreign Trade Corporation (JFTC) for the sale of 1,000 metric tons of styrene monomer. \textit{Id.} To finance the purchase, JFTC applied to Bank of China for a letter of credit for the benefit of Voest-Alpine. \textit{Id.} The letter of credit issued by Bank of China had numerous typographical errors, namely the credit listed the beneficiary's name as “Voest-Alpine USA Trading Corp.,” instead of “Voest-Alpine Trading Corp.” \textit{Id.} In addition, the credit misspelled the destination port, “Zhangjiang” instead of “Zhangjiangang.” \textit{Id.} Finally the credit was subject to the UCP 500. \textit{Id.}}

While documentary compliance was one issue that the \textit{Voest-Alpine} court discussed, the opinion also dealt with notice of dishonor by the issuing bank. \textit{Id.} The issue of proper notice of dishonor arose after Bank of China telexed Voest-Alpine's presenting bank, Texas Commerce Bank a list of discrepancies. \textit{Id. at 17}. Eight days later, Bank of China sent another telex to Texas Commerce Bank further elaborating what it thought to be discrepancies and stating: “[n]ow the discrepant documents may have us refuse to take up the documents according to \textit{Article 14(B)} of UCP 500.” \textit{Id.} Subsequently, Bank of China returned the documents to Voest-Alpine and did not honor the letter of credit. \textit{Id.}

In determining whether Bank of China's notice of dishonor was adequate the court looked to Article 14(d) of the UCP 500 which states:

\begin{enumerate}
\item If the Issuing Bank . . . decides to refuse the [presentation] documents, it must give notice to that effect by telecommunication or, if that is not possible, by other expeditious means, without delay but no later than the close of the seventh banking day following the day of receipt of the documents. Such notice shall be given to the bank from which it received the documents, or to the Beneficiary, if it received the documents directly from him.
\item Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.
\end{enumerate}

\textit{Id. at 18} (quoting from \textit{Uniform Customs and Practice for Documentary Credits, (1993 Revision)}, ICC Publication No. 500, Art. 14(d) (May 1993)). Based on this article in the UCP 500, the court found that Bank of China's notice of dishonor was deficient because it never actually stated that it was rejecting the documents or refusing to honor the letter of credit. \textit{Id. at 19}. The court determined that the original telex from Bank of China only listed the discrepancies and did not actually convey refusal. \textit{Id.} The second telex which stated, “[n]ow the discrepant documents may have us refuse to take up the documents according to \textit{Article 14(B)} of UCP 500,” came the closest to a refusal, but because it was received eight days after the documents were presented it was too late under UCP article 14(d)(i). \textit{Id.}

\footnote{196}{Id. at 18 (noting that what constitutes standard practice is a matter of}}
an individual document is compliant on its face, an issuing bank must determine whether the document bears a relation to all of the other presented documents. In *Voest-Alpine*, because all of the presented documents contained the inverted name, each document was clearly related to the transaction and therefore not discrepant.

The discrepancies noted by Bank of China were as follows:

1) the beneficiary's name differed from the name listed in the letter of credit . . .
2) Voest-Alpine had submitted bills of lading marked "duplicate" and "triplicate" instead of "original"; 3) the invoice, packing list and the certificate of origin were not marked "original"; 4) the date of the survey report was later than that of the bill of lading; 5) the letter of credit number in the beneficiary's certified copy of the fax was incorrect . . . and 6) the destination was not listed correctly in the certificate of origin and the beneficiary's certificate.

Id. at 17.

In coming to this conclusion the court first noted that a more moderate compliance standard, as opposed to mirror-image strict compliance, lies within the UCP and the opinions issued by the International Chamber of Commerce. Id. The court proceeded to rely on an opinion by the ICC Banking Commission that defined consistency between the letter of credit and documents presented to mean "'the whole of the documents must obviously relate to the same transaction, that is to say, that each should bear a relation (link) with the others on its face."' Id. (quoting International Chamber of Commerce, Banking Commission, Publication No. 371, *Decisions (1975-1979) of the ICC Banking Commission* R. 12 (1980)). This, to the court, was an indication that the Banking Commission rejected the notion that all documents must be exactly consistent. Id.

The above standard of compliance, based on the relationship between documents, seemed to the court to be a commonsense approach because it enabled case-by-case analysis of possibly discrepant documents. Id. The court noted that this approach may bear a strong resemblance to the relaxed strict compliance standard (substantial compliance), but it differs in the calculus used by the issuing bank in determining compliance. Id. Under the more relaxed strict compliance standard, banks must look beyond the documents to determine compliance, under this standard an issuing bank must only look to the documents in an attempt to discern some relationship. Id.

Id. at 21 (stating that the letter of credit listed the beneficiary as "Voest-Alpine USA Trading" instead of the correct name which actually appeared on the presented documents "Voest-Alpine Trading USA").

Id. at 21. In coming to its decision the court noted that all of the documents that related to the transaction placed the geographic locator, "USA," behind "Trading" and not in front of it. Id. Also important to the court was the fact that the inversion of the geographic locator did not, and could not, signify a different corporate entity. Id.

As mentioned, Bank of China also alleged five other discrepancies in the documents presented by Voest-Alpine. *Supra* note 196 (listing the six alleged the discrepancies). To begin, the court determined that Bank of China was not justified in dishonoring presentation because each one of the set of the bill of lading should all have been marked "original" as opposed to "original," "duplicate," and "triplicate." Id. at 21.

The court found that neither the letter of credit nor the UCP required the bill of lading to be stamped "original." Id. Also, because the preparer clearly marked each page of the bill of lading set as original, it did not matter that each was stamped as either "original," "duplicate," or "triplicate." Id. at 21-22.

The court also did not accept Bank of China's argument that the failure to stamp the packing list as "original" was a discrepancy. Id. at 22. Again the court noted that neither the letter of credit nor the UCP required the packing list to be stamped "original."
The strongest argument advanced against allowing the judiciary to determine compliance by looking to standard banking practice is the characterization of document checkers as “dumb high school graduates” who are incapable of anything but a purely mechanical and mindless examination of documents. However, this characterization has no basis in reality. While some document checkers have only completed high school, banks do not entrust them to make significant decisions until they have been fully trained. Thus, by the time the document checkers are granted significant decision making authority, they are qualified professionals with a specialized training in letter of credit transactions.

While no standard of compliance can solve all of the difficulties associated with letter of credit transactions, a test based on standard

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Id. In fact, the court stated that according to standard banking practice, as defined by the ICC, a bank should treat any document that appears to be hand-signed by the issuer of the document as an original. Id.

Bank of China’s argument, that the survey report was discrepant because its date was later than the date on the bill of lading, was also rejected by the court. Id. In quickly dismissing this argument, the court simply stated that “[t]he plain language of the report reveals that the report may have been issued after the bill of lading but the survey itself was conducted before the ship departed. The date does not pose a discrepancy.” Id.

Additionally, the court did not find compelling Bank of China’s argument that the beneficiary’s certified copy of the fax was discrepant because it listed an incorrect letter of credit number. Id. On the copy fax, the letter of credit number was listed as “LC.95231033/95,” instead of “LC9521033/95” as was noted on the actual letter of credit. Id. Basically, the copy fax added an extra “3” after LC952. Id. The court found that the addition of the extra digit was simply gratuitous, and because the issuing bank could have looked to any other document to verify the letter of credit number, it was not grounds for dishonor. Id.

Finally, the court disregarded Bank of China’s argument that the certificate of origin listed the wrong destination. Id. The port of destination was incorrectly spelled “Zbatiagang,” however, the certificate of origin omitted the third “a,” spelling the port as “Zhangpagng.” Id. In finding this mistake inconsequential, the court found it quite telling that Madame Gao, the document checker who reviewed Voest-Alpine’s documents for Bank of China, first considered this error a misspelling rather than an indication of the wrong port. Id. To further illustrate that the error was merely a misspelling, the court noted that in Romanized Chinese the combination of letters “Gng” is not found, but the letters “Gang” means port. Id. More importantly, because the other information in the document was correct, the document as a whole bore an obvious relation to the transaction and was therefore not discrepant. See id.

200. Kozolchyk, supra note 4, at 78. This characterization, as an advocacy tool, has succeeded in reducing some of the liability of the bank in wrongful honor or dishonor cases. Id.

201. See id.

202. Id. Even after document checkers have been trained, they are closely supervised “until they are experienced enough . . . to prevent wrongful honor or dishonor liability.” Id.

203. Id. By the time a document checker is fully trained, they have a highly specialized knowledge of both the function and significance of letter of credit documents. Id.
banking practice, as determined by a reasonable document checker, offers the greatest potential for uniformity and harmonization of documentary compliance. Uniformity and harmonization will increase because of the a priori nature of this standard. Thus, courts will be forced to base their interpretation of strict compliance on previously determined banking practice. The use of a standard based on internationally accepted banking practice will increase the certainty necessary for the proper functioning of letter of credit transactions. It will do so by allowing each party to have a general idea of what would constitute a material discrepancy prior to the presentation of documents. By employing the reasonable document checker standard, the court in *Hanil* would have followed generally accepted banking practice thereby making any outcome at least legitimate in the eyes of the banking community.

IV. CONCLUSION

*Hanil* is an unfortunate case because the court missed an important opportunity to announce an interpretation of compliance that would have aligned judicial notions of the principle with those of standard banking practice. Instead, the court relied on the unimpressive fact that the misspelling in question would not have been obviously recognized as a typographical error. This standard is not only ambiguous; it increases the uncertainty that already surrounds the very difficult concept of documentary compliance. Hence, a test based on standard banking practice as employed by a reasonable document checker is needed to increase the clarity and reliability of the letter of credit.

204. *Id.* at 79. Uniformity and harmonization is of particular importance with the advent of electronic letters of credit, and the reasonable document checkers standard is ideally suited to the high speed demands of the new electronic practice. *Id.* at 79-80.

205. *Cf. Kozolchyk, supra* note 4, at 72-74 (explaining the need for an a priori standard in regard to letter of credit compliance).

206. *Id.* at 74 (stating that “[a]s an a priori standard, the strict compliance of the reasonable document checker directs the document checker to determine discrepancies based upon the safe and sound practices of the document checker’s industry”).

207. *Cf. Kozolchyk supra* note 4, at 72 (noting the need for predictability in letter of credit transactions which can only be achieved through application of the test of “reasonable expectations”).

208. See Hanil Bank v. PT. Bank Negara Indonesia, No. 96 Civ. 3201, 2000 WL 254007, at *4-*5 (S.D.N.Y. Mar. 7, 2000) (holding instead that strict compliance is only fulfilled when an error can be obviously recognized).