Legal article

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Letter of credit refused for discrepancies: strict compliance, the five-banking-day rule, the single notice of refusal, and the Thai Supreme Court cases on documentary credits

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> This article is general legal information, not a legal opinion on any specific matter. Each matter must be assessed on its own facts and evidence. The latest online version is at https://eksiamtradeinvestlaw.com/en/insights/letter-of-credit-discrepancy/

Key points

- Thailand has no statute on letters of credit. The governing rules are the ICC's UCP 600, which bind because the parties agree to them, and the Supreme Court has enforced that agreement since Judgment No. 775/2525 (1982), whose first holding was decided by the plenary session.
- Banks examine documents, not goods. Complying documents oblige the buyer to reimburse the bank even if the goods do not match the contract, while documents that do not satisfy the conditions mean a bank that has paid cannot recover from the buyer, under Supreme Court Judgment No. 30/2548 (2005).
- A bank has at most five banking days following the day of presentation to examine the documents, and if it refuses it must send a single notice listing every discrepancy within that same period. A bank that does not comply loses the right to claim that the documents are discrepant, under UCP 600 articles 14 and 16.

- The bank's right to reimbursement from the applicant is subject to the ten-year prescription period in section 193/30 of the Civil and Commercial Code, under Supreme Court Judgment No. 266/2546 (2003), and letter of credit cases connected with international trade fall within the jurisdiction of the Intellectual Property and International Trade Court.

Which law governs a letter of credit in Thailand

A letter of credit (an issuing bank's undertaking to pay the seller when the seller presents the stipulated documents) is governed in Thailand by the agreement of the parties, and almost every credit incorporates UCP 600 of the International Chamber of Commerce. The Supreme Court treats those rules as part of the contract when the parties agree to them, and interprets the contract under section 368 of the Civil and Commercial Code, which requires regard to ordinary usage.

A single letter of credit transaction involves at least three layers of contract. The first is the sale contract between the overseas seller and the Thai buyer, which provides that the buyer will pay the price by letter of credit. The second is the application (the contract between the buyer as applicant and the issuing bank), which sets the documentary conditions, fees, security and the duty to reimburse. The third is the letter of credit itself, the issuing bank's undertaking to the seller as beneficiary (the party entitled to payment under the credit). Where there is a confirming bank (a bank that adds its own undertaking to pay) or a negotiating bank (a bank that purchases the draft and documents from the seller before maturity), another layer of relationships is added.

Thailand has no statute that deals directly with letters of credit, unlike the United States, where Article 5 of the Uniform Commercial Code does so. The rules that actually govern are therefore UCP 600, drawn up by the International Chamber of Commerce and applicable when the credit states that it is subject to them.[1] The Supreme Court accepted the binding effect of these rules as early as the 1962 revision, in Judgment No. 775/2525 (1982), whose first holding was decided by a resolution of the plenary session.[2]

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> Supreme Court Judgment No. 775/2525 (1982) (plenary session)
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> The applicant for a letter of credit agreed that the ICC Uniform Customs and Practice for Documentary Credits formed part of the terms of the contract. Once the seller had presented documents that were correct and complied with the conditions, the applicant remained liable to reimburse the bank even though the goods did not match the items described in the bill of lading, the invoice and the offer.

The judgment lays down two rules that still apply. First, the UCP take effect because the parties adopt them as contract terms, not because they are law. Second, the risk that the actual goods do not match the documents falls on the buyer, not the bank. Where the contract terms are unclear, the court interprets them under section 368 of the Civil and Commercial Code.[3]

> Civil and Commercial Code, section 368 (the firm's translation)
>
> “A contract is to be interpreted according to the intention of the parties in good faith, having regard also to ordinary usage.”

The words “ordinary usage” in this section open the way for the court to use international banking practice when reading the conditions of a credit. The most important source of that practice is the International Standard Banking Practice (ISBP, the ICC's guide to examining documents under UCP 600), whose current edition is ICC Publication No. 821 of 2023, which the ICC says must always be read together with UCP 600.[7] When the parties dispute whether a difference in wording between documents amounts to a discrepancy, ISBP is the evidence of ordinary usage that, in the author's view, a Thai court should admit.

The independence principle: banks examine documents, not goods

The issuing bank's duty is limited to checking that the documents are complete and comply with the terms of the credit. The bank is not bound by the sale contract and has no duty to verify that the goods were actually shipped or match the contract, under UCP 600 articles 4 and 5 and Supreme Court Judgments No. 6793/2543 (2000) and No. 1561/2529 (1986).

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The independence principle (also called the autonomy principle, which separates the bank's undertaking from the sale contract) is the economic reason for the letter of credit. A seller agrees to ship goods across a border to a buyer it does not know because it trusts that the bank will pay when the documents are in order, and that the buyer cannot block payment by raising a dispute about the quality of the goods. The Supreme Court explained the principle clearly in Judgment No. 6793/2543 (2000): the issuing bank is not involved in the sale contract, and its only duty is to examine the documents for correctness and completeness under the conditions before paying.[5]

> Supreme Court Judgment No. 6793/2543 (2000)
>
> The buyer alleged that it had been deceived into buying raw materials at an inflated price and asked the court to attach the funds payable under the letter of credit. The Supreme Court held that the issuing bank was not involved in the sale contract and had a duty only to examine the documents, that a failure to pay without a reason acceptable in international trade would damage the credibility of the bank and of the other parties involved, and that an order attaching the funds and prohibiting the bank from paying must therefore be considered with the greatest care.

Supreme Court Judgment No. 1561/2529 (1986) applied the same principle to facts importers often raise: where the ocean bill of lading showed that the goods had been loaded on board, the correspondent bank was bound to pay the seller and had no duty to check whether the goods had in fact been loaded.[10] Judgment No. 266/2546 (2003) describes the function of the letter of credit from the other side: the bank opens the credit to protect the buyer and, at the same time, to assure the seller that it will certainly be paid if it complies with the conditions.[6]

In practice the principle cuts two ways. For the importer, claims about defective goods, short shipment or goods not matching their description must be pursued against the seller under the sale contract, against the carrier under the contract of carriage or against the insurer under the policy, not against the bank. For the exporter, the security of the price depends on the documents, not on the goods. An exporter that ships perfect goods but presents the bill of lading one day late risks not being paid by the bank, while a seller whose documents are in order is paid even if the goods are defective.

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The strict compliance principle

A bank must examine a presentation on the basis of the documents alone to determine whether they appear on their face to comply. Data in the documents need not be identical, but must not conflict, and the description of the goods in the commercial invoice must correspond with the credit, under UCP 600 articles 14 (a), 14 (d) and 18 (c).

The strict compliance principle (under which documents that are nearly right, or that could serve the same purpose, are not accepted) grew out of English cases in the 1920s and became the universal rule of documentary credit transactions. The reason is that the bank does not know its customer's business. A bank that pays against documents that are merely "close" takes the risk that the applicant will later argue that the difference mattered to its business. UCP 600 article 14 (a) requires the bank to examine the presentation on the basis of the documents alone, while article 14 (d) softens the rule by allowing data in the various documents to differ, so long as they do not conflict.[8]

The United States has written the same principle into statute, tying strictness to the standard practice of banks. The wording shows that strict compliance in its modern sense is not a mirror-image comparison of letters, but a comparison against what an experienced document checker would treat as matching.[9]

> Uniform Commercial Code § 5-108 (a)
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> "(a) Except as otherwise provided in Section 5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply."

The Thai Supreme Court applied strict compliance in a way that plainly protects the applicant in Judgment No. 30/2548 (2005). The buyer of machinery required in the credit that the seller present technical specifications, electrical drawings, an operating manual and a spare parts list. The seller did not present them, the correspondent bank paid without objection, and the buyer was unable to assemble the machinery and run production.[11]

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> Supreme Court Judgment No. 30/2548 (2005)
>
> The bank had no duty to verify the correctness of the goods in the container, but it did have a duty to examine the documents specified in the letter of credit for correctness and completeness in accordance with the applicant's instructions. Payment without examining the documents for completeness was payment contrary to those instructions. The applicant therefore did not have to reimburse the bank, was not liable on the promissory note and the trust receipt whose underlying debt arose from the letter of credit, and the guarantor was not liable either.

The judgment matters to importers more than first appears. First, the Supreme Court treated the documentary conditions as the applicant's "instructions"; a bank that pays outside those instructions bears the risk itself. Second, the trust receipt (the contract by which the bank releases the documents to the importer so that it can clear the goods before paying, the goods remaining the bank's property) and the promissory note signed afterwards did not bring a non-existent debt into being, and were not an acknowledgment of debt. Third, the guarantor was released at the same time. An importer sued by its bank under a trust receipt should therefore always go back and examine the set of documents the bank accepted on the day it paid.

Strict compliance also governs the interpretation of the application itself. In Judgment No. 1156/2546 (2003) the Supreme Court construed an application stating that the bill of lading was to be made out in the name of the bank, with notice to the buyer; although a later passage required all shipping documents to be issued in the buyer's name, the Court held that the bill of lading still had to be made out in the name of the bank.[20] A specific condition therefore prevails over general wording, and whoever drafts the application should resolve conflicting wording before it goes to the bank rather than leave it to the document checker to interpret later.

The discrepancies that most often lead to refusal

Common discrepancies fall into three groups: timing (late shipment, presentation more than twenty-one days after shipment, or presentation after expiry), completeness (a missing document or an incomplete set of originals), and content (conflicting data between documents, a goods description in the invoice that does not match the credit, or insurance cover below the required amount).

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The empirical evidence shows that discrepant documents are the norm, not the exception. Ronald J. Mann's study, which collected 500 transactions from five United States banks, found that fewer than 25 percent of drawings under letters of credit complied with the credit, and that most were paid after the bank obtained the buyer's consent.[12] Those figures describe the United States market, and the author has found no published data on the same question for Thai banks, but the experience of Thai exporters is not very different. The discrepancies the author most often sees when reviewing documents are these.

1. Late shipment. The on-board date in the bill of lading must not be later than the latest shipment date in the credit. This discrepancy cannot be cured by amending the documents, because the date in the bill of lading must reflect the facts.

2. Late presentation. UCP 600 article 14 (c) requires a presentation that includes original transport documents to be made not later than twenty-one calendar days after the date of shipment and not later than the expiry date. Where the credit sets its own presentation period, the English Court of Appeal in the Fortis case discussed below held that the credit's term prevails over article 14 (c).

3. An unclean bill of lading, or one that does not show the goods on board. A bill of lading with a notation that the packaging is damaged, or a “received for shipment” bill with no on-board notation, is a discrepancy banks raise frequently.

4. Goods description in the invoice not matching the credit. Article 18 (c) requires the description of the goods in the commercial invoice to correspond with the credit, while other documents may describe the goods in general terms under article 14 (e). Many exporters use internal model names in the invoice and are refused on this ground.

5. Conflicting data between documents. Weights, number of packages, shipping marks or the port of discharge do not match across the bill of lading, the packing list and the certificate of origin.

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6. Insurance amount or cover incomplete. If the credit does not state an amount, article 28 (f) (ii) sets a minimum of 110 percent of the CIF or CIP value, and under article 28 (e) the insurance document must not be dated later than the date of shipment unless it shows that cover is effective from a date no later than shipment.

7. Missing documents or an incomplete set of originals. For example, a full set of three original bills of lading when only two are presented, an inspection certificate issued by someone other than the inspector named in the credit, or missing technical documents of the kind in Judgment No. 30/2548 (2005).

Most of these seven groups of discrepancies can be prevented on the day the draft letter of credit arrives. A seller that checks the conditions against its actual production and shipping schedule before the credit is issued, and immediately asks for amendment of any condition it cannot meet, pays an amendment fee that is a fraction of the loss caused by a refusal. This matches the finding of the study above that most discrepant presentations stem from conditions that did not fit actual practice from the start.

How a bank must examine and refuse: five banking days and a single notice

A bank has a maximum of five banking days following the day of presentation to examine the documents. If it refuses, it must give a single notice by telecommunication no later than the close of the fifth banking day, stating that it is refusing, listing every discrepancy, and stating what it will do with the documents. A bank that fails to comply loses the right to claim that the documents are discrepant, under UCP 600 articles 14 (b), 16 (c), 16 (d) and 16 (f).

Article 16 of UCP 600 is the provision every exporter should know, because it turns a refusal from something to be accepted into something whose validity can be tested. A refusal complies with UCP 600 only if four conditions are met. First, it must be made within five banking days following the day of presentation. Second, it must be a single notice; the bank cannot add further discrepancies later. Third, the notice must state every discrepancy on which the bank relies.

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Fourth, the notice must state whether the bank is holding the documents pending the presenter's instructions, holding them until the applicant waives, returning them, or acting on instructions previously received.[13]

The consequence of non-compliance is in article 16 (f): an issuing or confirming bank that fails to act in accordance with article 16 is precluded from claiming that the documents do not constitute a complying presentation, even if the documents are in fact discrepant. United States law provides the same consequence in UCC § 5-108 (c).[9] This is why the first task of an exporter that receives a notice of refusal is to examine the notice itself, not to rush to correct the documents.

> Fortis Bank SA/NV v Indian Overseas Bank [2011] EWCA Civ 58
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> The issuing bank gave notice of refusal and elected under article 16 to return the documents, but did not return them as stated. The trial judge held that a bank that elects to return the documents must do so with reasonable promptness, and that having failed to do so it was precluded under article 16 (f) from relying on the discrepancies. The English Court of Appeal dismissed the issuing bank's appeal.

The case shows that article 16 governs not only the form of the notice but the bank's conduct after it refuses. A bank that says it will return the documents and then keeps them loses its right to refuse.[14] In the author's view the same principle applies to a bank that releases the documents to the buyer to clear the goods before a waiver has been obtained, because that treats the documents in a way inconsistent with the status stated under article 16 (c) (iii). Foreign judgments do not bind Thai courts, but the Intellectual Property and International Trade Court, which must interpret UCP 600 in accordance with international usage, may properly consider the interpretation adopted by the courts of the main trading centers. In the search for this page the author found no Thai Supreme Court judgment deciding article 16 (f) of UCP 600 directly.

The checklist the firm applies to a notice of refusal has five questions. One, on what day did the bank receive the documents, and was the notice sent before the close of the fifth banking day, counting the issuing bank's holidays? Two, is the notice a single notice that lists every discrepancy? Three, is each alleged discrepancy a real discrepancy under UCP 600 and ISBP, or

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merely a difference in wording that does not conflict under article 14 (d)? Four, does the notice state the status of the documents under article 16 (c) (iii)? Five, after giving notice, did the bank deal with the documents as it said it would? A “no” to any one of these may mean that the bank has to pay despite the discrepancies.

The buyer's waiver, and a bank that pays despite discrepant documents

When documents are discrepant, the issuing bank may ask the applicant whether it waives the discrepancies, but asking does not extend the five banking days. If the bank pays against documents that do not satisfy the conditions and the applicant has not waived, the Supreme Court treats the payment as contrary to the applicant's instructions, and the applicant need not reimburse, under Supreme Court Judgment No. 30/2548 (2005).

In practice most discrepancies end not in refusal but in a waiver (the applicant's acceptance of the documents despite the discrepancies). UCP 600 article 16 (b) allows the issuing bank, in its sole judgment, to approach the applicant for a waiver, but the five banking days keep running.[13] This is the moment when bargaining power changes hands. A buyer whose market has fallen, or who has found a problem with the goods, may refuse to waive in order to negotiate a price reduction. The seller should therefore know what options remain: presenting corrected documents within the validity of the credit and within the twenty-one days, disputing that the alleged discrepancy is a discrepancy at all, or challenging the notice as non-compliant under article 16.

On the importer's side, the relationship between the applicant and the issuing bank resembles a mandate to the bank to pay on the applicant's behalf in accordance with its instructions. In Judgment No. 30/2548 (2005) the Supreme Court described payment without examining the documents for completeness as payment “contrary to the instructions” of the applicant. The judgment did not say that it was applying the law of agency, and in Judgment No. 266/2546 (2003) the Court held that the bank is not a person performing work for remuneration under

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section 193/34 (7). The author therefore regards the agency provisions of the Civil and Commercial Code as an analogy that helps explain the reasoning, not as the legal basis the Court laid down. The closest provision is section 807.[15]

> Civil and Commercial Code, section 807 (the firm's translation)
>
> "An agent must act in accordance with the express or implied instructions of the principal. Where there is no such instruction, the agent must follow the course of practice customary in the business that the principal has entrusted to it.
>
> The provisions of section 659 on deposit apply, mutatis mutandis, as far as appropriate."

Reading section 807 together with section 812, which makes an agent liable for damage caused by acting beyond its authority,[16] and with section 816, paragraph one, which allows an agent to recover advances only where they "may reasonably be considered necessary,"[17] produces a result consistent with Judgment No. 30/2548 (2005): a bank that pays against documents that do not match the applicant's instructions has not made a payment that was necessary under its mandate, and so cannot recover that payment from the applicant.

> Civil and Commercial Code, section 812 (the firm's translation)
>
> "If any damage results from the negligence of the agent, from the agent's failure to act as agent, or from the agent acting without authority or beyond the scope of its authority, the agent is liable."

The point of caution for importers is that later conduct may be read as an implied waiver: taking the documents to clear the goods without objection, signing a trust receipt with a note accepting the documents, or paying a discrepancy fee without reserving rights. An importer that needs to clear the goods first, to avoid container demurrage and detention, should send the bank a letter of reservation the same day stating that taking delivery of the documents is not acceptance of the discrepancies, and listing each discrepancy found.

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The applicant's duty to reimburse, trust receipts and prescription

When the bank pays against complying documents, the applicant must reimburse the bank under the letter of credit application. A bank that sells goods held as security must apply the proceeds first to the debt under that application, and an action to enforce liability under a letter of credit contract is subject to the ten-year prescription period in section 193/30 of the Civil and Commercial Code.

The applicant's debt to the bank is usually recorded in several documents at once: the letter of credit application, a trust receipt, a promissory note, a guarantee and a mortgage. In Judgment No. 775/2525 (1982) the Supreme Court held that where the applicant signed a trust receipt payable in installments and defaulted on the first installment, the bank could sue for the whole debt.[2] Conversely, Judgment No. 8972/2553 (2010) limits the bank's rights in the security: a bank that received the bill of lading as consignee by way of security and sold the goods when the applicant defaulted had to apply the proceeds to the debt under that letter of credit application, and could not set them off against other debts or the debts of other persons.[18]

> Supreme Court Judgment No. 266/2546 (2003)
>
> A bank that opens a letter of credit is not a person carrying on the business of performing work for remuneration and advances under section 193/34 (7). An action to enforce liability under a letter of credit contract has no prescription period specifically provided by law and is therefore subject to the ten-year period under section 193/30.

> Civil and Commercial Code, section 193/30 (the firm's translation)
>
> “Unless this Code or another law provides otherwise, the period of prescription is ten years.”

The ten-year period means that an importer in default under a letter of credit cannot raise the two-year prescription period as a defense.[19] But the importer keeps the substantive defense in Judgment No. 30/2548 (2005) throughout that period: proving that the bank paid against documents that did not satisfy the conditions. The key evidence in such cases is the set of

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documents the bank received from the foreign bank, the bank's internal document examination sheet, and the letter the bank sent to the applicant asking for a waiver. An importer should ask for copies of these documents before taking the documents to clear the goods.

The fraud exception: when can a bank be stopped from paying

The fraud exception (the exception to the independence principle where the beneficiary uses forged or fraudulent documents) is recognized by courts in the United States and England, but is confined to fraud by the beneficiary. The Thai Supreme Court has not laid down a rule on the point directly, and has held that an order prohibiting a bank from paying under a letter of credit must be considered with the greatest care, in Judgment No. 6793/2543 (2000).

The fraud exception originates in the New York decision in Sztejn v. J. Henry Schroder Banking Corp. in 1941. The seller packed cowhair and rubbish instead of the bristles described in the documents. The court held that the independence principle should not protect the seller where the bank had been given notice of the fraud before the draft and documents were presented.[22] The House of Lords narrowed the exception in United City Merchants v Royal Bank of Canada, where an employee of the loading brokers altered the date on the bill of lading without the seller's knowledge; the exception applies only to fraud by the beneficiary, and an honest seller remains entitled to payment.[23]

As for Thailand, a 2024 article in the journal of the Thai Bar states that no Thai court has yet ruled on fraud in a letter of credit.[21] The author searched the Supreme Court's judgment database for this page and likewise found none. The closest case is Judgment No. 6793/2543 (2000), where the buyer alleged that it had been deceived into buying raw materials at an inflated price. The Supreme Court stressed the harm to credibility in international trade and the rights of the negotiating bank, and held that an order prohibiting payment must be considered with the greatest care.[5] The author reads the judgment as meaning that an applicant seeking to stop its bank from paying must have clear evidence of fraud by the beneficiary, not merely a dispute about price or quality, and must take account of the rights of a negotiating or confirming bank that has already paid in good faith.

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Jurisdiction and proceedings

Civil cases concerning letters of credit issued in connection with international sales, trust receipts and guarantees relating to those transactions fall within the jurisdiction of the Intellectual Property and International Trade Court under section 7 (6) of the Act on the Establishment of and Procedure for the Intellectual Property and International Trade Court B.E. 2539 (1996).

Letter of credit cases are international trade cases in their own right under the statute that established this specialized court. The provision covers actions by a bank against the applicant and its guarantor, actions by the beneficiary against a bank, and actions under trust receipts.[4]

> Act on the Establishment of and Procedure for the Intellectual Property and International Trade Court B.E. 2539 (1996), section 7 (5) and (6) (the firm's translation)
>
> “(5) civil cases concerning the international sale or exchange of goods or financial instruments, the international provision of services, international carriage, insurance and other related juristic acts;
>
> (6) civil cases concerning letters of credit issued in connection with the activities in (5), the remittance of money into or out of the Kingdom, trust receipts, and guarantees relating to such activities;”

Several of the cases discussed on this page, such as Judgment No. 8972/2553 (2010), began in the Central Intellectual Property and International Trade Court and went directly on appeal to the Supreme Court.[18] For a foreign seller that intends to sue a Thai bank, some credits specify the governing law and the court with jurisdiction; where they do not, a Thai court must determine the applicable law under the Act on Conflict of Laws B.E. 2481 (1938). This point should be checked before a demand letter is sent, because it determines both where to sue and how UCP 600 is proved in evidence.

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Comparative law: England, the United States and Thailand

English courts enforce article 16 of UCP 600 strictly against banks. The United States has codified strict compliance, the examination period and preclusion in UCC § 5-108. Thailand relies on the parties' agreement and on Supreme Court judgments that accept the independence principle and the duty to examine documents for completeness, but has no judgment yet on article 16 or on the fraud exception directly.

Comparing the three systems, the common ground is the independence principle and the duty of documentary examination; the difference lies in the source of the rules. England treats the UCP as contract terms and develops their interpretation through case law, such as the Fortis case on the bank's duties after giving notice of refusal.[14] The United States has put the rules into statute, gives the bank up to seven business days to examine documents, and lets the UCP prevail when the credit refers to them.[9] Thailand is closer to the English system, because it has no specific statute and relies on section 368 to interpret the contract. The important difference is that the Thai Supreme Court has clearly protected the applicant where the bank paid against incomplete documents, in Judgment No. 30/2548 (2005),[11] but has not yet protected a beneficiary against a refusal that fails article 16. In the author's view, when such a case reaches a Thai court, the court is likely to apply article 16 (f) according to its terms, because the article is a contract term that the issuing bank chose to adopt, and that reading is consistent with the intention in good faith and the ordinary usage that section 368 requires.

Law and economics, and legal philosophy: why strictness

Strict compliance is a rule, not a standard, in the sense used in law and economics. It lowers the bank's cost of examination and makes outcomes predictable. Empirical research suggests, however, that the real value of a letter of credit lies in the bank's reputation as an intermediary more than in the certainty of payment.

Louis Kaplow distinguishes legal rules, whose content is fixed in advance, from standards, whose content is determined after the fact by the person applying the law. Rules are costly to draft but cheap to apply, which suits conduct that recurs in large numbers.[24] Documentary examination

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under letters of credit is a clear example of conduct that recurs in large numbers: a bank examines thousands of sets of documents a month without knowing its customers' businesses. If the rule were a standard such as “substantial compliance,” the bank would have to assess the commercial significance of every difference, and that cost and risk would come back as higher fees. Strict compliance therefore shifts the cost to the parties that can prevent errors most cheaply: the seller that prepares the documents, and the buyer that drafts the conditions.

Mann's work questions this reasoning. If most drawings are discrepant and are paid because the buyer waives, the letter of credit does not give the seller the certainty the theory claims. Mann explains that its real value lies in reputational intermediation: a buyer that refuses a waiver without reason risks its relationship with its own bank, and banks have an incentive to protect their reputation in the international market.[12] Clayton P. Gillette suggested in a comment in the same issue that a letter of credit also functions as a signal of the buyer's creditworthiness.[25]

In terms of legal philosophy, this is the debate between formalism (the view that legal effect follows the prescribed words and form) and an approach that looks to commercial purpose. Strict compliance is a formalism the market has chosen for itself, because the value of the form is that it lets strangers across borders trade without having to trust each other. Article 14 (d) of UCP 600 and ISBP adjust that formalism to tolerate immaterial differences while keeping predictability. The lesson for the firm's clients is that documents that are right from the start are worth more than any argument afterwards, and that when an argument does arise, it must be made in the language of UCP 600 and ISBP, not in terms of general fairness.

What exporters and importers should do

Exporters should check the draft credit against their production and shipping schedule before it is issued, check the documents before presentation, and check the notice of refusal under article 16 as soon as it arrives. Importers should draft the documentary conditions to cover what they actually need, examine the full set of documents before waiving, and reserve their rights in writing before taking the documents to clear the goods.

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For exporters. First, review the draft letter of credit as soon as it arrives, comparing the latest shipment date, the expiry date, the place of presentation and the list of documents against the actual production schedule and sailing schedule. Second, ask for amendment of any condition that cannot be met before shipment, such as a certificate to be issued by an authority that does not exist in your country, or a goods description that does not match the name on the export license. Third, use the goods description from the credit in the invoice, letter for letter. Fourth, present early enough to leave time to correct and re-present within the twenty-one days and within the validity of the credit. Fifth, when a notice of refusal arrives, check its date and content against the five questions above before replying to the bank.

For importers. First, state in the application every document you actually need to receive. If you need a manual, technical drawings or an inspection certificate, write them in as documentary conditions, because the bank examines documents only. Second, avoid non-documentary conditions (conditions that do not specify a document to show compliance), because UCP 600 article 14 (h) lets the bank disregard them. Third, when the bank asks for a waiver, obtain a copy of the full set of documents and examine it before answering. Fourth, if you must take the documents to clear the goods before deciding, send an itemized letter of reservation. Fifth, when the bank calls on you to reimburse under a trust receipt, check whether it paid against documents that satisfied the conditions, following Judgment No. 30/2548 (2005).

Related matters on which the firm also advises include reviewing the international sale contract before signature, so that the payment and documentary terms match the letter of credit, on our page International contract review, and claims against the carrier when goods are damaged in transit, on our page Cargo lost or damaged at sea.

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Document review, notices of refusal and letter of credit disputes

The firm reviews draft letters of credit and applications, examines documents before presentation or before a waiver, tests the validity of a notice of refusal under UCP 600 article 16, prepares letters of objection to banks, and conducts letter of credit and trust receipt litigation in the Intellectual Property and International Trade Court.

1. Review of the conditions before the credit is issued. Comparing the draft credit with the sale contract, the production schedule and the shipping schedule, and drafting requests to amend conditions that cannot be met.
2. Examination of documents before presentation, under UCP 600 articles 14 and 18 to 28 and ISBP 2023.
3. Review of the notice of refusal: the five-banking-day deadline, the completeness of the discrepancies, the status of the documents, and the bank's conduct after giving notice, under article 16.
4. Letters of objection and negotiation with the issuing bank, the confirming bank or the buyer, including letters of reservation for importers.
5. The applicant's defenses in actions by a bank for reimbursement under the application, a trust receipt or a promissory note.
6. Litigation in the Intellectual Property and International Trade Court, or arbitration where agreed.

A 45-minute consultation on one matter costs THB 4,900. It suits a party that has received a notice of refusal and wants to know whether the discrepancies alleged by the bank are valid under UCP 600, or an importer that has been called on to reimburse and wants to know its defenses. For document review of a full set, negotiation and litigation, the firm quotes a fee in writing according to scope before work begins.

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Questions before instructing us

Questions that exporters, importers and corporate finance teams typically ask when a letter of credit is refused for discrepancies, when a bank demands reimbursement, and before instructing the firm to review documents or litigate.

My letter of credit was refused for discrepancies. What should I do first?

Check the notice of refusal before correcting the documents. The bank must refuse within five banking days following the day of presentation by a single notice that lists every discrepancy and states the status of the documents, under UCP 600 articles 14 (b) and 16. If the bank has not complied, it is precluded from claiming that the documents are discrepant under article 16 (f). Only then decide whether to present corrected documents within the twenty-one days and within the validity of the credit, or to negotiate a waiver from the buyer.

How many days does a bank have to examine letter of credit documents?

A maximum of five banking days following the day of presentation, under UCP 600 article 14 (b). The bank's approach to the applicant for a waiver does not extend this period, under article 16 (b).

The goods do not match the contract. Can the buyer instruct the bank not to pay under the letter of credit?

As a rule, no. Banks examine documents, not goods. When the documents comply, the buyer must reimburse the bank even if the goods do not match the contract, under Supreme Court Judgment No. 775/2525 (1982), and an application to attach the funds and prohibit payment must be considered with the greatest care under Judgment No. 6793/2543 (2000). Claims about the goods must be pursued against the seller, the carrier or the insurer.

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The bank paid even though the documents were incomplete. Does the importer have to reimburse?

No, if the documents did not satisfy the conditions of the letter of credit and the importer did not waive. In Judgment No. 30/2548 (2005) the Supreme Court treated such a payment as contrary to the applicant's instructions; the applicant was not liable on the promissory note and the trust receipt whose underlying debt arose from the credit, and the guarantor was not liable either.

Within how many years can a bank sue for payment under a letter of credit contract?

Within ten years under section 193/30 of the Civil and Commercial Code, because no law provides a specific prescription period and the bank is not a person performing work for remuneration under section 193/34 (7), according to Supreme Court Judgment No. 266/2546 (2003).

How are fees for reviewing documents and a notice of refusal charged?

They start with a 45-minute consultation on one matter at THB 4,900. For document review of a full set, negotiation and litigation, the firm quotes a fee in writing according to scope before work begins.

Who does the work

Letter of credit and international payment matters are the responsibility of Eksiam Chaisorn, Legal Consultant, founder and Managing Director of Eksiam & Partners Co., Ltd., who advises on international trade law, including international trade finance, carriage of goods and the resolution of trade disputes.

Education relevant to this work: Master's level, Master of Laws (LL.M.) program, International Trade Law, Faculty of Law, Thammasat University; Master's level, Master of Laws (LL.M.) program, International Law (International Investment Law), Faculty of Law, Chulalongkorn University; and Master's level, Master of Laws (LL.M.) program, Financial and Tax Law, Faculty of Law, Chulalongkorn University. Full profile and qualifications

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Notes

1. Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 (UCP 600), International Chamber of Commerce. The text is ICC copyright; this note summarizes the substance of the articles cited and does not quote them., UCP 600 applies when the credit states that it is subject to the rules (article 1). A credit is a separate transaction from the sale contract, and banks are not bound by that contract even if the credit refers to it (article 4). Banks deal with documents, not with the goods, services or performance to which the documents relate (article 5).

2. Supreme Court Judgment No. 775/2525 (1982); the first holding was decided by the plenary session, Resolution No. 5/2524. The applicant had agreed that the ICC Uniform Customs and Practice for Documentary Credits, under which "the correctness of the documents is the governing criterion" (the firm's translation), formed part of the contract. The seller presented documents "correct and in conformity with the conditions stated in the letter of credit, and even though the goods did not match the items described in the bill of lading, the invoice and the offer, the defendant must be liable under the agreement made" (the firm's translation). The Court further held that where the applicant signed a trust receipt payable in installments and defaulted on the first installment, the bank could sue for the whole debt. (Thai text read on deka.supremecourt.or.th, October 16, 2026; summary and translation by the firm.)

3. Civil and Commercial Code, section 368, Thai text: "สัญญานั้นท่านให้ตีความไปตามความประสงค์ในทางสุจริต โดยพิเคราะห์ถึง ปกติ ประเพณี ด้วย" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 16, 2026. The English wording in the article is the firm's translation; there is no official English text.)

4. Act on the Establishment of and Procedure for the Intellectual Property and International Trade Court B.E. 2539 (1996), section 7: "The Intellectual Property and International Trade Court has jurisdiction to try and adjudicate the following cases: ... (5) civil cases concerning the international sale or exchange of goods or financial instruments, the international provision of services, international carriage, insurance and other related juristic acts; (6) civil cases concerning letters of credit issued in connection with the activities in (5), the remittance of money into or out of the Kingdom, trust receipts, and guarantees relating to such activities; ..." Thai text: "(5) คดีแพ่งเกี่ยวกับการซื้อขาย แลกเปลี่ยนสินค้า หรือตราสารการเงินระหว่างประเทศ หรือการให้บริการระหว่างประเทศ การขนส่งระหว่างประเทศ การประกันภัยและนิติกรรมอื่นที่เกี่ยวเนื่อง (6) คดีแพ่งเกี่ยวกับเลตเตอร์ออฟเครดิตที่ออกเกี่ยวเนื่องกับกิจกรรมตาม (5) การส่งเงินเข้ามา ใน ราชอาณาจักร หรือ ส่งออก ไป นอกราชอาณาจักร ทรัสต์ รี ซีท รวมทั้ง การ ประกัน เกี่ยวกับ กิจการ ดังกล่าว" (Thai wording checked against two published sources, identical in every word, and against the jurisdiction page of the Central Intellectual Property and International Trade Court, ipitc.coj.go.th, read October 16, 2026. English wording is the firm's translation.)

5. Supreme Court Judgment No. 6793/2543 (2000). The issuing bank "was not involved in the contract for the sale of goods" and "has the duty only to examine the documents for correctness and completeness under the conditions before paying under the letter of credit" (the firm's translation). Where the credit allowed any bank to negotiate the documents, the negotiating bank was entitled to payment from the issuing bank, and an order attaching the funds and prohibiting the issuing bank from paying under the credit "must therefore be considered with the greatest care." (Thai text read on deka.supremecourt.or.th, October 16, 2026; summary and translation by the firm.)

6. Supreme Court Judgment No. 266/2546 (2003). The bank opened the credit "to protect and preserve the interests of defendant 1 as the buyer of the goods, while at the same time assuring the seller that the seller will certainly be paid if the seller complies with the conditions stated in the letter of credit" (the firm's translation). The bank was therefore not a person carrying on the business of performing work for remuneration under section 193/34 (7) of the Civil and

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Commercial Code, and "an action to enforce liability under a letter of credit contract has no prescription period specifically provided by law and is therefore subject to the ten-year period under section 193/30." (Thai text read on deka.supremecourt.or.th, October 16, 2026; summary and translation by the firm.)

7. International Standard Banking Practice for the Examination of Documents under UCP 600 (ISBP), 2023 revision, ICC Publication No. 821. The ICC states that it must always be read together with UCP 600 and that it consolidates practice drawn from Banking Commission opinions approved since 2013 (2go.iccwbo.org, read October 16, 2026).

8. Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 (UCP 600), International Chamber of Commerce. The text is ICC copyright; this note summarizes the substance of the articles cited and does not quote them., Article 14 (a): a bank must examine a presentation on the basis of the documents alone to determine whether they appear on their face to constitute a complying presentation., Article 14 (b): a bank has a maximum of five banking days following the day of presentation to determine whether the presentation complies., Article 14 (c): a presentation including original transport documents must be made not later than twenty-one calendar days after the date of shipment and in any event not later than the expiry date of the credit., Article 14 (d): data in a document need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit., Article 14 (e): in documents other than the commercial invoice, the goods may be described in general terms not conflicting with their description in the credit., Article 18 (c): the description of the goods in the commercial invoice must correspond with that appearing in the credit., Article 28 (e): the date of the insurance document must be no later than the date of shipment, unless the document shows that cover is effective from a date not later than the date of shipment., Article 28 (f) (ii): if there is no indication of the insurance coverage required, the amount must be at least 110 percent of the CIF or CIP value of the goods.

9. Uniform Commercial Code § 5-108 (a): "(a) Except as otherwise provided in Section 5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in Section 5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply." and § 5-108 (c): "(c) Except as otherwise provided in subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given." (law.cornell.edu, read October 16, 2026)., § 5-108 (b) gives the issuer until the close of the seventh business day after the day of receipt of the documents, whereas UCP 600 article 14 (b) allows five banking days; where the credit is subject to UCP 600, the UCP time frame is the one the bank must meet.

10. Supreme Court Judgment No. 1561/2529 (1986). Where the ocean bill of lading showed that the goods had been loaded on board, the correspondent bank was bound to pay the seller, and "the plaintiff or the plaintiff's correspondent bank had no duty to verify whether the goods had in fact been loaded on the vessel" (the firm's translation). (Thai text read on deka.supremecourt.or.th, October 16, 2026; summary and translation by the firm.)

11. Supreme Court Judgment No. 30/2548 (2005). The seller did not present the technical specifications, electrical drawings, operating manual and spare parts list required by the credit. The Supreme Court held that "although the plaintiff and the plaintiff's correspondent bank had no duty to verify the correctness of the goods in the container, they had the duty to examine the documents specified in the letter of credit for correctness and completeness in accordance with the instructions of defendant 1" (the firm's translation); payment without examining the documents for completeness was payment "contrary to the instructions of defendant 1." The applicant therefore did not have to reimburse the bank, was not liable on the promissory note and the trust receipt whose underlying debt arose from the

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credit, the trust receipt was not an acknowledgment of debt, and the guarantor was not liable. (Related provisions as listed by the court's database: Civil and Commercial Code sections 193/14 (1), 694 and 702.) (Thai text read on deka.supremecourt.or.th, October 16, 2026; summary and translation by the firm.)

12. Ronald J. Mann, “The Role of Letters of Credit in Payment Transactions,” Michigan Law Review 98(8) (2000) 2494, doi: 10.2307/1290352 (bibliographic data checked against Crossref)., The SSRN abstract states that the author collected 500 transactions from five United States banks, 100 from each, and found that fewer than 25 percent of the drawings complied with the terms of the credit, most being paid after the bank obtained the buyer's consent (doi:10.2139/ssrn.214633, read October 16, 2026).

13. Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 (UCP 600), International Chamber of Commerce. The text is ICC copyright; this note summarizes the substance of the articles cited and does not quote them., Article 16 (a): when a bank determines that a presentation does not comply, it may refuse to honor or negotiate., Article 16 (b): the issuing bank may in its sole judgment approach the applicant for a waiver of the discrepancies, but this does not extend the period in article 14 (b)., Article 16 (c): refusal must be made by a single notice stating that the bank is refusing, each discrepancy relied on, and that the bank is holding the documents pending further instructions, holding them until it receives a waiver from the applicant, returning them, or acting in accordance with instructions previously received., Article 16 (d): the notice must be given by telecommunication or, if that is not possible, by other expeditious means, no later than the close of the fifth banking day following the day of presentation., Article 16 (f): a bank that fails to act in accordance with this article is precluded from claiming that the documents do not constitute a complying presentation., Article 16 (g): when an issuing bank refuses and has reimbursed a confirming or negotiating bank, it is entitled to claim a refund with interest.

14. Fortis Bank SA/NV v Indian Overseas Bank [2011] EWCA Civ 58 (January 31, 2011). The issuing bank gave notice that it was returning the documents but held them and returned them only on February 16, 2009 (paragraphs 5 and 64-70). The trial judge (Hamblen J) held that an issuing bank that elects to return the documents under article 16 must do so with reasonable promptness, and that having failed to do so it was precluded under article 16 (f) from relying on the discrepancies. The Court of Appeal dismissed the issuing bank's appeal and also held that a presentation period in the credit running from the date of the bill of lading prevails over article 14 (c) of UCP 600 (bailii.org, read October 16, 2026).

15. Civil and Commercial Code, section 807, Thai text: “ตัวแทนต้องทำการตามคำสั่งแสดงออกชัดหรือโดยปริยายของตัวการ เมื่อไม่มีคำสั่งเช่นนั้น ก็ต้องดำเนินตามทางที่เคยทำกันมาในกิจการค้าขายอันเขาให้ตนทำอยู่นั้น อนึ่ง บทบัญญัติมาตรา 659 ว่าด้วยการ ฝากทรัพย์ นั้น ท่าน ให้ นำมาใช้ ด้วย โดย อนุโลม ตามควร” (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 16, 2026. The English wording in the article is the firm's translation; there is no official English text.)

16. Civil and Commercial Code, section 812, Thai text: “ถ้ามีความเสียหายเกิดขึ้นอย่างใด ๆ เพราะความประมาทเลินเล่อของตัวแทนก็ดี เพราะไม่ทำการเป็นตัวแทนก็ดี หรือเพราะทำการโดยปราศจากอำนาจหรือนอกเหนืออำนาจก็ดี ท่านว่าตัวแทนจะต้องรับผิด” (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 16, 2026. The English wording in the article is the firm's translation; there is no official English text.)

17. Civil and Commercial Code, section 816, paragraph one, Thai text: “ถ้าในการจัดทำกิจการอันเขามอบหมายแก่ตนนั้น ตัวแทนได้ออกเงินทดรองหรือออกเงินค่าใช้จ่ายไป ซึ่งพิเคราะห์ตามเหตุควรนับว่าเป็นการจำเป็นได้ไซร้ ท่านว่าตัวแทนจะเรียกเอาเงินชดใช้จากตัวการ รวมทั้งดอกเบี้ยนับแต่วันที่ได้ออกเงินไปนั้นด้วยก็ได้” (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 16, 2026. The English wording in the article is the firm's translation; there is no official English text.)

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18. Supreme Court Judgment No. 8972/2553 (2010). The bank paid the price of motor vehicles on behalf of the applicant and received the bill of lading as consignee by way of security. When the applicant defaulted and the bank sold the vehicles, the bank "must apply the proceeds of the sale of the vehicles to the debt under the letter of credit application" (the firm's translation) and was not entitled to set them off against other debts or against debts of other defendants. (Thai text read on deka.supremecourt.or.th, October 16, 2026; summary and translation by the firm.)

19. Civil and Commercial Code, section 193/30, Thai text: "อายุความนั้น ถ้าประมวลกฎหมายนี้หรือกฎหมายอื่นมิได้บัญญัติไว้โดยเฉพาะให้มีกำหนดสิบปี", Section 193/34, which prescribes a two-year period, provides in (7): "(7) บุคคลซึ่งมิได้เข้าอยู่ในประเภทที่ระบุไว้ใน (1) แต่เป็นผู้ประกอบธุรกิจในการดูแลกิจการของผู้อื่นหรือรับทำการงานต่าง ๆ เรียกเอาสินจ้างอันจะพึงได้รับในการนั้น รวมทั้งเงินที่ได้ออกทดรองไป"; in English, (7) a person who does not fall within the category in (1) but carries on the business of attending to the affairs of others or of performing work of any kind, for the remuneration due for that work, including money advanced. (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 16, 2026. The English wording in the article is the firm's translation; there is no official English text.)

20. Supreme Court Judgment No. 1156/2546 (2003). The application stated that the bill of lading was to be made out in the name of the bank and the buyer notified. Although a later passage required all shipping documents to be issued in the buyer's name, the Supreme Court held that the bill of lading still had to be made out in the name of the bank, with the bank as consignee. (Thai text read on deka.supremecourt.or.th, October 16, 2026; summary and translation by the firm.)

21. กิตสุรณ สังขสุวรรณ์ (Kitsuron Sangkhasuwan), "Fraud in Letters of Credit" (in Thai: "กลฉ้อฉลในเลตเตอร์ออฟเครดิต"), บทบัณฑิตย์ (Bot Bandit, the journal of the Thai Bar) volume 80 part 2 (April-June 2024) 45-84 (tci-thaijo.org, abstract page read October 16, 2026). The abstract states that no Thai court has yet ruled on the issue of fraud in a letter of credit. The romanization of the author's name is the firm's.

22. Sztejn v. J. Henry Schroder Banking Corp., 177 Misc. 719, 31 N.Y.S.2d 631 (Sup. Ct. 1941). The seller shipped cowhair and rubbish in place of the bristles described in the documents. The court declined to let the independence principle protect the seller "where the bank has been given notice of the fraud before being presented with the drafts and documents for payment." The decision was made on a motion to dismiss the complaint, before any finding that fraud had in fact occurred (trans-lex.org, read October 16, 2026).

23. United City Merchants (Investments) Ltd v Royal Bank of Canada [1983] 1 AC 168 (HL), also reported at [1982] 2 WLR 1039. An employee of the loading brokers altered the date on the bill of lading from December 16 to December 15, 1976 to bring it within the shipment period, without the seller's knowledge. The House of Lords held that the fraud exception is confined to fraud by the beneficiary, so the honest seller remained entitled to payment (the facts were checked against case summaries and the citation against the American Journal of International Law case list; the full judgment has not been read).

24. Louis Kaplow, "Rules versus Standards: An Economic Analysis," Duke Law Journal 42(3) (1992) 557, doi: 10.2307/1372840 (bibliographic data checked against Crossref).

25. Clayton P. Gillette, "Letters of Credit as Signals: Comments on Ronald Mann's 'The Role of Letters of Credit in Payment Transactions'," Michigan Law Review 98(8) (2000) 2537, doi:10.2307/1290353 (bibliographic data checked against Crossref).

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