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Not So Evergreen: Court Limits Duration of Auto-Extension Clause in Letter of Credit

Paul Roder examines why the Court decision in Starr Indemnity is troubling both in its interpretation of the auto-extension clause and the practical effect it may have on the industry.

by Paul M. Roder

Many letters of credit contain an automatic extension (or "evergreen") clause. Typically, such a clause provides that the expiration date of an LC automatically extends (without amendment) for set, successive periods of time (usually annually) unless the issuer provides notice to the beneficiary that the issuer will not further extend.

A recent case decided in the U.S. District Court for the Southern District of New York highlights the risk to issuers, applicants, and beneficiaries alike in employing imprecise or potentially ambiguous language in an auto-extension clause.

In *Starr Indemnity & Liability Company v. Midwest Mortgage Associates Corporation,*[1] the issue presented was whether an auto-extension clause extended the expiration date of an LC for successive one-year periods or for only one year.

The clause reads, in pertinent part, as follows:

> "This Letter of Credit is deemed to be automatically extended without amendment for one (1) year from the expiration date hereof or any future expiration date, unless sixty (60) days prior to such expiration date, we notify you by regular mail and registered mail at the above address, . . . that this Letter of Credit will not be renewed for any such additional period."

The beneficiary of the LC, Starr Indemnity & Liability Company (Beneficiary), contended that, since the issuer, Midwest Mortgage Associates Corporation (Issuer), had not provided a notice of non-extension, the expiration date of the LC continued to extend for successive one-year periods and, as such, the Beneficiary's presentation should not have been dishonored on the basis that it was made after the expiration date. Of note, the LC did not state a final expiration date after which no further automatic extension would be permitted.

[1] (2026 U.S. Dist. LEXIS 10891 *; 2026 LX 38623)

In opposition, the Issuer argued that the clause provided for only a single one-year extension from the original stated expiration unless the parties subsequently agreed to a different expiration date by way of an amendment to the LC. Alternatively, the Issuer argued that the LC was "perpetual," and thus expired five years after issuance per New York UCC Section 5-106(d).

In respect of the "perpetual" argument, the Beneficiary appears to have argued that UCC Section 5-106(d) was inapplicable since the LC did not state literally that it was "perpetual".[2]

The Court ruled in favor of the Issuer. In ruling that the auto-extension clause provided for only a single one-year extension, and thus had already expired, the Court stated:

> "The operative language provides only that the LOC is automatically extended 'for one (1) year from the expiration date hereof or any future expiration date.' The phrase 'any future expiration date,' while perhaps less than artful, is hardly sufficient to render the LOC evergreen. Its most natural meaning is to hold open the possibility that the parties might subsequently agree to establish a new expiration date during its term. Absent such an amendment, there is no 'future expiration date' from which an additional automatic extension could run. Read in context, the provision allows for a single automatic renewal and contemplates the possibility of later amendments; it does not provide for indefinite renewal. Consequently, once the one-year extension elapsed without amendment, the LOC expired on October 15, 2019."

The Court's decision is troubling both in its interpretation of the auto-extension clause and the practical effect it may have on the industry.

With respect to the Court's interpretation of the auto-extension clause, one could argue that the first extension created a new expiration date (a "future expiration date") to which the clause should apply and, in that context then, the phrases "such expiration date" and "such additional period" make more sense. In addition, one could argue that any ambiguity in drafting should be construed against the Issuer since it decided to issue an LC with ambiguous wording. Here, the Court acknowledged that the drafting of the clause was "perhaps less than artful" but then interpreted it in favor of the Issuer.

As to the practical effect on the industry, the decision interprets an auto-extension clause that is similar to clauses seen in many LCs issued by various issuers. Given that the decision was rendered in the Southern District of New York, and many LCs are governed by New York law, the decision (if not successfully appealed) creates an uneasy precedent for issuers, applicants, and beneficiaries. It would behoove all parties

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[2] See Carter Klein's August 2025 *DCW* article, "Automatic Extension LC Issues", discussing final expiration dates and perpetual LCs.

to revisit the wording of their auto-extension clauses and consider whether an amendment is in order for clauses set forth in any outstanding LCs.

Interestingly, the Institute of International Banking Law & Practice's ISP98 Model Form 2 employs different wording in its auto-extension clause by expressly referring to "successive" periods, which in light of the present case, seems much more unambiguous:

> "The expiration date of this Standby shall be automatically extended for *successive one year periods*, unless Issuer notifies Beneficiary by registered mail or other receipted means of delivery sent to Beneficiary's above-stated address 5 or more days before the then current expiration date that Issuer elects not to extend the expiration date. The expiration date is not subject to automatic extension beyond [date], and any pending automatic one-year extension shall be ineffective beyond that date."

Drafters of automatic extension clauses may wish to consider the IIBLP's model clause or other clauses that more precisely describe the intent of the parties with respect to automatic extensions. Moreover, drafters should also consider the use of final expiration dates, after which no further extensions are permitted. Precise, unambiguous auto-extension clauses with final expiration dates may avoid unnecessary disputes in the future.

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