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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

International Union of Operating Engineers, Local Union No. 132 Health and Welfare Fund, *et al.*,	:	**Case No. 15-0898**
Plaintiffs-Petitioners,	:	
v.	:	
L.A. Pipeline Construction Company, Inc., *et al.*,	:	
Defendant-Respondents.	:	

BRIEF OF RESPONDENT, L.A. PIPELINE CONSTRUCTION COMPANY, INC.

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TABLE OF CONTENTS

CERTIFIED QUESTION 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 6

STATEMENT REGARDING ORAL ARGUMENT AND DECISION 7

ARGUMENT 8

A. West Virginia Code § 46-5-106 Governs When A Letter Of Credit Expires 8

B. The Letter Of Credit Expired In January, 2014 11

C. The West Virginia Wage Bond Statute Neither Regulates The Substance Of Letters of Credit Nor Trumps The UCC's Five-Year Expiration Rule 14

D. *Leary v. McDowell County National Bank* Is Not Applicable To The Letter Of Credit 16

CONCLUSION 21

CERTIFICATE OF SERVICE 22

TABLE OF AUTHORITIES

I. Cases

B.E.T., Ltd. v. L.A. Pipeline Construction Company, Inc., Case No. 11 OT 222 (Wash. Comm. Pl. Ct. Ohio Oct. 17, 2011) 3

Butler v. Rutledge, 174 W. Va. 752, 329 S.E. 2d 118 (1985) 16

Carolina Lumber Co. v. Cunningham, 156 W. Va. 272, 192 S.E. 2d 722 (1972) 8

Central States, Southeast and Southwest Areas Pension Fund, et al. v L.A. Pipeline Construction Company, Inc., Case No. 1:11-cv-4204 (N.D. Ill. Oct. 6, 2011) 2

Ebbert v. Tucker, 123 W. Va. 385, 15 S.E. 2d 583 (1941) 8

Elite Laundry Co. v. Dunn, 126 W. Va. 858, 30 S.E. 2d 454 (1944) 8

Equal Employment Opportunity Commission v. L.A. Pipeline Construction Company Case No. 2:08-cv-00840 (S.D. Ohio May 10, 2012) 2

Hall v. Baylous, 109 W. Va. 1, 153 S.E. 2d 293 (1930) 16

International Union of Operating Engineers, Local 181, et al. v. L.A. Pipeline Construction Company, Inc. Case No. 4:10-cv-39 (W.D. Ky. Mar. 18, 2013) 2

Laborers Local Union 158, et al., v. L.A. Pipeline Construction Co., Inc., et al., Case No. 1:12-cv-213 (M.D. Pa. Sept. 24, 2013) 2

Leary v. McDowell County National Bank, 210 W. Va. 44, 552 S.E. 2d 420 (2001) 6, 17, 20

Mears Group, Inc., v. L.A. Pipeline Construction Company, Inc. Case No. CL 2011-5827 (Fairfax Cir. Ct. Va. Apr. 21, 2011) 3

Pipeline Industry Benefit Fund, et al., v. L.A. Pipeline Construction Company, Inc., et al., Case No. 4:11-cv-434 (N.D. Okla. Nov. 1, 2011) 2

Raymond Orrand, Administrator, et al., v. L.A. Pipeline Construction Company, Inc., Case No. 2:11-cv-1103 (S.D. Ohio Mar. 6, 2012) 2

Robinson v. City of Bluefield, 234 W. Va. 209, 764 S.E. 2d 740 (2014) 16

Sheehan v. WFS Fin., (In re: Sorsby), 210 W. Va. 708, 558 S.E. 2d 45 (2001) . 15

Stamper by Stamper v. Kanawha County Bd. of Educ. 191 W. Va. 297, 445 S.E. 2d 238 (1994) 15

State ex. rel. Dept. of Health and Human Resources, etc., v. West Virginia Public Employees Retirement System, 183 W. Va. 39, 393 S.E. 2d 677 (1990) 15

Vest v. Cobb, 138 W. Va. 660, 76 S.E. 885(1953) 16

West Virginia Laborer's Pension Trust Fund, et al. v. L.A. Pipeline Construction Company, Inc., et al., Case No. 2:11-cv-0569 (S.D. W. Va. May 29, 2013) 4

II. Statutes, Regulations, and Rules

W. Va. Code § 46-5-106(d) 6,7,8,9,10,11,14,15,16,18,19,21

W. Va. Code § 21-5-14(g) 6,8,10,13,15,17,19,20

Rule 19(a)(4) 7

W. Va. Code § 45-5-106(c) 9,12

W. Va. Code § 46-5-103(c) 10,12,18

W. Va. Code § 21-5-14(c) 15

W. Va. Code § 21-5-14 . . . . . 10, 21

UCC § 5-106 17

W. Va. Code § 46-5-103(a)(1) 20

CERTIFIED QUESTION

Does "[a] letter of credit that states that it is perpetual expire five years after its stated date of issuance, or if none is stated, after the date on which it is issued" as provided by the 1996 version of West Virginia Code § 46-5-106(d), or does such letter remain in effect outside of the five year term until "terminated" by the Commissioner of the Division of Labor pursuant to West Virginia Code § 21-5-14(g)?

STATEMENT OF THE CASE

Respondent does not disagree with the Statement of Case set forth in Petitioners' Brief. As indicated in the Petitioners' Brief, Respondent is no longer in business and is insolvent. Petitioner's Brief, p. 2. There are currently millions of dollars in judgments that have been entered against Respondent that remain unsatisfied, including *Equal Employment Opportunity Commission v. L.A. Pipeline Construction Company,* Case No. 2:08-cv-00840 (S.D. Ohio May 10, 2012) for $250,000.00, plus interest and costs, *International Union of Operating Engineers, Local 181, et al. v. L.A. Pipeline Construction Company, Inc.,* Case No. 4:10-cv-39 (W.D. Ky. Mar. 18, 2013) for $8,022.04, plus interest, costs, and attorney's fees, *Central States, Southeast and Southwest Areas Pension Fund, et al, v. L.A. Pipeline Construction Company, Inc.,* Case No. 1:11-cv-4204 (N.D. Ill. Oct. 6, 2011) for $26,070.28, plus interest, liquidated damages, attorney's fees, and costs, *Pipeline Industry Benefit Fund, et al., v. L.A. Pipeline Construction Company, Inc., et al.,* Case No. 4:11-cv-434 (N.D. Okla. Nov. 1, 2011) for $82,792.72, plus interest, costs, and attorney's fees, *Raymond Orrand, Administrator, et al., v. L.A. Pipeline Construction Company, Inc.,* Case No. 2:11-cv-1103 (S.D. Ohio Mar. 6, 2012) for $4,718.00 plus interest and costs, *Laborers Local Union 158, et al., v. L.A. Pipeline Construction Co., Inc., et al.,* Case No. 1:12-cv-213 (M.D. Pa. Sept. 24, 2013) for $129,658.90, plus interest

and costs, *Mears Group, Inc., v. L.A. Pipeline Construction Company, Inc.*, Case No. CL 2011-5827 (Fairfax Cir. Ct. Va. Apr. 21, 2011) for $2,350,000.00, plus interest and costs, and *B.E.T., Ltd. v. L.A. Pipeline Construction Company, Inc.*, Case No. 11 OT 222 (Wash. Comm. Pl. Ct. Ohio Oct. 17, 2011) for $13,104.79, plus interest and costs. Respondent is estimated to owe approximately $7,000.00 to the State of North Carolina, $2,500.00 to the State of Pennsylvania, $60,000.00 to the State of Ohio, $75,000.00 to the State of Kentucky, $18,000.00 to the State of Virginia, and $375,000.00 to the State of West Virginia. There may be other judgments or claims not listed here.

Petitioners' Statement of the Case reveals something very significant about the position taken by the West Virginia Division of Labor ("Labor Division"). Specifically, Petitioners notified the Labor Division in September of 2011 of Respondent's non-payment of fringe benefits owed on behalf of its employees who were members of Local 132. Petitioner's Brief, p. 2. However, the Labor Division advised Petitioners to obtain a court judgment in order to obtain payment by means of the letter of credit/wage bond ("Letter of Credit"). Petitioner's Brief, p. 3.

There is absolutely <u>no requirement</u> under the West Virginia Wage Payment and Collection Act or the Uniform

Commercial Code for an employee to obtain a court judgment before receiving payment under the Letter of Credit. The Labor Division's advice to Petitioners that they do so is inexplicable and has severely prejudiced their interests.

The Labor Division has adopted a non-interventionist approach in exercising its authority under the Wage Payment and Collection Act. In a separate case involving a claim against the same Letter of Credit by the West Virginia Laborers, *et al.*, the Labor Division insisted not only on a court judgment, which was entered by agreement on January 2, 2013, but also a further order from the court, entered on May 9, 2013, that the Labor Division "take the necessary steps to pay the Plaintiffs, including making a claim on the United Bank, Inc., Perpetual Irrevocable Letter of Credit/Wage Bond, United Bank, Inc., Letter of Credit number A-09-01, to pay the sum of $117,500.00 to the Plaintiffs." *See West Virginia Laborer's Pension Trust Fund, et al. v. L.A. Pipeline Construction Company, Inc., et al.,* Case No. 2:11-cv-0569 (S.D. W. Va. May 29, 2013). The West Virginia Laborers, *et al.*, were persistent in their efforts to secure payment, and they did. The Labor Division, by contrast, did not take any action to assist them until ordered to do so by a court.

The Labor Division begins its Amicus Brief by invoking the legislative policy to "protect working peoples

wages and assist them in collecting compensation wrongfully withheld." Amicus Brief, p. 1. Yet, but for the Labor Division's abdication of its statutory responsibility, this particular dispute would never have arisen. At the time Petitioners notified the Labor Division of their claim in September of 2011, the Labor Division could have immediately made a presentation to United Bank, Inc. ("United Bank") for the amount of their claim. It refused to do so. Instead, the Labor Division withheld its authority to take any action or to make any determination and deferred to the judicial system.

Petitioners were unnecessarily frustrated in their attempt to access the Letter of Credit. While the Labor Division was erecting additional hurdles for Petitioners to jump over, the five-year limitation on the Letter of Credit expired. Now, in an attempt to deflect responsibility, the Labor Division urges this Court to issue a ruling that would seriously undermine uniform principles of commercial law. This Court should decline the invitation to do so.

SUMMARY OF ARGUMENT

There is no conflict between W. Va. Code § 21-5-14(g) and W. Va. Code § 46-5-106(d). The former governs the termination of a letter of credit whereas the latter governs the expiration of a letter of credit. There is no need for this Court to hold that one statutory provision trumps the other. Instead, they should be read *in pari materia* so as to avoid conflict and give effect to all of the provisions of the related sections of the statutes. Moreover, even if there was a conflict between the two statutes, the provisions of W. Va. Code § 46-5-106 should be controlling, since it is the most recent expression of the legislative will.

The letter of credit in this case expired in January 2014. Although there is no stated expiration date, the Letter of Credit states that it is "perpetual." West Virginia Code § 46-5-106(d) says that where a letter of credit states that it is perpetual, it expires five years after its stated date of issuance. Importantly, this provision in the Uniform Commercial Code cannot be altered through a private agreement.

This Court's decision in *Leary v. McDowell County National Bank* is not applicable. That case dealt with a letter of

credit that had been issued prior to the enactment of the expiration rules set forth in W. Va. Code § 45-5-106. This Court therefore refused to consider the statute's applicability. This Court also made clear, in *Leary*, that a bank would not be committed under a letter of credit for an indefinite period of time. Yet, if this Court were to adopt the position of Petitioners and the Labor Division, United Bank would remain committed under the Letter of Credit for much more than five years, perhaps even decades. This Court should therefore answer the certified question by holding that a perpetual letter of credit expires five years after its stated date of issuance.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondent agrees with Petitioner's statement regarding oral argument and decision, including the fact that this case involves a narrow issue of law. Respondent believes that this case should be scheduled for oral argument pursuant to Rule 19(a)(4).

ARGUMENT

A. West Virginia Code § 46-5-106 Governs When A Letter Of Credit Expires.

Petitioners' and the Labor Division's argument is simple: they say there is a conflict between W. Va. Code § 21-5-14(g) and W. Va. Code § 46-5-106(d) and that W. Va. Code § 21-5-14(g) is controlling. But is there really a conflict between these two provisions? Before answering the question, this Court should recall the well-recognized principle that, "[i]n the construction of a statute, a court should seek to avoid any conflict in its provisions by endeavoring to reconcile every word, section or part thereof, so that each shall be effective; and where a statute lends itself to two constructions, one of which will result in an irreconcilable conflict between its provisions, and the other will result in no conflict, the latter construction should be adopted." *Elite Laundry Co. v.. Dunn,* 126 W. Va. 858, 867-68, 30 S.E. 2d 454 (1944)(quoting *Ebbert v. Tucker* 123 W. Va. 385, 15 S.E. 2d 583, point 3 of the syllabus (1941)); see also *Carolina Lumber Co. v. Cunningham,* 156 W. Va. 272, 276, 192 S.E. 2d 722 (1972)(holding that several different statutes "must be read in pari materia and any ambiguous provisions in the statutes should be interpreted in such a manner as to avoid conflict and give effect to all of the provisions of the related sections of the statutes.").

Petitioners and the Labor Division are attempting

to manufacture an apparent conflict between W. Va. Code § 21-5-14(g) and W. Va. Code § 46-5-106(d) by confusing the concepts of termination and expiration. Expiration, which deals with the duration of a letter of credit, was not introduced under West Virginia law until the current W. Va. Code § 46-5-106 was enacted in 1996. West Virginia Code § 21-5-14(g) relates only to the termination of a letter of credit, which is the means by which a letter of credit may be revoked before it reaches its expiration date. Thus, W. Va. Code § 21-5-14(g) and W. Va. Code § 46-5-106(d) relate to separate subjects; there is no conflict between them and there is no reason why the provisions of W. Va. Code § 46-5-106 should not be enforced. A letter of credit may be terminated under W. Va. Code § 21-5-14(g) before it expires under W. Va. Code § 46-5-106 and it may expire under W. Va. Code § 46-5-106 even if it is not terminated under W. Va. Code § 21-5-14(g).

The Labor Division either does not understand or is deliberately confusing the concepts of termination and expiration. In its Brief, it says that Respondent is asking this Court to decide "that W. Va. Code § 46-5-106(d) exclusively controls the termination of a letter of credit serving as a wage bond." (emphasis added). Amicus Brief, p. 5. This is a misstatement of Respondent's position. Respondent agrees that the termination of the Letter of Credit is

governed by W. Va. Code § 21-5-14(g); this statute is certainly one of the legal provisions "beyond Article 5" that determines the rights and liabilities in a letter of credit/wage bond transaction. See W. Va. Code § 46-5-103, official comment 2. But W. Va. Code § 21-5-14 says nothing about the expiration of a letter of credit, so there is no inconsistency between it and the provisions of Article 5. Thus, W. Va. Code § 46-5-106 governs when a letter of credit expires.

The Labor Division says that the reason the Letter of Credit specifies the five-year anniversary of the issuing date is because that is the "earliest date" by statute that a wage bond could be eligible for release by the Commissioner. Amicus Brief, p. 10. This is false. The Letter of Credit clearly states that it can be drawn upon "during the effective date thereof, unless earlier released" pursuant to W. Va. Code § 21-5-14 (emphasis added). Moreover, W. Va. Code § 21-5-14(g) clearly recognizes that there will be situations where a wage bond may be terminated before the end of its initial duration, such as when an employer "has ceased doing business" in the state. The conditions that W. Va. Code § 21-5-14(g) imposes on termination, however, do not mean that the

Letter of Credit never expires.[1] So, the duration of the Letter of Credit remains governed by W. Va. Code § 46-5-106(d).

B. The Letter of Credit Expired In January 2014.

The Letter of Credit in this case expired after five (5) years. Although it does not contain an express expiration date, its title states that it is a "Perpetual Irrevocable Letter of Credit/Wage Bond" (emphasis added). Morever, the Letter of Credit's text repeatedly refers to it as a "perpetual irrevocable letter of credit." The Letter of Credit's repeated use of the term "perpetual" has important consequences as a matter of law regarding its expiration.

As a matter of public policy, the West Virginia Legislature recognized that "all letters of credit should specify the date on which the user's engagement expires."[2] The absence of an expiration date, however, is not fatal because the UCC prescribes default expiration dates. "If there is no stated expiration date or other provision that

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[1]The conditions on termination in W. Va. Code § 21-5-14(g) are consistent with W. Va. Code § 46-5-106(a), which recognizes that "[a] letter of credit is revocable only if it so provides."

[2]*See* UCC Cmt. 4, W. Va. Code § 46-5-106 ("Although all letters of credit should specify the date on which the issuer's engagement expires, the failure to specify an expiration date does not invalidate the letter of credit, or diminish or relieve the obligation of any party with respect to the letter of credit. A letter of credit that may be revoked or terminated at the discretion of the issuer by notice to the beneficiary is not 'perpetual.'").

determines its duration, a letter of credit expires one year after its stated date of issuance . . . ." W. Va. Code § 46-5-106(c). More importantly, the statute specifically provides that where "[a] letter of credit [] states that it is perpetual, [it] expires five years after its stated date of issuance . . . ." W. Va. Code § 46-5-106(d) (emphasis added).

Notably, the UCC's requirement that a "perpetual" letter of credit expires five years after its date of issuance is one of the few UCC provisions that the parties cannot alter through private agreements. See W. Va. Code § 46-5-103 (c) ("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 sections 1-302 and 5-117(d), the effect of this article may be varied by agreement . . ." (emphasis added). Given the undoubted sophistication of the Labor Division, including the fact that it almost certainly accepts letters of credit on a regular basis, the Letter of Credit's repeated use of the term "perpetual" is a fact of vital legal significance that cannot be ignored.

In addition, the Letter of Credit's express terms are inconsistent with the notion that it is an obligation without expiration. Indeed, the Letter of Credit states that "[a]s a wage bond, it may be drawn against by the Labor Division at any time for wages and/or fringe

benefits which came due during the effective dates thereof, unless earlier released in writing by the Commissioner pursuant to West Virginia Code § 21-5-14" (emphasis added). Plainly, the Letter of Credit's use of the phrase "during the effective dates" is an indication that it was to be governed by a definite term.

Moreover, the following language is compelling evidence that the Letter of Credit, as a "perpetual" letter of credit, expired five years after its issuance:

> The issuing bank further agrees to notify the Commissioner in writing by certified mail no earlier than one hundred and twenty (120) days and no later than ninety (90) days prior to the five (5) year anniversary of the issuing date so that the Commissioner can determine if the wage bond may be terminated pursuant to West Virginia Code § 21-5-14(g).

This language indicates that the parties to the Letter of Credit knew it would expire five years after its issuance. The issuing bank's notification was almost certainly intended to provide the Labor Division with a reasonable period of time to determine whether, under W. Va. Code § 21-5-14(g), "the wages and fringe benefits of all employees have been paid" so that, if necessary, the Labor Division could make a presentation to the issuing bank prior to expiration. Notably, United Bank did in fact provide the notice required by the Letter of Credit to the Labor Division. Amicus Brief, p. 3.

In sum, W. Va. Code § 46-5-106(d) and the text of the Letter of Credit require a legal conclusion that the Letter of Credit expired on January 13, 2014.

C. The West Virginia Wage Bond Statute Neither Regulates The Substance Of Letters Of Credit Nor Trumps The UCC's Five-Year Expiration Rule.

Petitioners have argued that the West Virginia wage bond statute trumps the UCC's expiration date provisions. In essence, they have argued that the wage bond statute creates a special type of letter of credit that is incapable of expiration. In fact, the wage bond statute neither legislates procedural or substantive standards with respect to letters of credit nor abrogates the UCC's five-year expiration rule. At its core, the wage bond statute merely requires certain employers to post "wage bonds"; it does not regulate the form or substance of letters of credit.[3]

The only express references to letters of credit are in the statute's provision prescribing how the wage bond requirement may be satisfied: "[t]he bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit,

[3] *See* W. Va. Code § 21-5-14(a) ("[w]ith the exception of those who have been doing business in this state actively and actually engaged in construction work . . . for at least five consecutive years . . . every employer . . . engaged in or about to engage in construction work . . . shall . . . furnish a bond on a form prescribed by the commissioner payable to the state of West Virginia . . . .").

establishment of an escrow account or a combination of these methods." W. Va. Code § 21-5-14 (c). Thus, the wage bond statute only states that letters of credit are one of a variety of devices that employers and the Labor Division may use to satisfy the wage bond statute's requirements. When satisfied in this manner, the letter of credit is "in lieu of any other bonding requirement." W. Va. Code § 21-5-14(c).

The wage bond statute is not a letter of credit statute. It neither regulates the procedures or substance of letters of credit nor abrogates the UCC's five-year expiration rule. There is no conflict between W. Va. Code § 21-5-14 (g) and W. Va. Code § 46-5-106(d). There is no reason why the expiration of the Letter of Credit, as set forth in W. Va. Code § 46-5-106(d), should not be enforced.

Even if there is a conflict between W. Va. Code § 21-5-14(g) and W. Va. Code § 46-5-106(d), W. Va. Code § 46-5-106(d) should be controlling. When two statutes conflict, the general rule is that the statute last in time prevails as the most recent expression of the legislative will. *Sheehan v. WFS Fin.*, (*In re: Sorsby*), 210 W. Va. 708,558 S.E. 2d 45 (2001) (citing *Stamper by Stamper v. Kanawha County Bd. of Educ.* 191 W. Va. 297, 445 S.E. 2d 238 (1994); *State ex rel. Dept. of Health and Human Resources, etc., v. West Virginia Public Employees Retirement System*, 183 W. Va. 39, 393 S.E. 2d 677 (1990)). When the legislature enacts

legislation, it is presumed to know of its prior enactments. *Robinson v. City of Bluefield*, 234 W. Va. 209, 220, 764 S.E. 2d 740 (2014) (citing *Vest v. Cobb,* 138 W. Va. 660, syl. pt. 12 , 76 S.E. 2d 885(1953), 76 S.E. 885). The legislature must be presumed to know the language employed in former acts, and, if in a subsequent statute on the same subject it uses different language in the same connection, the court must presume that a change in the law was intended. *Butler v. Rutledge*, 174 W. Va. 752, syl. pt. 2, 329 S.E. 2d 118 (1985) (quoting *Hall v. Baylous*, 109 W. Va. 2, 153 S.E. 2d 293 (1930)).

Here, the legislature is presumed to have known in 1996, when it enacted W. Va. Code § 46-5-106 (d), that the wage bond statute permitted an employer to provide a letter of credit <u>in lieu of</u> any other bonding requirement. Yet, there is nothing in the West Virginia Code preventing W. Va. Code § 46-5-106(d) from applying to letters of credit issued for this purpose. If both statutes pertain to the same subject, this Court must presume that a change in the law was intended by the enactment of the more recent statute. Since W. Va. Code § 46-5-106(d) is the most recent expression of the legislative will, W. Va. Code § 46-5-106(d) should be controlling.

D. *Leary v. McDowell County National Bank* Is Not Applicable To The Letter of Credit.

Petitioners assert that this Court's decision in

Leary v. McDowell County Nat'l Bank, 210 W. Va. 44, 552 S.E. 2d 420 (2001) means that the Letter of Credit does not have an expiration date. *Leary*, however, deliberately refused to apply the 1996 version of UCC § 5-106 to the letter of credit at issue there because it had been issued in 1990. According to this Court, the 1996 statute only applies to letters of credit issued on or after its effective date. *See Leary*, 210 W. Va. 44, 51.

This Court made clear that its decision did not consider W. Va. Code § 46-5-106 (1996): "We note that our decision today is limited in that it was not necessary for us to address W. Va. Code § 46-5-106 (1996)." *Id.* at 51 n. 9. This Court's refusal to consider the applicability of W. Va. Code § 46-5-106 (1996) is important because the 1996 statute's expiration rules, and the public policies supporting them, were not contained within the 1963 version of the UCC construed in *Leary*. The analysis in *Leary* was therefore limited to whether the expiration date set forth in the letter of credit "constituted an agreement by the Commissioner that the bond would be revoked on that date." *Leary,* 210 W. Va. at 51. This Court held that it was not, since such an agreement to terminate would have conflicted with the termination provisions in W. Va. Code § 21-5-14(g).

The two reasons cited in *Leary* to support this

Court's construction of W. Va. Code 46-5-106 (1963) do not apply to the 1996 version of the statute. The first reason stemmed from the limitations expressly written into the 1963 version of the UCC. As noted in *Leary*, W. Va. Code § 46-5-102(3) (1963) stated that it dealt "with some but not all of the rules and concepts of letters of credit as . . . have developed prior to the effective date of this chapter [July 1, 1964] . . . . The fact that this article states a rule does not by itself require, imply, or negate application of the same or a converse rule . . . ." *Leary*, 210 W. Va. at 51.

This Court may reasonably conclude that the need for firm expiration dates, as reflected in the 1996 version of the UCC, is a rule or concept of letters of credit that has arisen <u>after</u> July 1, 1964. Moreover, in stark contrast to the 1963 version of the UCC, the 1996 version expressly provides that the application of W. Va. Code § 46-5-106(d)'s five-year expiration rule cannot be avoided by agreement. See W. Va. Code § 46-5-103(c) (1996) (indicating that the applicability of the five-year expiration rule regarding "perpetual" letters of credit (i.e., § 5-106(d)) cannot "be varied by agreement.").

Likewise, the second reason for this Court's decision in *Leary* is also inapplicable as applied to W. Va. Code § 46-5-106(d) (1996). *See Leary*, 210 W. Va. at 51 ("Secondly, such a result would be

contrary to the Wage Payment and Collection Act which was designed to protect working people and assist them in the collection of unpaid wages and benefits.").

Importantly, giving effect to the five-year expiration rule set forth in W. Va. Code § 46-5-106(d) does not require the sacrifice of the protections provided by the wage bond statute. In the event of a claim for wages, the Labor Division has full authority to make a presentation for payment at any time before the five-year expiration.

The Letter of Credit at issue in this case required United Bank to provide the Labor Division with notice "no earlier than one hundred and twenty (120) days and no later than ninety (90) days prior to the five (5) year anniversary of the issuing date so that the Commissioner can determine if the wage bond may be terminated pursuant to West Virginia Code § 21-5-14(g)." By exercising its statutory authority to determine whether "the wages and fringe benefits of all employees have been paid," the Labor Division can prevent any negative impact on the statute's intended beneficiaries. In short, the W. Va. Code § 46-5-106(d) (1996) bright line expiration rule with respect to "perpetual" letters of credit does not run counter to the wage bond statute's salutary purposes.

If this Court were to accept Petitioners'

position, it would expand the liability of the issuing bank (United Bank), of the applicant (Respondent), and of any other party who may be adversely affected by a reimbursement claim from the issuer (such as guarantors or other secondary obligors). A completely open-ended contingent liability would create tremendous uncertainty for the issuing financial institution. If an applicant/employer becomes defunct, the bank would be required to carry this contingent liability on its books for decades, perhaps even generations. The Labor Division admits that, because of its insolvency, Respondent will never be able to satisfy W. Va. Code § 21-5-14(g). See Amicus Brief, p. 4. Such uncertainty runs contrary to the purpose of the Uniform Commercial Code, which is "to simplify, clarify, and modernize the law governing commercial transactions." See W. Va. Code § 46-1-103(a)(1). The statute is to be "liberally construed" to accomplish this purpose. Moreover, this uncertainty may make it more difficult for employers to secure wage bonds in the first place, which would actually undermine the purpose of the Wage Payment and Collection Act.

This Court made clear in *Leary* that the financial institution or bonding company "will not be committed under and obligated to pay the letter of credit for an indefinite period of time." *Leary*, 210 W. Va. at 51. As this Court noted, an

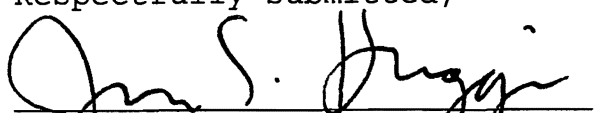
employer is not required to post a wage bond after five (5) consecutive years of doing business in the state. The five (5) year expiration of the Letter of Credit under W. Va. Code § 46-5-106(d) coincides exactly with the five (5) year requirement for posting a wage bond under W. Va. Code § 21-5-14. Yet, if this Court were to rule that the Letter of Credit does not expire, United Bank would remain obligated for an indefinite period of time. This Court emphasized that this would not be the result of its ruling in *Leary*.

CONCLUSION

Fundamentally, the Letter of Credit functions very similar to a typical consumer credit card. In both situations, you have an applicant or customer (in this case, Respondent), an issuer (in this case, United Bank), and a beneficiary (in this case, Petitioners; in a credit card situation, of course, the beneficiary is the vendor/merchant). Credit cards have an expiration date.

In this case, the Letter of Credit expired. Petitioners are essentially attempting to satisfy their judgment by using an expired credit card. This Court should answer the certified question by holding that a perpetual letter of credit expires five years after its stated date of issuance.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies a copy of the foregoing **Brief of Respondent** was served upon the following parties by sending a copy of same by ordinary U.S. mail, postage pre-paid, on this 02 day of December, 2015:

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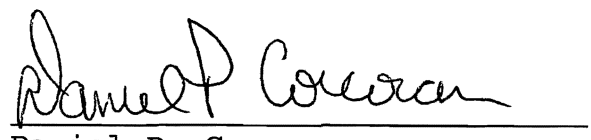

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