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Pruning the Evergreen Clause: Southern District of New York Strictly Construes Evergreen Clause in *Starr Indemnity v. Midwest Mortgage*

A January 2026 court decision out of the Southern District of New York has put increased scrutiny on common clauses in letters of credit which automatically extend the term for successive periods, commonly referred to as "evergreen clauses". In *Starr Indemnity & Liability Company v. Midwest Mortgage Associates Corporation* (S.D.N.Y. Jan. 21, 2026), the court concluded that a provision issuers, applicants, and beneficiaries would have likely viewed as an effective evergreen clause only extended the term of a letter of credit by one additional one-year term, and thus the letter of credit had expired when the beneficiary tried to draw upon it.

Given the ubiquity of New York governing law in commercial real estate transactions, the decision in the Starr Indemnity case merits attention. Parties relying on letters of credit should closely review the language used in any evergreen clause to confirm it is clear that the term of the letter of credit is automatically extended for successive terms. This article discusses the (1) language used in the letter of credit in the Starr Indemnity case and the court's reasoning for why it was deficient to create an evergreen clause; (2) other factual considerations in the Starr Indemnity case that may have influenced the court's decision; and (3) an example of best practice language to consider when incorporating an evergreen clause into a letter of credit.

1. Court's Analysis of Evergreen Clause Language

The letter of credit at issue in the Starr Indemnity case included the following language:

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.

Starr Indemnity & Liability Company, the beneficiary under the letter of credit, argued that "the letter of credit is deemed to be automatically extended for one (1) year from… ***any future expiration date***" provision was sufficient to show the intent to automatically extend the term of the letter of credit for successive one-year periods. However, the court disagreed. The court interpreted this language to mean that the letter of credit only had one automatic extension term from the date of its initial expiration date, and that the phrase "any future expiration date" simply meant that, if the parties agreed to establish a new expiration date at some later point, there would be an additional one -year automatic extension term from that expiration date as well. Additionally, the court contrasted the language in the Starr Indemnity letter of credit with language in other cases where the letter of credit at issue was determined to be evergreen. The letters of credit in those cases explicitly stated that the letter of credit would "***automatically renew***" for successive periods of time, which the court found clearly showed the intent that the letter of credit would continue to renew for successive periods instead of just the one-year extension contemplated in the Starr Indemnity letter of credit.

2. Factual Issues Potentially Impacting the Case's Outcome

Though not explicitly stated in the decision, the factual background of the Starr Indemnity case may have predisposed the court to narrowly interpret the letter of credit in favor of Midwest Mortgage Associates Corporation, the issuer of the letter of credit. When Midwest Mortgage initially issued the letter of credit, Starr Indemnity rejected it, stating that Midwest Mortgage was not a bank approved by the National Association of Insurance Commissioners. Without ever approving the letter of credit from Midwest Mortgage, Starr Indemnity tried to draw on the letter of credit eight years after Midwest Mortgage initially issued it. That Starr Indemnity never officially accepted the letter of credit from Midwest Mortgage and did not attempt to draw on the letter of credit until eight years after issuance could have caused the court to favor Midwest Mortgage and conclude the letter of credit had expired.

3. Best Practices in Evergreen Clauses

There are multiple ways in which beneficiaries can strengthen the language of an evergreen clause in light of the court's interpretation in the Starr Indemnity case. First, as the court noted, stating that the letter of credit "automatically renews for successive terms" more clearly shows the intent to have more than one extension in a letter of credit — (a) "successive terms" (plural) indicates multiple additional terms, and (b) "renews" instead of "extend" indicates that the letter of credit will continue to renew instead of being extended once. Additionally, the Institute of International Banking Law & Practice's ISP98 Model Form 2 includes the following language for an evergreen clause:

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 [e.g. 30] 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.

The model form language includes multiple clarifications that directly show the intent for the term of the letter of credit to automatically renew for multiple terms. First, the use of "***successive*** one year period***s***" more explicitly confirms that multiple extensions are contemplated, instead of just one extension period. Additionally, the use of an outside termination date implies that the intent is to extend the letter of credit's term beyond one additional extension period. Following the ISP98 Model Form language would likely add additional protection against a court misinterpreting the parties' intent.

Though it remains to be seen whether other courts will adopt the same approach as that taken in the Starr Indemnity case when interpreting evergreen clauses, parties should pay careful attention to those provisions when negotiating letters of credit. To guard against potential judicial misinterpretation, letters of credit that are intended to be evergreen should explicitly state that there are ***successive*** automatic renewal***s***, and provide an outside termination date.

For additional information on letters of credit in commercial real estate loans and other considerations when letters of credit are used as collateral, see "Letters of Credit: Financing Considerations and Terms for Negotiation." You can also contact the author or a member of the firm's Commercial Real Estate Finance team if you have questions about evergreen clauses as they apply to a specific transaction.

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