

Karen Hart, Esq.



# Keep Calm and Credit On! Successfully Navigating, Negotiating and Resolving Customer Account Disputes

Credit managers are often on the front lines of customer account disputes. You will likely be in customer legal battles more than a few times in your career, and some of you might already have one or two battle scars. The following tips and options for navigating, negotiating and resolving account disputes will help you to “Keep Calm and Credit On” the next time you are in the trenches with a customer.

## Get Organized and Get The Contract

When faced with a customer dispute, you first need to get your hands on the contract. Then read it!

The contract may encompass more than one agreement or document with your customer. Gather up all of the contract documents, including any amendments, modifications or supplements. Look for the credit application, guarantee agreements, purchase orders, invoices and master agreements.

Amongst other applicable terms, make sure you can identify and understand payment terms, delivery terms, inspection and rejection terms, interest terms, default provisions and any notice requirements. Pull together existing communications with the customer about the contract and also the issue in dispute if you are inheriting an ongoing matter.

Be sure to work with legal counsel early on to assist you with deciphering the contract and determining the key provisions for any given situation.

## Tighten Up Communications

As a customer issue begins to bubble up, watch what you are putting in writing to your client and internally. Be cognizant that your email or letter to the customer or to your internal team will become part of the written record and may be subject to discovery later if a lawsuit ensues.

Watch making admissions or being overly agreeable with a customer’s characterization of events. Make sure you have your facts straight before committing in writing and do your homework in investigating a customer’s claims. Put the burden back on the customer to provide proof of a complaint and ask for it in writing.

You have an opportunity to create a record that will help steer a developing dispute quickly toward resolution by cutting your problem customer off at the proverbial pass and not creating openings or exposing weaknesses.

**NACM's 122<sup>ND</sup> CREDIT CONGRESS and EXPO** JUNE 10-13, 2018 PHOENIX, AZ

**Karen will be presenting**

**27032. Successfully Navigating, Negotiating and Resolving Account Disputes**

**27087. The Life Cycle of a Creditor's Payment Claim**

Learn about these sessions and more on pp. 32-47.

## Document Customer Admissions

If your customer is delinquent in payment, be sure to document their admissions that the debt is owed. For example, you might have a preliminary call with a customer about a delinquent payment in which the customer promises payment and admits that funds are late and owed. To document this discussion, you could send a follow up email to the customer, carefully recounting the customer’s admission and promises. When you send this correspondence, however, be sure that you don’t fall prey to waiving what your contract requires. Here is a sample of how you might structure such an email:

Dear Mr./Ms. Bad Customer:

Thank you for taking my call. As discussed, you are late in paying Invoice Nos. 1001, 1002 and 1003, which total \$300,325, including interest to date. As you admitted in our call, you should have paid these invoices no later than January 1, 20\_\_\_. You apologized for being late and indicated that you would make full payment on these invoices (including all interest charges) no later than this Friday. We look forward to receiving your payment. We are not waiving any rights or remedies under the Master Services Agreement or otherwise in relation to these invoices or the Project.

Thank you,

Mr./Ms. Perfect Credit Manager  
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## Get Their Attention

Mr./Ms. Bad Customer may not be immediately responding to your further calls or follow up emails. He or she may not be responding at all. What is a credit manager to do? Raise the stakes and increase the pressure.

After Mr./Ms. Bad Customer has put you off, it may be time to send a formal demand letter. If you have been working with someone in accounting, it may be time to go above them, copy their boss, or send another letter to the CFO or higher up the chain of command. If you have an executed guarantee agreement, don't forget to include the guarantor in your demand letter. A guarantor who has personally guaranteed obligations may perk up and make some calls upon receiving such a letter.

If you are still not making progress on getting your customer to pay attention to your account, the next step may be involving legal counsel and having an attorney send a demand letter on attorney letterhead to the customer, including the relevant higher-ups and its registered agent as appropriate, along with any guarantors. If your customer is really hard headed and still won't respond, the next step, with the assistance of counsel of course, may be filing and serving a lawsuit on the customer and any guarantors.

For those of you in the construction industry, stay on top of your lien notice deadlines and send those notices to protect your payment and lien rights. You will be perfecting your lien claims, and you will also be applying pressure that may yield payment and resolution without filing a lien or a lawsuit.

## Should You Make an Offer?

Unless there is a compelling reason to come off of your invoiced amount, you should likely avoid negotiating against yourself. Make your demand and let the customer make the next move. They just might pay it all. If they don't, you will then be in the driver's seat on deciding whether to ignore, counter or accept a customer's proposal.

## Handling Settlement Offers—Moves and Counter Moves

A customer may approach with a settlement offer before or during litigation or even after a judgment has been entered. What should you do? You should conduct a cost-benefit analysis of your position, the potential risks, including associated fees and costs of the dispute, and whether and when it makes good legal and business sense to entertain such an offer.

If the offer comes in pre-suit, you will likely need to determine whether you can and should increase leverage further by filing suit first before responding. If an offer comes in after a lawsuit has been filed, you may want to further maximize pressure, including by requesting discovery, filing a motion for summary judgment, or waiting until trial, before responding. If an offer comes in post-judgment, in a case where all appeals are exhausted, you would likely want to evaluate what you know about the debtor's executable assets, overall collectability chances and related costs.

If you decide to entertain an offer, you may want to negotiate and not take the first number a customer throws out. Remember their offer is likely their starting point and not where they may be willing to end up. The same applies for any counter you may think about making. Don't start with your bottom line; give yourself room to negotiate if you are inclined to do so.

Join me at Credit Congress in Phoenix this year to learn more about successfully navigating, negotiating and resolving customer account disputes. I look forward to hearing your war stories and helping you sidestep those inevitable customer landmines. Keep calm and credit on! ■

*Karen Hart is a litigation partner at Bell Nunnally & Martin LLP in Dallas. Karen has been litigating creditor's rights cases for more than 15 years.*

## NACM DESIGNEE SPOTLIGHT

### Odalis Polanco, CCRA

Odalis Polanco, CCRA, originally from the Dominican Republic, is the asset-based lending relationship manager for the Supply Chain Finance International Division at Wells Fargo. His career with Wells Fargo began four years ago as a credit analyst. He was

promoted to his current role with the international division nine months later. His fluency in Spanish, Portuguese and English has made him a valuable asset to Wells Fargo. The portfolio of clients he is responsible for is mainly concentrated in the Caribbean, Central and South America and Portugal. Polanco's goal is to develop a sustainable ecotourism resort in the Dominican Republic where he hopes to utilize his credit experience in a microfinance institution and provide lines of credit to support the ecotourism projects in the area. He currently lives in Miami.

#### What prompted you to enroll in NACM's educational classes?

I saw an opportunity to grow in the field of credit and become an expert in financial analysis for better decision-making.

#### What was your experience in the designation process?

My experience while earning the designation was a very fun environment in which to learn; the material was relevant and the staff treated us with a lot of love.

#### How has earning a professional designation helped you in your career?

The professional designation will help me grow in my credit path and get involved in new roles.

#### What are some of your biggest takeaways throughout this journey?

My biggest takeaways are always to keep a student mentality and continue to push myself every day with new challenging tasks.

Learn more about **NACM and FCIB's Professional Certification Program** by calling 800-955-8815 or visit [www.nacm.org](http://www.nacm.org).