

Document Presentation Can Make The Difference In Disputes Between Merchants

Attorney Steve Leibowitz explains how careful structuring of information can lead to quick and favorable resolution of merchant disputes*



The nature of commercial buyer and seller relationships make them ripe for conflict. Claims of unpaid, short paid and missing invoices damage the ties between sellers and buyers of goods, and chargebacks and counter-chargeback disputes characterize many industries. Allegations of breach and assertions of offset range from the simple, such as an incomplete shipment, to the highly complex and difficult to prove, such as noncompliant performance. Resolution of these conflicts is often complicated by the large quantity of claims and counterclaims, and by questions over what agreement governs the transactions.

When a buyer and seller have numerous transactions, or when one party's operations require that a single purchase be divided into multiple transactions (for example, a multi-store retailer that requires vendors to ship and invoice stores individually), the mere volume of transactions increases the opportunity for conflict. Parties with a substantial ongoing relationship sometimes implement systematic ways to resolve payment disagreements. However, if the systems fail or are not developed, or the relationship deteriorates, collection professionals may be called in to recover what is owed.

Many collection professionals start by sending the debtor a demand letter accompanied by a statement of the creditor's claims. This approach often wastes valuable time because it usually generates a tepid response by the debtor. Typically, the debtor will claim to be current with the creditor, or to be owed money because of chargebacks and claims of the creditor's breach. Causing additional delay, the debtor will invariably demand copies of all documents supporting the creditor's claim. Even if the creditor provided this documentation to the collection professional, the information needs to be transformed into a persuasive, convincing argument.

Many years of experience in dealing with merchants has shown that creditors obtain the most favorable outcome when a matter is resolved quickly. Quick resolution requires not only confronting the debtor with a listing of the claims against it, along with all relevant supporting documents, but presenting a carefully analyzed, well organized and thoroughly documented rebuttal of defenses previously raised by the debtor. This approach may be more comprehensive than the tactic many collection professionals use for a new matter, but it is time well spent because it eliminates the debtor's predictable first (and often second, third and fourth) response.

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By first asking some basic questions, pages of information can be effectively structured to create a demand letter that elicits a meaningful answer from the debtor:

Is there a single writing that governs the transactions?

Buyers will often claim that vendors have agreed to comply with a buyer produced vendor guide, and therefore are required to accept any charges imposed. For example, in one case, the debtor asserted that it required all vendors to sign an agreement promising to follow such a guide and accept its unilateral imposition of penalties. The creditor, however, prohibited its sales and operational personnel from ever signing buyer-produced vendor guides, clearly explaining to them that such an action was beyond their authority. It challenged the debtor to produce evidence of its promise to follow and be bound by the guide. Unable to do so, the debtor was forced to consider seriously the substantive nature of the creditor's claims.

Are the creditor's claims fully documented?

Transactions between merchants usually involve several fairly straightforward documents: purchase order submitted by the buyer; packing list, invoice, and bill of lading, all produced by the vendor; and proof of delivery, obtained by the vendor from the carrier of the goods (or obtained by the vendor directly from the buyer if the vendor makes delivery itself). If a short payment is alleged, a copy of the debtor's written or electronic remittance advice is relevant.

How can a creditor categorize and rebut the debtor's previously asserted defenses?

A debtor benefits when it delays responding substantively to a demand letter by making a general assertion of defenses, or by producing a mass of paperwork asserting various defenses. In most cases, the parties have had prior communications, and the debtor has previously offered its reasons for not making payment or for making only partial payment. Between merchants, the debtor usually asserts these defenses by submitting an explanatory chargeback when withholding some or all of a payment.

For three reasons, the creditor should categorize and rebut the anticipated debtor defenses as part of the documentation included with its demand letter. First, detailed documentation shows the seriousness the creditor places on the matter and the efforts it has made to investigate fairly the debtor's position. Second, categorization can provide a roadmap to settlement where some defenses are stronger than others. Finally, claims within a category may be so similar that the resolution of one provides the basis for quickly resolving the others.

Categorization will vary with the facts of a given case, but those used in disputes between merchants often include defective goods, shortages, late shipments, nonconforming shipments, violation of the buyer's shipping policies (for example, improper carton size or misplacement of a label), inaccurate or missing electronic data interchange ("EDI") transmissions, and offsets claimed for promotional allowances allegedly authorized by the seller.

Delving into the documentation with an understanding of buyer-seller relationships will often uncover new facts that may help the creditor's case. Effectively structuring and presenting a merchandise creditor's claims will demonstrate the seriousness with which the creditor intends to pursue its rights. This approach will frequently persuade the debtor to address the matter meaningfully, leading to a quicker and likely more successful resolution of the dispute.