

## INVESTIGATIVE CONSUMER REPORTS AND CREDIT HISTORY:

HOW TO USE THEM AS AN AID IN EVALUATING CURRENT OR POTENTIAL BUSINESS CUSTOMERS,  
PRESENT OR PROSPECTIVE EMPLOYEES  
OR OTHER BUSINESS AND COMMERCIAL CANDIDATES FOR BUSINESS TRANSACTIONS

In our last issue of ON LAW, we addressed the desirability of obtaining a securing interest (like a mortgage in real estate) in products sold to create priority of payment (an increased likelihood of payment) if the customer goes into default. In this issue, we will explore a pre-emptive measure (tool) to help avoid potential defaults in promised obligations from customers, potential employees and others with whom business relationships may exist.

As the economy continues to soften, and businesses look for ways to firm their revenue base and increase bottom line profits, new relationships and opportunities are suggested by the marketplace that may sound compelling to the business seeking increased sales, but may be a warning of danger. An employee, who is about to be fired or who has been threatened with termination, becomes more active in seeking employment elsewhere. The candidate's sense of urgency at exploring new and better opportunities can be most compelling to a business owner under circumstances where the greatest amount of caution is required.

Debtors, sensing they are or will be experiencing financial difficulty, frequently increase their purchases of goods and services prior to major default the way an animal "beefs up" before the long winter. The unsuspecting business owner must exercise the greatest of caution and be receptive to the warning signs that an increase in demand from existing or prospective customers is not always a positive sign.

Consequently, informed business owners are turning to the increased use of credit reports for evaluation of existing and prospective customers, and existing and prospective employees, but the law imposes strict guidelines and limitations on the use of such investigation and use of credit history and reports.

Business owners have a variety of sources they can use to evaluate existing and prospective customers. With consolidation in the industry, there are currently three major credit reporting agencies that work through numerous independent local service organizations and groups to disseminate credit reports. The three major reporting facilities are:

**Equifax/CVI**  
P.O. Box 740241  
Atlanta, Georgia 30374  
Telephone: 1- 800-685-1111

**Experian**  
P.O. Box 2002  
Allen, Texas 75013  
Telephone: 1-888-397-3742

**TransUnion**  
P.O. Box 2000  
Chester, Pennsylvania 19022  
Telephone: 1-800-916-8800

Frequently, discovery of how a business owner is paying his own personal credit card bills to the local department store, to MasterCard or to VISA is a more useful and intuitive tool about that customer's intention and ability to pay than obtaining a credit history on that person's company, which, for example, rates the company's ability to pay its top 20 vendors, but is not revealing how that customer may pay a smaller vendor or smaller service provider who may be more reliant on the business. For larger and incorporated companies, Dun & Bradstreet provides useful business credit evaluation:

**Dun & Bradstreet Customer Service Center**  
899 Eaton Avenue  
Bethlehem, Pennsylvania 18025  
Telephone: 1-800-234-3867

Use of personal credit histories, however, requires strict adherence to the law that governs the provider of the information, the disseminator of the information and the user of the information, and can result in a lawsuit for civil damages for misuse in obtaining credit information. Today investigative consumer reports contain information about a consumer's character, general reputation, personal characteristics or mode of living obtained through personal interviews with neighbors, friends or associates of the consumer reported on, or others with whom he/she is acquainted or who may have knowledge concerning any of the items of information.

The law provides, however, that an investigative consumer report shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of a consumer or from the consumer.

Generally, a "consumer report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general

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reputation, personal characteristics or mode of living collected for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance, employment or other purposes, but does not include any report containing information solely as to transactions or experiences between the consumer and the person making the report.

After receiving such credit information, the user may take "adverse action" defined to mean a denial or cancellation of insurance, denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee, or a denial or cancellation of a license or benefit. The person who makes the communication must disclose in writing to the consumer, not later than five business days after receiving any request from the consumer, disclosure of the nature and substance of all information in the consumer's file at the time of the request. Therefore, the person who makes the communication (presumably the credit reporting agency) must disclose to the consumer that an adverse decision was made and the basis of the decision, providing for the consumer the right to obtain the credit or investigative report and rebut or explain any errors.

The permissible purposes of consumer reports are limited, but generally any consumer reporting agency may furnish a consumer report under the following circumstances and no other: (1) in response to a court order or subpoena; or (2) in accordance with written instructions of the consumer to whom the report relates; or (3) to a person that the consumer reporting agency has reason to believe will use the information in connection with a credit transaction involving the consumer and involving the extension of credit or review or collection of an account of that consumer; or (4) intends to use the information for employment purposes; or (5) intends to use the information in connection with the underwriting of insurance; or (6) determination of eligibility for a license; or (7) intends to use the information as a potential investor or servicer or current insurer in connection with a valuation of or an assessment of the credit or prepayment risks associated with an existing credit obligation; or (8) otherwise has a legitimate business need for the information in connection with a business transaction that is initiated by the consumer; or (9) to review an account to determine whether the consumer continues to meet the terms of the account.

A person may not procure a consumer report for employment purposes unless clear and conspicuous written disclosure has been made before the report is obtained that a consumer report may be obtained for employment purposes, and the candidate has authorized it in writing. The law further imposes conditions on use for adverse actions. In general, before taking any adverse action based on the report, the person using such information shall provide a copy of the report and a

description in writing of the rights of the consumer under law as prescribed by the Federal Trade Commission under Section 609(c)(3) [15 U.S.C.S. § 1681g(c)(3)]. If the consumer applies for employment by mail (such as by resume), telephone, computer or other similar means, and if a person makes an adverse decision on the employment application on the report, then the person must provide within three business days of taking such action an oral, written or electronic notification providing (1) that an adverse action has been taken based on the consumer report; (2) the name, address, and telephone number of the consumer reporting agency that furnished the report; (3) the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer with specific reasons why the adverse action was taken; and (4) that the consumer may request a copy of the report and dispute the accuracy or completeness of any information.

Notwithstanding, the pledge of the Internet to provide never-ending public information, as you can see, the use and transmittal of such information is limited by law. Further, there are requirements relating to the information that may be contained in the reports. Except as authorized, no consumer reporting agency may create a consumer report that contains any of the following items of information: (1) cases under Title XI of the United States Code (Bankruptcy Code) more than ten years old; (2) civil suits, civil judgments and records of arrest more than seven years old or until the governing statute of limitations has expired, whichever is longer; (3) paid tax liens more than seven years old; (4) accounts placed for collection more than seven years old; (5) and any other adverse item of information other than records of convictions of crimes more than seven years old.

The law makes an exception as to transactions or information of a certain size, and permits a consumer report to contain such information even though they are older than seven (or ten) years for the following: (1) a credit transaction involving a principal amount in excess of \$150,000.00; or (2) the underwriting of life insurance in excess of \$150,000.00; or (3) the employment of an individual at an annual salary which exceeds \$75,000.00 per year. In other words, there is no limitation, irrespective of time, disclosing salary in excess of \$75,000.00 per year, or the purchase of life insurance or any borrowing in excess of \$150,000.00, or any record of conviction (not arrest) of a crime.

This summary is a partial list of information that you can obtain and use now. There are also other laws governing employment that dictate how long information may be kept in an employee file, and the kind of information that may be retained. These issues will be addressed in future issues of ONLAW.

*Gerald C. Davis*

### **Elder Law: Are you Caring for a Loved One?**

**A**re you caring for an elderly loved one? Do you have a loved one in a nursing home or will you soon? Do you know the proper legal steps you should take when taking care of a loved one? Christopher Schultz, a partner in our Farmington Hills office, practices Elder Law and can assist you with all of your legal questions relating to Elder Law and Tax and Estate Planning. He has prepared a brief report on the important legal terms you should have an understanding of when dealing with Elder Law. If you would like a copy of his report, please contact Jennifer Sherman at (734) 261-2400 or via e-mail at [jsherman@cnda-law.com](mailto:jsherman@cnda-law.com) and she will mail it right out to you.

In addition, we would like to know if any of our clients and friends would be interested in attending a seminar on topics relating to Elder Law and Estate Planning. If so, please let Jennifer Sherman know the topics you are interested in learning more about and, as a service to our clients and friends, we will plan a seminar in the upcoming months.

## CMDA RANKS AS ONE OF THE 25 LARGEST LAW FIRMS IN METRO-DETROIT

Cummings, McClorey, Davis & Acho was once again ranked one of the 25 largest law firms in metropolitan Detroit in 2002 by Crain's Detroit Business. We thank our clients for helping us achieve this leadership role.



Sam C. Ayyash

In other news, we are delighted to announce that Sam C. Ayyash was recently made a Partner. Mr. Ayyash joined the firm in 2001 and heads our Workers' Compensation Defense practice group. He specializes in Workers' Compensation, Personal Injury Defense and Business Litigation.

From 1994-2001, Mr. Ayyash sat as a Workers' Compensation Magistrate. During that time, he was involved in the resolution and disposition of over 4,500 litigated workers' compensation cases. He has tried nearly 500 cases in which written opinions were issued and has been involved with various State Legislators in the area of workers' compensation reform, as well as the drafting of the current Rules for the Board of Magistrates in Workers' Compensation. Mr. Ayyash received his Juris Doctorate degree from Thomas M. Cooley Law School in 1986 and his Bachelor of Arts degree in Psychology and Criminal Justice from Michigan State University in 1983. He works out of our Livonia office and can be reached via e-mail at sayyash@cnda-law.com.

Kevin P. Cummings recently joined the firm as an Associate. He received his Juris Doctorate degree from Michigan State University's Detroit College of Law in 1999, his LL.M. in Labor Law from Wayne State University School of Law in 2002 and his Bachelor of Science degree in Journalism from Central Michigan University in 1994. He works out of our Livonia office and can be reached via e-mail at kcummings@cnda-law.com



Joseph D. Sarafa

Joseph D. Sarafa, former President and Principle Spokesperson of the Associated Food Dealers of Michigan (AFD) for 16 years, recently joined the firm as Of Counsel. He focuses his practice in the areas of Business Law, Regulatory Affairs, Licensing and Government Affairs. Mr. Sarafa received his Juris Doctorate degree from the University of

Detroit School of Law in 1982 and his Bachelor of Science degree, cum laude, in Marketing from the University of Michigan in 1977. He works out of both our Traverse City and Livonia offices and can be reached via e-mail at jsarafa@cnda-law.com

In closing, as a new year is upon us, we wish all our clients and friends best wishes for a happy, healthy and prosperous 2003.

*Timothy Young, Executive Committee*

## Attorney Profile

### Christopher G. Schultz



Chris, a partner in our Farmington Hills office, concentrates his practice on Elder Law, Tax and Estate Planning, Corporate Law, Transactional Law and General Business. He received his Juris Doctorate degree from the University of Detroit School of Law in 1984.

Chris is a Certified Public Accountant and is a member of the State Bar of Michigan, the Michigan Association of Certified Public Accountants and the American Institute of Certified Public Accountants. He has given numerous lectures on estate and succession planning throughout his career to a variety of audiences.

He received his Bachelor of Arts degree in Accounting from Wayne State University in 1981. Chris can be reached at cschultz@cnda-law.com or by calling our Farmington Hills office at (248) 737-3333.

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Livonia, MI 48150  
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Facsimile: 734.261.4510

**Battle Creek**

25 West Michigan Ave.  
Suite 909  
Battle Creek, MI 49017  
Telephone: 269.963.7800  
Facsimile: 269.963.4707

**Farmington Hills**

30555 Northwestern Hwy.  
Suite 200  
Farmington Hills, MI 48334  
Telephone: 248.737.3333  
Facsimile: 248.737.3330

**Marquette**

307 South Front Street  
Marquette, MI 49855  
Telephone: 906.228.8263

**Roseville**

25509 Kelly Road Suite C  
Roseville, MI 48066  
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Facsimile: 586.777.6896

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3939 M-72 East  
Williamsburg, MI 49690  
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**ARIZONA**

**Phoenix**

1850 North Central  
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**Our Vision**

*To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.*

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Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features or comments to the editor should be addressed to the attention of Jennifer Sherman.

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