The National Mariners Historic Trust

NMA REPORT #R-443 Rev. 1

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Asserting our right "…to petition the Government for redress of grievances."
Amendment 1, U.S. Constitution, Dec. 15, 1791

OUR ASSOCIATION CONDEMNED THE PRACTICE OF BLACK LISTING

Definition

Black List is a list privately exchanged among employers containing the names of persons to be barred from employment because of untrustworthiness or for holding opinions considered undesirable. A list of persons under suspicion, disfavor, censure, etc. This practice is also known in the marine industry as a ñ**Black-ball.**"

Our principles: The National Mariners Association strongly condemns the widespread practice many employers follow in "blackballing" our certificated limited tonnage merchant mariners.

When our Association first wrote on this this issue on Aug. 13, 2004, the practice of ñblacklistingò was well established in the marine industry and was feared by many of our mariners. We circulated our report (below) to members of the House Coast Guard and Marine Transportation Subcommittee and followed it up on an annual basis in until 2013[(1)] when we reported the following: [*[(1)]NMA Report #R-350, Rev. 7 , Issues P & X.]*

The problem. Our Association witnessed <u>abuse</u> of the ñproper utilizationò provision that adversely affects our limited tonnage mariners in seeking new employment in the maritime industry. When abuse by a <u>vindictive employer</u> occurs, it can deprive the industry of a trained and experienced mariner and ñblacklistò his/her career.

Good employees try to maintain a good work record. The fact that such a work record really exists and may follow a mariner in the workplace provides a positive and sobering influence upon a marinerôs conduct and stability. Nevertheless, one feature stands out and detracts from the value of this type of ñconsumer report.ò That point deals with the answer to the question, ñWould you rehire this employee?ò or, restated, ñIs this former employee eligible for rehire by your company?ò

We received reports from our mariners that this single point often is used to evaluate and subsequently ñ***<u>blacklist</u>***ò merchant mariners. This question can become a ñ***<u>quick and dirty</u>***ò test of suitability for employment.

The ñwould not rehireò determination is not based upon any uniform set of employment guidelines. It is a ***<u>subjective opinion</u>*** of some person working for a former employer who is under no obligation to reveal his/her identity or even his or her position within the company. It could represent the opinion of a President, a Human Resources Director, or even a receptionist with access to the companyôs computer. In many cases, employees are not even given a ñpink slipò stating the reason for their termination from employment.

A mariner does not know which person ñblacklistedò him/her or when it was done. However, ñwould not rehireò now can appear on a computer screen at a job seekerôs next job interview. Or, it may appear as part of the ñreinvestigationò the present law allows. **Example:** In one case that we followed, the job applicant only found out about his ñwould not rehireò entry three years later ï much of that time spent unemployed but constantly seeking work. Although our mariner made written inquiry to both his former employer and to the Credit Reporting Agency, he never was told <u>why</u> his former employer would not rehire him. The information the mariner chose to add to his consumer report to counteract the ñblacklistingò could be nothing more than a shot in the dark since he had no access to solid facts he could refute. Even worse, his statement stood out like a sore thumb on future reports provided to potential employers.

Related problem: Most job applications require job seekers to list their previous employers. In the transportation industry, 49 CFR §40.25 even requires prospective employers to verify a job seekerôs drug records for the past two years. Whenever a prospective employer makes such a call he has a greater opportunity to speak with a responsible person in authority and ask legally permissible questions about the job seeker. Unfortunately, ***<u>a "would not rehire" computer entry can short circuit the entire process</u>*** and becomes manifestly unfair to a job seeker.

Accepting ñwould not rehireò notations without identifying them by name coupled with the limitation of liability in 15 U.S. Code §1681h make it extremely difficult for an injured employee to prove in court that he was disqualified from employment by

ñ...false information furnished with malice or willful intent to injure such (a) consumerò if this is the case. Our experience shows that most mariners, especially those who are unemployed, do not have the means, the ability, and the knowledge to deal with the administrative procedures of a Credit Reporting Agency ï even when the agency scrupulously follows the law ***or even to identify, locate, or contact an appropriate Credit Reporting Agency***.

Our Decision on the Issue of Blacklisting

Although ñblacklistingò remains alive and well in the marine industry and is still reported by active mariners.[(1),] With the widespread use of the internet and divulgence of personal information on social media pages accessible to not only employers but a much wider audience, we believe each mariner must become more vigilant regarding the security of his own and his familyôs personal information. This includes work-related fitness reports that must be challenged if inaccurate as well as inaccurate logbook entries that may become part of company records. *[(1)NMA Report #R-210-D.]*

The problem of **Blacklisting** existed long before our Association was formed in 1999 and became inactive in June 2014. Since it was and still is a national problem and still exists. All we can do is leave an ***historical record*** of our work on this issue.

HISTORICAL RECORD (1999 to 2014)

Regulations Require Your Drug and Alcohol Record to Follows You

"Blackballing" or "black listing" is an effective way for an employer or former employer to ruin any mariner's career for any reason whatsoever. Yet, in its most basic form, it provides a means for an employer to avoid hiring someone else's undesirable employees. The first steps occur when a prospective employer asks you to fill out an employment application that asks you to list the names of your last three employers. There is nothing illegal about this.

In fact, new DOT regulations[(1)] require that "...as an employer you must after obtaining an employee's written consent, request the (following) information about the employee...from DOT-regulated *employers*[(2)] who have employed the employee during any period during the two years before the date of the employee's application or transfer:

(1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
(2) Verified positive drug tests;
(3) Refusals to be tested (including verified adulterated or substituted drug test results);
(4) Other violations of DOT agency[(3)] drug and alcohol testing regulations (etc.).... [*(1)Refer to 49 CFR 40.25(a)(b) effective August 1, 2000 (2) e.g, other boat companies. (3) Although the Coast Guard is now part of the Department of Homeland Security, they still follow DOT drug regulations in 49 CFR Part 40.]*

So, your "drug and alcohol" record must follow you from job to job. That record also may include any drug and alcohol use relative to your driving record. Remember that the Coast Guard checks your driving record at the National Drivers Register (NDR) with your permission at license renewal or upgrade time! A bad report here can destroy your future in the entire transportation system!

Now we get off the highway and into the grass when your "new" employer checks your record with your former employer(s). This is an area that a reputable employer approaches very cautiously. Other employers cherish their connections with the "good ole boy" system. This is an area where an individual mariner seeking employment literally "with hat in hand" is most vulnerable.

"Would You Rehire?" Is Very Subjective

Some but not all employers use a service that maintains records of employment. This service is known as a ñthird-party credit reporting agency.ò "This service provides information to employers for a fee. However, they must also provide a mariner with a copy of their files upon request.

A "blackball" may be based on something serious such as negligence, incompetence, or misconduct[(1)] ï the "big three" generalizations that could, if reported, bring you before a Coast Guard Administrative Law Judge. At the other end of the scale, a blackball can result from a personality conflict, a misunderstanding, failing to place the concerns of your employer above those of your family, refusing to work beyond 12-hours a day if a licensed officer, refusing to operate an unsafe vessel, or someone's pet peeve passed along with a simple "NO" or a quick "X" or check mark. In using the blackball, your employer is your judge and jury. The penalty is simply the word "NO" as an answer to the question "Would you rehire? on an employment report.

Over the years, the names of these ñthird party credit reporting agenciesò change as well as their addresses and their methods of operation. Years ago it used to be the Industrial Foundation of the South; later it was the Marine Index Bureau; still later it was Pretiem; then HireCheck. Now, we believe it is First Advantage whose address is

805 Executive Drive West, St. Petersburg, Florida 33702. Phone # 727-290-1000. Toll free: 800-321-4473. Fax: 727-290-1000. www.fadv.com. ***We count on our mariners to keep us updated on the latest information!!!***

Look up the credit reporting agency on the internet and correspond with them to ask for a copy of your **employment report** so that you can check it for correctness. Usually, after you fill out the form(s) they send you so that you can identify yourself and request personal information in their files. They will then identify the previous employers you worked for according to their records. However, the only comment they will release to you is whether a previous employer ñ***would or would not rehire***ò you. If the employer would not rehire you, that is a ñ***blackball***.ò If you have no idea why you would not be considered for rehire, then you can request further information and challenge any incorrect allegations on your report. There are forms that you must request from the credit reporting agency and they must send you to correct your record or challenge any incorrect information. These forms are required under the Fair Credit Reporting Act (15 U.S. Code §1681) and offer you some measure of protection.

GCMA Urges Mariners to Fight the Practice of Blacklisting

The "blackball" practice in the marine industry is pervasive. It is one of the principal tools that employers use to keep their employees in line. It has caused many good people to leave the industry with their talent and accumulated years of experience. The blackball is applied without complying with any code of fairness and in the absence of any uniform set of standards. It is a millstone around the neck of an industry that holds less and less attraction for fewer and fewer available candidates who have a real interest in making a career on work-boats of any type. The blackball wastes valuable training dollars, both public and private, to train a person for a career and then cashier him or her because of irritating the wrong person. The key to this issue is each individual mariner. Your employment record is your own responsibility. If an employer does not want you back because of something you did wrong or failed to do, that may well be your fault. If so, live with it and learn by it! However, you owe it to yourself to find out if any previous employer ñstabbed you in the backò with an unfair ñ***Would NOT rehire***ò notation.

At GCMA, we will attempt to give our mariners any guidance we are able to give should the mariner feel he or she has been ñblackballed.ò

THE LOADED EMPLOYMENT APPLICATI0N

The story started with an employment application that a GCMA member found so invasive of his privacy that he refused to fill it out and reconsidered working for the company. He took his 20+ years of service as a river pilot and went to work somewhere elseé and sent us the employment application.

GCMA asked our team of maritime attorneys whether the specific fifteen items called for in the application were "legal" questions to ask. Houston attorney Michael E. Shelton[(1)] provided this response. *[[(1)]Michael E. Shelton, Esq., 5615 Kirby Drive, Suite 300, Houston, TX 77005. Phone: (713) 8070700; 1 (800) 423-9745; FAX: (713) 807-0713.]*

Question #3. Have you ever been given a Coast Guard letter of warning or been assessed a civil penalty for violation of maritime or environmental regulations? If Yes, please explain.

Question #4. Have you had a spill to the deck or water in the past 12 months? If Yes, where and when?

[Comment by Mr. Shelton regarding Questions 3 and 4: Though a prospective employer is able to ask this, an applicant would not have to answer. The practical effect is that employment would be refused.]

Question #6. I certify that the facts contained in this application are true and complete to the best of my knowledge. I understand that any falsified statements on this application or omission of fact on either this application or during the pre-employment process will result in my application being rejected, or, if I am hired, in my employment being terminated. *[Comment by Mr. Shelton: I have run into this in suits where the seaman didn't tell the truth about some history and the defendant will invariably argue that if they had been told the truth the seaman would not have been hired, i.e., that this was a "threshold" requirement.]*

Question #9. I voluntarily consent to all such examinations, screenings and investigation. I release (XYZ Company), its officers, employees and agents from any claims arising from any information obtained from such examinations, screenings and investigations. *[Comment by Mr. Shelton: This would concern me. I can easily see an employer using this to "blackball" a seaman and with this language maybe get away with it.]*

Question #10. Employment at (XYZ Company) is on an "at-will" basis and is for no definite period and may, regardless of the date or method of payment of wages or salary, be terminated at any time with or without cause. Other than the president of (XYZ Company), no supervisor, manager, or other persons, irrespective of title or position, has authority to alter the at-will status of your employment or to enter into any employment contract with you. Any agreement with you altering your at-will employment status must be in writing and signed by the President of XYZ Company. *[Comment by Mr. Shelton: Texas is an "at will state; this is legal here. Additional*

***GCMA** Comment: The same is true in Louisiana and in many other states. Some employees who work for a company for years often fail to realize the "at-will" status of their employment until it is too late. One mariner received the "Silver Shaft Award" from ACBL after 26 years of service! A properly negotiated union contract gives company employees definite enforceable rights f*

Question #11. A consumer report and/or an investigative consumer report including information concerning your character, employment history, general reputation, personal characteristics, police record, education, qualifications, motor vehicle record, mode of living, and/or credit and indebtedness may be obtained in connection with your application for and continued employment with the Company. A consumer report containing injury and illness records and medical information may be obtained after a tentative offer of employment has been made. Upon timely written request of the Human Resources Department of the Company, and within 5 days of the request, the name, address and phone number of the reporting agency and the nature and scope of the consumer report will be disclosed to you. *[Comment by Mr. Shelton: This concerns me. It is way too much big brother! What possible concern could a credit rating be for qualifications for a seaman to his employer. Under Item #9, the employer could disclose this to the world with impunity. **Additional GCMA Comment:** A credit report shows an employer how desperate you may be for a job in his company and, indirectly, how far he can push you once you are employed.]*

Question #13. I authorize any investigator or representative of the Company bearing this release to obtain information from schools, residential management agents, employers, criminal justice agencies, or individuals, relating to my activities. This information may include, but is not limited to, academic, residential, achievement, performance, attendance, personal history, disciplinary, arrest, conviction records, and prior drug and alcohol testing.
[Comment by Mr. Shelton: (This) would allow an employer (not just a prospective employer) to have access to virtually every facet of the seaman's life. (It is) way too broad in my opinion for what an employer needs to know. Also, (it) could he released to the world under #9 (above).]

Question #15. I release any individual, including record custodians, from any and all liability for damages of whatever kind or nature which may at any time result to me on account of compliance, or any attempt to comply with this authorization. *[Comment by Mr. Shelton: A global release like this would allow an employer or prospective employer to walk away free even if information was maliciously disclosed.]*

EMPLOYER BACKGROUND CHECKS: PROTECTION OR VIOLATION?

*[**Source: E-mail article** Monday Aug. 22, 2005 by Mark Terry@bankrate.com Emphasis is ours!]*

You're filling out the application for a new job and there it is in bold letters: You must agree to a background check as a prerequisite for employment.

During the interview you are asked, "If we check for criminal records, are we going to find anything?"

At the bottom of the application it says: Anyone who knowingly provides incorrect information, or incorrect information through omission of fact, can be subject to termination at any time.

At the end of the interview, the prospective employer gives you a written form asking for your permission to run an extensive background check that will verify your Social Security number, driving record, criminal record, credit records and civil court records.

Does your employer have the right to do this? Should you sign? What are your rights?

The reason for background checks

More employers are performing criminal background checks on new hires. In some states and for some professions, it is a legal requirement. One of the primary reasons is an increase in negligent-hiring lawsuits. An employer, says Lynn Peterson, president of PFC Information Services Inc. in Oakland, Calif., "can be sued for actions taken on the part of an employee."

An employer has a legal responsibility to hire someone who is safe, qualified and fit for the position. "If they fail to use reasonable care and they hire someone that they either knew or should have known presented a foreseeable risk of harm to a third party, then that employer is liable," says Lester Rosen, attorney and president of Employment Screening Services Inc. in Novato, Calif.

The size of financial settlements, awarded by juries, in these negligent hiring lawsuits is on the rise. "In 1999, employers lost 60 percent of all negligent hiring/supervision jury trials," according to "Practical Guide to Employment Law." And the average settlement is more than $1.6 million dollars according to at least one study, says Jason B. Morris, president of Background Information Services Inc., of Cleveland.

Another reason employers are running background checks is, well, people lie. "We know, nationally, when you look across all industries that about 10 percent of all applicants have some sort of criminal record," says Rosen. "That doesn't mean it's a disqualifying criminal record. It's a form of discrimination to automatically reject an

applicant with a criminal record without considering whether there's a good business reason, but at least an employer needs to know if there's a criminal record involved. We know that up to 40 percent of resumes contain material omissions or fraudulent statements about credentials, education or employment. Some studies suggest that up to 40 percent of resumes contain some piece of fiction that is beyond the bounds of good taste."

But what about you? You don't have a criminal record. You have good credit. Why should you have to agree to a background check?

Maybe the background checks protect you as well. "In the larger scheme of things, I think it's very important to ensure that you're hiring people who are safe, from the perspective of the people who are co-workers," says Peterson. "I think it's very important to know that the person working next to you is a safe person. Particularly if you're talking about sending people out into the home; you've got to do it."

Types of background checks

So what's out there? Exactly what pieces of your personal history can your employer delve into?

- Resume and employment verification.
- Social Security number verification. It is illegal for an employer or third-party consumer reporting agency (CRA) to access the Social Security Administration for this purpose. This is performed using public records and credit bureau data.
- Criminal record checks. This is not a database check, if done correctly. The National Crime Information Center's (NCIC) database is not currently available to private employers, though legislation is being considered. A criminal record check is performed at county courthouses and sometimes state records are checked. Says Peterson, "The records are not available online and we have to send what we call a 'court-runner' out to the courthouse just as a quick check of the files to see if there's any criminal information pertaining to that person."
- Department of Motor Vehicles. Your driving record may be checked whether the job requires driving or not. It's an easy way to verify date of birth and addresses. "A driving record," says Rosen, "is a true statewide criminal record of that particular state, and it might reveal some level of responsibility. It might not matter if someone made an illegal left turn, but if somebody didn't go to court to deal with it may be suggestive."
- Civil court records. This can reveal lawsuits in which the potential employee was either a plaintiff or defendant in a case concerning a former employer. "in many states," says Peterson, "restraining orders are regarded as civil records, and if somebody has had a restraining order filed against him, it may be a cause for concern."
- Worker's compensation. Accessibility varies from state to state.
- Credit report. "A credit history check is allowed under the Fair Credit Reporting Act for employment purposes," says Tena Friery, research director with the Privacy Rights Clearinghouse. "This means that employers can make these kinds of non-skills determinations and reach a conclusion that if somebody is reliable at paying their own bills, they'll be a reliable employee, which certainly overlooks that some people have a bad credit history for medical reasons or for things that are really beyond their control."
- Sexual offenders databases.

Your rights

Background checks are covered by the Fair Credit Reporting Act, which in turn is covered by the Federal Trade Commission. "There is a specific law that covers background checks by third parties, and that law is the FCRA," says Friery. It's the same law that governs the credit reporting industry, but it also covers a number of other kinds of consumer reports, one of which is the employment report."

Among its many provisions, the FCRA gives the following rights to consumers:

1. The request for background checks must be on a separate document. "The provision," says Friery, "must be on a document that's separate from a job application or any other document. So it must stand out, in other words."
2. Pre-adverse action letter. If the applicant is turned down for any reason, they must be given an explanation for the employer's decision. "This is before any action is taken not to hire them," says Friery, "or to fire them, because this also applies to current employers. And along with that comes a statement of rights and a copy of the report."
3. Consent. The FCRA applies only to third-party credit reporting agencies. "In-house checks," says Friery, "are not covered by the FCRA. California does, however, have a requirement that an employer who obtains public record information by way of a 'self' check give the subject an opportunity to receive copies of the public records." This varies from state to state.
4. The FCRA does not address the consequences of refusing consent. "That's because the FCRA imposes specific obligations on employer-users of consumer reports," says Friery, "but there's no room to read more into it than what's required by the words of the law. The FCRA is really more a law about certain types of consumer reports, the companies that prepare such reports and the companies that use them. Employer

decision making and discretion are matters generally left to state employment laws ï or Equal Employment Opportunity questions."

Discrimination and obligation

Clearly the laws and regulations governing background checks are a delicate, and sometimes awkward, dance between the Federal Credit Reporting Act, Equal Employment Opportunity laws and nondiscriminatory hiring practices.

"There are some disturbing things about it," says Friery. "For one thing, this really overlaps with employment law and employer's discretion, which is really pretty much unlimited unless the employer runs afoul of discrimination laws. They really are in the position to be able to make job determinations. If they want to adopt a no-tolerance rule for criminal conviction no matter how far back it goes, there's nothing that really says they have to adopt more lenient practices."

And there's something unsettling about the notion that once you agree to allow these checks as a requirement for employment, your employer can follow up on them whenever it wants to. If you're a good employee, why should your employer have the right to check your credit history or driving record from time to time? How is that necessarily relevant to your work performance?

In addition, if a consumer reporting agency makes a mistake and you are not hired as a result, or you are fired as a result, there is not much you can do about it. "Once there is a mistake made," says Friery, "the employer does not have to reinstate a job offer or even take that person back if it resulted in a firing. So the subject really has very little recourse except to try to deal with the consumer reporting agency, the background screener that reported faulty information." You, as a consumer, however, do have a right to have the information corrected.

The laws need some fine-tuning to protect consumers' rights and privacy protections, but there many examples of why background checks are important. And in any case, knowing what's actually in your own credit report can be the first step in understanding what is at stake during a background check.

As Bankrate has reported, Americans can get a free copy of their credit report once a year from each of the three consumer reporting companies -- Equifax, Experian and TransUnion. The companies began rolling out the program last December in the western part of the country, and it's been slowly moving eastward. On Sept. 1, (2005) folks from the Northeast region will be the last to finally get access to their free reports.

GCMA CONTACTS WITH CONGRESS

*[**Background:** On September 1, 2003 GCMA wrote the following letter to Representative Billy Tauzin, Chairman of the House Committee on Energy and Commerce as well as to each member of the Committee presenting our views on the provisions of the Fair Credit Reporting Act (FCRA) that adversely affect our mariners. We followed up our correspondence with a second letter to the Chairman on December 1, 2003. Unfortunately, we have absolutely nothing to show for our efforts. We again brought the matter to the attention of Congress in GCMA Report #R-350, Rev. 3 as Item #22 and submitted it as part of our written testimony to the House Committee on Transportation and Infrastructure at the Hearing on "Challenges to the Coast Guard's Marine Safety Program" on August 2, 2007.]*

Dear Congressman Tauzin,

ñI am writing to you as Chairman of the House **Subcommittee on Commerce, Trade and Consumer Protection** to earnestly ask you to amend a provision in the Fair Credit Reporting Act (FCRA). I am writing on behalf of the Gulf Coast Mariners Association, an independent Association representing the interests and concerns of approximately 50,000 lower-level merchant mariners who serve on the nationôs tugs, towboats, small passenger vessels and offshore supply vessels.

"Employment purposes. 15 USC §1681b indicates that one of the permissible purposes of a consumer report is for ñemployment purposes.ò The Federal Trade Commission further defines these ñpermissible purposesò relating to employment to include reports used for evaluating a consumer ñfor employment, promotion, reassignment or retention as an employee.ò Our request concerns abuse of this provision in a significant, non-unionized portion of the maritime industry for employment purposes.

ñWe believe that a good employee will try to maintain a good work record. The fact that such a record really exists and may follow him in the workplace provides a positive and sobering influence upon his or her conduct and stability.

ñUnfortunately, there is one feature that stands out and detracts from the value of this type of ñconsumer report.ò That point deals with the answer to the question, ñWould you rehire this employee?ò or, restated, ñIs this former employee eligible for rehire by your company?ò

ñWe receive widespread reports from our mariners that this single point is used to evaluate and subsequently to

ñ**blacklist**ò many of our mariners. It is a ñquick and dirtyò test of suitability for employment. Our complaint lies with the law and not with the Consumer Reporting Agency that only appears to be doing what the law and/or the Federal Trade Commission allow. We make the following arguments for change. **[ENCLOSURE #1]** is a Work Report with the ñwould rehireò blank circled. An employer may elect a ñYesò, ñNoò or simply to make no comment.

- ñWould not rehireò is not based upon any uniform set of employment guidelines. It is a subjective opinion of some person working for a former employer who is under no obligation to reveal his/her identity or even position within the company. It could represent the opinion of a President, a Personnel Director, or even a clerk-typist with access to the companyôs computer. In the case covered in **[ENCLOSURE #1]** the employee was never ñfiredò or even given a ñpink slip.ò
- ñA mariner does not know which person ñblacklistedò him or when it was done. However, ñwould not rehireò now can appear on a computer screen at a job seekerôs next job interview. Or, it may appear as part of the ñreinvestigationò the present law allows. In this case, **[ENCLOSURE #1]** the job applicant found out about it three years later ï much of that time spent unemployed but constantly seeking work. Although he made written inquiry to both his former employer and to the Credit Reporting Agency, he was never told why his former employer would not rehire him. The information the mariner chose to add to his consumer report to counteract the ñblacklistingò was nothing more than a shot in the dark since he had no access to solid facts he could refute. Even worse, his statement now stands out like a sore thumb on his work report.
- ñMost job applications require job seekers to list their previous employers. In the transportation industry, 49 CFR §40.25 even requires prospective employers to verify a job seekerôs drug records for the past two years. If the prospective employer made such a call he would have a greater opportunity to speak with a responsible person in authority and ask legally permissible questions about the job seeker. A ñwould not rehireò computer entry short circuits the entire process and is manifestly unfair to job seeker.
- Accepting ñwould not rehireò notations without identifying them by name coupled with the limitation of liability in 15 USC 1681h make it very extremely difficult for an injured employee to prove in court that he was disqualified from employment by ñ...false information furnished with malice or willful intent to injure such (a) consumerò if this is the case. Our experience shows that most mariners, especially those who are unemployed, do not have the means, the ability, and the knowledge to deal with the administrative procedures of the Credit Reporting Agencies ï even when those agencies scrupulously follow the law.

ñIt is for these reasons and in the interest of fairness to our mariners that I ask you on behalf of our Association to amend the Fair Credit Reporting Act to exclude the solicitation of the information by Credit Reporting Agencies that allows notations such as ñwould not rehireò or ñnot eligible for rehireò to appear on a work report furnished by such an agency.ò

OTHER CONSUMER ACTIONS: COMPANIES SUED UNDER THE FAIR CREDIT REPORTING ACT

*[**Source**: GCMA File #A-800. Newspaper article in the Trucker by Jamie Jones, Editor, April 7-22, 2004. Emphasis is ours! Note: DAC is a "third party credit reporting agency" used by the trucking industry.]*

After more than two years of fighting to have retaliatory, unfavorable information removed from his DAC report, a South Carolina truck driver has sued the company and its affiliates that reported the information and DAC Services.

John Griffith is suing for actual damages in an amount of more than $100,000, statutory and punitive damages, as well as attorneys' fees and injunctive relief from both the group of Schilli Transportation affiliates and DAC Services.

The suit centers on unfavorable information reported by Atlantic Inland Carriers Inc. (AICI), and some affiliates of Schilli Transportation, to his DAC report and ensuing handling of judicial orders to move that information which was determined by a judge have been filed as retaliation.

The suit also includes DAC Services' alleged failure to follow Fair Credit Reporting Act procedures to assure maximum accuracy concerning Griffith.

Ultimately, the suit challenges any trucking company's ability to either report false information or retaliate against a driver by filing unfavorable information with DAC Services. It also takes to task DAC Service's alleged failure to ensure the information was fair and accurate in accordance with the Fair Credit Reporting Act.

Griffith worked for AICI from October 2001 through December 2001.

Griffith claims in his suit, filed March 11 by Minnesota attorney Paul O. Taylor, that he was terminated by the company on Dec. 28, 2001, because he filed a report at a North Carolina weigh station about a defective trailer part.

The suit claims that following Griffith's dismissal, AICI reported unfavorable and derogatory information Griffith's DAC report.

After his termination, Griffith filed an illegal discharge action and eventually the case was decided in his favor Oct. 21, 2003.

According to the lawsuit, U.S. Department of Labor Administrative Law Judge Richard E. Huddleston found the information reported to Griffith's DAC report was filed with DAC Services by the trucking company in retaliation for Griffith's report to North Carolina officials.

Huddleston ordered AICI and Schilli to amend Griffith's DAC report "to delete all unfavorable information, including but not limited to showing continuous employment, deleting the statement it [Griffith] is not eligible for rehire" and to "en-sure that any adverse information placed by [the companies] if any, is removed" from Griffith's DAC)report.

Griffith's suit goes on to allege that ACIC failed to communicate the corrections to DAC Services and it the false information remained on his DAC report. On Nov. 3, 2003, Griffith initiated a dispute of the information contained on his report to DAC Services.

The suit alleges that DAC Services failed to "timely respond" to Griffith's request. However, the suit goes on to state that when DAC Services did contact AICI and Schilli with Griffith's dispute, that the pair either "failed to respond or responded to the inquiry by verifying the inaccurate information," despite Huddleston's order.

According to the suit the unfavorable information .remained on Griffith's DAC report and ultimately led to him being denied employment with various trucking companies in January.

The suit claims that finally on Jan. 12 AICI instructed DAC Services to update Griffith's DAC report in accordance with Huddleston's Oct. 21, 2003 order.

Despite the eventual removal of the unfavorable Information, Griffith is suing both Schilli Transportation and its affiliates and DAC services for the emotional distress, humiliation, mental anguish and damages to his employment history.

REFERENCE-CHECK BUSINESS BOOMS: DETECTIVE WORK MAY REVEAL AN EX-BOSS BADMOUTHING YOU

*[**Source**: GCMA File #A-880. Newspaper article in the Dallas Morning News, August 12, 2003 by Katie Fairbank, Staff Writer. Emphasis is ours!]*

Looking for a job and getting turned away time and again? It might not be your fault.

It could be that former bosses are badmouthing you.

Take the case of one woman who left her company with good reviews only to find that one of her references kept telling prospective employers ñitôs so sad sheôd dyslexicò – even though she wasnôt.

Another job seeker learned his old superior was telling callers that the man kept a mistress and an apartment in Hong Kong. Interesting story, but totally inappropriate.

Both frustrated job seekers only found out about the smear campaigns when they hired a reference-checking company that posed as a prospective employer.

Such companies make up a fast growing niche that has exploded during a layoff and heavy economic downturn.

ñWe generally grow about 15 percent a year. But anytime the economy experiences a problem like this, for every 1 percent of unemployment, we see an increase of 5 percent in business,ò said Guy Fowler, vice president of operations for one of the biggest companies in the field, Documented Reference Check Inc. of Diamond Bar, Calif.

What job seekers do with the information from Mr. Fowler's company and other reference-checking firms is up to them. Action can range from informal warnings to lawsuits.

"Some of these services use a court reporter who transcribes what they've been told so it can be used as the basis of a defamation action; "said Scott Witlin, an employment law specialist and Los Angeles-based partner with Proskauer Rose LLP a New York law firm.

The increased interest in background checks isn't limited to people looking for work.

Sometimes the reference-check companies are hired to do background investigations on employees already on the job. Often those checks are prompted by lawsuits accusing companies of not being thorough enough in their initial background inquiries.

"We've had quite a few attorneys calling us to testify in the last few months on whether the background check was accurate**,"** said Laurie Jones, president and co-owner of Employment Practices Solutions Inc., in Southlake.

"For instance, there's a case where an employee allegedly raped a tenant at an apartment complex. In the lawsuit, they said they shouldn't have hired him because he had a criminal history."

A poor economy aggravates the situation because fewer jobs mean more rejections, Ms. Jones said.

"You turn down more people, and they're going to be upset and look for someone to blame," she said: We are seeing more lawsuits right now because more people are being turned down for jobs than previously.ò

Heidi Allison, a partner in the Michigan-based, reference checking company; Allison & Taylor Inc., marvels at how angry some bosses get at former employees.

In one memorable call, Ms. Allison said; the reference she was checking actually asked; ñWhat does that nightmare want?"

In another case, the boss was still nursing a years-old grudge over being denied a sabbatical that went to the former employee. In retaliation, he would tell prospective employers that his former subordinate was incompetent.

ñThe boss was so jealous about losing out to him for a sabbatical that he gave him bad references, said Ms. Allison. ñPeople are so mean.ò

Lawsuits involving references ï filed by both employees seeking jobs and co-workers ï are on the increase nationwide, with Texas among most litigation-heavy, states, Mr. Fowler of Documented .Reference Check.

ñWe do research every year, and publish our .findings on which state you'll most likely get a negative reference. We find that Texas is in the top three quite often," he said.

Thatôs because Texas employers "straight shooters, and they shoot from the hip," Mr. Fowler added.. "And employers are allowed to give negative references based on qualified privilege.ôò

Texas courts have recognized ñqualified privilege,ò allowing an employer to pass along information that is "true and accurate." The Texas Legislature also has passed a law that protects employers from being sued for giving references.

But Mr. Witlin, the employment attorney, said it usually isn't worth the potential trouble' to give a bad reference. He advises clients to release just the bare minimum of information.

"As an employer, there is no direct benefit to you from giving out references," he said. ñWhen weighed against the potential cost, in many cases, it's just not worth it. It's a surprising, unfortunate side effect of living in a litigious society, he said.

Jonathan Wilson, chairman labor and of the employment law section of Dallas based Haynes and Boone LLP agrees.

"It's created an unfortunate situation for employers and employees alike,ò he said. ñGood employees that used to be able to count on a good reference find that their employers donôt give them out or give neutral references.

Reference investigators, on the other hand, blame employers for the rise in lawsuits because they give out information they shouldnôt.

ñWe use certified court reporters, so what are they going to do, stutter and say we didnôt say that? Mr. Fowler said. ñThey may as well settle out of court. The attorneys pretty much hate us.ò