

The Power of Antitrust - Part II Ethics and Legality of Commercial Credit Exchange

- Defamation
- Confidentiality

Part 2 of the Antitrust Compliance Statement The Defamation Statement

- “Libelous statements in group meetings must be carefully avoided; they may subject all [participants] to major damage suits by persons who consider themselves to have been defamed.
- [Participants (to such conversations, discussions, communications)] must also avoid giving opinions or making statements which imply that any individuals are dishonest, fraudulent or immoral since no damages need to be proven in court to recover for these kinds of statements.
- Statements which might be considered libelous or hearsay should not be used in (conversations, discussions, and communications) unless the [participant to such communication] can prove from clear evidence that the statement is true.”

Understanding the Terminology

- Defamation = “Any communication that tends to harm the reputation of another as to lower that person in the estimation of the community or to deter third persons from associating or dealing with that person.”

Understanding the Terminology

- Communication = “That which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express”
- Libelous Statements = “Any written permanent form of defamation”
- Slanderous statements = “any oral communication”

Understanding the Terminology

- “In Group Meetings” applies to any formal setting of competitors meeting with one another for the purpose of exchanging credit information, this also attaches to telephone calls, personal conversations, email and fax communications.
- Participants = anyone in a meeting, discussion or other setting in which being party to a comment cannot be avoided.

Understanding the Terminology

- Persons = individuals, i.e.; principals, owners of companies.
- Company = entities, i.e.; businesses established as proprietors, partnerships, corporations and Limited Liability Companies (LLC's) and other business formations.
- “Subject all [participants] to major damage suits . . .” = “expose other people in the vicinity to an actionable claim of defamation”.

Understanding the Terminology

“Avoid giving opinions or making statements which imply that any individuals are dishonest, fraudulent or immoral”

- *Crooked*

- *Deadbeat*

- *Can't be trusted*

Understanding the Terminology

- Hearsay = “I hear they’re filing [or have filed] for bankruptcy”; “I heard others are filing liens, or suits against them”. “They are going out of business”. “I understand they can’t make their payroll, taxes, etc”.
- Clear evidence = printed articles in newspapers, magazines, or other medium or general publication or public records; i.e.; liens, suits, judgments that have been filed and can be cited.
- True = Truth [of the matter published] is ordinarily a complete defense to an action for libel.

Understanding the Terminology

- Defamation “per se” Rule = “In respect to words, those which by themselves, and as such, without reference to extrinsic proof, injure the reputation of the person, (individual or entity) to whom they are applied”.
- Libel “per se” Rule = to charge another with fraud or dishonesty is libelous per se. A written charge that one is guilty of falsehood is usually libelous per se.

Part 3 of our Antitrust Compliance Statement:

Confidentiality

- “All information obtained at meetings or otherwise from the group is to be considered strictly confidential and is not to be divulged or discussed with any person outside the [members own] credit department under any circumstances.”

Two Cardinal Principles

- Exchange of credit information requires:
 1. Confidentiality
 2. Accuracy of Inquiries and Replies

The identity of inquirers and sources cannot be disclosed without their permission.

Offenders jeopardize their privilege to participate further in the exchange of credit information.

(Source: Risk Management Association: A Guide for the Exchange of [Commercial] Credit Information)

Confidentiality

- Confidentiality falls more into the category of ethical behavior than legality unless or except when or if the breach touches an antitrust, defamation libel or slander issue.

A Breach of Confidentiality

No law covers a breach of confidentiality.

A breach will happen from time to time.

A breach is usually handled between
all parties involved.

Guidelines to Help Avoid Breach of Confidentiality:

- Know who is asking for information
Google or electronic search**
- Be a member of an NACM industry
credit group**

Industry Credit Group Meeting Guidelines

- Third-Party Monitor**
- Agenda & minutes for each meeting**
- Privacy**
- Compliance Statement read before
each meeting**

Thank You!

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