
Form U-5 Termination Notices — Absolutely or Qualifiedly Privileged?

Date: 07/28/06

On June 28, 2006, the United States Court of Appeals for the Second Circuit in *Rosenberg v. MetLife, Inc.* certified to the New York Court of Appeals the question whether statements made by an employer on an NASD employee termination notice (Form U-5) are subject to an absolute or a qualified privilege in a suit for defamation. In declining to affirm the view of the United States District Court for the Southern District of New York—that statements made by employers on Forms U-5 enjoy an absolute privilege—the Court of Appeals held that New York law remains unsettled as to whether the privilege is absolute or qualified, and that resolution of the issue by the New York Court of Appeals was appropriate.

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