

Legal Updates & News

Bulletins

N.Y. Court of Appeals Affirms Absolute Privilege for Content of Form U-5 Notices

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On March 29, 2007, the Court of Appeals of New York issued an opinion in *Rosenberg v. Metlife, Inc.*, holding that statements made by an employer on a National Association of Securities Dealers ("NASD") employee termination notice ("Form U-5") are subject to an absolute privilege in a suit for defamation.

Unlike a qualified privilege which may be defeated upon a showing of malice, absolute privilege bars liability regardless of motive. Accordingly, absolute privilege generally has been reserved for communications by individuals participating in a public function - such as a legislative or judicial proceeding - so as to ensure that those serving the public interest are not impeded by the threat of litigation. In *Rosenberg*, the Court extended this protection to the NASD as a "quasi-governmental entity," noting that while the securities industry is subject to Securities and Exchange Commission oversight, the NASD is responsible for day-to-day regulation of the industry. The Court thus found that the public interest in the regulation of registered brokers in the securities industry by the filing of Form U-5 is significant. Therefore, public policy requires securities industry employers to be free from liability in a defamation suit premised on these termination notices.

Significantly, there is no uniform standard of protection applied to Form U-5 statements in defamation actions across jurisdictions. As the dissent in *Rosenberg* makes clear, the Court's decision to afford statements made on a Form U-5 absolute privilege stands in contrast to those courts in other states - such as Illinois, Tennessee, and Florida - that instead afford such statements a qualified privilege.