

Application Exclusion Bars Coverage for Wrongful Termination Suit by Would-Be Whistleblower

January 2014

The United States Court of Appeals for the Ninth Circuit, applying California law, held that a broker-dealer's professional liability policy barred coverage for claims arising from circumstances known but not disclosed on the policy's application. *Endurance Am. Specialty Ins. Co. v. Nommensen*, 2013 WL 6623869 (9th Cir. Dec. 4, 2013). At the time the broker-dealer submitted the application, it was aware that an affiliate's employee had sent a "tip" to the Financial Industry Regulatory Authority (FINRA) regarding unregistered employees and that the broker-dealer had reprimanded the employee's supervisor and requested that the employee be terminated for violating FINRA rules. The court held that the employee's subsequent wrongful termination action "arose from" those circumstances, which were required to be disclosed on the application but were not. The court therefore concluded that the application's exclusion for any claim "arising from" a fact or circumstance required to be disclosed in the application barred coverage for the wrongful termination action, which arose from the same circumstances as the FINRA tip.