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NEWSLETTER

Ninth Circuit Confirms That Former Employee's Suit for Unlawful Termination Is Not a Claim for "Wrongful Acts"

May 2014

The United States Court of Appeals for the Ninth Circuit, applying California law, has affirmed a district court's ruling that claims for unlawful termination based on military service are not covered as "wrongful acts" under the insured entity's D&O liability insurance policy. *Forest Meadows Owners Ass'n v. State Farm Gen. Ins. Co.*, 2014 WL 1425299 (9th Cir. Apr. 15, 2014).

Alleging that she had been fired as a result of her time commitments to the Air Force Reserve in violation of state and federal law, a former employee sued the policyholder. After its insurer denied coverage on the grounds that the claim did not allege a "wrongful act" necessary to trigger the policy's insuring agreement, the policyholder filed a declaratory judgment action against the insurer. The California federal district court granted the insurer's motion for summary judgment.

On appeal, the Ninth Circuit affirmed the district court's holding. In so doing, the court held that, under established California law, "wrongful acts," defined as "any negligent acts, errors, omissions or breach of duty directly related to the operations of the [insured]," "reaches only negligent conduct." In this regard, the court found that "the firing of an employee is an intentional act [that] cannot qualify as negligence and does not fall within the policy." Because the policy was not implicated, the court rejected the insured's bad faith claim.