

SUPREME COURT OF LOUISIANA

99-C-1423

FREDERICK COLLINS

versus

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA D/B/A PRUDENTIAL  
PREFERRED FINANCIAL SERVICES AND LEO BEAULIEU

KIMBALL, J., Concurring

I agree with the result reached by the majority in this case. I write separately because I believe the majority omitted the initial step in determining whether an intentional tort falls within the scope of the arbitration agreement contained in the Form U-4. A claim “arises out of the employment or termination of employment,” and is therefore arbitrable, when it involves “significant aspects of the employment relationship.” *Morgan v. Smith Barney, Harris Upham & Co.*, 729 F.2d 1163 (8<sup>th</sup> Cir. 1984) (holding plaintiff’s allegations that his superiors “scrounged up” complaints from his former customers and communicated them to several securities enforcement agencies, and misinformed customers that his broker’s license had been suspended were arbitrable because they had a significant relationship to his employment, but employer’s charge that plaintiff stole from his co-workers’ desks was not arbitrable because no customers or securities agencies were implicated and no significant issue of plaintiff’s job performance *qua* broker was implicated). Claims that involve significant aspects of the employment relationship are those claims for which resolution depends upon the evaluation of a party’s performance as an employee or an employer during the time of the contractual relationship. *See Fleck v. E.F. Hutton Group, Inc.*, 891 F.2d 1047 (2<sup>nd</sup> Cir. 1989) (holding claim involving defendant’s statements that plaintiff had lost his broker’s license, was “basically a criminal,” had been the subject of many customer complaints, and had been fired was arbitrable as they involved significant aspects of the employment relationship, but claim that plaintiff was a disbarred lawyer was not arbitrable because it was not relevant to his performance as a broker); *Aspero v. Shearson American Express, Inc.*, 768 F.2d 106 (6<sup>th</sup> Cir. 1985) (holding broker’s claim that her employer made false statements that she was fired for violating trading rules was arbitrable because resolution of the claim depended upon an evaluation of the broker’s performance during

employment). Because the instant claims involve significant aspects of the employment relationship such that their resolution depends upon the evaluation of plaintiff's performance as an employee during the time of the employment relationship, I believe they are arbitrable and, therefore, governed by the Federal Arbitration Act.