Blog Entry: Supreme Court Postpones Consideration of Class Action Waivers Until 2017 Term

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In one of our previous posts, we highlighted that the United States Supreme Court granted review to address the legality of class action waivers in arbitration agreements among employers and employees. The case, *NLRB v. Murphy Oil USA, Inc.*, U.S., No. 16-307, was consolidated for oral argument purposes with two other similar cases that were granted review, *Ernst & Young, LLP v. Morris* , No. 16-300 and *Epic Systems Corp. v. Lewis*, No. 16-285.

On February 8, 2017, the Supreme Court stated that it would not hear the cases until the 2017 term, beginning in October. The Supreme Court's decision to push the consolidated cases until the next term is thought to be due to, at least in part, Judge Neil Gorsuch's recent nomination by President Trump. Assuming his confirmation in the U.S. Senate, the consolidated cases will be heard before a full nine-justice Supreme Court. The parties' opening briefs were originally due at the end of this month.

The Supreme Court's postponement of these cases until the 2017 term delays resolution of the uncertainty surrounding class action waivers in employment agreements. Currently, both the Seventh and Ninth Circuits have held that agreements between an employer and employees which bar class actions violate the NLRA. Conversely, the Fifth Circuit held in *Murphy Oil* that such provisions were lawful and overturned the NLRB's prior decision. Some believe that Justice Gorsuch's nomination and potential confirmation will benefit employers and is seen as a positive for the issue of class action waivers, but that remains to be seen.