

Blog Entry: Supreme Court to Address Class Action Waivers Amid Circuit Split

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On January 13, 2017, 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, comes after the Fifth Circuit's rejection of the NLRB's position that class action waivers in arbitration agreements are unlawful.

The current circuit split among the Second, Fifth, and Eighth Circuits and the Seventh and Ninth Circuits can be traced to the NLRB's decision in *D.R. Horton*, 357 NLRB No. 184 (2012). There, the NLRB held that an employer is not entitled to implement class action waivers with employees covered under the National Labor Relations Act ("NLRA"). Specifically, the Board held that an employer violates Section 8(a)(1) of the NLRA by requiring employees to sign an arbitration agreement waiving their right to pursue class and collective claims in all forums, because such waivers restrict an employees' Section 7 right to engage in protected and concerted activity.

The Fifth Circuit rejected the NLRB's position in *Murphy Oil* and its analysis of class action waivers. The Supreme Court granted the NLRB's petition for review, and also granted review in *Ernst & Young, LLP v. Morris*, No. 16-300 arising out of the Ninth Circuit and *Epic Systems Corp. v. Lewis*, No. 16-285 arising out of the Seventh Circuit. Both cases involve class action waivers and were consolidated by the Supreme Court.

The parties' opening briefs are due February 27, 2017. Amicus briefs in support of the various employers are due March 6, 2017.