

## U.S. Supreme Court To Decide D.R. Horton Arbitration Waiver Issue

January 13, 2017 | [National Labor Relations Board, Labor And Employment](#)



**Gerald F.  
Lutkus**  
Of Counsel  
(Retired)

The U.S. Supreme Court on Friday agreed to hear three cases all related to the National Labor Relations Board (NLRB) decision in *D.R. Horton* in which the NLRB held that companies that require employees to sign class action waivers violate their rights to act collectively under Section 7 of the National Labor Relations Act (NLRA). Though class action waivers have previously been upheld by the U.S. Supreme Court under the Federal Arbitration Act in *AT&T Mobility v. Concepcion*, 563 U.S. 333 (2011), *CompuCredit Corp. v. Greenwood*, 132 S.Ct. 665 (2012), and *American Express Co. v. Italian Colors Restaurant*, 133 S.Ct. 2304 (2013), the NLRB has taken the position that such waivers violate the NLRA. The three cases to be heard by the Supreme Court are *Murphy Oil*, *Epic Systems*, and *Ernst & Young*. *Murphy Oil* is a Fifth Circuit Court of Appeals decision in which that court concluded that the NLRB was wrong in holding that required employee class action waivers violated the NLRA. The Seventh Circuit in *Epic Systems* and the Ninth Circuit in *Ernst & Young* went the other way, upholding the NLRB's position in *D.R. Horton*. [Read more on the Supreme Court's blog.](#)

### RELATED PRACTICE AREAS

Labor and Employment  
Labor Relations  
National Labor Relations Board (NLRB)

### RELATED TOPICS

DR Horton