Center for Law and Public Policy

News Release

For Immediate Release

For more information, contact:

Tim Kolly 312-698-6220 | tkolly@dri.org

High Court Ruling Aligns with DRI Amicus Brief in *Epic Systems Corp. v. Lewis*

High Court Holds Federal Labor Law Does Not Override Federal Arbitration Act's Mandate that Arbitral Class Action Waivers Be Enforced

CHICAGO – (May 21, 2018) — In a ruling today, the Supreme Court aligned with a brief filed by DRI – The Voice of the Defense Bar in three consolidated cases: *Epic Systems Corp. v. Lewis*, *Ernst & Young LLP v. Morris*, *and National Labor Relations Board v. Murphy Oil USA, Inc.* The brief was filed through DRI's Center for Law and Public Policy.

The cases are notable in two respects. First, in one of the cases, *NLRB v. Murphy Oil USA, Inc.*, the Solicitor General filed a petition for writ of certiorari on behalf of the National Labor Relations Board (NLRB) in the waning days of the Obama Administration. The Acting Solicitor General under the Trump Administration reversed this position and sided instead with the employers—a rare occurrence. Second, each of the cases has worked its way through three different circuits: the Fifth, the Seventh, and the Ninth.

The purpose of the Federal Arbitration Act (FAA) was to overcome the hostility of the courts to arbitration and to require them to enforce arbitration agreements in accordance with their terms. In these consolidated cases, employees sued their employers for allegedly violating wage and hour laws, and the employers moved to compel individual arbitration of each claim. The employees argued that the arbitral class action waivers they signed were unenforceable because the National Labor Relations Act (NLRA) confers a substantive right to pursue wage and hour claims on a class or collective basis, and this substantive right overrode the FAA mandate either via the FAA's saving clause or via implied repeal of the FAA. In two of the consolidated cases, federal appellate courts agreed with the employees' argument, and in the third, the federal appellate court ruled in favor of the employer, reversing the National Labor Relations Board (NLRB).

In its opinion in favor of the employers' position, the Supreme Court held that the FAA's saving clause—which allows courts to refuse to enforce arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract"—does not help the employees' position because that clause "does not save defenses that target arbitration either by name or by more subtle methods, such as by 'interfer[ing] with fundamental attributes of arbitration.'" Here, the employees "object[ed] to their agreements precisely because they require individualized arbitration proceedings instead of class or collective ones." "[B]y attacking (only) the individualized nature of the arbitration proceedings, the employees' argument seeks to interfere with one of arbitration's fundamental attributes."

The Court also rejected the employees' argument that the NLRA displaced the FAA's mandate as applied to arbitral class action waivers in wage and hour cases brought by employees. Using some of the same analysis from DRI's amicus brief, the Court held that section 7 of the NLRA—which guarantees workers the right to organize unions, bargain collectively, and "engage in other concerted activities for the purpose of . . . mutual aid or protection"—does not even mention the FAA, arbitration, or class or collective actions, and that this failure to address the FAA or class actions expressly was fatal to the employees' position. In short, the Court concluded that the NLRA could not override the FAA's mandate by such silence.

Brief co-authors David M. Axelrad, Felix Shafir, and John F. Querio of Horvitz & Levy (Burbank, California) are available for interview or expert comment through DRI's Communications Office.

For the full text of the Supreme Court's opinion, click here.

###

About DRI – *The Voice of the Defense Bar*

For more than fifty-five years, DRI has been the voice of the defense bar, advocating for 22,000 defense attorneys, commercial trial attorneys, and corporate counsel and defending the integrity of the civil judiciary. A thought leader, DRI provides world-class legal education, deep expertise for policy-makers, legal resources, and networking opportunities to facilitate career and law firm growth. For more information, log on to www.dri.org