

D.R. Horton Reaches New Heights – U.S. Supreme Court Hears Oral Arguments

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On Oct. 2, the U.S. Supreme Court heard oral arguments in a consolidated trio of cases all addressing whether class action waivers in individual arbitration agreements violate the National Labor Relations Act (NLRA). In D.R. Horton, the National Labor Relations Board (NLRB) held such class action waivers violated the NLRA. Appeals followed to various federal circuit courts, with the U.S. Court of Appeals for the Fifth, Eighth and Second Circuits striking down the NLRB's position. More recently the U.S. Court of Appeals for the Seventh, Sixth and Ninth Circuits sided with the NLRB, setting up the inevitable Supreme Court showdown. Today's oral arguments did not reveal an expected outcome one way or another. The more liberal wing of the court seemed to favor with the NLRB's position. Justice Neil Gorsuch stayed silent, as did Justice Clarence Thomas. Justices John Roberts and Samuel Alito probed the NLRB's position, without revealing much except that they may lean toward the employers' position (slightly). Justice Anthony Kennedy seemed concerned about the real peril and limits that would place on concerted activity by a ruling adverse to the NLRB, seemingly seeking to balance that argument against the general federal preference for arbitration agreements. As in many such oral arguments before the Supreme Court the outcome is not at all certain. What does appear certain is that whatever the ruling, the result will be close.

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