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DRI Files Amicus Brief with Supreme Court in *MHN Government Services, Inc. v. Zaborowski*

CHICAGO – (December 2, 2015)—DRI – The Voice of the Defense Bar has filed an amicus brief with the U.S. Supreme Court in support of MHN Government Services, Inc. in the case of *MHN Government Services, Inc. v. Zaborowski*. The brief was filed through DRI's Center for Law and Public Policy.

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. Under the Supremacy Clause of the U.S. Constitution, federal law preempts state laws and court-created doctrines that stand as an obstacle to the purposes and objectives of the FAA.

In this case, petitioners MHN Government Services, Inc. and Managed Health Network, Inc. are military contractors that provide military service members and their families access to a network of licensed consultants at U.S. military installations worldwide. Respondents are members of MHN's consultant network who, upon joining the network, signed an agreement that contained a mandatory arbitration clause requiring that any dispute arising out of, or relating to, the Agreement would be resolved by arbitration. The agreement also contained a severability clause specifying that if "any provision of this Agreement is rendered invalid or unenforceable . . . the remaining provisions of this Agreement shall remain in full force and effect."

Despite having agreed to arbitrate any dispute, respondents sued MHN in federal district court, alleging violations of the wage and hour provisions of the Fair Labor Standards Act and state law. MHN moved to compel arbitration, but the district court denied the motion finding, under California law, that several provisions of the arbitration clause were unconscionable. A divided Ninth Circuit panel affirmed the district court's ruling. Ignoring the Agreement's severability clause, the Ninth Circuit held that the multiple offending provisions were unconscionable and not severable under California law because they "permeate[d] the entire agreement with unconscionability." The Supreme Court granted certiorari to decide whether California's

arbitration-only severability rule is preempted by the FAA.

The DRI brief addresses the broader question of whether California's unconscionability doctrine itself, as applied to arbitration agreements, is preempted by the FAA. DRI's brief traces the history of California's efforts to apply state-law unconscionability rules to avoid enforcing arbitration agreements according to their terms, as mandated by the FAA. The brief explains that incorrect and disproportionate use of the unconscionability doctrine has permitted California courts to invalidate arbitration agreements they deem too unfair or one-sided, an analysis the FAA preempts because it rests on policy judgments about the efficacy of arbitration.

The DRI brief further explains that California's unconscionability standards are preempted because they have a disproportionate impact on arbitration agreements, particularly when California's state-law severability rule is simultaneously applied in a manner unique to arbitration agreements, as in this case.

Finally, the DRI brief explains that, rather than applying ill-defined standards of fairness under the guise of an unconscionability analysis, courts should be limited to invalidating arbitration agreements based on unconscionability only when required to do so by constitutional due process requirements.

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

For the full text of the amicus brief, click here.