

**ORAL ARGUMENT SCHEDULED FOR MAY 17, 2016**

May 5, 2016

Mr. Mark J. Langer  
Clerk, U.S. Court of Appeals for the  
District of Columbia Circuit  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001-2866

Re: Rule 28(j) Letter, *Enterprise Leasing Company of Florida, LLC v. National Labor Relations Board*, Case Nos. 15-1200 & 15-1255

Dear Mr. Langer:

Pursuant to Federal Rule of Appellate Procedure 28(j), Petitioner/Cross-Respondent Enterprise Leasing Company of Florida, LLC (“Enterprise”) submits this letter regarding this Court’s recent judgment in *Heartland Plymouth Court MI, LLC v. NLRB*, Case No. 15-1034 (filed May 3, 2016) (per curiam), a pertinent and significant authority issued after the close of briefing in this case. A copy of the opinion is enclosed.

Enterprise’s Opening Brief in this case argues that the National Labor Relations Board (“Board”) erred by requiring Enterprise to show that the Union had “clearly and unmistakably waived” its right to further collective bargaining before Enterprise could eliminate short-term disability benefits for its Miami-facility employees. *See* Enterprise Opening Brief, at 21-23. Instead, under this Court’s contract-coverage doctrine, “the proper inquiry is simply whether the subject that is the focus of the dispute is ‘covered by’ the [collective bargaining] agreement.” *Enloe Med. Ctr. v. NLRB*, 433 F.3d 834, 835 (D.C. Cir. 2005).

In *Heartland Plymouth*, this Court held that “the Board refused to follow our controlling precedent and instead determined the Union had not clearly and unmistakably waived its right to bargain.” *Heartland Plymouth*, Slip Op. at 2. The Court reaffirmed that, “[u]nder our precedent, if a subject is covered by the contract, then the employer generally has no ongoing obligation to bargain with its employees about that subject during the life of the agreement.” *Id.* The Court held that “[t]he Board undoubtedly erred under our precedent by refusing to apply our contract coverage approach to the parties’ dispute . . . .” *Id.* On that basis, the Court granted the employer’s petition for review and denied the Board’s cross-application for

enforcement. *Id.* “The Board’s refusal to adhere to our precedent dooms its decision before this court.” *Id.*

*Heartland Plymouth* is relevant to Enterprise’s argument in this case that the Board plainly erred by applying the clear-and-unmistakable-waiver test—rather than the contract-coverage doctrine articulated by this Court—to conclude that Enterprise violated the National Labor Relations Act by eliminating short-term disability benefits without further bargaining.

Dated: May 5, 2016

Respectfully submitted,

/s/ Daniel R. Begian

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Enclosure

**CERTIFICATE OF SERVICE**

I hereby certify that on May 5, 2016, I caused a true and accurate copy of the foregoing to be filed electronically with the Court's electronic filing system, and to be served by operation of the Court's electronic filing system upon the following:

Julie Broido  
Greg Lauro  
Linda Dreeben  
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Further, I hereby certify that I dispatched four paper copies to the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit.

/s/ D. John Sauer