

No. 16-60034

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

EMPLOYERS RESOURCE
Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent/Cross-Petitioner.

**ON PETITION FOR REVIEW FROM THE DECISION AND ORDER
OF THE NATIONAL LABOR RELATIONS BOARD,
BOARD CASE NO. 31-CA-097189**

**REPLY BRIEF FOR PETITIONER/CROSS-RESPONDENT,
EMPLOYERS RESOURCE**

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CERTIFICATE OF INTERESTED PERSONS AND ENTITIES

No. 16-60034

Employers Resource v. National Labor Relations Board

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Employers Resource, Petitioner/Cross-Respondent

National Labor Relations Board, Respondent/Cross-Petitioner

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ARGUMENT

This Court should summarily decide this appeal, granting Employers Resource's Petition for Review and denying the NLRB's Cross-Application for Enforcement based on this Court's decisions in *D.R. Horton, Murphy Oil*, and *Chesapeake Energy*.

The NLRB does not, and cannot, dispute that the law of this Circuit is well settled after thorough and repeated consideration by this Court. *See RGIS, LLC v. NLRB*, No. 16-60129 (July 7, 2016) (per curiam) (order granting summary decision in favor of petitioner in case involving NLRB's application of its *D.R. Horton* decision); *24 Hour Fitness USA, Inc. v. NLRB*, No. 16-60005 (June 27, 2016) (per curiam) (same); *PJ Cheese, Inc. v. NLRB*, No. 15-60610 (5th Cir. June 16, 2016) (per curiam) (same); *On Assignment Staffing Services, Inc. v. NLRB*, Case No. 15-60642 (5th Cir. June 6, 2016) (per curiam) (same); *Chesapeake Energy Corp. v. N.L.R.B.*, 633 Fed. App'x 613, 2016 WL 573705 (5th Cir. Feb. 12, 2016) (per curiam); *Murphy Oil USA, Inc. v. N.L.R.B.*, 808 F.3d 1013 (5th Cir. 2015); *D.R. Horton v. N.L.R.B.*, 737 F.3d 344 (5th Cir. 2013).

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Review, deny the Cross Application for Enforcement, and grant all other relief to which Employers Resource is entitled.

Respectfully submitted,

by: s/Ron Chapman, Jr.

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CERTIFICATE OF SERVICE

I certify that on this 18th day of July, 2016, I caused this REPLY BRIEF FOR PETITIONER/CROSS-RESPONDENT, EMPLOYERS RESOURCE to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

s/ Ron Chapman, Jr.

Ron Chapman, Jr.

CERTIFICATE OF COMPLIANCE

Pursuant to FED. R. APP. P. 32(a)(7)(C) and 5TH CIR. R. 32.3, I certify that this Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this Brief contains 207 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

I further certify that this Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this Brief has been prepared using Century Schoolbook 14-point font, a proportionately spaced typeface.

Dated this 18th day of July, 2016.

OGLETREE, DEAKINS, NASH, SMOAK,
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s/ Ron Chapman, Jr.

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