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The Federal Arbitration Act v. The National Labor Relations Act: Battle of the Titans
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Last year in AT&T Mobility LLC v. Concepcion, 563 U.S. ___, 131 S. Ct. 1740 (2011) the United States Supreme Court held that the Federal Arbitration Act ("FAA") prohibits a court from invalidating arbitration agreements that preclude plaintiffs from proceeding collectively as a class, through either judicial or arbitral forums. Earlier this year the National Labor Relations Board (the "NLRB") issued a decision limiting the scope of AT&T Mobility. In D.R. Horton, Inc., 2012 NLRB LEXIS 11 (N.L.R.B. Jan. 3, 2012), the NLRB held that arbitration agreements that bar employees from proceeding collectively as a class in employmentrelated claims violated the National Labor Relations Act ("NLRA") because such agreements waive employees' rights under the NLRA to engage in "concerted activity."