



## The Voice

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### And The Defense Wins

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DRI member [Glenn E. Davis](#), partner with **HeplerBroom LLC** in St. Louis, obtained dismissal of a national class action brought by five franchisees of a national commercial cleaning franchise. The plaintiffs accused 179 defendants, including the system franchisor, master (regional) franchisors, and over 70 individuals associated with the franchise system of violating §§ 1962(c) & (d) of the Racketeer Influenced and Corrupt Organizations Act (RICO). The plaintiffs alleged the defendants operated the Stratus franchise system through a broad scheme to defraud unit franchisees across the country by misrepresenting the structure of the franchise, overstating franchisee earning potential, charging undisclosed fees, and churning franchise locations. In so doing, the plaintiffs ignored their contractual obligation to arbitrate their claims, on an individual as opposed to class basis.

In accordance with the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, Chief Judge Catherine D. Perry of the U.S. District Court for the Eastern District of Missouri found that the arbitration provision and class action waiver clause contained in plaintiffs' unit franchise agreements are valid, irrevocable, and must be enforced according to their terms. Rejecting the argument that the arbitration agreement was unenforceable as procedurally or substantively unconscionable, Judge Perry also concluded the agreement applied to non-signatories who were connected with the franchise system. "Because plaintiffs' RICO claims allege that they were defrauded, in part, by the operation of the unit franchise agreement, the arbitration agreement encompasses those claims.... Any arbitration must be conducted on an individual basis in accordance with the terms of the arbitration agreement."

The decision effectively ends substantial reputational harm to the Stratus franchise system during the pendency of the case and eliminates potential multi-million dollar system-wide exposure. *Torres v. Simpatico, Inc.*, \_\_\_ F.Supp.2d \_\_\_ (E.D. Mo. 2014), 2104 WL 409157.

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