

Salvatore takes security battle to Supreme Court

By JASON TURCOTTE

A New York arbitration case with major implications for the real estate industry reached the Supreme Court last week, as attorneys working on the 14 Penn Plaza v. Steven Pyett case brought their arguments to the country's highest court. Now the decision rests in the hands of the nine venerable Supreme Court judges.

The matter in question is whether an arbitration clause in a collective bargaining agreement that waives union members' right to a judicial forum for statutory discrimination claims is enforceable.

Paul Salvatore, partner and co-chair of the labor and employment law department at Proskauer Rose LLP, argued,

yes, in collective bargaining a union and an employer can require employees to arbitrate their statutory employment discrimination claims rather than appearing in a court of law.

Representing 14 Penn Plaza, Salvatore petitioned to take the case to the Supreme Court after denied motions in the district court and the Second Circuit. In February of 2008, the Supreme Court agreed to hear the case, marking Salvatore's first oral argument before the highest court. Justices John Paul Stevens, Antonin Scalia, Anthony Kennedy, David Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel Alito Jr., and chief justice John Roberts Jr. heard the one-hour argument

on Monday, Dec. 1.

"It was an unbelievable experience," said Salvatore. "I felt like I was on Mount Olympus appearing before the Gods."

The group representing 14 Penn Plaza also included Brian Rauch, Ian Schaefer and Mark Harris, of Proskauer Rose. James Berg and Howard Rothschild, of the Realty Advisory Board on Labor Relations, represented the co-petitioner, Temco Service Industries.

Salvatore spent several weeks prepping for the opportunity, a process that included participating in moot courts at law schools across the country. The key, he said, was preparing for the unexpected.

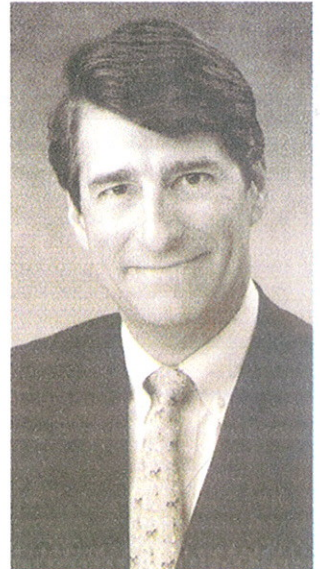
"They can ask you any one of a thousand questions and you

have to be ready for every one of them," Salvatore noted.

The case was initially introduced by a group of night watchmen and porters employed by Temco Service Industries to monitor the 14 Penn Plaza lobby. After the employees were transferred to new duties within their job description (in light of the hiring of licensed security guards) and having their contractual grievances rejected by an arbitrator, they filed a federal action in the Southern District of New York, claiming the transfer stemmed from age discrimination.

After unsuccessful efforts to convince the district court and Second Circuit to compel arbitration pursuant to the col-

Continued on Page 115



Supreme Court

Continued from Page 1S

lective bargaining agreement's arbitration provision, the case reached the Supreme Court.

The crux of Salvatore's argument focused on what he perceived as the Second Circuit's neglect to take into account a portion of the National Labor Relations Act that enables unions to bargain on behalf of their employees over "anything germane to the working environment, including methods of workplace dispute resolution."

When asked how he thought he fared in front of the Supreme Court justices, Salvatore said, "I think it's hard to read the judges. I think it'll be very close and it could go either way."

Attorneys David Frederick and Curtis Gannon, assistant to the solicitor general for the Department of Justice, represented the respondent.

The court must render a decision before adjourning for the year in June, but Salvatore expects to receive word by the end of winter. For now, he's content waiting – and savoring the moment of his first Supreme Court case. ■