

CALIFORNIA COURTS WILL NOT ALLOW ADVANCE WAIVING OF JURY TRIALS- EVEN IN CONTRACTS BETWEEN BUSINESSES

The California Supreme Court had now ruled that the protections afforded consumers...a jury trial regardless of what documents they signed at the beginning of a transaction...must now apply to business.

INTRODUCTON:

The right to a jury trial is guaranteed in the California Constitution. However, in business, the relatively high cost of a jury trial (usually three or four times higher than a judge trial) often does not seem worth while to one or the other contracting parties who therefore insert waivers of that right in the contracts that create the business relationship. See our article on [American Litigation](#) for more details on the typical United States trial procedure and the costs of juries.

Now the Supreme Court, in an unanimous decision, has ruled and that decision prohibits companies from waiving the right to a jury trial before any dispute even occurs.

Only once suit has been filed, and following specified court procedure, may the parties waive the right to a jury. This decision is NOT the law in most states in the United States and at least one of the Justices asked the California Legislature to consider altering the law-but for now, despite what it states in the contract, businesses, like consumers, can not waive in advance the right to a jury trial.



THE CASE:

Grafton Partners v Superior Court (C.D.O.S.) involved two businesses, *Grafton Partners and Allied Capital Partners*, ("plaintiffs" hereafter) suing the auditor PricewaterhouseCoopers, (PWC) for failure to disclose that a potential business venture the plaintiffs had invested in involved a company already guilty of a fraudulent "Ponzi" scheme. The plaintiffs claimed that PWC was or should have been

aware of that fact and was negligent or perhaps involved in the fraud and should compensate the plaintiffs accordingly. PWC argued that in the contract hiring PWC, the plaintiffs had waived the right to a jury trial and thus must try the matter before a judge.

Of course the PWC contract that the plaintiff signed was a standard large form contract that PWC created for all of its offices and PWC had carefully constructed the contract precisely to avoid the added expense and emotionalism that one possibly faces in a trial before a jury. Fully aware of this, plaintiff's counsel were intent on getting the matter heard before a jury.

Alameda County Superior Court Judge Sabraw denied the plaintiffs a jury trial because of that contract. The First District of Appeals reversed that ruling in February of 2004 and the matter was appealed to the California Supreme Court.

The case was closely followed by numerous business and consumer groups. Almost two dozen filed *amicus curiae* briefs in the case, arguing their various points of view.



THE RULING:

The Supreme Court, by unanimous decision, struck down the clause waiving the jury trial. Writing for the majority, Justice George stated that the right to a jury trial is guaranteed by the Constitution and wrote:

In light of our determination...it would not be appropriate to enforce such a waiver and thereby deny the right to a jury trial to a party who has timely and properly requested such a trial and complied with other applicable statutory prerequisites.

While the decision was unanimous, several judges were clearly unhappy with the result and Justice Chin wrote he was "reluctantly" joining the majority and asked the Legislature to legalize the practice known as pre-dispute jury waivers.

But for now the law is clear: until a matter is at issue, one cannot waive the right to a jury trial, whether the contract or document is between a consumer and business or between businesses.



THE EFFECT:

Jury trials are rare in the world. Only in a few nations are they allowed, most notably in the United States and several other nations once under English rule, and even within that small group, only the United States has enshrined that right in written constitutions and the Bill of Rights.

Most commercial matters in the world are resolved in special courts that often do not even have a trial in which live testimony is taken. Quite often, the parties merely submit written briefs to judges who can ask for live testimony, but seldom do.

But the United States, long distrustful of both government and bureaucracy, has long determined that a trial decided by the "peers" of the parties, namely a jury, is too valuable a right to easily remove. Expensive and time consuming, quite often illogical and fraught with emotion, juries are still a beloved institution in the United States and a right long cherished by the Courts.

It must be noted, however, that [arbitration](#), which waives not only a jury but the right to try the matter within a law court, IS allowed by the Courts and , indeed, encouraged, albeit with limitations applied in consumer contracts.

Thus the wise business seeking to limit the expense and trouble of a trial before a jury in California should plan on investigating the advantages and disadvantages of [arbitration](#) and should review our article on that matter for further details and the pros and cons.

As of now, the waiver of the jury trial in a business contract is void within the State of California.



THOUGHTS:

Too often people are misled by newspapers and other reports of outrageous jury verdicts and urban myths have arisen as to the absurdity of various verdicts, most of the myths entirely untrue or incomplete stories.

For instance, the famous McDonald's case of the hot coffee burning an elderly lady leading to a massive verdict has been touted by the press as an example of how absurd the jury system can be. In reality, that lady was the fourth or fifth customer to complain about coffee made in violation of MacDonal'd's own policies as to the temperature and several customers had already been burned without that particular outlet taking corrective action. The jury felt that a clear message had to be sent to the chain about the need to enforce its own rules. Wrong? Right? One can agree or disagree-but the point is that the decision was not illogical.

There are undoubtedly examples of juries acting without common sense. Any lawyer can give examples of judges doing the same thing-and arbitrators, for that matter.

The fact remains that the Founding Fathers knew what it was like to have judges-usually appointed by the government-decide matters often affecting the government and wrote into our laws limitations on that government's power and one of the most important limits was a trial by jury.

It is in money-the pure economics of litigation-that the real problem arises. Jury trials are so expensive that many business disputes can not justify the cost. But the solution to that is not a waiver of jury trial so much as mediation and arbitration and the reader should examine those solutions to the cost benefit problems of American litigation.

