

The Jury System

California Invalidates Contractual Jury Trial Waivers

Court holds policy debate is for legislature

By SEAN T. CARNATHAN
LITIGATION NEWS ASSOCIATE EDITOR

Predispute waivers of the right to a jury trial are unenforceable in California, following a recent decision by the state's supreme court. The ruling upholds an "inviolable" right to jury trial under the California constitution and strictly construes California's jury trial waiver statute, California Code of Civil Procedure § 631. *Grafton Partners L.P. v. Superior Court of Alameda County*.

Raising significant public policy issues, the case was heavily briefed by amicus parties. Four parties filed amicus briefs opposing predispute waivers, and 11 filed briefs supporting their enforcement. Counterbalancing California's public policy favoring jury trials were issues such as conservation of judicial resources, freedom of contract, and the reliance of parties on a commonplace commercial practice. The court held that these policy

wrote that a bench trial is an "attractive middle ground" between arbitration and jury trial, which "minimize[s] fears of excessive jury awards while affording greater procedural safeguards than those available in arbitration." Arbitration

behind the case is the proposition that jury trials are an important right and the waiver of an important right should be narrowly construed," says Refo. She also notes that the decision accords with the ABA's Jury Principles, which pro-

arguments are better addressed to the California legislature. "Our reluctance to substitute our judgment for that of the Legislature . . . is fortified by our awareness of the difficulties experienced in other jurisdictions . . . when a party resists enforcement of a contractual waiver of jury trial."

Although the decision was unanimous, Justice Ming W. Chin concurred separately, urging the legislature to change the law. "[O]ur decision is out of step with the authority in other state and federal jurisdictions," wrote Justice Chin. "Only the Supreme Court of Georgia . . . and now our court, have reached a different conclusion."

Predispute arbitration agreements remain enforceable in California because they are specifically authorized by statute. Both Justice Chin and the California Court of Appeal, however,

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adds a layer of expense to pay the arbitrators and largely sacrifices the right to appeal the decision.

Does the value of the jury trial outweigh these concerns? "Jury trials are a good thing," according to Patricia Lee Refo, Phoenix, Chair of the ABA's American Jury Project. "The principle

vide that "waiver should neither be presumed nor required where the interests of justice demand otherwise."

"In California, they take the right to jury trial seriously," agrees Brian Panish, Los Angeles, a member of the Section's Civil Justice Initiatives Task Force. □

Resources:

Grafton Partners L.P. v. Superior Court of Alameda County, 36 Cal. 4th 944, 116 P.3d 479 (2005).

Principle 1(C), ABA Principles for Juries and Jury Trials (Aug. 2005), available at www.abanet.org/jury/principles.html.