



Business Litigation Alert

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## **Ninth Circuit Sharply Narrows Enforceability of Jury Waivers in Commercial Contracts**

In a decision which narrows the contractual rights of companies doing business in California, the United States Court of Appeals for the Ninth Circuit ruled last week that jury trial waivers in contracts signed under California law will not be upheld in federal court, even where those agreements are entered voluntarily and knowingly. *In re County of Orange*, filed April 16, 2015.

Ten years ago in *Grafton Partners v. Superior Court*, the California Supreme Court held that under California law, pre-dispute jury trial waivers were invalid unless specifically permitted by a California statute. Federal law, on the other hand, permits such waivers as long as each party waived its rights knowingly and voluntarily.

The *County of Orange* court acknowledged that federal "courts (including ours) generally recognize that a party's right to a jury trial in federal court is a federal issue controlled by federal law." Nevertheless, the court held that a federal court sitting in diversity "must apply, as the federal rule, state law governing jury trial waivers where, as here, state law is even more protective of the jury trial right." Following a complex analysis of federal precedent the court held, "California -- not federal -- law dictates the validity of the waiver clause." Following *Grafton*, the court ruled the jury waiver clause to be unenforceable.

The decision deviates from most other federal circuits and could have wide impact in California where many businesses include jury trial waivers in their commercial contracts, expecting that such waivers would be upheld in federal court litigation. In the aftermath of *County of Orange* and *Grafton* before it, businesses will want to look carefully at their contracts going forward and possibly consider other forms of dispute resolution. Options now may include incorporating an arbitration provision under California Code of Civil Procedure §1281 or a broad stipulation for an order of general reference for issues under California Code of Civil Procedure §638(a), both of which were recognized as valid in California under *Grafton*.

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Payne & Fears LLP | 4 Park Plaza | Suite 1100 | Irvine | CA | 92614