



Have You Waived Your Rights? Contractual Jury Waivers and What You Need to Know

Many commercial contracts contain a provision that is easy to overlook during negotiation but can carry with it significant future consequences: the jury trial waiver. These clauses are common in everything from vendor agreements to loan documents or purchase and sale agreements, often buried among the boilerplate or miscellaneous provisions in a contract, but their implications deserve careful attention before you sign on the dotted line.

What is a Jury Waiver?

A jury waiver is a contractual provision in which both parties voluntarily and unequivocally agree to give up their constitutional right to have disputes decided by a jury. Instead, the parties agree that a dispute about that contract will be heard and decided solely by a judge in what is known as a “bench trial.”

Why Do Parties Agree to Waive a Jury Trial?

The right to trial by jury is guaranteed by the U.S. Constitution and serves as a fundamental pillar of the framework for the American judiciary system. As any trial lawyer will tell you, there is no substitute for the jury box. A jury trial gives a trial lawyer the opportunity to do what litigation is fundamentally about: telling a compelling story on behalf of their client to real people who bring their life experiences, common sense, and an innate sense of fairness into the deliberation room.

Juries more often respond to storytelling, to moral arguments and emotion, to equity, and to the human consequences of broken promises—all tools in a skilled trial lawyer’s arsenal that are usually more effective before twelve citizens than a single judge who may approach a case through a narrower lens. Jury verdicts are the result of the collective experience and wisdom of a group of peers, allowing multiple viewpoints to converge to reach a decision, rather than one person’s viewpoint deciding fact issues.

So why do parties agree to waive the right to a jury trial? Bench trials are generally viewed as faster and more efficient than jury trials. Bench trials eliminate several procedural and logistical steps that jury trials require, including drafting jury charges, the process of selecting a jury, and some post-trial procedures.

Juries are also often viewed as unpredictable. Conversely, judges are generally considered to have legal expertise and are less likely to be swayed by emotion or equitable arguments. Judges are also viewed as more capable of handling complex disputes or subject matters.

However, in bench trials, the entire outcome rests on one single person who acts as both the legal referee and the final finder of fact. With a jury trial, group decision-making is based on a blend of

various life experiences, cultures, and mindsets, creating an arguably more balanced evaluation of everyday facts. Having twelve people deliberate together reduces the impact of personal prejudices that a single biased person might hold.

The right to have a jury does not eliminate the judge's role in making important legal decisions before, during, or even after trial. But it does preserve your right to decide who will ultimately decide the facts of any dispute.

When waiving your right to a jury trial, trial lawyers lose some of the most important persuasive tools we have.

Why Should You Care?

The decision to waive a jury trial before you are even in dispute is not one to take lightly. It can fundamentally change the landscape of any future dispute. Things that may seem black and white at the time of contracting may become grayer when a dispute arises. By agreeing to a bench trial, you are giving up the advantage of presenting your case to a group of people who may be more receptive to adopting your version of the case and your equitable arguments.

With no jury waiver, you still have a choice whether to demand a jury or not when a dispute does arise. By keeping the choice of whether you want a jury until the time of a dispute (instead of waiving that right before you even know what the dispute is), you are in a better position to evaluate and decide whether a jury is optimal for that dispute. In other words, omitting a contractual jury waiver allows the parties to preserve their full range of options for future, unknown disputes.

Once you have agreed to a jury waiver, challenging its enforceability may be a losing battle. Jury waivers are generally enforceable in most jurisdictions, and courts generally hold commercial parties to their contracts. For example, the Texas Supreme Court in *In re Prudential* held that in Texas, jury waivers do not violate public policy and are generally enforceable.

The Bottom Line.

Waiving the right to a trial by jury in a contract is a significant decision that can impact the resolution of future disputes. In Texas, such waivers are generally enforceable if they meet specific legal standards—they must be clear, mutual, and made voluntarily. Before agreeing to a jury waiver, you should understand the practical effect it may have on a future dispute and evaluate whether you want to keep the full range of options available.

For further information on these developments, please contact [Emily W. Miller](#).