

# **Arkansas Supreme Court Holds Predispute Waiver of Right to Trial by Jury is Unenforceable Under Arkansas Law**

12/8/2017 [Trey Cooper](#)

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On December 7, 2017, the Arkansas Supreme Court delivered an opinion in which it held that a predispute contractual jury waiver clause is unenforceable under the Arkansas Constitution. [Tilley v. Malvern National Bank, 2017 Ark. 343](#). This is important because it is now clear that a party cannot waive its right to a trial by jury by agreeing to do so in a contract. The Arkansas Constitution states that "the right to trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law." Ark. Const. Art. 2, § 7.

Under Arkansas law, there is only one way to waive the right to trial by jury prior to a lawsuit being filed is through an agreement to arbitration. Arbitration agreements are governed by the Arkansas Arbitration Act, codified in Ark. Code Ann. §§ 16-108-201 et seq., and the only way to contractually waive the right to a trial by jury before a dispute arises is by entering into an arbitration agreement.

After a dispute has arisen and litigation is imminent, it is unlikely that both parties are going to agree to waive their right to trial by jury. The only way to avoid the time and expense associated with a jury trial is to enter into an arbitration agreement before a dispute arises because a contractual pre-dispute jury waiver clause will not be enforced. Businesses who enter into agreements with customers should strongly consider including an arbitration clause in their standard contract. For example, a property management company that includes an arbitration clause in its standard lease will likely avoid the expense and time of a jury trial if a dispute over the lease arises. A pest control company that includes an arbitration clause in its service agreement will avoid the time and expense of a jury trial when one of its customers gets disgruntled and attempts to bring a lawsuit. However, the property management company and the pest control company would be mired down in a full blown jury trial if only a jury waiver clause is included in their standard contract. Any business regularly entering into contracts with its customers would be well advised to seek the advice of an attorney regarding inclusion of an arbitration agreement in its standard contract.