

Insight

Delaware Forum Selection Clause Binds California Shareholders

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The California Supreme Court handed a major victory to Delaware corporations facing shareholder litigation in California courts but left open questions about how durable the success will be.

In *EpicentRX v. Superior Court of San Diego County*, the court held that mandatory Delaware forum selection provisions in corporate charter documents are enforceable, reversing a lower court and rejecting the argument that such provisions violate the right to a jury trial under California law.

Overall, the decision marks a significant clarification in California law, affirming that forum selection clauses pointing to Delaware's Court of Chancery don't violate California's jury trial protections.

Many corporations headquartered in California are incorporated in Delaware and include Delaware forum selection clauses in their bylaws or certificates of incorporation. These clauses aim to centralize litigation in the Delaware Court of Chancery, avoid duplicative proceedings, and promote predictability.

Because Delaware's Court of Chancery sits in equity, the Delaware Constitution doesn't establish the right to a jury trial for such cases. California, however, guarantees the right to a civil jury trial as inviolate, waivable only through specific post-filing procedures.

This divergence has led to legal challenges in California courts, where plaintiffs have argued that enforcing forum selection clauses—particularly those pointing to non-jury forums such as Delaware's—are void against public policy.

EpicentRX Dispute

In this case, a Delaware-incorporated company headquartered in sought to dismiss shareholder claims brought in California court, pointing to the company's forum selection clause. The trial court denied the motion, finding that some claims were legal, not equitable, and thus eligible for a jury trial in California.

Because the Delaware forum would effectively eliminate that opportunity, the court concluded that enforcing the clause would violate California's public policy against predispute jury trial waivers. The Court of Appeal affirmed.

The California Supreme Court unanimously reversed. It emphasized that requiring litigation in a forum that doesn't offer jury trials doesn't amount to an impermissible waiver of the jury trial right.

The court distinguished between an explicit waiver, which generally is unenforceable in California, and the procedural consequence of litigating in a forum that doesn't offer jury trials. California's public policy protects the right to a jury trial in California courts but doesn't extend that protection to proceedings in other states, it held.

The court emphasized that the relevant constitutional and statutory provisions governing jury trial waivers don't prohibit parties from agreeing to litigate elsewhere.

Reinforcing the trend of enforcing forum selection clauses, the court reiterated that such clauses are generally valid unless enforcement is unreasonable or contrary to a strong public policy.

The court also distinguished this case from others involving anti-waiver provisions protecting substantive rights under California law, such as franchise, consumer, and labor protections. They did so by rejecting the argument that losing a right to a jury trial in a foreign forum is equivalent to an unenforceable waiver.

Takeaways for Practitioners

The decision affirms the enforceability of Delaware forum selection clauses in California courts. It strengthens the position of Delaware-incorporated entities doing business in California and provides added certainty for litigants.

The court affirmed that Delaware forum selection clauses are enforceable under California law—even when they result in the loss of a jury trial right. California's constitutional jury trial right applies only in California courts and does not override a valid agreement to litigate elsewhere.

The court embraced a pro-business, pro-contractual certainty approach. It aligned with the modern trend of enforcing forum selection clause, emphasizing that honoring contractual agreements promotes predictability and efficiency. This reinforces the ability of companies to steer litigation to their chosen forums.

Public policy exceptions remain narrow and require clear statutory grounding. The court expressed a strong reluctance to expand exceptions beyond those detailed by statute.

While it acknowledged that California courts have declined to enforce forum clauses in certain contexts—such as labor, consumer protection, and franchise laws—it underscored that those are limited, non-waivable substantive rights.

Companies should assess whether a clause interferes with a statutory right. Outside of those narrow categories, forum selection clauses are generally enforced.

Open Questions

Two key issues were left unresolved. The first is whether California's strong public policy in favor of jury trials might be relevant in combination with other factors in future cases.

The second is whether the forum selection clause was unenforceable because it wasn't freely and voluntarily negotiated, having been adopted unilaterally in the company's certificate of incorporation and bylaws because the plaintiff didn't pursue it on appeal.

The outer bounds of statutory public policy exceptions also remain unclear. Although the Court explained that public policy exceptions will be narrowly construed, it did not define the outer bounds, leaving open how courts will treat forum selection clauses when they intersect with California's expansive statutory regimes.

Plaintiffs may test the limits by framing claims under broader statutes. Companies should monitor how lower courts apply this decision, particularly in cases involving California's more aggressive regulatory statutes.

Additionally, the enforceability of forum selection clauses in corporate governance documents remains unsettled. The court didn't address the enforceability of clauses adopted in bylaws or charters (rather than a negotiated contract).

That distinction could matter in future cases if shareholders argue they never meaningfully consented to the clause. Companies should be prepared for continued litigation over the enforceability of such provisions, especially in the shareholder context. Forum clauses should be clearly drafted, fairly presented, and consider any rights affected.

Looking ahead, *EpicentRX* offers clarity for companies seeking to enforce Delaware forum selection clauses in California, but leaves important questions unresolved. While the decision reflects a strong pro-business orientation, companies should not assume blanket protection.

Careful drafting and thoughtful adoption of forum selection clauses, and ongoing monitoring future California court decisions—particularly in the shareholder and statutory rights contexts—are essential to managing litigation risk.

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