

# West Virginia Supreme Court Affirms Lower Court's Ruling on Denial of Motion to Compel Arbitration

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Bailey Glasser is proud to announce an appellate victory that helps protect consumers by requiring debt collectors to prove any asserted right to compel arbitration arising from third party contracts. Representing the plaintiffs Robert Rutledge and Carol Barclay, in a case argued before the Supreme Court of Appeals of West Virginia, we are pleased that the Court has unanimously affirmed the decision of the Circuit Court of Raleigh County to deny the motion to compel arbitration by Frontline Asset Strategies, LLC.

Frontline was hired by plaintiffs' original creditors to serve as the debt collection agency seeking to recoup the debts that each plaintiff owed. The case commenced when plaintiffs filed a complaint in the circuit court claiming that Frontline's debt collection tactics violated the West Virginia Consumer Credit and Protection Act; Frontline then moved to compel arbitration, seeking to invoke the two debtors' agreements to arbitrate with their original creditors.

In the unanimous opinion, the Court ruled that a debt collector seeking to invoke a debtor's agreement to arbitrate with an original creditor "cannot enforce the original creditor's right to compel arbitration without proving assignment of that right." Furthermore, the Court refused Frontline's request to remand the case for further discovery and potentially a hearing on the issue. The Court explained that the documents Frontline sought to obtain should have been in its possession already, or at least readily obtainable. The Court therefore found it "unreasonable that two years have passed without Frontline being able to obtain such documents from its own clients," and further declined to require a trial or evidentiary hearing to determine the assignment of an arbitration provision.

Bailey Glasser Partner Patricia Kipnis represented the plaintiffs and argued the case in front of the Supreme Court of Appeals of West Virginia. Bailey Glasser Partner Jonathan Marshall also represented the plaintiffs in this case. Co-counsel included Steve Broadwater of Hamilton Burgess

## WEST VIRGINIA SUPREME COURT AFFIRMS LOWER COURT'S RULING ON DENIAL OF MOTION TO COMPEL ARBITRATION

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### **Practice Areas**

Appellate and Supreme Court Practice