

PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM

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It may sound obvious, but it wasn't the law of Louisiana until this week.

The Supreme Court of Louisiana just ruled, as we urged, that a debt collector can't enforce an arbitration award without proof that the consumer agreed to arbitration. Click [here](#) to read the decision and [here](#) for our brief to the Court. The vote was 6 to 1 and overturned the Court of Appeal's decision in the case.

Staff attorney [Leslie Bailey](#) argued [FIA v. Weaver](#) in January before the state high court in New Orleans. Leslie and her co-counsel (see below) were representing defendant William Weaver.



Mark Moreau, Steve Conley, Leslie Bailey, Bill Cherbonnier, and Garth Ridge
before the Louisiana Supreme Court in New Orleans

The debt collector in this case was seeking a sizable sum from Mr. Weaver -- over \$32,000. After FIA Card Services said that it was entitled to collect on the debt (which Mr. Weaver had allegedly incurred on an MBNA credit card), the National Arbitration Forum entered an award for FIA in the full amount sought.

As a general matter, the winning party in arbitration has up to one year to go to court and "confirm" the arbitration award. But the losing side has only 90 days to "vacate" it.

When FIA sought to confirm the arbitration award in court, it provided only a copy of the award from the NAF and undated, unsigned, barely legible MBNA credit card contracts that contained no mention of either FIA or Mr. Weaver.

The National Arbitration Forum's involvement was also problematic: in 2009, the for-profit NAF was forced to abandon the consumer arbitration business after a scandal broke out. Historically, the NAF was known to side with creditors nearly all the time. [A BusinessWeek investigation](#) found that NAF arbitration awards were often pre-printed with the amount to be awarded to the creditor already filled in.

Nonetheless, the trial court confirmed the \$32,000 against Mr. Weaver. Louisiana's First Circuit Court of Appeal affirmed, holding that if a creditor seeks confirmation of an arbitration award and the award is not vacated within 90 days, the trial court can do nothing but approve -- even if the creditor failed to show that the consumer ever agreed to arbitration.

But many courts around the country had already ruled that the 90-day limit does not matter unless there is a valid arbitration agreement. The high courts of Arkansas, Montana, Kansas and Idaho reversed NAF awards for precisely this reason.

Now Louisiana has followed suit, thanks to the superb work of Leslie Bailey, [Brayton-Thornton Attorney Melanie Hirsch](#), and their co-counsel -- Steve Conley of Covington, LA, Bill Cherbonnier of Greta, LA, and Garth Ridge of Baton Rouge, LA. Mark Moreau, on the left in the above photo, is the Legal Director of [Southeast Louisiana Legal Services](#). He filed an *amicus* brief in support of Mr. Weaver. Congratulations, all.

And thank you for helping to make this ruling happen. Public Justice would simply not be possible without your support.

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