Press Release

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COURT URGED TO BAR CLASS ACTIONS IN ARBITRATION PROCEEDINGS

***(Green Tree Financial Corp. v. Bazzle,* No. 02-634)**

The Washington Legal Foundation (WLF) yesterday urged the U.S. Supreme Court to prohibit class action procedures from being superimposed onto arbitration proceedings where the parties have not agreed to proceed in that manner.

In a brief filed in *Green Tree Financial Corp. v. Bazzle,* WLF argued that allowing arbitrations to proceed as class actions will undermine the effectiveness of arbitration as an efficient alternative to litigation. WLF argued that if the lower-court decision permitting class actions is allowed to stand, parties to a contract will be far more reluctant to enter into arbitration agreements as an alternative means of settling future disputes.

"The plaintiffs' bar for many years has been abusing the class action process in courtrooms around the country, as a means of extorting large fee awards," said WLF Chief Counsel Richard Samp after filing WLF's brief. "Now plaintiffs' lawyers are attempting to extend those abuses into the realm of arbitration; that should not be allowed to happen," Samp said.

The case involves two arbitration proceedings from South Carolina, both against Green Tree Financial Corp., a nationwide lender. One of the proceedings involves home improvement loans; the other, loans for the purchase of mobile homes. In both instances, Green Tree failed to include with the loan papers a disclosure form required in South Carolina loan transactions. South Carolina is the only state in the country that requires this particular disclosure, and the existence of that requirement was not definitively established in South Carolina courts until after these proceedings began. All three of the loans at issue here included a clause requiring that any disputes be submitted to arbitration before a neutral arbitrator chosen by the parties, rather than being resolved in court.

The recipients of a home improvement loan (Lynn and Burt Bazzle) later filed suit against Green Tree in South Carolina state court, alleging that Green Tree had failed to attach the proper disclosure form to the loan documents. Recipients of two mobile home loans (Daniel Lackey and

George and Florine Buggs) also filed suit, raising a nearly identical nondisclosure claim. The courts stayed proceedings and ordered the plaintiffs to seek arbitration, but first granted the plaintiffs' requests that the cases could proceed as class actions -- even though the arbitration clauses in the parties' contracts said nothing about class actions. The Bazzles were allowed to arbitrate on behalf of themselves and 1,898 others who received home improvement loans from Green Tree. Lackey and the Buggses were allowed to arbitrate on behalf of themselves and 1,839 others who received mobile home loans from Green Tree. A single arbitrator handled both proceedings; while recognizing that none of the plaintiffs had actually been injured by Green Tree's improper nondisclosure, he ultimately made awards of from $5,000 to $7,500 per plaintiff -- for a total of nearly $27 million. He also awarded the plaintiffs' attorneys nearly $7 million in fees. The South Carolina courts upheld the arbitration awards; in January 2003, the Supreme Court agreed to review the case.

In its brief, WLF argued that the Federal Arbitration Act prohibits the use of class-action procedures in arbitrations, unless *explicitly* agreed to by the parties. WLF argued that use of such procedures is terribly unfair to the defendant because, under well-established due process standards, absent class members cannot be bound by any arbitration judgment with which they are unhappy. Thus, a defendant in a class-wide arbitration is placed into a no-win situation: it can be ordered to pay millions to absent class members if it loses, but it gains no protection against future suits if it prevails.

WLF argued that if the arbitration awards are upheld, parties will be more reluctant to enter into arbitration agreements because they will justifiably fear that some court will later construe the agreements as consent to being subjected to class-based arbitration. WLF argued that any state policy that, as here, significantly discourages arbitration of disputes is contrary to the federal FAA's pro-arbitration policy and thus is preempted by the FAA.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a substantial portion of its resources to promoting tort reform and class action reform, and reining in excessive litigation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.