Litigation Update

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# COURT OVERTURNS USE OF CLASS ACTIONS IN ARBITRATION PROCEEDINGS

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

The U.S. Supreme Court this week overturned a South Carolina decision that superimposed class action procedures onto arbitration proceedings despite the absence of any agreement among the parties to proceed in that manner.

The Court's 7-2 decision in *Green Tree Financial Corp. v. Bazzle* was a victory for WLF, which filed a brief urging that the South Carolina decision be overturned. WLF argued that allowing arbitrations to proceed as class actions would undermine the effectiveness of arbitration as an efficient alternative to litigation. WLF argued that if the lower-court decision mandating class actions were allowed to stand, parties to a contract would be far more reluctant to enter into arbitration agreements as an alternative means of settling future disputes.

The Court agreed with WLF that it is up to the arbitrator, not the state courts, to decide whether the parties in an arbitration proceeding actually agreed that their dispute could be decided on a class-wide basis. The Court said that a court's role is limited to determining whether the parties have agreed to arbitration; once that determination is made, all further issues of contract interpretation are to be decided by the arbitrator.

The case now returns to the South Carolina courts, which will then return the case to an arbitrator. WLF expressed confidence that any fair-minded arbitrator will determine -- contrary to the determination of the South Carolina courts -- that the parties in this case did not agree to permit disputes to be determined on a class-wide basis.

"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 reviewing the Supreme Court's decision. "Now plaintiffs' lawyers are attempting to extend those abuses into the realm of arbitration; this week's decision makes it far less likely that that will 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 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; the Supreme Court's decision overturns them.

In its brief, WLF argued that if the arbitration awards were upheld, parties would be more reluctant to enter into arbitration agreements because they would justifiably fear that some court would 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 argued that the FAA requires states to stay out of the issue entirely and to allow the arbitrator to determine the parties' intent.

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.