

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
Conseco Finance Corp.,	)	Case No. 02-49675
	)	Honorable Carol A. Doyle
Debtor.	)	
	)	<b>Hearing Date: April 19, 2005 at 11:00 a.m. (Central)</b>
	)	<b>Response Date: April 4, 2005 at 4:30 p.m. (Central)</b>

**NOTICE OF OBJECTION**

**PLEASE TAKE NOTICE** that on **April 19, 2005 at 11:00 a.m., prevailing Central Time**, or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable Carol A. Doyle, or any Judge sitting in her stead, in Courtroom 742, of the Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois 60604, and present the **PLAN ADMINISTRATOR OF THE CFC ESTATE'S OBJECTION TO CLAIM NO. 49675-004353 FILED BY JAMES AND BRENDA WOODWARD ET AL.** (the "**Objection**"), a copy of which is attached hereto and hereby served upon you.

**PLEASE ALSO TAKE NOTICE** that responses to the Objection must be filed with the Court no later than **April 4, 2005 at 4:30 p.m., prevailing Central Time**, and a copy of any response served on co-counsel for the Plan Administrator of the CFC Estate, Greenberg Traurig, LLP, Attn: André Zafrani, 77 West Wacker Drive, Suite 2500, Chicago, IL 60601.

Dated: March 15, 2005  
Chicago, Illinois

THE PLAN ADMINISTRATOR  
OF THE CFC ESTATE

By:           /s/ Robert W. Lannan            
One of its Attorneys

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**THE PLAN ADMINISTRATOR OF THE CFC ESTATE'S OBJECTION  
TO CLAIM NO. 49675-004353 FILED BY JAMES AND BRENDA WOODWARD ET AL.**

The Plan Administrator, on behalf of the Post-Consummation Estate of the Finance Company Debtors (the "CFC Estate") hereby files this objection (the "Objection") to Claim No. 49675-004353 (the "Claim"), filed by James and Brenda Woodward et al. (the "Claimants"). In opposition to the Claim, the CFC Estate respectfully states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over the Amended Objection under 28 U.S.C. §§ 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding lies properly in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is § 502 of 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code").

**NATURE OF CLAIM AND HISTORY**

3. On May 23, 2003, James Woodward, as an individual, and Brenda Woodward, as an individual, filed unsecured claims against the CFC Estate in the amounts of \$32,760,000.00, respectively (the "Initial Claims").

4. These claims relate to a class action Complaint (the "Complaint") filed in the Circuit Court of Waupaca County, Wisconsin ("State Court") on April 26, 1996. The Complaint seeks damages from certain predecessors in interest of Conseco Finance Corp., including Green Tree Financial Corp., Green Tree Acceptance, Inc., and Green Tree Agency, Inc., as well as certain insurance defendants including American Bankers Insurance Group, Inc., American

Bankers Insurance Company of Florida, Foremost Corporation of America and Foremost Insurance Company for the following: 1) alleged breaches of the duties of good faith and fair dealing; 2) alleged fraudulent misrepresentation; 3) alleged negligent misrepresentation; and 4) alleged unjust enrichment.

5. The Complaint was allegedly filed on behalf of a class of plaintiffs. Although the State Court granted an ex parte “conditional” certification of a nationwide class, the State Court also determined that an evidentiary hearing would be required regarding certification. Such an evidentiary hearing has never taken place.

6. On August 11, 2004, James and Brenda Woodward, along with the other alleged class representatives, asserted a class proof of claim against the CFC Estate, numbered 49675-004353 (the “Claim”), seeking \$32,760,000.00 in damages, disallowing the Initial Claims and consolidating the amount into one Claim.

#### **THE OBJECTION AND REQUESTED RELIEF**

7. By this Objection, the CFC Estate seeks to disallow the Claim. The Claim arises out of class action litigation commenced by the Claimants in the State Court for which no hearing on, or determination of, the appropriate size or characteristics of any class has been held.

8. On July 14, 2004, the CFC Estate filed an Objection (the “Original Objection”) to the Claim based on the conditional ex parte nature of the certification and the stated intention of the State Court to hold a fully contested hearing before certifying any class for purposes of considering the merits of any class claim.

9. This Court dismissed the Original Objection and refused consideration of the class certification issues under the *Rooker-Feldman* doctrine deferring to the State Court for further proceedings regarding certification. At this juncture, the CFC Estate is preparing to challenge the Claimant’s proposed class in State Court.

10. Decertification, in whole or in part, of the conditional class, would significantly reduce the Claim against the CFC Estate. Furthermore, the CFC Estate has a good faith basis for challenging the underlying merits of the Claim.

11. Pursuant to § 502(b)(1) of the Bankruptcy Code, the CFC Estate objects to the Claim for the following reasons: 1) the Finance Company Debtors are not liable for the claims alleged because no breach of contract or fraud arises out of the facts alleged; 2) no common questions predominate; and 3) state law expressly authorizes the conduct complained of, among other reasons.

**HEARING ON THE CLAIM OBJECTION  
AND RESPONSE TO THE OBJECTION**

12. This matter will be set for hearing before the Honorable Carol A. Doyle, United States Bankruptcy Court, 219 South Dearborn, Courtroom 742, Chicago, Illinois on April 19, 2005 at 11:00 a.m., prevailing Central Time (the "Claim Hearing"). The CFC Estate does not wish to move forward with this Objection, however, until such time as the State Court has had an opportunity to rule on the class certification issues.

13. Any party wishing to oppose the relief requested in this Objection must file a written response with the Clerk of the United States Bankruptcy Court, 219 South Dearborn, Chicago, IL 60604, and serve a copy of the response upon Greenberg Traurig, LLP, Attn: André Zafrani, 77 West Wacker Drive, Suite 2500, Chicago, Illinois 60601 so as to be received on or before April 4, 2005 at 4:30 p.m., prevailing Central Time (the "Response Deadline"). Only those responses timely filed and received by counsel for the CFC Estate and the Court will be considered by the Court.

14. If no response is filed, served and received as required by the Response Deadline, the CFC Estate will request the Court to enter an order disallowing the Claim as requested in this Objection.

15. Any response should contain the following:

- (a) a caption setting forth the name of the Court, the name of the CFC Estate, the case number and the title of this Objection to which the response is directed;
- (b) the name and contact information (including daytime telephone number and facsimile) of the Claimant and a description of the basis for the amount of the Claim;
- (c) the Claim number and the Claim objection to which the response is directed;
- (d) the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection; and
- (e) and any all supporting documentation, to the extent it is not included with the proof of claim previously filed with the Clerk or Claims agent, upon which the parties will rely to support the basis for and amounts asserted in the proof of claim.

16. The CFC Estate will endeavor to consensually resolve the CFC Estate's Objection to the Claim with any party filing a timely response. If no agreement is reached, the Court will resolve the dispute.

17. Any party that files a response to the Objection should be prepared to argue that response at the Claim Hearing unless such party reaches an agreement with the CFC Estate's counsel to settle or the CFC Estate elects to continue the relevant matter prior to the Claim Hearing.

18. No party need respond to the Objection or appear at the Claim Hearing if such party does not object to the relief requested in the Objection. If a party does not timely file a response and serve a response to the Objection, the relief requested in the Objection will be granted without further notice on such party. Failure to timely file a response to the Objection

shall be deemed (i) a waiver of a party's right to respond to the Objection; and (ii) such party's consent to the relief requested herein.

### **RESERVATION**

19. The CFC Estate hereby reserves the right to object in the future to the Claim listed in this Objection on any ground, and to amend, modify and/or supplement this Objection, including, without limitation, to object to amended, surviving, transferred, re-classified and newly-filed Claims. Notice and hearing for any such objection will be separately scheduled.

### **NOTICE**

20. The CFC Estate's noticing agent and claims agent, Bankruptcy Management Corporation ("**BMC**"), will serve copies of this Objection on the U.S. Trustee, the Core Group and the 2002 List, as defined in the current Case Management Procedures. BMC will also serve a copy of the Amended Objection upon the creditor whose claim is affected by the Amended Objection. Any party may obtain a copy of the Objection by requesting the same from BMC at 888-909-0100 or by accessing the BMC website at <http://www.bmccorp.net>.

21. Based upon the foregoing, the CFC Estate submits that notice of this Objection is sufficient under Fed. R. Bankr. P. 3007 and that no other or further notice is necessary.

### **NO PRIOR REQUEST**

22. No previous request for the relief sought herein has been made to this or any other court.

### **ATTACHMENT OF PROOF OF CLAIM**

23. A copy of the Claim affected by this Objection will be provided to the Court, upon request, as required by the Court's Standing Order No. 9. Any party may obtain a copy of the Claim by requesting the same from BMC at 888-909-0100 or by accessing the BMC Website at <http://www.bmccorp.net>.

**WHEREFORE**, the CFC Estate respectfully requests that the Court enter an Order, substantially in the form attached hereto disallowing and expunging the Claim described in this Objection.

Dated: March 15, 2005

THE PLAN ADMINISTRATOR  
OF THE CFC ESTATE

By: /s/ Robert W. Lannan  
One of its Attorneys

Nancy A. Mitchell (ARDC No. 6199397)  
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**\*All responses to the Amended Objection contained herein should be served upon Greenberg Traurig, LLP, Attn: André Zafrani, 77 West Wacker Drive, Suite 2500, Chicago, Illinois 60601**