

June 27, 2005

PARTIES SETTLE COPYRIGHT CASE BEFORE DECISION BY FOURTH CIRCUIT

(Lowry's Reports Inc. v. Legg Mason, Inc.)

The parties to a major copyright infringement case recently settled the appeal several weeks after the matter was argued before the U.S. Court of Appeals for the Fourth Circuit in Richmond, Virginia, but before the court issued any decision. The terms of the settlement were not disclosed.

The Washington Legal Foundation (WLF) had filed a brief in the Fourth Circuit last July on behalf of itself and the Allied Educational Foundation seeking to overturn a massive jury award of approximately \$20 million in punitive fines against Legg Mason simply because a Legg Mason employee forwarded electronic copies of a copyrighted financial newsletter to other employees. WLF argued that the punitive fines, although within the statutory range provided by the copyright law, was nevertheless grossly excessive, and that the district court failed to conduct meaningful judicial review of the fine to comport with constitutional and procedural standards.

Legg Mason, a financial services firm, subscribed to a copyrighted financial newsletter published by Lowry's Reports, Inc. Against company policy respecting copyrighted works, a Legg Mason employee posted the periodical on a company intranet site and forwarded the *Report* to her assistant so that he could print a copy for her benefit. There apparently was no dispute that she was unaware that her actions would violate copyright law. Nonetheless, the plaintiff urged the jury to punish Legg Mason under the Copyright which permits a vast range of damages -- \$200 to \$150,000 per infringed work. Although the actual economic damages for lost subscriptions were approximately \$59,000, the jury awarded punitive fines of approximately \$20 million which the trial judge upheld without providing any careful scrutiny of the award.

Although the case was settled, WLF will continue to monitor similar cases and continue to argue that excessive punitive fines are unconstitutional. WLF's brief was filed with the *pro bono* assistance of Sean E. Andrussier, partner in Womble Carlyle Sandridge & Rice, PLLC, of Raleigh, North Carolina.

* * *

For further information, contact Paul D. Kamenar, WLF Senior Executive Counsel, at 202-588-0302.