

For Immediate Release

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U.S. COURT OF APPEALS URGED TO REVERSE PUNITIVE FINES AWARD (*Lowry's Reports Inc. v. Legg Mason, Inc.*)

The Washington Legal Foundation (WLF) filed a brief in the U.S. Court of Appeals for the Fourth Circuit seeking to overturn a massive jury award of approximately \$20 million in punitive fines levied 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, were nevertheless grossly excessive, and that the district court failed to conduct meaningful judicial review of the fines to comport with constitutional and procedural standards. If left intact, the award could set a dangerous precedent that can be used against any business that may run afoul of numerous other statutes, such as environmental laws, which provide for statutory penalties that can amount to millions of dollars regardless of how minor the violation may have been.

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 newsletter 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 Act which permits a vast range of damages -- \$200 to \$150,000 per infringed work. Although the total actual economic damages 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. Almost \$14 million of the fines were based on only \$4,900, the value of seven lost subscriptions.

In its brief, WLF argued that the district court not only refused to review the awards under the *constitutional* standard of review governing punitive awards, but the court also failed to undertake *any* review of the size of the awards to determine whether they are excessive -- even under common-law and other review standards.

WLF's brief was drafted with the *pro bono* assistance of Sean E. Andrussier of Womble Carlyle Sandridge & Rice, PLLC, in Raleigh, North Carolina.

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