Legg Mason Guilty of Willful Copyright Infringement, $20 Million Jury Verdict

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Washington, DC—Late on Friday, October 3, a jury in Baltimore, Maryland federal court, literally in the shadow of the Legg Mason tower, found that Legg Mason had willfully infringed the copyrights of Lowry's Reports, Inc., a newsletter covering stock market conditions, and awarded Lowry's just under $20 million.

Legg Mason has expressed its "shock" at the extent of the damages awarded to Lowry's by the jury and its belief that those damages are "grossly excessive." Thomas W. Kirby, lead trial counsel for Lowry's responded, "That just shows that, contrary to their claims at trial, Legg Mason still does not 'get it,' and that the jury was right that deterrence and punishment were needed."

The heart of the infringement was Legg Mason's daily posting of Lowry's newsletter on its firm intranet, known as "Legg Works," where all of its brokers had access, and systematic circulation of electronic copies within a Legg Mason group that provides marketing strategy to brokers. Since at least 1988, Legg Mason had used fax and other means to circulate the newsletter to its brokers.

Legg Mason argued that what occurred was a good faith mistake by low-level employees caught up in a technological transition. Lowry's responded that management was fully aware of the practice, the electronic infringement continued for years, and that the fault lay, not with those employees, but with corporate decisions that failed to train them in their responsibilities.

Kirby stressed that Lowry's complaint was with a particular set of Legg Mason actions: "Legg Mason is an excellent company with many wonderful employees. But in this case it lost track of its legal duties and the rights of a small business. This verdict will prompt Legg Mason to live up to its excellence and deter similar conduct elsewhere."

Lowry's Report, Inc., is a six-person business located in Florida that publishes a highly regarded U.S. stock market analysis written by its long-time owner Paul Desmond.

Lowry's sought and the jury awarded a special copyright remedy known as "statutory damages." U.S. District Judge William D. Quarles, Jr. instructed the jury that if it found that Legg Mason had knowingly or recklessly disregarded likely infringement of Lowry's copyrights, copyright law permitted it to award up to $150,000 in statutory damages for each issue of Lowry's newsletter covered by a registered copyright. The jury awarded $50,000 for each infringement that occurred before Lowry's gave notice of infringement to Legg Mason, and $100,000 for each work infringed after notice.

Statutory damages are a special copyright remedy that the owner of a promptly registered copyright may elect. The jury has broad discretion to award an amount that it deems "just," taking into account all of the circumstances and the need to deter, punish, encourage copyright enforcement, and assure that the infringer does not benefit from the infringement.

Wiley Rein & Fielding's Copyright Practice attorneys litigate, negotiate and counsel owners, technology providers, and alleged infringers in copyright and digital copy protection matters and are particularly active in computer and Internet related issues. The Group also is at the center of recent policy debates in diverse areas including the appropriate scope of liability for Internet service providers, limitations on the use of special subpoenas to identify Internet users, and approaches to content protection in consumer electronics and computer products.