
**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-04155
(consolidated with 05-05437)

Homer A. Whittington, Jr. as Trustee for the
Homer A. Whittington, Jr. Revocable Trust
Edwin Dodd
Douglas Packer
Robert G. Germany
C. Victor Welsh, III
Crymes M. Pitmann
Lucy P. Culver
Jeffrey L. Smith
Yerger Properties, LP
Lyndel B. Smith and Shirley E. Smith as Trustees
for the Smith Family Trust
Betty Sue Yandell
Y. Clifton Yandell
William M. Yandell, Jr.
William M. Yandell, III
William M. Yandell, III R/O IRA
Blue Mountain Wireless, LLC
W. M. Yandell FLP, LP
Susan Yandell McKee
Walcott and Caldwell, LLC
Richard R. Rushing
Jane T. Mills
William P. Thomas
Darden North
Terrell Williams
Wirt A. Yerger, Jr.
Claiborne P. Denning
Mary Jane Finney
David Bailey
Kim McDonald
Debra Morton
Gordon Morton
Gordon Morton, IRA
Ann Carter Thomas
Betty J. Thomas Marital Trust
Franklin E. Chatham and Marie D. Chatham
James C. Eckert
Lori Moskowitz
Bertie Heiner
James T. Thomas, IV

Martha Ross Thomas
W.P. Thomas, Sr.
Elaine A. Chatham
Henry E. Chatham, Jr.
Retirement Plan for Wise Carter, Child & Caraway
Joseph Roberts
Bill Thomas
James T. Thomas
W.P. Thomas, Jr.
William D. Frazier

Names of the Respondents
UBS Financial Services, Inc.
James T. O'Brien
Colette Fleming

Hearing Site: New Orleans, Louisiana

In the Matter of the Arbitration Between:

Name of the Claimant
American Wireless License Group, LLC

Case Number: 05-05437
(consolidated with 03-04155)

Name of the Respondent
UBS Financial Services, Inc.

Hearing Site: Jackson, Mississippi

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

For Homer A. Whittington, Jr. as Trustee for the Homer A. Whittington, Jr. Revocable Trust ("Whittington"); Edwin Dodd ("Dodd"); Douglas Packer ("Packer"); Robert G. Germany ("Germany"); C. Victor Welsh, III ("Welsh"); Crymes M. Pittman ("Pittman"); Lucy P. Culver ("Culver"); Jeffrey L. Smith ("J. Smith"); Yerger Properties, LP ("Yerger Properties"); Lyndel B. Smith and Shirley E. Smith as Trustees for the Smith Family Trust ("Smith Trust"); Betty Sue Yandell ("B. Yandell"); Y. Clifton Yandell ("Y. Yandell"); William M. Yandell, Jr. ("W. Yandell, Jr."); William M. Yandell, III ("W. Yandell, III"); William M. Yandell, III R/O IRA ("W. Yandell, IRA"); Blue Mountain Wireless, LLC ("Blue Mountain"); W. M. Yandell FLP, LP ("W. Yandell FLP"); Susan Yandell McKee ("McKee"); Walcott and Caldwell, LLC ("Walcott"); Richard R. Rushing ("Rushing"); Jane T. Mills ("Mills"); William P. Thomas ("W. Thomas"); Darden North ("North"); Terrell Williams ("Williams"); Wirt A. Yerger, Jr. ("W. Yerger"); Claiborne P. Denning ("Denning"); Mary Jane Finney ("Finney"); David Bailey ("Bailey"); Kim McDonald ("McDonald"); Debra Morton ("D. Morton"); Gordon Morton ("G. Morton"); Gordon Morton, IRA ("G. Morton IRA"); Ann Carter Thomas ("A. Thomas"); Betty J. Thomas Marital Trust ("B. Thomas Trust"); Franklin E. Chatham and Marie D. Chatham ("Chathams"); James C. Eckert ("Eckert"); Lori Moskowitz ("Moskowitz"); Bertie Heiner ("Heiner"); James T. Thomas, IV ("J. Thomas IV"); Martha Ross Thomas ("M. Thomas"); W.P. Thomas, Sr. ("W. Thomas, Sr."); Elaine A. Chatham ("E. Chatham"); Henry E. Chatham, Jr. ("H. Chatham"); Retirement Plan for Wise Carter, Child & Caraway ("Wise Carter"); Joseph Roberts ("Roberts"); Bill Thomas ("Bill Thomas"); James T. Thomas ("James

T. Thomas"); W.P. Thomas, Jr. ("W.P. Thomas, Jr."); William D. Frazier ("William D. Frazier") and American Wireless License Group, LLC ("Wireless"), hereinafter collectively referred to as "Claimants": Kirk Reasonover, Esq., Smith & Fawer, LLC, New Orleans, Louisiana; and J. Michael Rediker, Esq., Page A. Poerchske, Esq., Gilbert C. Steindorff, IV, Esq., and Meredith Jowers Lees, Esq., Haskell Slaughter Young & Rediker, LLC, Birmingham, Alabama.

For UBS Financial Services, Inc. ("UBS"), James T. O'Brien ("O'Brien") and Colette Fleming ("Fleming"), hereinafter collectively referred to as "Respondents": Daniel L. Cantor, Esq., O'Melveny & Myers, New York, New York.

CASE INFORMATION

The following pleadings were filed in Case No. **03-04155**:

Statement of Claim filed on or about: June 6, 2003.

Claimants signed the Uniform Submission Agreements: June 5, 2003.

Amended Statement of Claim filed on or about: July 18, 2003.

Statement of Answer and Motion to Stay or, in the Alternative, to Dismiss filed by Respondents on or about: September 12, 2003.

Respondents' Memorandum of Law in Support of Motion to Dismiss filed on or about: July 1, 2004.

Claimants' Opposition to Respondents' Motion to Dismiss filed on or about: July 30, 2004.

Claimants' Motion for Leave to Amend Statement of Claim with Second Amended Statement of Claim filed on or about: March 1, 2006.

Respondents' Opposition to Claimants' Motion for Leave to Amend Statement of Claim filed on or about March 10, 2006.

Respondent UBS did not submit an executed Uniform Submission Agreement.

Respondent O'Brien did not submit an executed Uniform Submission Agreement.

Respondent Fleming signed the Uniform Submission Agreement: June 5, 2003.

The following pleadings were filed in Case Number **05-05437**:

Statement of Claim filed on or about: October 24, 2005.

Claimant signed the Uniform Submission Agreement: October 18, 2005.

Statement of Answer filed by Respondent UBS on or about: January 10, 2006.

Respondent UBS did not submit an executed Uniform Submission Agreement.

CASE SUMMARY

The causes of action at issue in this arbitration relate to allegations of securities fraud arising out of the issuance of Leap Wireless International, Inc. stock. Claimants asserted the following causes of action: violations of 15 U.S.C. §77k (Section 11 Liability); 15 U.S.C. §77o (Section 15 Liability); violations of §§717(a) (2) and 791 of the Mississippi Securities Act; common law breach of fiduciary duty; and common law fraud.

Respondents deny all allegations of wrongdoing and asserted the following defenses: failure to state a claim upon which relief may be granted; untimeliness under applicable statute of limitations; ratification; waiver; laches; lack of material misstatement or omission; lack of reliance; lack of scienter; lack of causation; lack of standing; and lack of tracing.

RELIEF REQUESTED

In Case No. **03-04155**, Claimants requested: 1) an unspecified amount of compensatory damages; 2) rescission; 3) interest at the rate of 8.00% per annum from the beginning of this action to the date of judgment; 4) reasonable attorneys' fees as provided by statute; 5) an unspecified amount of punitive damages, not less than three times the amount of compensatory damages; 6) costs; and, 7) such other relief, including without limitation injunctive relief, declaratory relief and specific performance relief.

In Case No. **05-05437**, Claimant requested: 1) an unspecified amount of compensatory damages; 2) interest at the rate of 8.00% per annum from the beginning of this action to the date of judgment; 3) reasonable attorneys' fees as provided by statute; 4) an unspecified amount of punitive damages, not less than three times the amount of compensatory damages; 5) costs; and, 6) such other relief, including without limitation injunctive relief, declaratory relief and specific performance relief.

In Case No. **03-04155**, Respondents requested: 1) that the Panel dismiss the Statement of Claim, as amended in its entirety; 2) the Panel enter an award denying Claimants any and all relief; 3) the Panel award Respondents their costs and disbursements, including attorneys' fees; and, 4) such other and further relief as the Panel deemed just and proper.

In Case No. **05-05437**, Respondent UBS did not delineate a relief request.

OTHER ISSUES CONSIDERED AND DECIDED

In Case Nos. **03-04155** and **05-05437**, Respondent UBS did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

In Case No. **03-04155**, Respondent O'Brien did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code

and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about August 23, 2004, the Panel issued an order denying Respondents' Motion to Dismiss in Case No. **03-04155**.

On or about February 22, 2006, the Panel granted the parties' joint request to consolidate NASD Dispute Resolution Case No. **03-04155** with NASD Dispute Resolution Case No. **05-05437**.

On or about March 21, 2006, the Panel granted Claimants' Motion for Leave to Amend the Statement of Claim and accepted as filed the Second Amended Statement of Claim.

Claimants Bill Thomas, James T. Thomas, W.P. Thomas, Jr., and William D. Frazier were not parties to the Second Amended Statement of Claim and therefore their claims were deemed withdrawn and dismissed from this arbitration proceeding.

On or about November 17, 2006, Claimants submitted a letter indicating that the parties had resolved their issues.

On or about December 4, 2006, Respondents O'Brien and Fleming submitted a request to have their NASD CRD records expunged.

On or about December 19, 2006, the parties submitted a Joint Motion to Enter a Stipulated Award which was granted by the Panel on January 4, 2007.

An evidentiary hearing was held occurred during the week of April 3 - 7, 2006. Prior to the subsequent setting of the evidentiary hearing, the parties engaged in extensive settlement negotiations and subsequently entered into a settlement agreement with respect to the claims in the case. The parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

AWARD

After considering the pleadings, evidence and testimony presented at the evidentiary hearing, and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants have settled all claims alleged against Respondents UBS (formerly known as UBS PaineWebber Inc.), O'Brien and Fleming and request entry of the Stipulated Award. The parties have agreed that the expungement of all references to *Whittington, et al. v. UBS PaineWebber, Inc.*, NASD Case No. 03-04155 on Respondents O'Brien's and Fleming's registration records maintained by the NASD Central Registration Depository ("CRD") is appropriate.

2. The Panel, with the agreement of the parties, recommends expungement of the *Whittington, et al. v. UBS PaineWebber, Inc.*, NASD Case No. 03-04155 matter from the CRD records of Respondents O'Brien and Fleming. This matter was filed well before the effective date of NASD Rule 2130 (April 12, 2004). The Panel and parties understand that, pursuant to NASD Notices to Members 99-09 and 99-54, the NASD will not expunge this matter from the CRD records of Respondents O'Brien and Fleming until this Stipulated Award has been confirmed by a court of competent jurisdiction.
3. The parties shall bear their respective costs, including attorney's fees, that exceed the parties' existing deposits with NASD Dispute Resolution.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

FEES

Pursuant to the Code, the following fees are assessed in Case No. **03-04155**:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$250.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent UBS is a member firm and a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,200.00</u>
Total Member Fees	= \$4,450.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed in Case No. **03-4155**:

December 6 – 10, 2004 adjournment requested by Claimants	= \$ 1,000.00
September 19 – 23, 2005 adjournment requested by Claimants & Respondents	= \$ 1,000.00
<u>August 8 – 11, 2006, adjournment requested by Claimants & Respondents</u>	<u>= \$ 1,500.00</u>
Total Adjournment Fees	= \$ 3,500.00

The Panel has assessed an adjournment fee in the amount of \$1,750.00 to Claimants, jointly and severally.

The Panel has assessed an adjournment fee in the amount of \$1,750.00 to Respondents, jointly and severally.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings in Case No. **03-04155**.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary *injunction in court*. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings in Case No. **03-04155**.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with Case No. **03-04155** are:

Three (3) Decisions on discovery-related motions on the papers
with (1) one arbitrator @ \$200.00 = \$600.00

Claimants submitted two (2) discovery-related motions
May 15, 2006
June 26, 2006

Respondents submitted one (1) discovery-related motion
June 27, 2006

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 per session = \$ 1,350.00

Pre-hearing conferences: September 1, 2004 1 session
June 21, 2005 1 session
July 31, 2006 1 session

Five (5) Pre-hearing sessions with the Panel @ \$1,000.00 per session = \$ 5,000.00

February 4, 2004 1 session
February 13, 2004 1 session
April 13, 2004 1 session
August 20, 2004 1 session
March 20, 2005 1 session

Eleven (11) Hearing sessions with the Panel @ \$1,000.00 per session = \$11,000.00

Hearing Dates: April 3, 2006 2 sessions
April 4, 2006 2 sessions
April 5, 2006 3 sessions
April 6, 2006 2 sessions
April 7, 2006 2 sessions

Total Forum Fees	= \$17,950.00
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The Panel has assessed forum fees in the amount of \$8,975.00 jointly and severally to Claimants.
The Panel has assessed forum fees in the amount of \$8,975.00 jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings in Case No. **03-04155**.

Pursuant to the Code, the following fees are assessed in Case No. **05-05437**:

Filing Fees

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$250.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent UBS is a member firm and a party.

Member surcharge	= \$1,500.00
<u>Pre-hearing process fee</u>	= \$ 750.00
Total Member Fees	= \$2,250.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed in Case No. **05-05437**.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings in Case No. **05-05437**.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings in Case No. **05-05437**.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

There were no forum fees assessed during these proceedings in Case No. **05-05437**.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings in Case No. **05-05437**.

Fee Summary

In Case No. **03-04155**, Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 250.00
Adjournment Fees	= \$ 1,750.00
Forum Fees	= \$ 8,975.00
Total Fees	= \$10,975.00
Less payments	= \$10,975.00
Balance Due NASD Dispute Resolution	= \$ 0.00

In Case No. **03-04155**, Respondent UBS is solely liable for:

Member Fees	= \$ 4,450.00
Total Fees	= \$ 4,450.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

In Case No. **03-04155**, Respondents UBS, O'Brien and Fleming are jointly and severally liable for:

Adjournment Fees	= \$ 1,750.00
Forum Fees	= \$ 8,975.00
Total Fees	= \$10,725.00
Less payments	= \$10,725.00
Balance Due NASD Dispute Resolution	= \$ 0.00

In Case No. **05-05437**, Claimant Wireless is solely liable for:

Initial Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$ 250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

In Case No. **05-05437**, Respondent UBS is solely liable for:

<u>Member Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 2,250.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Mark A. Myers, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald M. Helton	-	Public Arbitrator
Robert E. Graves	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Mark A. Myers, Esq.
Public Arbitrator, Presiding Chairperson

January 12, 2007
Signature Date

/s/
Donald M. Helton
Public Arbitrator

January 12, 2007
Signature Date

/s/
Robert E. Graves
Non-Public Arbitrator

January 11, 2007
Signature Date

January 12, 2007
Date of Service (For NASD Dispute Resolution office use only)

In Case No. **05-05437**, Respondent UBS is solely liable for:

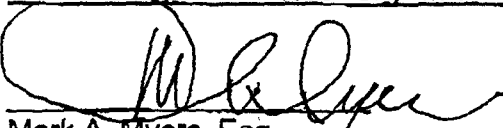
<u>Member Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 2,250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Mark A. Myers, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald M. Helton	-	Public Arbitrator
Robert E. Graves	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Mark A. Myers, Esq.
Public Arbitrator, Presiding Chairperson

1-12-07
Signature Date

Donald M. Helton
Public Arbitrator

Signature Date

Robert E. Graves
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

In Case No. **05-05437**, Respondent UBS is solely liable for:

<u>Member Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 2,250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Mark A. Myers, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald M. Helton	-	Public Arbitrator
Robert E. Graves	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mark A. Myers, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Donald M. Helton
Public Arbitrator

1/12/07

Signature Date

Robert E. Graves
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 03-04155
(Consolidated w/05-05437)
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In Case No. **05-05437**, Respondent UBS is solely liable for:

<u>Member Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 2,250.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Mark A. Myers, Esq.	-	Public Arbitrator, Presiding Chairperson
Donald M. Helton	-	Public Arbitrator
Robert E. Graves	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Mark A. Myers, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Donald M. Helton
Public Arbitrator

Signature Date



Robert E. Graves
Non-Public Arbitrator

1/11/07
Signature Date

Date of Service (For NASD Dispute Resolution office use only)