

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Eddie B. Scoggin;  
Robert A. Neilson;  
John Newman;  
Mitchell C. Massey M.D., A Professional  
Medical Corporation and Washington Parish  
Radiology, Inc. Profit Sharing Plan

90-01566 (consolidated  
with 90-00960, ~~90-00961~~  
and 90-00764)

Name of Respondent(s)

Legg Mason Wood Walker  
C. Peck Hayne

REPRESENTATION

For Claimants: Eddie B. Scoggin, Robert A. Neilson, John Newman, Mitchell C. Massey M.D., A Professional Medical Corporation and Washington Parish Radiology, Inc. Profit Sharing Plan were represented by W. L. West, Esq. of Lemle & Kelleher, New Orleans, Louisiana.

For Respondents: Legg Mason Wood Walker, Inc. and C. Peck Hayne were represented by Charles W. Lane, III, Esq. of Jones, Walker, Waechter, Poltevant, Carrere & Denegre, New Orleans, Louisiana.

CASE INFORMATION

Eddie B. Scoggin

Statement of Claim filed: June 4, 1990

Claimant's Submission Agreement signed on: June 1, 1990

Statement of Answer filed by Respondents Legg Mason Wood Walker, Inc. and C. Peck Hayne on: July 23, 1990

Respondent Legg Mason Wood Walker, Inc.'s Submission Agreement signed on: July 18, 1990 by Barbara L. Weaver

Respondent C. Peck Hayne's Submission Agreement signed on: July 18, 1990

Robert A. Neilson

Statement of Claim filed: March 14, 1990

Claimant's Submission Agreement signed on: March 8, 1990

Statement of Answer filed by Respondents Legg Mason Wood Walker, Inc. and C. Peck Hayne on: June 12, 1990  
Respondent Legg Mason Wood Walker, Inc.'s Submission Agreement signed on: June 4, 1990 by Barbara L. Weaver  
Respondent C. Peck Hayne's Submission Agreement signed on: May 22, 1990

John Newman

Statement of Claim filed: March 14, 1990  
Claimant's Submission Agreement signed on: March 12, 1990

Statement of Answer filed by Respondents Legg Mason Wood Walker, Inc. and C. Peck Hayne on: June 12, 1990  
Respondent Legg Mason Wood Walker, Inc.'s Submission Agreement signed on: June 4, 1990 by Barbara L. Weaver  
Respondent C. Peck Hayne's Submission Agreement signed on: May 22, 1990

Mitchell C. Massey M.D., A Professional Medical Corporation and Washington Parish Radiology, Inc. Profit Sharing Plan

Statement of Claim filed on: March 14, 1990  
Claimant Mitchell C. Massey M.D., A Professional Medical Corporation's Submission Agreement signed on: March 9, 1990 by Mitchell C. Massey as President.  
Claimant Washington Parish Radiology, Inc. Profit Sharing Plan's Submission Agreement signed on: March 9, 1990 by Mitchell C. Massey as Trustee.

Statement of Answer filed by Respondents Legg Mason Wood Walker, Inc. and C. Peck Hayne on: June 12, 1990  
Respondent Legg Mason Wood Walker, Inc.'s Submission Agreement signed on: June 4, 1990 by Barbara L. Weaver  
Respondent C. Peck Hayne's Submission Agreement signed on: May 22, 1990

Motion to Consolidate filed by Claimants on: June 4, 1990  
Response to Motion to Consolidate filed by Respondents on: June 26, 1990  
Motion to Consolidate granted by Director of Arbitration on: July 16, 1990

HEARING INFORMATION

Pre-Hearing Dates/Sessions: May 22, 1991 for one (1) session

Hearing Dates/Sessions: May 29, 1991 for two (2) sessions  
May 30, 1991 for two (2) sessions  
May 31, 1991 for two (2) sessions  
June 3, 1991 for two (2) sessions  
June 4, 1991 for three (3) sessions  
June 5, 1991 for one (1) session

Hearing Location: New Orleans, Louisiana

CASE SUMMARY

Claimants alleged that Respondent C. Peck Hayne ("Hayne"), while employed by or acting as an agent of Respondent Legg Mason Wood Walker, Inc. ("Legg

Mason"), engaged in the following acts:

1. Misrepresented and continued to misrepresent the profit potential and risk associated with an initial public offering in the stock of Medstone International Inc.;
2. Failed to obtain the information necessary to determine the suitability of the Claimants for the investment, thereby placing the Claimants in an investment unsuitable for their investment and financial backgrounds;
3. Failed to execute sell orders and improperly dissuaded Claimants from selling their shares;
4. Engaged in unauthorized trading; and
5. Breached the fiduciary duty owed to Claimants.

Claimants further alleged liability against Legg Mason based upon: 1) the failure to supervise Hayne; 2) Legg Mason permitted the excessive trading in the accounts without investigating the Claimants' backgrounds; 3) Legg Mason instructed and encouraged excessive selling in the stock because it was a market maker; and 4) Legg Mason prevented the liquidation of Claimants' accounts in order to manipulate stock prices.

Respondents denied the material allegations of the claims presented by the Claimants, alleging that:

1. Claimants had conducted independent research on Medstone prior to their purchases and had formed an independent judgment which led to their decision to purchase the stock;
2. Hayne furnished Claimants with all information available about Medstone, including a prospectus;
3. Hayne acted on every order given by Claimants to sell and complied with all instructions with regard to when to sell and the number of shares to sell;
4. Hayne never guaranteed an increase or profit in the price of the stock; and
5. Hayne made sufficient inquiries to determine that the Claimants had the financial resources to meet their obligations in connection with their stated investment objectives.

Respondents further alleged as affirmative defenses that: 1) Some of the claims are barred by the applicable statute of limitations; 2) Claimants have failed to state claims entitling them to relief; 3) Claimants are sophisticated investors who failed to exercise due diligence in connection with the transactions; 4) Claimants did not actually and/or reasonably rely upon the Respondents' advice; 5) By their actions, Claimants ratified the transactions and are estopped from claiming the liability of Respondents; 6) Claimants failed to mitigate damages; and 7) The claims are barred by the

doctrines of victim or comparative fault.

#### RELIEF REQUESTED

Claimants requested entry of an award against Respondents C. Peck Hayne and Legg Mason Wood Walker, Inc. in the following amounts:

1. Eddie B. Scoggin requested damages in the sum of \$148,742.93, punitive damages in the sum of \$150,000.00, the refund of commissions and fees earned by Respondents, attorneys' fees and costs;
2. Robert A. Neilson requested damages in the sum of \$182,480.51, punitive damages in the sum of \$175,000.00, the refund of all commissions and fees earned by Respondents, attorneys' fees and costs;
3. John Newman requested damages in the sum of \$1,123,900.00, punitive damages in the sum of \$1,000,000.00, the refund of all commissions and fees earned by Respondents, attorneys' fees and costs; and
4. Mitchell C. Massey M.D., A Professional Medical Corporation and Washington Parish Radiology, Inc. Profit Sharing Plan requested damages in the sum of \$282,809.39, punitive damages in the sum of \$276,000.00, refund of all commissions and fees earned by Respondents, attorneys' fees and costs.

Respondents requested that the Claims asserted by the Claimants be dismissed and denied in their entirety.

#### AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD;
2. The Statements of Claim filed by Claimants Eddie B. Scoggin, Robert A. Neilson, John Newman, Mitchell C. Massey M.D., A Professional Medical Corporation and Washington Parish Radiology, Inc. Profit Sharing Plan are dismissed and denied in their entirety;
3. Parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$550.00 hearing session deposit previously filed by the Claimant Eddie B. Scoggin. The NASD shall also retain the \$250.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by Claimant John Newman. Respondent Legg Mason Wood Walker, Inc. is liable for and shall pay to the NASD forum fees in the sum of \$6,850.00. In addition, Respondent C. Peck Hayne is liable for and shall pay to the NASD forum fees in the sum of \$6,850.00.

Fees are payable to the National Association of Securities Dealers, Inc.

BY THE ARBITRATION PANEL

DATED:

/S/ William D. Hawkland, Jr. Esq.  
William D. Hawkland, Jr., Esq.  
Chairperson  
Public Arbitrator

September 24, 1991

/S/ James H. Baskett, III  
James H. Baskett, III  
Public Arbitrator

September 25, 1991

/S/ David L. Baker  
David L. Baker  
Industry Arbitrator

October 15, 1991

Date Served: October 15, 1991