

## 'Hobbit' Heirs Seek \$220 Million for 'Rings' Rights

By Brett Pulley



July 15 (Bloomberg) -- **J.R.R. Tolkien** sold movie rights to his "Lord of the Rings" novels 40 years ago for 7.5 percent of future receipts. Three films and \$6 billion later, his heirs say they haven't seen a dime from **Time Warner Inc.**

The accounting methods used by New Line Cinema, the Time Warner unit that made the movies, will face a jury's scrutiny in October, when the heirs' lawsuit against the New York-based media company is set for trial in Los Angeles Superior Court.

The case, if not settled by then, may provide a window into accounting practices that let Time Warner deny proceeds of the Oscar-winning films to Tolkien's heirs. The litigation also threatens to derail two "The Hobbit" films that, if their predecessors are a guide, could generate \$4 billion in sales.

"Usually it's not outright thievery by the studios, but death by contract," said **Pierce O'Donnell**, the Los Angeles-based lawyer who represented the late columnist **Art Buchwald** in a successful case against **Viacom Inc.**'s Paramount Pictures in 1988. "It's an esoteric world where black doesn't mean black, and

white doesn't necessarily mean white."

Tolkien's family and a British charity they head, the Tolkien Trust, seek more than \$220 million in compensation, according to **Bonnie Eskenazi**, an attorney with Greenberg Glusker, the Los Angeles firm representing the heirs.

The Tolkiens also want the option to terminate further rights to the author's work, as the original contract lets them do in the event of a breach, according to the complaint. **News Corp.**'s HarperCollins Publishers, which holds Tolkien's publishing rights, is also a plaintiff.

#### Settlement Talks

The two sides have held settlement talks, Eskenazi said, adding they remain far apart and are proceeding to trial.

"Should this case go all the way through trial, we are confident that New Line will lose its right to release 'The Hobbit,'" Eskenazi said in an interview.

Time Warner's attorney, **Brad Brian** of Munger Tolles in Los Angeles, said in an e-mailed statement today that the contract is ambiguous.

The company is asking Judge **Ann I. Jones** to reject the heirs' claim they can revoke rights to the "Hobbit."

"The studios have historically played hardball in litigation," O'Donnell said. "Also, these are hard times and they maybe think it's cheaper to pay the lawyers than to pay a large claim. And maybe the lawyers think they have meritorious defenses."

#### New Films

Time Warner and **Metro-Goldwyn-Mayer Inc.** are collaborating on the new films. MGM holds international distribution rights through its ownership of United Artists, which struck the original deal with Tolkien and later sold production rights that ended up with New Line.

In an e-mail, **Harry Sloan**, chairman and chief executive officer of Los Angeles-based MGM, declined to comment.

Tolkien's works already have a litigation history. **Peter Jackson**, who directed all three "Rings" films, sued New Line in 2005, claiming the studio miscalculated his proceeds from the first movie. They settled for an undisclosed sum in 2007. Jackson is in pre-production in Wellington, New Zealand, for the two "Hobbit" films, which he is producing, according to **Scott Rowe**, a spokesman for Warner Bros. in Burbank, California.

Producer **Saul Zaentz**, who once owned film rights to the "Rings," also sued New Line over his share of the receipts and settled in 2005 for \$168 million, Variety reported at the time.

The three films based on Tolkien's fantasy epic -- 2001's "The Lord of the Rings: The Fellowship of the Ring"; "The Lord of the Rings: The Two Towers" in 2002; and "The Lord of the Rings: The Return of the King," released in 2003 -- have generated almost \$3 billion in worldwide box-office receipts, and another \$3 billion from DVDs, merchandise and other sources, according to Rowe.

## Share of Gross

Tolkien, a writer and professor at Oxford University who died in 1973, received \$250,000 from United Artists when he signed over the film rights in 1969, according to a copy of the original contract, which was filed as evidence in the case.

Under the contract, New Line was to pay a percentage of all gross receipts, after deducting 2.6 times the production costs, plus advertising expenses in excess of a certain amount, according to Eskenazi.

The heirs, including Tolkien's son, Christopher, 84, and his daughter, Priscilla, 80, say New Line inflated expenses and excluded revenue from its calculation, meaning the family "will never see any payment at all," according to the complaint. They also allege New Line allowed some documents to be destroyed.

## New Line's Accounting

Gross receipts typically consist of the studio's share of box-office sales and revenue from sources such as home video, TV, merchandise and music royalties, O'Donnell said.

New Line's accounting included 20 percent of home-entertainment revenue, instead of the 100 percent called for in the contract, the heirs say. The studio excluded foreign revenue, saying Warner Bros., not New Line, received those sales for distributing the films abroad, according to the complaint.

"The agreement says 'all,'" Eskenazi said. "All does not mean 20 percent. All means all."

The contract is "ambiguous" on home video, and "in any event, since home video wasn't invented" at the time, "you look to industry custom and practice to determine a reasonable royalty, and 20 percent is the industry norm," Brian, the studio attorney, said in the statement.

Brian also says the contract language specifies the Tolkiens' share of revenue from the second movie, "The Two Towers," is 2.5 percent.

## Early Draft

The Tolkiens, in their complaint, say an early draft of the contract was split into two agreements, and that the accords make clear the percentage should be 7.5 percent for all films.

The heirs also question expenses, according to Eskenazi, including an advance payment to an unnamed principal in the "Lord of the Rings" films for an unrelated project, and a \$1 million completion bond charged against gross receipts for each of the three films, even though a bond was issued only on "The Fellowship of the Ring." The studio also deducted a distribution fee for the home-video market, she said.

"My instinct tells me this is Hollywood accounting in the extreme," said O'Donnell, who wrote a book, "Fatal Subtraction: How Hollywood Really Does Business," about the Buchwald case. "If I was a betting man I'd say there's money owed."

The case is Christopher Reuel Tolkien v. New Line Cinema Corp., BC385294, Los

Angeles County Superior Court.

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*Last Updated: July 15, 2009 16:24 EDT*

