

# Disney Urges Calif. Judge to Throw Out Pooh Lawsuit

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By Howard Breuer

LOS ANGELES (Reuters) - Attorneys for the Walt Disney Co. Tuesday urged a Los Angeles judge to throw out a lawsuit over hundreds of millions of dollars in revenue from Winnie the Pooh merchandise, arguing that Disney's legal foes stole a decade's worth of confidential files.

In closing arguments in the week-long hearing, Disney attorney Daniel Petrocelli used terms like "tampering," "fraud" and "cover-up" to characterize the way that the Slesinger family, which owns the rights to Winnie the Pooh, came to possess thousands of pages of internal Disney documents.

"As we learned from Watergate, the fraud is often worse than you thought," he said in court.

Petrocelli said it was impossible that the Slesingers' private investigator had found the papers in a publicly accessible garbage dumpster near Disney's headquarters in Burbank, California, as the private eye had claimed.

"There are certain things you can't do," Petrocelli said. "You can't steal evidence. You can't alter evidence. You can't lie to cover it up. In this case, Stephen Slesinger Inc. has done all three."

But Los Angeles Superior Court Judge Charles W. McCoy Jr. noted that Disney had presented no physical evidence to disprove the Slesingers' story of how they came by the documents.

Slesinger attorney Eric Ferrer reinforced that point.

"There is no evidence that anyone went into an office," said Ferrer. "There are 5,000 pages of documents and no police reports saying anything was ever stolen."

McCoy said he will rule at a later time, after attorneys submit briefs detailing their positions.

Slesinger attorney R. Michael Collum said it was highly unlikely McCoy would throw out the lawsuit over Disney's allegations. He said McCoy also could make a narrower ruling, and order that certain documents not be used in the trial, which is scheduled for next month.

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"Mr. Sands told me that he took only a few documents," McCoy said, referring to his questioning of Sands' last week.

Later, McCoy said that he believed Sands tried to "minimize" the amount of documents he had taken.

One of Disney's contentions is that Slesinger investigators took thousands of pages of documents from Dumpsters, including some documents that were confidential.

The judge's apparent doubts about Sands' credibility appeared to strengthen Disney's contention that Slesinger investigators might have taken documents from more than one location and might even have broken into Disney offices.

Disney lead attorney Daniel Petrocelli of O'Melveny & Myers told me that to succeed he only has to raise doubt about the Slesingers' contention that their investigators took documents from one location.

On the other hand, McCoy seemed ready to cut plenty of slack for Pati Slesinger, who with her mother Shirley Lasswell manages the family's Pooh holdings.

McCoy noted that Slesinger was a "lay person" who might have easily tripped up under questioning from Disney lawyers about what she knew and when she knew it about the Dumpster diving.

Last week, Slesinger testified that she was often mystified about attorney-client privilege issues in the case and how she should respond to questions that might be covered by that privilege.

McCoy also seemed less than thrilled with Disney's arguments that taking documents from its Dumpsters was akin to breaking into the Vatican and stealing a couple of Renaissance paintings.

Among other things, McCoy observed "that trash area is more of a common area, isn't it?"

McCoy also noted that even though Disney's trash was picked up by a private trash hauler, the hauler "took it to a public landfill."

That comment caused visible distress among Disney partisans in the court's peanut gallery, one of whom twisted in his seat in disagreement.

McCoy also noted at one point in the morning that the key questions he must answer are, "Was the integrity of the court process violated and what is the remedy?"

Excellent question - and one to make me wish I could read judges' minds.

## **Disney Focuses on Trash in Winnie the Pooh Case**

At a hearing in the battle over millions of dollars in Winnie the Pooh royalties, attorneys for **Walt Disney Co.** focused on the question of whether confidential documents were stolen.

Disney's legal team alleged that an unlicensed investigator broke into Disney's offices about a decade ago and stole hundreds of pages of company papers from desks and filing cabinets as part of an effort to bolster the royalties case against Disney.

Disney's lead attorney, Daniel Petrocelli, argued that the alleged misconduct warrants the dismissal of the 13-year-old lawsuit.

If the case isn't dismissed, a trial could start in January 2005.

The hearing dealt mostly not with the substance of the documents, but rather with how they landed in the hands of Shirley Slesinger Lasswell and her daughter, Patricia Slesinger, who sued Disney in 1991.

Lawyers for the Slesingers contend that their clients searched through Disney's trash legally.

early next year.

The Slesinger family, which acquired Pooh merchandising rights from British author A.A. Milne in 1930, filed its lawsuit against Disney 13 years ago, claiming they had been shortchanged of royalties on Pooh merchandise and videos.

The family maintains that Disney had systematically destroyed documents relevant to the case, forcing them to hire private investigator Terry Sands to legally retrieve documents from Disney's garbage.

Slesinger lawyers have introduced a Disney letter from an employee named Tom Patterson who wrote in part, "There was faulty accounting, at best, on the audits we have discussed."

## LA Judge Doubtful About Disney Arguments

**AP** Associated Press

Wed Mar 3, 3:16 PM ET

LOS ANGELES - Attorneys for the Walt Disney Co. argued that a judge should dismiss a case involving licensing rights over Winnie the Pooh merchandise because confidential documents were allegedly stolen from the entertainment giant's offices and trash.

Disney attorney Daniel Petrocelli said Tuesday in arguments on a motion to throw out the multimillion dollar case that Steven Slesinger Inc., which owns Winnie the Pooh merchandising rights, stole important memos and then altered some of them to make them appear like ordinary paperwork.

"You can't steal evidence, you can't alter evidence, and you can't cover up evidence," Petrocelli said.

Superior Court Judge Charles W. McCoy did not indicate when he might rule on the request to dismiss the suit.

McCoy said Disney lacked evidence that the documents — revenue reports, contract summaries and internal memos — came from more than one location.

If he decides the case can proceed, a trial could begin in January.

SSI licensed the merchandising rights for the Winnie the Pooh characters to Disney in 1983.

SSI sued Disney in 1991, claiming the company owes millions for Pooh-related merchandise and has not paid royalties on the sale of videotapes, DVDs and computer software. Disney has claimed that those items were not covered in the agreement.

Disney said losing the case could cost it hundreds of millions of dollars.

### Walt Disney

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SSI inherited the Pooh merchandising rights from Stephen Slesinger, a New York literary agent who acquired them in 1930 from A.A. Milne, the British author who created the mischievous bear. Slesinger died in 1953, and his widow, Shirley Slesinger Lasswell, took over the rights.

Disney claims SSI hired a private investigator who obtained confidential documents by rifling through a trash bin and stealing them from desks in Disney offices over a period of years.

# After 13 Years, Judge Dismisses Case on Pooh Bear Royalties

By LAURA M. HOLSON

<http://graphics7.nytimes.com/images/dropcap/l.gif> OS ANGELES, March 29 - The Walt Disney Company <http://www.nytimes.com/redirect/marketwatch/redirect.ctx?MW=http://custom.marketwatch.com/custom/nyt-com/html-companyprofile.asp& symb=DIS> prevailed on Monday in a 13-year legal dispute over royalties related to its Winnie the Pooh franchise when a judge dismissed the case, contending the plaintiff altered confidential memorandums and covered up the theft of documents obtained by a private investigator who sifted through the company's trash.

Judge Charles W. McCoy of Los Angeles Superior Court wrote in his decision that the misconduct of the Slesinger family, which sued Disney in 1991 after contending the company cheated it out of royalty fees, was "so egregious that no remedy short of terminating sanctions" would adequately protect Disney and the justice system from further abuse.

Disney bought the rights to merchandise Pooh, Eeyore and other characters in 1961 from Shirley Slesinger Lasswell, the wife of Stephen Slesinger, a New York literary agent, who acquired the rights in the 1930's from their creator, A. A. Milne. Pooh merchandise is one of Disney's biggest revenue

generators, bringing in as much as \$1 billion a year, making it more lucrative than even Mickey Mouse in recent years.

The Slesinger family said it intended to appeal the judge's decision, the result of hearings held a month ago. The point of contention over the years has been that the family had not been paid royalty fees for Pooh videocassettes, games and DVD's. Such a provision was not written into the contract with Disney, but lawyers for the family contended they were promised the fees anyway.

"The decision unfortunately sends a strong message to corporate America that it is O.K. for companies like Disney to steal and renege on its contractual promises," the family said in a statement. "This is just one round in a very long and complicated relationship and another delay of justice."

The two sides have been locked in a bitter and often contentious fight which, if Disney had lost, could have cost the company hundreds of millions of dollars. Over the years, the Slesinger family has been represented by nearly a dozen lawyers - three in the last year alone - including Bertram Fields, the well-known entertainment lawyer who has made a career out of representing Disney's opponents. He abruptly resigned last summer without explanation. Most recently, the Slesingers were represented by Johnnie Cochran.

"After 13 years in the courts, the Winnie the Pooh case is over once and for all," said Dan Petrocelli, Disney's lawyer on the case. While the judge did not rule on the merits of the case, his 28-page decision described a yearslong effort to undermine Disney by the Slesinger family, their representatives and a private investigator that read more like a Three Stooges parody than a James Bond movie script.

Lawyers for Stephen Slesinger Inc., the formal plaintiff, had maintained that only trash bins accessible to the public at Disney's Buena Vista Plaza had been searched by a private investigator, Terry Sands, in the 1990's and that the searches were legal. But the judge wrote that Mr. Sands confused his activities at various Disney sites after it was revealed that the bags he would have seen at the plaza were dark plastic, not clear plastic as Mr. Sands described.

The judge questioned Mr. Sands's testimony that he never took Disney documents from a private disposal site in Canoga Park in the Los Angeles region, where internal documents were destroyed. "Mr. Sands does not impress the court as a person who considers himself constrained by trespass laws," the judge wrote.

According to the decision, Mr. Sands had testified that he said he sometimes took Dale Holman Jr. with him on trips to the dumpsters. Mr. Holman, who was then a youth, testified later that he possibly went to the Canoga Park site, which Mr. Sands entered through a hole in the fence. It was his job to stay in the car and honk the horn or flash the headlights if someone was coming, the decision said.

Mr. Holman Jr. is the son of Dale Holman Sr. who, in previous court filings and also in the decision, testified that he assisted Mr. Sands in his trash bin searches. Mr. Holman Sr. has said he tipped off Disney security personnel to the searches because he was mad at Mr. Sands, although he could not

the removed markings. But in the decision, Judge McCoy wrote, "Her demeanor on the witness stand when making those denials, coupled with evidence linking her directly to the documents convinces the court that Ms. Slesinger's denials were false."

Over the last two years, Disney royalty payments to the Slesinger family have averaged \$11 million a year, according to Disney. It said it has paid royalty fees of \$83 million to the family since October 1982.