

HBO Counters Michael Jackson Estate's \$100 Million 'Leaving Neverland' Suit

By **GENE MADDAUS**



HBO has accused the [Michael Jackson estate](#) of trying to use an expired, 26-year-old contract to try to stifle allegations that the singer committed child sexual abuse.

The Jackson estate filed a \$100 million suit against HBO in February, shortly before the network aired "Leaving Neverland." The four-hour documentary chronicles the lives of James Safechuck and Wade Robson, who each allege that they were abused by Jackson when they were young boys.

HBO is immune from a defamation claim because Jackson is dead. Instead, the estate accused HBO of violating a non-disparagement clause contained in a 1992 contract for a concert film from the "Dangerous" tour. The clause bars HBO from making "disparaging remarks" about Jackson or doing anything that "may harm or disparage or cause to lower in esteem" Jackson's image and reputation. The estate is seeking to compel a public arbitration of the issue.

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In a motion opposing arbitration filed on Thursday, HBO's lawyers Daniel Petrocelli and Theodore Boutros argue that the contract expired once both sides fulfilled their obligations. HBO has not aired the film of the Bucharest concert since October 1992. HBO also contends that the estate's interpretation of the clause as conferring perpetual immunity from disparagement — even beyond the grave — is excessively broad.

"The vague and overbroad interpretation of the non-disparagement sentence that Petitioners urge this Court to adopt would, if accepted, violate HBO's First Amendment right to distribute expressive content on an issue of public concern," HBO's lawyers argue.

Applying such an interpretation in this case, they argue, would also "run afoul of the public policy embodied in numerous California statutes to protect children from sexual abuse."

In addition, they contend that such an "unprecedented" interpretation of a standard contractual provision "would legitimize the creation of a special category of wealthy, powerful, or famous individuals who could — through a lifetime of contracts with news or media companies — preserve for themselves via contract posthumous control over how they are portrayed and described in a way that ordinary citizens cannot."

Bryan Freedman, an attorney for the estate, said in response that HBO is "afraid to have this matter adjudicated because it will expose the falsity of the documentary."

"The Jackson Estate wants an arbitration open to the public for all to see," Freedman continued. "If HBO thinks the contract does not apply or is expired then why are they opposing adjudicating it? The reason why is because they know they were complicit in this one-sided farce of a money grab that clearly violates the agreement. Now they are trying to delay the inevitable beating that they will suffer when this matter is adjudicated. It won't work. Stay tuned because at least we are offering them a chance to tell their side of the story unlike they did in the creation of the one-sided fiction intended to disparage [Michael Jackson](#). Let this be a warning to all talent that HBO will disregard the truth and distribute fictitious one-sided content in violation of the artists' rights it promised to protect. Make no mistake, HBO will be held responsible for its reprehensible conduct."



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