

9/20/2019 by Claudia Rosenbaum



Courtesy of HBO

Michael Jackson and Wade Robson

A federal judge in Los Angeles ruled on Friday (Sept. 20) that HBO must participate in arbitration with the Estate of [Michael Jackson](#) over the Emmy-winning *Leaving Neverland* documentary. U.S. District Court Judge George H. Wu granted the request by Michael Jackson's estate requiring HBO be bound by a 1992 arbitration agreement rather than allowing the lawsuit to continue in the federal court system. While arbitration proceedings are usually private, Jackson's attorneys have made the unusual request of wanting to hold public arbitration.

The lawsuit filed March 3 by Michael Jackson's estate against HBO over *Leaving Neverland* has taken some unusual turns and might actually end up before the Supreme Court, according to U.S. District Court Judge **George H. Wu**, who is currently overseeing the case. Jackson's estate argues the documentary violated a 1992 contract agreement that HBO signed to televise Jackson's Dangerous World Tour concert in Bucharest, Romania.

The 1992 agreement stated that "HBO shall not make any disparaging remarks concerning [Michael Jackson] ... or do any act that may harm or disparage or cause to lower in esteem the reputation of [Jackson.]" In addition, the agreement contained a clause that all disputes regarding this agreement would be handled in arbitration.

Once Jackson's estate learned of the HBO documentary *Leaving Neverland* it reminded HBO about this 27-year-old agreement. HBO ignored Jackson's estate's request. Jackson's estate subsequently filed a \$100 million dollar lawsuit against HBO in state court after the documentary aired, claiming the documentary harmed the legacy of Michael Jackson. HBO later had the case moved from state to federal court, refusing to agree to arbitration, according to court papers. HBO subsequently filed an anti-SLAPP motion alleging the Jackson estate was trying to silence constitutional rights of free speech by attempting to compel them to arbitration.

During oral arguments on Thursday, HBO attorney **Theodore Boutsros** argued the Jackson estate's filing "screams strategic lawsuit" and that it was done to "chill speech" on allegations of child abuse. Meanwhile, Wu said the law was unsettled regarding whether HBO's anti-SLAPP motion could be applied against a request to compel arbitration, calling the case "messy" and "unique." He said regardless of his decision, the losing side would appeal and the issue will ultimately be decided by a higher court, possibly even the Supreme Court.

"No matter who wins or loses it's going to be taken up on appeal," he said. "It doesn't matter what I do."

After Thursday's hearing Jackson estate attorneys said they were already confident the judge would issue a ruling in their favor.

"HBO has tried everything possible to avoid having a trier of fact adjudicate their wrongdoing," said Jackson estate attorney **Bryan J. Freedman** of Freedman & Taitelman, LLP, in a statement after the hearing. "If HBO believes its actions were proper then there is no reason for them to try and hide behind procedural technicalities to avoid an arbitration or a trial. Whether in an arbitration, federal court, state court or the court of appeal, the Estate of Michael Jackson will force HBO to be held accountable for its wrongful conduct. The Estate will never stop until justice has been obtained."

John Branca, co-executor of Jackson's estate, said, "I've never seen a media organization work so hard to keep a secret.... We are just trying to get all the facts out there."

HBO responded in a statement: "While we are disappointed that the federal court concluded it could not consider the merits of our anti-SLAPP motion, we look forward to continuing to defend HBO's right to exhibit this important, Emmy award-winning documentary."

UPDATE: This article was updated Sept. 23 to include HBO's statement.

