

For the Worst
Transnational
Corporation
Operating in
Aotearoa/New
Zealand in
2010

Roger Award 2010

Organised by

CAFCA

Campaign Against Foreign Control
Of Aotearoa

Winner
Warner Brothers

Runner Up
BUPA

Third Place
Imperial Tobacco

Accomplice
John Key (& his Government)

Special Quisling
Peter Jackson

Judges
Christine Dann
Sue Bradford
Joce Jesson
Wayne Hope
Paul Corliss

Roger Award 2010

Chief Judge's Statement

More Destructive Than An Earthquake Transnational Companies In New Zealand

It disrupts lives, causes loss of jobs and income, tears families apart, compromises essential services, destroys heritage buildings, and lays waste to millions and millions of dollars worth of public assets. An earthquake? No – **Telecom** – New Zealand's pre-eminent foreign-owned company. It just does it more slowly than an earthquake.

The way in which companies that care primarily about returning handsome dividends to foreign shareholders (and rewarding senior management with obscenely large salaries and bonuses) are damaging the fabric of New Zealand society as surely as an earthquake was brought home to me after the first big earthquake which Canterbury suffered, in September 2010.

My neighbours were overseas at the time, and when they returned over a month later they found that their telephone wasn't working. Three days later than they wanted and needed him, a technician arrived. He was a pleasant chap named Johnny, who was working for an Ashburton-based company which sub-contracts to Telecom. Johnny is originally from Auckland, and Johnny's family (a wife and four children) are still in Auckland. Johnny couldn't afford to move them south, just as he couldn't afford to become an independent contractor to Telecom when the company pushed its technical employees in northern New Zealand off its payroll in 2009, forcing many of them (like Johnny) to seek work elsewhere.

So a home has been split up and four children are growing up without their dad around – but you may be sure that if there are any social costs arising from these unfortunate circumstances it will not be Telecom which pays for them. It would rather pay its CEO an annual salary that would support 100 families for a year, if its technicians were employed directly and paid what their skills and efforts are worth.

Telecom has always been a finalist in the Roger Award, and it has won it three times, as it exemplifies all the worst characteristics of a foreign-owned company operating in New Zealand, consistently scoring Brownlee points (the opposite of Brownie points) for undue influence over Government (preventing regulation, loop unbundling and true competition), profit gouging, and poor treatment of workers and customers. True to form it was once again a finalist for the 2010 Award, mainly due to its egregious overcharging and short-servicing of hundreds of thousands of customers of its broadband and mobile services during 2010.

However Telecom always has stiff competition, and so it proved in 2010, when its fellow finalists were **BUPA (British United Provident Association)**, which runs rest homes in New Zealand, **Imperial Tobacco**, **Vodafone**, **Warner Bros** and **Westpac**. **Vodafone** was nominated because like Telecom it treats its employees and customers badly, refusing to increase wages (for years) despite big increases in revenue in the same period, plus dodging responsibility for providing decent jobs at decent wages by sub-contracting out core services. It also was caught out misleading customers about the quantity and quality of the services it provides, and (like Telecom) charging unreasonably high mobile phone call termination fees.

Westpac was nominated for continuing to exhibit the bad behaviour which made it an unplaced finalist in the 2009 Roger Award and co-winner of the 2005 Award (along with another big Australian-owned bank, BNZ). This included milking its customers and squeezing its frontline staff, expecting them to bear the bank's losses without giving them an equal share in the profits.

Since telecommunications and banking are essential services in modern societies, it is distressing to see them run so badly, with so little regard for the real needs of New Zealand workers to have decent remuneration for providing these services, and for New Zealand customers to have reliable services at an economical price.

Defending The Right To Kill You – Imperial Tobacco

Tobacco products, by contrast, are not only not essential, they are detrimental to health. Thus it is debatable whether tobacco companies should exist at all, given the harm that tobacco causes. Nevertheless, tobacco sales are legal in New Zealand, and tobacco companies are known to put some of the profits they reap from selling this dangerous drug towards influencing politicians to keep it legal, and not restrict selling it or advertising it. They do this directly, via lobbying and schmoozing politicians, and they also use indirect methods, including the infamous “third party technique”.

Imperial Tobacco NZ is New Zealand's sole manufacturer of tobacco products, for local consumption and export. The company is UK owned, with its corporate headquarters in Bristol, and it claims to be the fourth largest tobacco company in the world. It has only one factory in Australasia and the South Pacific, located in Petone, which it acquired in 1999. Its products are sold in over 160 countries worldwide and it operates 51 manufacturing sites across the globe. At the time of purchase the cigarette brands it acquired had 17.6% of New Zealand market share. It has pursued an aggressive strategy to increase that share since then, including cultivating relationships with retailers (especially smaller ones in smaller communities where promotions and displays have a bigger impact) and has increased it by around 1%.

On its company Website Imperial Tobacco says about New Zealand “The mature markets of Australia and New Zealand are among the most regulated in the world, although we continue to demonstrate our ability to successfully operate in these challenging environments”.

Part of Imperial Tobacco's strategy for operating successfully when challenged by regulations designed to protect public health is to employ a PR firm to engage in one of the dirtiest tactics in the corporate PR armoury, the so-called “third party technique”, which involves creating a fake citizens organisation to lobby for its product. Imperial Tobacco did this in New Zealand by employing New Zealand's premier “dirty cause” whitewasher and PR hack Glenn Inwood of Omeka Public Relations (infamous for fronting the Japanese whaling industry's spurious Institute for Cetacean Research, the only “research” facility in the world which involves killing endangered wild animals and selling their meat).

In May 2010 it was revealed that the Association of Community Retailers (ACR, which supposedly represents the interests of small retailers of tobacco products, and was protesting the Government raising their price) had been set up in April 2010 with the help of Glenn Inwood. Inwood was also involved with the ACR's predecessor, the Stay Displays Coalition, which was set up to counter regulations designed to reduce tobacco product displays and point-of-sale advertising. ACR representatives and Inwood both publicly denied connections with, and funding by, the tobacco industry, but their cover was blown by Imperial Tobacco's own NZ sales and marketing director Tony Meirs, when he admitted to the Maori Affairs Select Committee inquiry into smoking that the company had “...provided PR resource through Omeka Public Relations company to help small retailers develop the voice that they need to protect their business from unnecessary regulation.” (Verbatim quote from select committee session, from <http://mediadarlings.net/2010/05/21/breaking-the-habit-imperial-tobacco-comes-clean-kind-of/>).

When asked directly by an MP what the value of that PR resource was, Meirs replied that he didn't know. It may have been substantial. Three months later, in August 2010, the Alliance of Australian Retailers was set up by the Melbourne PR firm The Civic Group to fight the planned introduction of plain cigarette packaging in Australia. It received over \$A5 million (NZ\$6.3 million) from the three largest tobacco companies. \$A1,080,860 funding came from Imperial Tobacco Australia, \$A2,200,000 from British American Tobacco, and \$A2,161,720 from Philip Morris. Philip Morris was also paying The Civic Group a \$A200,000 a month retainer to help manage the alliance (<http://www.odt.co.nz/news/national/125852/leaks-reveal-over-6m->

spent-tobacco-front-group).

Although Imperial Tobacco is a foreign-owned company that New Zealand already has no need of, because its products are bad for health, the main reason why Imperial Tobacco is richly deserving of **third placing** in the 2010 Roger Award is its use of this despicable, deceitful tactic for influencing public opinion and public policy. It is a tactic which was first developed and refined by American PR firms working for large corporations, who gave it the third party technique name. The Center for Media and Democracy's SourceWatch Website says that the tobacco industry is notorious for using front groups to create confusion about the health risks associated with smoking. More recently it has moved to creating front groups to defend the "rights" of tobacco consumers and retailers (see http://www.sourcewatch.org/index.php?title=Front_groups and also <http://www.no-smoke.org/getthefacts.php?id=62>).

Front groups are used wherever corporations know that if the message came directly from them (climate change is not happening! animal fat is good for you! fuel-efficient cars are dangerous! Genetically engineered foods have all been thoroughly tested and are completely safe! coal is a clean fuel! McDonald's workers are well-paid! acid rain is not a problem! battery farms raise healthy, happy animals!) few people would believe it.

No one is likely to believe Imperial Tobacco if it says that tobacco is harmless, and that restricting its sale, display and advertising is an insupportable infringement of consumer and retailer rights. Don't believe it when anyone else says it either, especially if you don't know who is paying them to say it.

Couldn't Care Less – BUPA

As a transnational company with plants and customers around the world Imperial Tobacco's strategic acquisition criteria (which are to increase geographic footprint, add brand equity, and reduce costs and extract synergies) are probably very similar to those of BUPA, **the runner up** in the 2010 Roger Award. Indeed, the Overseas Investment Office said of BUPA, when considering its successful 2007 bid to acquire all the rest homes and hospitals and the personal alarm business of the NZ owned Guardian Healthcare Group: "The BUPA Group has a clear strategy of pursuing growth both in the United Kingdom and international markets particularly in the Australian and New Zealand markets where the BUPA group has identified opportunities for an experienced operator and provider of aged care businesses to make acquisitions and apply its international experience in the provision of aged care services. The acquisition will geographically diversify the BUPA Group's international operations and provide a platform to further expand its aged care and retirement village portfolio".

BUPA now owns 44 rest homes and hospitals and 16 retirement villages in New Zealand, making it the largest private owner of aged care facilities. 88% of New Zealand's for-profit aged care facilities are now foreign-owned, while 68% of all facilities are controlled by for-profit operators. While BUPA is *technically* a not-for-profit business since it is a provident fund (meaning that it does not have shareholders, and that its surplus income is supposed to be reinvested for the benefit of its customers) this is not a relevant distinction when it comes to its provision of care services in New Zealand. This is because its customers are not the residents of its rest homes, even when they pay fees for their care directly, but rather those who buy individual or company health care insurance with BUPA. BUPA's British customers seem to be very satisfied with it, as BUPA was the only health insurance company to rate highly in a recent Institute of Customer Service survey of large UK companies. BUPA also remunerates its British and foreign management staff generously, and directs some of its surplus income to the BUPA medical research foundation.

In its "Preliminary Results Announcement for the year ended 31 December 2010", BUPA reported a 9% annual growth in total revenues (up to £7.58 billion), of which 4% came from expansion of its businesses, and 5% from favourable exchange rate transactions (more money for free for a transnational company). It also noted the differences in profitability of its UK and Australasian care services, and the reasons for this, saying of its BUPA Care Homes UK operation that: "Revenues grew and surplus was maintained despite

public ... funding restrictions, with the local authority fee increase across England from 1 April 2010 just 0.5%" (p. 10).

Overall BUPA said that its Care Services division performed well, despite increasing pressure on public sector budgets in the UK, which was having an impact on aged care fees and referrals. In Australia and New Zealand however, the division benefited from "more benign economic conditions". BUPA is engaged in political lobbying in the UK to try and prevent more cuts in public funding of its facilities. Its preliminary statement for 2010 also says that in response to the reduction in public spending on aged care it is "actively controlling costs".

It appears to be doing this already in New Zealand, despite the "more benign" economic environment. The Roger Award judges thought that BUPA deserved to be the **second place getter** primarily because of its poor treatment of both its staff and its clients. Admittedly, the NZ government has so far done nothing to promulgate and enforce regulations to require that rest homes are staffed by an appropriate number of properly qualified and paid staff, who give a reasonable amount of care (in quantity and quality) to their clients. The staffing guidelines that currently exist provide for extremely low ratios of qualified nursing staff to clients, and extremely small amounts of contact time between clients and caregivers – much lower than international best practice standards. In any case, these guidelines are purely voluntary.

Staff are generally poorly paid, and frequently overworked, due to short-staffing in their facility. The number and percentage of staff who are foreign nationals who are working in NZ rest homes, and for whom English is a second language, is not known, but we now know that three of these already vulnerable women (two Filipinas and one Thai) who were working for three different BUPA-owned homes, were sadly killed in the February 22nd Christchurch earthquake while they were attending English language classes in the CTV Building, which collapsed on top of them (<http://www.bupa.co.nz/Care-Homes-News.aspx> – accessed 15/3/11). Competent New Zealand registered nurses are often reluctant to work in aged care, largely because they know they will be expected to do impossible amounts of work, and still not be able to provide adequate care, which may leave them open to charges of professional negligence.

In these staffing circumstances, is it any wonder that the quality of client care is extremely variable, and that there are now many well-documented cases of elderly New Zealanders receiving poor care, or being so badly neglected or mistreated that they end up in a public hospital requiring acute care – where some of them die. One of these people was a resident in a BUPA rest home in Tauranga. For several months she suffered considerably from misdiagnosed and untreated scabies. This led to other complications which eventually killed her. BUPA management averred that it was meeting the industry standards of care for its client – which, as we have already seen are too low. It may well have been meeting those inadequate standards, but that is irrelevant if the actual care it delivered was insufficient to maintain the health and life of its client, caused her to suffer unduly, and ultimately caused her death.

This would be bad enough if New Zealand were as poor as Haiti or Zaire, and unable to fund high standards of care for the elderly. But it is not, and therefore it is a public scandal that taxpayer's money, paid out as subsidies for care, is being used to increase the profits of foreign-owned companies rather than provide proper care for New Zealanders. BUPA should be ashamed of itself, but it is only doing what all profit-seeking companies will do if governments let them, which is to put profits before people. It is long past time that the aged care sector in New Zealand had a thorough overhaul, along the lines recommended by the report into aged care in New Zealand produced in 2010 by the Green and Labour Parties, in association with Grey Power. If at the end of that process companies like BUPA no longer find that the economic conditions in New Zealand are "more benign", so much the better for the health and wellbeing of elderly Kiwis.

The Saurons Of Cinema

Imperial Tobacco and BUPA are unlovely companies in their own ways, but neither of them, unlike the winner of the 2010 Roger Award, has so far been able to wield such a ring of power over the New Zealand government that it has had legislation rewritten in its favour. **Therefore, the Roger Award for the worst**

transnational company operating in New Zealand in 2010 goes to - the Saurons of cinema – Warner Bros!

Warner Bros has not been nominated for a Roger Award before, and it was a late and dramatic entry into the contest. In the 13 year history of the Award this is only the third time that a media conglomerate has been a finalist, and the second time that one has been placed. INL was equal runner-up in the very first Roger Award in 1997 (in 2003 INL sold its papers to Fairfax). In 2007 the Australian news and media corporation APN News and Media was a finalist. This was principally for its treatment of its New Zealand workforce by contracting out sub-editing on the country's biggest paper, the *New Zealand Herald*, leading to a 20% loss in salary for those transferred.

But this violation of labour rights and standards pales in comparison to that of the American TimeWarner Corporation's subsidiary Warner Bros, which threw its considerable financial (in 2009, Warner Bros. became the first studio in history to gross more than \$US2 billion domestically in a single year http://en.wikipedia.org/wiki/Warner_Bros) and political muscle around Wellington at the end of 2010, and succeeded in getting New Zealand law changed to ensure that New Zealanders working on its movies in New Zealand are not entitled to the status and protection of employees accorded to other New Zealand workers. This is “contracting out” on an unprecedented scale – not only of labour rights but also of democracy, sovereignty and corporate responsibility.

Warner Bros thus significantly outscored all the other finalists for 2010 in **interference in New Zealand politics and governance**. No other foreign corporation has been given such a red carpet treatment when it came to interfere in the way we do things here, to our detriment. As one Award judge expressed it:

“The entire spectacle of the negotiations between Warner Brothers’ executives and Government leaders was akin to a 19th Century Royal Visit (minus the automobiles). The emergency ‘Hobbit’ legislation fundamentally impugned New Zealand’s political sovereignty. Exclusive arrangements (resulting in legislation) between transnational corporate elites and the executive State were seen to circumvent representative institutions and the national public sphere. Furthermore, such interference in New Zealand politics sets a precedent for all future negotiations between the New Zealand government and transnational corporations”.

Another judge said:

“‘The Hobbit’ affair was an extraordinary example of transnational capital interfering in local politics, and overtly influencing the actions of the NZ government (which richly deserves its Accomplice Award). It was an overt display of bullying that humiliated every New Zealander, and deliberately set out to do that”.

On the judging criterion of **treatment of employees and contractors** Warner Bros also scored highly. Although not as exploitative in day to day employment matters as BUPA, being able to change the law to disadvantage New Zealand workers in their own country is surely a spectacular achievement, in the grand tradition of American anti-workers' rights legislation.

One judge ranked Warner Bros' treatment of workers and contractors high in terms of rhetorical intimidation, even though the number of New Zealand workers affected was small compared to other Roger Award finalists. He was also concerned that the emergency industrial relations legislation passed at the behest of Warners has the potential to be applied retroactively against other groups of workers, and that it is now legally problematic as to whether someone can claim the right to be an employee rather than a contractor (even if the nature of the employment conditions in question suggest this).

Similarly, although Warner Bros does not have overall *economic dominance and influence* on the NZ economy of the sort which the persistent finalist Telecom exercises, in cutting its costs on “The Hobbit” production by getting the right to employ only contractors, and by getting much better subsidies for its production than any other film company before (or, very likely, ever) it has pulled off a substantial financial coup against our country.

Journalist Gordon Campbell points out that despite John Key saying that New Zealand could not afford to match the 20% tax rebates on domestic spending that France and Hungary offer to foreign film companies, in effect he did exactly that. Even worse, this rebate is for Warner Bros exclusively, so the company has been doubly privileged at the expense of the NZ taxpayer. New Zealand film companies which get no such breaks are left to choke in Warner Bros' dust.

The \$100 million tax break and publicity subsidy going to Warner Bros represents around \$25 for every man, woman and child in New Zealand. Isn't it amazing that the Key government thinks that this little country can and should afford to pay these subsidies to a giant foreign corporation - whose market capitalisation is the same as that of 90% of the domestic companies listed on the NZ Stock Exchange, added together? And isn't it even more amazing that this very same Government baulks at the idea of adding an earthquake rebuilding levy to the taxes of those earning above the median wage (as proposed by the Green Party) but prefers to put the country even further into debt by borrowing more overseas to make up the shortfall between what is in the Earthquake Commission's coffers and the actual cost of the rebuild? Wow, who voted for these financial geniuses?!

The hype put about by the Government when it cravenly caved into Warner Bros' demands for exclusive and handsome subsidies was that they are worth it because they mean that jobs will be created in New Zealand. Oh, really? The Council of Trade Unions' *Economic Bulletin* (October 2010) draws attention to BERL's analysis of getting value for investment, which shows that a mere \$8.5 million (one quarter of the subsidies going to Warner Bros) invested in improving KiwiRail's workshops, laying the basis for further expansion of its business, would create 1,270 full-time equivalent jobs over 45 months – a much better ratio of employment to investment than the 800 fulltime equivalent jobs over four years that the three “Lord of the Rings” movies returned.

The winners of the Roger Award are frequently companies which treat their customers and clients spectacularly badly, preferring to pay out handsome dividends from their obscene profits to their foreign shareholders and owners rather than invest in improvements in service in New Zealand. Telecom, the Australian-owned banks and TranzRail are all good examples of this sort of company – and they are, or were, bad employers to boot. Warner Bros does not seem to fit this category, since it is an entertainment company, which presumably aims to please its customers with movies they want to see. Certainly “The Hobbit” movies will be as least as “pleasing” as “LOTR”, if you like crap goblin movies - and it seems that a lot of people do. So no customer exploitation there – is there?

Think about this before you put down your money for a “Hobbit” movie at the box office. In order to be able to subsidise this movie from your taxes the Government has to collect those taxes. Could that be why it raised GST to 15% in 2010? That way, you would only have to see ten movies at the new regular admission price to pay your share of the Warner Bros subsidy. Neat, eh? Too bad there are now two movies you can't afford to see after paying all that extra GST. And double extra too bad if any of those movies were made by New Zealand film companies, which aren't being given such generous handouts. Companies which would have made their movies using New Zealand actors and other workers, and kept the wages they paid and the profits they made in New Zealand.

Now when you get inside the cinema to watch the next goblin flick in the Jackson production line, and you behold the animated model of the dragon Smaug guarding his mound of gold and jewels (made by a skilled contractor with no rights to annual leave, sick leave and other minimum conditions, let alone collective bargaining) - whose face will you see?

Accomplice Award: John Key And His Government

As well as the award for the worst transnational company there is also an award for the New Zealand accomplice who did most to facilitate bad behaviour by a transnational company in New Zealand in the award year. In 2010 the judges agreed that this was definitely the Prime Minister and the National-Act-Maori Party government, with their sycophantic grovelling to Warner Bros, and their bending over

backwards to facilitate their exploitation of New Zealand workers and taxpayers. It has apparently given rise to a whole new men's fashion garment trend in Hollywood – Warners of Wellington trousers. They have an arrow printed on the seat, and the words “Kiss here”.

Yet although the Government certainly did the dirty deeds, putting Warner Bros interests ahead of those of New Zealanders, they had a lot of help from a Kiwi who was quite prepared to betray the interests of his compatriots to facilitate his own interests, and those of his American masters. Therefore I propose the

Special Quisling Award For 2010: Peter Jackson

For those who are too young to remember World War Two and the coinage of the word quisling by *The Times* newspaper, it is derived from the Norwegian Vidkun Quisling, who assisted Nazi Germany after it conquered his own country so that he could rule the collaborationist Norwegian government himself. The Wikipedia entry on Quisling states that: “In contemporary usage, Quisling is synonymous with traitor, and particularly applied to politicians who appear to favour the interests of other nations or cultures over their own”. It then goes on to cite the usage of the word in a 1944 Warner Bros cartoon! How apt.

Peter Jackson is not a politician, but he certainly appears to favour the interests of other nations or cultures over his own, and he also has the ear of top Government politicians, as we know from the leaked exchange of emails between him and the office of the Minister for Economic Development Gerry Brownlee. Jackson's public posing as a great patriot, one who brings cinematic and tourist glory to his native land, is exposed for the sham that it really is. New Zealand is just a cheap, convenient place for him to do what he likes doing best – but he was perfectly prepared to go to Eastern Europe, or any other place where the rate of exploitation suited his Saurons of cinema better, if he couldn't help them get their way in New Zealand. Sir Peter Jackson – you are fully worthy of joining that other blackened knight, that other exemplar in selling out your country to foreign corporations, the one for whom this award is named – Sir Roger Douglas.

Dr Christine Dann, Chief Judge, Roger Award 2010

Roger Award Judges' Report

Warner Brothers

Warner Brothers or Warner Productions has been the latest nominee to win the coveted Roger Award. In 2010, the Government provided Warners with an early Christmas present in the form of an amendment to employment legislation which stripped away rights of workers in the film industry. Effectively, making them all contractors and not liable for coverage as employees within the Act.

Warners became involved with "The Hobbit" and Peter Jackson through its ownership of New Line Cinemas which produces "The Lord of the Rings" and now, "The Hobbit".

Although to be fair to Warners, it really only took advantage of the desire by the Government and Peter Jackson to "cut the legs" off the unions. The Government has been introducing anti-union legislation for the past several years, while, Jackson and his various companies have had a previous tenuous relationship with the unions.

Despite previous claims to the contrary, it appears that Jackson had known that Warners had no real intention of moving the production offshore and stated such in a series of emails to the Minister's office.

Not that Jackson is a stranger to such claims. In September 2010, he apparently alleged that Disney would not film in Australia due to their frustration over the antics and actions of the film unions. This claim was consequently denied by Disney's Chairman, Rich Ross (<http://www.actorsequity.org.nz/component/content/article/116-note-to-jackson-disney-is-not-avoiding-australia>).

Equally, Warners were also well versed with the industrial situation when their executives met with the Government to hammer out a "deal" to keep the filming in New Zealand. They were aware that the unions involved, principally Actor's Equity had already withdrawn the refusal to work order over "The Hobbit" and that the union had provided a clear undertaking that the production would not be disrupted by industrial sabotage.

What really appeared to motivate Warners' desires, and those of Jackson during the dispute, were based on the outcome of a previous employment case that occurred during "The Lord of the Rings" in relation to a model maker, James Bryson. Bryson was a model maker who had been hired by Jackson's company Three Foot Six during the making of "The Lord of the Rings". His contract was terminated when the models unit was downsized. Consequently, Bryson brought a claim in the Employment Court that he had been an employee rather than a contractor and he was, therefore, able to claim for unjustifiable dismissal. The case went all the way through the court system to the Supreme Court, which ruled that Bryson was an employee, not a contractor.

Obviously, both Warners and Jackson were eager to have this state of affairs rectified in a means which would benefit them, and the employment dispute over "The Hobbit", with the aid of a compliant news media, was made into one of the evil Unions versus the Good and the Great of Jackson and the Movie Companies. The country was informed that Warners and Jackson had the best interests of the country's movie industry at heart, while the unions were presented as pursuing their own selfish interests.

A series of emails obtained under the Official Information Act demonstrates that the Government had been sharing information with Warners' subsidiaries, namely New Line Cinemas, in relation to proposed employment law changes. For example on 8 October 2010, New Line contacted Gerry Brownlee's office asking for a copy of the Crown Law opinion on the basis that the Minister had previously promised it to them. That opinion was forthcoming.

Warner Executives therefore flew into the country safe in the knowledge that their demands were going to be met by the Government. Further, they would have probably been aware that the Government was going to sweeten the pot more by making other concessions to them.

And, those concessions were forthcoming. Not only did the Government change employment law on Warners' behalf under Urgency, they also provided the international film company with financial aid to the tune of \$25 million. This sum included the Government paying \$10 million for publicity and \$15 million as a tax rebate. The Government touted this as victory for the movie industry in New Zealand.

Actors Equity was made out to be the villain of the piece and the media did its utmost to discredit both that union and Helen Kelly, the President of the NZ Council of Trade Unions (CTU). In fact, Helen Kelly's position was vindicated by the evidence revealed when correspondence between Peter Jackson and the Government was released under the Official Information Act. This is from an e-mail (18/10/10) from Jackson to Gerry Brownlee's office:

"There is no connection between the blacklist (and its eventual retraction), and the choice of production base for 'The Hobbit'. What Warners requires for 'The Hobbit' is the certainty of a stable employment environment, and the ability to conduct its business in such a way that it feels its \$500m investment is as secure as possible. Unfortunately Warners have now become very concerned about the grey areas in our employment laws. This situation hasn't been helped by the fact that they spent a lot of money fighting (unsuccessfully) the Bryson case in our courts, so they have seen these vague laws in action. They are just looking for reasonable security, and unless it's provided, it's likely they will choose to base the movie somewhere else. But we all know this ... it's been discussed endlessly these last few weeks. I'll talk with Warners now". There you have it in black and white.

The Warners' executives must have been laughing all the way back to Hollywood and to the bank.

An Award Winning Performance

Financial Analysis:

WARNER BROTHERS

By Sue Newberry

Warner Brothers is to receive tax subsidies of around NZ\$100 million courtesy of New Zealand's tax payers. This equates to a donation of public funds of about \$25 for every person in New Zealand. In addition, the Government evaded the usual democratic processes to push through Parliament legislation that weakened the Employment Relations Act (ERA). This change is intended to ensure that those employed in film production in New Zealand may be regarded as contractors, and unable to claim they are employees unless the contract says so specifically. Contractors are not entitled to "numerous rights and protections under the ERA, nor under other legislation including the Holidays Act 2003 and the Minimum Wage Act 1983. These include rights to bargain collectively, strike, a statutory duty of good faith, and grievance procedures, and have access to minimum conditions such as the minimum wage, annual leave, and sick leave."ⁱ The effect is to reduce the rights of New Zealand workers involved in film production. This change directly benefits Warner Brothers and its associates, including Sir Peter Jackson's production company Wingnut Films.

A point of particular interest is that although the legislative change followed disagreement between the unions and Wingnut Films, that change has nothing to do with that disagreement. Rather, the change in law relates to an earlier dispute over employment legislation that Warner Bros lost. That was the case *James Bryson v Three Foot Six Limited* (SC CIV 24/2004) [2005 NZSC 34].ⁱⁱ This lost case, not the dispute about making the Hobbit movie, was the "driving force for the Hobbit Law."ⁱⁱⁱ Warner Brothers and the companies that produce movies for Warner Brothers do not want employees – they want contractors.

Warner Brothers is a division of the US media conglomerate Time Warner Corporation. As a rough approximation of Time Warner's size, Brian Gaynor equated its market capitalisation to that of about 90% of all the domestic companies listed on the New Zealand stock exchange.^{iv} In New Zealand terms, this is indeed, a "corporate giant."^v

This financial review draws on Time Warner's latest profit announcement for 2010, its published *Annual Report* for 2009, and its most recent published *Corporate Social Responsibility Report*, that for 2008, before drawing attention to the philosophical views of well-known theorists who promoted neoliberal reforms and what those views and this Roger Award winning performance by Warner Brothers might mean in future.

In early February 2011, the Time Warner Corporation announced its financial results for the year ended 31 December 2010 publishing an 18 page document outlining its financial results. For the year ended 31 December, Time Warner's revenue was US\$26.9 billion, which converts to approximately NZ\$35.5 billion and its reported profit was US\$5.4 billion (NZ\$7.1 billion). Of these totals, the filmed entertainment section (that is, Warner Brothers) reported revenue of US\$11.6 billion (NZ\$15.3 billion) and profit of US\$1.1 billion (NZ\$1.5 billion). Warner Brothers plays a big part in Time Warner's results.

According to Time Warner's Chairman and Chief Executive Officer, Jeff Bewkes, 2010 was an "outstanding year" and "in 2011, we're even more confident about how we're positioned, and we'll be even more aggressive. We'll keep expanding our presence in the most attractive international territories."^{vi}

An important part of what makes a particular international territory "most attractive" to Time Warner is the extent to which it will offer incentives (financial and other) to Time Warner or its subsidiaries for conducting some of its business activities there. There seems little doubt that when searching for the most attractive

destinations, Time Warner demands tax incentives from governments, effectively requiring countries to compete with each other.^{vii} A quick Web search for recent (the last year) news articles about such activities produced material about Montreal, Canada; the UK; New South Wales, Australia; California and New Zealand all trying to offer attractive tax breaks.^{viii}

Having struggled to match the massive tax breaks offered by the other countries, the New Zealand government further reduced Warner Brothers' costs by weakening the Employment Relations Act rather than by further direct expenditure of public money. When New Zealand has signed preferential trade and investment agreements with other countries, it has also signed accompanying labour agreements that state: "Neither Party shall seek to encourage or gain trade or investment advantage by weakening or failing to enforce or administer its labour laws, regulations, policies and practices in a manner affecting trade between the Parties."^{ix} Under pressure, and despite such commitments, the New Zealand government did weaken its labour laws.

Why Warner Brothers might have wanted this change to the Employment Relations Act soon becomes apparent from Time Warner's published *Annual Reports* and *Corporate Social Responsibility Reports*. Note, however, that like *Annual Reports*, *Corporate Social Responsibility Reports* should be read with caution. While the additional information does supplement that in the published *Annual Reports* the disclosures can be selective and self-serving. As explained some years ago by Unilever's Chief Executive, companies that publish *Corporate Social Responsibility Reports* do so, "Not because it is nice to do or because people are forcing us to do it ..., but because it is good for our business ... This is a hard-edged business issue."^x

Under the heading of supplier diversity, Time Warner's *Corporate Social Responsibility Report* for 2008 explains that, "In January of 2007, Time Warner launched a program to encourage large corporations doing business with Time Warner to utilise diverse suppliers as subcontractors. This second tier programme, so called because it is intended to reach subcontractors – underscores the importance the company places on the inclusion of minority and women-owned businesses (MWBES)..."^{xi} Under the heading of "Collective Bargaining and Freedom of Association", the *Corporate Social Responsibility Report* also assures readers that: "Time Warner respects the rights of all employees ... and ... contract professionals who provide services to Time Warner under collective bargaining relationships. Contract professionals include directors, actors, designers, and others involved in the production of motion pictures and television programs in our Networks and Filmed Entertainment Segments"^{xii}

Time Warner's *Annual Report* for 2009 gives a rather different slant to Time Warner's programme to encourage the use of "diverse suppliers as subcontractors." Among the risks identified in this *Report* are those of doing business internationally, just one of those risks being "issues related to occupational safety and adherence to diverse local labour laws and regulations."^{xiii} From this *Annual Report*, we learn that Time Warner has been restructuring, and that in 2009 the company as a whole had incurred some US\$212million in restructuring costs. Of this US\$212 million, approximately half (US\$105 million) related to Time Warner's filmed entertainment unit, in other words to Warner Brothers. The amounts concerned "primarily related to various employee terminations and other exit activities"^{xiv} Further explanation is provided in the Management Discussion and Analysis section which comments on the financial operations for each business segment:

"To increase operational efficiencies and maximise performance within the Filmed Entertainment segment, in 2008 the Company reorganised the New Line business to be operated as a unit of Warner Bros, while maintaining separate development, production and other operations. Beginning in the first quarter of 2009, Warner Bros commenced a significant restructuring, primarily consisting of headcount reductions and the outsourcing of certain functions to an external service provider. As a result of these restructurings, the Filmed Entertainment segment incurred restructuring charges of \$105 million for the year ended December 31, 2009, and expects to incur additional restructuring charges of approximately \$10 million in the first quarter of 2010."^{xv}

Sir Peter Jackson's production company Wingnut Films, which is making "The Hobbit" movie in conjunction with Warner Brothers New Line business, seems to fit nicely into Time Warner's restructured arrangements which seek to use subcontractors, rather than employees. This is about saving costs and avoiding "issues related to occupational safety and adherence to diverse local labour laws and regulations."^{xvi}

Placed in the wider context of economic and trade liberalising reforms of the last 30 years, this Warner Brothers performance prompts thought about where these reforms are leading and who benefits. Key theorists promoting the neoliberal reform agenda have been open about their anti-government sentiments. In the early days of reforms, their concern seemed to be for a country's taxpayers, who some of these theorists viewed as trapped in a virtual slave relationship with their overly powerful Government.^{xvii} These theorists wanted smaller and weaker governments. As governments did indeed seem to weaken, some of the neoliberal reform advocates shifted their stance and took up the cause of big business. Powerful businesses dealing with a weak Government may be able to exploit that Government's taxpayer-slaves. With trade liberalisation increasing the international mobility of capital while leaving countries' citizens relatively immobile, the proposition emerged that powerful businesses could force governments to compete for businesses to operate there by providing favourable business conditions paid for by the taxpayers. Although referred to in seemingly benign language as "fiscal competition", the late Keynesian economist Richard Musgrave saw it not as benign, but rather as "a glorious arrangement for rent-seeking by capital".^{xviii}

Now, at Warner Brothers' behest New Zealand's weak Government has gone one step further at the expense of its taxpayer-slaves – in addition to paying \$100 million of public funds for the dubious privilege of hosting "The Hobbit" movie, it has also weakened its labour laws by removing the protections accorded to employees for those involved in producing movies. Those people have no choice but to be contractors. And if the Government is prepared to weaken its labour laws to attract movie producers, why not extend this weakening to attract other industries as well? Winning this fiscal competition looks horribly like winning a race to the bottom.

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ⁱ Rosenberg, B. (2010), "Background to the legislation passed by the New Zealand Government to amend the Employment Relations Act at the behest of Warner Brothers in October 2010"

ⁱⁱ Rosenberg, B. (2010), *ibid*; Hood, Samuel, "The Hobbit Law", *NZ Lawyer Online*.

ⁱⁱⁱ Hood, Samuel, *ibid*; Email Sir Peter Jackson to Gerry Brownlee's office, 18/10/10. Released under Official Information Act.

^{iv} Brian Gaynor, "Why we're too weak to fight the hobbits", *New Zealand Herald on line*, 30/10/10.

^v Brian Gaynor, *ibid*

^{vi} Time Warner news release: "Time Warner Inc reports strong results for 2010 fourth quarter & full year".

^{vii} "US Studio Warner Bros. leverages NZ", *VFX Soldier*, 27/10/10, vfxsoldier.wordpress.com/2010/10/27 downloaded 12/2/11.

^{viii} James Lee, "Tax breaks lure Warner Bros to set up Montreal Studio", *Edge Magazine*, 23/3/10 222.next-gen.biz/news/ downloaded 12/2/11; "US based Hollywood production firm Warner Bros buys home to the Harry Potter (sic) Movies, the Leavesden Studios" 10/11/10, investinuk.net/news downloaded 12/2/11; Sarah Dingle, "Australian film industry in crisis", Australian Broadcasting Corporation, 31/1/11, "US Studio Warner Bros. leverages NZ", *VFX Soldier*, 27/10/10, *ibid*.

^{ix} Rosenberg, (2010) *ibid*

^x *The Guardian*, 5/7/03, www.guardian.co.uk/business/2003/jul/05/unilever1

^{xi} Time Warner Corporation, *Corporate Social Responsibility Report 2008*, p.40

^{xii} Time Warner Corporation, *Corporate Social Responsibility Report 2008*, p.37

^{xiii} Time Warner Corporation, *Annual Report 2009*, p. 12

^{xiv} Time Warner Corporation, *Annual Report 2009*, p. 29

^{xv} Time Warner Corporation, *Annual Report 2009*, p. 23

^{xvi} Time Warner Corporation, *Annual Report 2009*, p. 12

^{xvii} See, for example, James Buchanan, 1989, *Explorations into constitutional economics*, (Texas: Texas A&M University), p. 5

^{xviii} Buchanan J. and R. Musgrave, 1999, *Public Finance and Public Choice: two contrasting visions of the state*, (Massachusetts: Massachusetts Institute of Technology), p. 144, 257