

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE AUTHORS GUILD, INC., et al.,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	Index No. 11 Civ. 6351 (HB)
	:	
HATHITRUST, et al.,	:	
	:	
Defendants.	:	
	:	
-----X		

DECLARATION OF T.J. STILES

I, T. J. Stiles, hereby declare as follows:

1. I am one of the plaintiffs in the above-captioned action and submit this declaration in support of Plaintiffs' motion for summary judgment.

2. I am the author of numerous books about American history. I have made my living as a full-time writer for over ten years, and I put tremendous effort, care, and creativity into my works, be they full-length biographies or short-form pieces for the *New York Times Book Review*, the *Washington Post*, the *San Francisco Chronicle*, the *Minneapolis Star-Tribune*, *Salon.com*, *The Atlantic* online, or the *New York Observer*. Although my writings are based on intensive historical research and are considered scholarly in their rigor, I believe a biography to be a creative endeavor. I approach the task of crafting a nonfiction narrative as an author of a novel might, making conscious artistic decisions about style, narrative flow, pacing, perspective, thematic development, and description to write works that are as literary as they are scholarly. I endeavor to create vivid, fully realized worlds on the page that shed light on the human condition.

3. My first biography, *Jesse James: Last Rebel of the Civil War*, (“Jesse James”) was named a *New York Times* Notable Book, a finalist for the *Los Angeles Times* Book Prize in Biography, one of the Five Best Books of the Year by the London *Sunday Times*, an American Library Association Notable Book, one of the New York Public Library’s *25 Books to Remember*, and a Best Book of the Year by *Library Journal*, the *Chicago Sun-Times*, the *Cleveland Plain Dealer*, *Bookpage*, and the London *Independent*. It also won the English Speaking Union's *Ambassador Book Award*, the *Peter Seaborg Award for Civil War Scholarship*, the James-Younger Gang's *Perry Award*, and the Friends of the James Farm's *John Newman Edwards Award*.

4. My second biography, *The First Tycoon: The Epic Life of Cornelius Vanderbilt*, won the 2010 *Pulitzer Prize* for Biography and the 2009 *National Book Award* for Nonfiction. It was also named a *New York Times* Notable Book and one of the best books of the year by *The New Yorker*, the *Financial Times*, the *Christian Science Monitor*, the *Boston Globe*, the *Philadelphia Inquirer*, and other publications.

5. I have received many honors and awards in my career. In 2011 I was named a fellow of the *John Simon Guggenheim Foundation*. From 2004-05, I held the *Gilder Lehrman Fellowship in American History at the Dorothy and Lewis B. Cullman Center for Scholars and Writers* at the New York Public Library. I have also received a *Distinguished Alumni Award* from Carleton College. Additionally, I am an elected member of the Society of American Historians, sit on the Advisory Council of the Biographers’ International Organization, and have a seat on the Board of Directors of Plaintiff The Authors Guild. I am also a member of the American Historical Association, the Organization of American Historians and the Western History Association.

The Work At Issue

6. I am the sole author and copyright holder of *Jesse James*, which was registered with the U.S. Copyright Office on or about February 4, 2002 and assigned Registration Number TX0005703845. A true and correct copy of the copyright registration is attached hereto as Exhibit A.

7. Although I have licensed to my publisher certain exclusive rights in connection with the commercial exploitation of *Jesse James*, I did so in exchange for the payment of royalties and I remain the legal and/or beneficial owner of all rights in and to *Jesse James*. I never assigned to any third party the copyright to *Jesse James*.

8. *Jesse James* was first published in hardcover format in 2002 by Alfred A. Knopf, Inc., and in paperback form in 2003 by Vintage Books. It is a nonfiction biography that is, as of this writing, available for sale in paperback and electronic formats, including on the Amazon Kindle, the Barnes & Noble Nook, and others. *Jesse James* was published in at least three countries, including the United States, the United Kingdom and Italy, where it was translated to and published in Italian.

Unauthorized Uses Of My Work

9. It has come to my attention that a print copy of *Jesse James* was copied without my permission when it was digitized by one the defendant universities (collectively referred to herein along with the HathiTrust as the “Defendants”) in partnership with Google, as part of the HathiTrust and Google Books projects. This digitization took place without my knowledge, consent, or approval. I did not authorize Google, HathiTrust, or any of the university defendants

to digitize or make any other use of *Jesse James*. To date, I have received no compensation of any kind for the Defendants' digitization and various uses of this work.

Harm Resulting From Defendants' Use Of My Work

10. As an author who depends on the value of my writings to earn a living, I brought this action because the Defendants' unauthorized digitization and use of *Jesse James* has harmed or threatens to harm me in a number of ways.

11. First, each digital copy of *Jesse James* that Defendants created without authorization represents a lost sale. Simply put, Defendants could have purchased a digital copy of *Jesse James* (which is readily available through a number of commercial outlets) rather than scanning a print copy to create an unauthorized digital version, whether for preservation, archival or any other purpose. Just as libraries purchase or otherwise lawfully acquire print copies of books for their physical archives, libraries should purchase digital copies for their digital archives.

12. I authorized my publisher to digitize and sell *Jesse James* as an electronic book in exchange for 25% of the amount the publisher receives from the sale of the book, as shown on the agreement attached hereto as Exhibit B. By scanning *Jesse James*, Defendants avoided having to pay the retail cost of *Jesse James* which, according to a recent print-out from Amazon.com attached hereto as Exhibit C, is approximately \$13.00 per copy. Thus, Defendants deprived me of a sale and the revenue that would have resulted from it. Attached hereto as Exhibit D is a copy of the most recent royalty statement I received for *Jesse James*, which shows that over 650 copies of the electronic book have been sold, generating almost \$1,500 in revenue for me. To the extent that an electronic copy was not available at the time Defendants sought to

digitize *Jesse James*, they could have requested a license to do so. However, no such license ever was requested or granted.

13. It is my understanding that Defendants make various uses of *Jesse James* without permission. These unauthorized uses, both individually and in the aggregate, undermine existing, emerging and potential markets for *Jesse James*. For example, I understand that HathiTrust has a service that allows certain users to conduct so-called “non-consumptive research” on the corpus of digital works, including my own, stored in the HathiTrust database. From what I’ve learned about it, non-consumptive research represents a potentially exciting field for academics and therefore an emerging licensing opportunity for authors at a time when revenues are decreasing. Indeed, it is my understanding that the Amended Settlement Agreement entered into by The Authors Guild and Google would have permitted the defendant libraries to engage in non-consumptive research activities using works such as *Jesse James* – but pursuant to a license that included a mechanism to compensate authors.

14. I further understand that Defendants have made my work available for full text searching. Again, this undermines a potential source of revenue for me and for other rights holders. For example, my publisher has granted licenses to companies such as Amazon and Ebrary to store a digital copy of *Jesse James* and allow users to search through the full text of my work. But those uses are authorized for the purpose of driving sales of my book – as reflected on the royalty statement. See Exhibit D at 2-3 (ebook sales) and 4 (Ebrary revenue).

15. Moreover, as a copyright owner, I (not Defendants) should be allowed to decide whether or not my works are copied and included in a database used for non-consumptive research, full text search indexing or other uses. My understanding is that one of the fundamental rights of copyright is to decide whether or not I want my work to be copied,

distributed or displayed. And, if I am inclined to grant permission, I should be able to negotiate the terms thereof.

16. Finally, by digitizing and storing *Jesse James* in a digital archive, Defendants subjected, and continue to subject, *Jesse James* to security risks. Every digital archive runs some risk of being accessed without authorization, and it is common knowledge that even the most secured networks in the world have been victims of cyberattacks. Defendants made no effort whatsoever to inform me of any security measures they may have taken, and they never sought permission to expose *Jesse James* to whatever risks their system poses. Once an unauthorized, unprotected digital version of *Jesse James* is released online, it becomes vulnerable to unlimited, instantaneous copying and distribution - in other words, unstoppable piracy. Should the Defendants' security be compromised, it would negatively impact future sales of *Jesse James* and damage my livelihood.

17. For each of the uses above, including full text searching, digital archiving, and non-consumptive research, Defendants are seeking to establish that as a matter of law they have the right to use my work without my permission and without compensating me. If Defendants are allowed to do this, there will be little to stop other people or entities from making digital copies of copyrighted works and using them for these same (and possibly other) reasons. In other words, if Defendants and Google can do this, what is to stop anyone else in the market from doing the same thing and depriving me of the opportunity to exploit new potential revenue streams?.


18. This is a difficult and complicated period of uncertainty for the future of publishing and professional authorship, and copyright law's carefully-drawn incentive structure has been jeopardized by the changing technological landscape. I, and many other authors, see

these new uses for books as a ray of hope and a potential revenue stream to allow authors to continue to be compensated as traditional print publication suffers. By deciding unilaterally, on my behalf, that I am owed nothing for these uses, Defendants cripple this hope and preempt my rights to demand compensation for these new kinds of uses.

19. It is my hope that this action will help ensure that future generations of authors will continue to have the financial incentive to write books.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June ²⁶ , 2012



T.J. STILES

EXHIBIT A

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ght Office
the Copy-

FORM TX

For a Nondramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 5-703-845



TX 0005703845

EFFECTIVE DATE OF REGISTRATION

Month Feb Day 4 Year 2003

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼

JESSE JAMES: Last Rebel of the Civil War

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼

a T.J. Stiles

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a
"work made for hire"? ☐ Yes☒ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ► USA

Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ NoPseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Entire text excluding brief quotes from other sources; all photographs are preexisting

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

b

NAME OF AUTHOR ▼

Was this contribution to the work a
"work made for hire"? ☐ Yes☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ►

Domiciled in ►

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

c

NAME OF AUTHOR ▼

Was this contribution to the work a
"work made for hire"? ☐ Yes☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ►

Domiciled in ►

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

2002

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month ► September

Day ► 17

Year ► 2002

USA

Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

T.J. Stiles
c/o Scovil, Chichak, Galen Literary Agency, 381 Park Ave. South
New York, NY 10016**TRANSFER** If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼APPLICATION RECEIVED
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TWO DEPOSITS RECEIVED

FEB 04 2003

FUNDS RECEIVED

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- Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
- See detailed instructions.
- Sign the form at line 8.

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Page 1 of 2 pages

EXAMINED BY

FORM TX

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CORRESPONDENCE

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DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ►

Year of Registration ►

5

DERIVATIVE WORK OR COMPILATION**Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼

Brief quotes from other sources; all photographs are preexisting

a

6

See instructions
before completing
this space.

b

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

Entire text excluding brief quotes from other sources; all photographs are preexisting

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

Alfred A. Knopf

19429

a

7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼Rebecca Heisman, Alfred A. Knopf
1745 Broadway, 3rd Floor
New York, NY 10019

b

Area code and daytime telephone number ► (212)572-2706

Fax number ► (212)572-6066

Email ► rheisman@randomhouse.com

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check only one ►

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Alfred A. Knopf

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

8

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Rebecca Heisman

Date ► January 24, 2003

Handwritten signature (X) ▼

X Rebecca Heisman

Certificate
will be
mailed in
window
envelope
to this
address:

Name ▼

Rebecca Heisman, Alfred A. Knopf

Number/Street/Apt ▼

1745 Broadway, 3rd Floor

City/State/ZIP ▼

New York, NY 10019

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- Sign your application in space 8

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2. Nonrefundable filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

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Office, or call
(202) 707-3000

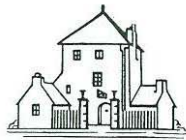
9

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Rev. June 2002—20,000 Web Rev. June 2002 Printed on recycled paper

U.S. Government Printing Office: 2000-461-113/20.021

EXHIBIT B



February 23, 2010

RANDOM HOUSE
BERTELSMANN

T.J. Stiles
c/o Scovil Galen Ghosh Literary Agency
276 Fifth Avenue Suite 708
New York, NY 10001

Dear Mr. Stiles,

We are pleased to inform you that your title has been selected to be included in Random House's Electronic Book, or "ebook," publishing program.

With the widespread use by consumers of electronic devices such as the iPod, the Amazon Kindle and the Sony Reader, a significant market for ebooks is beginning to emerge. Random House is committed to making its extensive backlist of titles available to consumers in new ways and we have every expectation that the wider availability of your books will increase sales to a segment of the population that has chosen ebooks as their preferred reading option.

We will pay royalties on all ebook sales of your book(s) in accordance with the following provision:

"On all copies of the Work sold as an "Electronic Book" as defined herein: 25% of the amount received.

As used in this Agreement, Electronic Book means the text of the Work in complete, condensed, adapted or abridged form by any means of distribution or transmission, whether now or hereafter known or developed, intended to make the text and any illustrations or photographs contained in the Work available in visual form for reading."

If these terms are acceptable, please sign each copy of this letter, which will serve as an amendment to our agreement dated November 9, 1998 for JESSE JAMES, and return one copy in the enclosed envelope. The other copy is for your records.

All other terms of the Agreement shall remain in full force and effect.

Should you have any questions about the foregoing, please contact **Joe Vilella** in our Contracts Department.

Agreed to and Accepted by:

Sincerely,


T.J. Stiles

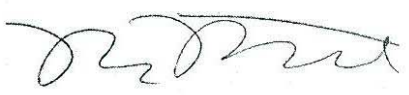

Madeline McIntosh
President, Sales, Operations and Digital
Random House, Inc.

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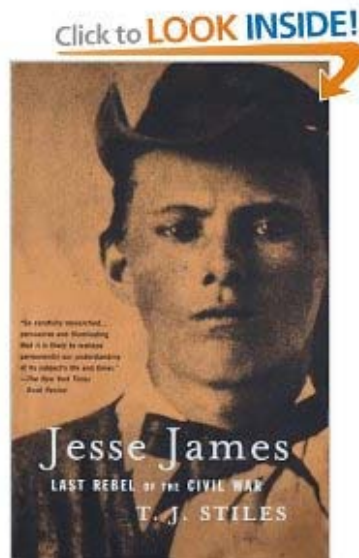
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Jesse James: Last Rebel of the Civil War [Paperback]

[T.J. Stiles](#) (Author)

★★★★★ (70 customer reviews) | Like (11)

List Price: \$17.00

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Formats	Amazon Price	New from	Used from
Kindle Edition	--	\$12.99	--
Library Binding	\$25.00	\$25.00	\$22.50
Paperback	\$12.75	\$8.61	\$3.40
Unknown Binding	--	--	--

Book Description

 Publication Date: **October 28, 2003**

In this brilliant biography T. J. Stiles offers a new understanding of the legendary outlaw Jesse James. Alt portrayed as a Robin Hood of the old west, in this ground-breaking work Stiles places James within the cc conflicts of the Civil War to reveal a much more complicated and significant figure.

Raised in a fiercely pro-slavery household in bitterly divided Misssouri, at age sixteen James became a bu savage Confederate guerrillas that terrorized the border states. After the end of the war, James continuer and murder into the brutal era of reconstruction, when his reckless daring, his partisan pronouncements, sympathetic editor John Newman Edwards placed him squarely at the forefront of the former Confederate power. With meticulous research and vivid accounts of the dramatic adventures of the famous gunman, T. resembles not the apolitical hero of legend, but rather a figure ready to use violence to command attentio many ways, a forerunner of the modern terrorist.

Frequently Bought Together

AG 0002676

EXHIBIT D



Alfred·A·Knopf

January 28, 2012

SCOVIL GALEN GHOSH LITERARY
AGENCY, INC.
276 FIFTH AVENUE SUITE 708
NEW YORK NY 10001

JESSE JAMES

Author(s): T.J. STILES

**Royalty Summary Statement
For Period Ending September 30, 2011**

	Current		Cumulative	
	Copies	Earnings	Copies	Earnings
Hardcover	0	0.00	24,981	88,742.33
Electronic Book	359	820.08	656	1,475.88
Trade Paperback	948	1,182.31	41,042	49,238.50
Subtotal	1,307	2,002.39	66,679	139,456.71
Subsidiary Rights Income		10.87		36,946.23
Earnings		2,013.26		176,402.94
Total Earnings	1,307	2,013.26	66,679	176,402.94
Less: Original Guarantee				100,000.00
Less: Royalty Payments				74,389.68
Total Balance Due				2,013.26
Allocation By Participant				
SCOVIL GALEN GHOSH LITERA	Payee #38885	ACH	100.00%	2,013.26

January 28, 2012
SCOVIL GALEN GHOSH LITERARY

**Royalty Detailed Statement
For Period Ending September 30, 2011**

JESSE JAMES

Market	Royalty Rate or External Market	Royalty Per Unit or Net Receipts	Current Copies	Current Earnings	Cumulative Copies	Cumulative Earnings
9780375405839	\$ 27.50 On Sale: September 17, 2002 HC					
		Sub Total	0	0.00	24,981	88,742.33
	Hardcover	Total in USD	0	0.00	24,981	88,742.33
9780307773371	\$ 17.00 On Sale: October 27, 2010 EL					
U.S.	25.0000	\$ 81.09	7	20.29	298	662.73
Canada	25.0000	\$ 72.76	8	18.20	10	22.72
Export	25.0000	\$ 35.36	4	8.84	8	17.68
		Sub Total	19	47.33	316	703.13
9780307773371	\$ 12.99 On Sale: October 27, 2010 EL					
U.S.	25.0000	\$ 3,090.97	340	772.75	340	772.75
		Sub Total	340	772.75	340	772.75
	eBook	Total in USD	359	820.08	656	1,475.88
9780375705588	\$ 17.00 On Sale: October 28, 2003 TP					
U.S.	7.5000	1.27500	932	1,188.30	3,911	4,986.53
Canada	3.7500	0.63750	10	6.38	30	19.13
Export	5.0000	\$ 153.42	21	7.68	53	20.13
Spcl disc	5.0000	\$ 3.00	1	0.15	1	0.15
		Sub Total	964	1,202.51	3,995	5,025.94
9780375705588	\$ 16.95 On Sale: October 28, 2003 TP					
U.S.	7.5000	1.27125	(14)	(17.80)	5,643	7,173.66
Canada	3.7500	0.63563	0	0.00	56	35.60
Export	5.0000	0.00000	0	0.00	79	30.80
Spcl disc	5.0000	0.00000	0	0.00	1	0.15
		Sub Total	(14)	(17.80)	5,779	7,240.21

January 28, 2012
SCOVIL GALEN GHOSH LITERARY

**Royalty Detailed Statement
For Period Ending September 30, 2011**

JESSE JAMES

Market	Royalty Rate or External Market	Royalty Per Unit or Net Receipts	Current Copies	Current Earnings	Cumulative Copies	Cumulative Earnings
9780375705588	\$ 16.00 On Sale: October 28, 2003 TP					
U.S.	7.5000	1.20000	(2)	(2.40)	30,477	36,572.40
Canada	3.7500	0.60000	0	0.00	510	306.00
Export	5.0000	0.00000	0	0.00	184	69.82
Spcl disct	5.0000	0.00000	0	0.00	63	13.19
Premium	5.0000	0.00000	0	0.00	34	10.94
		Sub Total	(2)	(2.40)	31,268	36,972.35
Trade Paperback Total in USD			948	1,182.31	41,042	49,238.50

January 28, 2012
 SCOVIL GALEN GHOSH LITERARY

**Subsidiary Rights Income
 For Period Ending September 30, 2011**

JESSE JAMES

Licensee	Rights Sold	Territory or Language	Current Copies	Current Receipts	Proprietor's Share %	Current Earnings	Cumulative Copies	Cumulative Earnings
9780375405839								
RHUK Cape		Lic.Total	0	0.00		0.00	0	27,989.86
il Saggiatore		Lic.Total	0	0.00		0.00	2,312	3,311.47
Easton Press		Lic.Total	0	0.00		0.00	0	1,000.00
AARP		Lic.Total	0	0.00		0.00	0	375.00
Bookspan		Lic.Total	0	0.00		0.00	4,185	3,766.95
The Globe Peq		Lic.Total	0	0.00		0.00	0	325.00
		ISBN Total	0	0.00		0.00	6,497	36,768.28
9780375705588								
Ebrary Proque	Permission	English	0	21.73	50.00%	10.87	0	177.95
		ISBN Total	0	21.73		10.87	0	177.95
Subsidiary Rights		Total	0	21.73		10.87	6,497	36,946.23