

# PIERCE LAW GROUP LLP

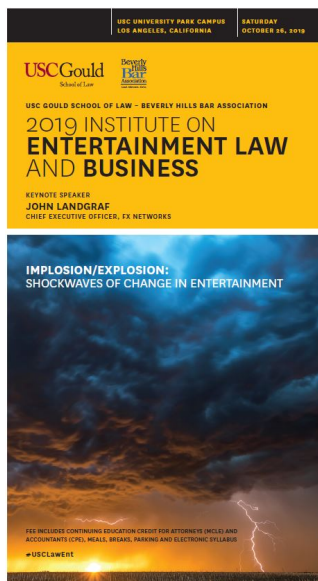
Who the Independents depend on  
*Film • TV • New Media*

Entertainment Law Circular  
December 2019

PierceLLP.com

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## Seminars & Speaking Engagements



PLG's **David Albert Pierce, John Baldivia, and Cassandra Johnson** participated in the 61st Annual **Institute on Entertainment Law and Business**, hosted by USC Gould and the BHBA.

**David** serves on the program's planning committee while **John** is a part of the syllabus committee.

In attendance were a variety of lawyers, executives, agents, producers, and accountants in our entertainment industry.

A good friend of our firm, **Neville L. Johnson** of Johnson & Johnson LLP, spoke on "Legal Jeopardies that Cause Nightmares for Lawyers," offering tips, tricks, and warnings for lawyers concerning transactional and litigation practices.

## Federal Copyright Small Claims Court One Step Closer To Passage

By Cassandra Johnson, Senior Associate Pierce Law Group LLP



The House of Representatives has passed the Copyright Alternative in Small Claims Enforcement Act, known as "The CASE Act." The bill now goes to the Senate for a final vote and will then be presented to President Trump for enactment into law.

The purpose of the CASE Act is to create a simple, more affordable judicial process for adjudicating copyright claims for those who may not have the deep pockets necessary to litigate under the federal Copyright Act. The Act is also designed to cover those infringements where damages are simply too small for plaintiffs to find attorneys to take their case.

As of now the CASE Act is simply a proposed Bill (yeah its only a Bill). Assuming that the Senate version of the bill continues to parallel the House version, here is a quick overview of what is likely to occur if this bill becomes a law.

If passed, the CASE Act will create a voluntary alternative to federal district court copyright claims. The new Copyright Claims Board will be able to hear disputes involving damages capped at \$15,000 per claim, and \$30,000 total for timely, multiple registered works. The litigants do not need to use an attorney, but (unlike traditional small claims courts) litigants are not prevented from using an attorney either. Some minor attorney fees are also recoverable but only in actions where the losing litigant acts in bad faith during the adjudication process.

Claims will be decided before a three- member Copyright Claims Board and generally the matters will be decided solely by submission of written papers without testimony or oral argument. This streamlined system is similar to the process established by ICAAN in regard to domain name disputes. Expert witnesses may be used in only exceptional cases and the board may reject a claim if it is too complex.

Unlike a traditional copyright action filed in federal court, actual registration with the Copyright Office of a protected work is not required to initiate a proceeding under the CASE Act. Instead a mere filing of the application for registration will suffice. However the board will not issue a decision until the registration has been confirmed and finalized.

As set forth above, this new abbreviated small claims resolution system is voluntary. A respondent may opt out of the process within 60 days following the initiation of a claim against them. However, failure to respond or opt out of the board's jurisdiction may result in a default judgment against the respondent. The advantage of respondents agreeing to the Copyright Claims Court jurisdiction and using this expedited process is that it significantly limits the damage amounts that a



On Wednesday, November 13th, **David Albert Pierce** spoke on the panel at the annual **NBI, Inc. Employment Law Seminar Annual Update** in **Irvine, CA** where he discussed statutory developments in state & federal employment law, new enforcement trends and how they can impact your company.



David Albert Pierce's 10 week **UCLA Extension Class on Running an Entertainment Production Company** concludes on **Monday, December 9, 2019**. Several of this year's guest lecturers that joined David at his weekly podium were Pierce Law Group attorneys and consultants. The topics they covered ranged from intellectual property topics, music issues, union issues, handling production crises and negotiating TV deals. **David** has been teaching this class in conjunction with his co-instructor **Patrick J. Gorman** for over 20 years.



PLG Production Consultant & DGA Member **Mike Kolkko** spoke about different film incentives and tax credits, financing options, and bonds, as well as how to deal with crises on the set. He also encouraged the students to pursue their dreams and the importance of establishing last relationships through out your career.



PLG Partner, **John Baldivia** explained the in's and out's of music clearance and music publication in the context of film and television.



PLG Partner, **Anthony J. Hanna**, who prior to joining Pierce Law Group LLP was a Theatrical Business Representative at SAG-AFTRA, gave David's students the annual low-down on the various entertainment unions with guidelines, tips and tricks for the up-and-coming producer, based on his extensive knowledge.



PLG Partner **Joshua Edwards** taught the students about the essential deal terms that can be negotiated for television creators and screenwriters.



On the last day of our 2019 Fall Semester, special guest speakers included **Stephen K. Glickman** (Comedian & PLG Client, depicted above), **Tim Molloy** (MovieMaker Magazine's new Editor & Publisher), and **Kathy Berardi** (former UCLA student and marketing guru).

## Pierce Law Group Attorneys Out & About Town

## AMERICAN FILM MARKET



In November, David Albert Pierce, Joshua Edwards and Anthony J. Hanna attended the 2019 American Film Market in Santa Monica. This was the 40th year of the market which hosted over The annual event draws over 7,000 industry participants from over 80 countries.



## POWER WOMEN SUMMIT

defendant would normally face if a federal district court case was brought. The advantage for plaintiffs is that disputes that would never otherwise be capable of being resolved from a cost benefit analysis will suddenly be resolvable.

Will this new system really help to fledgling creatives who see their work stolen or will this new system significantly curtail those very same creatives? Will this bill make it passed the Senate? Will the President sign it into law? Stay tuned copyright fans!

Industry Wisdom: A look at some relevant decisions, and new case filings relevant to entertainment law

**Sean Hall d.b.a. Gimme Some Hot Sauce Music, et al. v. Taylor Swift, et al.** (9<sup>th</sup> Circuit, Oct 28, 2019) Copyright Infringement [cv-06882-MWF-AS]



The 9<sup>th</sup> Circuit has reversed and remanded the U.S. District Court for the Central District of California's dismissal of a complaint against Taylor Swift, Martin Sandberg, and Karl Schuster, alleging copyright infringement of the song, "Shake it Off." The plaintiffs allege that "Shake it Off" contains lyrics which were illegally copied from Hall's song "Playas Gon' Play" released by pop group 3LW in 2001. The chorus of Hall's song contains the phrases: "Playas, they gonna play / And haters, they gonna hate." Swift's, released in 2014, contains the lyrics: "Cause the players gonna play, play, play, play, play / And the haters gonna hate, hate, hate, hate, hate."

The U.S. District Court initially granted Swift's motion to dismiss, holding that the lyrics, "haters and playas," were too common a phrase to consider as an original form of expression. The plaintiffs appealed and the 9<sup>th</sup> Circuit, reviewing de novo, reversed and remanded the district court's decision, recalling that originality is normally a question of fact, not a question of law. The district court considered itself able to determine the issue of similarity between the two works without the aid of experts or a jury, but the complaint "still plausibly alleged originality." Moreover, the district court could not "constitute themselves as the final judge when determining the expression of a creative work."

**NCAA Opens Doors for College Athletes to Cash-In On Endorsements in light of new California law S.B 206**



The NCAA Board of Governors unanimously voted to allow student-athletes to profit from their name, image and likeness. However, the exact contours of the NCAA changes are still up for discussion as they appear to be more limited than the newly enacted California Senate Bill 206 which prohibits colleges from blocking athletes' use of their name, image and likeness. The Board emphasized that modernization must assure that student athletes are treated similarly to other students unless there is a compelling reason. Student-athletes are students first and not university employees.

**Monster Beverages Company v. City Beverages, LLC** (9<sup>th</sup> Circuit, Oct 22, 2019) Arbitration [cv-00295RGK-KK]



The 9<sup>th</sup> Circuit reversed and vacated an arbitration award in favor of Monster Beverages, after a JAMS arbitrator created a reasonable impression of bias by not disclosing his ownership interest in JAMS,





Pierce Law Group LLP attorney **Cassandra Johnson**, attended the 2nd Annual **Power Women Summit** in Los Angeles at the end of October. Over 2,000 of the most influential women in entertainment, media, and tech gathered for 2 days of workshops and presentations covering women-centric issues concerning political activism, entrepreneurship, and diversity and inclusion in Hollywood.



Senior Counsel, **Cassandra Johnson**, enjoys the festivities and priceless panels at the Power Women Summit.



Keynote speaker **Eva Longoria** gives a presentation on the need for amplifying the empowering voices of Latinas.

## CORNELL SCHOLARSHIP EVENT



**David Albert Pierce**, a proud Cornell Law alum, supported the **Cornell Club of L.A. Scholarship Endowment Fund** by attending their charity wine tasting event hosted by our client **Chris Fenton** and his wife **Jennifer** on Tuesday, November 12th at **Barsha Wines** in Manhattan Beach.

## Beiderman Institute Gala

Congratulations to attorney **Neville Johnson, Managing Partner** of the entertainment law firm **Johnson & Johnson**. **Neville** is a long time friend of our firm and is a mentor to both **David Albert Pierce** and **John Baldivia**.

On November 6th, Neville was honored by the **Southwestern Law School's Beiderman Entertainment Law Institute** for his outstanding work in groundbreaking intellectual property litigation. Neville was one of the pioneers in litigating cases to protect the privacy of

coupled with JAMS' extensive business relation to Monster Beverages. In the 9<sup>th</sup> Circuit's analysis, Olympic Eagle did not have constructive notice for waiver of "evident partiality" because the Arbitrator did not reveal his ownership interest, but *instead* only partially disclosed past arbitrations where he ruled against Monster and claimed to only have a general economic interest in JAMS. To determine whether such disclosure was of "evident partiality," the court applied a two-part test finding that: (1) as co-owner of JAMS, the arbitrator had a substantial interest in the matter because it greatly exceeded the general economic interest of JAMS employees; and (2) JAMS administered 97 arbitrations for Monster over 5 years, which showed that the respective parties were engaged in non-trivial business dealings. Therefore, through the Court of Appeals analysis, the arbitrator's failure to disclose his ownership interest in JAMS, given its non-trivial business relationship with Monster, created a reasonable impression of bias and supported vacatur of the arbitration award.

*Practitioner's Tip: After years of JAMS secrecy concerning their involvement with studios and percentages with which studios win in arbitration, this may finally be the case that permits plaintiffs to obtain that information. It is traditionally believed that JAMS strongly favors studios in arbitration because of the volume of business the studios engage in with JAMS.*

### Mossack Fonseca v. Netflix Inc. (District Ct. Conn, Oct 17, 2019) Defamation [3:19cv-01618]



The pending lawsuit between Mossack Fonseca and Netflix was transferred from Connecticut Federal Court to California due to lack of personal jurisdiction. The Steven Soderberg film, "The Laundromat," is based on the Panama Papers, a data breach that leaked millions of Mossack Fonseca document which revealed the firm's involvement in constructing off-shore tax havens. Mossack Fonseca claims that the film libels principals Jurgen Mossack and Ramon Fonseca, invades their privacy by portraying them in a false light and dilutes their trademarked logo under Lanham Act, 15 U.S.C. 1125.



Police Training and Consulting firm, John E. Reid and Associates, filed a lawsuit for defamation against Netflix after their "Central Park Five" docuseries, *When They See Us*, allegedly made disparaging comments about the firm's police interrogation technique (Reid Technique). The firm continues to practice the Reid Technique although the creator, John E. Reid, pass away in 1982. The suit alleges that the series has damaged the company's reputation and seeks actual and punitive damages. Netflix had no comment about the suit.

### Bassett v. Jenson (District Ct. Mass., Oct 28, 2019) Copyright Infringement [cv-10576-PBS]

US District Judge Saris denied Bassett's preliminary injunction to prevent the release of pornographic films that were taped in her Martha's Vineyard rental home. The suit arose in 2018 after a tenant handed over the property to the production company, Mile High Productions, to produce pornographic content. Judge Saris determined that Bassett could not make the requisite element of irreparable harm. She cited several reasons - Bassett had disavowed claims for actual damages and sought only statutory damages; all of the copyrighted articles were personal belongings not for sale, eliminating many of the categories of irreparable harm (reputational harm, tarnishment, dilution) that might exist for items that were the subject of commerce; the minimal use of the copyrighted material in the films; and Bassett's delays in filing suit and then seeking the injunction, which undercuts the notion of irreparable harm.



performers and enforcing the value of their celebrity images.



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Headed to Park City, Utah for **Sundance** and **Slamdance**?

Clients and close friends of the Firm are invited to our **annual steak dinner** at **Butcher's Chop House** on Main Street. If you'll be in town, we'd love for you to join us. It is always a highlight attended by the most intriguing creative folks, plus your favorite Pierce Law Group LLP attorneys who you can dine with up close and personal!

**Please contact our Client Director, Paige, for more information:**  
[I'm going to Sundance / SLAMDANCE. Please send me more information about the Pierce Law Group Private Client & Friends Steak Dinner!](#)

PLG Says Goodbye

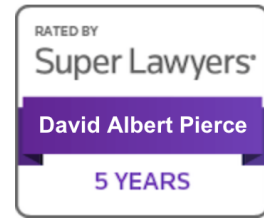


On Wednesday, November 13th at 3am David Albert Pierce rushed his corgi-mix, **Shecky**, to the pet emergency room as was in the midst of a cardiac arrest. Shecky thereafter passed away. Shecky was 17 and his health had been substantially deteriorating over the last 3 weeks of his life.

David rescued Shecky in December of 2005 after he was featured by TV anchor **Jillian Barberie** on a **Good Day LA** segment detailing Shecky's rescue from the streets of Beijing, China by the non-profit group **Dogs Without Borders**. Shecky was a true comedian by nature. He was a sweet lovable dog that often seemed to have a little smile on his face showing his disposition toward good humor and affection. All dogs go to heaven. He will be missed.

In addition to David, Shecky is survived by his fellow rescue dog pal, Scrapy.

Pierce Law Group LLP recognized as industry leader by peers and professional associations



### About Pierce Law Group LLP

Pierce Law Group LLP is a full service, boutique entertainment law firm that provides both transactional and litigation legal services. Our practice areas include entertainment law, intellectual property (copyright, trademarks, right of publicity), film finance, securities law, production counsel, and labor & employment issues affecting the entertainment industry, with an emphasis on film, television, and new media. We represent production companies and other creative businesses as well as artists including producers, actors, writers, directors, comedians, and other entrepreneurs. Our client list includes both Academy Award and Emmy Award winners. We utilize an academic and analytic legal approach to accomplish creative solutions to our clients' goals.

#### DISCLAIMER

The information you obtain in this newsletter is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters, and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.

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