

# PIERCE LAW GROUP LLP

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

## Entertainment Law Circular

April 2016

[PierceLawGroupLLP.com](http://PierceLawGroupLLP.com)

(310) 274-9191

### Celebrity Premiere of "Kill Me Deadly"

Pierce Law Group LLP attended the premiere of "Kill Me Deadly" for which our firm performed financing & production legal services. The film is now available via download on TimeWarner, DirectTV, AmazonPrime, VUDU and GooglePlay.

### New California Supreme Court case:

*...Yadda, yadda, yadda, be sure to let employees sit while they work if it doesn't affect the job.*

### By David Albert Pierce, Esq.

Remember that Seinfeld episode when George Costanza decided it was only right for a security guard at George's fiancé's uncle's store to be able to sit in a chair while he worked? [[Costanza clip, "It's inhumane to make a man stand for 8 hours a day"](#)] Well the California Supreme Court has stepped in to make Costanza's dream of providing mandatory chairs in the workplace a reality (*most of the time*).

On April 4, 2016, the California Supreme Court rendered its decision in the consolidated cases



Legal boss David Albert Pierce pals around with Joe Mantegna who portrays crime boss Bugsy Siegel in the mock film noir.



Always fun to see our hard work handling the financing legal and production legal appreciated with an end credit.

of Kilby v. CVS Pharmacy, Inc., and Henderson v. JPMorgan Chase Bank in which it interpreted the meaning of Section 14(A) of California IWC Wage Orders 4-2001 (governing professional, technical & clerical employees) and 7-2001 (governing most retail establishments). These Wage Orders require employers to provide employees with "suitable seats" when the "nature of the work reasonably permits the use of seats." Note the exact same language appears in the other Wage Orders governing such industries as motion picture production, television broadcast, restaurants, etc.-- so this new decision will apply to all industries in California.

The Court ruled that determining when seats must be permitted for employees, the analysis should focus on:

- (1) Tasks performed at a specific work location, rather than all of the tasks the employee performs over the course of a day;
- (2) Permitting seating should be viewed with consideration of the totality of the circumstances which can include, assessing feasibility with consideration of among other things: employer's business judgment and workspace layout, and whether it is objectively practicable for employees to perform those location-specific tasks while seated and;
- (3) If an employer argues there is no way to provide a suitable seat, then the burden is on the employer to prove it.

The California Supreme Court went on yadda, yadda, yadda. **And, the lesson is: *Allow employees to perform those aspects of their job sitting down where to do so would not be viewed by a reasonable person as being unreasonable or impracticable.*** If you don't, you could be sued.

Furthermore, all employers should remember that the employee that raises such concern about work conditions should be treated in a similar fashion, as other employees with job protected



The characters in the film may be cold-blooded killers, but Producers John Money and Kirsten Vangsness (who also stars in the film) could not be nicer. John and Kirsten are seen here embracing their trusted legal counsel.

#### **Stephen Kramer Glickman's Night Time Show at Improv Rapidly Becoming A Fan Favorite**

Congrats to Stephen Kramer Glickman and his smash hit monthly comedy/live talk show "The Night Time Show" which runs each month at the Hollywood Improv. This standing room only show has become a favorite of some of the town's top industry movers & shakers which regularly pack the audiences.

"whistleblowing" status raising good faith concerns about working conditions.

Pierce Law Group LLP is a leader in providing management-side employment law advice for various types of employers throughout the entertainment industry from night clubs, agencies and production companies.

The attorneys at Pierce Law Group LLP that can answer employment law related questions are: Tony Hanna, Briana Hill, Azita Mirzaian, Vera Golosker, and David Albert Pierce.

David Albert Pierce, Esq. can be reached at: [david@piercelawgroupllp.com](mailto:david@piercelawgroupllp.com) or via phone at 310-274-9191 ext. 224.

#### **To Be a "C" or Not a "C"-- That Is The Corporate Question: *When Is a Loan-Out Corp Benefitted From Being a C-Corporation Instead of an S-Corp?***

**By Mitchell R. Miller, Esq. & David Albert Pierce**

Entertainment professionals are generally aware of the tax and other benefits of creating their own personal services "loan-out" corporations when they reach a certain level in their career where liability protection and tax savings outweigh the administrative time and costs associated with maintaining your own personal services corporation.

However, the question of whether to have your loan-out be a traditional "C" corporation or instead elect to utilize the benefits of IRS Code Subchapter S and become an "S" corporation (as most in the entertainment industry automatically assume will benefit them) requires a bit more analysis than setting it up the same way your prominent friends originally set theirs up.

Let's first look at the basic differences between these entities:



### Speaking Engagements



On March 29th, Vera Golosker was a featured speaker on the Pepperdine Law School panel entitled

### C-corps are taxed as their own separate entities:

A C-corp takes in its income and pays its expenses, including the owner's salary, and it pays tax on its net income, if any. If the C-corp has no net income, it pays no income tax (other than the \$800 annual minimum California Franchise Tax).

### S-corps' net income (or net loss) pass through to their owner:

The S-corp pays no federal income tax, and only the \$800 minimum California Franchise Tax, or 1.5% of its net income, whichever is greater. The owner includes the income or loss from the S-corp in his or her personal tax return.

Formerly, the major advantage of using a C-corp as a loan-out was that there were greater pension benefits that could be provided in a C-corp than in an S-corp. But that is no longer the case - pension benefits have been equalized.

So from that standpoint, S-corps would appear to be the preferred choice, at least for U.S. citizens and residents (since non-US residents cannot invoke the S-corp option). C-corp loan-outs must pay out all their net income or be subject to penalty taxes and possibly extend the statute of limitations for tax audits from three to six years, whereas S-corps are not subject to such rules.

S-corp owners like to leave as much income as possible in the corporation as it can be distributed to them free of Social Security, Medicare, SDI, and other employment taxes. (Of course, in California, any income left in an S corp loan-out is subject to that 1.5% California Franchise Tax.) However, the IRS is wise to this attempt to avoid those above-mentioned federal deductions and thus generally will require the owner of the S-corp loan-out to treat all payments to the owner as employee salary, subject to employment taxes.

### C-corps permit a Medical Reimbursement Plan, whereas S-corps do not:

For sometime now, talent representatives have advised their clients to become a S-corp and

**"Women in Entertainment Law,"** jointly sponsored by Pepperdine Women's Legal Association, and Pepperdine's Sports & Entertainment Law Society.



**On April 2nd,** Vera also was a panelist at this year's California Western School of Law Entertainment & Sports Law Symposium. Vera spoke on "**The Impact of Lenz v. Universal Music Corp. on Internet Content Producers & Copyright Holders.**"

## Beverly Hills Bar Association

*Lead. Advocate. Serve.*

**On April 20th,** The Beverly Hills Bar Association's IP, Internet & New Media section presented a seminar entitled, "**Cyberlaw Without Borders.**" Azita Mirzaian is the Section Chairman for the IP, Internet New Media section.

**AND COMING UP on May 7, 2015 from 10 a.m. - Noon at Roxbury Park** in Beverly Hills, there will be a free legal clinic for the public which

remain a S-corp because of the advantages discussed above. However, there is one situation where becoming a C-corp can prove most advantageous to such individuals.

C-corps have the special ability to create a "medical reimbursement plan" for their employees (i.e. the single person for whom the loan out was created to assist). The Medical Reimbursement Plan, which is permitted only for C-corps, permits the C-corp to pay the medical expenses that are generally excluded from coverage under normal health insurance. As long as the Medical Reimbursement Plan is not discriminatory as to any group of employees employed by the C-corp, a C-corp owner may exclude the medical payments from his or her income. Since the only employee of most loan out corporations is the owner of the corp his/herself (and perhaps his/her spouse, children and/or an assistant) the caveat that the Plan cannot discriminate is of little concern to talent who utilize a loan out.

Also note that, although it is not yet perfectly clear, it appears that Medical Reimbursement Plans will not be subject to the Obamacare rules and limitations, possibly making this benefit even more valuable.

***Thus, while so many artists and producers are of the impression that a S-corp is always the right mechanism for their loan out, if medical costs are a real concern for the particular performer and a desire to see medical reimbursements be fully deductible where they otherwise wouldn't be, a C-corp may result in the better type of entity for that individual.***

### **Foreign considerations:**

Frequently, when the loan-out's owner is working in a foreign country (or in certain U.S. states), individual income taxes are withheld on payments from the studio or production company even if the payments are to the owner's loan-out company. Those taxes are available as Foreign Tax Credits to offset the owner's individual U.S. taxes, but only if these are passed through to his or her individual income tax return.

includes the ability to learn about Intellectual Property, Internet & New Media issues as part of an ongoing program sponsored by the BHBA.

### Wow Is This Girl Good!



One of Pierce Law Group LLP's youngest clients, Isabella "Bella" Mancini, gave a Broadway grade performance at the Dixie Canyon Charter Elementary School for the Arts presentation of "Grease!"

Don't believe us as to how good young Bella is? Check out this 2 minute video clip:

[\[Bella sings "Hopelessly Devoted"\]](#)

Oh did we mention she's only 11 years old? In September she will be enrolled at The Milikan Charter Magnet Middle School for the Performing Arts. Bella's father is longtime client, screenwriter, comedian & popular podcaster Chris Mancini.

Applause also goes out to Bella's fellow 5th graders: Kylie

As noted, a C-corp pays its own taxes and keeps any credits it is due. So when a C-corp loan-out pays out all its income in salary to the owner, the C-corp has no taxes against which to apply any Foreign Tax Credits - the credits just sit there and accumulate.

Therefore, when working abroad, an S-corp loan-out is definitely necessary so that any Foreign Tax or other credits can pass through to the owner instead of being trapped, uselessly, in a C-corp.

However, as discussed above, the ability to elect S-corp status for a loan-out is available only to U.S. citizens or U.S. residents. Nonresidents are not permitted to utilize an S-corp loan-out-- their loan-outs must be C-corps.

### Finally, when dealing with loan-outs, avoid the LLC:

The corporate entity known as a Limited Liability Company ("LLC") is quite popular and has much versatility particularly when dealing with investors holding different classes of membership interests (such as what is commonly found in traditional independent film financing).

However, when dealing with single owner talent loan-out entities, LLCs should be avoided. This is because virtually all major studios and networks will recognize a single owner loan-out corporation, but they will not likewise recognize a single owner loan-out LLC. The simple reason for this is because long ago when the "safe harbor" was created that permits networks and studios to treat a single owner loan-out corporation, like any other bona fide corporation leasing or "loaning out" its employees to a studio/network without the studio's need to withhold payroll tax, the "safe harbor" only referenced "corporations."

Thus, until and unless a similar case arises in which the IRS and courts are asked to apply the same "safe harbor" ruling to LLCs (and the IRS and courts agree to then do so), no studio is willing to be the test case for establishing that rule.

Taren ("Rizzo"), Amelia Teschner ("Frenchie"), Ava Bouhadaba ("Marti"), Emily Sabra ("Jan") for their age defying performances.



And Bella's younger brother Griffin Mancini (pictured below) also gave a scene stealing comedic performance as "Eugene" in his first legitimate stage role.



### Long Ago & Far Away Graphic Novel Kickstarter Campaign

Our client, Chris Mancini (yeah the one with the super-talented kids), has initiated a Kickstarter fundraising campaign for his new graphic novel "Long Ago and Far Away." He's less than \$8K from reaching his goal. The campaign ends May 2nd.

Pierce Law Group LLP has repeatedly seen clients create a loan-out on their own via LegalZoom or other similar services, and inadvertently create an LLC only to quickly find out that they need to scrap that entity and create an entirely new corporation so it can be recognized by the major studios looking to employ them.

### Concluding thoughts:

In conclusion, choosing the right entity structure for any particular business requires multiple analysis from different perspectives, including many very specific tax questions. Before you make any decision as to how to structure your loan-out, it is vital to confer with both your attorney and your own tax advisors. The specific needs relevant for your specific situation and requirements should always be analyzed as opposed to adopting a simple cookie cutter approach of doing what everyone else seems to do.

When it comes to your money and the proper choice of entity for your needs, more often than not the decisions are far more intricate than companies such as LegalZoom lead you to believe. There is a reason why such discount services give a disclaimer about their services not constituting legal advice.

Mitchell R. Miller serves in an "Of Counsel" capacity to Pierce Law Group LLP while maintaining his own independent tax law practice. Mitch is both a tax attorney and a Certified Public Accountant.

For more articles by attorney Mitchell R. Miller on tax planning and estate planning see [www.TaxPlanningForYou.com](http://www.TaxPlanningForYou.com) and [www.EstatePlanningForYou.com](http://www.EstatePlanningForYou.com). Mitch can also be reached directly at: **310-277-1848** or via email [\[email Mitch\]](mailto:email Mitch)

In addition to Mitch Miller's services being available to Pierce Law Group LLP clients, Pierce Law Group LLP's corporate department also includes: David Albert Pierce, [\[email David\]](mailto:email David) Tony Hanna [\[email Tony\]](mailto:email Tony), and Trea Tran Lachowicz [\[email Trea\]](mailto:email Trea).

If you are a comicbook/sci-fi nerd, click here for more details: [\[Mancini's Kickstarter page\]](#)

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*Membership limited to attorneys who've won million dollar verdicts & settlements*

**Law Circular Legal 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.

For more information about corporate formation, contact Pierce Law Group LLP at 310-274-9191.

## Upcoming Events

**Thursday, May 5th from Noon - 2pm:** The California Society of Entertainment Lawyers ("CSEL") will hold an MCLE luncheon event at Maggiano's Italian restaurant at The Grove on Fairfax entitled:

### Point / Counter-Point: Copyright Infringement Lawsuit Trends

David Albert Pierce is Co-Chair of CSEL's Continuing Education Committee, and Vera Golosker is the Program Chair. To register for the event click [here](#). Attorneys attending the event receive 1.5 hours of CLE Credit.



**CALIFORNIA SOCIETY OF ENTERTAINMENT LAWYERS**  
Fighting To Protect Artists' Rights

**MCLE SPECIAL EVENT**  
Point/Counter-Point: Copyright Infringement Lawsuit Trends

Date: Thursday, May 5, 2016  
Location: Maggiano's at The Grove  
189 The Grove Dr. Suite 280, Los Angeles, CA 90036  
Lunch: 12:00 p.m.  
MCLE: 12:30 p.m. - 2:00 p.m.  
Cost: \$50 for law students (Use code "STUDENT" at checkout)  
\$40 for members of CSEL (Use code "CSEL" at checkout)  
\$75 for general attendees (\$85 at the door)

This activity is approved for MCLE credit in the amount of 1.5 hours

**Description:**

A great debate that's not to be missed! CSEL's second MCLE special event will feature two distinct perspectives on select copyright infringement cases in the entertainment industry: the plaintiffs' perspective on one hand and the studios' perspective on the other. Speakers will cover how courts apply the various tests for infringement and how recent decisions are shaping legal trends. This dynamic discussion will provide attendees with a multifaceted look at how copyright law has developed in the last couple of years. This event includes a delicious lunch and great opportunity to network with CSEL members and fellow attorneys. Let's eat, read, and learn!



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## About Us

Pierce Law Group LLP practices in all area of litigation and transactional matters affecting film, TV, new media and the business of creative entrepreneurs across many industries.

### ENTERTAINMENT LAW

Motion Picture/TV Production Counsel ♦ Production, Talent, Licensing, and Distribution Agreements ♦ Clearances and Use Licenses ♦ Talent Agency and Management Agreements ♦ All aspects of New Media

### INTELLECTUAL PROPERTY

License and Use Agreements ♦ Copyright Law ♦ Trademark and Unfair Competition Law ♦ Rights of Publicity and Privacy ♦ Internet and E-Commerce

### EMPLOYMENT LAW

Guild Signatory Agreements ♦ Compliance Counseling ♦ Employment Agreements ♦ Employee Manuals and Policy Handbooks ♦ Wage Hour ♦ OSHA Safety ♦ NLRA matters ♦ Management Training Seminars ♦ Workplace Investigations

### CORPORATE FINANCE

Entity Formation and Maintenance ♦ Finance and Securities Law ♦ Motion Picture Production Incentives and Tax Credits ♦ Rapid Crisis Management of Workplace Problems ♦ Private Placement Offerings ♦ Loan Documents

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