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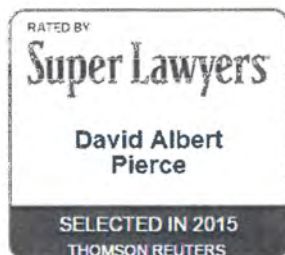
Entertainment Law Circular

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WHERE TO ORGANIZE LLCs (Revisited): CALIFORNIA CORRECTS SOME OF THE MISSTEPS MADE IN THE 2014 REVISIONS OF ITS LLC STATUTE

By David Albert Pierce, Esq.

Pierce Law Group LLP has previously written and warned clients about how the California legislators missed the mark in 2014 when they substantially overhauled the California limited liability company ("LLC") statute. In the state's attempt to make California's law more uniform and in line with other states' LLC statutes, it actually created something far different from the model uniform code followed by other states.

For a summary of the problems created by the 2014 Calif revised LLC law, see my prior article originally



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

Congratulations!

For the second year in a row, David Albert Pierce was selected as a Super Lawyer by Thompson Reuters.

Click here for:

[Southern California Super Lawyers Listing of Entertainment Attorneys](#)

Sundance/Slamdance Photo Gallery

Pierce Law Group LLP travelled to Park City to celebrate our many clients & friends involved in the Sundance & Slamdance Film Festivals

Slamdance Opening Night Film was Adam Rifkin's "Director's Cut" written and starring Penn Jillette with featured appearances by our friends Gilbert Gottfried and Penn's chatty side-kick, Teller.



published in MovieMaker Magazine: "[Where To LLC?](#)" (April 2014).

Essentially, in California's efforts to "fix what wasn't broke" in 2014, California made the LLC framework less controlling management-friendly by largely limiting the right of LLC promoters to draft certain operating agreement terms in their own discretion as management sees fit. The justification was to protect investors and third parties that do business with LLC. The odd revised statute also inexplicably created new terminology replacing long standing legal words and phrases that have long-held meaning established through case precedents.

As such, as soon as the 2014 law went into effect, the legislature almost immediately introduced a "Clean Up" Bill to fix some of the problems readily identifiable in the new law. Assembly Bill No. 506, which became law in January 1, 2016 is that "Clean Up" and it is retroactive to acts and transactions consummated by a California LLC on or after January 1, 2014. The 2016 Clean Up law fixes some of the 2014 changes that were most problematic and raised by corporate lobbyists. The 2016 law returns the power to LLC organizing members in regard to permitting them to draft their operating agreement without certain statutory restrictions imposed in 2014.

Here is a brief summary of what we believe are 3 of the most important changes arising from the new 2016 Clean Up Law:

1. No Longer Are LLCs Placed In Peril Upon the Death of a Member

Under the pre-2014 law a member could disassociate from an LLC (i.e. resign while the LLC continues with its remaining members) by express will or upon the automatic occurrence of certain events, such as a member's death. Under the 2014 law the death of a member no longer permitted mere disassociation so that the LLC could continue even after a member died. Rather, the 2014 law stated that if a member died his interest immediately terminated and the LLC could be forced to cash out that member's interest to the deceased member's heirs regardless of whether that was deemed in the best interest of the LLC,



"Million Dollar Duck" won the Best Documentary Film at Slamdance and was acquired at the Festival by Discovery's Animal Planet.



DAP led his annual Fireside Chat on Legal Issues Confronting Filmmakers at Slamdance alongside Slamdance co-founder Dan Mirvish (pictured below). Pierce Law Group also held Daily Legal Workshops for filmmakers offering legal production tips & free hot cocoa.



and regardless of whether the members expressly sought to provide otherwise via the operating agreement.

Such a rule would be devastating to a production that received money from a member investor who then dies, as the company would be forced to cash out the dead members interest even if the film had yet to be completed or commercially exploited. Fortunately, the new 2016 law returns us to the pre-2014 rules. And now once again, if the operating agreement permits it, a member can now assign all of his rights and obligations upon his death essentially making that new assignee a new member of the LLC and permitting the LLC to continue without any obligation for a forced distribution to deceased member's heirs.

2. No Longer Does Statute Pre-Empt Certain Key Desires for Management Operations Set Forth In Operating Agreements

Under the 2014 law, all members of the LLC needed to unanimously approve a merger, conversion, or amendment to the operating agreement. The new 2016 law, returns California rule to that followed by other states wherein the terms of the operating agreement will govern how and when amendments and major restructuring can occur. No longer can a dissident prevent the will of the majority of members and managers of an LLC.

3. Return of the Business Judgment Rule As A Safeguard For Managers Acting In Good Faith & Best Interest of the LLC

The 2014 law also significantly restricted a manager's reliance on the long established principle known as the Business Judgment Rule which insulated managers from liability when rendering good faith decisions that might ultimately prove detrimental to a company. As Pierce Law Group LLP previously warned our clients, the this radical change caused by the 2014 law only permitted company indemnification of its managers poor decisions and liability which might accompany it, in situations where that manager complied with specified statutorily imposed "duties of care" which again included certain "informed consent" of members prior to taking action.



Further advice for filmmakers was doled out at the Slamdance annual Hot Tub Summit. DAP stayed warm and dry while others took the plunge.



While the kids at Slamdance splashed around, the grand Sundance Film Festival saw our client Matt Johnson shine in his second feature film, "Operation Avalanche," which he wrote, starred in, and directed.



The new 2016 law returns the business judgment rule and permits California to again be in conformity with the pre-2014 rules and the rules of every other state in regards to permitting an LLC to indemnify a manager if the manager acted in good faith and in the best interest of the LLC which he/she is managing. For producers, this eliminates investors' rights to second guess the thousands of decision that producers are required to make in the course of producing and marketing a film, and the film ultimately fails to perform to the extent expected.

Concluding Thought: Determining The Best Jurisdiction To Organize An LLC Should Be Made On A Case By Case Basis

Our firm is continuing to fully examine this new 2016 Clean Up law. This article presents highlights just 3 of the most important changes of the new law. In addition, Pierce Law Group LLP's Corporate Department is continuing to analyze the areas of the 2014 law which remain in effect, and some continued concerns about organizing your LLC in California continue to exist.

At present time, we continue to believe the most caution course of action is to organize your LLC elsewhere (such as Delaware, Nevada, or the actual state in which you will be filming your movie). Whether California remains the best place to organize for your LLC is an issue to be determined on a case by case basis. Furthermore, the new law illustrates that operating agreements should not be constructed via a cookie cutter "Legal Zoom" approach. The Operating Agreement is the critical legal document by which your company operates. We regularly see problems arise when foreseeable issues were simply not addressed at the time the Operating Agreement was drafted. Pierce Law Group LLP can help you identify such problems and custom draft your Operating Agreement.

Contact us for more information about this new law and how it may affect your current LLC or contemplated LLC. *David Albert Pierce, is the Managing Partner of Pierce Law Group LLP. His email is: david@piercelawgroupllp.com*

Meanwhile the Pierce Law Group team tagged along at one party after another as part of the VIP entourage of our new clients Jeryl Prescott & Chris Green, both of whom star in the biggest breakout film of Sundance, "Birth of A Nation."



Upcoming Speaking Engagements

Thursday, February 11th- PLG's Azita Mirzaian is the Section Chair for the Beverly Hills Bar Assoc.'s IP & New Media Section which hosts a talk by the Hon. Lorelei Ritchie of the USPTO's Trademark Trial & Appeals Board. The event will take place at the BHBA offices. For further information on the event [Click here.](#)



Wednesday, February 17th - David leads a BHBA panel on Child Labor in Entertainment at Lawry's in Beverly Hills. [Click here](#) to register for the luncheon.



Saturday, February 20th - David will be the headline speaker at a day long Production Legal Workshop taking place in Columbia, South Carolina presented by the South Carolina Film Commission. For more information, [Click here.](#)



We also cheered on client Brian Moses, whose unique comedy creation "Roast Battle," was the subject of Jason Reitman's Sundance short documentary of the same name (pictured below is Jason with his dad, Ivan Reitman,

Production Legal Seminar with David Pierce



WEST COAST PRODUCTION BRUNING
PRODUCTION LEGAL SEMINAR
 with **DAVID PIERCE**

In the Entertainment industry, lawsuits are a fact of life. From studio to independent filmmaker, the production, distribution and sales of creative works are a high-stakes game. In order to protect your investment, you need to know the law. This seminar will provide you with the legal knowledge you need to protect your investment and ensure your success in the industry.

On Wednesday, October 14, 2015, at 10:00 AM, the West Coast Production Bruning Production Legal Seminar will be held at the West Coast Production Bruning Hotel in Los Angeles, California. The seminar will be presented by David Pierce, a seasoned entertainment lawyer with over 20 years of experience in the industry. The seminar will cover a wide range of topics, including contract law, intellectual property, and more.

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David Pierce is a Managing Member of WEST COAST GROUP LLP, a full-service entertainment law firm. He has represented a wide range of clients, including producers, directors, writers, and performers. He has also served as legal counsel to several major studios and networks.

David Pierce is also a frequent speaker at industry events and has written numerous articles on entertainment law. He is a past president of the Entertainment Law Association and is a member of the California State Bar and the Southern California Entertainment Law Association.

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DMCA's § 512(f) Remains Toothless in Light of Lenz Decision
 By Azita Mirzaian, Esq.

We live in a time when anyone with a smartphone and a social media app can become a content creator. Frequently, these content creators (such as video artists, animators, and musicians who post their content on the Internet) utilize pre-existing copyrighted works of corporate content rightsholders (such as record labels and movie studios), invoking the doctrine of fair use to justify what would otherwise be misappropriation in violation of copyright law. For example, a video artist may edit together existing footage owned by a film studio in order to create a parody that is protected by the fair use doctrine. Or an appropriation artist may use Photoshop to combine elements of images owned by a company to create a work of criticism that is protected by the fair use doctrine.

These content creators often complain that corporate content rightsholders misuse and abuse the takedown provisions of the Digital Millennium Copyright Act (DMCA) by issuing meritless takedowns in order to remove content that they don't like from the Internet, effectively silencing the content creators. These kinds of takedowns have

enjoying a recent Roast Battle at The Comedy Store.)



We stumbled upon Comedy Store favorite Erik Griffin, who appeared at Sundance to don a more serious role in the lesbian coming of age film "First Girl I Loved."



We also were quite proud of DAP's former student from his UCLA production class and mega actress, Bryce Dallas Howard, as she participated in a Hollywood Reporter panel alongside some other famous folks (pictured below). Bryce was at the festival with a short film she wrote and directed called "Solemates"



DAP treated clients and friends of the firm to a steak dinner at The Butcher's Chop House in Park City.

become increasingly problematic in recent years. Moreover, many sites like YouTube now offer content creators opportunities to monetize content, but the DMCA takedown process provides corporate content rightsholders a quick and easy way to shut off monetization (or, alternatively, to divert the proceeds from monetized content to themselves). As a result, there has been an increasing need for clarity regarding 17 U.S.C. Section 512(f), the part of the statute that prohibits abuse of the DMCA takedown process.

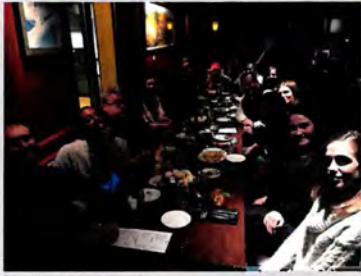
The 2004 Ninth Circuit case, *Rossi v. Motion Picture Association of America*, touched on this matter, providing a rough framework for how courts approach Section 512(f) claims, but many were hoping a subsequent Ninth Circuit case, *Lenz v. Universal Music Corp, et al*, would provide some real clarity on the matter. Unfortunately, the recent decision **[to continue reading this article in its entirety [click here](#)]**

This article was originally published in the Winter 2015 edition of the State Bar of California's Intellectual Property Law Section's "New Matter" law journal Vol. 40, Number 4. Reprint with permission of the California State Bar.

Azita Mirzaian, Esq. is the Litigation Department Head of Pierce Law Group LLP, she also serves as the Chair of the Beverly Hills Bar Association's Intellectual Property & New Media section. She can be reached at: azita@piercelawgroupllp.com

Pierce Law Group LLP proudly supports the following charitable causes:





And we enjoyed some omelettes and bananas foster at the chalet of our respected colleague and Binghamton University alum, Jonathan Gray, Esq.



While in Park City, DAP even found some free time to have pizza with Arnold Bachman (of the town of Brighton Bachmans) who pitched a great sports film idea.



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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.

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