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Vol. 2

June 2015

Issue 2

PierceLawGroupLLP.com

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California Appellate Court Rules Bank of America Can't Take Fees From Child Actor Coogan Trust Accounts

In *Phillips, et al. v. Bank of America*, the California Court of Appeals for the Second District unanimously ruled that



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"Barely Lethal" now in theaters!

Bank of America improperly withdrew service fees from money earned by child actors which is held in Coogan Trust Accounts without court authorization.

A Coogan Trust Account, designed to protect child actors' income, is a statutorily required account to preserve 15 percent of a minor's gross earnings for artistic or creative services until the time they turn 18 years old. The California Family Code § 6750 et seq. mandates that Coogan Trust Accounts are set up for child actors, and prohibits withdrawals without court approval. Bank of America's withdrawal of service fees constituted a violation of this state law prohibition.

To read the full ruling, click [here](#).

History of Coogan Trust Accounts

For over 75 years, the state of California has recognized that child actors are vulnerable and that their earnings need to be protected. In 1939, California passed the California Child Actors Bill, also known as the [Coogan Law](#) after famed child actor Jackie Coogan.

Coogan worked as a child actor from the time he was three years old, and became famous after playing Charlie Chaplin's sidekick in the 1921 film The Kid. Before he had turned 21, Coogan earned an estimated \$48 to \$65 million in today's dollars. However, his mother and step-father spent nearly every cent of his money before he reached the age of legal majority and could control his own money. As an adult, Coogan eventually filed a lawsuit against his own mother for mismanaging his funds, but recovered only \$126,000 after legal fees.

California legislators took notice of the protracted legal battle, and added the Coogan Law to the California Family Code and the California Labor Code. The statutes provide a variety of protections for child entertainers, including a provision that those who employ child actors must set aside 15% of the child's earnings into a blocked trust account which parents or guardians cannot access. Since minors are not legally able to control their own money, the Coogan trusts ensure that at least some of the child's earnings will be available once he or she is of legal age.

It is each production companies responsibility to ensure that Coogan Accounts are established for the child actors



Congrats to our client Sukee Chew, who along with Bret Ratner produced the new action comedy film *Barely Lethal*. The film was released on May 29th in select theaters and video on demand.

Click [here](#) to watch the trailer.

About Pierce Law Group LLP

Pierce Law Group LLP is a full service entertainment law firm with nine attorneys. It practices in the areas of 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.

The firm also represents various artists including producers, actors, writers, directors,

they employ, and court ratification of the child actor contracts cannot occur unless proof of a Coogan Account can be shown to the court. *[For a separate discussion on why child actor ratifications are important to production companies, see the accompanying article "Minor Actors, Major Headaches" further in this newsletter]*

Procedural Background of the Case

In 2012, the mothers of two child actors filed a lawsuit against Bank of America, alleging that the bank was making withdrawals from their children's Coogan Trust Accounts in the form of monthly service fees.

The Plaintiffs pointed to California Family Code Section 6753(b), which states that "no withdrawal by the beneficiary or any other individual, individuals, entity, or entities may be made of funds on deposit in trust without written order of the superior court..." They claimed that debiting service fees from the Coogan Trust Accounts was a direct violation of California law.

Bank of America claimed that debiting the account for a service fee was not the same as a withdrawal under the statute. The bank argued that the statute applied only to parents, guardians, and trustees, but not to other entities such as banks.

The trial court agreed with Defendant, and entered a judgment on a demurrer sustained without leave to amend. The mothers appealed the decision, and the Appellate Court reversed the trial court's ruling.

The Appellate Court's Ruling

The Appellate Court found Bank of America's argument that an account debit was not a withdrawal to be disingenuous. The Court relied on the dictionary's definition of "debit" to find that a debit was necessarily a withdrawal, and the fact remains that money was being removed from the account. In addition, the Court cited other legal decisions that classified debits and service charges as withdrawals.

The Court of Appeals also noted that the Coogan Law provided for preserving 15% of a minor's gross income, free from any kind of deduction for fees or even taxes without court approval. In addition, the language of the law specifying that no "individual, individuals, entity, or

numerous accomplished comedians, and other creative entrepreneurs.

Our client list includes both Academy Award and Emmy Award winners. The Firm's academic and analytic approach to contract negotiations and litigation seek to obtain creative solutions for achieving our client's desires.

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Congratulations!

Willie Hunter, co-creator of the primetime sitcom, "The Carmichael Show" which has been picked up by NBC.

Upcoming Films

Our client Leslie Jones joins the cast of Sony's

entities" may have access to the account is all-encompassing, and makes no exceptions for banks and their account fees.

The appellate court did not hold that Bank of America could not charge any fees for the Coogan Trust Accounts, however. But, it cannot be taken from the 15 percent gross income amount, and can instead be deducted from the other 85 percent of the child's earnings.

Significance of the Ruling

The ruling is consistent with the spirit of the Coogan Law, ensuring that the designated 15 percent portion of a child's income is protected. Such bank fees would especially affect children making relatively small amounts of money, including extras and background performers also protected by the Coogan Laws. If a child's Coogan Trust Account amount was below a minimum balance requirement, additional fees would have been incurred directly from the account. For these performers, this ruling will ensure that the money that is set aside for them until adulthood is protected.

At Pierce Law Group LLP, our experienced attorneys assist production companies (as well as the occasional child performer and their parents) in regard to all aspects of child labor laws during film production, as well as in regard to ratifying child actor contracts with the applicable state courts. Pierce Law Group LLP has provided legal advice and counsel for television productions such as "Mad Men" "Weeds" "Nurse Jackie" and "Nashville" in regard to child actor issues, and likewise on numerous films such as, "Akeelah & The Bee," the numerous Tyler Perry movies, and the "Hunger Games" franchise.

For more information about Child Actor Labor Issues contact the PLG-LLP experts:

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Minor Contracts, Major Headaches

Producers all too often think court ratification of child actor deals are strictly for the benefit of the child actors and something that therefore doesn't need to occur

Ghostbusters reboot - principal photography begins this month.



DAP backstage at SNL with Leslie

Upcoming Events

The Leukemia & Lymphoma Society of Southern California hosts its annual Man/Woman of the Year Gala on June 13, 2015 at The Globe Theater in Universal Studios. Cocktails & Silent auction begin at 6 p.m. followed by dinner and festivities. David Albert Pierce is a proud Trustee on the Executive Board of LLS. Tickets are \$150. For further information & purchase, click [here](#).

Bet Tzedek is hosting its annual fundraiser, The Justice Ball, on Sunday, June 28, 2015 at The Conga Room in downtown Los Angeles. Pierce Law Group attorney Vera Golosker is a member of Bet Tzedek's New Leadership Council and is helping fundraise for The Justice Ball. For tickets, please click [here](#).

Bet Tzedek provides free legal services for low-income individuals and

especially if producers are looking to cut corners on budgets. This archived article by David Albert Pierce found on firm's newly launched website, and which was first published in MovieMaker Magazine in Fall 2006, adeptly points out why every producer needs to be aware of the requirements for child actor ratifications and the perils that can arise when they fail to do so.

The article in its entirety can be found by clicking [here](#).

Titanic Actor Files Lawsuit Seeking Residuals After Role Changed From Extra To Principle Performer

Titanic is one of the most successful movies in history. Grossing over \$2 billion worldwide after its release, many aspiring actors would have loved even the smallest percentage of those profits.

One such actor, Vi Jay, known professionally as Abrax Lorini, may actually be entitled to part of the proceeds from Titanic. In 1996, the actor tried out for a part as an extra in the James Cameron film. He was hired on as an extra and was contracted to be paid \$60 per day for his work.

When it came time for filming, James Cameron spontaneously offered Vi Jay a bigger part. Rather than a non-speaking extra, he became "Spindly Porter," and was required to interact with actress Kathy Bates in the beginning of the movie. He also had a line of dialogue with the actress.

The extra responsibilities and the line of dialogue bumped him up from an extra to a "principal performer."

Now, nearly 20 years after the end of filming, Vi Jay filed a lawsuit against the film's producers, seeking back pay and residuals on account of his bigger role.

Bigger Parts Mean More Benefits

According to Vi Jay's lawsuit, the larger role meant that he should have been offered a membership into the Screen Actors Guild (SAG), and that he should have received SAG benefits. In addition to higher union pay, Vi Jay would have received residual pay from the film

families in Los Angeles, with practice area expertise in Holocaust Reparations, Elder Law, Employment Rights, Guardianships, Human Trafficking, Health, Housing, and more.

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Vi Jay alleges that he was never offered an opportunity to join SAG, and only received the \$60 payments for his work, even though the larger role required him to spend an additional 90 days on set. He alleges that the studio violated the SAG collective bargaining rules, and that the union should have been notified of the change in his role.

Since Vi Jay never received his SAG membership, he wasn't eligible for benefits like union pay or residuals. The residuals, a percentage of profits that a movie makes when it is released into other media markets like TV or video, could be worth a large amount of money even for a small part.

Though Vi Jay does not request a specific amount of damages in his lawsuit, he has asked for specific damages for his back pay and residuals, and punitive damages if he proves proven Twentieth Century Fox deliberately defrauded him of his right to SAG membership and benefits.

The Importance of Collective Bargaining

SAG works under the same types of collective bargaining agreements as any other union. The union membership allows actors to work together to demand better pay and benefits for their services. Membership in SAG is a lucrative option that allows actors to receive fair compensation for their roles.

It remains to be seen if Vi Jay will win his case against the producers of Titanic. If he were a part of SAG at the time of filming, he would have been required to take up his grievances through the arbitration process required under the SAG rules. Whether or not he will be forced into arbitration is an issue to be decided by the courts.

Issues regarding SAG residuals often arise. It's essential that Producers fully understand what residual obligations stay with them even after a distributor acquires their film. All too often producers are ignorant about these facts and can get sacked with unexpected bills. Pierce Law Group LLP regularly counsels both its production company clients and its talent clients on such issues.

If you have questions contact:

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Read this and other current blog articles at: www.piercelawgroupllp.com/blogs

Firm Retreat

On May 15th, the four newest members of PLG-LLP traveled with David Albert Pierce for a weekend retreat at PGA West in La Quinta, California. The retreat focused on an introduction and fine tuning firm procedures and operations. Desert rain on Friday assured productivity, but cleared up in time for a BBQ featuring homemade tortilla chips by attorney Brian Hewitt. Saturday saw a competitive round of golf on the Arnold Palmer course at PGA West.



Speaking Engagements

On June 1st, Jason Brooks delivers a seminar presentation as a guest speaker at UCLA-Extension regarding hot legal topics for consideration in the New Media space.

On June 2nd, David Albert Pierce presents a seminar on Clearance Issues for Filmmakers to Elon University's Summer In L.A. program in downtown Los Angeles.

On July 15th, Azita Mirzaian and Vera Golosker will be speaking on a panel for California Lawyers for the Arts entitled "The Basics of Copyright Law for Artists." Stay tuned for more information and registration details!

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