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Who the Independents depend on
Film • TV • New Media

Entertainment Law Circular

June 2019

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Events & Speaking Engagements



On **Wednesday, June 19** the Beverly Hills Bar Association Entertainment Law Section will present **Digital Deals 2.0: The Current Digital Landscape**.

As the world goes increasingly digital, attorneys need to be apprised of the trends and deals in that sphere. Three top executives will discuss the current marketplace and the types of deals that are occurring.

The panel will be introduced by **David Albert Pierce, Esq.**

Panelists will include **Reza Izad**, CEO of **Studio 71**, **Mitch Federer**, Senior VP Business & Legal Affairs, **Kinetic Content**, and **Neville Johnson**, Founding Partner **Johnson & Johnson**

Kaseberg v. O'Brien (S.D. Cal.) - Copyright

Settlement Announced May 9, 2019



This closely-watched joke theft case has settled only weeks before it was set for trial on May 28, 2019. Long-time comedy writer Robert Kaseberg filed suit against Conan O'Brien in July of 2015 over multiple jokes he had published prior to similar jokes being used on O'Brien's show. Kaseberg was seeking up to \$450,000 in damages.

Kaseberg's claims survived summary judgment, but the U.S. District Court wrote in its ruling that the protectability of a punchline of a joke is "constrained by the limited number of variations

LLP.

David Albert Pierce is the chair for the BHBA Entertainment Law Section. For more information on how to attend this and other BHBA events, [click here](#).



On **Wednesday, July 17**, the BHBA Entertainment Law Section will present **The Magical Mystery of the Music Business**.

An All-Star line-up of music professionals will discuss and walk-thru all aspects of music deals in the modern age, and the important roles agents, managers, business managers, and attorneys play in the deal making process. The panel will discuss, among other things, the current state of record deals, music streaming and the implications of the Music Modernization Act, the new trend of Vegas residencies and other touring trends.

David Albert Pierce is the Chairman of the Entertainment Law Section and will present introductory remarks and introduce the panel. Panelists will include **Dina LaPolt**, owner of **Lapolt Law, P.C.**, **Lou Taylor**, President of **Tri Star Sports and Entertainment Group**, **Cheryl Paglierani**, agent at **United Talent Agency**, **Stephanie LaFera**, owner of **Little Empire Music**.

The event will be held at Lawry's in Beverly Hills on Wednesday, July 17 at 12:30.



On **Wednesday July 31st**, the **California Society of Entertainment Lawyers** will

that would (1) be humorous (2) as applied to the specific facts articulated in each joke's previous sentence and (3) provide mass appeal....The standard of infringement must therefore...be some form of 'virtual identity.'"

Despite such a high bar to prove infringement, O'Brien decided to settle the case for an undisclosed amount. O'Brien released a statement in response to the settlement with some comments on the state of modern comedy and joke-writing:

"The fact of the matter is that with over 321 million monthly users on Twitter, and seemingly 60% of them budding comedy writers, the creation of the same jokes based on the day's news is reaching staggering numbers. Two years ago one of our writers came up with a joke referencing Kendall Jenner's ill-fated Pepsi commercial, and so did 111 Twitter users. This "parallel creation" of jokes is now so commonplace that Caroline Moss of CNBC and Melissa Radzimiski of the Huffington Post have given it a name: "tweet-saming." And, by the way, the person who sued me also tweeted the same Pepsi joke, but only after our show and 24 other tweeters beat him to it."

- Conan O'Brien

For more information about this case and its effects contact Pierce Law Group LLP.

Allen v. Cooper (SCOTUS, granted cert. June 3, 2019) - Copyright Case No. 18-877



The Supreme Court has granted certiorari to hear a case regarding footage captured of the legendary pirate Blackbeard's ship being

present a seminar titled, "(Can the law)" Stop Me If You Heard This One Before." This will be an afternoon seminar at The Comedy Store on Sunset Strip with a Deli lunch buffet starting at Noon and the Program running from 12:30 - 2pm. 2 hours of MCLE credits including 0.5 hours of Ethics credit is provided to those attorneys in attendance.

The program will focus on an array of business & legal issues involved in the representation of Stand-Up Comedians, including:

- (1) Analysis of "Joke Theft" under Copyright Laws (and the recent Conan O'Brien case involving joke theft);
- (2) Protecting Comedian's materials;
- (3) Defamation claims and 1st Amendment Rights;
- (4) Political Correctness Effects on Comedy & Handling Adverse Press;
- (5) Loan-Out Corporations & Performer Tax Implications;
- (6) Transforming Stand-Up Material into TV Concepts, Protecting Artist Ownership & Negotiating TV Deal Terms;
- (7) Preserving Ownership, Trademarks, Catch-Phrases & Right of Publicity;
- (8) Laws Governing Promoters;
- (9) Disputes with Club Owners;
- (10) Social Media Issues, and
- (11) Ethical Concerns For Lawyers (representing comedy teams, percentage fee arrangements & lawyer's ability to negotiate entertainment deals, dealing with multiple artist clients up for same role, importance of written rep agreements, the interplay between attorneys, managers and agents and the attorneys fiduciary duties concerning the

recovered from the bottom of the ocean. Plaintiffs Frederick Allen and his company Nautilus Productions were hired to excavate the wreckage of this ship. Nautilus filmed the recovery process and retained the copyright to the footage. The footage was then used by the North Carolina state government to attract tourists. Allen and Nautilus sued North Carolina and state officials for copyright infringement. North Carolina claimed it was protected from private copyright suits under the 11th Amendment of the United States Constitution. Additionally, North Carolina passed a law in 2015, after the footage was in possession of the North Carolina government, declaring all recordings or documentary evidence of a derelict vessel or shipwreck in the custody of any agency of North Carolina to be public record.

The 4th Circuit has upheld North Carolina's position that States cannot be sued for private copyright infringement. The State's law and the protections offered by the 11th Amendment regarding copyright infringement suits will now be reviewed by the Supreme Court.

For more information about this case and its effects contact Pierce Law Group LLP.

Red Label Music Publishing, Inc. v. Chila Productions (N.D. Ill., May 31, 2019) - Fair Use 18 C 7252

Defendant Chila Productions used the song *Super Bowl Shuffle*, as performed by the 1985 Chicago Bears football team, in a documentary about the Chicago Bears. The Northern District Court of Illinois found Chila's use to not be infringement under the fair use doctrine. The song was used for only eight seconds in a 100-minute documentary and it was used to describe that era of the Bears' history.

For more information about this case and its effects contact Pierce Law Group LLP.

Vallejo v. Netflix Productions (S.D.

same).

Current Panelists include: **Thomas Burke, Esq.** of **Glazer Weil** (defense attorneys for **Conan O'Brien**); **David Albert Pierce**, Managing Partner **Pierce Law Group LLP** (transactional and litigation counsel for numerous comedians & comedy clubs); Comedian **Argus Hamilton** (holds the distinction of most appearance by a Stand-Up on **Johnny Carson's Tonight Show**); Comedian **Tony Hinchcliffe** (one of comedy's hottest rising stars and Host of **Kill Tony Podcast**).

Tickets are: \$70 for Attorneys; \$50 for Attorneys who are members of CSEL; and \$40 for Non-Attorneys.

For more information about the event, please email: jabob.abdo@gmail.com

Leukemia & Lymphoma Society's 2019 Man and Woman of the Year Fundraising Campaign raises over \$1.4 Million



David Albert Pierce attended the LLS's **Man & Woman of the Year Gala** on **June 8** which was hosted by **Dr. Drew Pinsky**.

The **Man & Woman of the Year** is a philanthropic competition to support blood cancer research among a group of motivated and

Fl., filed August 24, 2018) -

Copyright

1:2018cv23462



Plaintiff **Virginia Vallejo** alleges that she is the inspiration for **Pablo Escobar's** news caster paramour in the Netflix production, *Narcos*. She had written a memoir about her relationship with **Escobar** and filed suit for copyright infringement after the release of the show. She claimed that many scenes from her memoirs were used in the show without her permission.

Federal judge **K. Michael Moore** found on **May 24** of **2019** that, while the majority of **Vallejo's** memoirs were not infringed by the Netflix production, one scene in which "the character **Valeria Velez** (the character allegedly based on Plaintiff) has an intimate encounter with **Pablo Escobar** that involves a revolver, and that this encounter infringes on the original expression in the Memoir. While Plaintiff does not provide the specific details of the scene in *Narcos* that allegedly infringed on the Memoir, Plaintiff does allege that this scene involves a unique expression - namely, an intimate encounter that involves a revolver. While copyright protection does not extend to ideas it is plausible that Defendants infringed on Plaintiff's expression with respect to this scene." However, the judge also points out that **Vallejo** has not alleged misappropriation by Netflix of anything other than facts, which may be a fatal flaw in **Vallejo's** case.

For more information about this case and its effects contact Pierce Law Group LLP.

Mission Product Holdings, Inc. v. Tempnology, LLC (SCOTUS, May 21, 2019) - Bankruptcy

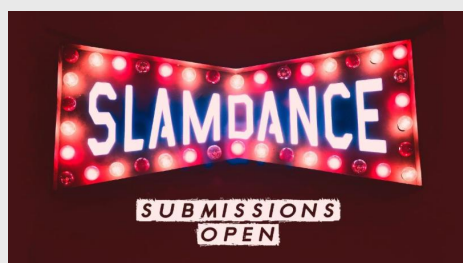
2019 DJDAR 4275

dedicated individuals. Candidates form fundraising teams and compete to see who can raise the most money in a 10 week period.

This year the LLS Los Angeles recognized **Dave Kuba** as Man and **Amanda Montell** as Woman of the Year. Additional congratulations are extended to **Naad Banki** and **Elizabeth Smiley** for coming in as runner up. The LLS Man/Woman of the Year raised a whopping **\$1,471,339** for blood cancer research.

David Albert Pierce has spent the last 9 years as an Trustee on the Executive Board of the Leukemia Lymphoma Society's L.A.. Chapter.

To read more about this awesome event and learn how to contribute to LLS, [click here!](#)



It's open submissions season for the 2020 edition of the Slamdance Film Festival!

Slamdance has created a track record for showcasing breakthrough artists that is beyond dispute. Filmmakers who first showed their work at the festival are now amongst the biggest names in the entertainment industry.

Pierce Law Group is proud to be a long-time sponsor of this extraordinary event, and encourages all aspiring filmmakers to get involved.

Tempnology licensed their "Coolcore" technology to Mission for a line of exercise clothing. The license was to expire in July of 2016, but Tempnology filed for bankruptcy in September of 2015. As part of the bankruptcy proceedings, Tempnology's license to Mission was rejected under Bankruptcy Code §365(a) so Tempnology could cease performance and Mission could sue for the damages that resulted from this non-performance. Additionally, Tempnology sought declaration that this rejection of the license revoked Mission's right to use the Coolcore technology. The Bankruptcy Court granted this declaration, but the Bankruptcy Appellate Panel reversed, citing *Sunbeam Products, Inc. v. Chicago Am. Mfg., LLC* (7th Cir. 2012) (holding that rejection of a contract does not revoke a licensee's right to use the debtor's trademark). The First Circuit then reversed again, holding that Mission's license to use this technology was terminated by the rejection.

The Supreme Court of the United States granted certiorari and reversed again, holding that, while a rejection under §365(a) converts the debtor's unfulfilled obligations to a pre-petition damages claim, rejection does not allow a debtor to take back rights it has previously granted. Therefore, even though the license agreement was breached as a result of the bankruptcy proceeding, Mission retained its rights to the Coolcore technology under the license for the full term of the contract.

Practice tip: This case has significant impact on the film finance industry because it illustrates that intellectual property (such as a licensee's rights in a picture) cannot merely suffer revocation by a contract provision under a bankruptcy proceeding initiated by a licensor. Before this holding by the Supreme Court, decisions such as the First Circuit's in this case presented some risk to licensees because licenses of copyrights that are necessary to the exploitation of a film may have been jeopardized by revocation provisions. This is no longer the case and this decision strongly cuts against enforcement of clauses in a license agreement that would have the same effect.



Early submission fees are available now through July 15. [Learn more here](#), and check out this *MovieMaker* article for [49 other film festivals](#) to get involved with this year!

Joshua A. Edwards attends the Deadline Emmy Kickoff Party



Emmy season is upon us and Pierce Law Group's **Joshua Edwards** had a front row seat to one of the coolest parties in town celebrating this exciting time. Tony Hale, Matt Walsh, Mishel Prada, Ramy Youssef, and many more of TV's biggest stars joined Josh on the red carpet at Deadline's Emmy Kickoff Party.

To check out all the pictures of attendees and read *Deadline's* full coverage on the event, [click here!](#)

For more information about this case and its effects contact *Pierce Law Group LLP*.

Key Terms for Development Season Deals

As we head into network development season, the Guild has prepared information on key pilot deal terms for Guild members and their representatives.

By the Writers Guild of America

Pilot Compensation Terms

Almost 1,000 Guild members provided information about pilot deals in the Guild's 2018 survey. Adjusting that information to reflect the annual minimum increases in the MBA, the tables below provide key compensation terms, including pilot script fees, pilot producing fees, episodic fees in the event the pilot is picked up to series, and series sales bonus terms, for all half-hour and one-hour pilot deals.

Half-Hour Pilots

	Median	Max Reported
Pilot Script	\$105,000	\$525,250
Pilot Producing Fee	\$34,250	\$84,000
Episodic Fee	\$31,500	\$81,500
Series Sale Bonus	\$26,250	\$68,250

One-Hour Pilots

	Median	Max Reported
Pilot Script	\$157,500	\$709,250
Pilot Producing Fee	\$39,500	\$105,000
Episodic Fee	\$36,750	\$105,000
Series Sale Bonus	\$26,250	\$63,000

Broadcast Network Pilots

Writers making broadcast network pilot deals should be aware that the

Broadcast Network Medians

	Half-Hour Pilots	One-Hour Pilots



HEAVY WATER, premiering **June 13**, follows big wave surfer **Nathan Fletcher** through the evolution of surfing and his relationship with big waves. A voyage through the eyes of the surfing community that delves deep into the mind-set of the board sports culture and its roots, culminating in a spectacular, never-before-performed stunt, which once again raises the bar of what is possible.

Pierce Law Group is excited to have played a part as limited production counsel on this documentary!

For more information on **HEAVY WATER** and where to watch, [click here](#)

Pilot Script	\$157,500	\$202,250
Pilot Producing Fee	\$47,250	\$42,000
Episodic Fee	\$42,000	\$42,000
Series Sale Bonus	\$26,250	\$26,250

When all agencies agree to provide the Guild with member contracts and data, as Verve and agencies signed to the Code of Conduct have done, we will be able to offer even more robust and complete information on development deal terms to members on an annual basis.

For more information on this and other topics relating to development deals, [check out the WGA West](#).

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.

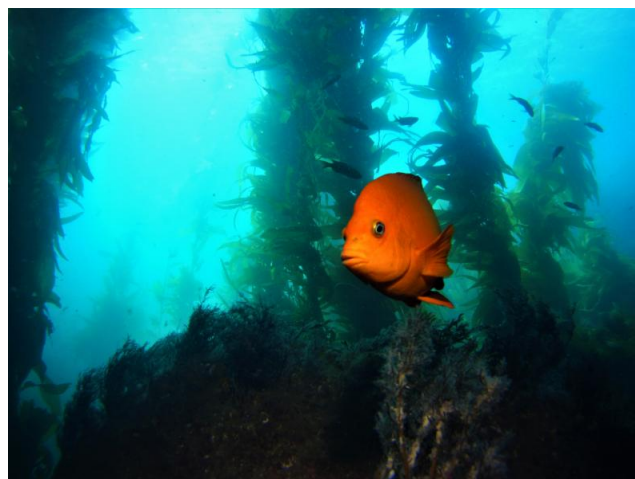
We represent production companies and other creative businesses as well as artists including producers, actors, writers, directors, comedians, and other entrepreneurs.

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.

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on Social Media



Forward to a Friend



"Screensaver" by Anthony J. Hanna, Esq.

Comedy Fundraiser Event For Anti-



**LEUKEMIA &
LYMPHOMA
SOCIETY®**

fighting blood cancers

CALL FOR ACTION:

Congress is considering an important bill this week that would stop the spread of dangerous junk insurance plans which discriminate against patients with pre-existing conditions. This is just one of seven bills that have been packaged together to protect and expand meaningful health care access and promote affordability to patients.

Pierce Law Group is asking all our friends to stand with LLS, and cancer patients everywhere and call your representatives today at **1-855-980-5634** and tell them to vote YES on H.R. 987. This phone number is the general switchboard for the House of Representatives, simply give them your reps name or just your zip code and they will instantly connect you with the right Congressperson.

More information on this bill can be [found here](#).

Defamation League

ADL'S NEXTGEN PRESENTS

STAND-UP AGAINST HATE!

THURSDAY, JULY 11
DOORS OPEN 7:00 PM · SHOW STARTS 8:00 PM
THE COMEDY STORE · 8433 SUNSET BOULEVARD

BRUCE FINE
Host
Producer for Wayne Brady Show

SAMMY OBEID
NBC's Last Comic Standing

MICHAEL YO
Amazon Prime's Blasian

MORE NAMES TO COME!

TICKETS START AT \$50 + 2 DRINK MINIMUM
SPONSORSHIPS AVAILABLE
MUST BE 21 OR OVER TO ATTEND

ADL
FIGHTING HATE FOR GOOD

FOR ANY QUESTIONS, CONTACT BHO@ADL.ORG
SPECIAL THANKS TO OUR LEAD SPONSOR MARTY SALVIN

Mark your calendars for 8 pm Thursday, July 11 when ADL's NextGen presents Stand-Up Against Hate! at the World Famous Comedy Store.

David Albert Pierce is a volunteer on the organizing committee for this yearly event.

For or more information on this event and how to buy tickets, [click here](#).

**Accorded the Highest Recognition by
Industry & Peers**

Avvo
Rating **10.0**
Superb



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

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