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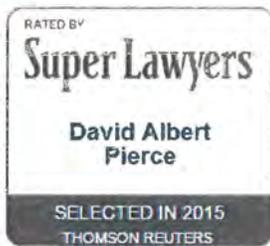


Lawsuit Over DreamWorks' Turbo Highlights Need For Strict Adherence To SEC Standards

After years of fundraising and production, the hopes and dreams of filmmakers and film investors hinge on the success of a newly-released movie. When that movie fails, the optimistic conversations leading up to the release of the film start to change.

When soliciting investors for a film project, where is the line between optimism and fraud? Which type of future projection is a securities law violation, and which type is simply a reasonable hope-based standard accounting practice? In an investor lawsuit against DreamWorks Animation, the animation company was vindicated.

How DreamWorks Got In Trouble



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Reclining Nude on La Cienega



All month of April, comedian Jann Karam's one woman show entitled "Reclining Nude on La Cienega" plays at the Greenway Theater in Los Angeles. The stage show is produced by legendary comedy producer George Schlatter, with Co-Executive Producer credit bestowed on our own David Albert Pierce.

About Pierce Law Group LLP

In the summer of 2013, DreamWorks released *Turbo*, an animated feature about a snail with dreams of winning the Indy 500 race. While critics enjoyed the movie, the film had a poor opening weekend. It cost \$135 million to make, grossed \$83 million domestically, and only made \$21 million.

After *Turbo* failed to make a profit, some of DreamWorks' shareholders filed a class action lawsuit against the company, alleging that DreamWorks violated securities laws by stating in its earnings announcements for the second and third fiscal quarters of 2013 that *Turbo* would be profitable. The lawsuit alleged that these earning statements falsely inflated DreamWorks' stock price, because the company knew or should have known that the film would not be profitable before its release.

Allegations of Securities Law Violations

The class action complaint alleged that DreamWorks had violated Section 10(b) of the Securities and Exchange Act by intentionally misleading investors about the profitability of *Turbo*.

In order to prove a violation of Section 10(b), the plaintiff must show that:

1. Defendant made a material misrepresentation or omission;
2. Defendant made the misrepresentation with the intent to deceive or defraud;
3. The misrepresentation lead to the purchase or sale of a security;
4. The investor relied on the misrepresentation;
5. The investor suffered an economic loss, and the loss was caused by the misrepresentation.

When considering whether a misrepresentation or omission was made with intent to deceive or defraud, the court looks at all of the facts in the complaint, taken as a whole. If those facts raise a strong inference that a defendant was attempting to deceive investors in order to make a profit, the lawsuit can continue.

Why DreamWorks Won

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, 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.

Our Attorneys

[David Albert Pierce](#)
Managing Member

[Anthony J. Hanna](#)
Administrative Member

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Finance Dept. Head

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Litigation Dept. Head

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New Media Dept. Head

As evidence of DreamWorks' alleged misrepresentation, Plaintiffs recounted earnings telephone calls with shareholders regarding the film's profitability. In those calls, CEO Jeffrey Katzenberg told investors that "based on the information we have today, we believe that *Turbo* is a profitable movie."

DreamWorks' assertions in those calls were based upon projections made at that time. The plaintiffs did not allege that any of the numbers or figures presented were false or inflated, only that the company should have known that movie may not be profitable. The plaintiffs also alleged that surrounding circumstances, like the resignation of DreamWorks' Chief Marketing Officer a few weeks after *Turbo's* release, show that the company knew that the film would fail at the time those calls were made.

U.S. District Court Judge James Otero reviewed the information presented by the plaintiffs and found that the allegations did not meet the pleading standards required by Rule 10(b). The case was more accurately characterized as a complaint of "fraud-by-hindsight," meaning that the complaint simply alleged fraud by contrasting DreamWorks' past optimism with the less favorable, actual results. That type of complaint is not legally sufficient to establish a securities law violation, and must be dismissed.

In addition, the court noted that generally accepted accounting principles allow for a range of possibilities or alternatives in their projections. Without the testimony from any secret or confidential witnesses, the plaintiffs only had their own opinions of how DreamWorks should have made its projections, rather than actual facts showing erroneous or misleading accounting. When a projection of success falls within a reasonable range of options, the fact that those projections were not fulfilled is not enough to sustain a lawsuit.

Finally, Judge Otero also discussed the fact that the plaintiffs had not provided any motive or discussed any benefit for DreamWorks' allegedly illegal actions. Without a reason for DreamWorks to commit fraud, the circumstances taken as a whole made it unlikely that DreamWorks purposefully deceived investors.

What This Means for Pierce Law Group LLP's Clients

[Briana C. Hill](#)
Senior Associate

[Vera Golosker](#)
Associate Member

Brian S. Hewitt
Of Counsel

Danielle Avalon
Of Counsel

Congratulations!



On April 9, 2015, our very own Briana C. Hill gave birth to a beautiful baby girl Iris Hill Werner. This is Briana's second beautiful baby girl, her oldest is 3 years old and a frequent visitor to the Pierce Law Group LLP offices. Briana's husband Jeffrey M. Werner is an accomplished film and television editor whose credits include *"The Kids Are All Right"*, Bill Maher's *"Religulous"* and currently the HBO series *"Ballers."*

David Albert Pierce ("DAP") has recently adopted "Scrappy" a terrier-mix rescued from a kill shelter. Scrappy joins Shecky a 13 year old basenji-corgi mix as part of the Pierce Dog Group team. People say Scraps bares a resemblance to "Baxter" from the Anchorman Ron Burgundy movies.

It is not a violation of securities law to be wrong about a film's potential. However, angry investors who lost money can be vengeful, and may file a lawsuit to try to recoup their losses. Producers/ filmmakers should always make it clear in writing to the investors of the *enormous* risks of investing in a Picture and that recoupment of the investment is not guaranteed, as it is always dependent on distribution and box office success. These risks (among other material information) should appear in properly drafted Private Placement Memorandum which is an essential part of any securities offering.

DreamWorks was saved from a potential securities law violation because it used a set of reasoned factors and its available evidence to make an optimistic projection about the film's potential. When discussing the film, DreamWorks' CEO used words like, "we believe" and "based on our evidence," rather than making strong predictions about the future. While even these procedures did not save DreamWorks from being sued, they did vindicate the company in court.

Before you communicate with investors about the potential of your film project, remember that your words could come back to haunt you. Pierce Law Group LLP recommends that producers entirely refrain from rendering any projections. If you feel compelled to provide them, always rely on hard evidence for your projections, and ensure that they are genuinely comparable-which is often difficult to do when dealing with products as subjective as independent motion pictures. Optimism is not against the law, but unwarranted optimism could be the basis for a lawsuit. Film finance is fraught with traps for the unwary. Pierce Law Group LLP's film finance experts can help you from falling into those traps.

For more information, contact: Trea Tran Lachowicz at trea@piercelawgroupllp.com or David Albert Pierce at david@piercelawgroupllp.com.



Recently Completed Films

Our client, Parkside Pictures has completed post-production on the widely anticipated family film, "Pups United." We are hoping DAP's new dog Scrappy may be right for a role in the event of a sequel.



Scrappy Pierce

"Zombeavers" is a joint production of producers Evan Astrowsky ("Cabin Fever") & Bender-Spink (American Pie") resulting in a comedy-horror film destined to be a cult classic. Zombeavers premiered March 18th and is in limited theatrical release via Freestyle Releasing and is available for digital download on iTunes. Our Firm served as production counsel.



Briana Hill & Tony Hanna on the set of Zombeavers.

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Staying Clear: How The First Amendment Can Protect Your Documentary

[Excerpt of article by David Albert Pierce originally published in MovieMaker Magazine Issue #113, Volume #22 Spring 2015]

If there's one thing both HBO and Scientology should agree upon, it's the value of the First Amendment: freedom of speech, religion, and the press (in addition to the freedom to assemble and petition the government).

The constitutional right that permits Scientology to act in the name of its religion without government interference is the same constitutional right that permits the team behind Going Clear: Scientology and the Prison of Belief to publicly examine those acts. Most documentaries take critical looks at their subjects, and do so without the consent of those subjects. This generally occurs with impunity because documentarians have substantial First Amendment protections derived from those accorded to the press. And although any disgruntled entity can sue a documentarian, winning that lawsuit is an entirely different story.

Read entire article at [Moviemaker.com](#) [\[click here\]](#).

Welcome Jason W. Brooks, Esq.

On April 1, 2015, Jason W. Brooks, joined Pierce Law Group LLP. Jason is a transactional attorney with a passion for counseling creative entrepreneurs, entertainment professionals, and emerging companies within the creative community and Los Angeles' acclaimed "Silicon Beach." He's been practicing law since 2006 and is a southern California native with an undergraduate degree from UCSD and a law degree from University of Wisconsin.

As an Executive Committee Member of the Beverly Hills Bar Association's IP, Internet & New Media section, Jason has spoken on panels entitled, "Counseling the Startup: Legal Pitfalls Every Startup Founder Should Know" and most recently "Financing the Startup: A Workshop For Lawyers." In his spare time, Jason is also an avid surfer and an LA County Ocean Lifeguard. If meeting in an office isn't your thing, Jason is happy to schedule a consultation or strategy session out in the water.

Speaking Engagements & Recent Articles

On March 26, 2015, our newest Firm Member, Jason W. Brooks delivered a seminar presentation to the Beverly Hills Bar Association's IP, Internet & New Media section entitled, "*Financing the Startup: A Workshop For Lawyers.*"

On April 8, 2015, David Albert Pierce and Azita Mirzaian delivered a seminar presentation to California Lawyers For The Arts on the subject of Film Financing. 65 producers attended the standing-room-only event. California Lawyers For the Arts is a nonprofit organization dedicated to empowering the creative community by providing education, representation and an affordable means of dispute resolution through its arbitration system.

David Albert Pierce is presently teaching the Spring Semester course entitled, *Media Law & Ethics* for Elon University's Semester in L.A. Program. Elon is a liberal arts school in North Carolina with a well known and respected journalism and media department. DAP is also teaching his long running popular UCLA-Extension course entitled, *Organizing, Financing & Operating A Start-Up Entertainment Production Company.*

DAP's latest article entitled, *"Staying Clear: The First Amendment can help protect you and your documentaries from lawsuits- for the most part"* appears in the Spring 2015 issue of MovieMaker Magazine on newsstands and available at MovieMaker.com.

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