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## An ear for the law

Leavens discusses the \$7.4M verdict Gaye estate won over pop hit 'Blurred Lines'

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Entertainment lawyer Thomas R. Leavens is not a pilot. But one of his clients views him that way.

"I look at lawyers like I look at pilots of jet airlines that I am boarding," said writer Jay Bonansinga.

When he boards a plane, he glances into the cockpit, hoping to see a pilot "graying at the temples, handsome ... with gravitas."

"That's Tom Leavens," he said. "He's the kind of guy I want flying my plane."

That's because Leavens has negotiated several contracts for Bonansinga, including two multibook deals with Robert Kirkman, creator of "The Walking Dead," to write novels set in that universe.

Peter J. Strand co-founded with Leavens the firm now known as Leavens, Strand & Glover LLC.

Strand admired Leavens for his "X-ray vision on an issue," such as in a 2010 case in which Strand represented a minister sued by a church piano player with whom he co-wrote and performed songs.

Strand thought they could reach a settlement, but the minister was not interested.

"I was talking to Tom who said, 'I think you have to look at this as a pride thing for your client, not a legal thing,'" Strand said.

Strand's solution was to have

the client make a donation to the plaintiff's new church.

"Tom gave me that perspective on him and we were able to get this resolved," Strand said.

Prior to forming his firm, Leavens served as general counsel for several entertainment companies.

He was GC of MusicNow LLC, a digital music company in the early 2000s, and of LRSmedia LLC, where he worked in 2006 on the company's PBS program "Legends of Jazz" with Ramsey Lewis.

In 2009, he began working with Pitchfork Media to formalize the company's relationship with At Pluto, co-producer of the Pitchfork Music Festival, which is Friday through Sunday. Leavens worked on licensing arrangements and contracts and remains the company's attorney today.

"I think the thing that Tom is extraordinarily good at is that

*"I'm trying to figure it out because I'm trying to figure out how it is that I advise people going forward. (The suit) reflects the fact that how music is created these days is different."*

he's a kind person," said Chris Kaskie, Pitchfork's president.

"When you hear from record labels and they hear from Tom, everyone likes Tom. It helps get things done."

In this Q&A edited for space, Leavens discusses perhaps the biggest news in musical copyright law of the past year —



Thomas R. Leavens

the \$7.4 million jury verdict given in March in federal court to Marvin Gaye's estate following a lawsuit regarding "Blurred Lines."

The suit alleged the song performed by Robin Thicke and written by Pharrell Williams violated the copyright from the composition of Gaye's 1977 song "Got to Give It Up" — despite the new song not actually using the Gaye recording.

**Law Bulletin:** Give me your thoughts on the implications of the "Blurred Lines" verdict.

**Leavens:** I'm still confused about it, to tell you the truth. Somehow elements that I identify with being associated with the recording of the song were interpreted as being part of the composition.

That's the part that I still don't really understand as to how it is that happened at the trial — that these elements such as the

going forward. (The suit) reflects the fact that how music is created these days is different.

If you're in Nashville and you're a songwriter doing country music, you'll sit down with a guitar and maybe someone else. And you'll work up something, and you'll maybe record it while you'll do it so it's captured. But it involves some very traditional elements. A melody, lyrics.

But certain other kinds of music — hip-hop, for example — there's never really a transcription made of what is being created. The recording is the composition. It's almost merged. The composition never exists independently of what the recording is.

**LB:** The composition is often in the computer programming. There is a compositional aspect to that.

**Leavens:** It's in the recording. When you have to deposit something with a copyright office, there isn't a sheet music itself. You could describe what the composition consists of and maybe if there is enough detail, you could say that it consists of this kind of sound created with this kind of electronic processing. You could do that. But most people just submit the recording as being the composition.

**LB:** So how does that change what you do?

**Leavens:** Well, if I have to think about the "vibe" and these other elements that I've always considered to be fair game for people to use, is that still correct?

The barrier is very low to get copyright protection. The amount of originality is not very great. But to the extent that you are on a very low level of originality then it's probably easier for someone to use that. The more original that it is, the more protectable it is. It's a gradient.

I know in the past that things like dog-panting sounds have been found to be copyrightable. This was involving a George Clinton song ("Atomic Dog" from 1982). It's a matter of certain things being combined and being protectable. A one-note melody

overall mood, the party, the sound of a pencil against a grapefruit juice glass, that sort of thing — those elements which aren't necessarily thought of as being compositional elements became an element of the composition. ...

I'm trying to figure it out because I'm trying to figure out how it is that I advise people

was protected.

**LB:** How could a melody be one note?

**Leavens:** It was a note that was performed in a particular rhythmic pattern. “Life Is a Rock But the Radio Rolled Me.” And a McDonald’s commercial which recited the ingredients for one of the sandwiches adopted that rhythmic pattern in the same way. They were successfully sued for doing that.

So there are some things that

we can get some guidance from in the past as far as what kind of amount of originality might be enough for somebody to stake a claim, but I would not have thought that the sound that you get — just the sound itself or the party atmosphere — those are more in the realm of ideas.

Those are concepts for me. Those are not necessarily things that you can collectively put together in some kind of way and claim that you have a protectable

copyright interest in it.

**LB:** Can you copyright a guitar lick?

**Leavens:** If you could, then Chuck Berry would be even wealthier than he is.

**LB:** That seems like something that is sort of similar here. Is this something music lawyers are up in arms about or concerned about?

**Leavens:** I don’t know that people are up in arms because there’s always two sides. There’s

always a winner and a loser. And for most of us, we are in both the winner and the lower side — back and forth, back and forth.

Sometimes we’re on the production side, sometimes we’re on the artist side. Sometimes we’re on the composer side, sometimes we’re on the record company’s side.

So I don’t know that anybody is “up in arms.” That would be too strong. But I think people are somewhat puzzled by it.