FROM THE CHAIR

by Michael R. Diliberto

Conflict in the world and geopolitical risks are increasing. According to data from the Stockholm International Peace Research Institute, military expenditures around the world were up in 2023 for the ninth consecutive year, hitting an all-time high of $2.4 trillion. We see conflict at home as we approach a contentious presidential election. Given the state of conflict in the world, this month's article is dedicated to the lighter side of law, as reflected in judicial opinions.

In a song parody case, Mattel, Inc. (maker of the Barbie doll) sued MCA Records (producer of the song, "Barbie Girl") for trademark infringement. The Ninth Circuit held there was no infringement or dilution. The court noted that after suit was filed, Mattel and MCA "traded barbs in the press" (pun likely intended), with Mattel's comparing MCA to a "bank robber" and describing MCA's action as a "heist," "crime," and "theft." MCA filed a counterclaim for defamation that the court held nonactionable. The last sentence of the decision offered a simple admonishment: "The parties are advised to chill."[1]

In a Hollywood squabble, a movie studio paid less than the agreed price for special effects footage provided for use in a movie without a written license or copyright assignment. The opinion began with a paraphrased line from the movie *Cool Hand Luke*: "What we have here is a failure to compensate." Noting the motion picture industry's apparent loose practice of transferring rights without a written agreement, the court commented, "Moviemakers do lunch, not contracts."[2]

This may be mere coincidence, but in a California Court of Appeals opinion, the majority "fe[lt] compelled by the nature of the attack in the dissenting opinion to spell out a response" to begin seven successive numbered sentences to spell the word "S-C-H-M-U-C-K."[3]

Judge John. H. Gillis of the Michigan Court of Appeals wrote a cleverly succinct opinion, which states in its entirety: "The appellant has attempted to distinguish the factual situation in this case from that in *Renfroe v. Higgins Rack Coating and Manufacturing Co., Inc*. [citation omitted]. He didn't. We couldn't. Affirmed. Costs to appellee."[4]

The District of Columbia Court of Appeals determined the doctrine of *res ipsa loquitur* applied where the defendant fell or was thrown onto the plaintiff's sculptures. The plaintiff saw defendant "flying through the air...at least three feet off the ground—and he landed in the middle of (a plexiglass sculpture)" destroying four sculptures. Noting that "human bodies do not generally go crashing into breakable personal property" the court found that "[w]hen they do, as here, we think the facts require the court to permit an inference of negligence."[5] Thus, if your body flies through the air and ruins expensive art, you probably committed an act of negligence. ■

[1] Mattel, Inc. v. MCA Records, Inc., 296 F. 3d 894, 908 (9th Cir. 2002).
[2] Effects Assocs, Inc. v. Cohen, 908 F. 2d 555, 556 (9th Cir. 1990).
[3] People v. Arno, 90 Cal. App. 3d 505, 514 n.2 (1979).
[4] Denny v. Radar Inds., Inc., 28 Mich. App. 294 (1971).
[5] Krebs v. Corrigan, 321 A. 2d 558 (1974).

Michael R. Diliberto, a mediator and arbitrator with ADR Services, Inc., is the 2024-2025 chair of the Los Angeles Lawyer *Editorial Board. He also served two terms as chair of the Los Angeles County Bar Association's ADR Section.*