



## CREATIVITY BREWS RESOLUTION

EDITED BY ROBERT N. DOBBINS

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More often than we would like, we hear stories about conflict that spun out of its original orbit and went careening into a costly legal battle landing in the courthouse. That battle, even if settled before trial, did little to afford the parties a resolution of their conflict.

Occasionally, we can recount the contrary, almost magical story. In the story you are about to read, though the conflict was real and could have distilled into that distasteful legal-battle brew, the parties' creativity instead created an elixir to their mutual gain and achieved true resolution.

First, we must digress for one moment. Many of you know of my "home brew" exploits and my affinity for what has become known as "craft breweries". From past writings, you know that I can connect dots that draw the mediation process and brewing process into a metaphorical image. Hence, I bring you the story of:



### **"COLLABORATION NOT LITIGATION ALE"**

The craft brewing industry, while growing across the country, has a small group of pioneer artisans whose creativity inspires the rest. Among them are Colorado-based Avery Brewing Company and, from Northern California, Russian River Brewing Company. Though their creations are not for everyone, there is no question about the talent of these folks or about their creativity.

Besides the delectable nectar that is the essence of their trade, naming of each

brew always involves its own creative process. Though one would think the lexicon must be endless, believe it or not, name selection can send one headlong into a collision course with a competitor. Next thing you know, the craft brewer finds himself in the throws of an IP conflict.

It seems that Avery and Russian River both developed what they describe as "two intricate Belgian-style ales". As luck would have it, Vinnie Cilurzo of Russian River and Adam Avery at Avery Brewing hung the moniker "Salvation" on their respective brews.

That miscue left them with a dilemma – what could have been a Hobson's choice. Should one of them relinquish the rights to the name? Do they draw battle lines and let their respective IP gladiators duke it out (while the brew ages and relations sour)? Messrs. Avery and Cilurzo responded, "Hell NO!" Instead they got together and brewed a creative solution. They caught the best qualities of each to create "a more complex libation". Ultimately, together they found the perfect blend, the salvation now being their relationship and harmony in the close-knit industry.

Rather than be done in by the conflict, through creativity was born "Collaboration Not Litigation Ale". (Credit for the name goes to Natalie from Russian River Brewing.)

### **CREATIVITY BREWS RESOLUTION – CONNECTING THE DOTS**

Among the many hallmarks of the mediation process is that it affords

opportunities to find solutions that may not be available once you are entangled at the courthouse. It may be an IP dispute like the one faced by our craft brewer friends, or a shareholder/dissolution conflict in a closely held corporation, or another potential legal quagmire that your client is about to stumble into.

Perhaps the next time one of your clients comes to you with her own conflict story, you will think about Avery and Russian River. Amongst the moments of analysis of alternatives, consider pausing to reflect on the benefits of creativity – think of finding a collaborative rather than a litigated solution to your client's problem. Consider a facilitated conversation with “the other side”; consider mediation *before* any legal process is begun.

And, though you may choose not to pour a couple of glasses of the special elixir, perhaps you can stimulate the creative juices by recounting the story of COLLABORATION NOT LITIGATION ALE.

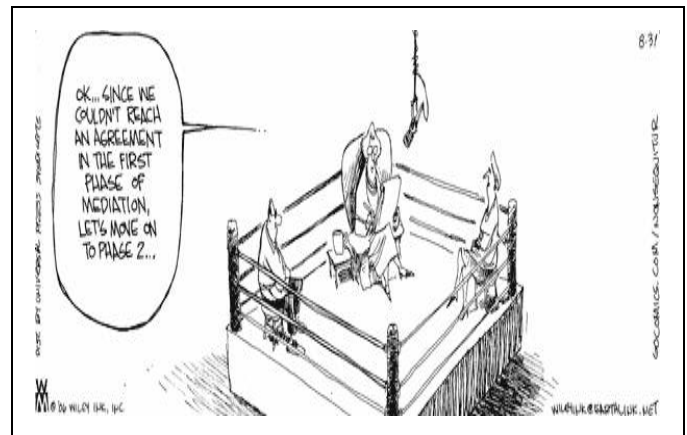
With that, a toast: to creativity as an important link in building the bridges between disputes and their resolution.

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### THE “PROFESSOR’S” CORNER

My affiliation with Judicate West brings with it the ability to give MCLE credits. Among the many topics we can cover, here are two in the all important **Ethics** category: **Ethical Issues in ADR**; and, **Ethics in Negotiation**.

Please give me a call or drop me an “E” so we can plan your next “brown bag” to full day training session.



**ROBERT N. DOBBINS, LL.M.**



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303 Broadway · Suite 104-150  
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