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## "A FILMMAKER'S GUIDE TO AVOIDING LITIGATION"

by Glenn T. Litwak

Everyone would like to avoid litigation and the time, expense and stress it entails. This article specifies 23 points to assist filmmakers in avoiding or minimizing lawsuits, or maximizing their position if litigation is unavoidable.

- GET CONTRACTS IN WRITING. Although most oral contracts are enforceable, their existence is more difficult to prove in court. Written contracts help avoid misunderstandings and force the parties to clarify potential disagreements. Some of the problems associated with alleged oral agreements were recently addressed in the Frank Dux v. Jean-Claude Van Damme trial which aired on the Court T.V. channel. Mr. Dux claimed he had an oral agreement with Van Damme whereby Dux would receive 2.5% of the gross profits from the film "The Quest." Van Damme denied the existence and terms of the alleged oral agreement. The jury's verdict was in Van Damme's favor.

- INSURANCE. Make sure you understand what kind of insurance you have, the deductible, the limits of liability, exclusions, etc. Motion picture insurance will cost approximately 2-4% of the total budget. In addition, state law requires worker's compensation insurance. In a recent case I handled, a filmmaker did not obtain insurance for his negative. Four rolls of film were misplaced by a post production facility. The post production facility had insurance but the carrier denied coverage since loss of film was excluded by their policy (because it is usually covered by the filmmaker's policy).

- HAVE AN ARBITRATION CLAUSE. Include an arbitration clause in most contracts. Usually, if the case is arbitrated, the attorney's fees will be reduced, and you will get a quicker resolution.

- HAVE AN ATTORNEY'S FEES PROVISION. Have your contract provide that the prevailing party in any dispute will be entitled to recover their reasonable attorney's fees and costs. This type of provision will usually be beneficial if a dispute arises.

