IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

PNC Bank, N.A., as Trustee for the Estate of George Pennock	:	
Plaintiff,	:	No. 114-1937
Prohibition National Committee, et al.,	:	
Defendants.	:	11 March 2007

PNC REPLY TO 16 FEB 2007 DEFENDANT DODGE GROUP ANSWER TO 19 JAN 2007 WEBB GROUP SUPPLEMENT TO 25 SEPTEMBER 2006 MOTION AND BRIEF FOR SUMMARY JUDGMENT

Defendant Leroy J. Pletten, Secretary, Prohibition National Committee, hereby replies to the said 16 Feb 2007 Answer, in two parts, generally and specifically.

GENERAL REPLY

A. First, we deny that attorney Bill W. Bodager represents the PNC absent a meeting authorizing such representation, and aver that as he has not answered our 27 December 2006 Motion to Strike 'Entrance of Appearance,' 'Verification,' and 'Answer' of Counsel Bill W. Bodager, our denial is undisputed.

B. Second, we aver that Mr. Bodager's claims of who he represents repeatedly change, from

(a) some 14 defendants, then

(b) about 11 defendants, per having to revoke his having wrongfully claimed to be representing persons who had in fact never heard of/retained him and/or who denied interest in this case (Gardner, Hansen, Whitney, Williams), then

(c) at the 16 January 2007 conference when directly questioned by President Judge Zetusky as to who he in fact represents, he cited only two (Earl F. Dodge and

the so-called Denver PNC) leaving others unidentified, and now in version four,

(d) reduced to allegedly representing only one defendant (the so-called Denver PNC),

but without citing any evidence that he in fact does so;

C. Third, we aver that Mr. Bodager's 16 Feb 2007 Answer is incompetent for the reasons stated in our pending 267 Dec 2006 Motion to Strike 'Entrance of Appearance,' 'Verification,' and 'Answer' of Counsel Bill W. Bodager,' and aver that said Motion is more apropos than ever as an organization per se (what he now solely claims to represent) is unable to 'testify';

D. Fourth, we aver that Mr. Bodager, in order to create "dispute of fact," is causing/citing various contradictory-Dodge initiated stories, a "Dodge story" vs "Dodge story" for the apparent purpose of defeating summary judgment;

E. Fifth, we object to the harassment and intimidation of PNC members who filed affidavits denying having retained Mr. Bodager, said harassment/intimidation occurring via contacts from Mr. Dodge threatening that he (Dodge) will ensure, in retaliation for their having so stated concerning Mr. Bodager, that they will not be re-elected at the upcoming 2007 Convention; and

F. Sixth, we aver that the transcript of the 16 January 2007 conference is/will be the best evidence of what President Judge Zetusky said concerning his forthcoming decision on our 25 September 2006 Motion for Summary Judgment.

SPECIFIC REPLY

1. Bodager's answer, paragraph 1, is a "Dodge story" vs "Dodge story" situation:

A. The entire 'two organizations' story is a story invented by Earl F. Dodge; the "Webb group" has consistently held that there is only one PNC organization of long-term continuing existence (the unincorporated 1869 entity); and that we the 'Webb group" are that group and constitute the majority thereof notwithstanding our disproportionate losses by death compared to the Dodge group) and pursuant to standard American majority rule principles, control it, and do so pursuant to the Bylaws and Convention Rules.

B. We admit that we, after hearing Dodge's story at the 16 Jan 2007 conference and President Judge Zetusky's astute analysis of same, alluded to Dodge's story in our Supplement Mr. Bodager is answering. But the fact we allude to Dodge's story, is for the purpose of rebutting it pursuant to the two issues cited by PJ Zetusky, and in no way means we believe it. (Dodge has not come forward with any evidence supporting his incorporation story). The gravamen of our Supplement was that, assuming arguendo Mr. Dodge's 16 Jan 2007 incorporation story, it follows from the two-part issues identification (which group, who controls) by PJ Zetusky, that our position is the correct one: (a) the unincorporated entity was the only entity known to Mr. George Pennock, the trust deviser, in the 1920's and 1930's when he was writing his will; Dodge's 2002 entity obviously did not exist then; and (b) we the "Webb group" clearly control it, pursuant to our majority, which is of course the situation of which Dodge hitherto has complained.

C. The "Webb group" is not claiming that there are TWO Denver PNC's. It is Bodager's client (?) Earl Dodge in Bodager's immediate presence inches away, whose own responses under questioning by PJ Zetusky asserted TWO PNC's, one the original 1869 organization, and the other, the entity Dodge claimed to have incorporated with his daughter Karen in 2002.

D. Nonetheless, as Bodager has himself raised the issue of TWO Denver PNC's, it is averred that of the 14, then 11, defendants Dodge claims as its members, they disagree among themselves; only some (Dodge, Scott, Kain, Lydick, Shickley, and Dodge's daughters) signed the November 2004 accusations (Bank Petition Exhibit B, P.045-P.051) against the organization majority (the "Webb group), but the others (Burgess, Gardner, Mitchell, Partain, and Powell) did not. And Dodge's daughter Faith Nelson has somehow disappeared from the "Dodge group"; is she one who wants out, as Mr. Dodge alluded to 16 January 2007, for fear of losing her home?

E. Bodager's answer is in, grammatical terms, in the passive, in alleging that "it was feared that the name of Prohibition National Committee was at risk." Bodager cites nobody who had such a "fear" for the reason that the said claim is a hoax, a sham, just now invented, clearly years retroactively, for the purposes of this litigation.

F. Bodager's Answer does not claim, with respect to this mythical "fear," that any PNC meeting was convened to deal with it; from the absence of such meeting, it follows that Dodge provided no "opportunity to deliberate, and, if possible, to convince their fellows . . ." concerning what to do about it – and for the good reason, that no such "fear" existed.

G. It is averred that Mr. Bodager does not deny the Court's rendering of the issues in terms of which Prohibition National Committee (hereinafter PNC) is to receive the Pennock funds at issue, as two-fold:

i. Who is the recipient: the unincorporated or the incorporated PNC?

ii. Who controls the recipient?

H. Mr. Bodager avers that Dodge's self-alleged title of "President" (a title not authorized by PNC Bylaws) is required by "Colorado statute" but cites none, nor in the five years since the alleged 2002 incorporation, any corresponding change to the PNC Bylaws–thus it follows that the corporation is in fact not consented to on the record by the PNC (but a mere private act by two Dodge family members).

2. With respect to our 19 Jan 2007 Supplement having said,

"(i) The unincorporated entity, in existence since 1869, is of course the only body known to Mr. George Pennock at the time of his Will and Codicils granting the funds at issue. (ii) The "Webb group" controls it (Exhibit 1, Member List),"

Mr. Bodager limply replies, "Neither admitted nor denied. Exact proof is demanded at the time of trial." As a matter of promoting judicial economy, we can, and hereby, do, aver "proof" forthwith:

A. Reference the calendar!! Mr. Pennock made his will in the 1920's and 1930's, many - many - decades before Dodge's 2002 corporation! i.e., clearly while the unincorporated entity was the ONLY entity.

B. Reference basic arithmetic! With respect to our Supplement's "Exhibit 1, Member List": the middle column (the unincorporated ["Webb group"] entity, 36 names) is a number larger than the right column (the incorporated ["Dodge group"] entity, 11 names)!

C. Aver (to remind Mr. Bodager) that during the recess for negotiations, client (?) Earl Dodge in Bodager's immediate presence within inches, lamented that we the "Webb group" were growing, obtaining more members! as though promoting, enlarging, the Party as Mr. Pennock intended is somehow a bad thing!

D. And see the number of members cited in Dodge's own June 2003 "Minutes" submitted by Mr. Dodge to Plaintiff Bank (Petition Exhibit B, P.057 and P.059), citing 26 names (contrast with Dodge's now 11, including a daughter; some of whom as aforesaid, have not signed on to his accusations against the "Webb group").

3. Bodager issued a blanket "denial" to Supp. para. 3, apparently denying that in Bodager's presence inches away, "Defendant Earl F. Dodge, under basic impartial questioning by the Court, admitted against interest to having 'incorporated' the Prohibition National Committee (hereinafter

PNC), in 2002, in Colorado, with his daughter Defendant Karen Thiessen . . ."

A. We aver that PJ Zetusky heard Dodge's said admission, and commented on it.

B. Mr. Bodager fails to acknowledge that Dodge himself, in Bodager's presence, admitted that only his daughter Karen Thiessen was a co-signer with him of the incorporation, i.e., it follows that nobody else in the PNC was a signer, i.e., that, on the record, the corporation is Dodge's "personal/family incorporated entity."

C. Mr. Bodager by using a grammatical double negative sentence tries to convey a positive thought, that somehow the PNC consented to the incorporation. But Mr. Bodager fails to aver the occurrence of the only legitimate process for "consent,"a meeting with the members having "opportunity to deliberate, and, if possible, to convince their fellows . . ." – a silence by Bodager that speaks volumes! And confirms that no meeting was held to give "consent."

D. In another "Dodge story" vs "Dodge story," Mr. Bodager now brings forth a denial that the undersigned "Leroy Pletten was the Secretary of the organization."

i. In contrast, the prior "Dodge story," published nationwide in his newsletter, *The National Statesman* (Bank Petition Exhibit B, P.021), specifically averred that Leroy J. Pletten was chosen Secretary at the June 2003 event convened by Mr. Dodge. The impression given was that Pletten's term was no different than that of the others, i.e., four (4) years, the same as the others Dodge reported as having been elected! (See enclosed Affidavits on-point).

ii. Additionally, in the immediate presence of Mr. Bodager, and under and PJ Zetusky's adroit questioning on this exact subject, Dodge gave a different "Dodge story," i.e., that Pletten had a two-month term!

iii. Now, this third "Dodge story" is that Pletten had no term at all!!! What will be the fourth "Dodge story"?!!

iv. And assuming arguendo this "Dodge story" three, that Pletten was never chosen Secretary by the "Dodge group," it follows that Bodager thus 'proves' too much; if at the "Dodge group" June 2003 meeting, Pletten was not elected, neither was Dodge nor anyone else! And thus Bodager leaves the only meeting in 2003 doing any "electing" — as the September 2003 "Webb group" meeting, thus answering PJ Zetusky's correct rendering of this issue (who is in control), in favor of the "Webb group"! Bodager has in essence 'thrown the case' in our favor! with this 'never elected' claim against Pletten.

4. Bodager now admits that the 2002 incorporation was not authorized by either the 1999 nor 2001 PNC Meetings. Bodager evades the issue of "subsequent meetings" for the reason that he knows none, 2002-present, have approved the incorporation, so he can, and does, allege none.

> A. It is also clear that Dodge's title change (to "President") was not authorized, not even at the subsequent June 2003 event of which Mr. Dodge was in full control, having excluded disfavored members Dodge deemed "trouble-makers."
>
> B. Bodager's excuse for not obtaining approval for the incorporation is the aforesaid mythical "fear" (paranoia?) of a mythical "threat to the name use"! Even assuming that years-retroactive claim arguendo, Bodager does not say how a mythical 2002 fear would apply to a subsequent 2003 meeting! And prevent amending the Bylaws to create a "President" title. It follows that no consent in fact was ever given for the incorporation. The "Dodge group" Minutes of his own meeting (Bank Petition Exhibit B, P.057 and P.059), cite no such approval then or previously.
>
> C. No such "fear" existed, for the reason that the claim alleging a "fear" of a "threat to the name use" is a hoax, a sham, just now invented some five (5) years later, after-the-fact, retroactively, for the purposes of this litigation.
>
> D. Bodager's 16 Feb 2007 Answer does not claim with respect to this supposed "fear," that any PNC meeting was convened to deal with this pretended crisis supposedly requiring such impulsive precipitous action as changing our historic (since 1869) unincorporated status in such a bizarre outside-the-record manner, and by Dodge family signers only. From the absence of such a meeting, it follows that Dodge denied the members "opportunity to deliberate, and, if possible, to convince their fellows . . ." as to what course of action to be taken with respect to the alleged "fear." Of course, he knows the "fellows" would have denied existence of the "threat" and "fear" and refused consent to make this wholly unwarranted change.

5. Bodager does not directly answer our para. 5 which simply restated the November 2004 "Dodge group" accusations against us (that we the "Webb group" "organized a new group" with "no connection" to the "Dodge group"). Bodager instead fabricates in the guise of 'answering' a point we did not raise in para. 5. We did <u>not</u> say that <u>we</u> "splintered off.' We are the majority and oppose splintering the organization–a position PJ Zetusky raised in context of whether there might be yet additional splits (and thus further burden the court with additional future litigation!).

A. It is the "Dodge group" that "splintered off," or in Pennsylvania precedent terminology [Commonwealth ex rel. Langdon v. Patterson, 158 Pa. 476, 493, 27 A. 998, 999, 34 W.N.C. 45, 1893 Pa. LEXIS 1620 (Pa., 1893)], 'seceded.'

B. For perspective, note that the "Dodge group" has a mere eight of the 31 members from 1999; and has a mere 11 vs the 26 of record according to their own June 2003 "Minutes" (not to mention that the "Minutes" depress the count by failing to cite disfavored individuals excluded by Dodge as "troublemakers").

C. Neither Bodager nor any member of the "Dodge group" attended the September 2003 meetings at issue, hence, none of them have any personal knowledge of what happened there, and certainly none to refute our denials of their accusations; we most emphatically deny that we "organized a different group," but instead aver that we exercised our majority voting rights to take control of the organization pursuant to longstanding American majority rule principles, contrary to the monarchical position of Dodge, that he can rule by decree.

6. Bodager claims we mischaracterize Earl Dodge's responses to questions by PJ Zetusky (responses admitting his and his daughter's setting up a corporation using our unincorporated name, or in our re-stating Dodge terminology "organized a new group"), but Bodager cites no specifics of how we supposedly mischaracterized Dodge's confession against interest.

A. We aver that in the very next paragraph, 7 infra, Bodager concedes "there are two organizations"

B. We further aver this situation (incorporation) is clearly not authorized by PNC Bylaws, and an outrage to which we can hardly be expected to sit by silently without protest upon discovery of this self-admitted assertion by Dodge.

7. Bodager now concedes "there are two organizations," one incorporated and the other unincorporated. Bodager does not deny our allegation of a "conflict of interest" on Dodge's part in terms of the fact of same, but merely asserts that said allegation is a "conclusion of law," an evasion approach, and begging the question.

A. It is prima facie clear that Dodge is attempting to take over, supersede, the unincorporated organization, via his corporation – a conflict of interest if ever there was one.

> B. Dodge should be protecting us the historic unincorporated entity (IF he is our Chairman as he purports to be!) from the corporation! Not attempting to oust us! He made a choice, them or us. He chose the corporation. He made his bed, now let him lie in it (and 'lie' he does).

8. Bodager is evasive on the subject of Dodge's avoiding mention of the incorporation in Dodge's own Minutes of his own June 2003 meetings (Bank Petition Exhibit B, P.057, P.059). Our para. 8 had forthrightly reported that Dodge's Minutes "reflect no announcement of this startling incorporation action changing the PNC's historic unincorporated status since 1869." But Bodager's evasiveness does not refute the fact, the said Minutes say nothing about any incorporation.

9. Bodager again is evasive as to facts, and merely claims our "averment is a conclusion of law." This begs the question. From Dodge's statements in Court 16 Jan 2007, it follows that Dodge continues to refuse accountability for funds (a long-term issue, see the Higgerson affidavit), demands in essence to be "Chairman for Life," and has no scruples about splitting the organization; it follows that Dodge's purpose is personal loyalty to him personally, not to the cause or organization.

10. Bodager again begs the question, and himself gives a "conclusion of law," i.e., claims Dodge did not violate PNC Bylaws. And he is unresponsive to the para. 10 facts concerning denying members notice, counting daughters, lacking quorum, etc. Bodager is further evasive or unresponsive as to whether the Dodge corporation does or does not use (or purport to use) our Bylaws.

11. Bodager is again unresponsive, ignores the underlying facts of our para. 11, including our pending Motions (dating from 2005) that address in detail the invoking of the Bylaws; ten signature clause (Bank Petition Exhibit B, P.054, "Meetings, Section 3 Call of Committee, "A formal petition signed by ten members . . . .shall constitute a call for a meeting") to convene the requisite meetings in 2003. Bodager's ignoring the fact of the invoking of the Bylaws and principles of Pennsylvania case law such as the Carrier v. Shearer, 1972 WL 15998, precedent, including via the circulation and

signing of the petition by the requisite ten or more signers, will not make such facts go away (nor "conclusions of law" that follow). The "Webb group" meticulously followed the Bylaws and case law in convening the September 2003 meetings at issue; Bodager does not cite even a de minimis violation of same. The meeting being convened, it was the duty of then Chairman Dodge to attend and preside; but he and his "Dodge group" boycotted said meetings. We aver that our pre-September 2006 Motions (starting in 2005) were undisputed by the "Dodge group" and their counsel, Robert A. Carpenter, Jr. Bodager's attempting to raise dispute now so belatedly is surely untimely.

12. Bodager is again evasive or unresponsive, simply saying again our "averments are conclusions of law." But the facts from which such "conclusions" follow, will not go away; and Mr. Bodager fails to refute them.

13. Again, Bodager is evasive, unresponsive, failing to say whether any of the people he claims to represent have ever heard of, much less retained him. His deleting all personal names from his latest pleadings is deemed corroborative that he represents none of the individuals who are Defendants herein; it follows that he is not authorized to submit pleadings in this case. And we aver that the facts from which "conclusions of law" follow establish identity theft, Dodge's attempted taking over of our name via his self-admitted incorporation action without PNC consent.

14. Mr. Bodager belatedly raises non-outcome-determinative additional issues, in essence challenging the Court's correct two-fold rendering of the issues:

i. Who is the recipient: the unincorporated or the incorporated PNC?

ii. Who controls the recipient?

Re Bodager's issues, none are outcome-determinative; none refute the two simple facts of record that our para. 14. cited in response to the Court's said correct identification of the two issues:

i. that the unincorporated entity has always been the Pennock funds recipient entity;

ii. said unincorporated entity is under "Webb group" control.

WHEREFORE, the undersigned Secretary Leroy J. Pletten, requests that

A. The relief previously stated be granted;

B. The Bodager reply be stricken, along with all his other pleadings, on the basis that his four different versions of whom he represents connote that he in reality represents nobody, certainly no person competent to testify; and absent a PNC meeting authorizing him to represent the PNC (the only party to the case his latest pleading purports to represent), he cannot represent the PNC as such, and especially (and/or, alternatively, without having to reach this aspect) in view of the opposition to Bodager's doing so by the undersigned Secretary Pletten (elected to the Denver PNC pursuant to Dodge's own announcement of said fact as aforesaid referenced);

C. The Court find that no material / outcome-determinative facts are in dispute, and even if any are, that no admissible evidence has been presented showing same, only conclusions and arguments in pleadings, e.g., no affidavits by persons, potential witnesses, with personal knowledge of such alleged facts;

D. The Court grant either the undersigned 25 September 2006 Motion for Summary Judgment, the 19 January 2007 Supplement, or both;

E. The Court grant our preceding Motions pending since October 2005, seriatim or en masse;

F. The Court find that in view of the unresponsiveness of Earl Dodge, his prior counsel Robert A. Carpenter, Jr., and the "Dodge group" to the undersigned prior Motions, that belated arguments so long after case commencement are untimely, dilatory, and/or otherwise inappropriate;

G. In view of their unresponsiveness to our 30 Nov 2005 Interrogatories, that the Court preclude, strike, or deny, or otherwise rule against their belated pleadings;

H. The Court grant such other relief as may be appropriate in the circumstances.

Respectfully,

11 March 2007

Enclosure
Supporting Memorandum
of Law

Leroy J. Pletten, Defendant
Secretary, Prohibition National Committee
8401 18 Mile Road #29
Sterling Heights MI 48313-3042
(586) 739-8343
FAX (419) 574 -6145

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

PNC Bank, N.A., as Trustee for the Estate of George Pennock	:	
Plaintiff,	:	No. 114-1937
Prohibition National Committee, et al.,	:	
Defendants.	:	11 March 2007

MEMORANDUM OF LAW IN SUPPORT OF
PNC REPLY TO 16 FEB 2007 DEFENDANT DODGE GROUP ANSWER
TO 19 JAN 2007 WEBB GROUP SUPPLEMENT TO
25 SEPTEMBER 2006 MOTION AND BRIEF FOR SUMMARY JUDGMENT

The facts are already of record, and the court will not be burdened by a repetition.

Defendant "Webb group" support President Judge Zetusky's rendering of the issues:

i. Who is the Pennock fund recipient: the unincorporated or the incorporated PNC?

ii. Who controls the recipient?

The Bodager Answer and Memorandum of Law opposing our Supplement needlessly complicates the case. Mr. Bodager's "Dodge story" vs "Dodge story" approach may seem to create material issues of fact, but not so on close examination. Additionally, and alternatively, in proper summary judgment situations, "disputes of fact" relate to one side vs. another side versions of materials facts, not one side vs itself – one side attempting by telling varying stories to create self-inflicted "disputes of fact" in an effort to defeat a Motion for Summary Judgment.

In this case involving litigants across a number of states, pertinent court rule and precedent principles include the following:

Summary Judgment is admittedly only properly granted where the pleadings, depositions,

answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that moving party is entitled to judgment as a matter of law. Pa. R. C. P. 1035.

To withstand a motion for summary judgment, the opposing party (the "Dodge group") must demonstrate that there exists a genuine dispute as to one or more facts material to the outcome. *Anderson* v *Liberty Lobby, Inc.*, 477 U.S. 242, 247-248; 106 S.Ct. 2505; 91 L.Ed.2d 202 (1986). An adverse party's failure to produce such evidence at the summary judgment stage entitles the moving party to judgment in its favor. *Steckl* v *Motorola, Inc.*, 703 F.2d 393 (CA 9, 1983).

The party resisting the motion may not rest upon the mere allegations or denials of his/her pleadings to avoid summary judgment. *Anderson*, 477 US at 248. A mere scintilla of evidence will not avoid summary judgment; there must be sufficient evidence on which a jury could reasonably find for the nonmoving party. *Anderson*, at 251.

Disputed facts alone are not sufficient to preclude summary judgment; the disputed facts must be outcome-determinative under the governing law. *Secretary of Labor, U.S. Dept of Labor* v *Lauritzen*, 835 F.2d 1529 (CA 7, 1987) cert den 488 U.S. 898 (1988).

1. No Issue of Material Fact Is Supported by Evidence Sufficient for A Jury to Reasonably Find for the "Dodge group."

The gravamen of the foregoing rule and precedents is that actual evidence for summary judgment purposes must be in the record. Mere attorney pleadings are not adequate.

Here the "Dodge group" has filed only attorney pleadings, and those belatedly. It provides no depositions, admissions on file, affidavits, answers to interrogatories. Indeed, they refuse to answer for well over a year notwithstanding motion to compel answer, and default with respect to responding to said motion. Not even in their original 2004 writings to Plaintiff Bank giving rise

to this case, did the "Dodge group" ever support anything they said under oath or affirmation.

In contrast, the "Webb group" has diligently filed not only pleadings including a number of Motions but also documentary evidence and affidavits. And at the 16 January 2007 conference, Earl F. Dodge in presence of Mr. Bodager made "admissions on file," admissions against interest.

The "Dodge group" response to our Motions is not via evidence, but instead includes (a) harassment and intimidation of our members in retaliation for their providing affidavits and evidence in favor of the "Webb group," and (b) various "Dodge story" vs "Dodge story" aspects: (a) Pletten was / was not elected Secretary; (b) the "Webb group""organized a different group," or, it was Dodge and daughter who did that, incorporating the historic unincorporated group.

The "Dodge group" cannot even agree among themselves as to their original 2004 story! Only some of the members signed on to the accusations against the majority "Webb group." Only Dodge, Scott, Kain, Lydick, Shickley, and Dodge's daughters, signed the said November 2004 accusations (Bank Petition Exhibit B, P.045-P.051). Others (Burgess, Gardner, Mitchell, Partain, and Powell) did not. Daughter Faith Nelson has evidently dropped out; our Motion to deal with that is pending.

Guidance on summary judgement does not contemplate rejecting a Motion for Summary Judgment because one party to a case inserts various self-contradictory stories into the record. The intent is that a "dispute of material fact" be between OPPOSING parties, not by one side's various contradictory stories. Thus there is nothing whereby a trier of fact can rule for the "Dodge group."

2. <u>The "Dodge group" is Bound By Its Original Theory of the Case</u>.

The "Dodge group" theory of the case as presented to the Bank (Petition Exhibit B) was:

> A. They had June 2003 meetings in Colorado, elected officers including the undersigned Secretary Leroy Pletten for four (4) year terms, and published this in their newsletter and online, http://www.prohibition.org/statesman-200306.pdf.

B. Their attendees shown in their Minutes were very few (essentially an admission against interest of no quorum)

C. Dodge's daughters were counted as in attendance (another admission against interest)

D. They gave the impression their meetings were the normal ones for the PNC, the unincorporated PNC, the only one of record consented to by the members

E. The names listed in the Minutes were in good standing as members.

F. The "Webb group" "organized a different group" in September 2003, with "no connection" to the "Dodge group."

Now, belatedly, years later, evidently realizing this story is unwinnable, they suddenly have fabricated various sham story changes:

A. Pletten was elected for only a two month term, or wasn't elected at all! Never mind what the "Dodge group" said at the time (thus proving more than they might like, if Pletten wasn't elected at their June 2003 meeting, neither was Dodge, et al.)

B. No change (apparently not daring to claim substantially higher attendance).

C. No change (but mysteriously one daughter has seemingly dropped out of the case).

D. Oh, it was really an incorporated PNC, something done a year earlier! in 2002, a non-meeting year, but the members had somehow consented to this dramatic change in the organization's historic status, without their being any allegation of such "consent" until suddenly within the last few weeks

E. A good number of the names are suddenly disappeared, no explanation by the "Dodge group"

F. And, it was really the "Dodge group" that "organized a different group," an incorporated one, well, it wasn't that different, it has some "connection," as the "Dodge group" apparently didn't mean it to be different, they wanted it to be the same group; it's our "Webb group" fault that we can't read "Dodge group" minds! And we all "consented" even though we deny doing so, and nothing of record shows any such "consent."

"A plaintiff is bound by the theory upon which he submits and tries his case. See: Kramer v. Pittsburgh Coal Co., 341 Pa. 379, 382, 19 A.2d 362, 364 (1941); In re King's Estate, 183 Pa.Super. 190, 198, 130 A.2d 245, 249 (1957)." Solomon v. Presbyterian Univ. Hosp., 32 Pa.Commonwealth Ct. 57, 530 A.2d 95, 97 (1987) lv app den 517 Pa. 618, 538 A.2d 500 (1988).

> "It is axiomatic that Claimant [Plaintiff] is bound by the theory upon which she presents her claim. . . . See Solomon; Manzulich v. Unemployment Compensation Board of Review, 32 Pa.Commonwealth Ct. 56, 377 A.2d 1066 (1977)." Quinn, Gent v Unemp. Comp. Bd. of Rev., 147 Pa.Cmnwlth. 141; 606 A2d 1300, 1303; 7.3 TPLR 2.89; 431 CD 1990 (1992).

In our initial Motion for Summary Judgment (25 September 2006), we applied this principle against the nominal plaintiff, the Bank. But in all fairness and equity, the concept that a litigant cannot keep changing his/her story (cannot create a moving target, burden an opposing party with having to shoot down first one, then another, then a third, and maybe a fourth, different story!!) should certainly apply to defendants whose own story is what deceived the Plaintiff in the first place.

The "Dodge group" don't accept their own original story that caused this litigation (some of them wouldn't even sign it!), why should you?!

As a matter of equity, the Court is requested to apply these "don't change your story" concepts in this situation. And then please put an end to the "Dodge group" story changes; dismiss the case in favor of the "Webb group."

3. The "Dodge group" Stories are a Sham Fashioned for the Purpose of Litigation.

> A "sham" is defined as "false." A "sham pleading" is "inherently false and must have been known by the interposing party to be untrue. Pentecostal Holiness Church, Inc. v. Mauney, Fla.App., 270 So.2d 762,769." "A 'sham pleading' . . . is one that is good in form, but false in fact, and not pleaded in good faith. Scott v. Meek, 228 S.C. 29, 88 S.E.2d 768, 769. A pleading is 'sham' only when it is so clearly false that it does not raise any bona fide issue. Fontana v. Town of Hempstead, 219 N.Y.S.2d 383, 384." Black's Law Dictionary, 5th ed., 1979, p. 1233.

It is "highly irregular and inequitable to expect a defendant to prepare a defense against accusations known to be untrue by the accuser," Nye v Parkway Bank & Trust Co, 114 Ill.App.3d 272; 70 Ill.Dec. 40; 448 N.E.2d 918, 919 n 2 (1983). Federal precedent is likewise, rejecting a sham claim "fashioned for the purposes of litigation," Alaniz v. U.S. Office of Personnel Management, 728 F.2d 1460, 1465 (Fed. Cir. 1984).

The "Dodge group" claims with respect to their story of having elected / not elected Pletten at their June 2003 meeting as their own Minutes, newsletter, and website announced, is clearly a "sham" in the meaning of the said criteria. Three different versions: four year term, two month term, no term! They cannot, do not, believe all three stories!

Their desperation is evident. They realize that having announced choosing Pletten as Secretary, they cannot have Bodager as their attorney, when Pletten is responsible for correspondence. And, for Bodager was not retained as counsel at any meeting; if the "Dodge group" were to allege having held a meeting to vote on the issue of retaining an attorney, the fact of having excluded Pletten from notice of such meeting, from attendance, would void such retaining, pursuant to parliamentary law as enunciated by so many case law precedents.

Hence, the "Dodge group" resolved on a bluff, a sham, to fabricate various stories, in the desperate hope of creating some "issue of disputed fact" so as to somehow defeat the Motion for Summary Judgement.

4. The Incorporation Story with Which Mr. Dodge Surprised Us At the 16 January 2007 Conference Does Not Create a "Material Dispute of Fact."

Mr. Bodager now treats us to claims to which he is not competent to testify, the claim that party(ies) unnamed had a fear, that "it was feared that the name of Prohibition National Committee was at risk." There was some mysterious unspecified "threat"! Our response is, the claim is a hoax, a sham. Bodager's claim is grammatically in the passive, to avoid saying who! (Incidently, when Dodge apparently attempted on 16 Jan 2007 to present reasons for incorporating, PJ Zetusky stopped Dodge. We here see that PJ Zetusky was correct in doing so; this bizarre and unsubstantiated "Dodge story" is not suitable for a mere conference, much less, for a trial.

Mr. Bodager goes on to claim that unnamed persons consented to Mr. Dodge (and daughter)

incorporating the PNC. Mr. Bodager does not cite anybody by name who gave consent, does not cite any documents establishing such consent. Remember, this is a major alteration in the PNC's historic unincorporated status since 1869! There should be voluminous documentation, and common knowledge among every member! Instead, see denials (enclosed Affidavits).

But be that as it may, significantly, Mr. Bodager does NOT claim that a meeting – the proper way to make such a momentous decision – occurred. Mr. Bodager does not claim, with respect to this mythical "fear," that any PNC meeting was convened to deal with it. From the absence of such a meeting, it follows that no "opportunity to deliberate" occurred IAW Pennsylvania case law:

> "The opportunity to deliberate, and, if possible, to convince their fellows, is the right of a minority [certainly the majority], of which they cannot be deprived by the arbitrary will of the majority [minority]. That the ["Dodge group" actions] were in contempt of this right, is manifest. The attempt [to violate member rights] consequently defeats itself." Commonwealth ex rel. Claghorn v. Cullen, 13 Pa. (1 Harris) 133, 144, 53 Am. Dec. 450, 459; 1 Pitts. L. J. 76, 1 O. L. J. 76, 1850 WL 5703 (Pa., March 1850).

> "Our own determination in *Shorts* v *Unangst*, 3 Watts & S. 45 [1841 WL 4235 (1841)], following earlier decisions, settles that to make a vote of acceptance valid, as the act of a corporation, it should be passed at a meeting duly convened, after notice to all the members. In such cases [as serious issues], congregated deliberation is deemed essential . . . The private procurement of a written assent, [even if] signed by a majority of the members, will not supply the want [lack] of a meeting. Such an expedient deprives those interested of the benefit of mutual discussion, and subjects them to the hazard of fraudulent misrepresentation and undue influence." 13 Pa. 143, 53 Am Dec, 458. When members object to actions, even if there were an assumption of a meeting's validity, "how can such a presumption be entertained, in the face of a remonstrance against the proposed election [of officers]? . . . This is obviously out of the question." 13 Pa. 144, 53 Am Dec, 459.

Here members object! See attached affidavits. As a matter of law (the above precedent), lack of a meeting renders any "dispute of fact" over whether there was some other "consent" moot. Bodager has not presented even a "scintilla of evidence" claiming a meeting occurred to give "consent." A mere allegation of some other-than-meeting "consent" is clearly insufficient to deny

the Motion for Summary Judgment and/or Supplement thereto. A party resisting such a motion may not rest upon the mere allegations (or denials) of his/her pleadings to avoid summary judgment. *Anderson*, 477 US at 248.

And even if the total PNC membership had somehow consented in 2002, the "Dodge group" is now on record, as of 16 Jan 2007, as saying that in essence, such "consent" has been superseded by subsequent events!! Dodge's new story is that there are <u>two</u> separate groups, one incorporated, one unincorporated!! (And Mr. Bodager specifically agrees, para. 7, "It is admitted there [are] two organizations.") Had there been "consent," that would not be the case.

So we are right back to PJ Zetusky's correct analysis of the situation: which of the admitted "two organizations" one is the one Pennock had in mind? And which group controls that entity?:

i. Who is the recipient: the unincorporated or the incorporated PNC?

ii. Who controls the recipient?

From the incessant complaining that the "Dodge group" is doing about the "Webb group," in whichever "Dodge story" ("organized a different group," "no connection," oops, was a "connection" in terms of allegedly subjecting "Dodge group" members to "removal"), it is clear that the "Webb group" controls the recipient. And that means the unincorporated PNC.

And if the Court so finds, that there was no valid "consent" to the incorporated PNC, we "control" that too, long enough to forthwith abolish it! thus ending these issues and thus ending the burden on this Court.

5. The 19 February 2007 Pleading by Bodager Should be Stricken for The Reasons Already Shown in the Pending 27 December 2006 Motion to Strike 'Entrance <u>of Appearance,' 'Verification,' and 'Answer' of Counsel Bill W. Bodager</u>.

To reduce burden on the Court of duplicative arguments, this hereby incorporates by

reference the said Motion, e.g., that the Bodager pleading is unauthorized by the named client, is incompetent for lack of personal knowledge, etc.

For example, according to Penn. R. Civ. P., Rules 76, 1002 and 1024, internet accessible online at http://www.courts.state.pa.us/Index/supctcmtes/civilrulescmte/310civ.pdf, verification of a pleading must be by person(s) with personal knowledge, not by his/her counsel. The "Verification" by Mr. Bodager in support of the 16 Feb 2007 "Answer" is prima facie inadequate.

6. It Is Unclear Whom Mr. Bodager Represents, So His 16 February 2007 Pleading Should be Stricken.

We now have Mr. Bodager's fourth (4th) story as to who he represents. His claims of who he represents have repeatedly changed from, e.g., (a) some 14 defendants, then (b) about 11 defendants due to having to revoke his having unethically claimed to be representing persons who had in fact never heard of him nor retained him and/or who denied interest in this case, then (c) at the 16 January 2007 conference when directly questioned by President Judge Zetusky as to who he in fact represents, he cited only two (Earl F. Dodge and the so-called Denver PNC) and others unidentified, and now in version four, (d) reduced to representing only one defendant (the so-called Denver PNC), but without citing any evidence that he in fact does so.

It is unethical (a) to claim to represent person(s) whom one does not represent, and (b) contrariwise, to omit stating clients whom one does represent. Either approach burdens fellow litigants and the Court with doubt as to what is going on. Either, whichever, situation may be the case here, enough is enough – four strikes and out! Please strike Mr. Bodager's pleadings.

7. Dodge Does Not Obtain "Consent"; Dodge Decrees.

Bodager cites no evidence that anyone on the PNC consented to the incorporation. He cites no names, no date(s), no meetings, no votes. In fact, incorporation papers (if any exist) have not even

been placed in the record. All we have is Mr. Dodge's unsupported word of 16 January 2007, and that not under oath or affirmation. Absent evidence, the claim that this is an issue for the Court to adjudicate should be deemed frivolous.

Earl Dodge does not obtain "consent." Like a monarch, he issues decrees, fiats, orders; he punishes anyone who dares disagree, even if they were never informed and had no idea of his having issued a decree or fiat. Witness Monarch Earl's decree to the unsuspecting Eunice Hansen. (Enclosure). She had had the temerity to say, in an affidavit to this Court, that she was unaware of Bill W. Bodager supposedly representing her!! (Bodager, unethically, had NOT obtained her consent to his claim of representing her!) However, Monarch Earl apparently had issued a decree hiring Bodager in her name, unbeknownst to her! And woe to her for saying otherwise. That is his idea of "consent," submit or else – even when you have not been contacted or informed, and have no idea what your name is being "consented" to, even in cases of unethical/false attorney representations!

As Pennsylvania case law such as Commonwealth ex rel. Claghorn v. Cullen, 13 Pa. (1 Harris) 133, 144, 53 Am. Dec. 450, 459; 1 Pitts. L. J. 76, 1 O. L. J. 76, 1850 WL 5703 (1850), shows, members have rights. We are not, as in a monarchy, mere "subjects" or servants, people to be subjected to imperial fiats and decrees – not by a monarch.

> "Since the Declaration of Independence in 1776, it has been an axiom of the American people, that all just government is founded in the consent of the people. Wells v. Bain, 75 Pa. (25 P. F. Smith) 39, 46, 5 Leg. Gaz. 400, 21 Pitts. L. J. 65, 15 Am. Rep. 563, 570, 1873 Pa. LEXIS 162, 1874 WL 13096 (Pa., 1874).

The U.S. is not a monarchy but a republic, with citizenry rights. The U.S. Constitution, Article 4 § 4 guarantees "to every State . . . a republican form of government."Article I §§ 9-10 ban "nobility." "Servitude [is] the state of voluntary or compulsory subjection to a master." Hodges v. U.S., 203 US 1, 17; 27 S Ct 6; 51 L Ed 65 (1906); 58 CJ 745, 746 n 1. Dodge's behavior is thus

unconstitutional. The "Dodge group" actions violating members' rights is unconstitutional in seeking to ". . . have made available to [private] individuals the full coercive power of government [this court] to deny" other individuals their rights, a principle from Shelley v. Kraemer, McGhee v. Sipes, 334 US 1, 19; 68 S Ct 836; 92 L Ed 1161 (1948).

Regardless, the issue of incorporation or not, is an internal issue, outside Court jurisdiction. Carrier v. Shearer, 57 D. & C. 2d 631, 642, 94 Dauphin 447, 455, 1972 Pa. Dist. & Cnty. Dec. LEXIS 495, 1972 WL 15998 (Comm.Pl., 1972). (We do not consent to Court jurisdiction on this subject, except in the limited sense of seeking a Court order directing the "Dodge group" to notify Colorado of the invalidity of the incorporation, see 19 January 2007 Supplement, page 5, Item B.).

8. The Nature and Purpose of the Organization is Not In Corporate Language Terms.

The PNC Bylaws describe the "NATURE AND PURPOSE" of the PNC:

> "The Prohibition National Committee is a political body, the function of which is to organize, promote and direct the political activities of that body of persons ordinarily known as the Prohibition Party." (Bank Petition Exhibit B, P.052).

The PNC dates from 1869 and historically has been unincorporated. The PNC is a voluntary non-profit association of individuals from the several states who serve representing their state. The PNC Bylaws (Bank Initial Petition Exhibit B, P.052-P.054) provide that each member is

> "nominated by the delegates of each of the respective political units at the quadrennial nominating convention and elected by the convention body, or otherwise designated by their state organization. . . ."

The PNC has no stockholders. Its "function" "is to organize, promote and direct the political activities of that body of persons ordinarily known as the Prohibition Party." The Bylaws (Bank Petition Exhibit B, P.052-P.054) date to 1957 and do not contemplate or provide for incorporation.

The PNC is essentially limited to not to exceed 100 members (two per state) and has never

been incorporated. Apt legal terms for the PNC's status are the words "association" and "society":

> "**Association** . . . An unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms [e.g., Bylaws] used by incorporated bodies for the prosecution of some common enterprise . . . It is not a legal entity separate from the persons who compose it." Black's Law Dictionary, 5th ed., 1979, p. 111.

> "**Society** . An association or company of persons (generally unincorporated) united together by mutual consent, in order to deliberate, determine, and act jointly for some common pursuit." Black's Law Dictionary, 5th ed., 1979, p. 1247.

The "incorporation" by Earl F. Dodge and daughter Karen Thiessen was their unauthorized fiat decree. Dodge in court 16 Jan 2007 admitted having listed only themselves as "directors." They did this without a vote of the members.

> "The opportunity to deliberate, and, if possible, to convince their fellows, is the right of a minority [certainly the majority], of which they cannot be deprived by the arbitrary will of the majority [or one person, e.g., Mr. Dodge]. That the [suspect Dodge actions] were in contempt of this right, is manifest. The attempt [to violate member rights] consequently defeats itself." Commonwealth ex rel. Claghorn v. Cullen, 13 Pa. (1 Harris) 133, 144, 53 Am. Dec. 450, 459; 1 Pitts. L. J. 76, 1 O. L. J. 76, 1850 WL 5703 (Pa., March 1850).

9. The Court Correctly Identified the Issues 16 January 2007; The Additional Issues Alleged by Mr. Bodager's 16 Feb 2007 Answer Are Untimely, Outside Court Jurisdiction, Not Outcome-Determinative, Unnecessary to Decision, And In Essence Seek to Entrap the Court into Rendering Dicta.

The Court on 16 January 2007 correctly identified the issues in terms of which PNC is to receive the Pennock funds at issue, as two-fold:

i. Who is the recipient: the unincorporated or the incorporated PNC?

ii. Who controls the recipient?

But Mr. Bodager argues that the Court should adjudicate additional issues:

> "The Defendant Webb PNC has alleged that among other things that . . . the Denver CY 2003 National Convention was convened without appropriate authority, and that Denver PNC 2003 Convention was not held and conducted in accordance with the PNC bylaws. . . ."

Mr. Bodager does not cite what is outcome-determinative about these matters. He cites no supporting facts. But even if he did, disputed facts alone are insufficient to preclude summary judgment. Disputed facts must be outcome-determinative under the governing law. *Secretary of Labor, U.S. Dept of Labor* v *Lauritzen*, 835 F2d 1529 (CA 7, 1987) cert den 488 US 898 (1988).

Moreover, Mr. Bodager fails to recognize that said issues, presented long ago before the startling recent events (the "Dodge group" story changes December 2006 - February 2007), were in essence in the alternative. The meetings called by the "Webb group" for September 2003 were for the stated purpose of rendering Dodge's meetings "null and void." Our 25 November 2005 Motion for Dismissal enclosed those Petitions, which had been circulated to invoke the Bylaws' ten signature rule to call the meeting due in 2003.

Whether Dodge's meetings were or were not proper (we believe they were not, and affidavits to that effect are on file), that is simply an "in the alternative" matter. Even if Dodge's June 2003 meetings were valid, what was done could be "rescinded," as the Carrier v. Shearer precedent affirms. (Congress and Legislatures routinely rescind laws, without need to reach the issue whether sessions adopting same had/had not been valid. The right to "rescind" need not address such issues.)

In the second alterative, note our position that such internal issues are outside Court jurisdiction, Carrier v. Shearer, 57 D. & C. 2d 631, 642, 94 Dauphin 447, 455, 1972 Pa. Dist. & Cnty. Dec. LEXIS 495, 1972 WL 15998 (Comm.Pl., 1972). That too was a case involving a Party Chairman behaving like a "maliciously mischievous and irresponsible boy." Rather than solving the problem within the organization as we did, this Party group sought the Court to take jurisdiction to do the ouster for them. The Court declined.

The court further analyzed the Bylaws to determine whether an adequate means existed

pursuant to them for the group to oust its own Chairman. 57 D. & C. 2d 631, 644-645, 94 Dauphin 447, 457-458. One did. And that Court cited prior precedent noting benefits of "having disputes resolved within the association." 57 D. & C. 2d 647, 94 Dauphin 459.

The Court detailed methods to deal with a recalcitrant Chairman. For example, if he ignores member rights to present motions, or protest of such disregard, an affected member can himself force the issue and "put it to a vote." 57 D. & C. 2d 645, 94 Dauphin 457-458.

Here, as is undisputed, a number of members felt that then Chairman Dodge had ignored member rights, including to notice of meetings, had in essence sought to extend his (and his accessories') term another four years, via fraudulent meeting without quorum.

Exactly as the Carrier v Shearer court had said to do (though of course we were unaware of said precedent but by using basic logic exactly as the Court had done), one of the adversely affected members, Defendant Donald W. Webb, took action in combination with others similarly affected (the majority!), pursuant to the Bylaws. This did "put it to a vote." (See the 25 November 2005 Motion for Dismissal enclosing the Petitions circulated to invoke the Bylaws' ten signature rule to call the meeting due that year). At the thus called meetings, Dodge and his "Dodge group" had a duty to attend. Dodge certainly had a duty as then Chairman to attend to preside. Of course, boycotting the meeting, Dodge and accessories lost, meaning, were not re-elected! This is an internal affair of the organization, applying the Carrier v Shearer precedent. This is the type situation where a Court lacks jurisdiction. The process "within the organization" is quite sufficient.

The gravamen of Dodge's case (including his apparently now abandoned complaint in the initial Dec 2006 Bodager pleadings, of a supposed improper "removal" of Dodge) establish that his real complaint is that we are indeed the majority and do indeed control the organization. There is

thus nothing for the Court to adjudicate on point; the "Webb group" majority is in control, and Dodge simply has "sour grapes" over having lost. But personal pique does not confer jurisdiction.

In any event, the issue of Dodge (and accessories) not having been re-elected in 2003, is untimely, beyond any statute of limitations, and should be rejected on such basis, and/or pursuant to the doctrine of laches, especially in view of the deaths of "Webb group" members (loss of witnesses), though we admittedly remain the majority.

10. <u>The "Dodge group" Boycotting the September 2003 Meetings Violated "Duty of Aid"</u>.

Far from "organizing a different group," the "Webb group" as so exhaustively shown above and in the record, including our first Motion in November 2005, laboriously invoked the Bylaws' ten signature rule to convene the meetings due that quadrennial year. The "Dodge group" had violated members rights in terms of their June 2003 meeting having excluded members deemed by Dodge as "troublemakers," lacking a quorum, etc. In reaction to the "tort" of their member rights having been violated, the majority convened the meetings due that year.

> "A tortfeasor has a duty to assist his victim. The initial injury creates a duty of aid and the breach of the duty is an independent tort. See Restatement (Second) of Torts, §§ 322, Comment c (1965)." <u>Taylor v. Meirick</u>, 712 F.2d 1112, 1117 (CA 7, 1983).

The "Dodge group" tortfeasors had "a duty to assist [their] victims," the excluded members, indeed, the entire membership deprived of meetings to which entitled. It was the duty of then Chairman Dodge to attend and preside; but he and his "Dodge group" boycotted said meetings. Now, having breached their said duties, they have the audacity to lie, say the "Webb group" – the majority – trying so valiantly to hold together the historic (since 1869) unincorporated entity, "organized a different group." Such lying is blatantly clearly mail fraud across state lines contrary to RICO.

11. State Courts Have Jurisdiction to Apply RICO.

This issue must now be addressed in view of the record and especially in view of the new evidence surfaced since the 16 January 2007 conference, the fact of Mr. Dodge's harassing and intimidating our witnesses (such as Eunice Hansen) for their affidavits.

Assuming arguendo that the Court, on review of the record, (a) does grant our Motion for Summary Judgment and/or Supplement, and (b) finds that "Dodge group" mailings* constitute a pattern of fraud via interstate mail, not to mention the recent witness harassment/intimidation, the issue of applying the federal Racketeer Influenced and Corrupt Organization (RICO) Act, 18 USC § 1961, et seq., in this case as we have hitherto requested in terms of seeking treble damages may arise, as "state courts have concurrent jurisdiction over civil RICO claims." Tafflin v. Levitt, 493 U.S. 455, 458, 110 S.Ct. 792, 794-795, 107 L.Ed.2d 887 (1990).

CONCLUSION

The facts of record including not only our pleadings and affidavits, but also the various contradictory "Dodge group" stories supports granting our pending Motion for Summary Judgment, the Supplement, and/or any or all our other pending Motions. In this matter in the interstate mail,

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* A person who engaged in fraudulent telemarketing scheme was liable for treble damages under RICO, 18 USC § 1961, et seq., despite district court observation that it would not have supposed the accused acts were sufficiently analogous to those of organized crime figure as to justify finding of RICO violation. Banco de Ponce v. Negron, 726 F. Supp. 926, 927 (E.D.N.Y., 1989), aff'd mem. 923 F.2d 842 (CA 2, 1990) cert. den. 498 U.S. 1087, 111 S.Ct. 964, 112 L.Ed.2d 1050 (1991). "By causing numerous mailings and telephone calls to be made in 1987, [that] defendant violated the mail fraud statute 18 U.S.C. § 1341, as well as the wire fraud statute, 18 U.S.C. § 1343." Here Dodge and the "Dodge group" caused numerous mailings among themselves, the members, and to the victimized Bank, thus damaging the genuine organization.

The claim to funds brought by the "Dodge group" is via deceiving the unsuspecting Bank as shown in the record. this frivolous suit. A "frivolous suit" is defined as "a lawsuit having no legal basis, often filed to harass or extort money from the defendant." Black's Law Dictionary, 7th ed (1999), p 678, as stated in our 25 September 2006 Motion for Summary Judgment, Argument 1,

the "Dodge group" has failed to carry its burden, has indeed added to its initial offenses and pattern of fraud by its story changes and witness retaliation. In contrast, the "Webb group" has been consistent, factual, and meticulous in supporting its position with facts, documents, affidavits, pertinent case law, and motions.

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page 3. The "fear" element of extortion as a predicate act under the Racketeer Influenced and Corrupt Organizations Act (RICO) can be satisfied by putting the victim in fear of economic loss. *De Falco* v *Bernas*, CA 2, NY 2001, 244 F3d 286 (CA 2, 2001). Here, we the "Webb group" reasonably fear economic loss due to the pattern of mail fraud by the "Dodge group" effort to extort funds to which not entitled.

Under the RICO Act, 18 U.S.C. § 1961, et. seq., "treble damages are mandatorily assessed upon the finding of liability." Resolution Trust Corp. v. S & K Chevrolet, 868 F. Supp. 1047, 1062 (C.D. Ill., 1994), citing 18 USC § 1964(c) (victim "shall recover threefold the damages he sustains").

"In fact, imposition of treble damages is required by RICO." MDO Development Corp. v. Kelly, 735 F. Supp. 591, 593 (S.D.N.Y., 1990) (disloyal employee case, an apt parallel to what is transpiring in this situation, former officers and members in essence absconding with organization funds and property, and worse than in that case, laying claim to future income and contributions belonging to the organization, not to individuals).

Trebling applies even in what may be deemed mere "overbilling" situations. A victim City was entitled to three times total of overbilling by defendant for quantities of water treatment chemical that were never delivered. City of Chicago Heights, Ill. v. Lobue, 914 F. Supp. 279, 283 (N.D.Ill., 1996). The situation is bar is far more than mere "overbilling." This situation develops from a protracted pattern of deliberate false and/or misleading claims via mail, with multiple impacts (described above) well beyond those of a mere "overbilling" situation. That type of "overbilling" did not include a pattern of member rights such as shown here.

The bottom line is that damages under RICO should be assessed against the "Dodge group" for their misconduct giving rise to, and during the pendency of, this case.

WHEREFORE, the undersigned Leroy J. Pletten, Secretary, Prohibition National Committee, requests that the relief sought by said pending Motions, or any of them, be granted, seriatim or en masse.

Respectfully,

11 March 2007

Leroy J. Pletten, Defendant
Secretary, Prohibition National Committee
8401 18 Mile Road #29
Sterling Heights MI 48313-3042
(586) 739-8343
FAX (419) 574 -6145

Enclosures
- Affidavits by
  - Higgerson
  - Hansen
  - Kennicutt
  - McKenzie
  - Pletten
  - Whitney
- Dodge's Retaliation Letter