

AMERICAN LEGION

DEPARTMENT OF CALIFORNIA

117 VETERANS WAR MEMORIAL BLDG, SAN FRANCISCO, CA 94102-4587

THIS FORM MUST BE FILLED OUT IN **TRIPPLICATE**

Resolution No. 008-07 Subject: Investigation & Full Disclosure re: Vitikacs and Pullen v The American Legion and Doris Grooms, Superior Court For The District Of Columbia, Civil Action No. 02ca010202

(DO NOT FILL IN ABOVE THIS LINE)

RESOLUTION

WHEREAS, at the Eighty-Eighth National Convention (hereafter, "88th Convention") of The American Legion ("TAL"), Salt Lake City, Utah, August 29-31, 2006, **Resolution No. 1: Increase In National Per Capita Dues of The American Legion** ("Resolution No. 1"), originated by the National Executive Committee ("NEC"), submitted by the Convention Committee on Finance ("Finance Committee"), was brought before the elected Convention Delegates ("Delegates"), representing the membership ("Membership"), to be approved or disapproved by vote of said Delegates in reliance upon the representations made in Resolution No. 1 and in the financial records and representations made by the National Organization to the Delegates; and,

WHEREAS, National Adjutant Robert Spanogle ("Spanogle"), and National Judge Advocate Phillip Onderdonk ("Onderdonk") were advocates in support of said per capita dues increase to be paid to the National Organization and made representations to the Delegates concerning the need for said per capita dues increase and representations as to the financial situation justifying it, including without limitation representations by Onderdonk pertaining to litigation involving The American Legion; and,

WHEREAS, the elected Delegates representing the Membership, in reliance upon the information provided by Resolution No. 1, the written financial records and representations provided to the Delegates, and the written and oral representations of Spanogle and Onderdonk, and others, did ultimately approve by vote, over the active opposition of the Department of California, the per capita dues increase sought by the National Organization, including Spanogle and Onderdonk, both of whom are paid officers of TAL appointed by the NEC; and,

WHEREAS, at all times since 2002, and including the time during which Spanogle, Onderdonk, and other individuals operating at the level of the National Organization made representations as to the financial condition of TAL to justify the per capita dues increase sought by the National Organization, there was pending that certain lawsuit known as John Vitikacs and Pullen -vs- The American Legion and Doris Grooms Superior Court For The District Of Columbia, Civil Action No. 02ca010202 (hereafter, "Vitikacs vs. TAL"), a lawsuit brought by two former employees alleging wrongful discharge from the Washington, D.C., office of TAL, ultimately decided against those plaintiffs in a jury trial concluding in 2005; and,

WHEREAS, in none of the written materials provided to the Delegates, including Resolution No. 1, the financial statements provided, the reports provided as to the finances of TAL, including as to litigation, was the information provided as to the existence of Vitikacs vs. TAL, nor that, as subsequent investigation has revealed, that the National Organization, in which National Adjutant Spanogle has major responsibility as administrator, and in which Onderdonk has major responsibility as Judge Advocate in matters pertaining to litigation, including attorney fees and costs pertaining thereto, had expended at least \$750,000 in attorney fees, apparently in one year, 2005, of the multi-year lawsuit, and over \$120,000 in costs, defending the wrongful discharge action in Vitikacs vs. TAL; and,

WHEREAS, in the Financial Statements of The American Legion National Headquarters, December 31, 2005, and 2005, at Note 17- Litigation, found on page 19 of said Finance Statement, Judge Advocate Phillip Onderdonk -- who was himself an attorney of record as "of counsel" in the Vitikacs vs. TAL litigation -- provided only the following information pertaining to Vitikacs vs. TAL and all other litigation involving TAL and therefore actual expenditures of attorney fees and costs pertaining thereto:

Below space is not for use when resolution originates with a adopted.
Dept Committee/Commission or Convention Committee.

This is to certify that the above resolution was

Chairman

Dept Committee/Commission or Convention Committee

DATE:

DATE:

RESOLUTION CONTINUED

“The Legion is currently involved in and/or has been mentioned as a defendant or co-defendant in several legal actions. It is the opinion of the National Judge Advocate that these claims are without merit and any ultimate liability of the Legion with respect to these actions will not materially affect the financial position of the Legion” and

WHEREAS, in fact TAL had become liable to pay to attorney fees, or had paid attorney fees, to firms apparently retained at the recommendation of Onderdonk, of over three-quarters of a million dollars, and, according to sworn cost claims filed by those attorneys in a motion for costs in the Vitikacs vs. TAL lawsuit, TAL had incurred costs amounting to **\$120,933.22**, including: \$741 in filing fees; **\$24,171.80** for printing (i.e., copying); **\$8,655.47** in witness fees; **\$21,853.63** for costs incident to taking depositions; **\$65,000** in **“other costs,”** which include, among other things **\$36,262.61** for **“travel,”** **\$8,702.15** for **“on-line legal research;”** **\$3,163.28** for couriers; and **\$5,586.79** in overnight mail, and

WHEREAS the above costs were attested to on or about November 30, 2005, in an **Affidavit In Support Of Bill Of Costs: Eric L. Siegel** (D.C. Bar No. 427350), Henrichsen Siegel, P.L.L.C. , a Washington, D.C. law firm retained as local counsel to defend those who had fired the two plaintiffs, Siegel swearing under oath the costs claimed **“...were actually and necessarily performed, were incurred by the Defendant The American Legion, through one of its counsel, Henrichsen Siegel, P.L.L.C., in this matter[;]”** and,

WHEREAS the above costs were attested to on or about November 30, 2005, in an **Affidavit In Support Of Bill of Costs: Patricia L. Ogden** (Ind. Bar No. 19509-48), Barnes & Thornburg LLP, Indianapolis, IN, an Indianapolis-based law firm retained as counsel to defend those who had fired the two plaintiffs, Oden swearing under oath the costs claimed **“...were actually and necessarily performed, were incurred by the Defendant The American Legion, through one of its counsel, in this matter[.]”** i.e., incurred by the Indianapolis hired to represent TAL in Washington, D.C.; and,

WHEREAS the Court in Vitikacs vs. TAL, by Order dated December 22, 2005, did not grant or deny TAL’s motion for costs but rather the parties to mediation over TAL’s cost claims, the Court noting in said Order, among other things, that while TAL would be entitled to **“reasonable costs”** as prevailing party that :

“This does not necessarily mean, however, that the defendant [TAL] is entitled to recover thousands of dollars in travel and lodging expenses that were incurred solely because the defendant chose to engage out-of-state attorneys to defend the action. Nor does it necessarily mean that the defendant will be awarded thousands of dollars in computer and other technology expenses that were incurred so as to enable the defendant to present a ‘high-tech’ defense at trial.”

WHEREAS, the Praecipe filed January 30, 2006, in said case evidences settlement of the cost claims, resulting in plaintiffs dismissing their appeal from judgment, and paying **“\$10,000”** of the \$120,933 costs claimed by The American Legion under oath as having been actually expended; and,

WHEREAS, at the 88th National Convention, neither Spanogle, Onderdonk, nor any other person advocating the per capita dues increase for the National Organization fully disclosed the attorney fees or costs expended in the Vitikacs vs. TAL litigation, nor the identities of the attorneys receiving in excess of \$750,000 in attorney fees, nor that costs of over \$120,000 had been incurred, nor even the name of the case, nor the court in which it had been filed, at the time the Delegates were called upon to vote for or against the per capita dues increase sought by the National Organization; and,

WHEREAS when Rees Lloyd, Commander of District 21, Department of California, an attorney with more than twenty-five years experience representing non-profit organizations, acting individually pursuant to his rights as a member of TAL to whom a fiduciary duty is owed by TAL’s officers, and acting for and on behalf of the members of District 21, each of whom is owed a fiduciary duty by TAL’s officers, made written request upon officers of the National Organization for specific information on what had been paid in attorney fees, and costs, and for the name of the lawsuit, court in which it had been filed, and case number, National Adjutant Robert Spogle by letter dated December 5, 2006, refused to provide the name of the Vitikacs vs. TAL case, the court in which it had been filed, or the case number, stating **“...as an attorney, I am certain you have ample mechanisms to obtain such information if you desire it [.]”** and refusing to disclose specific information on what actual attorney fees had been paid and to whom, and what costs had been incurred, on the ground that such information is **“confidential”** (sic); and,

WHEREAS the name of the Vitikacs vs. TAL lawsuit, the court in which it was filed, and the case number, was only provided upon subsequent appeal to National Commander Paul Morin, who was elected after the decisions and expenditures had been made in the Vitikacs vs. TAL and had not, therefore, been responsible therefor, and who, to his credit, did release the name, court location, and case number of Vitikacs vs. Tal by letter dated January 7 4, 2007, so that court records could be obtained, which was done at the personal expense of Lloyd upon the failure of Spanogle, Onderdonk, and other officers of National TAL to provide that information which was available to them at all times; and,

WHEREAS at all times relevant, Spanogle, Onderdonk, and each other officer of National TAL owed to each member of TAL, a fiduciary duty, which is defined as: **“A duty of utmost good faith, trust, confidence and candor owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such as a lawyer’s client or a shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interest of the other person[.]”** (*Black’s Law Dictionary*); and,

WHEREAS to date the total amount paid in attorney fees in Vitikacs vs. TAL, which was filed in 2002 and not resolved until January, 2006, has still not been fully disclosed by Spanogle, Onderdonk, or any other officer of the National Organization, and the attorney fees and costs in the other litigation opaquely referenced by JA Onderdonk in his one-paragraph statement concerning litigation at Note 17 of the Financial Statement for the period ending December 31, 2005, quoted hereinabove, has not been disclosed; now **THEREFORE BE IT**

RESOLVED, by The American Legion, Department of California, in regular convention assembled at Palm Springs, California, June 21-24, 2007, That The American Legion should reconsider and rescind Resolution 1, Increase In National Per Capita Dues of The American Legion, adopted at the 88th National Convention, Salt Lake City, Utah, August 29-31, 2006, for the reason that there was a failure of full disclosure of material facts, e.g., the more than \$750,000 attorney fees paid apparently for one year and more than \$120,000 in costs incurred in Vitikacs vs. The American Legion, Superior Court For The District Of Columbia, Civil Action No. 02ca010202, or any other litigation, at the time Resolution 1 was presented to delegates for a vote to approve the per capita dues increase; and **BE IT FURTHER**

RESOLVED That the National Commander cause an investigation to be made into the attorney fees paid, and costs incurred, in Vitikacs vs. The American Legion, Superior Court For The District Of Columbia, Civil Action No. 02ca010202, including who recommended, decided, or authorized that such attorney fees or costs should be allowed at the amounts incurred or paid, and including all other litigation in which The American Legion incurred attorney fees or costs within a five-year period prior to the presentation of Resolution 1, Increase In National Per Capita Dues of The American Legion, to the Delegates for vote at the 88th National Convention, Salt Lake City, Utah, August 29-31, 2006; and **BE IT FURTHER**

RESOLVED That the National Commander cause action to be taken to obtain agreement from the law firms who represented The American Legion in the case of Vitikacs vs. The American Legion, Superior Court For The District Of Columbia, Civil Action No. 02ca010202 to reconsider and reduce the costs claimed and the attorney fees claimed, or to otherwise act to obtain a reduction in the costs claimed and attorney fees paid in order to recover some portion of said attorney fees and costs and restore those funds to the The American Legion; and **BE IT FURTHER**

RESOLVED That, if findings are made upon investigation that any person has breached his or her fiduciary duty to the members in relation to Vitikacs vs. The American Legion, Superior Court For The District Of Columbia, Civil Action No. 02ca010202, that appropriate disciplinary action be taken against them and damages resulting from such conduct be recovered from them, by agreement or by appropriate legal action; and **BE IT FURTHER**

RESOLVED That the National Commander take such other actions as the Commander deems just and proper to fulfill the fiduciary duty of each officer of The American Legion owed to each member, and to increase confidence in the membership that their rights to the performance of said fiduciary duty, including the duties of candor, prudence, and honesty, are fulfilled; and, **BE IT FURTHER**

RESOLVED That the National Executive Committee not re-appoint either National Adjutant Robert Spanogle or National Judge Advocate Phillip Onderdonk at the post-89th Convention NEC Meeting in the manner that it was done at the post-88th Convention NEC Meeting, i.e., without a single question being asked as to either of them pertaining to their conduct and without any discussion whatsoever, but, rather, that the NEC, if it reappoints either Spanogle or Onderdonk at all, that such reappointment be only provisional or interim until there is full disclosure of all facts and circumstances pertaining to the attorney fees paid or incurred, and the costs paid or incurred in Vitikacs vs. The American Legion, Superior Court For The District Of Columbia, Civil Action No. 02ca010202; and **BE IT FINALLY**

RESOLVED That the Department Adjutant be and is hereby instructed to send this Resolution to the National Adjutant for appropriate action at the National Convention in Reno, Nevada, August 24-30, 2007.