LITIGATION

(OR, IF THE SUIT FITS, WEAR IT)

"Litigation," according to the *American Heritage Dictionary*, is simply defined as "Legal action or process." *Black's Law Dictionary*, with predictable ponderousness, describes it as a "(c)ontest in a court of justice for the purpose of enforcing a right." In any case, to many "litigation" is synonymous with "lawsuit," and there is no particular benefit to distinguishing between the two terms here. Many of us have had some passing experience with litigation on a small scale: e.g., pleading "not guilty" to a parking ticket before a local traffic court; or exercising a right to a fair hearing before some governmental, administrative body in order to qualify for unemployment benefits; or seeking restitution for a minor loss by initiating an action in small claims court; and so on. Few, however, have been involved in lawsuits of any magnitude (except, possibly, divorce court, which seems to attract more and more litigants each year). Hence, the view of lawsuits most familiar to us is that which is portrayed on television - both as a dramatization and live coverage - with all of the attendant mystery and formality. The stakes are enormous: large sums of money in civil matters; and extended incarceration,or even death, in criminal matters. The perception available to us through the lens of the TV camera is indeed sobering - almost forboding.

In reality, however, one of the great societal phenomena, one which evolved almost in lock-step with the evolution of man himself, was the development of a judicial structure. (Recall King Solomon sitting as a court of equity in order to determine the rightful mother of an infant). And with its development, individual notions of justice, equity and fair-play were gradually subsumed into a common understanding; rights, responsibilities and remedies became defined; and speculation, regarding these matters, was gradually replaced by codification - but in a way that allowed for flexibility and changing perspectives. Violence and self-help were no longer acceptable - nor necessary - as a means of settling disputes. There was a better way.

By the end of the twentieth century, at least in the United States, earlier constraints on access to the judicial process have been entirely eliminated. Hence, any citizen whether a natural person or a corporation (corporations, as creatures of the state, are considered citizens), has a right to avail himself, herself, or itself to our court process. Thus, today, in our fast-paced world of business and commerce,

thousands upon thousands of differences, which were not susceptible to nay other attempts at resolution, are reconciled, daily, under auspices of our court systems. Three considerations ensure that, in almost all cases, the judicial process is, in effect, a court of last resort: litigation is expensive, both in direct expense and in the soft costs attributable to the diversion of resources necessary to support litigation; litigation is always a much more protracted process than out-of-court (without commencing litigation) solutions - indeed, in some instances where the matter is tried, a resolution may not occur for several years; and, most civil procedures codes provide for penalties in cases of spurious lawsuits.

Recently, respecting, A.A.'s involvement as a litigant, questions have ben raised as to its acceptability - or even its permissibility - under the Traditions and Concepts. One member, for example, felt that A.A. simply should not appear in court, under any circumstances. I then described a recent event to him: A.A. World Services, Inc. (A.A.W.S.) was named as one of the defendants in a personal injury case in Louisiana, where the plaintiff was suing for millions of dollars, because of serious injuries he sustained at a local A.A. picnic: A.A.W.S. felt that it was improperly joined as a party defendant; A.A.W.S. then hired counsel, appeared in court, and successfully raised its defenses; and, if they had not done so, the plaintiff would have been awarded a substantial default judgment against A.A.W.S. The member agreed that, upon reconsideration, it is proper to defend ourselves when sued.

I then hypothesized the following 2 scenarios: A.A.W.S. purchases a $1 million computer that proves to be defective and not repairable. The manufacturer, who has provided A.A.W.S. with a warranty, refuses to honor it. All attempts at negotiations meet with failure, and it is clear that the manufacturer will not relent. A.A.W.S.'s attorney advises them that they would most likely prevail if they sued on the warranty. Should A.A.W.S. commence an action against the manufacturer or "eat" the $1 million (and, if $1 million seems like a small enough amount to "eat," change the facts so that the hardware costs us $2 million)?

In scenario #2, the real estate market takes a dramatic upswing, and A.A.W.S. has 9 more years on a lease at a very favorable rental. The landlord attempts to buy out our lease, but, for what he is willing to offer, moving would be far too disruptive to the continuity of services that A.A.W.S. provides to the Fellowship. One day, based on an alleged breach of the lease (which is, in fact, untrue) the landlord locks A.A.W.S. out of its offices, and threatens to have all of its property removed in the street. Should A.A.W.S. ask its attorneys to both obtain a restraining order from court to prevent further harm by the landlord, and

commence legal action for re-entry into its premises? Here, too, the member conceded that, where A.A.W.S. was confronted with the loss of substantial sum of money, or unlawful ejectment from its offices - either of which events would seriously impair A.A.W.S.'s ability to provide those services which help carry the message - resort to the courts was appropriate.

However, it may be argued that, if A.A.'s Traditions and/or Concepts proscribe involvement in litigation, even as a defendant, then any such appearance, for any purpose, would be inappropriate. By failing to appear when sued, A.A.W.S.'s only defense would be a reliance on Providence. It does not require a great deal of foresight to see that such an extreme policy would be ruinous: one lawsuit, even where the claim was completely without merit, might result in the loss of <u>all</u> of our assets; and, our ability to provide necessary services would cease. Bill comments on such a narrow focus in Concept IX:

> (W)e shall surely suffer if we cast the whole job of planning for tomorrow onto a fatuous idea of Providence. God's real Providence has endowed us human beings with a considerable capacity for foresight, and He evidently expects us to use it.

The notion that A.A. ought to stand by, passively, while it is sued out of existence is, in my view, absolutely unsupportable. There remains however, the question of the appropriateness of A.A. initiating litigation.

According to the Conference Charter, the General Service Board (G.S.B.) ". . . is essentially custodial in its character." And, although it is entrusted with the custody of A.A.'s property, it is not an operating corporation.[1] The relationship between G.S.B. and A.A.W.S. is frequently described as analogous to a parent company (G.S.B.) and a wholly-owned subsidiary (A.A.W.S.), respectively, and that description is certainly sufficient for these purposes. As a by-product of that relationship, title to the bulk of A.A.'s assets is held by A.A.W.S., and those assets are comprised mostly of personal property (which includes money) and intellectual property (copyrights, trademarks, and service marks - A.A., at present, owns no real property). Additionally, the Grapevine has title to some of A.A.'s property). Thus A.A.W.S. is not only the fiscal agent for G.S.B., but, to the extent that it has title to A.A.'s property, it holds such title as an agent for G.S.B. In turn, the ultimate responsibility that G.S.B. has respecting such property interests, is to oversee the property for the benefit of the Fellowship as a whole. Under the law, trustees are required to ". . . discharge (their) . . . in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances . . ."[2] In fact, the statute also provides that an action may be brought against a trustee for "(t)he neglect of, or failure to perform, or other violation of his duties in the management and disposition of corporate assets committed to his charge."[3] Indeed, Concept IV recognizes that ". . . the conduct of our world services is primarily a matter of policy and business." And, although " . . . our objective is always a spiritual one, (our) . . . service aim can only be achieved by means of an effective business operation. (The) trustees must function almost exactly like the directors of any large business corporation." Care must be taken, then, not to anticipate precisely the same action and perspective on the part of G.S.B., in the conduct of its business, as we would expect on the part of Conference participants, during the Conference. And there is no lesser a spiritual aim in either pursuit - the former has to engage in arms-length business transactions on a regular basis, while the latter operates within the protective environment of a "within A.A." activity. The nature of negotiation and compromise are frequently quite different in a purely business arena as compared to what happens during a Conference debate - and both are essential to our primary purpose. Competing interests, where both have positive attributes, are a fact of life in modern society: for example, does one's right to free speech permit the person to shout "fire" in a crowded theater, when there is no danger. The

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1 Concept VIII

2 New York State Not-For-Profit Law, Section 717.

3 Id., Section 720

potential harm to life and property in the event of a stampede is deemed to outweigh the otherwise inalienable right of the individual to freely express himself. The Board, too, must reconcile its business activities and its legal responsibilities with the Concepts and traditions, on a *case-by-case basis,* such a responsibility cannot tolerate a perception limited to blacks and whites.

In his discussion or Warranty Five, in Concept XII, Bill illustrates his notion of public controversy by referring to how we avoid potential quarrels with the medical profession or the clergy by sticking to our primary purpose; or how we avoid contentious responses to those who would criticize or ridicule us. He notes here that we do not seek to publicly punish those who violate our Traditions, and we avoid engaging in public, intra-Fellowship disputes. Referencing Bill's admonitions to today's panoply of public issues, we can all appreciate that, as a society, A.A. has no opinion on the abortion issue, nor, indeed, on who would make the best governor of Louisiana - both of which are as controversial as they are public.

Bill's further commentary on Warranty Five is less precise in its meaning. For example, he makes it clear just how important the A.A. name itself is: we can ". . . give away all of (our) knowledge and experience . . . all excepting the A.A. *name* itself". He then goes on to point out how fortuitous it was that the Conference decided not to seek a "Congressional incorporation" for A.A. What Bill may have meant by "Congressional incorporation" is confusing, since, at the time the Concepts were written, G.S.B., A.A.W.S., and the A.A. Grapevine were already incorporated. Bill, whatever he may have meant by "Congressional incorporation," was ***not*** referring to the existing boards. Additionally, what seems to be implied by the commentary is that, concomitant with such "Congressional incorporation," would be the power to sue. And, ". . . the power to sue would be a dangerous thing for us to possess." Indeed, the statute pursuant to which G.S.B., A.A.W.S. and the Grapevine were all incorporated, provides, as to each of A.A.'s corporations, that it ". . . shall have power . . .(t)o sue and be sued in all courts and to participate in actions and proceedings, whether judicial, administrative, arbitrative or otherwise, in like cases as natural persons."[4]

Before seeking to reconcile these apparent inconsistencies, certain facts must be noted: the first of A.A. trademarks was registered in 1956, well before the Concepts were written; each of the books written by Bill, prior to his development

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4 Id., Section 202 (a) (2)

of the Concepts, and each pamphlet published for sale, during the same period, was registered with the Copyright Office. There are no valid purposes for registering copyrights, trademarks and service marks other than to put the world on notice as to ownership, and to provide an enhanced legal basis for defending against infringement. Should we really accept the notion that, if someone had flooded the market with pirated Big Books - whether before or after the Concepts were written - that the Board would have, or should have, failed to take legal action, if necessary, in order to halt the infringement? Would such an unlawful infringement have been acceptable if, thereby, there was insufficient income to support A.A.'s vitally-needed services? Or, would such an event have been acceptable if the pirated version substantially modified our message? Without trying to answer these hypotheticals specifically, I think that it is amply clear that the board(s) would have to have the latitude to decide what course of action to take - including an infringement action, if indicated. If the board(s) decided to initiate legal action, they would assume the obligation to take whatever steps necessary to avoid the lawsuit from developing into a "public controversy." And, such an objective ought not to be difficult of achievement: with the thousands of legal actions suffocating court calendars on a daily basis, it is almost presumptuous of us to assume that our affairs, in this regard, would rise to the level of public interest, much less public controversy. Indeed, for the boards to avail themselves of the judicial process, where indicated, is not a resort to some sleazy, unsavory, non-spiritual business practice, as one member implied; rather it is to enjoy the full range of benefits that the state provide for all of its citizens.[5]

Today, we have learned that, in some countries, the first one to register a trademark (the name "Alcoholics Anonymous," for instance) owns it. In consequence, there was reason for concern when, in 2 instances, a bogus A.A. was starting to develop alongside of the bonafide entity. Hence, a few years ago, we encouraged all those attending the World Service Meeting to register our marks, on our behalf, in their respective countries - especially the name, "Alcoholics Anonymous." and the mark, "A.A." Again, what would we do if a similar problem occurred here? Does the board have a responsibility for taking appropriate steps to pressure the fellowship, its message, and its assets for the alcoholic seeking help or not? Concept VI states that the boards ". . . are the active guardians of our Twelve Traditions; Concept III asks that ". . .we . . . trust our responsible leaders ***to decide***, within the framework of their duties, ***how they will interpret and apply***

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[5] We, of course, have taken full advantage of the opportunity to be tested as a non-profit organization, as to all 3 of A.A.'s corporations.

their own authority and responsibility to each particular problem as it arises(emphasis in original); "and, Concept X states that "(e)very service responsibility should be matched by an equal service authority. . ."

In view of the foregoing, one must conclude, then, that the most reasonable construction of Bill's commentary in Warranty Five provides that we always seek to avoid public controversy; that A.A., the spiritual entity, ought not be incorporated and become a legal entity, and ought not have the power to sue. That is, Bill's reference and concern is directed to the Conference and the Fellowship or society of Alcoholics Anonymous, and ***not*** to the existing boards. It is impossible to apply any such naked restriction on the boards' power to sue (or undertake any other legally permissible action) and, at the same time, have any expectation of reconciling Concept XII with Concepts I through XI - such a narrow interpretation would present an impassible barrier to any attempt at harmonizing the Concepts.