UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,	:	
Plaintiffs,	:	
v.	:	**Case No. 03-2006 (EGS/JMF)**
RINGLING BROS. AND BARNUM & BAILEY CIRCUS, et al.,	:	
Defendants.	:	

EXHIBIT 18

TO

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FEI'S MOTION TO COMPEL DISCOVERY FROM PLAINTIFF TOM RIDER AND FOR SANCTIONS, INCLUDING DISMISSAL

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February 14, 2007

By Electronic & First Class Mail
Lisa Joiner
George A. Gasper
Fulbright & Jaworski
801 Pennsylvania Avenue N.W.
Washington, D.C. 20004

Re: ASPCA v. Ringling Brothers, Civ. No. 03-2006 (EGS).

Dear Ms. Joiner and Mr. Gasper:

Enclosed are the ASPCA's original Verification for its Supplemental Objections and Responses to Defendants' First Set of Interrogatories (a copy of which defendants received on January 31, 2007) and a bill for plaintiffs' supplemental productions on January 31, 2007, January 16, 2007, August 11, 2006, and July 11, 2006 and for the two videos produced on behalf of API also on January 16, 2007.

Although you have requested proof of our in-house copying charge of twenty cents per page, we note that defendants have failed to provide plaintiffs with any proof of their copying charges, even after we raised the issue. Nevertheless, we have attached to this letter an invoice sent to the ASPCA that demonstrates that we do in fact charge twenty cents per page for copying that is done in house. Attachment A. The remainder of our bill to you is straight forward, with the charges varying depending on whether the work was done in house, by Judicial, or Graffiti, and totals $1,771.76. See Attachment B.

Based on the enclosed bill plaintiffs now owe defendants $4,020.88 and have enclosed a check for this amount with this letter.

By letter dated February 8, 2007, you also requested that we respond by today to two questions that you raised for the first time at our meeting with you on February 7. Our answers

to those questions are set forth below.

A. The Privilege Log Issue.

You have asked whether the Privilege Log that accompanied plaintiffs' 2004 document production in this case will be "broken out by document" and whether each such document will be "identifiable on the log as to the source of each, i.e., which plaintiff(s) has them." As a threshold matter, as with defendants' other much-belated claims of deficiencies in plaintiffs' 2004 discovery responses, we note that defendants have waited over two and a half years since plaintiffs provided their Privilege Log to raise this concern. Although, as with other concerns defendants have belatedly raised with the 2004 production, we will endeavor to address this issue with you, we reserve the right to object to these concerns on the grounds that defendants have waited far too long to bring them to our attention.

Putting that matter aside, at your request we have taken a look at the Privilege Log we produced to you, and are confident that it not only provides you with all of the information to which you are entitled, but that it goes well beyond that requirement. Indeed, our review of the Privilege Log defendants have produced to plaintiffs confirms that, as we suspected, while defendants are complaining about a lack of detail concerning certain of plaintiffs' Privilege Log entries, as to the same categories of materials covered by those entries, the defendants have not identified responsive materials at all. Thus, for example, while plaintiffs included a Privilege Log entry for emails exchanged between plaintiffs' attorneys and clients regarding litigation strategies and advice in this litigation – materials that are plainly covered by the attorney-client and work-product privileges – defendants' Privilege Log contains no such entries.

Presumably, this disparity can be explained by the way defendants handled plaintiffs' request for documents in defendants' control that concern plaintiff Tom Rider. As you will recall, at one point defendants maintained that, even though such records were responsive to plaintiffs' document request, defendants were not required to even identify those records on a Privilege Log, because to do so would "disclose their attorneys' mental processes, as well as their attorneys' avenues and means of investigation," and Judge Facciola agreed with this position. ASPCA v. Ringling Bros., 233 F.R.D. 209, 213 (D.D.C. 2006). We presume that this is the same rationale that explains why defendants have not identified on their Privilege Log any of the email communications that defendants' counsel, or in-house counsel, have had with defendants concerning the litigation strategies or advice in this lawsuit, or have acknowledged that such written communications even exist.

Plaintiffs, on the other hand, have acknowledged that the existence of these written materials should be identified on their Privilege Log, and have done so. Indeed, in their 2004 Privilege Log, plaintiffs included far more detail than is required with respect to these matters, and the Supplemental Privilege Log also contains more detail than has been provided by defendants with respect to the same categories of documents. However, plaintiffs are certainly not going to provide further details about these communications when defendants have not even

identified these categories of communications on their log. Moreover, because providing further details about these communications could implicate the very concern that Judge Facciola upheld, no further details are warranted here.

To be clear, the Privilege Log entries that refer to emails between and among plaintiffs' attorneys and clients only covers those written communications that concern the litigation, and advice and recommendations concerning litigation strategies and approaches. Again, since defendants have not even identified those communications, at this point there is no grounds for seeking to compel plaintiffs to provide further details concerning such material.

B. Identification of Documents Issue

In your letter dated February 8, 2007 you asked "with regard to all responses that incorporate documents by reference, will the documents be specifically identified in each response?"

1. Interrogatory Responses

With respect to plaintiffs' interrogatory responses, as a general matter, plaintiffs have identified the document or documents that they are incorporating by reference by bates label in their responses. We note that the specific interrogatory responses that you list in your letter were all objected to on the grounds that the interrogatory is overly broad, unduly burdensome, and/or oppressive. Thus, your letter is asking plaintiffs to provide defendants with the very information they have objected to producing. While plaintiffs maintain their objections to these interrogatories, they provide the following response.

With respect to plaintiffs' 2004 Interrogatory Responses, again, you have waited far too long to begin raising for the first time questions concerning those Responses. Nevertheless, as the chart in your February 8 letter demonstrates, a number of these responses were supplemented on January 31, 2007 and now include detailed lists of documents that plaintiffs incorporate by reference. Plaintiffs direct defendants to the organizational plaintiffs' supplemental interrogatory responses to Interrogatories numbered: 5, 13, 15 and to Mr. Rider's supplemental response to Interrogatory No. 19 (which incorporates by reference his supplemental response to Interrogatory No. 11).

Again, in as much as these responses, and any of plaintiffs' other responses, state that they "include, but are not limited to" the listed documents, this clause was included because plaintiffs objected to these interrogatories as being overly broad, unduly burdensome, and/or oppressive – i.e., we cannot possibly be expected to go through all of our documents that we have already produced to defendants for the purpose of picking out all of the information that is responsive to each of defendants' interrogatory responses. However, having so objected, plaintiffs did in fact make a good faith effort to identify such responsive documents to they extent they could reasonably do so.

As for the rest of plaintiffs' original interrogatory responses, your question appears to be directed at plaintiffs' incorporation of their document production request responses in the corresponding interrogatory responses. While this incorporation is self-explanatory, the following chart contains the interrogatories, the document production responses they incorporate, and the documents listed in plaintiffs' Addendum – which was also provided to defendants in June 2004 – that are responsive to each document production request.

Plaintiff(s)	**Interrogatory**	**Document Request**	**Addendum**
ASPCA	16	10	A 001-0289
ASPCA, AWI, The Fund	17*	4	PL 1482-1751, 5118, 6003-6045, 6046-6170
AWI, The Fund	18*	same as above	same as above
AWI, The Fund	19*	22	AWI 1261-1441, 1490-1588, 1589-1613, 1614-1648, 1649-1794, 1804, 1808-1896, 2446-2610 F 001-0801, 802-1001, 1002-1070, 1071-1232, 1254-1493, 1495, 1560, 1965-2154, 2707-2758, 3095-4028,
AWI, The Fund	21*	19	AWI 001-002, 003-008, 009, 010-016, 017, 1261-1441, 1442-1461, 2446-2610, 5891-5892 F 1002-1070, 1071-1232, 1233-1253, 1254-1493, 1495-1560, 1561-1580, 1914-1944, 1965-2154, 2155-2255, 2256-2692, 2707-2758, 2759-2949, 2951-3094, 3095-4028

Rider	4	22	TR 0001; PL 01333-01143, 01482-01751, 01752-01968, 01969-02021, 02022-02280, 023-69-02677, 02668-02762, 02763-02771, 02793-02803, 02804-03069, 03070-0321, 03846-04152, 04153-04445, 0446-04615, 05118, 07045-07065

* Interrogatory responses that mention documents but that do not specifically incorporate them by reference.

Additionally, in response to Interrogatory No. 5 Mr. Rider incorporated documents he produced regarding his media contacts, news articles that plaintiffs produced, and videos of Mr. Rider's media interviews – all of which have already been produced to defendants. However, at this late date it would be extremely burdensome for plaintiffs to figure out the precise bates labels placed on all such documents in June 2004. In response to Interrogatory No. 17, Mr. Rider also mentioned videotapes of the Ringling Brothers elephants that he has reviewed – all of which have also already been produced to defendants. However, again, at this late date, it would be difficult, if not impossible, for us to give you a precise list of each of those videos.

As a result of defendants having waited over two and a half years to complain about plaintiffs' 2004 interrogatory responses, this is certainly more than a sufficient response to your question.

We also point out that defendants have failed to specifically identify documents upon which they rely in answering plaintiffs' interrogatories. For example, in responding to Interrogatory No. 6 defendants state "defendants will provide records in their custody dating from January 1, 1996, that concern ankuses." Def. Response to Interrogatory No. 6; see also Defendants Interrogatory Responses Nos. 8, 9, 11, 18. Thus, by complaining about plaintiffs' responses, defendants are once again seeking to hold plaintiffs to a higher standard than defendants themselves are willing to meet in their discovery responses.

2. Document Production Requests

As for the document production requests, we have produced the supplemental documents as they are kept "in the usual course of business," which is all we are required to do under Rule 34. See, e.g., Doe v. District of Columbia, 231 F.R.D. 27, 36 (D.D.C. 2005). While plaintiffs provided defendants with a detailed Addendum of their documents with their 2004 production, they were not required to do so, and certainly are not under any obligation to continue to do so. Indeed, we note that defendants have not provided any such identification of documents in their document production responses.

We are continuing to address the additional matters that were mentioned in our February 8, 2007 letter to you, and will get back to you on those matters soon.

Sincerely,

Tanya M. Sanerib
Howard M. Crystal