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 14

TO

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

FULBRIGHT & JAWORSKI L.L.P.
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January 19, 2007

VIA FACSIMILE AND U.S. MAIL

Katherine A. Meyer
Meyer Glitzenstein & Crystal
1601 Connecticut Avenue, N.W.
Suite 700
Washington, DC 20009-1056

Re: ASPCA v. Feld (No. 03-2006)(EGS): LCvR 7(m) Conference Regarding Plaintiffs' Discovery Deficiencies

Dear Ms. Meyer:

Thank you for your letter dated January 16, 2007. It is regrettable that plaintiffs persist in their recalcitrance to fulfill their overdue discovery obligations, and continue to invoke delay tactics. The long overdue information that we sought in our November 22, 2006 letter was not provided on December 15, 2006, nor was it provided with your January 16, 2007 letter despite us giving plaintiffs (at your specific request) a 31-day extension until January 15, 2007. Your most recent letter indicates that plaintiffs are still playing games by refusing to provide a date certain by which these materials will be corrected and/or produced. Simply put, since plaintiffs still "cannot guarantee" to have everything provided to us by January 31, 2007, please be advised that we will simply use January 31, 2007 as our cutoff date. Anything not properly produced or amended to correct prior deficiencies by that date will be raised with the Court.

Your letter of January 16, 2007 clearly demonstrates that the parties have reached an impasse on numerous issues that are critical to resolving the deficiencies in plaintiffs' discovery responses. We will not address every one herein, but note just a few examples where the Court's intervention appears necessary. First, your overbroad assertion that "all of the plaintiffs' discussions with each other and with their lawyers concerning litigation strategy and the evidence they may rely on in this case is privileged under the attorney client and attorney work product privileges" is incorrect. *See, e.g.*, Jan. 16 Let. at 5, 7, 9-10. Similarly incorrect is your assertion that conversations between Ms. Weisberg and Mr. Rider are privileged simply because they are co-plaintiffs and Ms. Weisberg is in-house counsel for ASPCA. *Id.* at 2, 10. These instances do not satisfy the elements of privilege and you cite no case law to support your novel privilege theories, yet plaintiffs continue to withhold information and/or documents that are responsive to several discovery requests based upon such "privilege."

Your letter also appears to assert that plaintiffs need not provide complete responses to certain discovery requests because FEI either did not inquire about such information during the plaintiffs' depositions or because FEI has obtained some of the information elsewhere. *See, e.g.*, Jan. 16 Let. at 5 (asserting that AWI need not amend response to interrogatory because Ms. Liss testified about the information during her deposition and FEI did not ask follow-up questions at the time); *Id.* at 6 (arguing that ASPCA need not provide a complete response to an interrogatory because "Ms. Weisberg was deposed by defendants on July 19, 2005 for approximately six and a half hours. If defendants had additional questions about any of these conversations, they should have asked them at that time."); *Id.* at 8 (noting that WAP provided certain information and asserting that "to the extent that defendants are complaining that they have been denied such information, this simply is not true."). That position, like the privilege standard you have articulated, is not proper and is not supported by case law. Plaintiffs cannot shirk their discovery obligations by delaying and waiting to see if FEI can somehow manage to come across the information another way. Such an approach, if plaintiffs actually believe what they are now espousing, indicates a fundamental misunderstanding of the Federal Rules of Civil Procedure and the discovery obligations that bind all parties in litigation – including plaintiffs. As indicated in my November 22, 2006 letter, FEI now has obtained discovery that conclusively demonstrates plaintiffs' discovery responses and document productions are deficient. Based on that proof and plaintiffs' ongoing refusal to be forthcoming in discovery, FEI reasonably believes that there is additional information being withheld improperly. The issue at this time is simply how many of the deficiencies plaintiffs are willing to correct before Court intervention is required.

It appears that the parties have reached an impasse over fundamental issues such as these, and we should schedule a meet and confer to avoid any further delay. We first will review plaintiffs' discovery provided on January 31, 2007 in an effort to make our meeting more productive. We are available on Wednesday, February 7, 2007 at 10:00 a.m. to discuss these matters. You are welcome to come to our offices or we can hold our meet and confer over the telephone, whichever your prefer. Please confirm your availability for that date and time.

Very truly yours,

George Gasper

George A. Gasper