

PLAINTIFFS' EXHIBIT 11

To Plaintiffs' Opposition to Defendant Feld
Entertainment, Inc.'s Motion for Leave to Amend
Answers to Assert Additional Defense and Rico
Counterclaim

Civ. No. 03-2006 (EGS/JMF)

1 (The document marked for identification as
2 Plaintiff's Exhibit No. 108 was received in
3 evidence.)

4 BY MR. HIRSCHKOP:

5 Q Look at the second page of 108. "The invoice for
6 the undercover operative that we have in place for Florence
7 Lambert is No. 9216, coded reference," quote, "C", end
8 quote, "for billing."

9 Does it refresh your recollection that C in that
10 bill is for Florence Lambert?

11 A I see the report. I take it to be accurate.

12 Q And why did you have to have codes for all these
13 people? Was it to hide it from your own finance
14 department?

15 A Of course not.

16 Q Well, Mr. Froemming brought these bills to you;
17 and you sent them to finance. Who else was going to see it
18 that it had to be coded?

19 A Well, they're coded to keep track of where the
20 costs are going.

21 Q Couldn't you do it by name? Didn't you normally
22 get bills my name?

1 Plaintiff's Exhibit Nos. 109 through 116 were
2 received in evidence.)

3 BY MR. HIRSCHKOP:

4 Q Mr. Smith, would you look at 116, please. Do you
5 have it, sir?

6 A I got it.

7 Q There's a new code here, quote, T, end quote. Do
8 you remember what that is?

9 A I don't know remember, no.

10 Q Would it refresh your recollection if I suggested
11 that was the taxes that hadn't been paid by Mr. Froemming
12 and you gave him extra amounts. Does that refresh your
13 recollection?

14 A It could very well be. I said I don't recall.

15 MR. HIRSCHKOP: Your Honor, in the prior group it
16 included 114-A when I moved in that group.

17 THE COURT: Yes, sir, I included everything
18 between 109 and 116, which included 114-A.

19 MR. HIRSCHKOP: Thank you.

20 I move 117 in, Your Honor.

21 THE COURT: 117 is admitted over objection.

22 (The document marked for identification as

1 A I got bills by name.

2 Q These bills that went to finance to be paid,
3 they're all coded, are they not; or are they by name?

4 A They're all coded. Every cost accounting system
5 has codes in it. This is just a cost accounting system.

6 MR. HIRSCHKOP: I'd move into evidence, Your
7 Honor, 102 through 107.

8 THE COURT: If you come across something you
9 don't think --

10 MR. CAWLEY: Yeah. Let me catch up.

11 THE COURT: -- is not a stipulation, let me know.

12 MR. CAWLEY: Right. I was just making sure.

13 THE COURT: Plaintiff's 102 through 107 will be
14 admitted over objection.

15 (The documents marked for identification as
16 Plaintiff's Exhibit Nos. 102 through 107 were
17 received in evidence.)

18 MR. HIRSCHKOP: I move into evidence, Your Honor,
19 109 through 116.

20 THE COURT: 109 through 116 are admitted over
21 objection.

22 (The documents marked for identification as

1 Plaintiff's Exhibit No. 117 was received in
2 evidence.)

3 MR. HIRSCHKOP: And I'd move 118 in, Your Honor.

4 THE COURT: 118 is admitted over objection.

5 (The document marked for identification as
6 Plaintiff's Exhibit No. 118 was received in
7 evidence.)

8 BY MR. HIRSCHKOP:

9 Q Sir, were you seeking to get information on the
10 Fund for Animals in New York, an operation run by
11 Cleveland Amory, the author?

12 A I don't recall. I don't -- I don't recall.

13 Q Look at this 118 and see if it refreshes your
14 recollection.

15 A 118.

16 Q The fifth line down -- fifth paragraph -- I beg
17 your pardon -- "We also have plans for this operative to be
18 invited out to the Black Beauty Ranch in Texas to spend
19 time with Cleveland Amory and to obtain the necessary
20 background information for further action."

21 Was The Fund for Animals one of the network that
22 PETA controlled, according to your theory?

1 Q What do you recall about those reports in the
2 first several years, 1990, 1991, 1992?

3 A After looking at them, I don't recall seeing
4 them. Periodically, I mean, I had discussions about
5 animal rights and things that were happening. I don't
6 recall the reports in the early years.

7 Q Who was Chuck Smith?

8 A Chuck Smith was executive vice-president and
9 chief financial officer of the company.

10 Q Was he involved with, in some respect, all of
11 the companies that you have discussed?

12 A Yes, he was.

13 Q What was the relative difference between your
14 role with respect to these corporations and
15 Mr. Smith's role?

16 A My role was primarily in the creative end. I
17 was the guy that put the shows together. I would go
18 all over the world looking for talent and would come
19 up with the creative concepts, hire a creative team
20 and really guide the various productions that we had.

21 Q In the years 1990, 1991, 1992, what is your
22 recollection with respect to how often you would

1 regularly?

2 A I believe it is. I think from that time on,
3 I did receive regular reports from Richlin.

4 Q All right. Mr. Andelman, would you please
5 put on the next Exhibit 596?

6 Could you turn to it also, Mr. Feld?

7 Now, this document is also in evidence,
8 Plaintiff's 596, and it's to a Mr. Bloom. Was he an
9 executive in your organization?

10 A Yes, he was.

11 Q Is the date the same as the previous
12 document?

13 A Yes.

14 Q It says, "I have been instructed that
15 effective this date, the distribution list for my
16 reports are to include," and is that your name there
17 at the top?

18 A Yes.

19 Q Now, during the time '90, '91, '92, I think
20 you just mentioned that you had discussions with
21 Mr. Smith; is that correct?

22 A That's right.

1 receive these reports? Did you get them regularly?

2 A I don't believe that I did.

3 Q Did you have discussions with Mr. Smith from
4 time to time about Mr. Froemming's work?

5 A I did. Mr. Smith and I would meet
6 frequently. And we discussed all the topics of all of
7 our businesses, and the animal rights issues would
8 come up.

9 Q Let me ask Mr. Andelman, if you would,
10 please, to put on Plaintiff's Exhibit 595 which is in
11 evidence.

12 Mr. Feld, this document, which is in
13 evidence, is a letter to you from Richlin Consultants
14 dated January 18, 1993. Do you see it in front of
15 you?

16 A Yes, sir.

17 Q It says, "Dear Mr. Feld." It's from Richlin
18 at the top. And then it says, "I have been instructed
19 to submit copies of my weekly reports to your office
20 for review."

21 Is that date significant in your mind in
22 terms of when you started to get these reports

1 Q Now, first of all, how often would you have
2 discussions or phone calls with Mr. Smith?

3 A We both traveled a great deal. And if I was
4 in the office, which probably averaged over the year
5 maybe two days a week, and if he was in the office, we
6 would meet. And I would talk to him probably four
7 times a week.

8 Q What would be the topics that you would cover
9 in these conversations?

10 A It was a full array of all the businesses
11 that we were in. So it dealt with the circuses. It
12 dealt with Sells-Floto merchandising, all the ice
13 shows and all of our -- that was the time when we
14 started globally expanding. And so there was a lot of
15 talk about our international business.

16 Q Did those conversations include at times
17 discussion of Mr. Froemming's work?

18 MR. HIRSCHKOP: Objection, leading, Your
19 Honor.

20 MR. CAWLEY: I can rephrase it, Your Honor.
21 BY MR. CAWLEY:

22 Q Can you state whether or not any of those

Page 2067

1 monitoring virtually all the state legislatures in the
 2 country about legislation that would affect the circus, and
 3 we would have lobbying efforts to counteract that or to
 4 enact depending on what the various bills were. And it had
 5 to do with animals but it also had to do with respect to
 6 innovations and a lot of other business issues.

7 **Q Did you also approve the idea that there should be**
 8 **counterdemonstrations?**

9 A Yes.

10 **Q And what was the purpose of a**
 11 **counterdemonstration?**

12 A It was really to try and get a balance. I mean,
 13 if the press would come -- typically, the demonstrations
 14 typically were opening nights where we had a lot of media
 15 or at the animal walks where there were media. And if they
 16 only saw a group protesting the circus, that would be the
 17 story.

18 So if there were pro circus demonstrations, there
 19 was a greater chance to have a balanced story come out.

20 **Q Did you feel that the information imparted by the**
 21 **animal activists in their demonstrations was accurate?**

22 A I thought it was inaccurate and a

Page 2068

1 misrepresentation of actually how we took care of our
 2 animals, yes.

3 **Q In what respect? How was it inaccurate?**

4 A There was literature -- I mean, they would say
 5 that it's a common practice. They would bulk all the
 6 circuses together. And, for instance, a common practice
 7 was that we would use electricity. There was -- at one
 8 point they said that there was the use of blow torches to
 9 shave hair off of elephants.

10 **Q Was that true, to your knowledge? Did you use**
 11 **blow torches to take the hair off elephants?**

12 A No, it wasn't.

13 **Q Now, there were a great number of invoices that**
 14 **were discussed here. I'm sure you recall last week when**
 15 **the invoices were discussed. Do you remember that?**

16 A Yes, I do.

17 **Q Okay. Who approved those invoices?**

18 A Charles.

19 **Q Did he have the right to do that in the**
 20 **organization?**

21 A Yes.

22 **Q His title?**

Page 2069

1 A He was chief financial officer.

2 **Q All right. Were you generally involved in the**
 3 **process of approving invoices?**

4 A No, I wasn't.

5 **Q What type of expenditures would be brought to your**
 6 **attention on, typically?**

7 A If there was a unique expenditure in excess of
 8 \$50,000, it would come to me.

9 **Q When you say a unique expenditure, what does that**
 10 **mean?**

11 A Okay. For instance, we operate in 90 cities with
 12 the circus. So each city, in essence, becomes a separate
 13 business. So, for instance, in New York city, we might
 14 spend a million dollars on advertising. Those were not
 15 bills I ever saw, and that was what I would call a normal
 16 course of business.

17 If there were unique contracts, for instance, if
 18 someone was -- if we were going to buy a million dollars
 19 worth of railroad cars or something, that's something I
 20 would probably see. But that was a unique sort of a
 21 one-time expense.

22 **Q Were you aware as the years went on of the total**

Page 2070

1 **that was being spent on Mr. Froemming's organization, say**
 2 **starting in 1990 and going on for the next half dozen**
 3 **years?**

4 A I really wasn't aware of the total amount until I
 5 became involved in this litigation.

6 **Q Who approved the invoices after Mr. Smith left?**

7 A After Mr. Smith left, Mike Ruch became the chief
 8 financial officer.

9 **Q Okay. And who took over the duties of Mr. Smith**
 10 **after he left?**

11 A In the beginning of 1997, I hired the present
 12 chief operating officer, Stuart Snyder.

13 **Q Stuart Snyder?**

14 A That's correct.

15 **Q And he took over a lot of duties of Mr. Smith?**

16 A Yes.

17 **Q Now, last week, I think it was, there were certain**
 18 **contracts that were offered into evidence. And I wonder if**
 19 **I might show you these and ask you to look at them briefly.**
 20 **These are all in evidence. And I believe these are all**
 21 **plaintiff exhibit numbers. The first is 19, excuse me,**
 22 **909.**

1 plaintiff's attorney said in that case, all it is is
2 inflammatory. It's not probative of anything in this case.

3 MR. HIRSCHKOP: The allegations are in the
4 complaint that he says he saw. Allegations go directly to
5 the actions of his organizations under him against Pat
6 Derby.

7 It's cross-examination. This isn't far afield.
8 This is directly related to this. I remember the leeway
9 they got on Mr. Kendall yesterday. This is directly
10 related.

11 The admissions are not being filed in this case as
12 admissions. We may move them at some point. But the fact
13 they made admissions in that case are directly pursuable on
14 cross-examination.

15 MR. CAWLEY: It's not fair to read a bunch of
16 allegations in a case.

17 THE COURT: I agree about the allegations. Take
18 away the allegations. But the admissions, if it was in
19 another case, that's an admission you can cross-examine him
20 about that. The allegations, you can't go into the
21 allegations.

22 MR. HIRSCHKOP: Those things are in this case in

1 A I saw that there were reports, yes.

2 Q Reports from Mr. Froemming to your Mr. Smith and
3 Mr. Bloom and Mr. Sowalsky, right?

4 A Whoever the reports were to, yes.

5 Q Did you believe Mr. Froemming when you talked to
6 him?

7 A Yes.

8 Q Did you find him reliable?

9 A Yes.

10 Q Do you have any reason to question what he put in
11 his reports today?

12 A I've learned a lot since I've been here in two
13 weeks, so some things I now question that I never did
14 question before.

15 Q What do you now question, sir?

16 A What I question is if in fact he said that he
17 was -- if the reports are accurate, he said that he was
18 paying \$1,500 a week, for instance, to Mr. Kendall. And
19 Mr. Kendall says that he was only getting 750 a week. I
20 would think there's something that's not accurate with
21 that.

22 Q One of them has to be lying, right? Would that be

1 documents.

2 THE COURT: No.

3 MR. HIRSCHKOP: Okay.

4 BY MR. HIRSCHKOP:

5 Q You've been sitting in court. Did you see
6 documents we put on the screen that Ed Stewart driver's
7 license was taken from Pat Derby's home?

8 A I saw that on one of the reports.

9 Q Do you remember that coming up in the course of
10 the case with Mrs. Derby in California?

11 A No, I don't remember that.

12 Q Do you recall banking records were taken from that
13 organization?

14 A No.

15 Q Do you recall that coming up in documents in this
16 case?

17 A In this case, yes.

18 Q Wasn't that also one of the things being litigated
19 in California?

20 A It may have been, yes.

21 Q Do you recall charges of social security numbers
22 came up in this case as being taken from Pat Derby's home?

1 fair?

2 A One of them is not telling the truth, yes.

3 Q And you've seen the 1099 that Mr. Kendall got
4 which matches what he says as his weekly income, isn't that
5 correct?

6 A I think so. I don't recall seeing that exactly.

7 Q Based on that, it would appear that Mr. Froemming
8 is lying, cheating you out of money, wouldn't it?

9 A Maybe.

10 Q Now, to begin with, counsel asked you about a
11 number of charts. Do you remember the chart counsel put up
12 there?

13 A Yes.

14 Q The first was Irvin Feld and Kenneth Feld
15 Productions, Inc. When did that go out of existence?

16 A That became what is now Feld Entertainment.

17 Q Roughly 1990, who were the owners of Irvin Feld
18 Productions, Inc. I'm sorry. I'll call it I&K. Is that
19 permissible?

20 A That's fine.

21 Q It was known that way?

22 A Yes.

1 Q And this is the first one you remember seeing,
2 right?

3 A Oh, I may have seen others. This is when I
4 believe I would get them on a regular basis.

5 Q But you were getting PETA/PAWS reports before
6 that, weren't you?

7 A No, I wasn't.

8 MR. HIRSCHKOP: Okay. Now, this thing -- it's in
9 evidence, Your Honor. May I hold it up so the jury can see
10 what I'm referring to?

11 THE COURT: If it's in evidence, yes, sir.

12 BY MR. HIRSCHKOP:

13 Q The first page has privileged, redacted. What was
14 taken out there that the jury can't see?

15 A I have no idea.

16 Q The bottom has redacted. What was taken out there
17 that the jury can't see?

18 A I don't know.

19 Q Well, look at the next page. What was taken out
20 there that the jury can't see?

21 A I have no idea.

22 Q No signature page, nothing. Why is it we just get

1 prior to depositions.

2 Q Well, at deposition, I deposed you. It was well
3 over a year ago, wasn't it?

4 A The first time it was, yes.

5 Q And I showed you numerous documents with
6 redactions. Why didn't you then, why didn't you then do
7 something about it?

8 A For what reason, sir?

9 Q So that there would be a full and honest
10 disclosure so we can get to the truth of what's happening.

11 A I believe it is full and honest disclosure.

12 Q Well, attached to this document, he says in the
13 bottom -- look at the last paragraph. Read that to the
14 jury on the bottom of the first page.

15 A This is -- "I have on this day prepared a
16 supplemental plan with additional suggestions that will
17 help address the issue of centralizing the efforts on
18 behalf of Ringling to effectively address the problems
19 concerning the perception of animal care given."

20 Q And attached is an implementation plan, is it not?

21 A That's correct.

22 Q Okay. So this report was basically sending you an

1 this totally incomplete document?

2 A I have no idea. This may have come from Charles
3 Smith's files, not from the company files.

4 Q You've seen numbers of documents in this case that
5 have the same kind of redaction that came from the
6 corporation files.

7 A That's right. My understanding is, if they were
8 redacted, they had nothing to do with animal rights.

9 Q Well, you've testified to all these things
10 Mr. Froemming was doing. How can the jury tell if you're
11 accurate if you take out all this stuff and you don't let
12 them see it?

13 A I didn't redact this. They were redacted by
14 counsel.

15 Q Didn't you ever look at these and say, wait a
16 minute. This is not very fair. Why don't the jury have
17 the full information so they can arrive at the truth in
18 this matter?

19 A No, I never did look at them.

20 Q You actually showed up in this courtroom without
21 ever having looked at these documents?

22 A No, I didn't say that. I never looked at them

1 implementation plan, wasn't it?

2 A I don't know what the redacted portion is. There
3 is an implementation plan here, yes, sir.

4 Q Okay. And it says, for instance, at page Smith
5 PETA 0775 -- can you find that, sir, please?

6 A Yes, sir.

7 Q It talks about accomplishments under Richard
8 Froemming's direction. He identified groups whose goal was
9 to destroy Ringling Brothers. Do you see that?

10 A Yes, sir.

11 Q He identified methods used by the opposition to
12 attack Ringling Brothers. Do you see that?

13 A Yes.

14 Q And then he talks about accomplishments under his
15 direction further. Do you see that?

16 A Is that on the next page?

17 Q Next page, yes, sir.

18 A Yes.

19 Q He talks about, number four, developed
20 intelligence operation, created an intelligence gathering
21 operation. What was his intelligence gathering operation?

22 A As far as I know, it was to find out what the

Page 2115

1 animal activists groups were doing.

2 **Q I'm sorry. I asked that poorly, sir. I mean, did**

3 **he have a crystal ball, or did he have undercover**

4 **operatives that were going into people's organizations? Do**

5 **you know which he had?**

6 **A I don't know. But from what I've seen here, it**

7 **looked like he did have people inside of some of the**

8 **organizations.**

9 **Q Well, didn't it wet your curiosity what was his**

10 **intelligence gathering operation?**

11 **A I don't know. I don't recall this document.**

12 **Q He gained advance knowledge of planned attacks.**

13 **Do you know how he did that?**

14 **A Where is that, sir?**

15 **Q The next thing, right under created an**

16 **intelligence gathering operation.**

17 **A I see that, yes.**

18 **Q He gained advance knowledge of planned attacks.**

19 **Was that also through a crystal ball or perhaps he had some**

20 **inside information?**

21 **A He may have. I mean, he talked to a lot of**

22 **people. I don't know. He obviously gathered some**

Page 2116

1 information.

2 **Q Mr. Feld, there is no question you're a brilliant**

3 **businessman. You got up on the stand there. You told the**

4 **jury of many major accomplishments of yours. You pride**

5 **yourself on being a brilliant businessman, right?**

6 **A I like to think that, yes.**

7 **Q I'm not appealing to your ego or being negative.**

8 **Let's get to the truth of this. The fact is, you're very**

9 **hands on. You're a micro manager, aren't you?**

10 **A I am when it comes to the shows, yes.**

11 **Q And you go down and you help pick out the dresses**

12 **for the entertainers, right, and the pants and everything**

13 **else. I don't want to limit it to women.**

14 **A Yes.**

15 **Q You helped pick out the costumes. You said that,**

16 **right?**

17 **A Yeah, I'm very hands on with the production of the**

18 **shows, that's correct.**

19 **Q He says here he obtained video propaganda used**

20 **against the circus. Where's the video propaganda? Why**

21 **can't the jury see that?**

22 **A I don't know?**

Page 2117

1 **Q Did you direct your lawyers, get me that video**

2 **propaganda; let's show that to the jury?**

3 **A They did extensive searches of our facility. What**

4 **you have is what they came up with.**

5 **Q But you have no idea where the rest went, the**

6 **hundreds. You heard Mr. Kendall testify he made over a**

7 **thousand reports. You heard Mr. Kendall testify he always**

8 **videotaped demonstrations, that he went to hundreds and**

9 **hundreds of demonstrations. He made one copy for**

10 **Mr. Froemming and he kept one copy. Where are the hundreds**

11 **and hundreds of copies that he gave to Mr. Froemming?**

12 **A I have no idea.**

13 **Q What have you done to find out where they are,**

14 **sir?**

15 **A We searched all of our facility.**

16 **Q We searched? Did you go search?**

17 **A No, I didn't search. But the attorneys searched,**

18 **and we had people spending a substantial amount of time.**

19 **Q Did you ever ask Mr. Froemming, when you went into**

20 **Mr. Smith's office and closed it up, what happened to those**

21 **videos? The videos, he had a credenza full of videos**

22 **behind his desk. Did you ever ask him what happened to**

Page 2118

1 **those videos?**

2 **A I don't know that he had a credenza full of**

3 **videos. But I don't know what happened to the videos no**

4 **matter what.**

5 **THE COURT: Let me know when you get to the end of**

6 **a line of questions.**

7 **MR. HIRSCHKOP: This is fine, Your Honor.**

8 **THE COURT: Members of the jury, let's take the**

9 **afternoon break. If you would, pleased, follow the Deputy**

10 **Atkins. Please step down, Mr. Feld.**

11 **(The jury left the courtroom.)**

12 **THE COURT: Fifteen minutes.**

13 **MR. CAWLEY: Thank you, Your Honor.**

14 **(A recess was taken.)**

15 **THE COURT: Members of the jury, we'll continue**

16 **with the cross-examination of Mr. Feld. Mr. Hirschkop?**

17 **MR. HIRSCHKOP: Yes.**

18 **BY MR. HIRSCHKOP:**

19 **Q Mr. Feld, I just want to digress into something**

20 **else that came up while I was looking at this. You said on**

21 **direct examination that you have never been found guilty of**

22 **an offense by the Department of Agriculture, isn't that**