

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
AMERICAN SOCIETY FOR THE)	
PREVENTION OF CRUELTY)	
TO ANIMALS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civ. Action No. 03-2006 (EGS)
)	
RINGLING BROTHERS AND BARNUM)	
& BAILEY CIRCUS, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

MEMORANDUM OPINION AND ORDER

Pending before the Court is plaintiffs' second motion for attorneys' fees related to their attempts over more than a year and a half to obtain veterinary records to which they were entitled and which the Court ordered produced by September 28, 2005 in its September 26, 2005 Order. Rather than immediately producing all veterinary records as ordered by the Court on September 26, 2005, defendant engaged in a piecemeal production of documents over a number of months, often only in response to threatened or actual motions to compel or Court orders. The Court and plaintiffs have wasted a considerable amount of time and resources because of defendant's failure to produce highly relevant veterinary records and other documents related to the medical condition of its elephants. Because plaintiffs should have received such records without having to resort to the filing

of motions to compel, thereby delaying this litigation, the Court invited plaintiffs to submit a second motion for attorneys' fees and costs related to their efforts to obtain elephant veterinary records.¹ See Order (Sept. 26, 2006).

Rule 37 of the Federal Rules of Civil Procedure governs plaintiffs' motion for attorneys' fees. Under Rule 37, "the district court has broad discretion to impose sanctions for discovery violations." *Bonds v. Dist. of Columbia*, 93 F.3d 801, 807 (D.C. Cir. 1996).

Rule 37(a) states that a discovering party who does not obtain responses to its discovery requests may file a motion to compel. See Fed. R. Civ. P. 37(a)(2)(B). If the motion is granted or if the requested discovery is provided after the motion was filed, the Court shall, "after affording an opportunity to be heard, require the party . . . whose conduct necessitated such motion or the party or attorney advising such conduct or both of them to pay the moving party the reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(4)(A). The Court is not required to order payment of attorneys' fees if the Court "finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court

¹ On February 26, 2007, the Court granted in part plaintiffs' first motion for attorneys' fees related to veterinary records.

action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust." *Id.* Moreover, when a motion to compel discovery is granted in part and denied in part, the Court may "after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner." Fed. R. Civ. P. 37(a)(4)(C).

In this case, the Court finds that an award of attorneys' fees to plaintiffs is warranted. After good faith efforts to obtain veterinary records from defendant, plaintiff had to file motions to compel on more than one occasion to get defendant to produce the records. The Court granted plaintiff all of the relief sought in its Expedited Motion to Enforce the Court's September 26, 2005 Order filed in June 2006. Defendant's extraordinary delay in producing relevant records, whether through the errors of its prior counsel or as a result of its extremely narrow reading of what constituted medical records subject to disclosure, was not substantially justified. Accordingly, the Court will award plaintiffs their reasonable attorneys' fees related to their Expedited Motion to Enforce the Court's September 26, 2005 Order.

For the same reasons articulated in the Court's February 26, 2007 Memorandum Opinion, however, the Court finds that the

declaration submitted by Kimberly Ockene in support of plaintiffs' motion for attorneys' fees does not provide sufficient detail for the Court to determine the reasonableness of the fees and costs claimed. In order to make an appropriate determination of the reasonableness of the claimed fees and costs, the Court directs plaintiffs to submit their actual billing records and a more detailed breakdown of costs to the Court for review. Specifically, the Court needs more information on how the 58.06 hours related to the motion to enforce were spent, the level of experience of each attorney, and why the hourly rates claimed for the attorneys involves are reasonable. The Court also needs more details on the costs incurred with an accounting of how the \$4,271.48 claimed was spent. Mere references to Westlaw research with no indication of how many hours of research or the cost per hour or transaction and paralegal time with only approximate hourly rates and no accounting or hours are not sufficient for the Court to determine the reasonableness of the costs claimed.² Because this litigation is still ongoing, plaintiffs may submit these records to the Court *in camera*, if necessary.

² To the extent plaintiffs have not provided this level of detail for the fees and costs claimed in connection with their first motion to compel veterinary records, plaintiffs may supplement their original *in camera* filing.

Based on the foregoing, it is by the Court hereby

ORDERED that Plaintiffs' Motion Requesting Attorneys' Fees and Costs Related to Plaintiffs' Motion to Enforce the Court's September 26, 2005 Order is **GRANTED**; and it is

FURTHER ORDERED that plaintiffs shall provide actual billing records and a more detailed account of costs to the Court, *in camera* if necessary, so that the Court may determine the reasonableness of plaintiffs' claimed fees and costs. Upon receipt and review of such records along with the records already provided by plaintiffs in conjunction with their first motion for attorneys' fees related to the veterinary records, the Court will determine the exact amount of fees to award for both motions.

SO ORDERED.

Signed: Emmet G. Sullivan
United States District Judge
August 23, 2007