

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE  
PREVENTION OF CRUELTY TO  
ANIMALS, et al.,

Plaintiffs,

v.

FELD ENTERTAINMENT, INC.,

Defendant.

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case No. 03-2006 (EGS/JMF)

**EXHIBIT 2**

**TO**

**DEFENDANT'S MOTION TO ENFORCE  
THE COURT'S DECEMBER 3, 2007 ORDER**

**FULBRIGHT & JAWORSKI L.L.P.**

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
801 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2623  
WWW.FULBRIGHT.COM

GGASPER@FULBRIGHT.COM  
DIRECT DIAL: (202) 662-4504

TELEPHONE: (202) 662-0200  
FACSIMILE: (202) 662-4643

December 14, 2007

**VIA PDF TRANSMISSION, FACSIMILE, AND FIRST CLASS MAIL**

Matthew F. Stowe, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
875 15th Street, N.W.  
Washington, DC 20005

Re: *ASPCA et al. v. Feld Entertainment, Inc.*, Civil Action No. 03-2006 (EGS/JMF)

Dear Matt:

This morning we received your letter producing documents pursuant to the Court's Order dated December 3, 2007 ("Order"). It appears that HSUS has not complied with the Court's Order. Your immediate attention to the issues discussed below is necessitated by HSUS's insufficient production.

A. Documents Concerning This Litigation

HSUS was ordered to produce all documents "in its possession, custody, or control that were created by any other party to this litigation in which that party discusses this litigation or any aspect of it." Opinion at 3 (emphasis added). Your letter takes pains to state only that HSUS has no such documents in its "custody or control." That representation is not the legal standard: The question remains whether HSUS has any such documents in its possession. If so, they must be produced. Indeed, at a minimum, FEI understands that Jonathan Lovvorn, Michael Markarian, and Ethan Eddy are all HSUS employees who have been actively involved in this litigation. Please let me know immediately whether those individuals or any other HSUS employee(s) have documents in their files that are responsive to the Court's Order. Please also let me know immediately whether HSUS is withholding documents discussing this litigation that were created by HSUS employees who also have responsibilities for FFA (e.g., Michael Markarian). Documents subject to Court order may not be withheld simply because Mr. Markarian or others are paid by HSUS to work for FFA. Documents in the files of any HSUS employee are documents in the "possession" of HSUS and documents created by any HSUS employee with FFA responsibilities are documents "created by" FFA.

B. Documents Concerning Tom Rider and WAP

It is quite evident that HSUS has not produced all documents concerning its payments to WAP for Tom Rider. Instead, HSUS has produced merely "records" of such payments. That,

Matthew F. Stowe, Esq.  
December 14, 2007  
Page 2

however, is not what Judge Facciola's Order requires. HSUS must produce all documents in its possession, custody, or control that pertain to Tom Rider, to the funding he has received from parties to the litigation (including FFA) and/or his counsel, or to WAP.<sup>1</sup> As indicated above, your representations that HSUS does not have such documents in its "custody or control" is intentionally vague and does not fulfill the "possession, custody or control" standard. HSUS must produce all such documents in its possession, as well as those in its custody or control. Judge Facciola's Order was not limited to producing only those documents sufficient to show payments to Rider/WAP; it requires HSUS to produce all documents concerning such payments. It is impossible for FEI to believe that HSUS has paid WAP (on FFA's behalf) at least \$8,500, yet it has absolutely no documents concerning those payments other than a single check request and corresponding cover letter. Is it HSUS's position, for example, that there were no e-mails with or among HSUS employees about such payments? As discussed above, moreover, HSUS may not withhold documents compelled by the Court's Order simply because they are located in the files of HSUS employees who happen to have FFA responsibilities.

Please let me know immediately, therefore, whether HSUS has withheld any documents in its possession, custody, or control that pertain to Tom Rider, to the funding he has received from parties to the litigation (including FFA) and/or his counsel, or to WAP. In particular, please let me know whether Mr. Lovvorn, Mr. Eddy, and/or Mr. Markarian have in their files any documents concerning any of these matters.

Your response is requested by no later than 10 a.m. on Monday morning (December 17, 2007) in light of the pending discovery cutoff and next week's deposition schedule. If you have additional documents, they must be produced by that time, or if you are refusing to produce such documents, please provide HSUS's alleged reasons for not doing so no later than 10 a.m. The documents at issue could affect the depositions scheduled for next week, so we will request a status conference with Judge Facciola on Monday if HSUS is unable to provide the documents at issue or to sufficiently explain its refusal to do so.

Very truly yours,

  
George A. Gasper

---

<sup>1</sup> Judge Facciola's Order specifically compelled HSUS to produce all documents in its possession, custody, or control "pertaining to WAP that fall within Judge Sullivan's August 23, 2007 Order." Opinion at 6. So the record is clear, Judge Sullivan's August 23 Order compelled WAP and plaintiffs to produce all documents concerning payments to Rider, whether they were made directly to him or indirectly through another organization such as WAP. Therefore, it is quite clear that HSUS must produce all documents concerning the payments it made to WAP on behalf of FFA. See, e.g., Stowe letter to Gasper (12/13/07) at 2 (describing such payments as being "made by FFA").