

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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In the Matter of:	:	
	:	
AMERICAN SOCIETY FOR THE	:	
PREVENTION OF CRUELTY TO	:	
ANIMALS, et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Civil Action No. 03-2006
	:	
FELD ENTERTAINMENT, INC.,	:	
	:	
Defendant.	:	
	:	Washington, D.C.
----- x	:	January 8, 2008

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:	ERIC R. GLITZENSTEIN, ESQ. KATHERINE A. MEYER, ESQ. KIMBERLY D. OCKENE, ESQ.
For the Defendant:	JOHN M. SIMPSON, ESQ. MICHELE C. PARDO, ESQ. GEORGE A. GASPER, ESQ. KARA PETTEWAY, ESQ.

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1 Your Honor believes that this hearing should proceed we'll
2 of course make those people available. But these are people
3 at non-profit organizations doing important work. We
4 understand the business of this Court takes precedence over
5 everything else they might be doing. But I guess what I'm
6 asking for is an opportunity to submit to your Court a brief
7 on the procedure and legal standards applicable to contempt
8 and essentially move for summary judgment on the
9 availability of contempt under these circumstances.

10 THE MAGISTRATE JUDGE: Thank you. Counsel?

11 MR. SIMPSON: Very briefly, Your Honor. This
12 isn't hard. Judge Sullivan said, "Produce all responsive
13 documents that relate to payments to Tom Rider."

14 Now, the argument that a document they have that
15 concerns payments to Tom Rider is not responsive is
16 ridiculous. And all you have to do, we listed the requests
17 that cover this information in footnote 6 on page 13 of our
18 reply brief, and just going through those requests, there is
19 no way that any document they have that concerns a payment
20 to Rider or any communication that they engaged in that
21 concerns a payment to Rider, is not responsive to those
22 requests. So they're chasing their tails on this.

23 The second thing that Judge Sullivan -- we've been
24 through this exercise once before in this case with respect
25 to the Defendants' veterinary records. The same kind of

1 thing. Where the veterinary records were produced, it was
2 incomplete, and he was very clear, "You have got to tell me,
3 yes or no, did you produce all the records." And we did.
4 We produced 29-some-odd declarations to that effect.

5 They haven't done that. And he's basically just
6 stood up here and admitted to you that there's an entire
7 body of information that they're sitting on right now that
8 concerns payments to Rider that they haven't produced under
9 some lawyer's interpretation of Judge Sullivan's order,
10 which I think is pretty clear in plain English.

11 Now. This idea about there being some ambiguity?
12 Judge Sullivan closed that loop on page 8 of his order,
13 where he discussed the media strategy. And by the way, you
14 know, a big argument, the high-sounding argument was made
15 about how all this media strategy is covered by the First
16 Amendment. Judge Sullivan didn't agree with that. All he
17 said is, it's irrelevant to this case.

18 But in discussing the media strategy argument, he
19 made it very clear, on page 8 of his order, "The Defendant,
20 however, is entitled to information concerning the payments
21 made to Tom Rider and the role of the organization of
22 Plaintiffs and WAP in those payments."

23 That was made in the context of discussing the
24 question of whether media strategy documents need to be
25 produced. We don't care about their media strategy. But

1 what we do care about is information that they have that
2 relates to these payments.

3 He wants to talk about minutiae? The Federal
4 Express documents are minutiae? Well, one thing the Federal
5 Express documents will show is where these checks were sent.
6 Is it true that Mr. Rider is a man who lives in a van and
7 travels the United States arguing the welfare of the Asian
8 elephants, or is he somebody who basically spends most of
9 his time in one place? The Federal Express envelopes would
10 show that. Unfortunately, Mr. Rider destroyed them all.
11 Whether their law firm kept copies of them, I don't know.
12 That's something to be hashed out in this hearing.

13 The same thing with the check-cashing receipts.
14 That's another minutiae. Same issue. Where was he when he
15 cashed the checks? Does he travel the country or does he
16 live basically in a van in his daughter's driveway, which is
17 what he testified to in his lawsuit -- or, in his
18 deposition. So while they may call it minutiae, we think
19 it's a relatively important detail.

20 They want to brief contempt? That's fine with me,
21 but it seems to me that's part of the trial brief they
22 should submit on the hearing. There's no reason to waste
23 time with another document filed in this case. We think you
24 ought to set the hearing and let's just get on with this.

25 MR. GLITZENSTEIN: May I just respond briefly,