

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

Plaintiffs :

v. :

CIV. NO. 03-2006 (EGS/JMF)

RINGLING BROTHERS AND BARNUM & :
BAILEY CIRCUS, *et al.*, :

Defendants :

**NON-PARTY PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS'
REPLY TO PLAINTIFF'S MOTION TO COMPEL COMPLIANCE
WITH THIRD PARTY SUBPOENA**

People for the Ethical Treatment of Animals ("PeTA") does not oppose plaintiffs' Motion to Compel Compliance. PeTA is caught between threats from a large, international law firm, which are clearly intended to block production under the subpoena, and PeTA's lawful duty to obey the subpoena. PeTA believes that the state court protective orders related to the subpoenaed documents do not bar such production.

PeTA received plaintiffs' subpoena on January 24, 2008. Pursuant to the state protective orders relating to the documents subpoenaed, PeTA immediately gave notice and faxed a copy of the subpoena to counsel of record in the two state cases involved (Circuit Court of Fairfax County, Virginia: *People for the Ethical Treatment of Animals v. Feld, et al.*, Law No. 220181, and *People for the Ethical Treatment of Animals v. Smith*, Law No. 204452). On the same day the notice was sent (January 25, 2008), Feld Entertainment, Inc. ("FEI") sent a letter and objections to PeTA's counsel. That letter, without attachments, is attached as Exhibit 1. The objections did not apparently stay the subpoena and FEI made

no effort to either set or seek a hearing on their objections, or to file a Motion to Quash. Nor did FEI even have standing in the state cases to raise objections under the state protective orders.

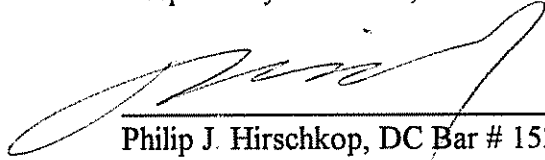
Thereafter, on January 28, 2008, PeTA received a letter from counsel for Kenneth Feld, a party in Law No. 22018 (Exhibit 2). Neither that counsel nor Kenneth Feld have standing to object to production under Law No. 204452, to which Feld was not a party. On February 5, 2008, PeTA's counsel responded to the January 25 and January 28 missives from FEI's and Feld's counsel, explaining PeTA's position and inviting either further discussion or an appropriate Motion to Quash with respect to the subpoena (Exhibit 3). Apparently that same day, February 5, 2008, attorneys from Fulbright & Jaworski brought pressure upon counsel for Mr. Smith, a prior defendant in Law No. 204452. Mr. Smith's counsel, Bruce Henry, then spoke with Mr. Hirschkop and sent an email. *See* Exhibit 4.

The final episode was the next day, February 6, 2008, when FEI's counsel, Lisa Joiner, sent an abusive, incorrect, and somewhat histrionic letter to PeTA's counsel regarding production (Exhibit 5). A review of Ms. Joiner's letter and the prior correspondence makes it clear that FEI's sole purpose is to coerce PeTA to not obey a lawful subpoena and order of this Court. Feld and FEI have a history of this sort of attempted interference with subpoenas. FEI never sought to set its objections for hearing, nor did it file a Motion to Quash the subpoena, or even seek to have Feld file the matter before the state court, if it felt that was the appropriate forum.

Mr. Hirschkop, as "chief counsel" for the plaintiff in Law No. 204452 and Law No. 220181, holds the documents subpoenaed as an agent of PeTA. Accordingly, the subpoena being directed to PeTA was appropriate and the issue of the relevance of the documents is not for Mr. Hirschkop to decide, as PeTA has a lawful duty to obey the subpoena. Production was not made, solely because of the implied threats of Feld and FEI that they would clearly go after PeTA or Mr. Hirschkop if production was made. FEI's

actions are clearly inappropriate and PeTA, which is not a party to this action, welcomes the Court's adjudication of the issue.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, first class, postage prepaid, this 7th day of March, 2008, to:

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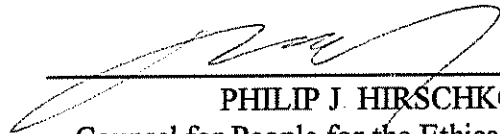
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