

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.

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

FILED UNDER SEAL

Case No. 03-2006 (EGS/JMF)

**REPLY IN SUPPORT OF MOTION TO COMPEL THE DEPOSITION TESTIMONY
OF TOM EUGENE RIDER, THE ANIMAL PROTECTION INSTITUTE AND THE
WILDLIFE ADVOCACY PROJECT AND FOR COSTS AND FEES**

EXHIBIT 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE .
PREVENTION OF CRUELTY TO .
ANIMALS, et al., .
Plaintiffs, .
vs. . Docket No. CA 03-2006
FELD ENTERTAINMENT, INC., . Washington, D.C.
February 26, 2008
Defendants. .
.

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

APPEARANCES:

For the Plaintiff: ERIC GLITZENSTEIN, Esquire
KATHERINE MEYER, Esquire
KIMBERLY OCKENE, Esquire
Meyer Glitzenstein & Crystal
1601 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20009-1056
(202) 588-5206

For the Defendant: JOHN M. SIMPSON, Esquire
LISA ZEILER JOINER, Esquire
GEORGE GASPER, Esquire
Fulbright & Jaworski, LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2615
(202) 662-4501

1 Court Reporter: Cathryn J. Jones, RPR
2 Official Court Reporter
3 Room 6521, U.S. District Court
4 333 Constitution Avenue, N.W.
5 Washington, D.C. 20001

6 Proceedings recorded by machine shorthand, transcript
7 produced by computer-aided transcription.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Honor, I have an objection to anything that would be
2 characterized as attorney/client communication that her
3 answer might be based upon.

4 THE COURT: Thank you. Objection overruled.

5 THE WITNESS: We worked closely with Tom
6 especially at the beginning of the suit to find out what his
7 thinking was in terms of speaking and reaching out to the
8 media. He basically would follow one of the units around
9 the country. And we worked with him to contact the media
10 beforehand to try to schedule interviews with him.

11 So the strategy to that was to figure out --

12 MR. GLITZENSTEIN: Your Honor, I hate to keep
13 doing this. One of our --

14 THE COURT: Then stop doing it.

15 MR. GLITZENSTEIN: Okay. Can I just make one
16 point though. We are trying to protect media strategy, so
17 we want it to be clear -- we don't want the other side to
18 know what our media strategy is. I appreciate Your Honor's
19 effort to get in --

20 THE COURT: But the point that Judge Sullivan is
21 protecting there is quite narrowly defined. Quote,
22 "Plaintiffs need not produce documents or -- information
23 related to any media or legislative strategies,
24 communications or any documents or information about
25 litigation strategy or communications that are properly

1 protected by the attorney/client or work product
2 privileges."

3 Now, Ms. Weisberg, as I said I thought the
4 question assumed something not in evidence. Did you exclude
5 pursuant to the permission granted you by that portion of
6 the order any materials and not turn them over?

7 THE WITNESS: No.

8 THE COURT: You didn't? Thank you.

9 BY MR. SIMPSON:

10 Q Let me move on. Could you state, ma'am, for the record
11 what ASPCA did to search for documents in response to Judge
12 Sullivan's order?

13 A Sure. I went through all of my files, and I, all of
14 the files are kept with me regarding the litigation. I also
15 went through and worked with the vice president of our media
16 relations department to search for any and all files related
17 to their work with Mr. Rider. We also searched all of
18 accounting's files that had to do with both the government
19 affairs office in New York and the government affairs office
20 in D.C. at the time.

21 Q Anything else?

22 A We went through the various financial documents that
23 pertained to the two departments as well as the cash
24 advances that were provided to Mr. Rider. I went through
25 and had to request from American Express past documents that

1 A Yes, I do.

2 Q Is it your view that the ASPCA has done a thorough
3 search for all documents that are sufficient to reflect
4 payments that have gone to Mr. Rider for any purpose
5 whatsoever?

6 A Yes, I absolutely do.

7 Q Is it the case that some of these documents were
8 provided to the defendant in response to the initial
9 discovery request in this case prior to the judge's order?

10 A Yes.

11 Q That would include documents that reflect payments to
12 Mr. Rider?

13 A Yes.

14 Q After Judge Sullivan's order that was obtained in
15 August of 2007, did ASPCA do an additional search?

16 A Yes, we did.

17 Q Why did you do that?

18 A To abide by the court's order and make sure that there
19 wasn't anything we hadn't inadvertently produced.

20 Q And do you believe that you undertook a thorough good
21 faith search to do that?

22 A Absolutely.

23 Q Did you spend a considerable amount of time doing that?

24 A I sure did as did my assistant.

25 Q Did you come across any documents and decide to discard

1 BY MR. GASPER:

2 Q Good afternoon. Could you please state and spell your
3 name for the record.

4 A Michelle Sinnott, M-I-C-H-E-L-L-E, S-I-N-N-O-T-T.

5 Q Thank you. Are you here today pursuant to a subpoena
6 that was issued to the custodian of records for Meyer
7 Glitzenstein & Crystal?

8 A Yes.

9 Q Did that subpoena command you to bring all originals of
10 any and all letters from the Wildlife Advocacy Project to
11 Tom Rider?

12 A I don't know. I was told to bring them.

13 MR. GASPER: Your Honor, may I approach and hand
14 the witness a copy of the subpoena?

15 THE COURT: Sure.

16 MR. GASPER: We have a copy of the subpoena for
17 the court and for plaintiffs as well.

18 THE COURT: Thank you.

19 BY MR. GASPER:

20 Q Do you recognize this document?

21 A Yes.

22 Q Is this the subpoena pursuant to what you have appeared
23 today?

24 A Yes.

25 Q And about halfway down the document does it state that

1 you're commanded to produce and permit inspection of quote,
2 "all originals of any and all IRS forms 1099 issued to Tom
3 Rider by Wildlife Advocacy Project and MGC?"

4 A Yes.

5 Q And at the top of the page, the two field does it say
6 "Meyer Glitzenstein & Crystal paren MGC?"

7 A Yes.

8 Q So you understand the reference to MGC is to Meyer
9 Glitzenstein & Crystal?

10 A Yes.

11 Q And it also commands you to bring all originals of any
12 and all letters from WAP to Tom Rider?

13 A Yes.

14 Q Just before that WAP is defined as the Wildlife
15 Advocacy Project; is that right?

16 A Yes.

17 Q Did you bring the documents with you today?

18 A Yes, I did.

19 Q Are these all of the original documents commanded by
20 the subpoena that are in Meyer Glitzenstein & Crystal's
21 possession?

22 A Yes.

23 Q Did you assemble these documents to bring today?

24 A Yes, I did.

25 Q Are these documents kept and maintained by Meyer

1 Glitzenstein & Crystal in the ordinary course of its
2 business?

3 A Yes.

4 MR. GASPER: Your Honor, I'd like to mark the
5 documents as Exhibit 94 and move them into evidence?

6 THE COURT: Any objection?

7 MR. GLITZENSTEIN: Your Honor, just the question
8 is these going to be kept by the court?

9 THE COURT: No, I don't think I'll do that. We'll
10 let you make a copy and your --

11 THE WITNESS: They are the originals.

12 THE COURT: We'll just have an understanding you
13 can substitute a copy. Maybe you can help us establish
14 Ms. Sinnott when you get back to the office make a copy of
15 those.

16 MR. GLITZENSTEIN: I can make life easier than
17 that. I've got a full set of them as an exhibit.

18 MR. GASPER: Your Honor, I'd like to reserve our
19 right to review what's actually submitted to see what was
20 comport what was shown to me last week.

21 THE COURT: All right.

22 BY MR. GASPER:

23 Q The documents you brought here today are they the same
24 documents I was allowed to inspect in Meyer Glitzenstein &
25 Crystal's office last week?

1 A Yes, with the addition of we brought the Federal
2 Express air bills which you did not inspect last week.

3 Q I'm sorry, they're not asked for in the subpoena,
4 correct?

5 A Right. I just wanted to make sure. FedEx air bills,
6 they are in my possession but he did not inspect them last
7 week.

8 THE COURT: They indicate what, you FedEx --

9 THE WITNESS: No, they're just the air bills that
10 say where they went.

11 MR. GLITZENSTEIN: Your Honor, just by way of
12 explanation at the January status hearing one specific item
13 that came up where these Federal Express -- we've now
14 produced them, a copy of them. It's actually a subject of a
15 pending motion. And they reflect where Mr. Rider has been.
16 So we thought out of an abundance of caution Ms. Sinnott
17 would bring those as well.

18 THE COURT: I appreciate that.

19 MR. GASPER: Just so the record were cleared they
20 were not produced by the plaintiffs. They were produced
21 only after we were forced to subpoena the law firm for the
22 documents.

23 THE COURT: Okay. Deuce, your serve.

24 BY MR. GASPER:

25 Q Regarding the letters that are in front of you from

1 ability to inspect later.

2 THE COURT: With that understanding they're
3 admitted.

4 MR. GLITZENSTEIN: Thank you, Your Honor.

5 [Thereupon, Plaintiff's Exhibit No. 5 admitted
6 into evidence.]

7 BY MR. GLITZENSTEIN:

8 Q And then finally Plaintiff's Exhibit G, behind Tab G in
9 the same volume. And, Ms. Sinnott, you see this is marked
10 M001 in the lower right-hand corner. Does this look
11 familiar to you.

12 A Yes.

13 Q Do you know what these are?

14 A These are the documents produced on behalf of the firm
15 as a result of this subpoena issued to the firm.

16 MR. GLITZENSTEIN: Your Honor, especially because
17 the Federal Express labels came up at the January status
18 hearing. And if you leaf through this you will also see
19 we've got these 1099s which we would represent is a true and
20 accurate copy that Your Honor asked for of the originals
21 that were brought here today. And then behind those is a
22 true and accurate copy of the letters that referred to the
23 original letters. So based on that I would ask that --

24 THE COURT: Subject to the defendant's right to
25 review these materials before they're, after they're

1 admitted into evidence and subject to any objection made at
2 that time in terms of accuracy but then another fair copy
3 they'll be admitted.

4 MR. GLITZENSTEIN: I think that would be
5 Plaintiff's Exhibit six.

6 [Thereupon, Plaintiff's Exhibit No. 6 admitted
7 into evidence.]

8 THE COURT: Thank you.

9 BY MR. GLITZENSTEIN:

10 Q Ms. Sinnott, let me ask you one question about the
11 originals of the letters. I think you said you brought them
12 here. Doesn't sound like anybody has asked to physically
13 look at them today although we know the defense counsel did
14 that last week. Can you describe the physical condition of
15 those letters?

16 A They're wrinkled. They're crumbled. They're stained.
17 I mean they're, some of them are in pretty bad shape.

18 Q Is it possible they came from a van?

19 A I mean it's very possible they came from a van or
20 someone living in a van. It's very clear to me.

21 Q Just to make this faster. On some of them have you
22 taken efforts to block out some of the material?

23 A Yes, there are two where we blocked out information
24 that was on the back of the actual letter.

25 Q And do you know what was on the back just in general

1 Meyer Glitzenstein & Crystal? Or was she on the phone in
2 her capacity as a representative of the Wildlife Advocacy
3 Project?

4 MR. GLITZENSTEIN: As a foundation I think she
5 needs to be asked if she knows what capacity Ms. Meyer was
6 acting.

7 THE COURT: From what you were hearing on the
8 phone you know which capacity Ms. Meyer was speaking?

9 THE WITNESS: No.

10 BY MS. JOINER:

11 Q Do you know which capacity Kim Ockene was on the phone?

12 A I misunderstood your question. When Ms. Meyer has been
13 a participant in the conference calls when we've been
14 talking about litigation she's been a member of Meyer
15 Glitzenstein & Crystal. On the occasion that Ms. Meyer sat
16 on conference calls and we talked about media strategy it's
17 my understanding she was a member of the Wildlife Advocacy
18 Project.

19 Q Let me see if I can still ask it. When a conference
20 call you identified when Ms. Kim Ockene and Tanya Sanerib
21 participated was that in their capacity with Meyer
22 Glitzenstein & Crystal?

23 A When we've been talking about litigation, I don't
24 recall if they were ever participants on the strategy calls.

25 Q And in what capacity was Ethan Eddy participating in