

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

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

Plaintiffs,

v.

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

Defendants.

Civil Action No. 03-2006 (EGS/JMF)

ORDER

This case was referred to me for resolution of all discovery disputes. Currently ripe and ready for resolution is Plaintiffs' Motion for Clarification of Court's Order Concerning the Close of Fact Discovery and Supporting Memorandum. For the reasons stated herein, the motion will be denied.

Fact discovery in this case closed on January 30, 2008. On January 25, 2008 plaintiffs issued subpoenas duces tecum from the following courts to the following railroads:

Court	Railroads
Middle District of Florida	Florida East Coast Railway, CSX Transportation Corporation
District of Nebraska	Union Pacific Railroad
Eastern District of Virginia	Norfolk Southern
Western District of Missouri	Kansas City Southern Railway
Northern District of Texas	Burlington Northern Santa Fe Railway

Plaintiffs now ask me to “clarify” that the end of discovery does not relieve the railroads from complying with the subpoenas.

First, I do not issue advisory opinions because my jurisdiction is limited to cases and controversies. Unless and until plaintiffs move to compel compliance, despite the end of discovery, or the railroads move to quash them pursuant to Rule 45(c)(3) of the Federal Rules of Civil Procedure on the grounds that discovery has ended, there is no case or controversy that the court can resolve. City of Los Angeles v. Lyons, 461 U.S. 95, 101-02 (1983).

Second, under Rule 45, all power over a subpoena resides exclusively in the court which issued it. The Rule specifically limits the power to quash or modify a subpoena or compel compliance to the issuing court. Thus, this Court lacks jurisdiction to affect the subpoenas issued by other courts.

Third, only the party served with a subpoena has standing to move to quash it. Novak v. Capital Mgmt. & Dev. Corp., 241 F.R.D. 389, 394 (D.D.C. 2007). Accordingly, plaintiffs will have to move to compel compliance in the issuing court and the railroads alone will have standing to respond. Until then, neither party before me can ask that this Court affect the issued subpoenas in any way.

It is, therefore, hereby,

ORDERED that Plaintiffs’ Motion for Clarification of Court’s Order Concerning the Close of Fact Discovery and Supporting Memorandum [#287] is **DENIED** for lack of jurisdiction over its subject matter.

SO ORDERED.

Dated: June 11, 2008

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JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE