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)**

MEMORANDUM ORDER

My order of September 25, 2007 provided:

> From this point, all information disclosed during discovery, including information disclosed or learned during the inspections, will be sealed and both parties and their counsel are prohibited from disclosing it to any person who is not a party to this lawsuit or counsel to one of the parties. At the conclusion of the inspections, the Court will permit the parties to brief the question of what, if any, disclosure there should be of information disclosed or learned during discovery, including during the inspections.

Order [#195] at 4.

Plaintiffs now ask me to lift that order since the inspections have been completed. I will not. First, I remaine convinced that there is not and never has been any "right" of public access to materials produced in discovery. Anderson v. Ramsey, No. 04CV56, 2005 U.S. Dist. LEXIS 2935, at *2 (D.D.C. 2005). Professor Richard Marcus, who has

served since 1996 as the Special Reporter of the Advisory Committee of the Judicial Conference on Civil Rules and who is one of the authors of the volume of Federal Practice and Procedure devoted to discovery, has stated the following:

> The framers [of the discovery provisions of the Federal Rules of Civil Procedure] knew that what they were doing was unprecedented. But it seems relatively clear that their goal in broadening discovery was tied into the animating objective underlying the relaxing of pleadings—to foster decisions on the merits based on knowledge of the actual facts. That objective hardly translates into an intent to employ discovery as an omnibus Freedom of Information Act for non-litigation purposes.

Richard L. Marcus, A Modest Proposal: Recognizing (At Last) that the Federal Rules Do Not Declare that Discovery is Presumptively Public, 81 CHI.-KENT L. REV. 331, 334 (2006).

Moreover, while plaintiffs claim a public interest in the disclosure of information yielded by the compulsion of discovery, they would candidly have to admit that they wish to use the discovery material as part of their public relations campaign to ban the Circus from using performing elephants. While they are free to express their views, I do not understand why they can claim a right to draft the court to help them by permitting their use of documents produced for litigation purposes in discovery for an entirely different purpose. The public had no access to these documents before this lawsuit was filed and plaintiffs cannot claim, on behalf of the public, the right to them now, as explained by Professor Marcus above.

Furthermore, this Circuit has yet to apply the factors I identified in the Anderson case to any thing other than documents filed in the court record. See United States v. Hubbard, 650 F.2d 293 (D.C. Cir. 1981). Until it does, I am loath to create out of thin air some "right" of a party to use documents secured by the judicial compulsion inherent in the discovery process for a public relations campaign.

It is therefore, hereby,

ORDERED that Plaintiffs' Motion to Lift the September 25, 2007 Protective Order [#294] is **DENIED.**

SO ORDERED.

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JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE

Dated: July 29, 2008