

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.

Case No.: 03-2006 (EGS/JMF)

MEMORANDUM IN SUPPORT OF DEFENDANT'S  
MOTION FOR ENTITLEMENT TO ATTORNEYS' FEES

**EXHIBIT 2**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.	:	Civil Action No. 07-1532
	:	
Plaintiff	:	
v.	:	June 23, 2011
	:	
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,	:	
	:	
Defendants	:	10:10 a.m.
.....	:	.....

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	JOHN M. SIMPSON MICHELLE PARDO FULBRIGHT & JAWORSKI, LLP 801 Pennsylvania Avenue, NW Washington, DC 20004-2623 (202) 662-4539
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For Defendants Tom Rider and Wildlife Advocacy Project:	STEPHEN L. BRAGA ROPES GRAY LLP 700 12th Street, NW Suite 900 Washington, DC 20005 (202) 508-4655
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For Defendants Jonathan Lovvorn and Kimberly Ockene:	ANDREW B. WEISSMAN WILMER CUTLER PICKERING HALE & DORR, LLP 1875 Pennsylvania Avenue NW Washington, DC 20006 (202) 663-6612
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For Defendant Humane Society of the United States:	WILLIAM B. NES MORGAN, LEWIS & BOCKIUS, LLP 1111 Pennsylvania Avenue, NW 9th Floor Washington, DC 20004-2541 (202) 739-5779
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1 THE COURT: Not at this point. I'll take a short  
2 recess. Did you want a minute or two to make a point?

3 MS. STEEL: Thank you, Your Honor. As Your Honor  
4 knows, I represent the lawyers, and I would like an opportunity  
5 to tell you exactly where the lawyers were in connection with  
6 this case.

7 This whole theory, this whole construct that  
8 Mr. Simpson comes up with is based upon a house of cards. The  
9 house of cards is, you have a client who you call as a witness  
10 who is impeached. I have been practicing for 20 years as a  
11 litigator; every single lawyer who is worth his or her salt has  
12 a client or a witness who is put up on the witness stand where  
13 there is something to impeach them about, whether it's a prior  
14 inconsistent statement, whether it's --

15 THE COURT: I think the word I used during the trial  
16 was he was pulverized. And quite frankly, my years on the  
17 bench, I don't think I've seen a witness as totally discredited  
18 on just about every aspect of his testimony as I did during the  
19 course of that trial.

20 MS. STEEL: Your Honor, that's true.

21 THE COURT: It wasn't just simple impeachment, it  
22 wasn't just a prior inconsistent statement.

23 MS. STEEL: But just because a witness or a client is  
24 impeached doesn't mean --

25 THE COURT: He wasn't just impeached. He was

1 thoroughly discredited.

2 MS. STEEL: But it doesn't mean that the entire lawsuit  
3 was fraudulent. If you have a group of lawyers --

4 THE COURT: Isn't plaintiff entitled to pursue his  
5 theory, though? He can demonstrate, and he's alleged, a pattern  
6 or practice of Rider being paid for years. Rider didn't work  
7 anywhere else, he paid no taxes during the time he was whatever  
8 his capacity was on behalf of the -- well, in this lawsuit. And  
9 it wasn't as if this was just a part-time job he had. They made  
10 a pretty compelling -- they painted a pretty compelling picture  
11 of him being literally a paid employee. Essentially that's what  
12 I found, a paid plaintiff.

13 MS. STEEL: Well, *Iqbal* and *Twombly* only allow a case  
14 to proceed if the allegations, the theory, the construct is  
15 plausible.

16 I submit to you that it's not plausible to say that  
17 just because a witness is impeached necessarily means they're  
18 intentionally lying, necessarily means that ergo everybody who  
19 comes into contact with him knows he's lying; with ergo  
20 everything he does is a lie, everything he advocates for is a  
21 lie, ergo every lawyer who comes into contact with him should  
22 find he's a liar and not put him on the witness stand; and  
23 everybody who comes into contact with him is therefore involved  
24 in this RICO conspiracy based upon the initial construct: He  
25 was impeached at trial.