

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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AMERICAN SOCIETY FOR THE)	
PREVENTION OF CRUELTY TO)	
ANIMALS, <u>et al.</u> ,)	
)	
Plaintiffs,)	Case No.: 03-2006 (EGS/JMF)
)	
v.)	
)	
FELD ENTERTAINMENT, INC.,)	
)	
Defendant.)	
_____)	

**DEFENDANT’S OPPOSITION TO THE HUMANE SOCIETY
OF THE UNITED STATES’S MOTION TO STRIKE**

EXHIBIT 3

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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS, ET AL

CIVIL ACTION NO. 03-02006

WASHINGTON, D.C.

VERSUS

THURSDAY, MARCH 6, 2008

RINGLING BROTHERS AND BARNUM &
BAILEY CIRCUS, ET AL

10:00 A.M.

EVIDENTIARY HEARING

BEFORE THE HONORABLE JOHN M. FACCIOLA

UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS,

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WENDY C. RICARD, CCR, RPR
OFFICIAL COURT REPORTER

1 **DIRECT EXAMINATION BY MR. GASPER:**
2 Q. Good morning, Mr. Markarian.
3 A. Good morning.
4 Q. Could you please state your name for the record?
5 A. Michael Markarian.
6 Q. And please spell the last name?
7 A. M-A-R-K-A-R-I-A-N.
8 Q. Thank you. Mr. Markarian, are you employed?
9 A. Yes.
10 Q. By whom?
11 A. By the Humane Society of the United States.
12 Q. And what is your title?
13 A. Executive Vice President for External Affairs.
14 Q. When did you assume that title?
15 A. January of 2005.
16 Q. Is that January 2005, is that when you began to work for
17 the Humane Society?
18 A. Yes.
19 Q. Do you currently hold any position on behalf of the Fund
20 for Animals?
21 A. Yes.
22 Q. What is that position?
23 A. The president of the Fund for Animals.
24 Q. Who pays your salary, Mr. Markarian?
25 A. The Humane Society of the United States.

1 Q. Does the Fund for Animals provide you with any
2 compensation?

3 A. Not directly.

4 Q. Any indirectly compensation?

5 A. The Fund for Animals reimburses the Humane Society of the
6 United States for time that I spend working on Fund for
7 Animals' projects.

8 Q. Does the Fund for Animals reimburse the Humane Society
9 for any time you've spent discussing payments to Mr. Rider?

10 A. I'm not aware of that.

11 Q. Sir, how many hours per week do you spend working on Fund
12 for Animals' matters?

13 A. It varies.

14 Q. On average, over the course of the last year, how many
15 per week?

16 A. Maybe one hour per week.

17 Q. What office do you work out of?

18 A. I principally work out of the Humane Society of the
19 United States office in Gaithersburg, Maryland.

20 Q. Who pays the lease for that space?

21 A. The Humane Society of the United States.

22 Q. Did there come a time, sir, when the Humane Society
23 purchased assets from the Fund for Animals?

24 A. There was a time when the Fund for Animals and the Humane
25 Society of the United States entered into a corporate

1 Q. They pay the lease on that?

2 A. Yes, I believe so.

3 Q. Do any Humane Society employees work out of that office?

4 A. There are a couple of Humane Society employees who are
5 based in the New York City area who do spend some time in that
6 office, but they're not full time in that office.

7 Q. Sir, pursuant to the agreement that we have looked at
8 here between HSUS and Fund for Animals, the Humane Society was
9 required to offer employment to every Fund for Animals'
10 employee; isn't that right?

11 A. The HSUS was required to offer employment to every Fund
12 for Animals employee at that time pursuant to the normal
13 hiring process, including background checks and applications.

14 Q. How many employees, sir, prior to this agreement did Fund
15 for Animals have?

16 A. About 50.

17 Q. How many employees does Fund for Animals currently have?

18 A. The Fund for Animals has no paid staff of its own.

19 Q. Who pays people who work on behalf of the Fund for
20 Animals?

21 A. They are employed by the Humane Society of the United
22 States, and the Fund for Animals reimburses the HSUS for time
23 that those employees spend working on Fund for Animals'
24 programs.

25 Q. Whose time is reimbursed by Fund for Animals?

1 A. Several staff members who work on Fund for Animals'
2 programs.
3 Q. Anyone who works on this case?
4 A. Myself; attorneys who represent the Fund for Animals in
5 this case, their time would also be paid for by the Fund for
6 Animals.
7 Q. Who are those attorneys?
8 A. Jonathan Lovvorn and Ethan Eddy.
9 Q. What about Roger Kinler(Phonetic)?
10 A. I believe that Roger's time that he spends on Fund for
11 Animals' matters would also be reimbursed by the Fund for
12 Animals.
13 Q. So who is Roger Kinler?
14 A. He's the general counsel and chief legal officer for the
15 Humane Society of the United States.
16 Q. And who is Ethan Eddy?
17 A. Ethan works in the animal protection litigation section
18 of the Humane Society of the United States.
19 Q. And by whom is Jonathan Lovvorn employed?
20 A. Jonathan Lovvorn is employed by the Humane Society of the
21 United States.
22 Q. Sir, since January of 2005, the Fund for Animals has not
23 operated its own fundraising department; isn't that right?
24 A. That's correct.
25 Q. And it has not operated its own public relations

1 department; isn't that right?

2 A. Yes, that's correct.

3 Q. And it has relied upon the Humane Society employees to
4 provide those services; isn't that right?

5 A. That's correct.

6 Q. Same thing with the litigation department, correct, that
7 Fund for Animals has not operated its own litigation
8 department since January 1, 2005?

9 A. That's correct.

10 Q. And it's relied upon the individuals you mentioned
11 earlier for litigation services; isn't that right?

12 A. Yes.

13 Q. All of whom are Humane Society employees?

14 A. Yes.

15 Q. Sir, prior to January 1st, 2005, this combination with
16 Humane Society, describe the ways in which you personally have
17 been involved in this lawsuit.

18 A. Could you restate that, please?

19 Q. Sure. Prior to the combination with the Humane Society,
20 describe the ways in which you have been involved in this
21 lawsuit.

22 MR. GLITZENSTEIN: Your Honor, we are going to
23 object to the extent that it may call for attorney/client
24 privileged information or work product.

25 THE COURT: All right. But let me see if I

1 understand the question: Have you had any involvement in this
2 lawsuit in any way, Mr. Markarian?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: What has the nature of your involvement
5 been?

6 THE WITNESS: As the president of the Fund for
7 Animals, I had decision-making authority, consulted with our
8 staff about the nature of the lawsuit, consulted with our
9 attorneys about legal strategy, what evidence we may choose to
10 rely on, and, also, had discussions with other co-plaintiffs.

11 THE COURT: Thank you.

12 BY MR. GASPER:

13 Q. Did anyone else acting on behalf of the Fund for Animals
14 have any involvement in this lawsuit prior to January 2005?

15 A. Yes, I believe so.

16 Q. Who were they?

17 A. Previous staff members of the Fund for Animals, named
18 D.J. Schubert(Phonetic) and Christine Wolf(Phonetic) had some
19 involvement in the lawsuit, as well.

20 Q. D.J. Schubert, is that a former Meyer, Glitzenstein and
21 Crystal associate?

22 A. I believe he was employed at one time by Meyer and
23 Glitzenstein. I don't know what his position was there.

24 Q. Ethan Eddy, was he employed by Meyer, Glitzenstein and
25 Crystal?

1 A. My understanding is that he was at one time.

2 Q. Jonathan Lovvorn was, as well; isn't that right?

3 A. That's my understanding.

4 Q. Now, sir, since January 1st, 2005, the manner in which
5 you have participated in this lawsuit, has it changed in any
6 way?

7 A. I have still been as the president of the Fund for
8 Animals the main point of contact regarding the lawsuit for
9 the Fund for Animals. Mr. Lovvorn and Mr. Eddy have also had
10 some involvement as counsel for the Fund for Animals.

11 Q. Anyone other than Mr. Lovvorn, yourself, and Mr. Eddy
12 been involved in this lawsuit on behalf of the Fund for
13 Animals since January 2005?

14 A. Not that I'm aware of.

15 Q. Has Mr. Kinler worked at all on this litigation?

16 A. Mr. Kinler is involved in the corporate governance of
17 the organization, has been involved in responding to subpoena
18 requests. I'm not aware that he has been involved in the
19 offensive litigation matters in this case.

20 Q. You don't know, sir, if he has ever spoken to the board
21 of directors about this litigation?

22 A. I'm not aware of it.

23 Q. Okay. Sir, do you recall being deposed in this case in
24 June of 2005?

25 A. Yes, I do.

1 thousand dollars in 2004; isn't that right?

2 A. That's correct.

3 Q. And the Fund for Animals paid Meyer, Glitzenstein and
4 Crystal approximately \$4,500 that was given to Mr. Rider over
5 the course of three years; isn't that right?

6 A. That's correct.

7 Q. And the Humane Society has paid the Wildlife Advocacy
8 Project \$11,500 over the course of three years that was given
9 to Mr. Rider; isn't that right?

10 A. The amount that was paid to the Wildlife Advocacy Project
11 was to be used for a media campaign regarding circus issues.
12 We do understand that some of the money was used to support
13 Mr. Rider's travel expenses and his activities to discuss
14 circus issues with the public and with the media, but we don't
15 have the expectation that that's the only thing the money was
16 used for.

17 Q. But the amount of the payments total \$11,500; isn't that
18 right?

19 A. That's correct.

20 Q. So the Fund for Animals has paid Tom Rider a thousand
21 dollars. The Fund for Animals has paid Meyer, Glitzenstein
22 and Crystal almost \$4,500, and the Humane Society has paid the
23 Wildlife Advocacy Project \$11,500; is that correct?

24 A. The Humane Society has not paid the Wildlife Advocacy
25 Project that money. That was the Fund for Animals' payment to

1 the Wildlife Advocacy Project which was processed by the
2 accounting department of the Humane Society.

3 Q. Why wasn't that processed by the Fund for Animals?

4 A. The Fund for Animals relies on the administrative
5 functions of the Humane Society of the United States when
6 processing checks, making payments, etcetera.

7 Q. Which individuals requested that the payments be made?

8 A. I believe that I approved the payments. The requests
9 would have come either from myself or from John Lovvorn.

10 Q. Any other FFA employees that know about the payments to
11 Tom Rider other than yourself and Mr. Lovvorn?

12 A. Not to my knowledge.

13 Q. Nobody else knows about these payments; is that your
14 testimony?

15 A. Can you rephrase the question again? I'm sorry.

16 Q. Are there any other Fund for Animals' employees that know
17 about these payments other than yourself and Mr. Lovvorn?

18 A. Well, there are no Fund for Animal employees. I'm an
19 officer of the organization. Mr. Lovvorn is counsel for the
20 organization. He and I had direct involvement in donations to
21 the Wildlife Advocacy Project to support media and campaign
22 efforts. I had direct knowledge of the payments to Mr. Rider
23 that were made in 2004 which you referenced, which were used
24 by him to repair his van and be able to travel.

25 Q. Okay. Let's talk about them in two parts, then. Prior

1 our responses.

2 Q. So you don't know, sir, whether or not all of Mr.
3 Lovvorn's files concerning payments were searched by Fund for
4 Animals?

5 A. I believe that all of his files were searched if we felt
6 they were like likely to contain any information that might be
7 responsive.

8 Q. Sir, the individuals whose files were searched in
9 September of 2007, how did they know what to look for?

10 A. They were instructed by our attorneys on what to look
11 for.

12 Q. And which attorneys were those?

13 A. They were -- if you'll excuse me for one second, which
14 document request are we --

15 Q. We're talking about the September 2007 production that
16 the Fund for Animals made in response to the Court's August
17 2007 order.

18 A. I believe they would have been instructed by our counsel
19 at Meyer and Glitzenstein, as well as our counsel within the
20 organization and our general counsel's office, as well.

21 Q. And "our general counsel's office", is that Fund for
22 Animals or Humane Society's?

23 A. The Humane Society's general counsel's office.

24 Q. Okay. So, sir, the people who were looking for
25 documents, did they rely on these instructions by your outside

1 Q. All of his files?

2 A. I believe so.

3 Q. Including any files he had related to a July 2005
4 fundraiser that raised money for Mr. Rider.

5 A. Yes. I believe that all his files were searched.

6 Q. Anyone else on behalf of the Humane Society that was
7 involved in that 2005 fundraiser?

8 MR. STOWE: Your Honor, he hasn't asked the witness
9 any questions about whether or not HSUS or Fund for Animals
10 had any involvement in the fundraiser.

11 THE COURT: Did you? That's the one in Los Angeles?

12 THE WITNESS: Yes. The Humane Society of the United
13 States did provide some support for that fundraiser and helped
14 promote it to some of our donors, but was not very involved in
15 organizing it or collecting donations or anything at that
16 level.

17 BY MR. GASPER:

18 Q. Setting aside whether it was very involved or not very
19 involved, who on behalf of HSUS was involved?

20 A. Mr. Pachelli attended the event and spoke at the event
21 as he frequently does at other events for local humane
22 societies and animal protection organizations around the
23 country. I had some knowledge of the fundraiser, and I
24 believe that some of our staff in our major gifts' section may
25 have sent some invitations to Humane Society donors in that

1 area.

2 Q. Specifically who? What individual employees?

3 A. I don't recall. When -- that was in 2005. I don't
4 recall which staff worked on that.

5 Q. Sir, I believe there is a white binder in front of you.
6 Can you please turn to tab 45? These are Defendants' Exhibit
7 45.

8 A. Forty-five? I believe this goes to --

9 Q. I may need to get you a different volume.

10 A. This goes to 32.

11 MR. GASPER: I'm sorry. Your Honor, may I approach?

12 THE COURT: Of course. It's your declaration,
13 right, Exhibit 45?

14 THE WITNESS: Yes, sir. I'm sorry.

15 THE COURT: Sure. Just a moment. Let the reporter
16 do what she has to do.

17 (Whereupon, the court reoprtter changed steno paper
18 at this time.)

19 BY MR. GASPER:

20 Q. Mr. Markarian, do you recognize this document, Exhibit
21 45?

22 A. Yes, I do.

23 Q. And what is this document?

24 A. It is my declaration on behalf of the Humane Society of
25 the United States.