

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

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

**Plaintiffs,**

**v.**

**FELD ENTERTAINMENT, INC.,**

**Defendant.**

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**Case No. 1:03-cv-2006  
(EGS)**

**OPPOSITION TO THE ASPCA’S MOTION TO REMOVE ITS NAME FROM THE  
CASE CAPTION IN LIGHT OF THE DISMISSAL OF ALL CLAIMS AGAINST IT**

Plaintiff Animal Welfare Institute, Inc. (“AWI” ), by and through its undersigned counsel of record, respectfully submits this Opposition to the Motion by the American Society for the Prevention of Cruelty to Animals (the “ASPCA”) to Remove its Name from the Case Caption in Light of the Dismissal of all Claims Against It (“Motion”). AWI, which was a co-plaintiff in the multiparty ESA Action alongside ASPCA and others for almost the past decade, respectfully submits that the ASPCA has presented no legitimate basis to change the caption. The Motion should therefore be denied, and the caption should remain unaltered. In the event the Court grants the Motion, AWI respectfully submits that the caption should be “*In Re: ESA Litigation*” as the case has commonly been called over many years by all of the parties involved.

Plaintiffs’ claims against Defendant Feld Entertainment, Inc. (“Feld”) were dismissed on December 30, 2009. What presently remains to be resolved in this action is Feld’s pending Motion for Entitlement to Attorneys’ Fees (“Motion for Attorneys’ Fees”) and the taxed Bill of Costs. The ASPCA and Feld entered into a settlement which resolved all claims between them.

Motion at 1; Exhibit A at 1, 4-7. This settlement did not include the other parties to this action. Exhibit A at 4-5. On December 28, 2012, the ASPCA and Feld filed a stipulation seeking the dismissal of all Feld's claims against the ASPCA. Motion at 1. On December 31, 2012, the Court granted that motion and dismissed all claims against the ASPCA. *Id.*

The settlement agreement entered into between the ASPCA and Feld clearly provides that at least part of the settlement proceeds cover attorneys' fees and costs, although it is not clear what amount of the settlement proceeds are apportioned to attorneys' fees and costs. Exhibit A at 1, 4-7.<sup>1</sup> On February 19, 2013, the Clerk of Court taxed costs in the amount of \$156,356.40. Feld has demanded payment of these costs from all plaintiffs and threatened enforcement proceedings, and its Motion for Attorneys' Fees is still pending. Through counsel, the ASPCA has advised that, in light of the settlement reached with Feld, it has no intention of paying any of the taxed costs or any award of attorneys' fees.<sup>2</sup>

In light of this backdrop, and for multiple reasons, the ASPCA's Motion is premature as the ASPCA's involvement in this matter has not concluded. First, the ASPCA has been one of the plaintiffs in the underlying ESA Action for more than a decade, and it and its employees will be witnesses in the related case. Second, there are remaining legal issues involving the ASPCA that may need to be resolved in this case. For instance, issues may arise in the event that the ASPCA's settlement with Feld does not cover all costs and any attorneys' fees that may be awarded (again, AWI believes that no such fees or sanctions are warranted), and at this time, we do not know the precise scope or extent of such involvement by the ASPCA as the matter of costs, fees and/or sanctions has not yet been decided.

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<sup>1</sup> Feld's counsel was requested to provide this information, but they have failed to do so.

<sup>2</sup> It must be noted that AWI believes that no award of attorneys' fees or sanctions are warranted in this case, but that issue has not been ruled upon.

The authorities upon which the ASPCA relies for the proposition that “Courts often remove settling or otherwise dismissed parties from a case caption when litigation will be ongoing against other parties” appear to be inapposite and unlike the facts and circumstances in this very unique set of facts and circumstances. Motion at 2 (citing cases). In none of those cases does it appear that any of the remaining parties opposed the amendment or even that the amendment was at issue. More importantly, and unlike the case at bar, in none of those cases were there potential remaining legal issues regarding the payment of taxed costs and potential attorneys’ fees. To the contrary, all issues as to the dismissed parties appear to have been resolved, *i.e.*, none of these cases appear to deal with post-trial proceedings where further involvement by that party may be necessary. That is not the case here.

For the forgoing reasons, the Motion should be denied and the caption should remain unaltered. In the event the Court grants the Motion, AWI respectfully submits that the caption should be “*In Re: ESA Litigation*” and not “*Animal Welfare Institute, et al. v. Feld Entertainment, Inc.*” as the ASPCA suggests in its proposed Order. The ASPCA does not object to this suggested change in the caption, but Feld does. Alternative proposed Orders are attached.

**Date: March 14, 2013**

**Respectfully submitted,**

/s/

Bernard J. DiMuro (D.C. Bar No. 393020)  
 Stephen L. Neal, Jr., Esq. (D.C. Bar No. 441405)  
**DIMUROGINSBERG, P.C.**  
 1101 King Street, Suite 610  
 Alexandria, Virginia 22314  
 Telephone: (703) 684-4333  
 Facsimile: (703) 548-3181  
 Emails: [bdimuro@dimuro.com](mailto:bdimuro@dimuro.com); [sneal@dimuro.com](mailto:sneal@dimuro.com)

*Counsel for Plaintiff The Animal Welfare Institute*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on this 14<sup>th</sup> day of March, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

\_\_\_\_\_/s/  
Stephen L. Neal, Jr.