UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE, et al.,	
Plaintiffs,	
v.	**Case No: 03-2006 (EGS/JMF)**
FELD ENTERTAINMENT, INC.,	
Defendant.	

DEFENDANT FELD ENTERTAINMENT, INC.'S PETITION FOR ATTORNEYS' AND EXPERT WITNESS FEES

JOHN SIMPSON DECLARATION

EXHIBIT 10 (Part 2)

(JS, Ex. 10 (Part 2))

Exhibit 3 to Relator's Reply to HII's Opposition: Supplemental Declaration of Stephen Braga

Case No. 1:95CV01231 (RCL)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, ex rel. RICHARD F. MILLER, Plaintiffs, v. BIL HARBERT INTERNATIONAL CONSTRUCTION, INC. et al., Defendants.	Case No. 1:95CV01231 (RCL)

SUPPLEMENTAL DECLARATION OF STEPHEN L. BRAGA

Stephen L. Braga hereby deposes and says:

1. I have been asked to file this supplemental declaration to offer my opinion on certain of the arguments raised by the defendants in this case in opposition to the Relator's fee request under 31 U.S.C. § 3730(d)(1).

2. Defendants criticize certain selected time entries from the records submitted in support of Relator's fee request as constituting vague "block" time entries. There is, to be sure, a preference against such "block" billing identified in the relevant cases. In a perfect world, no lawyer would ever engage in "block" time billing because every lawyer would be able to scrupulously detail each and every minute of his work product during the day and there would, therefore, be no need to have "block" time billed to any client. But this is not a perfect world, of course, and as Judge Kessler ruled just a little over a year ago, in considering a challenge to block billing, "it is essential for the

trial Court to be practical and realistic about how lawyers actually operate in their day-to-day practice." Smith v. District of Columbia, 466 F.Supp.2d 151, 158 ((D.D.C. 2006).

In this latter regard, clearly a reasonable balance must be applied to any reyiew of how detailed counsel's bills must be. Otherwise, "if [lawyers] have to document in great detail every quarter hour or half hour of how they spend their time on civil rights cases, two undesirable results will follow: their fee petitions will be higher, and the lawyers will simply waste precious time doing menial clerical tasks." Id. Based upon my review of all of the billing records submitted in support of Relator's fee request, it is my opinion that on balance the entirety of billing entries at issue herein fall well within the zone of reasonable billing practice for law firms in the District of Columbia (and well within the acceptable zone of billing information upon which this Court can prudently rely). Given the way litigators practice, some less than fulsomely detailed "block" time entries are inevitable in a case of this magnitude; otherwise, they would be forced to spend too much of their time documenting what they were doing. The "block" time entries that exist in these billing records are often explainable in context with other time entries, sometimes attributable to obvious efforts to protect privileged matters and frequently related to relatively minor matters. This is standard fare in today's billing world.

With respect to time entries, defendants also complain that some of Relator's counsel's time entries do not match up. For example, one attorney's time entry might reference a conversation with a second attorney about the case, while the second attorney's time entry for that same day might not reference that conversation. There is nothing sinister about that; it is a rather ordinary billing phenomenon (and, in fact, one

which defendants should applaud rather than criticize). The missing matching entry from the second attorney's time entry likely reflects an exercise of billing judgment by that second attorney, or by the billing attorney, not to bill the client for that conversation with the first attorney. Nothing more and nothing less. Contrary to defendants' contention, it would actually be suspicious in a voluminous case like this one if all timekeeper entries matched and interlocked with each other perfectly, whereas there is nothing other than an honest effort by Relator's counsel to account for their time to explain the imperfect matching of these time entries.

3. Defendants criticize the basis for my expertise to offer opinions in this case because I have not tried a False Claims Act case to verdict. This criticism is of a piece with defendants larger objection that the hourly rates sought by Relator's counsel are not reflective of the relevant market because Relator's counsel are not exclusively False Claims Act litigators. Both these points miss the mark. In my opinion, the relevant market - and, thus, the relevant expertise - is not a niche practice of False Claims Act mavens. It is, rather, simply the field of complex federal jury trial litigation generally. Accord Covington v. District of Columbia, 839 F.Supp. 894, 898 (D.D.C. 1993). Defendants do not, and cannot, criticize my expertise in this latter field.

At bottom, the litigation of this False Claims Act case was no different than the litigation of any complex federal white collar fraud or antitrust case. There were the typical allegations of bid rigging and cover ups, and a number of the participants entered (white collar) criminal guilty pleas. Moreover, as in the typical piece of complex federal civil litigation, both the Federal Rules of Civil Procedure and the Federal Rules of Evidence controlled the proceedings. And both discovery and trial went ahead under the

well-established means of proceeding forward in this courthouse in complex civil cases. In reality, there is no principled, or meaningful, distinction between the litigation of this False Claims Act case and complex federal civil litigation generally. Perhaps the best proof of this is in the pudding, Relator's counsel - who are admittedly not exclusive False Claim Act specialists - won the case, with their general complex federal litigation skills.

On a related point, defendants also claim that Relator's counsel spent more time researching False Claims Act issues than expert False Claims Act counsel would have spent, but there is no real proof of that claim. As the Court is well aware, it is prudent for even the most expert counsel - and, indeed, for expert judges as well - to perform additional research on topics they are otherwise familiar with in order either to confirm their beliefs in the state of the law or to ascertain any changes in the state of the law as a result of recent developments. Nonetheless, in another appropriate exercise of billing judgment, Relator's counsel has voluntarily eliminated a number of basic research charges from its fee request. The law requires that Relator's fee request be "reasonable," not that it be the most efficient request possible, and that test is clearly satisfied herein.

4. Defendants attack the bona fides of my prior declaration to this Court on two additional grounds. First, defendants argue that my opinion should be disregarded because of my own "self-interest" in this matter. See Opposition Of Harbert International, Inc. To Relator Richard F. Miller's Motion For Award Of Attorney's Fees, Costs, and Expenses ("HII Opp.") at 22 n.20; Opposition of Harbert Corporation to Relator Richard F. Miller's Motion For Award of Attorney's Fees, Costs and Expenses at 14. This criticism is simply false; the truth is that I am not "self-interested" in this matter in any way. The fee I am charging Relator's counsel for my services is not contingent

upon the outcome of this matter and I do not make my living testifying as an expert or (as defendants themselves have pointed out) by litigating (or seeking attorney's fees in) False Claims Act cases. I have no "axe to grind" in this case beyond providing this Court with the benefit of my sincerely held professional views on some of the issues before the Court in order that they might (hopefully) help the Court in its resolution of this matter.

Second, defendants argue that my opinion uses "adjectives like 'extraordinary'" that are "untethered . . . to the actual events in this litigation" and that are not "compar[ed] to actual discovery and trial experiences in other qui tam cases." Id. at 22. This criticism overlooks the fundamental reality of this Court's own experience with "the actual events in this litigation" and its substantial "experiences in other qui tam cases." (Defendants' criticism also entirely overlooks - or ignores - the unparalleled statement by Government counsel about the critical importance of Relator's counsel's role in this case.) At the end of the day, this Court is going to decide whether the scope, schedule and result in this litigation rendered it "extraordinary" or not, and the Court surely has an ample basis for making that determination (without the parties engaging in collateral satellite litigation on that topic). If the Court decides, as I submit, that the case was indeed "extraordinary," then the Court of Appeals has made it quite plain that this Court must use plentiful praiseworthy "adjectives" to describe its conclusion in that regard for purposes of appellate review. See Donnell v. United States, 682 F.2d 240, 254-255 (D.C. Cir. 1982).

5. Defendants maintain that Relator's counsel improperly seek compensation for (a) travel time, and (b) clerical tasks performed by non-clerical employees. I address each of these points in turn. With respect to travel, it is my opinion

that it is routine for lawyers practicing in the Washington D.C. legal marketplace to bill their clients for a significant portion of their travel time on client matters. This is because lawyers inevitably tend to work on the matters for which they are traveling while they are en route in their travels. In fact, I cannot remember the last time that I - or any lawyers traveling with me - did not have a stack of the relevant client's legal papers to read while flying on an airplane to handle that client's matter. The unfortunate truth is that lawyer's travel is typically not a "three martini and a movie" experience; rather, it tends to be just a mobile work experience (which is perfectly appropriate for client billing).

With respect to some clerical tasks being performed by non-clerical staff employees such as paralegals, the propriety of assigning such tasks cannot be divorced from the surrounding circumstances. Sometimes a clerical task needs to be done on a expedited basis by whomever is available to do it. (I can well recall my former partner Nathan Lewin photocopying a brief while I bound it in order for us to meet a Second Circuit briefing deadline.) Sometimes it is more efficient for a clerical task to be done by someone who will not require a lengthy explanation before being able to do it. (We have all had the experience of just doing a task ourselves in order to save the time that would be required to explain how to do it to someone else.) With the benefit of hindsight, it is always possible to criticize who did what and why, while at the time the work was done the intention was simply to get the assignment accomplished for the client. From time-to-time that happens at every firm, everywhere; indeed, it would be surprising if defendants' counsel's own time records do not show similar instances on occasion. In the aggregate, there is nothing unreasonable or out of the ordinary about Relator's counsel's billing practices for such time entries.

6. Defendants also raise various complaints about Relator's counsel's alleged overmanagement and overstaffing of this case. See HII Opp. at 22 (questioning "the reasonableness of a relator - in just one year of discovery and trial - using 52 attorneys and 30 paralegals in a case"). But the Court of Appeals has directly rejected such rhetorical numbers games. "The issue is not whether intervenors used too many attorneys, but whether the work performed was unnecessary." Donnell, 682 F.2d at 250 n.27. In my professional opinion, the wide scope and expedited schedule of this litigation made Relator's counsel's staffing and case management decisions eminently reasonable, rather than impermissibly redundant. Id. at 250.

This question of reasonableness must, of course, be judged in context. As the Court is well aware, litigation counsel have an ethical duty to zealously represent their client in the most effective manner possible. That duty obviously has different implications in a simple local car accident case and a complex international bid-rigging case. Counsel in the latter will necessarily need to undertake more and different tasks than counsel in the former in order to ethically represent their client. Context is everything, and the context of this matter is a complex and bitterly fought $100 million case concerning an international conspiracy to commit bid-rigging and fraud which was set for discovery and trial on an aggressive expedited schedule. In proper context, and upon due consideration of all the points raised in defendants' opposition papers, it remains my opinion that Relator's counsel's total fee request is reasonable under the unique circumstances of this case.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 1/22/08

STEPHEN L. BRAGA