

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

ANIMAL WELFARE INSTITUTE, <u>et al.</u>,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 03-2006 (EGS/JMF)
)	
FELD ENTERTAINMENT, INC.,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF DEFENDANT FELD ENTERTAINMENT, INC.'S
MOTION TO JOIN THE HUMANE SOCIETY OF THE UNITED STATES
AS A PARTY PLAINTIFF AND NOTICE OF HEARING**

EX. 6

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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

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1 Q. And looking over it, Interrogatory Number 21, which
2 defense counsel asked you about, if you could just take a
3 moment to not read again, but just glance through again to
4 make sure you're familiar with the interrogatory answer that
5 I'm asking about.

6 Do you believe that is a complete and accurate response
7 to the interrogatory?

8 A. Yes, I do.

9 Q. And is it your understanding that in response to Judge
10 Sullivan's September 27th -- excuse me -- August 23rd, 2007
11 order, AWI did in fact undertake an effort to uncover all
12 information that would be included in this interrogatory?

13 A. Yes.

14 MR. GLITZENSTEIN: I have nothing further, Your
15 Honor.

16 THE COURT: Thank you. Ms. Silverman, you may step
17 down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You may call your next witness, please.

20 MR. GASPER: Michael Markarian.

21 * * * *

22 **MICHAEL MARKARIAN**, called as a witness herein, after
23 having been duly sworn by the deputy clerk, testified as
24 follows:

25 * * * *

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 combination agreement, and there was a transfer of assets
2 between the two groups.

3 Q. So the Humane Society purchased the assets of Fund for
4 Animals; is that right?

5 A. It was an asset acquisition agreement.

6 Q. When did that take place?

7 A. January of 2005.

8 Q. And as a result of that acquisition, the Humane Society
9 purchased most of the Fund for Animals assets; isn't that
10 right?

11 A. I'm not sure whether "purchased" is the correct term or
12 whether "most" would be correct. The Fund for Animals
13 maintained several assets in real property, and other assets
14 were transferred to the Humane Society of the United States.

15 Q. Are you aware of what assets the Fund for Animals
16 retained?

17 A. Yes.

18 Q. What were they?

19 A. The Fund for Animals maintained property at our Black
20 Beauty Ranch Animal Sanctuary in Texas and property in Ramona,
21 California, which is used to operate the Fund for Animals
22 Wildlife Rehabilitation Center.

23 Q. Anything else that the Fund for Animals retained?

24 A. I'm not entirely sure. There may have been some other
25 assets that were maintained for the Fund for Animals. Those

1 are the two properties that I'm certain of.

2 MR. GASPER: Your Honor, may I approach the witness?

3 THE COURT: Certainly.

4 MR. GASPER: Your Honor, we have a copy of this for
5 the Court, as well.

6 THE COURT: Thank you.

7 BY MR. GASPER:

8 Q. Mr. Markarian, do you recognize this document?

9 A. Yes, I do.

10 Q. And what is this document?

11 A. This is the asset acquisition agreement entered into by
12 the Fund for Animals and the Humane Society of the United
13 States.

14 Q. Okay. Sir, on Paragraph 1.1 on Page 1, am I correct that
15 this says the Humane Society will purchase, acquire, and
16 accept from the Fund all assets except those identified in
17 section 1.2?

18 A. Yes. I believe that's correct.

19 Q. And if you flip forward, sir, to Page 3, Section 1.2,
20 defines excluded assets to include, "A", cash in the amount of
21 \$250,000; "B", books and records relating to its
22 incorporation; "C" -- and I am paraphrasing here -- records
23 relating to preparation and certification of financial
24 statements; "D", rights under this agreement; "E", personal
25 property of officers, directors; "F", the right to receive

1 mail; and "G", is the title that you described earlier on the
2 real estate; is that correct?

3 A. Yes. That's correct.

4 Q. Other than these assets right here, the Humane Society
5 purchased everything owned by the Fund for Animals effective
6 January 1st, 2005; isn't that right?

7 A. Other than these assets listed, other assets were
8 transferred to the Humane Society of the United States.

9 Q. So effective January 1st, 2005, sir, all the equipment in
10 Fund for Animals offices were transferred to the Humane
11 Society; isn't that right?

12 A. The Fund for Animals does continue to lease office space,
13 but any owned assets other than what has been included here
14 would have been transferred to the Humane Society.

15 Q. So the equipment in the offices, that was transferred to
16 the Humane Society; is that right?

17 A. That's my understanding, yes.

18 Q. And the filing cabinets, those were transferred to the
19 Humane Society; is that right?

20 A. Yes.

21 Q. And the computers, those were transferred to the Humane
22 Society; isn't that right?

23 A. Yes.

24 Q. Do you use a computer for your work as president of Fund
25 for Animals?

1 A. Yes, I do.

2 Q. Who owns that computer?

3 A. The Humane Society of the United States.

4 Q. Do you have a Humane Society e-mail address?

5 A. Yes, I do.

6 Q. Do you use that e-mail address for your work as Fund for
7 Animals' president?

8 A. Yes, sometimes I do.

9 Q. And do you have a Fund for Animals' e-mail address?

10 A. I do, yes.

11 Q. How often do you use that?

12 A. Infrequently.

13 Q. You have conducted Fund for Animals business using your
14 HSUS e-mail address; is that correct?

15 A. Yes.

16 Q. You mentioned office space that Fund for Animals still
17 has. Prior to the combination with HSUS, how many offices did
18 Fund for Animals have?

19 A. The Fund for Animals had about a half dozen offices
20 around the country.

21 Q. How many does it have now?

22 A. It has one office in New York City and the animal
23 sanctuaries that I mentioned previously.

24 Q. Who pays for the office space in New York City?

25 A. The Fund for Animals.

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 Q. Did you talk to Mr. Kinler to prepare for that
2 testimony?

3 A. I believe so.

4 Q. Okay. Who is Ms. Heidi Prescott (Phonetic)?

5 A. She is the senior vice president of campaigns for the
6 Humane Society of the United States.

7 Q. Has she been involved in this lawsuit in any manner?

8 A. In her previous role as national director of the Fund for
9 animals, she had some knowledge of the lawsuit, but was not
10 very directly involved.

11 Q. Did she have knowledge of any payments being made to or
12 for Mr. Tom Rider?

13 A. I'm not sure whether she would have had knowledge of any
14 payments.

15 Q. Is she still employed by the Humane Society?

16 A. Yes, she is.

17 Q. And you don't know whether or not she has knowledge of
18 these payments; is that right?

19 A. I don't believe that she does. We have -- we queried her
20 in response to these interrogatories and subpoena requests,
21 and she did not have any knowledge or documents in her
22 possession about payments to Mr. Rider.

23 Q. Sir, are you aware that this Court issued an order on
24 August 23rd, 2007 ordering the Fund for Animals to produce
25 documents and information concerning payments to Tom Rider?

1 A. Yes.

2 Q. Did you read that order?

3 A. Yes, I did.

4 Q. How many times?

5 A. I don't recall.

6 Q. When did you first read the order?

7 A. I read the order when it was issued in August of 2007.

8 Q. And when did you last read the order?

9 A. I re-read the order in preparing for today's testimony.

10 Q. Are you also aware, sir, that the Court issued an order
11 in December of 2007 requiring the Humane Society to produce
12 documents in this case?

13 A. Yes, I am.

14 Q. Have you read that order?

15 A. Yes.

16 Q. When did you first read it?

17 A. I read the order when it was issued in December of 2007.

18 Q. Sir, you signed all of the Fund for Animals interrogatory
19 responses in this case; is that right?

20 A. Yes.

21 Q. And in doing so, you verified that they were true and
22 accurate and complete; is that right?

23 A. Yes.

24 Q. And you were the deponent on behalf of Fund for Animals
25 back in December of 2005; isn't that right?

1 A. Yes.

2 Q. And you submitted a declaration on behalf of the Fund for
3 Animals in response to the Court's August order; isn't that
4 right?

5 A. Yes.

6 Q. And you submitted a declaration on behalf of the Humane
7 Society in response to the December order; isn't that right?

8 A. Yes.

9 Q. Sir, were you responsible for locating responsive
10 documents on behalf of the Fund for Animals?

11 A. Yes, I was.

12 Q. Are you familiar with how Fund for Animals looked for
13 such documents?

14 A. Yes.

15 Q. And were you responsible for the Humane Society's search
16 for documents?

17 A. Yes.

18 Q. Are you familiar with what HSUS did to comply with the
19 order?

20 A. Yes.

21 Q. Mr. Markarian, is it your understanding that Fund for
22 Animals has produced all of the documents in its or HSUS'
23 files that concern payments to or for Tom Rider?

24 A. Yes, it is.

25 Q. Has FFA produced all the documents in its or HSUS' files

1 that concern communications regarding the subject matter of
2 this lawsuit?

3 A. Excuse me. Yes, it has.

4 Q. Has Fund for Animals identified in its interrogatory
5 responses all the internal communications it has had
6 concerning payments to Tom Rider?

7 A. Yes.

8 Q. Has Fund for Animals identified in its interrogatory
9 responses all the communications it has had with HSUS
10 concerning payments to Tom Rider?

11 A. Yes, I believe so.

12 Q. Has Fund for Animals identified in its interrogatory
13 responses all of the communications it had with other
14 organizations concerning payments for Tom Rider?

15 A. Yes.

16 Q. Sir, is it your understanding that the Humane Society has
17 produced all of the documents in its or its employees' files
18 that pertain to the payments HSUS has made to the Wildlife
19 Advocacy Project?

20 A. Yes.

21 Q. All of the documents in its files that pertain to these
22 payments; is that correct?

23 A. Yes.

24 Q. Is it your understanding that the Humane Society has
25 produced all of the documents in its or its employees' files

1 that refer, reflect, or relate to Tom Rider?

2 A. Yes.

3 Q. Has HSUS produced all of the documents in its or its
4 employees files that pertain to WAP, the Wildlife Advocacy
5 Project, and pertain to payments to Tom Rider?

6 A. Yes.

7 Q. And, sir, has the Humane Society produced all of the
8 documents in its or its employees' files that discuss this
9 litigation?

10 A. Yes.

11 Q. All of the documents that discuss this litigation; is
12 that correct?

13 A. Yes, I believe so.

14 MR. GLITZENSTEIN: Your Honor, just for clarity's
15 sake, we haven't gotten anything from Mr. Markarian as to
16 what his understanding of those terms are. Obviously,
17 pertaining to most litigation, it involves attorney/client
18 communications and other things that the parties agreed did
19 not have to be produced. So I just want to make sure Mr.
20 Markarian knows what he's being asked and is not being led
21 down a path that is not going to serve anybody's purposes.

22 THE COURT: Okay. So be it. Go ahead, proceed.

23 MR. GASPER: Thank you, Your Honor.

24 BY MR. GASPER:

25 Q. Mr. Markarian, the Fund for Animals paid Tom Rider a

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