

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**KATHERINE MEYER AND MEYER GLITZENSTEIN & CRYTAL’S
REPLY IN SUPPORT OF THEIR MOTION FOR AN EXTENSION OF TIME**

Katherine Meyer and Meyer Gitzenstein & Crystal’s (collectively “MGC”) motion for extension of time simply requested that their response to the motion of Feld Entertainment, Inc. (“FEI”) for attorneys’ fees be due on the same day as that of the Organizational Plaintiffs, as has been the case in the past with respect to all matters related to the fee issue. *See* ECF No. 680. The rationale for MGC’s motion is that there will be at least some overlapping issues raised in the two responses – especially relating to the appropriate rates – and hence that it would serve the interests of judicial economy and efficiency for the responses to be briefed and resolved at the same time.¹

FEI’s opposition is non-responsive to this point, aside from FEI’s self-serving (and erroneous) assertion that there will be no serious dispute about the appropriate rates. FEI points out that the Organizational Plaintiffs have raised a number of issues (such as the need for discovery) that have not been raised by MGC – which is true but irrelevant. FEI never disputes

¹ Of course, it would also be fundamentally unfair to the other parties in the fee application proceeding if a process was adopted which led to an early determination of applicable rates without those parties’ participation.

that there *are* some overlapping issues, and offers no reason why it makes any sense, or would serve anyone's interests (including the Court's) for *those* issues to be briefed and addressed by the Court on divergent schedules.

Moreover, FEI resorts to prejudging the ultimate outcome of the rate issue, asserting that MGC "do[es] not have a credible basis for challenging the Fulbright rates." ECF No. 684 at 3. Obviously, a motion for extension of time is not the appropriate place for the Court to make any decisions concerning *any* aspect of FEI's fee application, but one example should suffice to demonstrate why it makes sense for the Court to continue to resolve all of the fee matters on the same track.

With respect to a significant portion of the \$ 133,000 award sought against MGC (which may be "small" change to FEI, ECF No. 684 at 2, but is not so for MGC, a small public-interest law firm that does not charge its clients market rates for its work, *see* www.meyerglitz.com), FEI is seeking more than \$ 30,000 for time spent by its lead counsel alone *at 2012 rates*, although the time in question was expended in *2006 and 2007*. *See* ECF No. 654-2 at Ex. 33. Although the standard principle in fee shifting litigation, including in the cases cited in FEI's own motion for fees, is that fees are generally awarded based on the market rate *actually charged* by an attorney during the time period in question (so long as that rate is in fact reasonable), *see, e.g., McKesson Corp. v. Islamic Republic of Iran*, 935 F. Supp. 34, 40-41 (D.D.C. 2013), FEI seeks to justify using 2012 rates based on precedents that seek to compensate attorneys *who do not get paid at all for the many years a case was pending*, which has nothing to do with the situation here. *See, e.g., Missouri v. Jenkins*, 491 U.S. 274, 282 (1989). Again, there is no reason for the Court to resolve this (or any other) rate-related issue at this juncture, but it demonstrates not only why the

issue is not as straightforward as FEI would have the Court believe, but also why it continues to make sense for the Court to resolve the fee issues on the same schedule and with the benefit of full briefing by *all* affected parties.²

Accordingly, the motion for an extension should be granted and MGC should be ordered to file its response at the same time that the Organizational Plaintiffs' response will be due.

Respectfully submitted,

/s/Stephen L. Braga
Stephen L. Braga
(D.C. Bar No. 366727)
Kathleen M. Braga
(D.C. Bar No. 418830)
Law Office of Stephen L. Braga, LLC
3079 Woods Cove Lane
Woodbridge, VA 22192
703-623-2180
bragalaw@gmail.com

² To the extent that FEI seeks to rely on undersigned counsel's declaration in support of a fee petition by Wilmer Hale in a different context before Judge Lamberth on the hourly rate issue herein, that reliance is misplaced. As the Court is well aware, the determination of such an issue is a particularized and fact-specific inquiry. This case is not that case, and Fulbright is not Wilmer Hale.