

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

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

Plaintiffs,

v.

**RINGLING BROS. AND BARNUM &
BAILEY CIRCUS, et al.,**

Defendants.

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Case No. 1:03-CV-02006 (EGS/JMF)

**RESPONSE TO PLAINTIFF'S MOTION FOR
A STATUS CONFERENCE AND SUPPORTING MEMORANDUM**

Defendant Feld Entertainment, Inc. ("FEI") hereby responds to the remarks included in plaintiffs' motion for status conference (9/1/06) ("Motion") as follows:

FEI has no objection to a status conference should the Court so desire. FEI disputes only the purpose of such a conference. Plaintiffs claim they need a status conference to "set a trial date that will hopefully ensure the resolution of this case by some time next year." (Motion at 2). This is premature. On September 5, 2006, FEI filed a motion for summary judgment raising purely legal issues regarding the lineage and ownership of FEI's elephants, which is indisputable. It is simply a legal matter for the Court to decide, and thus, presents a very realistic likelihood of terminating this case as soon as the Court is able to review it.

Moreover, this lawsuit is brought pursuant to a statute that contains not just a cost but also a fee shifting provision. See 16 U.S.C. § 1540(g)(4) ("The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court

determines such award is appropriate.”). This is not a one-way fee-shifting statute: plaintiffs themselves could well be liable at the end of the day for FEI’s litigation costs and fees. Such significant financial consequences to proceeding any further with the case are not to be incurred lightly or without true need. Here, there is no true need given the nature of the summary judgment motion now on file: *it is for the Court to determine whether the elephants at issue are exempt or excepted via permit from the Endangered Species Act.* The motion should terminate the case in its entirety, and proceeding in this manner is more than reasonable under the circumstances. Accordingly, FEI will file an expedited motion to stay discovery within the next business day or two, and maintains that a status conference is appropriate to establish a briefing schedule for summary judgment, if necessary, rather than a scheduling order for any further discovery as plaintiffs have requested.

Dated this 8th day of September, 2006.

Respectfully submitted,

/s/

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