

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.	:	Civil Action No. 07-1532
	:	
Plaintiff	:	
v.	:	June 23, 2011
	:	
AMERICAN SOCIETY FOR THE	:	
PREVENTION OF CRUELTY TO	:	
ANIMALS, et al.,	:	
	:	
Defendants	:	10:10 a.m.
.....	:

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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by computer-aided transcription.

1 *Whelan vs. Abell*: Bribes in any context are unacceptable. You
2 have no First Amendment right to bribe someone.

3 So that's part of this. Whether we could ever show any
4 damages because he was in Nebraska doesn't matter, it's part of
5 our racketeering case because it's part of the racketeering
6 pattern of activity that they did.

7 THE COURT: You need this outside activity in order to
8 establish pattern, do you not?

9 MR. SIMPSON: I don't think so. I think even if you
10 excluded it all, we have a pattern based on this lawsuit.

11 THE COURT: Well, what case says that?

12 MR. SIMPSON: I think *Handeen vs. Lemaire*, that's
13 exactly what happened. It's a single scheme, it's a single
14 person victimized, and it's a single case. That's all that
15 happened. The Eighth Circuit found that was a pattern of
16 racketeering activity because that guy got together with his
17 lawyers and his parents to defraud the bankruptcy court in order
18 to defeat a collection action by someone he shot and then got
19 sued and got a judgment against him. So they come in, and the
20 lawyer comes up with this scheme. This is what you do: Your
21 parents come in and claim to be creditors, and we'll have the
22 trustee pay those parents and then they'll give you the money
23 back.

24 And the creditor comes in and tries to defend that, and
25 spends legal fees dealing with that fraudulent bankruptcy case;

1 the bankruptcy trustee discovers the fraud, the plan is blown,
2 it all comes back in; and then the creditor sues. And his
3 allegation is: I got defrauded here because they cooked up this
4 scheme to dissipate the assets of the case, the bankruptcy case.

5 The district judge granted summary judgment; the
6 Eighth Circuit reversed. This is a pattern of racketeering
7 activity. This association between the lawyer, the client, and
8 the parents --

9 THE COURT: The Supreme Court found that there was a
10 basis for a RICO liability there?

11 MR. SIMPSON: This was the Eighth Circuit.

12 THE COURT: At the Eighth Circuit?

13 MR. SIMPSON: Yes. Yes. Single victim, single scheme.

14 In Your Honor's own decision in *Oceanic Exploration*,
15 which was an oil company that was victimized by a scheme to
16 bribe foreign officials --

17 THE COURT: The Eighth Circuit case is the strongest
18 case that you rely on.

19 MR. SIMPSON: I think so. And also in District Court,
20 the *Living Designs* case is -- now, the only real difference
21 between *Living Designs* and this case is instead of one case, it
22 was consolidated litigation. But it was still one scheme. And
23 it was a class of victims. But we have a class of victims here.
24 We don't just have Feld Entertainment, we've got anybody that
25 was going to use the guide and tethers. They were going to be

1 affected by the outcome of this case. We have the people who
2 were defrauded because they made donations to these
3 organizations on the strength of what they represented this case
4 was about, on the strength of Rider's credibility.

5 There's a specific example of mail fraud in the
6 complaint involving Ms. Meyer's solicitation letter, where she
7 makes a specific allegation, specific statement: He's credible,
8 he's a credible person. He was found not to be credible in any
9 aspect of his story. That letter was disseminated, we think to
10 hundreds of people. Some of them donated money. Some of these
11 other -- we think other animal rights groups paid this guy as a
12 result of that, gave him additional money. Not just these
13 defendants, but other people. He's already admitted in his
14 deposition he's paid by In Defense of Animals. Now, would they
15 actually join us? Probably not. But that shows you there are
16 other potential victims of this conduct.

17 Now let's talk about the pattern of racketeering point.
18 We have the six-factor test that the DC Circuit suggested
19 Your Honor should follow in *Western Associates* in terms of how
20 many predicate acts you have --

21 THE COURT: Wait a minute. What is this case here? Is
22 it open-ended continuity?

23 MR. SIMPSON: Both.

24 THE COURT: What is your theory? Or closed-ended?

25 MR. SIMPSON: Both.

1 THE COURT: I mean, are they clearly set forth --

2 MR. SIMPSON: Yes.

3 THE COURT: -- as separate and distinct legal theories?

4 MR. SIMPSON: Yes.

5 THE COURT: All right. Open-ended measured at the time
6 the suit is filed. Right?

7 MR. SIMPSON: It is.

8 THE COURT: Continuing now?

9 MR. SIMPSON: The allegation in paragraph 283 of the
10 complaint, Your Honor, is it continues up through and after the
11 filing of the amended complaint. Other than Mr. Braga said, I
12 don't have any way to know that they've stopped paying
13 Tom Rider. How do we know that?

14 THE COURT: Don't you have to have a good faith basis
15 for making that allegation?

16 MR. SIMPSON: I do. I do.

17 THE COURT: What's the good faith basis?

18 MR. SIMPSON: Because this activity continued after the
19 trial. He went to Europe and made more false statements in a
20 campaign for the Animal Defenders International. That's pleaded
21 in the complaint. He didn't hitchhike to Europe; somebody paid
22 him to get there. He's not wealthy independently. We know that
23 from his trial testimony. It continued after the trial.

24 One of the aspects of open-ended continuity is: Is
25 this a regular way that this enterprise does business? And the

1 answer to that is yes. And we've pleaded it in the complaint.
2 Tom Rider is not the only paid plaintiff, not the only paid
3 plaintiff who was procured for money. We think that was the
4 case with --

5 THE COURT: In the *HJ* case, the Supreme Court clearly
6 said that the conduct not only be continuing, but be capable of
7 extending indefinitely into the future. You're not able to make
8 that allegation here.

9 MR. SIMPSON: I think I am.

10 THE COURT: How, in good faith?

11 MR. SIMPSON: Because what was the case brought to do?
12 Take elephants out of the circus, ban these tools. Elephants
13 are in the circus; these tools haven't been banned.

14 Based on what they did and what they've declared their
15 objectives are - particularly API's recent comment, "we'll never
16 quit" - what makes me that's going to stop? What makes me think
17 they're going to give up and not move to Round Two in some other
18 context, with some other plaintiff, like they tried to do in the
19 ESA case, who doesn't come in with the baggage of being paid?

20 THE COURT: That's just sheer speculation, though.

21 MR. SIMPSON: Well, we experienced it, Your Honor. We
22 experienced it in the ESA case. They tried to amend the
23 complaint to add three new plaintiffs in November of 2007, after
24 the wheels were coming off their bus with respect to this
25 payment scheme. Why else do you do that? Because these people