

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

FELD ENTERTAINMENT, INC.,

Plaintiff,

v.

Civil Action No. 07-1532 (EGS/JMF)

ANIMAL WELFARE INSTITUTE, et al.,

Defendants.

ORDER

On April 3, 2013, at the status hearing held before me, I indicated that I would review the record since my involvement in ASPCA v. Feld Entertainment, Inc. (03-2006/EGS and 00-1641/EGS) (“the ESA action”) and then reassemble the parties. Having completed that review, I am now convinced that reassembling counsel is unnecessary, and that I can define the scope of discovery. Accordingly, upon consideration of the parties’ submissions regarding the appropriate scope of discovery in this case, the Court determines that the following topics are relevant:

1. The payment of money and the provision of goods or services, including the reimbursement of expenses to 1) Tom Rider, 2) any actual or contemplated witness, or 3) plaintiffs in the ESA action, made directly to any of these individuals by or through the Wildlife Advocacy Project (“WAP”) or by any other defendant. The planning and coordination among the defendants as to how these payments were to be made, shared among them, accounted for, and characterized.
2. Defendants’ monitoring of sums paid, whether by WAP or other defendants, to 1) Rider, 2) any actual or contemplated witness, or 3) plaintiffs in the ESA action, and the

- documentation by the payor of those payments.
3. How the decision to make payments of any kind to 1) Rider, 2) any actual or contemplated witness, or 3) plaintiffs in the ESA action **was made**.
 4. Defendants' grant practices and procedures related to recordkeeping and auditing during the period of time that money was paid by any of the defendants to 1) Rider, 2) any actual or contemplated witness, or 3) plaintiffs in the ESA action.
 5. How the defendants structured and created the authorization and approval process for organizations to join the ESA action as plaintiffs, including when, where, and how that authorization was sought and how approval was obtained.
 6. Defendants' evaluation of Rider as an ESA action plaintiff and their evaluation of the credibility of his claims and testimony.
 7. How the defendants identified who would be the defendant in the ESA action, and why Feld Entertainment, Inc. ("FEI") was selected.
 8. How defendants used the ESA action and Rider's claims and testimony for fundraising or publicity agendas.
 9. The damages claimed by FEI in this case, to include any claims for attorney fees made by FEI in this action.
 10. Defendants' communications with or about Rider relating to what he was doing, and their assessment of the effectiveness of his efforts.
 11. Defendants' knowledge of Rider's "media" war, its purpose, and reports received by the defendants about it.
 12. Defendants' creation and understanding of a media strategy that is in any way connected to

payments to Rider with respect to the ESA action (from January 1, 1998 through December 30, 2009, unless defendants will stipulate to a date certain that they ceased paying Rider), including all Rider payments withheld from production in the ESA action, on the grounds that they were “media strategy.”

13. Why defendants used various terms to characterize payments to Rider or WAP, including “grants,” “reimbursements for media work,” and payments for “minimal living expenses.”
14. WAP’s 1) mission statement, 2) purpose, 3) corporate structure, 4) staffing, 5) financials, 6) grant process, 7) meeting minutes, 8) correspondence, 9) registration as a non-profit, and 10) tax documents (including defendants’ Form 990) related to payments made to Rider.
15. Contents of defendants’ websites related to 1) FEI, 2) Asian elephants, 3) the ESA action, or 4) any party to the ESA action.
16. How defendants learned of Rider’s work with the elephants, and how he was retained by Meyer, Glitzenstein and Crystal (“MGC”).
17. Rider’s tax returns during the period he was receiving payments from the defendants, and any tax advice provided to him by any defendant or arranged by any defendant.
18. Information about 1) fundraising donations, 2) marketing, 3) advertising plans, 4) programs, or 5) campaigns that refer to or contemplate using the ESA action, FEI, or its elephants to raise funds or to gain media attention or publicity, including proposed plans, strategies, campaigns, or programs that were not implemented and what funds were spent on 1) reports or communications on the efficacy of campaigns or appeals, 2) contracts with fundraising counsel, 3) solicitors, 4) telemarketers, and 5) filings with federal and state authorities regarding same.

19. Lectures, speeches, interviews, or statements given by Rider regarding his work with FEI elephants and his work with other elephants thereafter.
20. Organization, ownership, structure, and formation of MGC, including 1) the Partnership Agreement, 2) corporate formation records, 3) filings with the D.C. Department of Consumer and Regulatory Affairs, and 4) insurance policies.
21. Portions of MGC tax returns for tax years 2000 through 2009 that relate to payments to Rider.
22. Complaints about 1) defendants' fundraising activities on behalf of elephants, 2) campaigns, 3) tactics, or 4) publicity made by federal, state, or local agencies, and any statement made by any one of which defendants were aware that accused defendants of making false statements during their fundraising activities.
23. With respect to contributions made to defendants to aid in their work on behalf of elephants, instances in which each defendant has been investigated by governmental authorities (federal, state, local) concerning 1) fundraising, 2) donations, 3) donor fraud, or 4) tax compliance.
24. Any filings by the defendants made with the IRS since 2000 that mention, disclose, or refer in any way to payments or grants to Rider, and any documents related to such a filing.
25. All information related to the decision to bring the original ESA action (00-1641) with Tom Rider as a plaintiff, including information related to the 60-day notice letter, the complaint to the United States Department of Agriculture, or any other proposed plaintiff including 1) Glenn Ewell, 2) James Stehcon, 3) Archele Hundley, 4) Robert Tom, or 5) Margaret Tom.

26. Communications with People for the Ethical Treatment of Animals (“PETA”) about the ESA action and about the testimony of Tom Rider.
27. Previous drafts and versions of selected discovery responses in the ESA action as to discovery responses claimed by FEI to be inaccurate or false (specific requests to be identified).
28. Facts and circumstances surrounding the Humane Society of the United States’ (“HSUS”) belief that the Asset Acquisition Agreement could be unenforceable, voidable, or otherwise invalid due to the Fund for Animals’ (“FFA”) fraud.
29. Damages related to MGC’s counterclaim for abuse of process, including 1) the effect of the RICO litigation upon MGC’s ability to represent its clients, attract and retain business, and generally conduct its law or advocacy practice, and 2) any other damages that are alleged to have been caused by FEI’s actions.
30. Any defense raised by any defendant in their respective answers that has not been stricken by Judge Sullivan.
31. When and how FEI came to learn of Rider’s 1) existence, 2) public advocacy, 3) funding, and 4) funding sources.
32. The factual basis defendants had for their statement in the July 2005 fundraiser announcement that FEI mistreats its Asian elephants.
33. The corporate organization and structure of FEI.
34. FEI’s financial information, including 1) profit and loss statements, 2) tax returns, and 3) ticket sales, as it relates to any claim by FEI that its business has suffered because of defendant’s actions, and as it relates to any claim for punitive damages.

35. FEI's knowledge of Rider's 1) interactions and relationship with FEI elephants, and 2) public advocacy, education, and media efforts.
36. FEI's attorneys' fees and costs, including third party discovery issued to the law firms of Covington & Burling, and Fulbright & Jaworski, LLP.
37. FEI's failure to accept production of Rider's financial information subject to a confidentiality agreement.
38. The motivation of FEI in filing a RICO action against MGC in 2007 after Judge Sullivan denied FEI's motion to file a counterclaim in Civil Action No. 03-2006.
39. Any payment by FEI to any witness who testified in Civil Action No. 03-2006.
40. FEI's knowledge of the relationship between MGC and Archele Hundley and Robert and Margaret Tom and its significance for this RICO action.
41. Any agreements, whether or not in writing, between FEI and any employee, with reference to statements that employee may make, while employed by FEI, concerning FEI's treatment of elephants.
42. Any efforts by the FEI in the media or otherwise to prevent in any way the dissemination of information about FEI's treatment of elephants.
43. Whether present or former employees of FEI were subject to surveillance by persons employed by FEI to establish whether those employees were making statements critical of FEI's treatment of elephants.
44. The retention of Clair George by FEI and his responsibilities and duties.
45. Any efforts by FEI to infiltrate animal protection organizations, and the results of those efforts.

46. Any discussions among employees or agents of FEI pertaining to discrediting MGC or to harassing it by lawsuits against MGC or other counsel.

Counsel for the plaintiffs indicated at the hearing that the parties had made substantial progress in resolving all other remaining discovery disputes. To ensure completion of that process, it is, hereby,

ORDERED that, pursuant to Rule 26(f)(3) of the Federal Rules of Civil Procedure, the parties meet and confer in an attempt to resolve all remaining discovery issues, including those specified in that rule and its subdivisions. It is further, hereby,

ORDERED that the parties submit to the Court, by May 24, 2013, a proposed order pertaining to all discovery issues, in accordance with Rule 16(b)(3) of the Federal Rules of Civil Procedure.

SO ORDERED.

JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE