



UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.,	.	Case No. 1:07-CV-01532
	.	(RBW/JMF)
Plaintiff,	.	
	.	Washington, D.C.
v.	.	April 3, 2013
	.	
ANIMAL WELFARE INSTITUTE,	.	
	.	
ET AL.,	.	
	.	
Defendants.	.	
.....	.	

STATUS CONFERENCE  
BEFORE THE HONORABLE JOHN M. FACCIOLA  
UNITED STATES MAGISTRATE JUDGE

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1 (Proceedings commenced at 2:03 p.m.)

2 THE CLERK: This is Civil Case, Year 2007-  
3 1532, Feld Entertainment, Inc. v. Animal Welfare  
4 Institute, et al..

5 This is a scheduling conference.

6 Would the parties please introduce yourselves  
7 and the parties you represent, beginning with the  
8 Plaintiff.

9 MR. SIMPSON: Good afternoon, Your Honor.  
10 John Simpson for the Plaintiff.

11 With me today is Mr. David Kessler, Ms.  
12 Rebecca Bazan and Ms. Kara Petteway.

13 I didn't even see you there, Kessler  
14 (phonetic), hiding in plain sight.

15 Counsel?

16 MR. ZUCKERMAN: Good afternoon, Your Honor.

17 I'm Roger Zuckerman. I represent the Fund  
18 for Animals, and with me is Logan Smith.

19 THE COURT: Mr. Smith.

20 MR. BRAGA: Good afternoon, Your Honor.

21 Stephen Braga on behalf of Tom Rider and the  
22 Wildlife Advocacy Project today.

23 As I've told Mr. Simpson, in short order I'm  
24 going to be shifting roles with Ms. Case. Mr. Rider is  
25 going to get new counsel. I'm going to drop off his

1 representation.

2 Ms. Steel is going to have to drop out of  
3 representing the law firm, Meyer, Glitzenstein &  
4 Crystal and its partners because the insurance funds  
5 are exhausted, and I'm going to shift over to them. So  
6 today I'm Rider and WAP. Next time we meet I'll  
7 probably be WAP and the law firm and its partners.

8 THE COURT: All right.

9 MS. STEEL: Good afternoon, Your Honor.

10 I am Laura Steel and today I represent Meyer,  
11 Glitzenstein & Crystal; Catherine Meyer, Eric  
12 Glitzenstein and Howard Crystal.

13 THE COURT: Thank you.

14 MR. NEAL: Morning, Your Honor.

15 Steve Neal on behalf of the Animal Welfare  
16 Institute.

17 MR. NES: Good morning, Your Honor.

18 Brad Nes on behalf of the Humane Society, and  
19 with me is my colleague, Graham Rollins.

20 MR. WEISSMAN: Andrew Weissman on behalf of  
21 Defendants Jon Lovvorn and Kim Ockene.

22 I'm here with Scott Litvinoff.

23 MR. SPAGNOLETTI: Good afternoon, Your Honor.  
24 Robert Spagnoletti. I'm here for Born Free.

25 THE COURT: Appearing for who, Counsel?

1 MR. SPAGNOLETTI: Born Free.

2 THE COURT: Yes.

3 Is that everyone?

4 (No audible response.)

5 THE COURT: Have you been able to make any  
6 progress, Mr. Simpson, on your dispute, since  
7 September?

8 MR. SIMPSON: Your Honor, there has been a  
9 breakthrough. We were able to agree with respect to  
10 the respective discovery plans, that all parties are in  
11 agreement that all written discovery should be reissued  
12 once the Court has given us some guidance on the scope  
13 of discovery, and therefore, the previously served  
14 requests don't have to be responded to.

15 And in addition, there was a disagreement  
16 about whether the plaintiffs -- the Plaintiff and  
17 Defendant should meet to discuss search terms. The  
18 Defendants are now amenable to do that and we will have  
19 such a meeting, and meet to discuss that subject.

20 And there was a technical issue. It's, I  
21 believe, page 14 of the Discovery Plan, with respect to  
22 the production of native (phonetic) documents with a  
23 flag. There was a disagreement about that. We have  
24 now resolved that. They are -- They, the Defendants,  
25 are agreeable to the plan's position.

1 information about what the victim knew about the  
2 purported event which is said to have been omitted over  
3 a period of months and years, by the perpetrator of the  
4 fraud.

5 So again --

6 THE COURT: Again, I presided over that  
7 aspect of the case for several years, --

8 MR. ZUCKERMAN: Well, --

9 THE COURT: -- and I learned what Rider was  
10 paid because I increased the scope of discovery, and  
11 until you spoke, I thought it was perfectly equal  
12 knowledge about that on both sides, once the discovery  
13 had finished in the first case.

14 MR. ZUCKERMAN: Well, our position, I think,  
15 is going to be that FEI knew, at a point much earlier  
16 in time than it has asserted in its pleadings, enough  
17 about the way Mr. Rider was being compensated, that it  
18 is false for them to assert that in the typical fashion  
19 of a victim of a mail fraud or wire fraud it relied.

20 THE COURT: I understand that.

21 MR. ZUCKERMAN: Fourth, the fourth area, how  
22 the defense was conducted.

23 Again, and this sort of goes back to my  
24 footnote articulated at the beginning of my  
25 presentation, in a weird way, at the end of the day,

1 this is another fee shifting case in which they seek  
2 only their legal fees, but they're using the rubric of  
3 RICO to get fees times three, and much as in a regular  
4 fee shifting case, one is entitled to explore whether  
5 the defense was conducted in a profligate way, whether  
6 there were other objectives in the way funds were  
7 expended, that had nothing to do with the defense of  
8 the case. It may have had to do with social or  
9 political objectives, whether the expenditures were  
10 reasonable. For a host of reasons dealing with damage,  
11 we're entitled to explore that in some detail because,  
12 after all, individuals as well as organizations are  
13 being asked to pay three times 20 million dollars.

14 We have yet to receive -- We can raise it at a  
15 later point, but in the initial disclosures, the one  
16 initial disclosure that has not been made by the  
17 Plaintiff to this point, is anything to do with its  
18 damages. We've received nothing to that point.

19 We're going at least from the Fund for  
20 Animals' perspective. We are going to urge that the  
21 Court consider in effect merging the discovery that  
22 will be done in the RICO case and the discovery that's  
23 going to be done in the ESA case, the underlying case,  
24 on how lawyers spent their time, what they did, what  
25 they didn't do, and so forth, because it's easy. It



1 would be wonderful and easy, if Your Honor would  
2 imagine, and it is a much more rational way to behave  
3 than to have one discovery routine conducted by Judge  
4 Sullivan in the ESA case and another conducted by Your  
5 Honor here.

6 I think those four categories, in the main,  
7 capture, I would say, 80 percent of what we're after.

8 And to conclude, I give you sort of a preview  
9 of the nifty legal issues that they raise without, in  
10 any respect, meaning to argue them.

11 I do think there is something to the notion,  
12 for example, that, and I'm trying to be neutral and  
13 helpful here, I think there's something to the notion  
14 that Mr. Simpson articulated, that he's owed more  
15 discovery on the issue of these payments, than he's  
16 received so far.

17 Here is a litany of some of the issues that  
18 we're going to confront.

19 We're obviously going to confront some First  
20 Amendment issues dealing with how far Mr. Simpson can  
21 go in getting the donor lists for the people who  
22 (unintelligible) this. I think you can imagine what  
23 this will look like.

24 THE COURT: We've been there, I think.

25 MR. ZUCKERMAN: Yes.