

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.

Plaintiff,

v.

ANIMAL WELFARE INSTITUTE, et al.

Defendants.

Case No. 07-1532 (EGS/JMF)

OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT BY
DEFENDANTS KATHERINE MEYER, ERIC GLITZENSTEIN AND
MEYER GLITZENSTEIN & CRYSTAL

EXHIBIT 6



1601 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20009
(202) 518-3700

September 29, 2005

By Hand Delivery

Joshua D. Wolson
Covington and Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2401

Re: Subpoena to Wildlife Advocacy Project

Dear Josh:

Enclosed are the documents that the Wildlife Advocacy Project believes are responsive to the subpoena, as narrowed and clarified by our subsequent discussion and correspondence. Also enclosed is a detailed privileged log which identifies all materials being withheld and reasons for the withholding. We have separately paginated in the lower right corner each document that has been disclosed in full or in part. As noted on the log, some financial material is being withheld that WAP will make available subject to an appropriate protective order. If you wish to pursue access to these materials, or have any other questions regarding this response, please contact the Project's outside counsel, Richard Thomas and Michael Trister ((202) 328-1666)).

The "transaction detail report" (page #s 135-140) contains a comprehensive compilation of receipts and disbursements relating in any fashion to elephants, Tom Rider, Ringling Brothers, or the lawsuit. Accordingly, we are not providing or identifying financial records that merely duplicate the information that is embodied in this comprehensive report – i.e., monthly financial statements, monthly phone bills, or canceled checks.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric R. Glitzenstein".

Eric R. Glitzenstein
President

ERG/ms

cc: Michael Trister/Richard Thomas (by mail)

LAW OFFICES
LICHTMAN, TRISTER & ROSS, PLLC
1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR
WASHINGTON, D.C. 20009
PHONE: (202) 328-1666
FAX: (202) 328-9162

ELLIOTT C. LICHTMAN
MICHAEL B. TRISTER
GAIL E. ROSS
B. HOLLY SCHADLER

*ALSO ADMITTED IN MD
ADMITTED ONLY IN TX
*ALSO ADMITTED IN MD

RICHARD L. THOMAS*
JOSEPH J. KRANYAK*
ALEXANDER W. DEMOTS*
KAREN A. POST

LAURENCE E. GOLD
OF COUNSEL

December 7, 2005

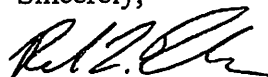
VIA COURIER

Mr. Joshua Wolson
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Mr. Wolson:

Per your written request of November 8, 2005 on behalf of your client, Feld Entertainment, Inc., I am enclosing a copy of the Wildlife Advocacy Project's application for recognition of exemption and supporting documentation, all correspondence with the Internal Revenue Service relating to the application, and the Internal Revenue Service's ruling on the Wildlife Advocacy Project's exemption application. Please note that the organization's original name was the "National Biodiversity Advocacy Project," which was changed in 1999 to the Wildlife Advocacy Project.

Sincerely,



Richard L. Thomas

Enclosure

LAW OFFICES
LICHTMAN, TRISTER & ROSS, PLLC
1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR
WASHINGTON, D.C. 20009
PHONE: (202) 328-1666
FAX: (202) 328-9162

ELLIOTT C. LICHTMAN
MICHAEL B. TRISTER
GAIL E. ROSS
B. HOLLY SCHADLER

RICHARD L. THOMAS^A
JOSEPH J. KRANYAK^B
KAREN A. POST

LAURENCE E. GOLD
OF COUNSEL

^AALSO ADMITTED IN MD
^BADMITTED ONLY IN TX^{*}

June 30, 2006

BY FACSIMILE AND HAND-DELIVERY

George Gasper, Esq.
Fulbright & Jaworski L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2623

RECEIVED

JUN 30 2006

FULBRIGHT & JAWORSKI LLP

Re: ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus, No. 03-2006 (D.D.C.)

Dear Mr. Gasper:

I am writing on behalf of the Wildlife Advocacy Project ("WAP") in response to your June 13, 2006 letter concerning WAP's production of documents on September 29, 2005 in response to the subpoena dated July 26, 2005. In the interest of finally resolving the outstanding issues with your client, Feld Entertainment, Inc. ("FEI"), and without waiving any asserted privileges, WAP is today producing additional information and documents as follows:

- (1) Financial information previously redacted or withheld in its entirety, including the amounts of contributions to WAP, which WAP had previously offered to provide subject to a protective order;
- 2) Certain financial information previously withheld in its entirety on the basis that it was duplicative or burdensome for WAP to produce;
- (3) The identities of non-plaintiff donors that are organizational donors, which had previously been redacted on the basis of a First Amendment privilege; and
- (4) Certain information previously redacted or withheld in its entirety on the basis of a First Amendment privilege regarding WAP's internal media strategy.

In providing all of the above information and documents at this time, WAP is no longer requiring that such information or documents be subject to a protective order. WAP continues to assert, however, its First Amendment privilege to withhold the names and addresses of the organization's individual donors and grassroots activists, as well as certain information regarding the organization's internal media strategy. As a result, documents provided today continue to redact such information. An updated privilege log is enclosed that describes redacted information or documents for which a privilege continues to be asserted by WAP. In the interest of efficiency, WAP is enclosing all documents produced to date, including documents produced on September 29, 2005 that were not redacted and for which no privilege was asserted.

As described below, WAP is also not turning over documents containing financial information that has otherwise already been produced, on the grounds that such documents

contain duplicative information that has already been produced and also contains large amounts of non-responsive information such that it would be extremely burdensome to redact and produce all such documents.

Your June 13, 2006 letter represented the first communication from your client in more than six and half months in response to the November 28, 2005 letter and draft protective order from WAP. Given this delay on your client's part, any effort on your part to portray WAP as having delayed resolution of the remaining issues is completely groundless. The fact that your June 13, 2006 letter provided my client with less than two weeks to provide the documents to which you believe you are entitled under the threat of a motion to compel, and your willingness (stated in your June 19, 2006 letter) to extend this deadline by only one week call into question whether your client is indeed operating in good faith to resolve these matters without resorting to motions and the use of court resources. My client has nonetheless again bent over backwards in seeking to comply with your requests in a timely and comprehensive fashion, including making a renewed search of its records in an effort to ensure that it was being as responsive as possible.

I. Preliminary Issues Relating to Prior Production

Turning to the substance of your June 13, 2006 letter, let me address some of your questions that may be quickly covered:

- 1) In reference to your requests that documents be produced in response to Subpoena Requests No. 1, 4 & 5 that "discuss or allude to" your client and its current or former employees, consultants, etc., rather than those documents that "discuss or *clearly* allude to" such entities or individuals, leaving aside what previous counsel for your client may have agreed to, there are no additional documents to be produced using the "discuss or allude to" standard you request.
- 2) In response to your question regarding Subpoena Request No. 1, in confirming for FEI's former counsel that WAP did not have any documents involving communications to FEI's employees or former employees (not Tom Rider) of your client, I can confirm that such a representation was not limited to "communications or documents concerning such communications," but applied to all documents that might have been responsive.
- 3) In response to your question regarding documents requested under Subpoena Request No. 3 that "refer, reflect, or relate to anything of value that was requested by, on behalf of, or received from any plaintiff in underlying litigation and that was used to support WAP's projects regarding Tom Rider, FEI, Ringling Bros., and/or Asian elephants," WAP previously provided all documents responsive to this request on September 29, 2005. With today's disclosure, as discussed below, the amounts related to these documents are no longer redacted. I also hope to put this issue to rest by representing that *all* documents reflecting all contributions from the plaintiffs to WAP have been disclosed, not merely those documents reflecting contributions actually used to support WAP's projects regarding Tom Rider, FEI, Ringling Bros., and/or Asian Elephants.

- 4) As to your statement in your June 13, 2006 letter that “WAP clearly has additional files that discuss or allude to this litigation” that it has not turned over in response to Subpoena Request No. 4, WAP has previously provided all documents responsive to this request.

II. Additional Production by WAP

Turning to the primary issues raised in your June 13, 2006 letter, without conceding the relevance of any of the information, and without waiving privileges as to other information, WAP is providing additional information and documents at this time, without requiring that it be subject to a protective effort, solely in an effort to resolve the outstanding issues. On a much more limited basis than it previously had, WAP is continuing to assert a privilege regarding certain information or documents that are either redacted or withheld in their entirety.

- A) WAP is disclosing financial information previously redacted or withheld in its entirety that WAP previously stated it was willing to disclose subject to a protective order.***

On September 29, 2005, WAP provided your client with documents that redacted certain financial information responsive to Subpoena Request No. 2, including amounts provided by non-plaintiff contributors to WAP and amounts expended by WAP for its projects relating to elephants, Tom Rider, Ringling Bros. (FEI), or the lawsuit, which WAP offered to provide subject to a protective order. All such partially redacted information was specifically noted on the privilege log provided by WAP, and WAP indicated that it would disclose the redacted financial information subject to a protective order. In addition, the privilege log noted that certain documents that contained financial information (receipts for Tom Rider’s expenses) were being withheld in their entirety, but that WAP would also provide these documents subject to a protective order.

Without waiving any privilege, WAP is now enclosing previously provided documents that are no longer redacted with regard to this financial information. Consistent with its continued asserted First Amendment privilege discussed below, these documents still redact the names and addresses of individual donor and activists. Documents previously withheld in their entirety that contained financial information discussed above are also provided in their entirety.

WAP is taking this step at this time even without a request that the disclosed financial information be subject to a protective order in order to resolve this matter and, as described below, because the suggested changes to the protective order that you made in your June 13, 2006 letter would leave this information without any meaningful protection in any event.

- B) WAP is providing certain responsive financial information previously withheld in its entirety on the basis that it would be duplicative and burdensome to produce.***

As part of the disclosure of financial information discussed above, you will find that the two enclosed computerized data charts (“Charts”) found at Doc. Nos. 135 – 140, now disclose *all* of the amounts received and expended by WAP relating to elephants, Tom Rider, Ringling Bros.

(FEI), or the underlying litigation. These Charts, which are based on the contemporaneously entered computerized financial data maintained by WAP in the ordinary course of its business activities, reflect *all* relevant disbursements and receipts of funding by WAP regarding elephants Tom Rider, Ringling Bros. (FEI) or the underlying litigation. The entries reflected in the Charts were made contemporaneously into a database at the time the income was received or expenditure made. The actual printout of this information was the only act WAP undertook after receiving the subpoena request from your client.

It was and remains WAP's position that the Charts provide the most comprehensive and relevant financial information your client had sought, and thus is fully responsive to the subpoena, and that to locate and produce documents that repeat this same information would be duplicative and extremely burdensome, since it would require WAP to delete a whole host of information that is completely non-responsive to the subpoena. However, in an effort to resolve this issue immediately, WAP is turning over relevant and responsive documents in its possession containing relevant and responsive financial information, including but not limited to cancelled checks, check stubs and Form 1099s issued to Tom Rider.

Consistent with its continued asserted First Amendment privilege discussed below, WAP has redacted the individual donor and activist names and addresses on several of these newly disclosed documents. These duplicative documents are now noted in the privilege log, along with WAP's continued asserted objection to providing such information on the basis of a First Amendment privilege. *See United States v. Philip Morris Inc.*, 347 F.3d 951, 954 (D.C. Cir. 2003).

WAP is not producing three additional categories of documents containing the same financial information as part of its continued assertion that production would be duplicative and burdensome: monthly financial statements, monthly bank statements, and cell phone records.

The bank and monthly statements include so much non-responsive information concerning other WAP projects that are completely unrelated to the matters covered by the subpoena that it would be extremely burdensome for WAP to redact such information and produce the remaining information. WAP is a very small organization with very limited staff. It simply does not have the time or resources to go through each of these documents to produce information that is completely duplicative of information that has already been provided. In fact, all the information contained in the monthly financial statements and monthly bank statements related to Tom Rider, elephants, Ringling Bros. (FEI) or the underlying litigation, is contained in the Chart detailing expenditures, as well as in other documents provided by WAP. With regard to the cell phone bills, WAP would have to redact all non-responsive phone numbers, as well as other non-responsive information, which would be extremely burdensome. Again, all of the amounts paid by WAP for the monthly cell phone bills related to the matters covered by the subpoena are disclosed in the Chart detailing expenditures by WAP.

If necessary, WAP is willing to provide you with a sample bank statement, sample monthly statement, and sample monthly cell phone bill that discloses all relevant information to demonstrate the duplicative nature of these documents and the burden it would place upon WAP to go through each bank statement, monthly bank statement and cell phone record to produce this

duplicative information.

- C) In addition to names of plaintiff donors, WAP is now providing names of its donors that are organizations, but continues to assert its First Amendment privilege in redacting the names and addresses of the organization's donors, grassroots activists and certain information regarding its media strategy***

WAP has previously provided all documents that contain the names of plaintiffs in relation to WAP's project related to Tom Rider, Ringling Bros. (FEI), elephants or the underlying litigation. Given the amounts disclosed today as part of the financial information, your client now knows how much each of the plaintiffs has contributed to the WAP. WAP is taking the additional step of providing the names of all non-plaintiff donors who are organizations.

However, with regards to individuals who are WAP's donors or have otherwise associated with WAP's activities, WAP continues to assert a First Amendment privilege, as disclosure of their names and addresses will chill and curtail their freedom to associate with the organization. *NAACP v. Alabama*, 357 U.S. 449, 459 (1958) (organization may assert right on behalf of its members to withhold disclosure of identity of some members). Moreover, your client has failed to articulate any legitimate reason why it needs to know the names of these individual donors or activists. See *Int'l Union v. Nat'l Right to Work Legal Defense and Ed. Found., Inc.* 590 F.2d 1139, 1153 (D.C. Cir. 1978) (court must assess whether information requested goes to the "heart of the lawsuit" when First Amendment right is implicated in discovery). Moreover, in view of your clients' past admitted actions in conducting surveillance on individuals and organizations which it considers to be at odds with FEI, WAP has every reason to be concerned about potential harassment or hostility directed against these individuals by your client. See *NAACP*, 357 U.S. at 461; see also *Brown, et al. v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87, 93-94 (1982). If necessary, WAP will detail these concerns for Judge Sullivan in defense of its position that such information should be protected.

Your June 13, 2006 letter incorrectly asserts that WAP did not make a showing of harm in asserting its First Amendment privilege. In fact, WAP's privilege log provided on September 29, 2005 explained exactly what information had been redacted or withheld and the basis for doing so. Moreover, WAP's President, Mr. Glitzenstein, and I have asserted the organization's First Amendment privilege to withhold certain information in every communication with your client, beginning with WAP's first communication to your client's former counsel on August 10, 2005.

If your client were able to articulate a legitimate basis for obtaining the names of WAP's individual donors and other individuals who have associated with WAP's activities, WAP might be willing to agree to disclose such information subject to an appropriately crafted protective order that would ensure that such individuals were not subject to any harassment or hostility by your client. However, the protective order that you proposed for an entirely different purpose – i.e., the financial information that WAP has now disclosed – would not be sufficient for this purpose, since, e.g., it does not contain any protections from harassment and hostility, would disclose information to non-counsel, and would also place the burden on WAP to file a motion

with the Court within thirty days in order to uphold a confidentiality designation.

Although WAP is today providing certain additional information previously redacted or withheld regarding its media strategy involving Tom Rider, elephants, Ringling Bros. (FEI), or the underlying litigation, it has continued to redact certain information that reflects WAP's media strategy such as the names of reporters that have been contacted by WAP. Such internal strategic information of an organization is protected by the First Amendment. *See AFL-CIO v. FEC*, 333 F.3d 168, 177 (D.C. Cir. 2003). Moreover, your client has made no showing that such information is relevant to Mr. Rider's motives or credibility. In this context, it is worth noting that your client insisted (and Judge Facciola agreed) that it not be required to produce documents to the plaintiffs concerning its public relations in this effort. Hence, you cannot, at the same time, insist that you have an entitlement to the same kind of information.

Although your demands go well beyond what FEI's prior counsel sought, my client has endeavored to again address the outstanding issues you have raised. We would hope that this will be adequate to finally resolve this matter. Nonetheless, if you have any questions, please feel free to contact me at (202) 328-1666.

Sincerely,



Richard L. Thomas

Enclosures

LAW OFFICES
LICHTMAN, TRISTER & ROSS, PLLC
1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR
WASHINGTON, D.C. 20009

PHONE: (202) 328-1666
FAX: (202) 328-9162

RICHARD L. THOMAS^A
JOSEPH J. KRANYAK^B
KAREN A. POST

LAURENCE E. GOLD
OF COUNSEL

ELLIOTT C. LICHTMAN
MICHAEL B. TRISTER
GAIL E. ROSS
B. HOLLY SCHADLER

^AALSO ADMITTED IN MD
^BADMITTED ONLY IN TX^{*}

July 20, 2006

BY CERTIFIED U.S. MAIL

George Gasper, Esq.
Fulbright & Jaworski L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2623

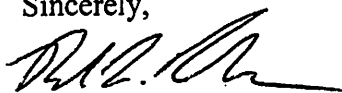
Re: ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus, No. 03-2006 (D.D.C.)

Dear Mr. Gasper:

I am writing on behalf of the Wildlife Advocacy Project ("WAP") as a follow up to my letter dated June 30, 2006 to your client, Feld Entertainment, Inc. As part of the letter, my client provided a series of documents containing financial information previously withheld in their entirety on the basis that it was duplicative or burdensome for WAP to produce. My client has since located three cancelled checks that were not produced at that time, copies of which I am enclosing. I would note that the same information detailed in these three checks was previously disclosed to your client as part of WAP's June 30, 2006 production of documents (see Doc. No. 135).

If you have any questions, please feel free to contact me at (202) 328-1666.

Sincerely,



Richard L. Thomas

Enclosures

LAW OFFICES
LICHTMAN, TRISTER & ROSS, PLLC
1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR
WASHINGTON, D.C. 20009
PHONE: (202) 328-1666
FAX: (202) 328-9162
www.ltsrlaw.com

ELLIOTT C. LICHTMAN
MICHAEL B. TRISTER
GAIL E. ROSS
B. HOLLY SCHADLER

KAREN A. POST
LILAH S. ROSENBLUM^Δ
ALLEN H. MATTISON^Δ
^ΔADMITTED IN MARYLAND ONLY

LAURENCE E. GOLD
Of Counsel

March 30, 2007

By Hand Delivery

George A. Gasper, Esq.
Fulbright & Jaworski, L.L.P.
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: *ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus*, No. 03-2006

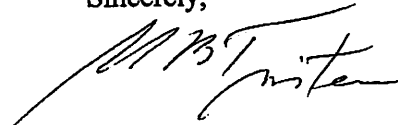
Dear Mr. Gasper:

Enclosed are documents responsive to the February 20, 2007 subpoena, as narrowed by my objection letter of February 15, 2007, and your responsive letter of February 20, 2007. By providing these responsive materials, the Wildlife Advocacy Project ("WAP") is not waiving any of the grounds for objecting to the subpoena that are set forth in my February 15 letter. Please note, however, that the *only* responsive materials we are withholding on privilege grounds are the identities of individual contributors; we are doing so for the reasons set forth in our opposition to your pending motion to compel with respect to the first subpoena served on WAP. All such deletions are identified directly on the copies provided to you; none are employees of the plaintiffs or their legal counsel. With the one caveat discussed in the following paragraph, copies of all other materials postdating September 29, 2005 relating to Tom Rider, defendants, the elephants at Ringling Bros. circus, this litigation, or WAP's public education campaign concerning elephants in circuses are being provided to you.

As before, we are providing you with an updated Transaction Detail Report that encompasses the pertinent time period (September 29, 2005 through March 26, 2007, when we completed the search for materials responsive to the February 20 subpoena). Once again, this comprehensive, computer-generated report reflects *all* organizational transactions relating in any fashion to Tom Rider, Ringling Bros., defendants, the litigation, or WAP's public education campaign regarding elephants in circuses. Accordingly, as before, we are not providing you with duplicative materials (including monthly financial statements) that would provide you with no additional substantive information but would impose a significant burden on the organization from the standpoint of reviewing and deleting non-responsive information..

With regard to the specific questions posed in your February 20 letter, I am confirming that WAP does not have any documents responsive to Request No. 7. In addition, WAP has no documents responsive to Request No. 8 that either were not produced previously or are not being produced in this “updated” response. As for your clarification of Request No. 6, with regard to *above-captioned lawsuit*, other than Tom Rider, WAP has no documents relating to any “payments, gifts, ‘grants,’ or otherwise that WAP gave to any person who was also a client of Meyer Glitzenstein & Crystal.”¹

Sincerely,

A handwritten signature in black ink, appearing to read "M B Trister". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Michael B. Trister

cc: Eric Glitzenstein, Esq.

¹ Once again, we construe the exchange of letters (and particularly your representation, at p. 2, that “FEI is more than willing to limit the subpoena in a manner that is consistent with what it has done in the past”) as narrowing the subject matter of the subpoena to funding in connection with this lawsuit, Ringling Bros. Circus, WAP’s public education campaign relating to elephants in circuses, and related matters. Accordingly, we are not construing Request No. 6 (or any other request) as requesting any documents regarding the funding of any *other* project that has been carried out by WAP that has nothing to do with the subject matter of this lawsuit (such as WAP’s manatee projects). In any event, such internal financial information is clearly irrelevant to this dispute.

LAW OFFICES
LICHTMAN, TRISTER & ROSS, PLLC
1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR
WASHINGTON, D.C. 20009
PHONE: (202) 328-1666
FAX: (202) 328-9162
www.ltsrlaw.com

ELLIOTT C. LICHTMAN
MICHAEL B. TRISTER
GAIL E. ROSS
B. HOLLY SCHADLER

KAREN A. POST
LILAH S. ROSENBLUM^Δ
ALLEN H. MATTISON^Δ
^Δ ADMITTED IN MARYLAND ONLY

LAURENCE E. GOLD
Of Counsel

April 24, 2007

By Hand Delivery

George A. Gasper
Fulbright & Jaworski, L.L.P.
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: *ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus*, No. 03-2006

Dear Mr. Gasper:

This is in response to your April 16, 2007 letter. Before responding to the specific issues you have raised, I must object to your characterization of the Wildlife Advocacy Project (“WAP”) as “stalling” and failing to comply with a “straightforward subpoena.” In reality, WAP has now made strenuous, good-faith efforts to comply with two highly invasive subpoenas demanding the financial and other sensitive details concerning the operations of a small non-profit organization. With regard to the latest subpoena, WAP could have reasonably objected to any production based on the grounds set forth in my February 15, 2007 letter. Instead, in order to avoid burdening the Court with unnecessary litigation, we have provided any records that might conceivably bear on the issues in the lawsuit, subject to only the most minimal redactions to safeguard the identities of WAP contributors and supporters.

WAP’s legitimate First Amendment interest in protecting such information is now even more apparent in light of FEI’s proposed “RICO” counterclaim against the organization. Indeed, your April 16 letter makes abundantly clear that most, if not all, of the information now being sought relates to your proposed punitive counterclaim against the organization, rather than to any of the existing issues in the case. Nonetheless, WAP will continue to address all issues by providing any non-privileged information that could possibly be construed as following within the subpoena and bearing on the issues presently in the litigation. Along these lines, without waiving any basis for objection should you file another motion to compel, we respond to your specific issues as follows:

1. We reasonably construed your February 20 letter – and specifically your statement (at 2) that “FEI is more than willing to limit this subpoena in a manner that is consistent with what it has done in the past” – as restricting the subject matter of the subpoena in its entirety to any

Fulbright & Jaworski, L.L.P.
April 24, 2007
Page 2

topics that are actually relevant to this litigation, i.e., as relating to Tom Rider, defendants, the elephants at Ringling Bros. circus, this litigation, or WAP's public education campaign concerning elephants in circuses. Accordingly, we are surprised by your suggestion that the subpoena – and particularly request No. 6 – has not been so limited but, rather, that you are continuing to seek information that does not relate to any of these topics and, instead, concerns other, unrelated WAP projects and activities. In any case, such other WAP projects and activities are obviously irrelevant to this dispute, and we will not produce documents regarding them.

2. Tom Rider does not communicate with WAP by e-mail. As you have previously been informed, Leslie Mink assists WAP with bookkeeping activities. She also occasionally disseminates articles and other media events concerning Mr. Rider. While we do not agree that documents reflecting this activity are properly subject to the subpoena, in another effort to avoid an unnecessary discovery dispute, we have searched for and are producing such materials. We also realized that an additional WAP fundraising letter that was sent by e-mail contains one reference to Mr. Rider's work, the pertinent portion of which we are producing (we are deleting the identities of two individuals on First Amendment association grounds -- neither of these individuals works for WAP or Meyer Glitzenstein & Crystal or has any other connection to this lawsuit; the remaining portions of the letter involve other actual or potential WAP projects and activities, and hence are non-responsive). WAP has located no other e-mails that are even arguably responsive to the subpoena.

3. Other than the materials specifically marked as deleted, we have produced all documents "as they are kept in the usual course of business" conducted by WAP. Fed. R. Civ. P. 45(d)(1)(A).

4. As would seem evident from a document captioned "Programmatic Grant Proposal," the non-responsive portions involve other potential projects or activities of WAP (some of which the organization is now pursuing) that have nothing whatsoever to do with this case.

5. WAP has produced all receipts that it has received from Tom Rider or that it has paid on Tom Rider's behalf. We are enclosing a few additional documents concerning a hotel reservation that was made for Mr. Rider in connection with his public education campaign.

6. WAP obtained those two documents after the response was provided to the first subpoena. We have not withheld any documents in response to the first subpoena that were not previously disclosed to FEI.

7. Our justification for withholding the identities of individual contributors has previously been detailed in prior correspondence with you, as well as in our opposition to your pending motion to compel. As noted above, if anything, WAP now has an even more compelling basis for withholding such information because of our grave concern that you will seek to join

Fulbright & Jaworski, L.L.P.
April 24, 2007
Page 3

such individuals to your baseless "RICO" counterclaim, or to otherwise seek to deter such individuals from supporting WAP's work on behalf of the Ringling Bros.' elephants. With regard to the duplicative financial documents (i.e., monthly profit and loss statements, monthly bank statements, and cell phone billing records), we have previously described such materials to you and FEI's prior counsel in detail, and have also explained to the Court why it would be burdensome to produce such materials, while providing nothing of substance beyond what has been provided to FEI. As for the cell phone bills, we have not previously construed the subpoena as seeking every phone number ever called by Tom Rider – and particularly reflecting calls "to the media," as you specifically request (at 3) – but if the subpoena encompasses such information, it is being withheld as both irrelevant and a violation of WAP's First Amendment rights of speech and association. It will be impossible for Mr. Rider effectively to pursue the public education campaign which he is pursuing with WAP if individuals he contacts in confidence – including representatives of the media and potential donors to the public education campaign – know that their phone numbers will be made available to FEI.

Sincerely,

A handwritten signature in black ink, appearing to read "M B Trister". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Michael B. Trister

LAW OFFICES
LICHTMAN, TRISTER & ROSS, PLLC
1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR
WASHINGTON, D.C. 20009
PHONE: (202) 328-1666
FAX: (202) 328-9162
www.ltsrlaw.com

ELLIOTT C. LICHTMAN
MICHAEL B. TRISTER
GAIL E. ROSS
B. HOLLY SCHADLER

KAREN A. POST
LILAH S. ROSENBLUM^Δ
ALLEN H. MATTISON^Δ
^Δ ADMITTED IN MARYLAND ONLY

LAURENCE E. GOLD
Of Counsel

September 24, 2007

By Hand Delivery

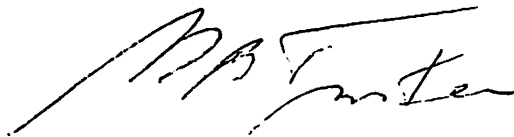
George A. Gasper
Fulbright & Jaworski, L.L.P.
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: *ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus*, No. 03-2006

Dear Mr. Gasper:

In response to the Court's Order of August 28, 2007 in this matter, attached is the Declaration of Eric Glitzenstein on behalf of the Wildlife Advocacy Project and the documents referenced therein.

Sincerely,



Michael B. Trister

Enclosures

cc: Eric Glitzenstein, Esq. (w/o attachments)

LAW OFFICES
LICHTMAN, TRISTER & ROSS, PLLC
1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR
WASHINGTON, D.C. 20009

ELLIOTT C. LICHTMAN
MICHAEL B. TRISTER
GAIL E. ROSS
B HOLLY SCHADLER

PHONE: (202) 328-1666
FAX: (202) 328-9162
www.ltrslaw.com

KAREN A. POST
LILAH S. ROSENBLUM^Δ
ALLEN H. MATTISON^Δ
^Δ ADMITTED IN MARYLAND ONLY

LAURENCE E. GOLD
Of Counsel

November 30, 2007

BY HAND DELIVERY

George A. Gasper
Fulbright & Jaworski, L.L.P.
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Re: *ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus*, No. 03-2006

Dear Mr. Gasper:

On behalf of the Wildlife Advocacy Project (“WAP”), I am responding to your November 19, 2007 subpoena to WAP – the third such subpoena to WAP. WAP has no responsive documents with regard to Request No. 2. With respect to request No. 1, I am providing along with this letter responsive documents generated and/or obtained by WAP since September 24, 2007 until the present, along with a transaction detail report reflecting all pertinent receipts of funds and disbursements for that period of time.

In searching for and providing these documents, WAP has proceeded in a manner that is entirely consistent with Judge Sullivan’s August 23, 2007 ruling regarding FEI’s first subpoena, WAP’s September 24, 2007 Declaration responding to that ruling, and my October 4, 2007 letter responding to several questions you raised concerning the Declaration. In particular, WAP is withholding from the responsive records only the identities of a non-party organization and individuals who are not plaintiffs’ counsel, employees or officers of the organizational plaintiffs, or employees or officers of WAP. In addition, as before, the responsive documents withheld by WAP on the ground that they are duplicative are the organization’s monthly financial reports, bank statements, and phone bills.

Although WAP is fully responding to the subpoena solely in an effort to avoid unnecessary litigation, the subpoena is nonetheless legally objectionable. First, Judge Sullivan’s ruling regarding FEI’s motion to compel WAP documents found that FEI’s first subpoena was vastly overbroad and burdensome, and hence he required WAP to furnish a much smaller subset of materials and make certain representations in a Declaration by September 24, 2007. WAP complied with that obligation. Nothing in Judge Sullivan’s August 23, 2007 ruling even remotely suggested that WAP would be obligated to respond to further subpoenas from FEI following WAP’s compliance with the Court’s ruling.

Fulbright & Jaworski, L.L.P.
November 30, 2007
Page 2

Second, WAP also objects to the subpoena because it is “unreasonably cumulative or duplicative,” Fed. R. Civ. P. 26(b)(1), of what has previously been provided to you by WAP, and it also imposes an “undue burden” on WAP. Fed. R. Civ. P. 45(c)(3)(A)(iv); see also Linder v. Calero-Portocarrero, 183 F.R.D. 314, 316 (D.D.C. 1998). In light of WAP’s responses to FEI’s two prior subpoenas, FEI now has more than enough information to raise whatever issue it desires concerning Tom Rider’s credibility – which is the sole basis on which Judge Sullivan found that FEI could pursue any discovery against WAP. Indeed, because FEI has already been provided with a vast amount of information on the funding of Mr. Rider’s public education campaign, it appears that FEI’s latest subpoena is simply an effort to bolster the RICO case that FEI has filed against WAP and that has now been stayed pending the outcome of the ESA case.

Once again, however, because WAP is fully complying with the latest subpoena (within the parameters that Judge Sullivan applied to FEI’s first subpoena), we are invoking these objections simply to preserve them in the event that FEI initiates further litigation over this matter.

Sincerely,



Michael B. Trister