UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FELD ENTERTAINMENT, INC.	:	
	:	
Plaintiff,	:	
	:	
v.	:	**Case No. 07-1532 (EGS/JMF)**
	:	
ANIMAL WELFARE INSTITUTE, et al.	:	
	:	
Defendants.	:	
	:	
	:	

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

EXHIBIT 7

September 7, 2007

VIA PDF TRANSMISSION
AND MESSENGER DELIVERY

George A. Gasper, Esq.
Fulbright & Jaworski, L.L.P.
801 Pennsylvania Avenue, NW
Washington, DC 20004-2623

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

Dear Mr. Gasper:

Please find enclosed a partial voluntary production from the Human Society of the United States' ("HSUS") in response to the third party subpoena issued by Ringling Brothers on June 15, 2007. We trust that this production is sufficient to establish that HSUS is a third party to the litigation. As we explained at the meet-and-confer, the Fund for Animals ("FFA") remains a separate entity from HSUS, and has its own assets and income stream. This portion of our voluntary production includes the separate incorporation statement filed by the FFA, separate state charitable registrations filed by the FFA, and the minutes from the most recent FFA board meeting (redacted as to issues of privilege).

We anticipate making an additional voluntary production imminently that addresses RFP #2 and RFP #7 as discussed/modified by your letters of August 9, 2007 and August 27, 2007. If, after reviewing the materials enclosed with this letter, you wish to revisit RFP #1, we can do this contemporaneously in order to advance the process more rapidly.

Sincerely,

Matthew F. Stowe

September 20, 2007

VIA PDF TRANSMISSION AND FIRST CLASS MAIL

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

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

Dear George,

Your letter of September 13, 2007 was initially received by HSUS as a clear signal that any hope of compromise with respect to your overbroad Rule 45 subpoena had been lost, and that any further voluntary attempts to supply Ringling Brothers with information would be unwise in the extreme. The client and I were disturbed that you used the fact that I was unable to coordinate with the general counsel to receive final approval to send you additional documents (which were, in some cases, proprietary and confidential) on a voluntary basis until a few days past a deadline which you unilaterally set for said production, as an excuse to go back on our prior understanding of what we would voluntarily produce. We had agreed as an initial matter to producing documents relating to RFP's 1, 2 and 7 (as modified). Your September 13, 2007 simply ignores this understanding and requests "full compl[iance]" with RFPs 1-3 and 5-8. We consider it self-evident that this is unacceptable. Nor is this the first time Ringling Brothers has backpedaled on a clear understanding. At the August 2 meet and confer, for example, you and your colleagues indicated that it would be no problem for HSUS to resume its normal practice of recycling disaster recovery tapes, an issue of paramount importance to the client (which ended up having to spend close to $17,000.00 on extra tapes and storage for August and September). In your subsequent letters, this again became an issue of negotiation, as if that understanding had never existed. In the end, HSUS had to decide to unilaterally return to its normal practice of recycling these tapes, after establishing safeguard procedures without any consultation from you, and simply inform you of this fact. While HSUS has not always produced documents by the dates Ringling Brothers has unilaterally set (and if a specific date is important to your client, working with us to establish a mutually agreeable deadline would have seemed the logical choice), up until your last letter HSUS had at least not backpedaled as to what it was attempting to produce. Your recent communications to HSUS seem more like thinly-disguised efforts to "pad the record" with constant accusations of dilatory tactics and mischaracterizations of prior production than good faith attempts to negotiate mutually acceptable production.

Contrary to the assertions in your last letter, the documents we produced to you in response to RFP #1 were "meaningful." The minutes we provided to you show that FFA has separate meetings, legal proceedings, and still exists as a corporate entity. We also sent you FFA's corporate registration statements and certificate of good standing from the State of New York. Your response to receiving these documents is, from HSUS' perspective, simply

unbelievable. You state that the minutes we provided demonstrate that FFA directors are officers or directors of HSUS. You knew this already. Moreover, this information is available to anyone searching HSUS' website. Even if it was not, you received detailed information regarding the so-called "merger" with HSUS during your 2005 deposition of Michael Markarian, in which he explained the nature of the "merger" between FFA and HSUS, that both he held offices and positions in both organizations, that the staffs of the two organizations were partially joined, and that the two organizations shared common accounting and payroll resources but otherwise remained separate (including having separate boards and board meetings, and each carrying on litigation specific to itself). You also repeat a mischaracterization I neglected to correct earlier from your letter August 9, 2007, in which you state that "it is ironic that HSUS seeks to convince us that it and the FFA are distinct entities by producing (and thereby asserting control over) documents that should only reside in the files of the FFA." When we first agreed to try and produce these documents for you at the August 2, 2007 meet and confer, you were told by both my colleague Chris Dugan and by me that HSUS did not control these documents, that the documents were in control of the FFA, and that as a courtesy we would try to obtain copies from the FFA and send them to you. I cannot help but point out that had you made better use of the discovery permitted in your litigation with the FFA against your party opponent, you could have obtained these documents directly from them. Indeed, many of the documents you seek from us you could have gotten from public sources or from your opposing parties in that litigation.[1] As a third party to the litigation, it is not HSUS' job to correct your litigation missteps. In short, the only irony in this situation is that Ringling Brothers would try and use any and all cooperative steps that HSUS takes to try and improve the overall discovery atmosphere against it.

That having been said, now that tempers have somewhat cooled, I am writing this letter because you are correct about two things: Judge Sullivan's most recent order makes clear that payments made by parties to your litigation to Tom Rider retain some relevance. It is also clear that you are entitled to know that you are litigating against a party that actually exists as a separate entity. With respect to the latter, if there are reasonable additional documents (such as HSUS' separate incorporation and registration statements, meeting minutes, and the like) that would satisfy you that the corporate formalities between the two entities are being observed, we remain willing to discuss getting them to you. These discussions should take place by e-mail or letter, should include mutual discussion of the appropriate timeline, and should avoid unnecessary and unwarranted references to "dilatory tactics" of HSUS. HSUS is aware of your position on the issue, has never thought it merited a response, and if you have any further accusations to make regarding the amount of time it takes HSUS to compile information, you should direct them to the magistrate, who can receive them more dispassionately than HSUS.

With respect to payments made to Tom Rider, prior to receiving your last letter HSUS conducted a search of its accounting records to determine if any payments have been made to Tom Rider. In addition, based on our discussions at the August 2, 2006, meet-and-confer in which you had expressed concern that payments to Tom Rider were being funneled through the WAP, HSUS has recently finished conducting a similar search for payments to the Wildlife

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1 An additional document, which is also publicly available, that was sent to us by FFA in response to our requests arrived recently and is enclosed with this letter. It is the FFA's Form 990, dated November 20, 2006 and is submitted as additional proof that the FFA remains a viable, separate entity from HSUS.

Advocacy Project ("WAP"). A review of the check register has shown that no checks were issued to Tom Rider during the time period from 01/00 through 08/07. I am informed that if any payment had been made to Tom Rider from HSUS, it would have been reflected in this register.

With respect to the WAP, a search of the check register from 01/00 to /08/07 shows a total of $17,000 being transferred from HSUS to the WAP. Specifically:

Invoice Date	Amount
12/30/02	$1,500.00
5/1/03	$4,000.00
3/1/05	$500.00
4/4/05	$2,000.00
5/24/05	$3,000.00
4/4/06	$2,000.00
7/17/06	$2,000.00
3/22/07	$2,000.00

In your letter of letter of August 9 you indicate uncertainty of understanding with respect to the phrases "relate to" or "have been made for the benefit of" Tom Rider that I included in my letter of August 9. This was not intended to be legalese. In the meet and confer, we discussed Ringling Brother's concern that money had gone from HSUS either directly to Tom Rider or to the WAP, which might have then funneled the money to Tom Rider. HSUS' accounting department has to have concrete terms to search through the database of check requests – they cannot search the files for payments that "relate to," "have been made for the benefit of" or "made for" Tom Rider or WAP. They can search the database for any mention of the words WAP or Tom Rider – this was what I meant by payments that "relate to" Tom Rider or WAP in my earlier letter. They have done so, and any request that mentions Tom Rider or WAP is listed above.

HSUS is willing to submit a sworn declarations that it conducted the above searches and that the results are accurately reflected above. With respect to RFP #2, HSUS' has done a search of the detailed minutes of its board meetings going back to January, 2000, and found no mention of the litigation. HSUS is again willing to provide a sworn declaration to this effect if necessary.

We view this information as exceeding the information we have a duty to produce under the circumstances. The court's August 27, 2007, orders make clear that wide ranging discovery of the financial matters of the Plaintiffs, other than as relates to payments to Tom Rider, is not relevant. See Docket No. 178, at 9. It necessarily follows that wide-ranging discovery into the finances and internal operation of a third party is also not relevant. Moreover, the court's order granting Ringling Brothers' discovery into WAP's finances permits the WAP to redact the names and identifying information of donors that are not parties to the litigation. See id. at 8. It would make little sense for the court to permit WAP to engage in this redaction if Ringling Brothers' could permissibly seek the same information by issuing subpoenas directed at all of the likely donors, thus seeking the same information from the other end.

The court's order explains that you are entitled to information concerning payments made to Tom Rider, and the role of the WAP and the FFA in making those payments. See id. at 8. You are also plainly entitled to information sufficient to determine that HSUS and FFA remain separate entities. HSUS believes that the documents already provided to you, combined with the offered affidavits if necessary, should be sufficient to establish these points. If reasonable additional information would further assist you, we are willing to engage in further discussions on the subject.

Sincerely,

Matthew Stowe

enclosure(s)(1)

Atlanta
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Brussels
Chicago
Hong Kong
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Los Angeles
Milan
New York
Orange Country
Palo Alto
Paris
San Diego
San Francisco
Shanghai
Tokyo
Washington, DC

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December 13, 2007

VIA COURIER

George Andrew Gasper
Fulbright & Jaworski L.L.P.
Market Square
801 Pennsylvania Avenue, N.W.
Washington, District of Columbia 20004-2623

Re: Humane Society

Dear George:

Please find enclosed documents responding to the Court's order of December 3, 2007. As requested in your motion with respect to RFP 1(a), we have enclosed a copy of the November 22, 2004, Asset Acquisition Agreement between the Humane Society of the United States and the Fund for Animals ("FFA"). This agreement was designed from its inception not to affect a merger between the two organizations, which as we have explained previously is a combination whereby one of the constituent corporations remains in being, absorbing in itself all the other constituent corporations, which cease to exist. *See, e.g.,* 20 **Am. Jur. Proof of Facts** 2d 609. Significant real property in three different states, including land, buildings, and other facilities is retained by the FFA, as is the FFA's board of directors, although it is reduced in size and reconstituted. The FFA's board is active and has meetings, and in conjunction with the FFA we have produced minutes of those meetings to you previously.

In addition, this agreement was not designed to set forth in detail the operating relationship between the two organizations. That operating relationship was intended to be developed over time by the officers and boards of the two organizations. As a result, there have been some *de facto* course-of-dealings modifications to the Asset Acquisition Agreement over time. For example, even though section 1.1(i) and 10.6 of the Asset Acquisition Agreement grants HSUS the right to bequests left to the FFA, a subsequent *de facto* understanding between the boards has resulted in such bequests remaining with the FFA. As we have explained previously, the best documentation of the operating relationship between the two organizations is the deposition of Michael Markarian, especially at pages 25-37 and 60-62.

In addition, please find enclosed records of payments made to the Wildlife Advocacy Project ("WAP"). Most are payments made by the FFA after the Asset Acquisition Agreement with HSUS, when the HSUS accounting department started processing payments made by the Fund. Also enclosed are a couple of grants to WAP directly from HSUS (as opposed to grants from the Fund that went through the HSUS accounting department) that pre-date the 2004 Asset Acquisition Agreement (dated 12/30/02 and 5/1/03). These payments are grants to WAP for use as part of a manatee-protection campaign in Florida, and are the only payments from HSUS directly to the WAP (as opposed to HSUS processing check requests from the FFA).

Also enclosed is the FFA's latest Form 990, which has recently become available.

Other than the enclosed documents and those voluntarily produced previously, HSUS confirms that it:

1. Does not have in its custody and control any documents referring to the litigation that were created by parties to the litigation. HSUS observes that there are some press releases and other informational materials referring to the litigation on the FFA's website, but the website is an FFA asset and HSUS has no control over its content.

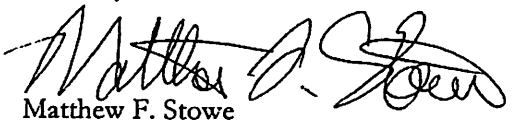
2. Does not have in its custody and control any documents relating to any funding of Tom Rider's educational/litigation activities by any party to the litigation, any attorney representing a party, or the Wildlife Advocacy Project.

3. Does not have in its custody or control any documents that refer, reflect, or relate to Tom Rider.

4. Does not have any custody or control any other documents relating to the WAP covered by Judge Sullivan's order.

Please call me at 202-551-1771 if you have any questions.

Sincerely,



Matthew F. Stowe
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosures