

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Norfolk Division)**

FELD ENTERTAINMENT, INC.,	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2:08mc00004
	:	
PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS,	:	
	:	
Defendant	:	

**BRIEF IN SUPPORT OF DEFENDANT PETA’S MOTION IN THE ALTERNATIVE
TO TRANSFER THIS MATTER FOR FORUM *NON CONVENIENS***

The doctrine of forum *non conveniens* is well-developed in the District of Virginia. “The doctrine of forum *non conveniens* allows a court to decline jurisdiction if the forum is an inconvenient one for the action.” *Dunham v. Hotelera Canco S.A. de C.V.*, 933 F.Supp. 543, 553 (E.D.Va. 1996) (citing *Hodson v. A.H. Robins Co., Inc.*, 528 F. Supp. 809, 817 (E.D.Va. 1981)). If a more convenient federal forum exists, then the court may transfer the action pursuant to 28 U.S.C. § 1406(a).¹ *Id.*

As recounted by the *Dunham* Court:

The doctrine of forum *non conveniens* was addressed by the Supreme Court in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 91 L. Ed. 1055, 67 S.Ct. 839 (1947), and the Court set out public and private interest factors to be considered in determining whether application of the doctrine is

¹Section 1406(a) states:

“(a) The district court of a district in which is filed a case laying venue in the wrong **division** or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or **division** in which it could have been brought.” (Emphasis added.)

Here, PeTA is seeking transfer from the Norfolk Division to the Alexandria Division.

appropriate. Among the private interest factors recited by the *Gulf Oil* Court are:

Relative ease of access of sources of proof; availability of compulsory process for attendance of unwilling witnesses; the possibility of view of premises, if view would be appropriate to the action; and all of the practical problems that make trial of a case easy, expeditious and inexpensive. *Gulf Oil, supra*, at 508.

Dunham, 933 F. Supp. at 553-554.

The Alexandria Division – not the Norfolk Division – is the most convenient federal forum in this case. At the outset, it is obvious that the case that Feld Entertainment, Inc. (“FEI”) has filed against PeTA in this Court is not an ordinary civil “action” headed for trial. It is only a piece of ancillary litigation arising out of the action that the ASPCA has filed against FEI in the District of Columbia. The only “action” before this Court is the resolution of FEI’s Motion to Compel.

With this procedural posture in mind, it is clear that most of the private and public interest factors have less force in the context of this case. Presumably, FEI filed its Motion to Compel in this Court because PeTA is headquartered in Norfolk. However, the resolution of FEI’s Motion will not require witnesses or an evidentiary hearing before the Court. Only the parties’ counsel will appear to argue the motion.

The subpoena issued to PeTA in the underlying case has virtually no connection with the Norfolk Division of the Eastern District of Virginia. PeTA is also filing a motion to transfer this matter to the District of Columbia District Court in the underlying action or, in the alternative, to stay this action while the District of Columbia District Court rules on a Motion for Protective Order filed there by PeTA. This Motion for Change of Venue to the Alexandria Division should be considered if the Court does not grant PeTA’s Motion to Transfer the matter to the District of Columbia or to otherwise stay the matter pending resolution of a protective order on the underlying subpoena in the District of Columbia.

The underlying facts are compelling why the matter should be transferred, at least to the Alexandria Division of this Court.

The subpoena sought to be compelled issued from a case pending in the District of Columbia by a District of Columbia lawyer for the defendant in that case. Defendant has offices in the Washington Metropolitan Area (in Fairfax County, Virginia). Defendant's lawyer, Mr. Gasper, has his offices in the District of Columbia. Mr. Gasper issued the subpoena from his D.C. offices, and signed the subpoena. The subpoena is issued not from a specific Division of this Court, but merely recites "Eastern District of Virginia." Rule 45 apparently does not specify the division in which the matter is to be heard.

Indeed, all lawyers in the underlying case have their offices in the District of Columbia. The lawyer for plaintiffs (ASPCA, *et al.*) is in a small firm and it is likely that if this matter is heard in Norfolk, will not be able to participate directly. Although PeTA is located in Norfolk, no PeTA witnesses are contemplated to appear in this matter and, if needed, they would go to Alexandria or the District of Columbia. As pointed out above, the other party to this proceeding has its offices in Fairfax County, Virginia.

After PeTA accepted service of the subpoena, it was referred to its long-term counsel, Philip Hirschkop. Mr. Hirschkop has handled PeTA's outside litigation for over twenty-five years, has extensive dealings with FEI going back many years, and has a unique background to handle this matter. He is a solo practitioner with offices in Alexandria, Virginia. It is also a hardship for him, as it is for plaintiffs' counsel in the underlying ASPCA case, to appear in the Norfolk Division and file things in the Norfolk Division, and particularly if there is more than one hearing.

All documents produced so far were supplied to Mr. Hirschkop in Alexandria by PeTA, and produced from Alexandria to Mr. Gasper in Washington, D.C. Any remaining paper documents are now under Mr. Hirschkop's control in Alexandria.

As pointed out, the issues in the case pertain to legal rulings by two judges in the District of Columbia. The records for that case are in the court in the District of Columbia or in the plaintiffs' or defendant's attorneys' offices in the District of Columbia.

Further, the economics of transferring this matter would strongly favor referring the matter to the Alexandria Division. If heard in Norfolk, counsel for plaintiffs, defendant FEI, and non-party PeTA, all located in the Washington Metropolitan Area, will have to make one or more trips to this division.

For all the foregoing reasons, PeTA moves that if this Court: (1) will not transfer this matter to the trial court in the District of Columbia, or (2) will not stay the matter pending a hearing on a protective order in the trial court District of Columbia, then this Court grant a change of venue to the Alexandria Division of this Court.

Respectfully submitted,

By _____ /s/
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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of February, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

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And I hereby certify that I will mail the document by U.S. Mail to the following non-filing user:

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