

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

**FELD ENTERTAINMENT, INC.**

**Plaintiff,**

**v.**

**PEOPLE FOR THE ETHICAL  
TREATMENT OF ANIMALS,**

**Defendant.**

**Case No.**

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**FELD ENTERTAINMENT'S MOTION TO COMPEL DOCUMENTS SUBPOENAED  
FROM PETA**

**EXHIBIT 7**

**FULBRIGHT & JAWORSKI L.L.P.**

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December 7, 2007

**VIA FACSIMILE AND FIRST-CLASS MAIL**

Philip J. Hirschkop  
Hirschkop & Associates, P.C.  
908 King Street, Suite 200  
Alexandria, VA 22314-3013

Re: ASPCA v. Feld Entertainment, Inc. (Subpoena *duces tecum* to PETA)

Dear Mr. Hirschkop:

Thank you for speaking with me on December 5, 2007 regarding the above-referenced subpoena. This letter will confirm our discussions concerning PETA's proposed response to the subpoena and will set forth FEI's positions on the various issues that remain.

1. Documents Concerning the Credibility of Witnesses (Request Nos. 1-4)

You stated that PETA is searching for documents concerning the nine individuals specifically mentioned in FEI's subpoena (Tom Rider, Archelle Hundley, Robert Tom, Margaret Tom, James Stehcon, Glenn Ewell, Garrison Christianson, Kelly Tansy, and Gerald Ramos). You stated that PETA is scheduled to give you all "financial records" concerning these individuals and all "communications with" them by Monday, December 10, 2007. You stated that you intend to produce all of the "financial records" and to review the communications to determine whether they will be produced as well. Finally, you stated that you expect to produce documents by the end of next week (i.e., December 14, 2007).<sup>1</sup> It is, of course, our position that *all* documents concerning the nine individuals referenced above must be produced.

In addition, I asked you whether PETA was searching for documents concerning its payment(s) to the Wildlife Advocacy Project ("WAP") as part of its search for all documents concerning payments to Mr. Rider. You indicated that you were aware of at least one payment to WAP and that you would ask PETA to search for documents concerning payment(s) to WAP.

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<sup>1</sup> You also requested that the parties execute a protective order prior to the production of documents, but I explained that the Court has already entered a protective order for all discovery produced after September 25, 2007.

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I also told you that we consider any video or photo taken by any of the nine individuals identified above to be responsive to the subpoena. You stated that you would ask PETA if any such videos or photos exist.

Finally, I also asked you whether PETA was searching for documents concerning Frank Hagan, another former FEI employee who is addressed by this subpoena (even though he is not named specifically). You stated that PETA already searched for files concerning Mr. Hagan in connection with a separate subpoena served by FEI's prior counsel. I explained that I am aware of that production but that PETA redacted information that has since been deemed relevant by the Court. Specifically, PETA has redacted information concerning the amount of money that has been paid by an animal advocacy organization to a witness in this case. In response to your statement that you would not advise PETA to conduct a new search, I told you that I would send you copies of PETA's prior production so that we could discuss whether you and PETA would be willing to lift the redactions. Accordingly, the redacted documents are enclosed for your review. Furthermore, there may have been payments to Mr. Hagan by PETA or communications with him after the date of PETA's initial document production on June 20, 2005 so there needs to be a search for documents generated after that date.

We will await your production of documents late next week. In connection with that production, please explain precisely any documents that concern the nine individuals identified above and that PETA refuses to produce so that we may seek the Court's assistance to resolve our disagreement. Please also state whether PETA will lift the redactions contained in the enclosed documents concerning Frank Hagan. If so, please provide unredacted copies of those documents at that time. If not, please provide PETA's authority for redacting such information.

2. Plaintiffs' Requests Concerning the Funding of this Lawsuit (Request No. 5)

You stated that Request No. 5 seems overbroad because you interpret it to request the production of all documents concerning PETA's fund-raising efforts related to FEI. I explained that your interpretation is not correct. Request No. 5 is limited to documents concerning requests for funding that were *made by plaintiffs, WAP, and/or plaintiffs' counsel* and that relate to this litigation and/or FEI and its current or former employees. In light of that explanation, you stated that you would discuss this request with PETA.

We will expect to receive by the end of next week, all documents responsive to this narrowly-tailored request.

3. Evidence Concerning FEI's Treatment of its Elephants (Request Nos. 6-7)

You stated that PETA will not permit FEI to review all of its videos and photographs concerning FEI or its elephants, but that you would consider requests for videos or photographs concerning specific "incidents" or dates. I explained to you that "all" videos and pictures concerning FEI's elephants are relevant because we must "prove a negative" in the underlying

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litigation. Specifically, videos and photos that show the lack of abuse are just as relevant as any videos and photos that PETA or plaintiffs allege to show abuse. You responded that the underlying litigation does not involve allegations that FEI uses bullhooks and hits its elephants all the time, thus, videos and photos that show no abuse would not disprove plaintiffs' allegations. I explained, however, that those are precisely the allegations that have been made under oath in connection with this case.

I also explained to you that we have reason to believe that PETA has given plaintiffs certain videos and photos. I believe you then confirmed our suspicion, at which time I stated that PETA is putting itself in a position that will be difficult to defend in Court. Specifically, PETA has given plaintiffs videos that they requested while denying FEI's request for the same. Although you stated that plaintiffs asked for specific videos, not "all" of them, I told you that it is not for PETA to decide which videos are relevant to this case and to grant or deny parties access to them based on PETA's interests in the underlying litigation.

Finally, you stated that we already got from plaintiffs all of the videos that PETA has given to plaintiffs. I explained, however, that we have no way of knowing whether plaintiffs have produced them all and that, even if plaintiffs have produced all of the videos they have received thus far, PETA and plaintiffs will not be permitted to surprise FEI at trial with materials that PETA has in its possession now but elects to wait until after the close of discovery to give to plaintiffs. Most importantly, however, I explained that it is not a sufficient response to FEI's inquiry that PETA has given some tapes to plaintiffs who allegedly have given them to FEI. It is not for PETA to determine which photos and videos concerning FEI's elephants will be produced or used in this litigation.

The parties have reached an impasse on the issue of whether FEI is entitled to "all" videotapes and photographs of its employees and/or animals. We will proceed, therefore, to seek the Court's assistance on this issue at the appropriate time.

With respect to Request No. 7, you stated that PETA and plaintiffs are operating under a mutual defense agreement and that, therefore, communications between the parties are privileged and will not be produced. We are unaware of any privilege that attaches to communications or documents exchanged between a party and a non-party. We will expect PETA to produce all documents responsive to Request No. 7 by the end of next week. If PETA persists in its refusal to produce such documents, please immediately provide the authority for PETA's privilege claim so that we may consider it carefully.

#### 4. Miscellaneous Points


At various times during our conversation you stated the following: (a) PETA paid a "living wage" to Frank Hagan, (b) you would be "shocked" if plaintiffs call Glenn Ewell as a witness in this case based on your dealings with him seven or eight years ago, (c) PETA paid for Tom Rider's expenses to testify in New York, (d) you are aware that Garrison Christianson has

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testified before the USDA, (e) plaintiffs, their counsel, and/or attorneys for Archelle Hundley and Mr. and Mrs. Tom requested from PETA documents concerning Tom Rider, Ms. Hundley, and the Toms, and (f) PETA provided to plaintiffs, their counsel, and/or attorneys for Archelle Hundley and Mr. and Mrs. Tom documents concerning expenses being paid for Mr. Rider and "pay stubs and expense vouchers" concerning Ms. Hundley and the Toms.

Please let me know immediately if any of the above is incorrect. Please also let me know if PETA intends not to produce documents at the end of next week.

Very truly yours,

  
George A. Gasper