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The lawsuit circus

Animal-rights legal misconduct

By: Walter Olson – January 6th, 2013

Visit the online store at ASPCA.org, and you'll be invited to make a symbolic donation enabling the animal-welfare charity to carry on one of its beloved activities. Give $20, and you symbolically buy antibiotics for an injured animal. Spend $50, and care for a rescued horse; $200, and cover a spay or neuter operation.

There's no checkoff for "$9.3 million to compensate opponent for litigation abuse." But maybe there should be.

Last month, the ASPCA agreed to hand over that impressive sum to the owners of the Ringling Bros.-Barnum & Bailey circus after a judge ruled that it could be sued for alleged misconduct during 10 years of litigation against the circus.

The case began with an ex-employee's charges that Ringling was mistreating the Asian elephants that make up its most famous attraction. As it happened, the courts never ruled on the merits of those charges, finding instead that the Endangered Species Act did not give any of the human plaintiffs adequate legal standing to sue.

But by the time that ruling was upheld in 2011, the case had turned into a bit of a circus itself, as the jungle denizens we call litigators began to indulge their own tendency to stomp and bellow.

The only hope for securing the needed legal standing, as it developed, was for a human to testify he'd been personally traumatized by witnessing the alleged abuse. But when the ex-Ringling employee recited such symptoms, Judge Emmet Sullivan didn't deem his testimony credible.

What's more, the ASPCA and other animal-rights plaintiffs and their lawyers turned out to have paid the man at least $190,000 over the course of the suit.

As lawyers are supposed to know, payments to a "fact witness" need to be handled with great ethical care, when allowed at all. In Judge Sullivan's view, the groups had not only intended the regular payments to keep the witness engaged in the lawsuit, but had also disguised them under various misleading headings such as "media and educational outreach," and been less than candid with the court about this purpose.

Last July, the judge let circus owner Feld Entertainment proceed with its countersuit alleging litigation abuse. Now the ASPCA has opted to pay rather than fight that countersuit.

Not so incidentally, the ASPCA (like its rival Humane Society of the United States, which declined to settle and remains a defendant in the countersuit) functions mainly as a national advocacy organization — not a vehicle for supporting local shelters and rescue groups, which are mostly on their own financially. Donors, not all of whom are necessarily aware of that fact, collectively give the ASPCA more than $100 million a year — which leaves the group big enough to weather this setback.

Still, $9.3 million would buy an awful lot of flea collars, and that the group was willing to spend so much to settle suggests it saw a significant potential for liability.

This makes the second time in a month that a high-profile nature "charity" has fallen on its face in the courtroom. Last month, a Maryland federal judge tossed a much-publicized lawsuit filed by Waterkeeper Alliance, the litigation group associated with Robert F. Kennedy Jr. and popular with Hollywood types, against a family chicken farm on the Eastern Shore.

After Waterkeeper's local agent had spotted a pile of "biosolids" — that's a euphemism — out in the open on the farm, the group raced to file a suit claiming Clean Water Alliance violations for which it said Perdue should be liable, because it had contracts with the farm to raise chickens.

Turned out the biosolids weren't chicken manure after all and were lawfully on the property. The judge proceeded to lambaste Waterkeeper for pressing forward even after the legal and factual shakinessof its case should've been clear, with a suit that amounted to little more than a steaming pile of you-know-what.

You might wonder why suing people counts as the sort of charitable endeavor deserving of tax deductibility. Good question. Not until 1970 did the Treasury Department, in response to a big PR campaign, decide that "cause" litigation as an activity deserves charitable status.

Spearheading that PR campaign was none other than the American Bar Association: What more authentic way to express the benevolent spirit of charity, after all, than to create more jobs for lawyers?

Maybe it's time to reconsider.