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October 19, 2004

**Delivered By Hand**

Eugene D. Gulland  
Joshua D. Wolson  
Covington & Burling  
1201 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Re: ASPCA et al. v. Ringling Bros. et al.  
Civ. No. 03-20006 (EMS)

Dear Mr. Gulland and Mr. Wolson:

Pursuant to Rule 37(a), this letter is intended as plaintiffs' initial good faith effort to confer with defendants (also referred to as "Ringling") regarding their failure to provide discovery in response to Plaintiffs' First Set of Requests for Admission, Interrogatories and Requests for Documents ("First Discovery Requests"). As further discussed below, defendants' responses to this discovery were woefully inadequate in almost every respect, making it extremely difficult for plaintiffs to fully prepare their case, and to provide their expert witnesses with important relevant information that is needed to prepare the expert reports, consistent with the requirements of Rule 26(a)(2)(B), Fed.R.Civ.P.

In addition, because defendants did not "identify" the records requested by plaintiffs, as defendants were specifically directed to do in many of plaintiffs' Interrogatories, and defendants' document production was not categorized in any useful way, it has taken substantial time for us to prepare this letter to provide a meaningful basis for us to pursue the discovery to which plaintiffs are entitled, either by conferring with you, or by means of a motion to compel.



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In response to plaintiffs' Document Request No. 4, for "all documents and records that in any way concern or relate to Tom Rider," defendants objected that the request "is overbroad because it is without limitation as to time." Defendants have produced very few documents regarding Tom Rider. Please be advised that unless and until all records responsive to this request are produced, plaintiffs will not make Mr. Rider available to be deposed by defendants.

Defendants have not produced any records in response to plaintiffs' Document Request No. 6 for records about defendants' advertising and public relations for the circus, the copy for such advertising and public relations, the amount of money spent on such advertising and public relations, etc. However, such information is clearly relevant to defendants' credibility and bias, and the credibility and bias of their witnesses, and may clearly lead to the discovery of admissible evidence bearing on defendants' defenses in this action. It is also relevant to the issue of whether defendants are engaged in a "commercial activity" within the meaning of the Endangered Species Act, which is relevant to both the claims and defenses in this action.

Defendants have objected to the production of all records requested in plaintiffs' Document Request No. 7, even though all such records are clearly relevant to this action.

Defendants have also clearly failed to provide all records that are responsive to Document Request No. 8 concerning the elephants' medical records, even though all such records are highly relevant to this case. For example, there are no such records at all for either Riccardo or Lecheme, nor are there such records for other elephants identified in USDA inspection reports, including "Luke," "Roxy," and "Bunny;" for many other elephants, there are no records before 1999 or after 2002 or 2003. In addition, as to the scant medical records that were produced, they appear to be extremely incomplete, and provide only minimal information concerning the elephants' health status. In addition, there are no medical records concerning the health of five elephants after they gave birth at defendants' "Center for Elephant Conservation," including post-partum health, interactions with their offspring, including problems with attachment, nursing, or weaning, and no records concerning what defendants themselves have referred to as the "separation process." Likewise, there are no corresponding medical or other records regarding the offspring. For example, other than a single videotape provided by defendants, there are no records regarding the birth of Riccardo, nor, as claimed in Ringling's August 6, 2004 press release, the fact that Riccardo's mother, Shirley, "rejected" him at birth. In addition, although a record numbered Feld 0839 refers to the fact that an elephant named Seetna was euthanized during labor, there is no documentation concerning what happened to the fetus. The records produced are also incomplete as to testing for tuberculosis, and the results of such tests.


Defendants have refused to produce records in response to Document Requests Nos. 9 and 10, concerning its conservation of Asian elephants in the wild, even though such information is clearly relevant and calculated to lead to the discovery of admissible evidence bearing on

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Sincerely,



Katherine A. Meyer



Kimberly D. Ockene

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December 22, 2004

**By Facsimile and First Class Mail**

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

Re: ASPCA, et al. v. Ringling Bros. et al., Case No. 03-2006 (EGS)

Dear Josh:

This letter responds to your December 3, 2004 letter summarizing our November 15, 2004 meet and confer discussion regarding our discovery disputes.

**Identification of Documents**

You are correct that we acknowledged the defendants' decision to produce documents in the manner in which they were kept in the ordinary course of business, rather than categorizing them by Request. We simply emphasized this point to explain why it took us a while to ascertain what had not been produced. Nevertheless, we do reserve our right to compel responses to the interrogatories that specifically requested identification of documents. This is distinct from the issue of the manner in which you have produced the documents.

**Relevant Time Frame**

Plaintiffs stand by their request for documents from 1994 to the present, and will not narrow this request to "specific discovery requests" as you suggest. As we explained, documents dating back ten years (or more) are highly relevant to plaintiffs' claims that defendants are engaging in an ongoing pattern and practice of unlawful activity. Defendants have objected to the time-frame on the grounds that it is overbroad and unduly burdensome, but have not explained why that is the case. During our meeting you stated that defendants selected the cut-off date of 1996 simply because it "seemed to be easiest for the client," without any contention that it would actually be difficult or "unduly burdensome" to obtain documents back to 1994. As we stated during our meeting, unless defendants produce documents using the reasonable, 10-year time frame



Document Request No. 5

We appreciate your agreement to search for additional records related to Tom Rider. As you know, you are required to produce all records related to Mr. Rider that are in your client's custody or control, including all such records that are in your or your clients' possession, or identify in a privilege log any such records as work product or otherwise privileged. If we do not receive any such additional records or a privilege log indicating that the requested records are privileged, we will assume that no such responsive records exist. We also appreciate your statement during our meeting that defendants have no intention of "surprising" plaintiffs during a deposition with documents that plaintiffs have never seen. However, we reiterate that until defendants have complied with this Request in full, we are not prepared to make Mr. Rider available for a deposition. Alternatively, we would be willing to accept a stipulation that you have no such records and, accordingly, will not use any such records in this case for any purpose.

Document Request No. 6

Plaintiffs stand by their request for these documents, and will move to compel their production.

Document Request Nos. 9-10

We are not willing to accept documents that defendants believe are "sufficient" to identify the projects in which defendants have engaged to "conserve elephant habitat in the wild in Asia" for purposes of satisfying Document Request No. 10. Rather, we have requested "all records concerning each project that Ringling has undertaken since 1994 to conserve elephant habitat in the wild in Asia." We also continue to insist that defendants provide information responsive to Request No. 9 concerning the amount of money defendants have spent on the conservation of habitat in the wild for Asian elephants for each year since 1994.

Document Request No. 11

Plaintiffs stand by their request for the financial information sought in this Request, as such information clearly bears on the credibility of defendants' witnesses, as well as whether defendants are engaged in a "commercial activity" for purposes of the Endangered Species Act. In addition, it is our understanding that defendant Feld Entertainment owns Sells-Floto, which provides the concessions for the Ringling Brothers circus, and hence defendants must also respond to this discovery request with respect to Sells-Floto.

Document Request Nos. 13-23

We reiterate that, because defendants refused to "identify" records as requested in Interrogatories 1, 2, 6, 8, 9, and 10-15, in some cases it is difficult for plaintiffs to

ascertain whether defendants have produced any, let alone all, records that are responsive to Document Request Nos. 13-23. We therefore note again that plaintiffs reserve their right to compel responses to the "identification" instruction in the Interrogatories. Alternatively, plaintiffs would accept a stipulation that defendants have produced all documents in their clients' custody or control – or stated that such documents are privileged – that are responsive to Document Request Nos. 13-23.

Document Request No. 24

We did agree to attempt to obtain our own samples of the products defendants have identified. However, we reserve our right to compel production of such samples from defendants, should we be unable to do so.

\* \* \*

We look forward to receiving additional discovery responses from defendants. We note that, to date, more than five weeks after our meet and confer meeting at which you agreed to search for additional documents responsive to a number of our discovery requests, we have received only a handful of additional documents from you.

It is now clear that plaintiffs will be filing a motion to compel with respect to some of their discovery requests. Because Judge Sullivan has asked us to inform him of the scope of that motion before we file it, we intend to do so at the January 11, 2005 status conference. Therefore, if defendants have additional records to provide us, we request that you do so before January 11. In addition, we believe it would be prudent for the parties to present Judge Sullivan with a new proposed pre-trial schedule on January 11, as well. We will send you a proposed schedule as soon as possible after the holidays for your review.

Please let me know if you have any questions about this response to your letter.

Sincerely,

  
Kimberly Ockene