

## **PLAINTIFFS' EXHIBIT 9**

To Plaintiffs' Opposition to Defendant Feld  
Entertainment, Inc.'s Motion for Leave to Amend  
Answers to Assert Additional Defense and Rico  
Counterclaim

Civ. No. 03-2006 (EGS/JMF)

**THE SOUTH BEACH DIET ONLINE**      **What's your weight-loss goal?**

0-10 lbs      10-20 lbs      20-30 lbs      over

# TIME

FROM THE MAGAZINE

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## Who Belongs in the Zoo?

IT MAY BE THAT SOME ANIMALS JUST CAN'T BE KEPT HUMANELY IN CAPTIVITY. ZOOS MAY HAVE TO REINVENT THEMSELVES--ONCE AGAIN

By MICHAEL D. LEMONICK

Standing alone in a small enclosure, a 21-year-old Asian bull elephant named Billy seems oblivious to the two dozen schoolchildren who press against a chain-link fence to get a closer look. He bobs his massive head up and down and transfers his considerable weight from one side to the other. His trunk unfurls toward the blue plastic cylinder that has been provided for him to play with. Occasionally Billy lumbers over to another part of the yard--his massive gray body, wrinkled skin and billowy, fanlike ears intimidating yet at the same time irresistible. Some of the kids have never been this close to a real, live elephant, and their gasps and laughter convey the consensus: he's cool!

But to animal-rights activists, animal-behavior experts and even some zoo officials, Billy's situation is very uncool. In the wild, elephants roam as much as 30 miles a day, snacking on lush foliage, bathing in water holes and interacting socially with other elephants in groups of up to 20. At the Los Angeles Zoo, Billy has had just under an acre on which to roam. After a \$39 million upgrade scheduled for completion in 2009, he will share 3.7 acres (about three football fields) with two companions.

That's generous by today's standards, but critics say it's still too little to give an elephant adequate exercise. Living in such confinement, elephants are prone to arthritis, foot problems and even premature death. Billy's head bobbing, they contend, is typical of elephants in distress and probably results from an inadequate physical environment. "I've come to the conclusion after many years that it is simply not possible for zoos to meet the needs of elephants," asserts David Hancocks, an outspoken zoo consultant and former director of the Woodland Park Zoo in Seattle.

He's not alone. Over the past five years, major zoos across the country--San Francisco, Chicago, Detroit, Philadelphia, the Bronx Zoo in New York City--have quietly made the decision to stop exhibiting elephants altogether, some as soon as they can find homes for the animals and others after the deaths of the ones they have. For zookeepers, it's a continuation of

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a reform movement that began a generation ago and swept through most major U.S. zoos. The old concrete-and-steel cages that resembled prisons for animals are mostly gone. In fact, the cages themselves are mostly gone. The barriers between people and animals today consist largely of moats and unobtrusive ramparts that give the exhibits the feel of miniature wild habitats.

But the reform movement, say critics, didn't go far enough, and those natural-looking habitats are just an illusion created to enhance the visitors' experience. "From the animals' point of view," says Hancocks, "they are not better than they were when they were in cages. It's all done for theatrics."

Hancocks goes further than most zoo professionals would, but there is growing agreement that zoos are on the verge of yet another wave of transformation. This time the question is whether some animals--not just elephants but also giraffes, bears and others--belong in zoos at all. "On the one hand," says Ron Kagan, executive director of the Detroit Zoological Society, "people want to see the signature animals like elephants, gorillas and giraffes. But we believe that the American public wants us to create facilities for these animals only if we can provide them with a good life." It was that calculus that last year led Kagan to eliminate an elephant exhibit on humane grounds.

One key consideration was Detroit's harsh winters. Although elephants can tolerate cold weather, standing on snow and ice increases the risk of slipping and falling. The only alternative was to have the animals spend most of the winter months indoors, where hard concrete led to foot problems and boredom. Many zoos, like the one in San Diego, have phased out certain species, like the moose, that do better in other climates. "Bringing cold-weather animals into the warm Southern California climate is a bad business decision and a waste of precious resources," says Larry Killmar, the zoo's deputy director of collections.

That's part of a national trend. Zoo directors routinely phase out species that don't thrive in the local environment. The ultimate example: the Arizona-Sonora Desert Museum, outside Tucson, which houses 300 animal species and 1,200 kinds of plants on 21 acres of desert. Unlike conventional zoos, the museum doesn't even try to take on species that are not native to the area because its mission is not to give visitors a snapshot of wildlife everywhere but to give the full story of a single ecology. "It has a completely different mind-set than most zoos," says Hancocks.

The largest zoos can't really afford to adopt that approach. The San Diego Zoo, for example, draws some 3 million visitors a year and like many big city zoos is a major contributor to the local economy. Zoo officials consider it part of their mission to inspire visitors to care about wildlife and the habitats that nurture it. "We're trying to engage people emotionally," says Andy Baker, senior vice president for animal programs at the Philadelphia Zoo, the nation's oldest. "It's much less about natural history and life cycle these days and more about empathy."

That being the case, Philadelphia, like most major zoos, is not about to transform itself into a place that shows only native fauna--black bears, raccoons, wild turkeys and chipmunks, say. Indeed, the institution has just opened up Big Cat Falls, a flashy exhibition showcasing lions, pumas, jaguars, leopards and tigers. Although the exhibit has drawn fire from animal activists, many experts believe that those animals can do fine in captivity, since even in the wild they spend much of their time sitting around digesting their last meal. Hancocks, for one, thinks gorillas and other primates can reasonably be kept in zoos. "If you can give them an intellectual environment," he says, "so they are using their minds and manipulating their fingers, they can be satisfied."

Bears, however, are a different story. Many experts believe they don't belong in zoos at all. They're too curious and exploratory to be satisfied by an artificial environment. But it's not clear what you do with a bear that's already in captivity. Animal-rights activists have long complained about the highly ritualized, seemingly neurotic behavior of Gus, the polar bear in New York City's Central Park Zoo. "Though Gus is perfectly healthy, people tell us to send him back," says Alison Powers, communications director of the Wildlife Conservation Society, Central Park's parent institution. "But Gus wasn't ripped out of the Arctic. He came from Ohio. He wouldn't stand a chance in the wild."

Many animal-behavior experts also oppose zoo confinement for giraffes, gazelles and other animals designed by evolution to run freely across miles of savannah. "What you see in zoos is just completely unnatural," says Marc Bekoff, an animal behaviorist at the University of Colorado. But most of all, Bekoff and his colleagues oppose the constraints imposed on elephants. "The only place I have seen truly happy elephants in captivity," says Hancocks, "is in the two elephant sanctuaries in the U.S. [in Tennessee and California]. Once you've seen how wonderful their lives are there, you realize whatever zoos do is doomed to be inadequate."

Hancocks' solution? A few national zoos in appropriate climates that tourists from all over the country can visit. "There are two Disney parks," he says. "That's enough for America's children. Similarly, two really good spots for elephants in the country would be sufficient."

A model for what such a spot might look like--and one that animal-behavior experts routinely cite with approval--is the zoo in Oakland, Calif., where four elephants live on 6 acres. "Our philosophy is to just let the elephants be elephants as much as possible," says executive director Joel Parrott. "That means giving them space, not dominating them, and working with them in ways that do not use physical discipline." The animals spend their days socializing, taking dust baths, swimming, eating and wallowing in the mud.

Like Parrott, Baker does not buy the idea that elephants can't be housed humanely--only that his facility doesn't have the money to do so. "I think there's still a huge amount we don't know about what animals need and want," he says. "Could we reach the point someday where we as a

community say, We don't think this is a good species to keep in a zoo environment?" That option is always open. But given the pleasure zoos provide--especially for those kids pressed up against the chain-link fence--it's not one to be taken lightly.

With reporting by Reported by Jeanne McDowell/ Los Angeles, David Bjerklie/ New York

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