

PLAINTIFFS' EXHIBIT 23

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)

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL PLANT HEALTH INSPECTION SERVICE
INVESTIGATIVE AND ENFORCEMENT SERVICES
WESTERN REGION
FORT WORTH, TEXAS

REPORT OF INVESTIGATION

Violator(s): FELD ENTERTAINMENT, INC. Lic. # 52-C-0137
d/b/a Ringling Bros. and Barnum & Bailey[®]
8607 Westwood Center Drive
Vienna, VA. 22182
Telephone no. (703) 448-4000 or 448-4065

Case Number: TX99237-AC

Violation(s): 9 CFR, 2 and 3

Investigator: David Green
c/o USDA, APHIS, IES
P. O. Box 6258
Fort Worth, Texas 76115 -6258
(817) 885-6922

Date: September 1, 1999

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SYNOPSIS

Violator(s): Feld Entertainment, Inc., is corporation based at Vienna, VA., which is USDA licensed. Feld Entertainment currently holds USDA exhibitors license number 52-C-0137.

Business

Information: Feld Entertainment, Inc., is an entertainment corporation and the parent company of Ringling Bros. and Barnum and Bailey®. Chairman and Chief Executive Officer is Kenneth Feld; President and Chief Operating Officer is Stuart Snyder, and Julie Alexa Strauss is Vice-president and Corporate Counsel.

Primary

Witness(es): William Henry Lawler can testify to two elephants being on his property and to what he observed. Angela Martin and Scott Martin can testify to transporting two elephants from Houston to Huntsville, Texas and what they observed. Hugh Patrick Harned can testify to allowing the two young elephants to enter a pond to swim. He can further testify as to his training methods and prior experiences with transporting the two young elephants. [b6
b6] witnessed the death and can testify to her observations.

Previous

History: USDA licensee Feld Entertainment, Inc., has been involved in the following prior violations: Florida case FL99028 which was closed on April 22, 1999, as no violation supported. Florida case number FL98026 was closed on 7/15/98 with a consent decision resulting in a \$10,000.00 civil penalty. Florida case FL98023 was closed on 4/02/98 with a ticket (APHIS form 7060). Ringling Bros. and Barnum and Bailey® was involved in case VA92015 which was closed on 4/06/92 with a ticket (APHIS form 7060).

Violation

Events: On July 25, 1999, Ringling Bros. and Barnum and Bailey® elephant trainer, Hugh Patrick Harned, loaded two young elephants, Benjamin and Shirley, on a trailer for transportation to Dallas, Texas. A contract truck driver, Scott C. Martin and [b6] transported the two young elephants from Houston, Texas to Huntsville, Texas, where Pat Harned had decided they would stop for the night. A convoy of vehicles, consisting of Scott Martin and [b6] transporting the elephant trailer, Pat Harned in a separate truck, and Pat Harned [b6] in a jeep, stopped at a combined private residence and trucking company owned by William Lawler at Huntsville, Texas. The night was spent at this facility with the elephants remaining in their trailer. The morning of July 26, 1999, Mr. Harned unloaded the two elephants, as he planned to allow them to swim in a pond. He walked the two animals around the pond allowing them to drink. According to Mr. Harned, both elephants entered the water. Shirley swam briefly then exited the water. Benjamin stayed in the water. Pat Harned put Shirley back in the trailer, and Benjamin was still in the water and swam to a deeper area of the pond. Mr. Harned attempted to get Benjamin out of the water using repeated voice commands. The animal would not respond to Mr. Harned. Mr. Harned entered the water to attempt to get the elephant to exit the pond. Witnesses state the animal attempted to avoid Mr. Harned by moving to a deeper area of the pond. By the time Mr. Harned, who got in the water, was able to get close enough to "touch" the elephant, the animal was not responding. Because of Mr. Harned's calls for help, truck drivers who were in the area came and assisted in pushing the animal to the shallow area of the pond. The animal was pulled from the water by a rope attached to a back-hoe. The body of the animal was later that same day transported to the Texas Veterinary Medical Diagnostic Laboratory in a refrigerated trailer for a necropsy.