

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO
ANIMALS, et al.,

Plaintiffs,

v.

RINGLING BROS. AND BARNUM &
BAILEY CIRCUS, et al.,

Defendants.

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Case No. 03-2006 (EGS/JMF)

DEFENDANT’S OPPOSITION TO PLAINTIFFS’ MOTION UNDER RULE 11

EXHIBIT 91

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE)	<u>C.A. NO. 00-1641</u> (EGS)
PREVENTION OF CRUELTY TO ANIMALS,)	<u>C.A. NO. 03-2006</u> (EGS)
ET AL.)	
VS.)	WASHINGTON, D.C.
)	NOVEMBER 25, 2003
RINGLING BROTHERS AND BARNUM AND)	11:00 A.M.
BAILEY CIRCUS, ET AL.)	

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: KATHERINE A. MEYER, ESQ.
KIMBERLY D. OCKENE, ESQ.

FOR THE DEFENDANTS: EUGENE D. GULLAND, ESQ.
JOSHUA D. WOLSON, ESQ.

COURT REPORTER: FRANK J. RANGUS, OCR
U. S. COURTHOUSE, RM. 6822
WASHINGTON, D.C. 20001
(202) 371-0545

PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY; TRANSCRIPT
PRODUCED BY COMPUTER.

1 THE DEPUTY CLERK: AMERICAN SOCIETY FOR THE PREVENTION
2 OF CRUELTY TO ANIMALS VS. RINGLING BROTHERS AND BARNUM AND
3 BAILEY CIRCUS, ET AL., CIVIL ACTION 00-1641 AND CIVIL ACTION
4 03-2006.

5 COUNSEL FOR THE PLAINTIFFS, IDENTIFY YOURSELF FOR THE
6 RECORD, PLEASE.

7 MS. MEYER: YES. I'M KATHERINE MEYER FOR THE
8 PLAINTIFFS, AND WITH ME IS MY ASSOCIATE, KIMBERLY OCKENE.

9 THE COURT: ALL RIGHT, GOOD MORNING.

10 THE DEPUTY CLERK: COUNSEL FOR THE DEFENDANTS.

11 MR. GULLAND: GOOD AFTERNOON, JUDGE SULLIVAN.

12 I'M GENE GULLAND FOR THE DEFENDANTS, AND WITH ME IS MY
13 PARTNER, JOSHUA WOLSON.

14 THE COURT: ALL RIGHT, I WOULD SAY GOOD MORNING, BUT
15 WE'RE ON THE FRINGE. GOOD MORNING SLASH GOOD AFTERNOON.

16 I WANT TO SHARE A FEW THOUGHTS WITH COUNSEL. MY
17 UNDERSTANDING IS THAT THE COMPLAINT IN CIVIL ACTION 03-2006 IS
18 ESSENTIALLY IDENTICAL TO THE SECOND AMENDED COMPLAINT THAT WAS
19 FILED IN 00-1641. IS THAT RIGHT?

20 MS. MEYER: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 OKAY, THIS IS WHAT I'M INCLINED TO DO. THEN I'LL HEAR
23 BRIEFLY FROM COUNSEL. I'VE CONSIDERED THE PENDING MOTIONS.

24 I'M INCLINED TO DISMISS CIVIL ACTION 00-1641 WITHOUT PREJUDICE,
25 DISMISS THAT CASE WITHOUT PREJUDICE TO THE PROSECUTION OF THE

1 COMPLAINT THAT'S PENDING IN 03-2006. CERTAINLY, THEY'RE
2 IDENTICAL COMPLAINTS, AND THERE'S NO NEED FOR TWO CASES ON THIS
3 COURT'S DOCKET.

4 IF I PROCEED WITH THE DISMISSAL WITHOUT PREJUDICE OF
5 THE 00 CASE, THEN I'M GOING TO REVISIT THE COURT'S ORDER
6 PROVIDING FOR CONSOLIDATION OF THE TWO CASES AND VACATE THAT
7 ORDER. THERE'S NO NEED FOR THAT, AND I'M ALSO INCLINED TO DENY
8 AS MOOT THE DEFENDANTS' PENDING MOTION FOR JUDGMENT ON THE
9 PLEADINGS INSOFAR AS THE AMENDED COMPLAINT IS CONCERNED.

10 NOW MOVING ON TO DISCOVERY, I'M INCLINED TO GRANT THE
11 PLAINTIFFS' MOTION TO RESOLVE THE DISCOVERY DISPUTES AND TO
12 ENTER AN APPROPRIATE ORDER FINDING AS A MATTER OF FACT AND LAW
13 THAT THE PLAINTIFF IS ENTITLED TO TAKE DISCOVERY REGARDING ALL
14 OF DEFENDANTS' PRACTICES THAT PLAINTIFFS ALLEGE VIOLATE THE
15 ENDANGERED SPECIES ACT AND THE STATUTES AND IMPLEMENTING
16 REGULATIONS INVOLVING PAST, PRESENT, AND ONGOING PRACTICES.

17 THAT ADDRESSES THE PENDING MOTIONS.

18 I'LL HEAR FROM PLAINTIFF BRIEFLY, BUT THAT'S WHAT I'M
19 INCLINED TO DO. I UNDERSTAND YOU MADE AN ARGUMENT THAT AT SOME
20 POINT, AT SOME UNSPECIFIED POINT, YOU MAY BE IN A POSITION TO
21 FILE A MOTION FOR ATTORNEY'S FEES, THE THEORY BEING THAT YOU'RE
22 A PREVAILING PARTY IN THE 1641 CASE. IS THAT RIGHT?

23 MS. MEYER: THAT'S RIGHT, YOUR HONOR.

24 THE COURT: MY ACTION IS NOT PRECLUDING YOU FROM DOING
25 THAT. I DON'T NEED TO FOCUS ON THAT, BECAUSE THAT'S NOT REALLY