

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.

Case No. 03-2006 (EGS/JMF)

DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION UNDER RULE 11

EXHIBIT 101

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3 - - - - -x

4 PEOPLE FOR THE ETHICAL TREATMENT :
OF ANIMALS, INC., :

5 :
Plaintiff, :

6 :
vs. : At Law No. 220181

7 :
KENNETH FELD, et al., :

8 :
Defendants. :

9 :
- - - - -x

10 :
PEOPLE FOR THE ETHICAL TREATMENT :

11 OF ANIMALS, INC., :

12 Plaintiff, :

13 vs. : At Law No. 204452

14 STEVEN KENDALL, et al., :

15 Defendants. :

16 - - - - -x

17 :
18 Fairfax, Virginia

19 Monday, February 27, 2006

20 The trial commenced at 9:22 a.m.

21 BEFORE:

22 THE HONORABLE DAVID T. STITT

1 APPEARANCES:
 2 PHILIP J. HIRSCHKOP, ESQ., and MARIANNE MERRITT
 3 TALBOT, ESQ., Hirschkop & Associates, P.C.,
 4 108 North Columbus Street, Alexandria, Virginia
 5 22314
 6 and
 7 BERNARD J. DiMURO, ESQ., DiMuro Ginsberg, P.C.,
 8 908 King Street, Suite 200, Alexandria, Virginia
 9 22314, counsel for the plaintiff.
 10 and
 11 JOSEPH G. PETROSINELLI, ESQ., and
 12 MATTHEW B. ANDELMAN, Williams & Connolly,
 13 L.L.P., 725 - 12th Street, Northwest, Washington,
 14 D.C. 20005
 15 and
 16 THOMAS J. CAWLEY, ESQ., and SONA REWARI, ESQ.,
 17 Hunton & Williams, 1751 Pinnacle Drive, Suite
 18 1700, McLean, Virginia 22102
 19 and
 20 JOHN A. C. KEITH, ESQ. and WILLIAM B. PORTER,
 21 ESQ., Blankingship & Keith, P.C.,
 22 4020 University Drive, Suite 300, Fairfax,
 Virginia 22030, counsel for the defendants.
 STEVEN KENDALL, pro se.

1 PROCEEDINGS
 2 (The court reporter was sworn.)
 3 THE COURT: For the record this is People for the
 4 Ethical Treatment of Animals versus Kenneth Feld. It's Law
 5 Nos. 2002-204452 and 2004-220181.
 6 Counsel, please identify yourselves for the
 7 record.
 8 MR. HIRSCHKOP: Phil Hirschkop and
 9 Marianne Merritt for the plaintiff PETA.
 10 MR. DiMURO: Ben DiMuro for the plaintiff PETA.
 11 MR. CAWLEY: Tom Cawley and Sona Rewari for the
 12 defendant Kenneth Feld.
 13 MR. PETROSINELLI: Joe Petrosinelli and
 14 Matt Andelman for the defendant Kenneth Feld.
 15 MR. PORTER: Bill Porter for Kenneth Feld.
 16 THE COURT: Mr. Hirschkop, is the plaintiff ready
 17 for trial?
 18 MR. HIRSCHKOP: Yes, sir, Your Honor.
 19 THE COURT: Mr. Cawley, is the defendant ready
 20 for trial?
 21 MR. CAWLEY: Yes, sir, Your Honor.
 22 THE COURT: I'm going to introduce counsel and

1 INDEX
 2
 3 WITNESS DIRECT CROSS REDIRECT RECROSS
 4 Charles F. Smith 232
 5
 6
 7
 8 EXHIBITS
 9
 10 PLAINTIFF'S IN EVID.
 11 No. 1 (Document) 239
 12 No. 2 (Document) 242
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22

1 the parties to the jury. You can ask them about any other
 2 witnesses you'd like.
 3 Does PETA have a corporate representative here?
 4 MR. HIRSCHKOP: Yes, sir. Jeff Kerr; he's
 5 general counsel.
 6 THE COURT: Jeff Kerr, K-e-r-r?
 7 MR. KERR: Yes, sir.
 8 THE COURT: All right. It's Philip J. Hirschkop?
 9 MR. HIRSCHKOP: Yes, sir, Your Honor.
 10 THE COURT: And Marianne Merritt?
 11 MS. MERRITT: Yes, Your Honor.
 12 THE COURT: Mr. DiMuro, do you prefer to be
 13 introduced as Bernard J. or Ben?
 14 MS. MERRITT: Bernard J. is fine. It would make
 15 my mother happy, Your Honor.
 16 THE COURT: All right.
 17 I'm sorry. It's pronounced "Kerr"?
 18 MR. KERR: Yes, Your Honor.
 19 THE COURT: And you want me to use just Jeff Kerr
 20 or your full name?
 21 MR. KERR: My full name is Jeffrey, middle
 22 initial S.

1 discussing all aspect of the business. I don't recall
 2 exactly when it was that I met Mr. Froemming, when I
 3 actually had the meetings with him.

4 Q And what about Ms. Hupsel; had she been
 5 Mr. Smith's executive assistant or administrative
 6 assistant, whatever she was, for a number of years at that
 7 point?

8 A For a long time, yes.

9 Q And do you know of any reason she would have to
 10 fabricate in this matter?

11 A No.

12 Q And how can you explain -- strike that, please.

13 Now, what about Clair George; when was he
 14 retained?

15 A I believe Claire George was hired by the
 16 companies in sometime in 1989, I believe.

17 Q And you met with Mr. George periodically, did you
 18 not?

19 A Yes, I did.

20 Q And Mr. George informed you what was going on
 21 with Mr. Froemming, did he not?

22 A No, he didn't.

1 MR. CAWLEY: Your Honor, once again, we're
 2 getting into Pottker. It's not supposed to be part of this
 3 case. It's totally irrelevant. It's not to be in front of
 4 the jury.

5 As I understood at the very beginning of this
 6 case, Pottker was not going to be a topic in this
 7 litigation. I recall Your Honor -- I recall Your Honor
 8 ruling on that a number of times here at this bench.

9 MR. HIRSCHKOP: Your Honor, I'm not going to go
 10 into the detail of it. Where I'm going with this is
 11 Mr. Claire George filed an affidavit in the Pottker case
 12 and said, "I met with Mr. Feld. We went over his reports.
 13 We went over Froemming's reports." It is a critical piece
 14 of information. It's a sworn affidavit in a case where Mr.
 15 Feld is a defendant.

16 I'm not going to tell the jury any detail as to
 17 Pottker. The affidavit does go into some of it. I'm
 18 willing to excise that from the affidavit.

19 MR. CAWLEY: Your Honor, you've already ruled
 20 that that affidavit is not properly before this Court. And
 21 it's obviously hearsay. You can't put in out-of-court
 22 statements by Mr. George as evidence in this case. That to

1 Q Mr. George never talked to you about it?

2 A My conversations in the business that the
 3 companies had and that I had with Mr. George did -- did not
 4 entail animal rights. We discussed primarily the
 5 international business that we were involved in.

6 Q Well, you also discussed the Pottker matter with
 7 him, did you not?

8 A Yes.

9 Q And he gave you reports -- written reports of
 10 that, did he not?

11 A Yes, he did.

12 Q And then he would take them back; is that
 13 correct?

14 MR. CAWLEY: Excuse me, Mr. Hirschkop.
 15 Objection. May we approach?

16 THE COURT: Counsel approach.
 17 (The following proceedings were held at the
 18 bench:)

19 MR. HIRSCHKOP: Your Honor, can the witness stand
 20 down? I'm leading up to something.

21 THE COURT: Mr. Feld, if you would please step
 22 down.

1 me -- that is just so fundamental.

2 THE COURT: How does it get in?

3 MR. HIRSCHKOP: It's not remotely hearsay. It's
 4 a sworn statement of a co-conspirator.

5 And, Your Honor, it's vital to the core. It has
 6 reliability, and Mr. George is not available. It meets all
 7 the exceptions to the hearsay rule.

8 THE COURT: Why is he not available?

9 MR. HIRSCHKOP: Maybe he's too ill to testify.
 10 But he doesn't live in this jurisdiction. I couldn't have
 11 noticed him. I spoke to the lawyers, and the man is nearly
 12 blind and not able to give testimony.

13 MR. CAWLEY: Your Honor, it's classic hearsay.
 14 There's been no showing that Mr. George is part of any
 15 conspiracy.

16 I can't say anything about his availability. I
 17 flat out don't know anything about his illness.

18 This is classic hearsay. It cannot come in, Your
 19 Honor.

20 MR. HIRSCHKOP: I can get my list. I've read
 21 them to the jury. George was getting weekly reports from
 22 Froemming, reviewing his reports from Froemming, and

Page 2346

1 A Yes, periodically he would.
 2 Q And he took them back with him; is that correct?
 3 A Yes, sir.
 4 Q And in the time when he gave you written reports,
 5 he also reported to you, did he not, what was happening
 6 with Mr. Froemming?
 7 A I don't recall that.
 8 Q I'd like to show you Exhibit 1379, please.
 9 Do you have the documents, sir?
 10 A Yes, sir.
 11 Q Look at the last paragraph, No. 7, and see if
 12 that refreshes your recollection that Mr. George discussed
 13 the Froemming reports in meetings with you.
 14 A I see the paragraph.
 15 Q Does it refresh your recollection, sir?
 16 A No, I don't -- I don't recall discussing this
 17 with Mr. George.
 18 MR. HIRSCHKOP: I move 1379 into evidence, Your
 19 Honor.
 20 MR. CAWLEY: Your Honor, I understand that all
 21 but that last paragraph is redacted?
 22 THE COURT: Mr. Hirschkop.

Page 2347

1 MR. HIRSCHKOP: Well, paragraph 1 would remain
 2 in.
 3 MR. CAWLEY: Yeah, 1 and 7.
 4 MR. HIRSCHKOP: 1 and 7 is fine with me, Your
 5 Honor.
 6 MR. CAWLEY: Everything else will be redacted.
 7 THE COURT: All right. Plaintiff's 1371 (sic),
 8 paragraphs 1 and 7 is admitted over objection. The
 9 defendants' objection is noted for the record.
 10 THE CLERK: 1379.
 11 THE COURT: 1379.
 12 MR. HIRSCHKOP: I'm sorry. I thought you said
 13 "1371".
 14 THE COURT: I may have. That's what Ms. Smith
 15 heard too. I'm sorry. It's 1379. Paragraphs 1 and 7 are
 16 admitted over objection.
 17 (The document marked for identification as
 18 Plaintiff's Exhibit No. 1379 was received in
 19 evidence.)
 20 MR. HIRSCHKOP: I'd ask it be --
 21 Beth, it has something we're going to excise.
 22 BY MR. HIRSCHKOP:

Page 2348

1 Q Mr. Feld, would you kindly read paragraph 7 to
 2 the jury.
 3 A Yes.
 4 Q I'm sorry. Read paragraph 1 to the jury.
 5 This is an affidavit of Clair George, is it not?
 6 A Yes, that's what it says.
 7 Q Filed in the United States District Court for the
 8 Eastern District of Virginia?
 9 A Correct.
 10 Q In litigation between you and Charles Smith?
 11 A That's correct.
 12 Q Okay. Read paragraph 1 to the jury, please.
 13 A "My name is Clair E. George. I was the deputy
 14 director for operations," in parentheses, "DDO, of the
 15 Central Intelligence Agency from July 1984 through December
 16 1987, during which time I was responsible for the CIA's
 17 covert operations worldwide.
 18 "I'm also a former consultant to Feld
 19 Entertainment and its affiliates and make this declaration
 20 based on my personal knowledge."
 21 Q And read paragraph 7 to the jury, please.
 22 A Uh-huh.

Page 2349

1 "As part of my consulting work for Feld
 2 Entertainment, I was also asked to review reports from
 3 Richard Froemming and his organizations, based on their
 4 surveillance of and efforts to counter the activities of
 5 various animal rights groups. I have discussed these
 6 reports in meetings in which Mr. Feld was present."
 7 Q And he says, "I swear under penalty of perjury
 8 that the foregoing is true and correct"?
 9 A Yeah.
 10 Q Do you know that he discussed the Froemming
 11 reports in meetings in which were you present?
 12 A I don't recall discussing the Froemming reports
 13 with Mr. George.
 14 Q Do you know of any reason why Mr. Froemming (sic)
 15 would give a -- I'm sorry -- Mr. Clair George would give a
 16 false affidavit?
 17 A Mr. George was very close with Mr. Smith; and at
 18 the time when Mr. Smith left Feld Entertainment, the
 19 companies, Mr. George and Mr. Smith -- Mr. Smith sued me,
 20 and there were some allegations made. And I believe that
 21 he did file an affidavit that he later recanted.
 22 Q And with regard to Mr. George, do you have any

1 companies in other cases, have they not?
 2 A That's correct.
 3 Q Now, with regard to the senior staff, it's true
 4 that Mr. Andy Ireland took over getting reports at some
 5 point from Mr. Froemming? Is that correct?
 6 A That's right.
 7 Q And as time went on, did any of the senior staff
 8 ever come to you -- and I'm including Mr. Ireland; although
 9 you said he might not have been at the full level of these
 10 various other people -- did Mr. Smith, Mr. Bloom,
 11 Mr. Sowalsky, and Andy Ireland say, "Gee, this is has been
 12 going on for three years," or anything about it?
 13 A What has been going on for three years?
 14 Q There were operatives in PETA and PAWS and
 15 Elephant Alliance, one or the other or all.
 16 A No one discussed that with me.
 17 Q Why would they not, if you know?
 18 A I don't know. I mean I'm -- obviously I get
 19 information, and there would be discussions. I assumed
 20 Mr. Froemming was a private investigator who was getting
 21 information about animal rights groups and about PETA with
 22 respect to counters -- so that we could have

1 counterdemonstrations, to find out if there were going to
 2 be demonstrations or that sort of thing.
 3 Q Well, sir, you've seen in the documents various
 4 things about taking credit cards from people and bank
 5 information from people --
 6 A Uh-huh.
 7 Q -- and personal medical information from
 8 people -- you heard Mr. Kendall testify about that -- and
 9 all sorts of things like that.
 10 Isn't that something you would expect these very
 11 senior people to fill you in on?
 12 A I don't know. I don't know what the extent of
 13 their knowledge was. This -- this was not material that we
 14 would have any use for; that's for sure.
 15 Q Well, the jury has seen reports going to Bloom
 16 and Sowalsky and Smith, identifying that those very
 17 documents -- those kind of documents were being taken from
 18 people. You saw all those internal PETA documents I went
 19 over; internal memos, projected budgets, and their names on
 20 the top as distribution to them, your senior people. Your
 21 name is on the top.
 22 Do you have any --

1 MR. CAWLEY: Excuse me, Mr. Hirschkop.
 2 Objection to two or three declarative sentences
 3 there. I would object to Mr. Hirschkop testifying. I
 4 would object that there has to be questions asked of him.
 5 MR. HIRSCHKOP: I'll rephrase.
 6 THE COURT: Rephrase.
 7 BY MR. HIRSCHKOP:
 8 Q The internal PETA documents, the projected
 9 budgets and all, do you have any explanation why they
 10 wouldn't say, "Gee, look we got" -- "maybe we shouldn't
 11 have these"?
 12 A I don't know that they got them. But they --
 13 they were not discussed with me, so I had no knowledge of
 14 them.
 15 Q Sowalsky was your lawyer for many years in terms
 16 of a corporate lawyer, right, general counsel?
 17 A That's correct.
 18 Q Didn't he ever come to you and say, "Mr. Feld" or
 19 whatever he calls you, "Kenneth, we can get in trouble
 20 here. There are problems here"? Never had a discussion
 21 about that?
 22 A No, we didn't.

1 Q Mr. Bloom never came to you and said, "Mr. Feld,
 2 I approve of this. We shouldn't do this"?
 3 A Approve of what?
 4 Q What's going on with Mr. Froemming's activities,
 5 using private investigators to get inside people's
 6 organizations.
 7 A Mr. Bloom's view was that for the most part we
 8 should do nothing with respect to animal activists or
 9 demonstrations; and if we didn't acknowledge them, that
 10 maybe it would go away.
 11 Q Mr. Bloom specifically objected to Froemming's
 12 private investigators, did he not?
 13 A I don't know that.
 14 Q Mr. Bloom actually partially left the company
 15 because you brought Froemming in and he didn't approve of
 16 Froemming's activities; isn't that true?
 17 A No, that's absolutely incorrect.
 18 MR. HIRSCHKOP: Pardon me, sir?
 19 THE COURT: Yes, sir.
 20 BY MR. HIRSCHKOP:
 21 Q I had asked you on Thursday if the buck stopped
 22 with you.

1 ever raise any of questions about those?
 2 A I don't know that I recall that document.
 3 Q And Mr. Kendall, as far as you know, was at many
 4 demonstrations, wasn't he?
 5 A Yes, he was.
 6 Q And did you ever receive any information from him
 7 that PETA had engaged in any violence at any demonstration?
 8 A I never received any information from
 9 Mr. Kendall, no.
 10 Q Did you ever receive any information of a
 11 specific violent demonstration by PETA from Mr. Froemming
 12 at a Ringling Bros. Circus?
 13 A I don't know that I received it. I know that
 14 there was -- in one of the reports we saw that there were
 15 PETA individuals -- I believe it was in Boston -- that were
 16 waving sticks at elephants in the street.
 17 Q You remember the document specifically says they
 18 were not PETA, but they belonged to CEASE, C-E-A-S-E, a
 19 totally different organization?
 20 A No. I think the document says that these two
 21 individuals were violently -- the peaceful group belonged
 22 to CEASE and the violent people belonged to PETA is what I

1 believe the document says.
 2 Q The documents say they were employees of PETA or
 3 officers of PETA, other than Mr. Froemming thinks anything
 4 bad is PETA.
 5 A What's the question.
 6 Q Does the documents say that they were actually
 7 officers or employees of PETA?
 8 A No, the document does not say that.
 9 Q There are numerous documents in which he
 10 attributes things to PETA, and later in the document it
 11 turns out the person had nothing to do with PETA, aren't
 12 there?
 13 A You would have would have to show me the specific
 14 documents.
 15 Q And I will.
 16 In your testimony on direct, you said there was a
 17 bomb threat at the Boston Garden in the early '90s; is that
 18 correct?
 19 A I believe it was in early '90s.
 20 Q Well, if there was a bomb threat, I assume there
 21 is a police report. You could have pinned the date down,
 22 couldn't you?

1 A I assume that there's a report, at least with
 2 the -- in the Boston Garden.
 3 Q Have you ever seen such a report?
 4 A I haven't seen it lately, no.
 5 Q And do you have any reason why you don't have the
 6 report to back up what you say?
 7 A Because it's something that happened 15, 16 years
 8 ago. And, no, I -- I don't have it. I'm sure would it be
 9 in the files of the Boston Garden.
 10 Q And, sir, the early '90s would be '91, '92, '93,
 11 somewhere in there?
 12 A Something like that.
 13 Q Well, that would be well after you authorized the
 14 hiring of Mr. Froemming, wouldn't it?
 15 A Yes.
 16 Q It would be well after, according to these
 17 documents, Froemming had placed people inside PETA, PAWS,
 18 and The Elephant Alliance, would it not?
 19 A I -- I don't that he placed people inside. I
 20 don't know that.
 21 Q Did you see the reports about getting information
 22 from PAWS and The Elephant Alliance? I asked you that

1 before, and you said you did.
 2 A Yes, I did see the reports --
 3 Q Okay.
 4 A -- but I don't know if they were employees, I
 5 don't know if they were volunteers. They were people he
 6 was getting information from. That's what the private
 7 investigators --
 8 Q Whatever it was, that was before you got this
 9 whole Boston Garden thing?
 10 A It may have been.
 11 Q So the Boston Garden thing had nothing to do with
 12 his actions in doing that, didn't it?
 13 A Yeah. I don't think I ever said the Boston
 14 Garden incident had anything to do with Mr. Froemming.
 15 Q The Boston Garden incident, you don't have any
 16 idea who made that call, do you?
 17 A No.
 18 Q It could be an ex-employee of the circus, could
 19 it not?
 20 A It's possible.
 21 Q Over the years you've received threats from
 22 ex-employees of the circus, have you not?

1 Q You said yesterday that Mr. Smith approved -- in
 2 your direct examination by counsel, that Mr. Smith approved
 3 the bills that Mr. Froemming had put in.
 4 Do you remember that?
 5 A Yes.
 6 Q And after him Mr. Ruch, R-u-c-h, who became your
 7 president or something approved --
 8 A Mr. Ruch became CFO in '97.
 9 Q He approved them; is that correct?
 10 A He would have approved the bills, yes.
 11 Q There were numerous bills also approved by
 12 Andy Ireland, weren't there?
 13 A I think in some point in 1993 Mr. Froemming
 14 started to report to Mr. Ireland, yes.
 15 Q Were there bills approved by Mr. Ireland?
 16 A Yes.
 17 Q And there were bills also approved by
 18 Joan Galvin, weren't there?
 19 A There may have been, uh-huh.
 20 Q Now, Mr. Ireland was approving bills to a
 21 fictitious company that didn't exist; and he didn't come
 22 tell you about it?

1 How can you possibly explain that, sir?
 2 A Because I -- I didn't deal with the approval of
 3 those finances.
 4 Q Well, you had auditors. They never raised a
 5 question. Checks were being made to Concept
 6 Visualizations; to a company in north Florida; to a company
 7 in Virginia Beach; to a company in Richmond, Virginia, that
 8 had no employees and showed no services.
 9 Was -- no one ever raised that question with you;
 10 is that your testimony?
 11 A It is.
 12 And, as I told you in my deposition, I had never
 13 heard of those companies until this litigation.
 14 Q Now, look at Exhibit 721, sir. Do you know what
 15 this company is, O'Bannon & Gibbons?
 16 A I'm not sure, no.
 17 Q Do you know how they came to make a report -- or
 18 a proposal in May of 1993 -- this is when you're getting
 19 weekly reports --
 20 MR. CAWLEY: May we approach.
 21 Excuse me, Mr. Hirschkop.
 22 THE COURT: Counsel approach.

1 MR. HIRSCHKOP: I'll withdraw the question.
 2 MR. CAWLEY: Thank you.
 3 Let me know when you get to the end of the line.
 4 MR. HIRSCHKOP: Very quickly, Your Honor.
 5 BY MR. HIRSCHKOP:
 6 Q Have you ever seen the proposal before?
 7 A I don't recall it, until this litigation.
 8 MR. HIRSCHKOP: Now would be a good time, Your
 9 Honor.
 10 THE COURT: Members of jury, let's take the
 11 morning break. If you would, please follow Deputy Atkins.
 12 (The jury left the courtroom.)
 13 THE COURT: Fifteen minutes.
 14 (Whereupon, a brief recess was taken.)
 15 (The jury entered the courtroom.)
 16 THE COURT: All right. Members of the jury,
 17 we'll continue with cross-examination of Mr. Feld.
 18 Mr. Hirschkop.
 19 BY MR. HIRSCHKOP:
 20 Q Mr. Feld, I've shown you Document 839. Do you
 21 see that, sir?
 22 A Yes, sir, I do.

1 Q You received this report, did you not? This is
 2 the time you were getting weekly reports?
 3 A I was getting regular reports from Mr. Froemming
 4 at this time, yes.
 5 Q Look at X 830-A. That will confirm you got this.
 6 A 830-A.
 7 Q Yes. The one before this, same date, cover
 8 letter.
 9 A Yes, it's the same date.
 10 Q Okay.
 11 A But this was a cover letter to Mr. Ireland.
 12 Q Okay. He was getting reports at this time too,
 13 and you were getting reports at this time?
 14 A It's possible, yes.
 15 Q If you would, sir, look at Corp. No. 2328. You
 16 see it, the second page?
 17 A Yes.
 18 Q This document says, "Let's not forget that PAWS
 19 has a judgment, Berosini, that if held up in Court of
 20 Appeals, the PAWS facility, the land, animals, buildings,
 21 all would be attached by the Berosinis. Food for thought."
 22 Do you will recall during that period of time

1 these operatives were trying to destroy PAWS and PETA
2 because of the Berosini judgments?

3 A No, I don't recall -- I don't recall that. I was
4 aware of the Berosini case.

5 Q Do you remember discussing with Mr. Froemming the
6 fact he was sending operatives in to give information taken
7 from PAWS and PETA to the Berosinis to pursue his judgment?

8 A No, I wasn't aware of that.

9 Q Look at 2330, sir. Do you recall an effort by
10 your people to block Ms. Derby from getting elephants from
11 a zoo?

12 A No, I don't recall that.

13 Q It says in the final paragraph on 2330, "If at
14 all possible, we need to stop Ms. Derby from receipt of
15 these animals, which she in turn will use to drum up
16 emotional support and financial contribution towards her
17 stated goal against animals in entertainment."

18 Do you see that, sir?

19 A Yes.

20 Q Didn't that raise a red flag that something
21 improper was being done by these operatives to you?

22 A No. I -- I mean reading it now, it looks, you

1 the page. Do you see that, sir?

2 A Yes.

3 Q And it says, "R. Froemming visit to same in
4 Norfolk. Animal walk Norfolk. Trained spotting elephants
5 with a hot spot for manage."

6 Do you see that?

7 A Yes.

8 Q What did you did do when you got this
9 confidential report in March of '94 about resolving the use
10 of illegal hot shots?

11 A Well, I believe I do remember something about
12 Mr. Froemming mentioning the use of hot shots.

13 And what had happened in January of '94, we had
14 probably what was the greatest disaster since I've been
15 involved with the circus, which was a train wreck where we
16 had a derailment that not only destroyed virtually all of
17 our coaches; but two individuals were killed, one young
18 lady by the name of Cecily Conkin (phonetic).

19 The other individual, Ted Sperteski (phonetic),
20 who was our lead elephant trainer at the time -- his wife
21 Patricia Zerbini (phonetic) was with the young elephants
22 and their mothers.

1 know -- I don't know if that was letters; I don't know what
2 it was. So I don't know that it was anything
3 inappropriate.

4 Q And, sir, did you have any problem about
5 their getting -- PAWS getting elephants from Milwaukee Zoo?

6 A No.

7 Q Then why block them?

8 A I don't know. I don't know that we did.

9 Q Look at Exhibit 971. Do you see that, sir?

10 A Not yet. Which number is it?

11 Q 971.

12 A I see that.

13 Q You see the initials on the top, JG? That's
14 Joan Galvin's initials, aren't they?

15 A I don't know; I can't tell.

16 Q You've see her initials on hundreds of hundreds
17 of documents, haven't you. All right --

18 A I don't know. I mean it could be -- Joan Galvin
19 has the initials JG, but I don't know if that's her
20 initials or not.

21 Q Yes, sir.

22 Look down where it says "blue unit" halfway down

1 So I had to, when this happened, replace our head
2 elephant trainer. And I did bring on someone at the time
3 that we later found out -- when we found out that he was
4 using a hotshot, his employment was not renewed because
5 that's against our policy.

6 Q Well, didn't the animal activists who
7 demonstrated have signs that hot shots were being used?

8 A I don't know what they had at this time.

9 Q Do you recall your company putting out publicity
10 that said they were giving out false information about the
11 use of hot shots?

12 A That's -- that's correct.

13 And actually when we found out about this, we
14 took the appropriate -- appropriate actions so that -- it
15 is not our policy to use hot shots. In fact, we had hired
16 an elephant act. We had brought the elephants from Europe
17 over. And when we found out -- because they were in
18 Europe, our people didn't know. But when we found out here
19 that they did use hot shots, they were never again put on
20 the show; and their elephants were sent back to Europe.

21 MR. HIRSCHKOP: Would you set up, please,
22 Document 971, the last page.

Page 2526

1 assumed they composed it. But the fact is they've got
2 to show some extortion behavior, and the Fitzgerald
3 case doesn't help them at all. We discussed this the
4 first time they came before you. Fitzgerald not only
5 made a complaint to the police department, he sought
6 an indictment. Then when he got the indictment, he
7 sought to get the guy fired over the indictment.
8 There were clear threats. There was clear extortion
9 to try and collect a bill.

10 PETA tried to collect nothing from Mr. Feld.
11 They sued him after secret documents were produced,
12 which they have a right to do. They have pursued this
13 case all this way. I think you are compelled to grant
14 the motion because there's absolutely nothing for
15 which anyone could reasonably infer.

16 THE COURT: Thank you, Mr. Hirschkop.

17 At this point in the proceedings, the Court
18 is required to construe all inferences in favor of the
19 defendant. Construing all inferences in favor of the
20 defendant, the motion to strike is denied.

21 You say you're going to put Mr. Andelman and
22 Mr. Keith on?

Page 2528

1 MR. DIMURO: Your Honor, page 3 of
2 Mr. Keith's deposition: "I kept a chart for this
3 purpose. What would you say, Mr. Keith? What have
4 you been asked to testify about concerning the bills
5 incurred by Williams & Connolly in defense of the 452
6 case? Answer: All the same. The nature of the work,
7 the reasonableness of the fees and what was going on."

8 He's here to opine about the reasonableness
9 and necessity of the bills. Otherwise, what would he
10 be taking the stand for? Just to say we are local
11 counsel and I think they did a lot of work.

12 THE COURT: Mr. Porter?

13 MR. PORTER: Judge, I think that's something
14 that the Court can take on a question by question
15 basis. I don't think that's grounds to exclude him
16 based on some statement that was made in the
17 deposition which, by the way, I haven't even seen yet.

18 THE COURT: He can testify as a fact witness,
19 but if I hear anything that sounds like an opinion
20 question to him, I'm going to sustain the objection.

21 15 minutes.

22 (A short recess was taken.)

Page 2527

1 MR. PORTER: Yes, sir.

2 MR. DIMURO: Your Honor, we would object to
3 Mr. Keith. He was not identified as an expert. The
4 only authority in Virginia on a lawyer getting on the
5 stand and testifying is in support of his own bills.
6 That's the Seyfarth Shaw case, which I'm sure you are
7 aware of. So we would object to getting Mr. Keith on
8 the stand.

9 THE COURT: Mr. Porter?

10 MR. PORTER: The issue of Mr. Keith, Judge,
11 is that Seyfarth Shaw does talk about a lawyer putting
12 on evidence about his own testimony, but that talks
13 about lawyers involved in the case. What Mr. Keith is
14 here to offer today is essentially fact testimony that
15 he was a lawyer involved in the case. He was aware of
16 what was going on. He participated in the action. We
17 are not seeking fees from my firm or from Mr. Keith in
18 his counterclaim, but he did participate. He did know
19 what went on. He provides an additional level of
20 detail with respect to the fact.

21 So he's a fact witness. He's not an expert
22 witness.

Page 2529

1 MR. PORTER: Judge, before you get the jury,
2 one, we've reached an agreement on the attorney's
3 fees, so we have an agreed stipulation we'd like to
4 read to the jury like we did last time.

5 THE COURT: That's wonderful.

6 MR. PORTER: A second housekeeping matter, we
7 have a number of exhibits we want to move in evidence.
8 There's two categories. One is the category of things
9 we identified or that are on our list that we would
10 like to move in.

11 Are you ready?

12 MR. HIRSCHKOP: Yes.

13 MR. PORTER: Judge, may I approach with the
14 stipulation?

15 From our list, Judge, we move Exhibit 5.

16 THE COURT: Any objection?

17 MR. HIRSCHKOP: Yes, Your Honor. It hasn't
18 been -- no foundation for it.

19 THE COURT: Mr. Porter?

20 MR. PORTER: This was a document that was
21 identified by Mr. Kerr, I believe, during his
22 examination.