

## COVINGTON & BURLING

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December 3, 2004

BY FACSIMILE AND FIRST CLASS MAIL

Katherine A. Meyer, Esq.  
Kimberly D. Ockene, Esq.  
Meyer & Glitzenstein  
1601 Connecticut Avenue N.W., Suite 700  
Washington, DC 20009

Re: ASPCA et al. v. Ringling Bros. and Barnum & Bailey Circus et al.,  
Case No. 03-2006 (D.D.C.)

Dear Kathy and Kim:

This letter summarizes the meet and confer meeting that we had on November 15, 2004.

### Identification of Documents

As an initial matter, you informed me that plaintiffs are not asking defendants to identify which documents they produced in response to which document request. You stated that you understood that defendants had produced documents as kept in the ordinary course of business, as permitted by the Federal Rules of Civil Procedure.

### Relevant Time Frame

You stated that plaintiffs want documents dating back to January 1, 1994, and that you believe documents and events prior to that date may be relevant in this action. Defendants stand by their objections that document requests dating back to January 1, 1994, are overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. We suggest you focus on specific discovery requests for which plaintiffs believe they need older information and, for each request, inform us of the reason that you believe you need such dated material. We will then consider the request.

### Interrogatory No. 5

Regarding plaintiffs' request for a list of all employees who have "worked with" the elephants "in any capacity," you told me that plaintiffs would accept a list of all barn men, "floor

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crew,” wardrobe personnel, and transportation personnel in satisfaction of plaintiffs’ request. We will work with our clients in an attempt to compile such a list.

Regarding plaintiffs’ request for a list of employees “from Puerto Rico” who “worked with” elephants, you clarified that plaintiffs are seeking identification of employees who lived in Puerto Rico at the time they were hired. We will discuss with our client whether they have any records from which we could make such a determination.

Finally, you said that, in lieu of plaintiffs’ request for a list of each elephant with which each employee worked, you would accept (a) a list of the elephants traveling with each unit, by year, and (b) a list of each employee’s work history, by unit. You also offered that you would accept the same information in lieu of the request in Interrogatory No. 9 for a list of each person who worked with every elephant in defendants’ possession. We will check with our client to determine if such information is available.

Interrogatory No. 8/Document Request Nos. 8 and 16

We will attempt to determine whether there are any additional medical records for the elephants for which we have already produced medical records. In addition, we will search for medical records for additional elephants, including the ones identified in your letter dated October 19, 2004. Finally, we will attempt to locate information about the way in which each elephant was acquired and each elephant’s parents.

You also asked for information regarding the presence of tuberculosis in defendants’ elephants. We will confer with our client regarding this request and let you know our position.

Interrogatory No. 11/Document Request No. 19

You asked us to determine whether defendants have any additional documents, either already in their production or elsewhere, regarding efforts to breed Asian elephants. I told you we would check both sources for additional documents.

Interrogatory No. 15/Document Request No. 23

You explained that plaintiffs are not seeking documents that are already in their possession, but that plaintiffs do want documents not in their possession (*i.e.*, not in the “report” that was attached to plaintiffs’ discovery requests) that relate to the USDA investigations identified in the various chapters of plaintiffs’ “report.” We have already produced to you documents in our possession relating to the USDA’s investigation of Benjamin, Kenny, and Doc and Angelica. In addition, as the “report” itself notes, the USDA did not investigate the allegations relating to the elephant Asia made in August 2001. Accordingly, there are no

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responsive documents. We will consider this request as it applies to the other investigations and get back to you as to defendants' position.

Interrogatory No. 17/Document Request No. 25

You informed me that plaintiffs will accept, in full satisfaction of these requests, videos responsive to the six categories listed on page 8 of your October 19 letter. I agreed that we would speak with our client to determine whether we can identify such videos and, if so, to determine how many there are.

Document Request No. 2

We will search for documents that reflect educational and/or training prerequisites to be hired as a "handler, trainer, performer, or veterinarian," as you have requested, and we will produce any responsive, non-privileged documents that we are able to locate.

Documents Request No. 5

We will produce any additional documents we can locate relating to Tom Rider.

Document Request No. 6

You stated that you believe information on the amount of money defendants spend on advertising, as well as drafts of advertisements, are relevant to the potential credibility of certain, unidentified witnesses in this case. Defendants stand by their objections to this request.

Document Request No. 7

I told you that I believed that defendants have produced the documents that they have that are responsive to this request and available after a reasonable search.

Document Request Nos. 9 – 10

We are willing produce to you documents sufficient to identify the projects in which defendants have engaged to "conserve elephant habitat in the wild in Asia," if you will accept such documents in satisfaction of these requests.

Document Request No. 11

I reiterated that defendants stand by their objections to this request.

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Document Request Nos. 13-23

Each of these document requests asks for documents identified in response to an earlier Interrogatory. I explained that defendants' objections to these requests were therefore tied to their objections to the Interrogatory referenced in each request, but that defendants had generally not interposed any additional objections.

Document Request No. 24

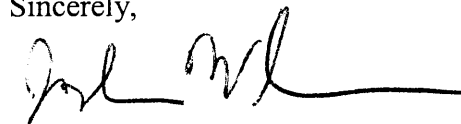
You told me that plaintiffs will not insist that defendants produce samples of products that defendants use to care for their animals. Instead, plaintiffs agree to purchase their own samples of the products that defendants have identified.

Additional Items

We will also follow up on the items identified in my letter dated November 8, 2004: we will search for a copy of the "Animal Husbandry Resource Manual" and the photographs referenced at Feld-0565.

Please contact me if any of this is not consistent with your understanding of our discussions.

Sincerely,



Joshua D. Wolson