

the specific animals for which an employee had responsibilities. For example, an employee may hold the position of “Animal Crew,” but the payroll system does not distinguish between Animal Crew who have responsibilities for horses and those who have responsibilities for elephants. Similarly, an employee may be listed as “Assistant Wardrobe,” but the system does not note whether that employee dealt with wardrobe for trapeze artists, clowns, or elephants.

5. Until early 2004, Feld’s payroll system did not track all of an employee’s job assignments. Instead, the system tracked only an employee’s current or last-held position. Thus, if an employee was transferred from a position having responsibility for elephants (*e.g.*, Animal Crew assigned to the elephant barn) to a position having no responsibility for elephants (*e.g.*, transportation staff), the payroll system would not have a record of the employee’s former position.

6. Under the old payroll system, if an employee left the Company and then returned, he or she usually had a new entry in the payroll system. Thus, for some employees, there are multiple entries in the payroll system, indicating different positions that were held.

Efforts To Gather Information Responsive To Plaintiffs’ Requests

7. Given the way that Feld maintains its data, there is no documentary record from which the Company could determine which employees worked with a specific elephant at some time in the past, or even what each employee’s assignment was in a given year, or how that assignment may have changed over time.

8. In an effort to provide plaintiffs with a list of employees who have had direct responsibilities involving elephants since 1996, I printed from Feld’s old and new payroll systems lists of employees that held positions that might have involved such responsibilities. That list included more than 3,000 records.

9. I then traveled from Florida to meet with three Feld employees – Dave Gorman, Alex Vargas, and Mark Gaipo – and I asked each of them to identify any employee who they recalled having responsibility for elephants. I selected these three individuals because they have had lengthy tenures with Feld and they held positions that would give them knowledge of who had responsibility for the elephants. For example, Mr. Gorman has worked for Feld since the mid-1980s, and for many years he had responsibilities for dressing the elephants before the show. Given his tenure with the show, he has knowledge about the individuals who have come and gone and who have had responsibilities with the elephants. Mr. Vargas has served as the Superintendent of Animals on one of the traveling units of Ringling Bros., in which capacity he was responsible for assigning various employees to different animal barns. Mr. Gaipo is the general manager of one of Ringling Bros. touring units – the “Red” unit, and is therefore ultimately responsible for all personnel decisions.

10. Based on my conversations with Messrs. Gorman, Vargas, and Gaipo, we have identified more than 300 individuals who have had responsibilities for elephants. However, that list is not yet complete. I am still working with various people at Feld to determine whether there are any additional individuals who are on the list, whether the list contains any duplicate records (*i.e.*, individuals who have multiple entries in the payroll system and therefore appear twice), or whether there are any other errors.

11. It is my understanding that, once these issues have been resolved, we will provide the list to plaintiffs. Because of the way that Feld’s records are maintained, however, there is no way for us to provide the plaintiffs with a list of each person’s past work assignments.

Burdens Associated With Plaintiffs' Requests


12. To date, I have spent more than 40 hours attempting to gather this information. I have traveled to Nashville, Tennessee, and to Greenville, South Carolina, in order to meet with Messrs. Gorman, Gaipo, and Vargas. Each of them has spent multiple hours meeting with me to review the initial list of 3,000 names that I pulled from the employee system, taking time from their normal job responsibilities.

13. I understand that plaintiffs have requested information dating back to 1994. Gathering that information will be significantly more burdensome than the information I have gathered to date.

14. There will be a significant number of additional records. In addition, because the old payroll system tracks only an individual's last-held position, it is likely that many of the people who had responsibilities for elephants at some time in 1994 and 1995 subsequently changed jobs. For such people, even a search of the payroll system will not generate their names, because they will not be listed as having held the position in which they worked with the elephants. Thus, we will have to rely on people's memories of staffing assignments more than ten years ago.

15. There are very few people at Feld who have any memory of who had responsibilities for elephants from 1994 and 1995 but not later (the only people who would not be on the current list but who would be covered by plaintiffs' request). And the memory that people do have is likely to be spotty, at best.

Pursuant to 28 U.S.C. § 1746, I swear under penalty of perjury that the foregoing
is true and correct to the best of my knowledge.


Harry Shugerman

February 15, 2005