

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION)	
OF CRUELTY TO ANIMALS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civ. No. 03-2006 (EGS)
)	
RINGLING BROTHERS AND BARNUM & BAILEY)	
CIRCUS, <i>et al.</i> ,)	
)	
Defendants.)	

PLAINTIFFS' NOTICE OF FILING

Plaintiffs have two reasons for filing this Notice of Filing in conjunction with their pending Motion to Compel Defendants' Compliance With Plaintiffs' Discovery Requests: (1) to provide notice of an additional document they wish to rely on in support of their motion to compel; and (2) as promised, to inform the Court of additional materials produced by defendants since plaintiffs filed their motion to compel. See Memorandum In Support of Plaintiffs' Motion To Compel ("Pl. Mem.") at 2, note 1.

First, plaintiffs notify the Court and defendants that they are filing an additional Exhibit in support of their motion to compel. That document, entitled "Clinical Biology and Care of the Elephant," authored by the Forest Harvesting and Transport Branch, FAO, Rome (1995), which is attached as Plaintiffs' Supplemental Exhibit G, is submitted in further support of plaintiffs' motion to compel defendants' records concerning tuberculosis in elephants (Plaintiffs' Document Request Nos. 8, 23; Interrogatory No. 15). See Pl. Mem. 30; Plaintiffs' Reply Memorandum ("Pl. Reply") at 11. As explained in that document, "[t]uberculosis is predisposed

in [captive] elephants by stress resulting from factors such as severe punishment; heavy work without adequate rest . . . [and] bleeding from wounds . . .” Plfs. Supplemental Exhibit G (emphasis added). Thus, as plaintiffs have explained, Pl. Mem. 30, the records they have requested concerning tuberculosis are clearly relevant to their claims in this case concerning the stressful – and unlawful – methods and conditions defendants use to train, control, “discipline,” and otherwise maintain the Asian elephants in the Ringling Bros. circus. See also Pl. Mem. at 30 (“as plaintiffs have explained to defendants, and as plaintiffs’ experts will testify, tuberculosis is a stress-related disease, and may be extremely indicative of the conditions under which the elephants are maintained”).

Second, plaintiffs wish to notify the Court that, since plaintiffs filed their Motion to Compel on January 25, 2005, defendants have served plaintiffs with several supplemental discovery productions which, as detailed below, provide some of the information at issue in the motion to compel, but, unfortunately, do not resolve the bulk of the issues addressed in the motion. Thus, tracking the disputed discovery issues in the order that they are addressed in plaintiffs’ memorandum in support of their motion to compel, plaintiffs hereby inform the Court of the materials that have been provided by defendants in their supplemental productions, and of the materials that remain at issue.

1. Information Concerning Tom Rider (Pl. Mem. at 17; Pl. Reply at 3)

On February 10, 2005, defendants finally provided plaintiffs with some of Mr. Rider’s employment records, but not all of them. For example, although defendants gave plaintiffs copies of forms indicating three instances in which Mr. Rider received disciplinary warnings from Ringling Bros. during the time he worked there, defendants did not provide the narratives

that accompanied such forms when Mr. Rider signed them, which explain the circumstances that precipitated each of those warnings. Nor have defendants produced any documents concerning any “background check” on Mr. Rider, although Ringling has publicly stated that it conducts “background checks” before hiring any employee. See “Llama in hand, accused bank robber is nabbed,” Reid Forgrave, The Cincinnati Enquirer (March 6, 2005) (according to Ringling Bros. spokesman Darin Johnson, Ringling Bros. “performs background checks before hiring anyone”) (available at <http://news.enquirer.com/apps/pbcs.dll/article?AID=/20050306/NEWS01/503060418/1056&template=printpicart>)

In addition, defendants still have not provided any background or other information that they have collected on Mr. Rider, and which, according to them, they intend to use for “cross-examining Mr. Rider,” see Defendants’ Opposition to Motion to Compel at 23, nor have defendants supplemented their privilege log with a description of any such documents. Nor, for that matter, have defendants produced or identified on their privilege log any e-mail communications concerning Mr. Rider, although surely such electronic records exist, since Mr. Rider is the only individual plaintiff in this case, he worked for Ringling Bros. for two and a half years, and defendants have made it clear that they intend to challenge both his standing and his credibility in this case.

2. **Identification of Individuals and Employment Responsibilities**
(Pl. Mem. at 21; Pl. Reply at 12)

On January 25, 2005 – the day plaintiffs filed their motion to compel – defendants produced a list of job descriptions for some categories of employment. However, they did not provide such descriptions for all of the categories of employment that defendants themselves use when referring to individuals who had employment responsibilities with respect to the elephants,

including such categories as “developmental elephant care mgr,” “blue unit ringstock,” and “Blue workingman.”

On March 3, 2005, defendants also provided plaintiffs with a chart that identifies those individuals whom Ringling is willing to identify because they had “direct responsibilities” for the elephants. Defendants’ March 3, 2005 Supplemental Responses at 2. However, that chart apparently does not provide a list of all of the employees defendants were required to identify in response to plaintiffs’ discovery request (*i.e.*, all employees who “worked with” the elephants, in any capacity, regardless of whether, in defendants’ view, they had “direct responsibilities” for elephants), nor have defendants provided any indication of what they mean by “direct responsibilities.” In addition, except in a very few situations, the supplemental production fails to identify which unit of the circus each identified employee worked with, as defendants promised they would do so that plaintiffs would have a basis for determining which elephants those employees worked with. *See* Pl. Mem. at 23.

3. **Information Regarding Asian Elephants In Defendants’ Custody**
(Pl. Mem. at 25; Reply at 11)

On February 10, 2005, defendants produced a copy of the 2002 North American Regional Studbook for the Asian Elephant, which lists elephants maintained in captivity in the United States by zoos, circuses, and other facilities.

On March 1, 2005, defendants produced two files concerning the elephants: (1) a file primarily containing forms filled out pursuant to the Convention on International Trade in Endangered Species of Fauna and Flora (“CITES”), and, in some cases, affidavits explaining that a particular elephant had died or been euthanized, and, also in some cases, a statement as to the reason for the death or euthanasia, and (2) a file primarily containing various “animal

inventories,” listing the elephants. On March 3, 2005, defendants also provided a narrative response to Plaintiffs’ Interrogatory No. 8 concerning some of the history of some of the elephants.

However, other than listing the animals on various animal inventories, defendants still have not produced any information on several elephants, including those named Luke, Roxy, Bunny, Lecheme, Meena, and Camela. In addition, defendants have produced only scant information on additional elephants Bo, Charlie, Cora, Gilda, Judy, Louie, and Vicki, and defendants have also not provided information concerning the cause of death of at least one of the elephants that died – an elephant named Roma.

Defendants also have not provided any additional medical records, but instead, as the Court is aware, have belatedly moved for a protective order with respect to that material, after first insisting that they had produced all such information. In addition, defendants still have not produced records relating to tuberculosis in elephants, as requested in Plaintiffs’ Document Request No. 8, since defendants persist in their contention that such records do not fall within the scope of discovery in this case. See Pl. Reply at 11.

4. Information Relating to Plaintiffs’ Report (Pl. Mem. at 30; Reply at 10)

On March 1, 2005, defendants provided some additional documents concerning one of the nine Chapters of Plaintiffs’ Report – i.e., Chapter 4, pertaining to the forcible removal of two baby elephants (Doc and Angelica) from their mothers. However, other than these few documents, defendants still have not provided plaintiffs with any of the additional information that is requested concerning this Chapter, or any of the other matters addressed in this Report.

5. Video, Audio, and Other Recordings (Pl. Mem. at 32; Reply at 14)

On March 1, 2005, defendants provided plaintiffs with one additional videotape. However, other than this one record, defendants have not provided plaintiffs with any of the other “thousands” of videotapes that they admit may be responsive to plaintiffs’ discovery requests. See Def. Opp. at 15. Nor have defendants ever addressed whether they have other “recordings” that are specifically covered by plaintiffs’ discovery requests, including, but not limited to, audio recordings, computer records, or recordings made from closed-circuit monitors.

6. Information Related To Defendants’ Alleged Conservation Of Asian Elephants
(Pl. Mem. at 35; Reply at 17)

On March 3, 2005, defendants provided a supplemental narrative response to Interrogatory Nos. 9 and 10 concerning defendants’ conservation projects, as well as a few documents concerning donations to an elephant organization. However, in their narrative response, defendants insisted that, although “[t]here is no way to quantify the amount of money that defendants have spent that has directly conserved habitat in the wild for Asian elephants,” and that hence defendants need not produce any discovery on this point, they should nevertheless be entitled to “rely on these facts to rebut plaintiffs’ contention that defendants are not engaged in activities that conserve Asian elephants.” March 3, 2005 Supplemental Responses at 7-8. However, it is plaintiffs position that, pursuant to Rule 37(c)(1), Fed. R. Civ. P., if defendants refuse to provide the requested discovery to plaintiffs on this point, then they certainly may not rely on such information as a defense in this case.

Moreover, defendants have not provided any of the additional information requested by plaintiffs concerning defendants’ efforts to breed elephants at their breeding farm in Florida, which they refer to as “The Center for Elephant Conservation.”

7. **Commercial Information** (Pl. Mem. at 37; Reply at 19)

Defendants have not provided any supplemental information in response to these discovery requests.

8. **Defendants' General Objections** (Pl. Mem. at 40; Reply at 21-25)

Defendants have not provided any supplemental information that would further illuminate whether they have in fact withheld information based on any of their general objections.

Respectfully submitted,

/s/

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Date: April 5, 2005