

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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

**Plaintiffs,**

**v.**

**FELD ENTERTAINMENT, INC.,**

**Defendant.**

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**Case No. 03-2006 (EGS/JMF)**

**DEFENDANT’S WITNESS AND EXHIBIT LIST FOR MONDAY, MARCH 9, 2009**

Defendant hereby provides notice of the following list of witnesses who are likely to testify on Monday, March 9, 2009 and the exhibits defendant intends to introduce that same date. In addition to the witnesses and exhibits listed in this notice, defendant also may call any witnesses or exhibits previously identified. Defendant reserves the right to rely upon any exhibit already admitted into evidence.

**I. DR. TED FRIEND**

<b>EXHIBIT #</b>	<b>Description</b>	<b>Evidentiary Basis</b>
DX 22	Expert Report of Ted H. Friend	Probative of Dr. Friend’s qualification as an expert witness;  Evidence of defenses to “taking” claim

<b>EXHIBIT #</b>	<b>Description</b>	<b>Evidentiary Basis</b>
DX 26D	Court-Ordered Inspection Video Footage (Auburn Hills) (11/13/07)  <b>Timestamp:</b>  <b>1:19:00-1:24:42</b>	No objection by plaintiffs
DX 214	Brockett, R.C. <i>et al.</i> , Nocturnal Behavior in a Group of Unchained Female African Elephants, Zoo Biology, 18: 101-109 (1999) (Ex. 5 to Benjamin Hart Deposition)	Evidence of defenses to “taking” claim
DX 215	Wilson, Megan L. <i>et al.</i> , Nocturnal Bheavior in a Group of Female African Elephant, Zoo Biology, 25: 173-186 (2006) (Ex. 6 to Benjamin Hart Deposition)	Evidence of defenses to “taking” claim
DX 216	Schmid, J., Keeping Circus Elephants Temporarily in Paddocks - The Effects of Their Behavior, Animal Welfare, 4: 87-101 (1995) (Ex. 7 to Benjamin Hart Deposition)	Evidence of defenses to “taking” claim
DX 220	Friend, Ted H., Behavior of Picketed Circus Elephants, Applied Animal Behaviour Science, 62: 73-88 (1999) (Ex. 11 to Benjamin Hart Deposition)	Probative of Dr. Friend’s qualification as an expert witness;  Evidence of defenses to “taking” claim
DX 221	Friend, Ted. H. and Melissa L. Parker, The Effect of Penning Versus Picketing on Stereotypic Behavior of Circus Elephants, Applied Animal Behavior Science, 64: 213-25 (1999) (Ex. 12 to Benjamin Hart Deposition)	Probative of Dr. Friend’s qualification as an expert witness;  Evidence of defenses to “taking” claim
DX 222	Gruber, T.M. <i>et al.</i> , Variation in Stereotypic Behavior Related to Restraint in Circus Elephants, Zoo Biology, 19: 209-221 (2000) (Ex. 13 to Benjamin Hart Deposition)	Evidence of defenses to “taking” claim

<b>EXHIBIT #</b>	<b>Description</b>	<b>Evidentiary Basis</b>
DX 223	Williams, J.L. and T.H. Friend, Behavior of Circus Elephants During Transport, JEMA, Vol. 14, No. 3, 8-11 (Ex. 14 to Benjamin Hart Deposition)	Probative of Dr. Friend's qualification as an expert witness;  Evidence of defenses to "taking" claim
DX 300A	Final Report of Transportation of Circus Elephants to USDA (7/30/01) (Ex. 12 to Friend Deposition) (FELD 2210-2317)	Probative of Dr. Friend's qualification as an expert witness;  Evidence of defenses to "taking" claim
PWC 121A	"Ringling Abuse" (PL 0704)	Evidence of defenses to "taking" claim
PWC 132I	Compilation of Video Footage of Elephants From 1987-2004 (Produced to Defendant on 3/20/08)  <b>Timestamp:</b>  <b>19:46-21:03</b>	Admitted into evidence during plaintiffs case-in-chief
PWC 143	Video footage of the Rule 34 Inspection of the Blue Unit in Auburn Hills, Michigan (11/13/07)  <b>Timestamp:</b>  <b>4:08:00-4:09:00</b>  <b>4:12:00-4:18:00</b>	Plaintiffs' exhibit to which defendant did not object
	Toscano, Friend & Nevill. 2001. Environmental Conditions and Body Temperature of Circus Elephants Transported During Relatively High & Low Temperature Conditions. Journal of the Elephant Managers Association.	Probative of Dr. Friend's qualification as an expert

<b>EXHIBIT #</b>	<b>Description</b>	<b>Evidentiary Basis</b>
		witness;  Evidence of defenses to “taking” claim

## II. CATHY LISS (AWI)<sup>1</sup>

<b>EXHIBIT #</b>	<b>Description</b>	<b>Evidentiary Basis</b>
DX 17	FEI’s Interrogatories to the Organizational Plaintiffs (3/30/04)	No objection by plaintiffs
DX 19	AWI’s First Response and Supplemental Responses to FEI’s Interrogatories (6/9/04; 1/31/07; 9/24/07; 1/30/08)	Party Admission;  No objection by plaintiffs
DX 50	WAP Ledgers of Payment Made to or for Tom Rider (September 24, 2007 WAP-004-009; November 30, 2007 WAP-001)	No objection by plaintiffs
DX 61	Meyer, Glitzenstein & Crystal Invoices Reflecting Payments to Rider	No objection by plaintiffs
DX 62	Fundraiser Invitation (AWI 09925)	No objection by plaintiffs
DX 63	AWI Check to an Employee for Wire Transfer to Tom Rider (AWI 09946)	No objection by plaintiffs
DX 65	Partial Email (pages 2 and 3) From Katherine Meyer to Lisa Weisberg, Michael Markarian, and Cathy Liss (11/5/03) (WAP 270)	No objection by plaintiffs

<sup>1</sup> Ms. Liss is the at the Animal Protection Institute (AWI). Ms. Liss served as AWI’s Rule 30(b)(6) deponent and verified its interrogatory answers. Because Ms. Liss is an officer of an adverse party, FEI requests that it be permitted to ask leading questions during its direct examination pursuant to F.R.E. 611(c).

DX 97	Letter from AWI to Regulatory Analysis and Development PPD (4/17/00) (AWI 02465-468) (Ex. 8 to AWI Rule 30(b)(6) Deposition)	Party Admission;  No objection by plaintiffs
DX 209	Documents Produced by Plaintiffs on 8/11/08	No objection by plaintiffs
PWC 94A	Media Concerning Tom Rider and the Ringling Brothers Circus	Admitted into evidence during plaintiffs' case-in-chief  Credibility of lead plaintiff
	Complaint, Civ. Act. No. 03-2006 (9/26/03)	Judicial Notice

### III. JERRY SOWALSKY

<b>EXHIBIT #</b>	<b>Description</b>	<b>Evidentiary Basis</b>
DX 1	Regulatory Status of Seven Asian Elephants at Issue - Summary (Excerpt from DX 1 to FEI's Motion for Summary Judgment (Docket No. 82) (9/5/06))	Evidence of defenses to "taking" claim
DX 3	Documents Evidencing Regulatory Status of Seven Asian Elephants At Issue (Excerpt from DX 5 to FEI's Motion for Summary Judgment (Docket No. 82) (9/5/06))	Evidence of defenses to "taking" claim;  FEI Business Record. F.R.E. 803(6)
DX 5	Letter from C.R. Bavin, Chief, Division of Law Enforcement, United States Department of Interior to Ringling Brothers & Barnum & Bailey Shows (11/4/75) (DX 11 to FEI's Motion for Summary Judgment (Docket No. 82) (9/5/06))	Evidence of defenses to "taking" claim;  FEI Business Record. F.R.E. 803(6)

DX 6	Animal Censuses (1994-2008)	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 7	ASPCA Inspection Documents (A 00801, A 00804-806, A 00819-841)	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 71	USDA No Action and No Violation Letters and Internal Memoranda and Communications Regarding Same	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 72	Certificates of Veterinary Inspection	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 73	USDA Inspection Reports Produced by FEI: Blue Unit	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 74	USDA Inspection Reports Produced by FEI: Red Unit	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)

DX 75	USDA Inspection Reports Produced by FEI: Gold Unit	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 76	USDA Inspection Reports Produced by FEI: CEC	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 77	USDA Inspection Reports Produced by FEI: Williston	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 78	USDA Inspection Reports Produced by FEI: Miscellaneous	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 79	USDA Inspection Reports Produced by Plaintiffs	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 80	Local Inspection Documents	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)

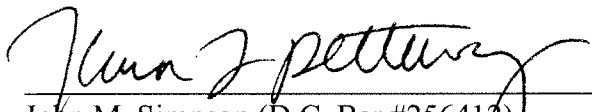
DX 81	S.P.C.A. Inspection Reports	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 82	Documents Relating to USDA Investigation Regarding Tuberculosis in FEI’s Elephants, Including the Asian Elephant “Nicole”	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 83	Documents Relating to USDA Investigation Regarding the Asian Elephant “Benjamin”	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 84	Documents Relating to USDA Investigation Regarding the Asian Elephant “Kenny”	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 85	Documents Relating to USDA Investigation Regarding the Asian Elephant “Riccardo”	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)
DX 86	Documents Relating to USDA Investigation Regarding the Asian Elephants “Doc” and “Angelica”	Evidence of defenses to “taking” claim;  FEI Business Record. F.R.E. 803(6)

DX 87	Documents Relating to USDA Investigation Regarding the Asian Elephants "Rudy" and "Angelica" (PL 014715-718)	Evidence of defenses to "taking" claim;  FEI Business Record. F.R.E. 803(6)
DX 88	Documents Relating to USDA San Jose Investigation (FELD 0002010-016, FELD 0002018-021)	Evidence of defenses to "taking" claim;  FEI Business Record. F.R.E. 803(6)
DX 89	Documents Relating to USDA Investigation of Allegations by Archele Hundley (PL 014355-360, PL 014433, PL 014456-463)	Evidence of defenses to "taking" claim;  FEI Business Record. F.R.E. 803(6)
DX 90	Documents Relating to USDA Investigation of Allegations by Glenn "Doc" Ewell and James Stehcon	Evidence of defenses to "taking" claim;  FEI Business Record. F.R.E. 803(6)
DX 193	Feld Entertainment, Inc.'s Current USDA Licenses and Permits	Evidence of defenses to "taking" claim;  FEI Business Record. F.R.E. 803(6)
DX 200	Agreement Between Teamsters Local Union No. 688 and Irvin Feld and Kenneth Feld Productions, Inc. dba Ringling Bros. & Barnum & Bailey Circus (1/1/96- 12/31/98) (FEI 53188-209)	Credibility of lead plaintiff
DX 201	Agreement Between Teamsters Local Union No. 688 and Feld Entertainment, Inc. dba Ringling Bros. & Barnum & Bailey Circus (1/1/99-1/31/01) (FEI 53210-233)	Credibility of lead plaintiff

DX 206	Letter from USDA to Richard Froemming Regarding Train Transportation (11/22/02) (FELD 0028084)	Evidence of defenses to "taking" claim;  FEI Business Record. F.R.E. 803(6)
DX 299A	Demonstrative Exhibit Regarding USDA No Action and No Violation Letters	Demonstrative
PWC 35	Regulatory Status of Asian Elephants Currently Owned by Feld Entertainment, Inc. - Summary (Exhibit 1 to Defendant Motion for Summary Judgment, DE 82)	Plaintiffs' exhibit to which defendant did not object
PWC 86	Documents reflecting the origin of Ringling Brothers elephants (DX 5 and DX7 to Defendant Motion for Summary Judgment, DE 82)	Plaintiffs' exhibit to which defendant did not object
PMC 33	6/6/05 Letter from Julie Strauss to Adam Parascandola (FEI 1572-1575)	Plaintiffs' exhibit to which defendant did not object

Dated this 4th day of March, 2009.

Respectfully submitted,



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Lisa Zeiler Joiner (D.C. Bar #465210)  
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