

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)  
JUDGE: Emmet G. Sullivan

## DECLARATION OF JULIE ALEXA STRAUSS

Julie Alexa Strauss being duly sworn, declares as follows:

1. I am Vice President and Corporate Counsel for Feld Entertainment, Inc. (“Feld”). As part of my duties at Feld, I am the in-house counsel who is primarily responsible for this Litigation. I make this declaration based on personal knowledge and belief in response to the Court’s Order to Show Cause dated September 19, 2005.

2. I graduated from Duquesne University Law School in 1984. I am a member of the bars of the Commonwealth of Pennsylvania, the Commonwealth of Virginia, and the District of Columbia.

3. I have worked for Feld for more than 17 years, and I am one of four attorneys in Feld's legal department. Feld is the world's largest provider of live family entertainment, including Ringling Bros. and Barnum & Bailey Circus and Disney On Ice. In my capacity as Feld's in-house counsel, I work on multiple matters, including overseeing various litigation with which the company is involved, animal regulatory

compliance, immigration work, intellectual property issues, employment matters, and a range of contract issues, among other things.

4. This declaration is submitted in response to the Court's Order requiring Feld to show cause why it failed to identify some medical records for its elephants in June 2004, when it first responded to plaintiffs' discovery requests. It is now clear to me that I and others at Feld overlooked responsive documents that were in the possession of our veterinarians and other animal care personnel while gathering materials to respond to plaintiffs' requests. We certainly did not intend to conceal the existence of any records. The oversight occurred because I and others at Feld sought medical records from the facilities and touring units where the animals were located because that is where the medical records are supposed to be kept. As described below, not all the records were located at these sites, our computerized records system ("DVMax") may not have had complete medical records, and some groups of documents were not produced because non-veterinarian animal care staff regarded them as observation reports rather than medical records.

5. Starting in December 2003, I alerted various members of Feld's staff, including Tracy Mahoney (the then-Executive Assistant to Feld's Vice President of Circus Operations), William Lindsay (Feld's then-Director of Veterinary Medicine), John Kirtland (Feld's then-Executive Director of Animal Stewardship), and Jim Andacht (Feld's Vice President of Circus Operations) that discovery in this lawsuit would begin in early 2004 that would require Feld to produce to plaintiffs information regarding a wide variety of issues involving elephant care and treatment, covering both specific matters

and general practices. I specifically referenced the need to start gathering each elephant's medical records.

6. On March 30, 2004, the plaintiffs in this case served on Feld discovery requests, including interrogatories, document requests, and a request for admission. Those requests were forwarded to me the same day they were served. Over the next two months, I assisted Feld's litigation counsel Covington & Burling in preparing responses to those discovery requests. As part of that effort, I, sometimes joined by other legal staff at Feld and Covington & Burling attorneys including Joshua Wolson and Kimberly Strosnider, spoke with a number of Feld employees to answer interrogatories and locate documents responsive to the requests. At the culmination of that effort, Feld provided plaintiffs with more than 3,600 pages of documents, as well as interrogatory responses and a response to the request for admission. We later supplemented that production with more than 2,500 additional pages of documents and supplemental interrogatory responses, and offered to produce additional documents under a protective order.

7. One of the document requests in plaintiffs' discovery requests (Request No. 8) sought all "medical records" that related to each elephant that Feld identified as one that it owned or leased. Another (Request No. 16) sought all documents about each elephant's birth, death, breeding, and other information. Feld asserted partial objections to these requests, but agreed to produce non-privileged documents dated 1996 or later that it located after a reasonable search. I oversaw the search that Feld conducted to gather responsive documents.

8. In the Spring of 2004, when we were preparing our responses to the plaintiffs' discovery requests, Feld had elephants in two fixed facilities – the Ringling Bros. Center for Elephant Conservation (“CEC”) and the Williston Retirement facility – and on three touring units of Ringling Bros. and Barnum & Bailey Circus – the “Blue,” “Red,” and “Gold” units. Based on my experience, I believed that complete sets of Feld's animal care records would be maintained on site where the animals were located. I held this understanding for a number of reasons, based both on the purpose the records serve and my experience with requests for records in the past.

9. First, Feld's policy is to maintain information about each animal at the site where each animal is located. The United States Department of Agriculture (“USDA”) has federal oversight of defendant's elephants pursuant to the Animal Welfare Act, and under federal regulations, USDA inspectors conduct unannounced inspections at each of Feld's facilities, at which time they have the authority to review medical records for each of the animals on site. Some state and local regulatory authorities have similar inspection and oversight authority. To my knowledge, the USDA has been satisfied with the records available to it at each of Feld's locations; indeed, I do not recall any time that the USDA (or any other regulatory agency) has complained to Feld about the completeness of the records available on site. In supervising document gathering, I therefore proceeded on the assumption that those sites were the places where Feld kept each animal's complete file.

10. Second, as a practical matter, it makes sense for an animal's records to be with the animals to facilitate the administration of veterinary care. Feld has employed more than one veterinarian on a full time basis, as well as having consulting

veterinarians who provide services. Therefore, the same veterinarian does not always treat an animal. Moreover, in any city where Ringling Bros. and Barnum & Bailey Circus is performing, Feld maintains a local, on-call veterinarian available in case of emergencies. Any veterinarian who treats an animal will be able to update himself or herself on the animal's recent history by using the available medical records for that animal. Because the veterinarians travel amongst all of Feld's units and facilities, the medical records must be on site, and cannot only be in the possession of a veterinarian. Feld's staff veterinarians do not have fixed offices at Feld facilities.

11. Third, the veterinarians are not the only Feld employees who may administer medical care to an animal or otherwise need access to the animal's medical records. Care is often given by veterinary technicians or other qualified animal care staff at the facilities or who travel with the circus. These individuals help to maintain the records, and they also can access an animal's records if necessary to update themselves on the animal's status and history or to make appropriate records for the veterinarians.

12. In addition to hard copy records, at the time of the initial document search, Feld had inaugurated a relatively new centralized computer database called "DVMax," which was designed to serve as a central, electronic record of each animal's medical history, with entries made directly into the system by Feld's on-site animal care staff and its veterinarians. The goal was that DVMax would replace paper records and that new entries would be entered electronically, directly into the system. Like the records traditionally kept on site with each animal, DVMax was intended to provide a medical history about each animal, so that different veterinarians and other animal care staff would have access to relevant information when caring for the animal. In this way,

Feld would ensure that the information was backed up in case of any damage that might occur to the paper records. These files would also be accessible to federal and other regulatory authorities.

13. When a veterinarian or other animal care personnel made an entry to an animal's medical record in DVMax, the updated record would be sent to the CEC for incorporation onto the central DVMax system. The CEC would update the DVMax entries, and it would then send the updated version back to the units. The units would then have a complete, updated set of medical records, which they could then print out or add to their own electronic records.

14. In my experience, when the USDA has made a special request for an animal's medical records, the agency has obtained access to the animal's records at the animal's location. For example, several years ago, the USDA asked to review the medical records for an elephant named Nicole. The USDA investigator reviewed Nicole's medical records at the CEC and requested hard copies of her records. We obtained these documents from the CEC, where Nicole was living at the time. The USDA never suggested that the medical records that it received about Nicole were incomplete. Similarly, when working with the USDA on other inquiries, I do not recall the USDA suggesting that the medical records provided for other animals were incomplete.

15. Based on the experience and understanding described above, in an effort to gather the materials responsive to plaintiffs' Document Request Nos. 8 and 16, I personally spoke with personnel responsible for animal records on each of Feld's three touring companies and at the Williston and CEC facilities in order to gather the medical

records of each elephant. I purposely handled the document production process in this way because, in a company like ours whose personnel are traveling or who have limited access to e-mail, paper communications and e-mails can be delayed in reaching the recipient and are often overlooked. I wanted to ensure that the responsible personnel knew and understood that all medical records had to be sent to me for review by counsel. Although I have not been able to recall in the past few days all of the people with whom I spoke in Spring 2004, to the best of my recollection I spoke with either the General Manager or a veterinary technician on each of the traveling units, Gary Jacobson and Trudy Williams at the CEC, and Harry Locker at Williston facility, among others. One or more attorneys from Covington & Burling may have been involved in some of those conversations. Although I have not been able to reconstruct all of these conversations, I would have told them that I needed copies of all medical records for each elephant at each of their respective locations.

16. At no time did any of the animal care staff or other Feld employees with whom I spoke suggest that the medical records maintained at each site or on DVMax were incomplete, or that anyone maintained additional medical records. Nor did I believe that Feld's veterinarians had additional records. In addition to the practices discussed above, Feld's staff veterinarians travel a significant portion of the year in order to see and treat the animals, which are located throughout the country. Keeping medical records with the animals saved veterinarians the need to take records with them.

17. It is my understanding that all of the material (with the exception of certain objected-to categories or privileged documents) that I obtained from CEC, Williston, and the traveling units was produced to the plaintiffs in June 2004, when

defendants first produced documents to the plaintiffs. At the time, I thought that we had gathered and produced all of Feld's medical records relating to the elephants.

18. In early November 2004, the USDA was conducting an investigation into the death of an elephant named Riccardo. As part of that investigation, Jeannie Perron of Covington & Burling, Dr. Lindsay, Gary Jacobson, and I met at the CEC in preparation for a meeting with the USDA. At that time, Dr. Perron and I were given handwritten records about Riccardo that were not part of the medical record. These documents consisted of daily observations and handwritten notes about Riccardo made primarily by animal care staff at the CEC, as opposed to veterinarians. I had not seen those documents – nor do I recall being aware of their existence – prior to that day. It did not occur to me at that time that this information called into question the completeness of our document production in this case, because I was focused on the USDA investigation. These documents were shown to USDA investigators and veterinarians the following day at the CEC.

19. In November 2004, shortly after the meeting at the CEC about Riccardo, Joshua Wolson spoke to me about concerns raised by plaintiffs about defendant's discovery responses. He asked me whether there were any additional medical records for any of the elephants, including specifically Riccardo, because he said that the plaintiffs had questioned whether all of the records had been produced and had specifically mentioned Riccardo. It was at that time that I recalled the Riccardo documents. I provided them to Mr. Wolson, and, after discussion, we determined it would be appropriate to seek a protective order from plaintiffs for these and other additional medical records.



20. I learned at some point that Dr. Lindsay, Feld's then-Director of Veterinary Care, had documents relating to Feld's elephants in his possession at his home office in Toronto, Canada. I cannot recall at this point exactly when or how I learned this. I am certain it was well after we gathered and produced the initial round of documents in discovery, and I believe it was after the Riccardo investigation. I further recall that when I first learned of these documents, I was under the impression that these were duplicates of the documents kept on the traveling units and at CEC and Williston. More recently, I have learned that this is not the case, and that some of the documents in Dr. Lindsay's files are not in the veterinary records at other locations. I have also come to understand that some Feld employees had not been entering all medical information into the DVMax system because they have found the software incompatible with their operating systems or encountered other technical problems. I was unaware of these technical problems at the time that Feld gathered its documents to produce to the plaintiffs, which is one of the reasons that I expected the files on the traveling units to be complete records. I have also come to know that some Feld employees, including veterinarians, have prepared their own notes about the care given to the elephants.

21. I have recently been told by Ellen Wiedner, Feld's current Director of Veterinary Medicine and Dr. Lindsay's successor, that after she was hired in April 2004, she came to realize that there were technical problems with DVMax and, consequently, Feld's medical records for its animals were not as organized and/or consolidated as she would have preferred. In part because of this, Feld has begun efforts to organize a new system.

22. In response to further inquiries of various members of Feld's animal care staff, including Drs. Lindsay and Wiedner, as well as various personnel on the traveling units and at Williston and CEC, I learned that some Feld employees draw a distinction between medical records – that is, records compiled by a veterinarian and/or that dealt directly with medical issues – and day-to-day observational records of elephants made by Feld's professional animal care staff, such as the handwritten notes about Riccardo. Thus, when we asked for medical records, they understood the request to encompass only the former category of documents, and they only endeavored to provide us those documents. While reasonable minds might differ on whether these are “medical” records, once we were aware of them, we concluded that these records should be produced as part of the request for medical records.

23. After focusing on the additional Riccardo documents that seemed relevant to this matter, which plaintiffs wanted promptly, I discussed with lawyers from Covington & Burling the possibility of obtaining a protective order so that additional medical records could be produced quickly without the risk that they would be disseminated to the public. As a result of those conversations, plaintiffs were asked to consent to a protective order covering additional medical records, out of concern for research interests in many of the documents. I was also concerned that public release of the documents without context or explanation would potentially subject the veterinarians to unfair public attacks on their professional reputations. When the plaintiffs declined to agree to a protective order, Feld filed a motion seeking an order to protect the medical records prior to their disclosure to plaintiffs.

24. At no time did I attempt, or encounter any attempt by others at Feld, to conceal information or to avoid providing information to plaintiffs that is responsive to their discovery requests. I regret that the medical records subject to the request for a protective order were not identified during our initial document search, but I sincerely do not believe that the failure to locate and/or identify the documents was the result of any malfeasance on the part of anyone at Feld. We have acknowledged this oversight after conducting further searches in response to plaintiffs' inquiries and offered to produce the documents subject to a protective order.

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.

  
Julie Alexa Strauss

September 21, 2005