

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION
OF THE CRUELTY TO ANIMALS, ET AL.,

Plaintiffs,

vs.

FELD ENTERTAINMENT, INC.,

Defendant.

CA No. 03-2006
Washington, DC
February 24, 2009
10:20 a.m.

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

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For the Plaintiff:

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PHILIP ENSLEY, DMV

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1 P R O C E E D I N G S

2 COURTROOM DEPUTY: Civil Action 03-2006, the
3 American Society for the Prevention of Cruelty to Animals
4 versus Feld Entertainment. Counsel, please identify
5 yourselves for the record.

6 MR. GLITZENSTEIN: Good morning, Your Honor. Eric
7 Glitzenstein for the Plaintiffs.

8 MS. MEYER: Katherine Meyer for the Plaintiffs,
9 Your Honor.

10 MS. SANERIB: Good morning, Tanya Sanerib for the
11 Plaintiffs.

12 MS. WINDERS: Good morning, Delcianna Winders for
13 the Plaintiffs.

14 MS. SINNOTT: Good morning. Michelle Sinnott, Tech
15 for the Plaintiffs.

16 MR. SIMPSON: Good morning, Your Honor. John
17 Simpson for the Defendant.

18 MR. SHEA: Good morning, Your Honor. Lance Shea
19 for the Defendant.

20 MS. JOINER: Good morning, Your Honor. Lisa Joiner
21 for the Defendant.

22 MS. PARDO: Michelle Pardo for the Defendant.

23 MS. PETTEWAY: Good morning. Kara Petteway for the
24 Defendant.

25 MS. STRAUSS: Good morning, Your Honor. Julie

1 Strauss for the Defendant.

2 MR. PALISOUL: Derek Palisoul, Tech for the
3 Defendant.

4 THE COURT: Good morning. Sorry for the delay, we
5 were all ready to go at 9:30 but the other court reporter had
6 some problems and it couldn't be fixed, so it's just one of
7 those things. We'll start now. There's a matter at 11:30, a
8 short status hearing that I can't continue, I have to take
9 that. So, we'll take a recess at 11:30.

10 With respect to video depositions, is there a
11 hardship if I require Plaintiffs to just put whatever
12 remaining video depositions there are with the
13 counter-designations on a DVD? Is that a problem?

14 MS. MEYER: No, Your Honor, but the only thing I'll
15 add to that is I don't really have that -- I pared it down
16 again, I don't have that much more to show you.

17 THE COURT: That's relative. How much is that
18 much?

19 MS. MEYER: It's -- I think all tolled it's 58
20 minutes for everything, reading and showing you video.

21 THE COURT: Fifty-eight more minutes?

22 MS. MEYER: Yes.

23 THE COURT: That's an hour, that can be put on a
24 DVD. Unless it's a hardship. If it's going to take five
25 hours to do it, we'll do it at the end of the day. If not,

1 we'll put it on the DVD with Defendant's counter-designations.
2 And with respect to Defendant's video, do you have any video
3 depositions that you want me to take a look at during your
4 case in chief?

5 MR. SIMPSON: Well, for our case in chief there
6 might be. I think for purposes of their -- we can probably do
7 counter-designations, the only hitch there is that we did
8 counter-designations based on their most recent list. So, if
9 they have pared it down further, we'll have to hand that up
10 and the record will just need to be clarified what they are
11 actually submitting.

12 THE COURT: All right.

13 MR. SIMPSON: So, it could be over-inclusive.

14 THE COURT: Just one second. I may be able to
15 continue this 11:30 matter.

16 MR. SIMPSON: I've been advised that the only part
17 that we would actually play for the Court is a video, at this
18 point, is a nine minute segment.

19 THE COURT: That's fine. Let's proceed, Counsel.

20 MR. GLITZENSTEIN: Thank you, Your Honor.

21 THE COURT: One second. Let's proceed.

22 MR. GLITZENSTEIN: Thank you, Your Honor.

23 Plaintiffs have called Dr. Philip Ensley to the stand.
24
25

1 Thereupon,

2 PHILIP ENSLEY, DVM,

3 the witness herein, having been first duly sworn, was examined
4 and testified as follows.

5 DIRECT EXAMINATION

6 BY MR. GLITZENSTEIN:

7 Q. Good morning, Dr. Ensley.

8 A. Good morning.

9 Q. Can you state and then spell your full name for the
10 record, please.

11 A. Philip Keith K-E-I-T-H Ensley E-N-S-L-E-Y.

12 Q. And where do you live?

13 A. 2740 --

14 THE COURT: You don't have to give us -- just give
15 us the city.

16 THE WITNESS: San Diego.

17 BY MR. GLITZENSTEIN:

18 Q. What is your current occupation?

19 A. I am retired.

20 Q. And what did you do before retiring?

21 A. I worked as an Associate Veterinarian for the
22 Zoological Society of San Diego for 29 years.

23 Q. And is the San Diego Zoo a respected institution?

24 A. Yes.

25 Q. Why do you say that?

1 A. It's been in existence since 1917, it's world renown.
2 There are two campuses in San Diego at Balboa Park and in
3 Escondido, California. We've been involved with education,
4 conservation and entertainment for that entire period of time.

5 Q. And what did your responsibilities entail while working
6 with the zoo?

7 A. I was a clinician -- a veterinary clinician for 11
8 years at the Balboa Park campus and then for 18 years at the
9 Wild Animal Park campus.

10 Q. Did you deal with elephant medical issues while you
11 were at the zoo?

12 A. I did. For 11 years at the zoo we had both Asian and
13 African elephants, and at the Wild Animal Park two herds also.
14 The African herd was a breeding herd.

15 Q. What did your responsibilities with regard to the
16 elephants entail?

17 A. I was a clinician. If there were a particular issue
18 that was brought to the attention of a veterinarian, I would
19 go and make a first appearance, collect information, perform
20 an examination, evaluate a course of treatment, consult with
21 my colleagues. Or if another colleague had made that first
22 appearance and assessment of the animal, then I might be
23 following up on a following day.

24 Q. Did you actually participate in veterinary care with
25 regard to the elephants?

1 A. Yes, I did.

2 Q. What did that involve?

3 A. We performed annual examinations. We would drive by
4 and look at them on a visual basis on an ongoing basis, just
5 to maintain good contact with the keeper personnel and the
6 elephant manager. And we would monitor keeper reports, making
7 observations of the animals' conditions, and make a
8 determination if we needed to make a site visit and look
9 beyond just a verbal acquisition of information.

10 Q. And were you actually participating in any surgical
11 procedures?

12 A. Yes, sir.

13 Q. What did that entail?

14 A. There were a number of procedures at the zoo. We had
15 one animal with a broken jaw that required several
16 immobilizations and assessments and monitoring its repair. I
17 can remember one immobilization to do some foot repair work
18 and foot trim work. There were eye problems. There were foot
19 problems that needed fine tuning.

20 At the Wild Animal Park we performed a Cesarean
21 section. We did an episiotomy on an animal. There were
22 dental issues -- minor dental issues. There were foot care
23 issues. We did a laparotomy procedure, that's an exploratory
24 procedure with a rigid endoscope to look at abdominal tissues.
25 Necropsy procedures. I participated in one --

1 Q. Dr. Ensley, when you're going over the jargon, could
2 you try to be as slow as you can be when you're going through
3 that kind of language.

4 A. I understand.

5 THE COURT: I can't resist. You're asking someone
6 to slow down?

7 MR. GLITZENSTEIN: It takes the devil to know the
8 devil, Your Honor. I appreciate that.

9 BY MR. GLITZENSTEIN:

10 Q. And I think you mentioned -- you had a phrase that
11 began with an EP, I just wanted to be clear on what that
12 procedure was.

13 A. An episiotomy.

14 Q. Yes. What is that?

15 A. This is making an incision ventral to the anal opening
16 to explore the vaginal vault for an animal that -- a female
17 who is undergoing a near term pregnancy, to try to evaluate
18 the position of the -- or the presentation of the fetus.

19 Q. And based on your experience, do you feel that you are
20 conversant with elephant medical and physiology issues?

21 A. Yes, sir.

22 Q. And in the course of doing this work, did you have to
23 become familiar with literature bearing upon elephant medical
24 status and physiology?

25 A. Yes.

1 Q. Why is that?

2 A. Medicine doesn't remain stagnant, you're constantly
3 going to meetings, reading journals, new textbooks, it's an
4 ongoing process.

5 Q. Have you previously served as an expert with regard to
6 the treatment of elephants?

7 A. Yes, I have.

8 Q. In what context?

9 A. There were three cases, first case I gave a deposition
10 in a situation where a trainer had been killed by an elephant
11 and an assistant trainer was seriously injured. Essentially
12 the case involved, was there -- it was a case of alleged abuse
13 and mismanagement of the elephant. The second case was at a
14 zoo in Oregon where a humane organization asked me to review
15 evidence provided by the district attorney's office in
16 Portland and to offer an opinion as to whether or not there
17 was abuse or mistreatment of an elephant.

18 And then a third case was in Santa Clara County
19 where a similar situation occurred, except it was just the
20 district attorney's office providing information for me to
21 review and offer an opinion.

22 Q. So, in that later situation it was the district
23 attorney's office solicited your opinion?

24 A. That's correct.

25 Q. And, Dr. Ensley, you've been sitting in the courtroom

1 with the Judge's permission for most of the trial?

2 A. Yes, sir.

3 Q. Is the Santa Clara incident you referred to the same
4 one that the Judge heard testimony about with regard to
5 Ringling Brothers?

6 A. Yes, it is.

7 Q. With regard to the San Diego Zoo, what kind of
8 management approach to elephants does the zoo have?

9 A. Currently or historically?

10 Q. Currently, to begin with.

11 A. Currently, it's a protected contact management scheme,
12 both at the zoo and at the Wild Animal Park.

13 Q. And what was it previously?

14 A. Free contact when I arrived at the zoo in 1976, and it
15 was free contact also at the Wild Animal Park in 1976.

16 Q. What year did it switch to protected contact?

17 A. At the Wild Animal Park it was in the early 1990s, and
18 at the zoo it was in the late 1990s.

19 Q. Why was that switch made?

20 A. Ultimately, the foundation was for safety of personnel,
21 and it appeared as though there was a growing consensus within
22 the elephant management community that this was -- this was
23 the direction things were moving, and it was just a choice,
24 you know, a selection for management.

25 Q. Did it have anything to do with the well-being of the

1 elephants?

2 A. Yes, it did.

3 Q. Why is that?

4 A. My impression -- I was not involved with management
5 decisions.

6 Q. To the extent that you understand the decision?

7 A. But you were constantly reading more and more about the
8 behavior -- behavioral studies being done in the wild by Saba
9 Douglas-Hamilton, Drs. Mark and Delia Owens, Cynthia Moss, Dr.
10 Poole, and this became a trend in which you're just simply
11 trying to provide a better care for your animals and have them
12 respond more naturally.

13 Q. Does the zoo -- when I say the zoo, generally, assume
14 that I'm saying San Diego Zoo unless I specify otherwise,
15 please. Does the zoo use the ankus or the bull hook?

16 A. No longer.

17 Q. Did it in the past?

18 A. Yes.

19 Q. When was that change made?

20 A. At the zoo, I'm not sure. I did visit the zoo last
21 August after my deposition and I inquired of the lead keeper,
22 he said that they don't even have an ankus or guide on site
23 anymore. At the Park, I don't know that -- there may be one
24 in a locker somewhere, but they're not used. And that would
25 have happened in the early 1990s, mid 1990s at the Park, and

1 then at the zoo in the late 1990s.

2 Q. What is your educational background?

3 A. I received my Bachelor of Science degree at Iowa State
4 University, majoring in Zoology, and my Veterinarian degree at
5 Tuskegee University. I then was in the U.S. Army Veterinary
6 Corps for two years, and then completed an internship in small
7 animal medicine and surgery at the Henry Bergh Memorial
8 Hospital at the ASPCA in New York City.

9 I then completed, after two years of practice in
10 Salt Lake City in a group practice, where I was also
11 consulting with a local zoo, I completed a 15-month internship
12 or post-doctoral training as a Smithsonian Fellow at the
13 National Zoo here in Washington, D.C.

14 Q. What did that entail?

15 A. Fifteen months in a learning position where I was a
16 mentee or intern, and you were basically working seven days a
17 week at the National Zoo in a learning position. I would make
18 rounds with the duty veterinarian. I went to seminars at
19 Johns Hopkins, and you were just pretty much there every day
20 taking care of everything.

21 Q. Does everything include elephants?

22 A. That's correct.

23 Q. Can we take a look at your CV.

24 MR. GLITZENSTEIN: Which, Your Honor, is included
25 in Dr. Ensley's expert report at Plaintiff's Will Call Exhibit

1 113, and it is Appendix A to the report. If you can take a
2 look at that. If you need to scroll down -- if we need to
3 scroll down through it, we can do that. But if you could just
4 indicate whether this is in fact an accurate reflection of
5 your CV, and let us know when you need to scroll down.

6 A. Okay. Okay. Okay. I think I notice a duplication of
7 one citation there, it's not significant. Okay. Okay. Okay.
8 Okay. Okay.

9 Q. Thank you. Is, in fact, that an accurate copy of your
10 CV?

11 A. Yes, it is.

12 MR. GLITZENSTEIN: Your Honor, we move that into
13 evidence as Plaintiff's Will Call Exhibit 113J.

14 THE COURT: Any objection?

15 MR. SHEA: No objection to the CV, Your Honor.

16 THE COURT: Admitted.

17 MR. GLITZENSTEIN: Thank you, Your Honor.

18 BY MR. GLITZENSTEIN:

19 Q. Now, if we go back to the first page of your CV --
20 actually, the second page. It indicates that you are a
21 Diplomate in the America College of Zoological Medicine. Can
22 you explain what that means?

23 A. This is a specialty board established in the early
24 1980s sanctioned by the American Veterinary Medical
25 Association, and basically you submit your credentials for

1 evaluation to a credentials committee. And then you sit a
2 two-day examination, which tests your knowledge and
3 capabilities in five specialty areas: Fish medicine, reptiles
4 and mammals, avian medicine, marine mammals and terrestrial
5 mammals.

6 Q. Would those categories include elephants?

7 A. Terrestrial mammals, yes.

8 Q. And how many Diplomates in the America College of
9 Zoological Medicine are there, approximately, if you know?

10 A. I think the count now is close to 120, if not a few
11 more.

12 Q. That's 120 in the country?

13 A. That's correct. And the world.

14 THE COURT: I'm sorry, 120 in the world?

15 THE WITNESS: Yes, sir.

16 BY MR. GLITZENSTEIN:

17 Q. Are you now or have you ever been a member of the
18 American Zoo and Aquarium Association?

19 A. I was for close to 25 years. I think that would be
20 fairly accurate. I cannot completely remember.

21 Q. And that's while you were at the zoo?

22 A. The zoo and the park. I think I was a member in the
23 middle -- perhaps 1979 or '80, until perhaps 2001 or 2002.

24 Q. And in the course of your practice at the zoo, has it
25 been a responsibility of yours to read and prepare medical

1 records?

2 A. Yes, sir.

3 Q. Has that responsibility specifically related to
4 elephants?

5 A. Yes.

6 Q. What were you asked to do in this case?

7 A. Well, the scope of my investigation was to examine two
8 basic claims of the Endangered Species Act. One, to exam the
9 practice of chaining or tethering elephants for prolonged
10 periods of time on hard surfaces. And, two, examine the use
11 of the bull hook. And offer an opinion as to whether or not
12 the behavior of the Defendants was wounding, injuring, harming
13 or harassing Asian elephants.

14 Q. And in the course of engaging in that review, did you
15 examine the medical records of the Defendant?

16 A. Yes, sir.

17 Q. And by medical records of the Defendant, I mean the
18 medical records relating to their elephants and their care?

19 A. That's correct.

20 Q. And why did you do that?

21 A. The medical records reflect the health and well-being
22 of your patients, the elephants in this case.

23 Q. Do you believe that review was necessary to your
24 ability to perform an adequate evaluation?

25 A. Absolutely.

1 Q. And what did you actually review when you looked at the
2 medical records?

3 A. I looked at -- I received somewhere between 12 and 14
4 boxes of medical records, actually, thousands of papers
5 recounting and chronicling the health of the lives of close to
6 140 elephants. Many of the records, of course, weren't --
7 didn't cover the entire lives. I looked at close to 140 that
8 I could account for, and then after reviewing them all I pared
9 them down when I was informed that the case would be more
10 closely looking at seven elephants.

11 Q. But did you review all 140 records pertaining to all
12 140?

13 A. Yes, sir.

14 Q. And how long did it take you to engage in that review?

15 A. I think over a three-year period it was a little
16 over -- a little over 1300 hours.

17 Q. Do you believe you've done a thorough review of the
18 records that were available to you?

19 A. Of the records that were available, yes.

20 Q. And in the course of developing an opinion, did you
21 attend the inspections that were ordered by the Court?

22 A. Yes, I did.

23 Q. And those are inspections at both the Auburn Hills site
24 and the CEC site in Florida?

25 A. That's correct.

1 Q. Did you engage in review of literature in developing an
2 opinion?

3 A. I did.

4 Q. What did that entail?

5 A. I looked at my own personal library, and I acquired
6 papers through the zoo library, and pulled information from
7 previous court cases, you know, where I consulted for further
8 information.

9 Q. And did you prepare a report reflecting your opinions?

10 A. I did.

11 Q. And approximately how long is that report?

12 A. I believe, minus the appendices, 290 pages. 290 pages.

13 Q. Why is it so long?

14 A. There was a great deal of literature to review, which I
15 wanted to see how the literature would follow my assessment,
16 if you will, support my opinion, if you will. And I felt it
17 was important to include that in the report.

18 Q. And does the report also address the medical record
19 summary that you came to?

20 A. Yes, it did.

21 Q. Do you feel qualified to offer an expert opinion on the
22 physical and medical status of the elephants and whether the
23 claims being made in this case has any bearing upon that
24 physical and medical status?

25 A. Yes, sir, I do.

1 Q. Do you believe that your opinion on those issues could
2 assist Judge Sullivan in resolving the issues in this case?

3 A. Yes, sir.

4 Q. Do you consider yourself to be an expert on whether
5 stereotypic behavior or swaying behavior is caused by chaining
6 on hard surfaces?

7 A. It would be in my general area of expertise.

8 Q. But you haven't engaged in any studies of that
9 yourself, have you?

10 A. No, sir.

11 Q. Would you consider yourself an expert on the actual use
12 of a bull hook?

13 A. No, sir.

14 MR. GLITZENSTEIN: Your Honor, we tender Dr. Ensley
15 as an expert in zoological medicine, and specifically, with
16 respect to his ability to provide an opinion on his review of
17 the medical records of Defendant and other matters bearing
18 upon that review.

19 THE COURT: Any voir dire?

20 MR. SHEA: Yes, Your Honor.

21 VOIR DIRE EXAMINATION

22 BY MR. SHEA:

23 Q. Good morning, Dr. Ensley.

24 A. Good morning to you.

25 Q. We've seen your CV here this morning, correct?

1 A. Yes, sir.

2 Q. And it is a lengthy list of articles there that were
3 published, correct?

4 A. Yes, sir.

5 Q. And some textbook chapters as well, is that true?

6 A. That is correct.

7 Q. And one textbook was there in your CV, is that right?

8 A. That's correct, yes.

9 Q. Right. Now, the textbook and the textbook chapters are
10 all about avian medicine, that pertains to birds, is that
11 right?

12 A. Surgery of the pectoral and pelvic limbs of birds.

13 Q. So, those publications are about birds, correct?

14 A. That's correct, yes.

15 Q. Now, you've published only one article about elephants,
16 right?

17 A. That's true.

18 Q. And that article was published in 1994, is that
19 correct?

20 A. That's correct.

21 Q. And the article was about the presence of bone
22 problems, I think it's called osteodystrophy, in hand-raised
23 elephants, isn't that right?

24 A. One elephant, yes.

25 Q. So, it was a case report about one elephant that had

1 had those problems, is that right?

2 A. Yes, sir.

3 Q. And you haven't published a scientific or medical
4 article on elephants since that article in 1994, correct?

5 A. That's correct, also.

6 Q. And you've not published in any peer review journals
7 any articles about elephant management or elephant training,
8 right?

9 A. That's correct.

10 Q. And you've not published in peer review journals any
11 articles about elephant breeding, is that true?

12 A. That's true, too.

13 Q. You've not published in peer review journals any
14 articles about captive elephant behavior, correct?

15 A. Correct.

16 Q. Now, you have not been a member of the Elephant
17 Managers Association, correct?

18 A. That's right.

19 Q. And you've never been a member of the International
20 Elephant Foundation, is that correct?

21 A. Correct.

22 Q. And you've not been a member of the Elephant Taxon
23 Group or the Species Survival Plan of the American Zoo and
24 Aquarium Association, right?

25 A. Correct.

1 Q. And you've never been asked to consult for either that
2 Taxon Group or Species Survival Plan, is that right?

3 A. Yes, that's correct.

4 Q. Now, while you were at the San Diego Zoo, the zoo
5 housed many specimens, is that right?

6 A. True.

7 Q. And they, in fact, the zoo housed over 900 species,
8 right?

9 A. I think that's the number we had during our deposition
10 from a paper I had published in the middle 70s, yes.

11 Q. Right. So, that's about the right number of species,
12 900?

13 A. Yes.

14 Q. And that amounted to 3,000 plus specimens, true?

15 A. Correct.

16 Q. Now, during your time at the San Diego Zoo -- and let's
17 define terms here if we can because we've heard about two
18 different campuses, and I've also heard you say zoo versus
19 Wild Animal Park, or zoo versus park. I want to be clear
20 about semantics, if I might. If I call the Zoological Society
21 of San Diego ZSSD, would that be fair?

22 A. Yes.

23 Q. And ZSSD is the organization that basically is the head
24 of both the Balboa Park campus and the Wild Animal Park
25 campus, is that true?

1 A. That's true.

2 Q. And if I called the Balboa Park campus, the part of
3 those entities that is down in San Diego in something called
4 Balboa Park, would you know what I'm talking about?

5 A. Yes, sir.

6 Q. And then the Wild Animal Park. If I call that the Wild
7 Animal Park, that is north of San Diego, isn't it?

8 A. Yes.

9 Q. If I call it that, you'll know what I'm talking about?

10 A. Yes.

11 Q. So, with that out of the way, during your time at the
12 ZSSD, you and the other veterinarians distributed time equally
13 between all the species at the zoo, isn't that right?

14 A. That's true.

15 Q. So, from 1976 until the late 1980s you were one of
16 three veterinarians at the Balboa Park campus, right?

17 A. Correct.

18 Q. And you were there from 1976 until 1987, is that
19 correct?

20 A. Yes.

21 Q. And there were -- were there 3,000 plus specimens at
22 that campus?

23 A. I don't know for sure.

24 Q. But that's about right? Is that about the right
25 number?

1 A. I would think so.

2 Q. So, that was about a thousand specimens per
3 veterinarian, correct?

4 A. Correct.

5 Q. And then from 1987 forward there were -- or I'm sorry,
6 strike that. From the late 1980s forward there were six
7 veterinarians at the Balboa Park campus, is that true?

8 A. Off and on. I'd say that's an accurate number, yes.

9 Q. So, while you were there from 1986 until -- I'm sorry,
10 from 1976 until 1987, you were one of three veterinarians that
11 whole time?

12 A. Correct.

13 Q. So, there weren't six veterinarians there at that --
14 while you were there at the Balboa Park campus, right?

15 A. Correct.

16 Q. So, you had with three veterinarians, there were about
17 a thousand plus specimens during that period that you were
18 caring for, right?

19 A. Yes.

20 MR. GLITZENSTEIN: Your Honor, this seems to be
21 more cross-examination because -- unless I read the Daubert
22 response incorrectly, Defendant appeared to acknowledge that
23 Dr. Ensley could be qualified as an expert for the purposes of
24 reviewing the records at issue or for offering an opinion.
25 So, this would seem to be going into an area of

1 cross-examination as opposed to expertise as a threshold
2 matter.

3 THE COURT: Counsel?

4 MR. SHEA: Your Honor, I'm about to tie it to
5 expertise, which is his time spent with elephants versus other
6 species. I think that is directly related to his experience
7 as a veterinarian, and obviously comes under qualifications.

8 MR. GLITZENSTEIN: Your Honor, that's not the
9 problem -- with permission. This is what was said by
10 Defendant in their response on the Daubert issue. Beginning
11 on Page 10 of their response says: While Dr. Ensley may
12 discuss his inspection of the six elephants at issue, and his
13 review of their medical records, it goes on to several things
14 that he can't testify to about, including captive -- including
15 the cause of stereotypic behavior and appropriateness of free
16 contact management issues -- we're not asking him about.

17 So, it would appear that this is all
18 cross-examination unless they're backtracking on the Daubert
19 response that they gave.

20 THE COURT: It sounds close to cross-examination,
21 Counsel. Do you have any questions with respect to the
22 expertise -- the basis for which this witness is being offered
23 as an expert, if so, you can ask those questions, but
24 otherwise, it is sounds like cross-examination as well.

25 MR. SHEA: Your Honor, then I'll proceed.

1 BY MR. SHEA:

2 Q. You were asked just now, Dr. Ensley, about some medical
3 procedures you had performed while at the zoo, is that
4 correct?

5 A. Yes.

6 Q. Now, as I understood it, you performed anesthesia for
7 foot care as one of those procedures, is that right?

8 A. That's correct.

9 Q. You had administered the anesthesia, but you didn't
10 render the foot care, right?

11 A. I was monitoring the foot care because I was aware of
12 what corrective measures needed to be taken.

13 Q. I see, but you didn't perform the foot care, correct?

14 A. That's correct.

15 Q. And then the second procedure that you mention in your
16 deposition was a jaw bone exploratory surgery, is that
17 correct?

18 A. One of several procedures done to first explore or
19 perform a reconnaissance to determine what type of corrective
20 course we should be taking. And then there were one, perhaps
21 two, or even three follow-up procedures to evaluate the
22 healing process.

23 Q. Correct. But that was a -- that was an exploratory
24 surgery at the outset, is that right?

25 A. A wound exploration.

1 Q. And the jaw was not treated surgically, was it? It
2 healed on its own, correct?

3 A. That's correct.

4 Q. And you assisted on one eye surgery, correct?

5 A. At the Wild Animal Park.

6 Q. And that surgery was actually performed by an
7 ophthalmologist, is that true?

8 A. That's correct.

9 Q. And you administered anesthesia for a Cesarean section,
10 is that correct?

11 A. I did not administer the anesthesia. I was
12 participating with the anesthesia component. We had three or
13 four physicians and anesthesiologists and surgeons -- 17 or 18
14 veterinarians were present for that procedure. So, I was --
15 my responsibility was to participate with the anesthetic team.

16 Q. You did not scrub for that Cesarean section, correct?

17 A. That is correct.

18 Q. And you were involved in a support role for the
19 episiotomy, is that right?

20 A. That's correct.

21 Q. But you didn't scrub for that procedure, correct?

22 A. That's correct.

23 Q. And you were involved in a support role for a
24 laparoscopy, right?

25 A. Laparotomy.

1 Q. Laparotomy?

2 A. That's correct.

3 Q. Exploratory surgery, correct?

4 A. Correct.

5 Q. So, in your entire career in San Diego you had the lead
6 role in only one surgical procedure which was on the elephant
7 jaw, is that right?

8 A. That's correct, too.

9 Q. Now, you have never been asked to consult with a circus
10 for elephant care, correct?

11 A. That's correct.

12 Q. And you've never conducted any study in wild elephants,
13 correct?

14 A. That's correct.

15 Q. You've not observed Asian elephants in the wild,
16 correct?

17 A. That's correct.

18 Q. And you have observed African elephants in the wild,
19 isn't that right?

20 A. Yes, sir.

21 Q. But those observations were limited to two tourist
22 safaris, isn't that right?

23 A. That's right.

24 Q. And each of those safaris was two and a half weeks in
25 duration, is that correct?

1 A. Yes.

2 Q. And you've not published any studies on wild elephants,
3 right?

4 A. Correct.

5 Q. Now, you've not trained an elephant, true?

6 A. True.

7 Q. And you've never used a guide on an elephant, right?

8 A. Right.

9 Q. You've never treated a hook boil, is that correct?

10 A. That's correct.

11 Q. You've never seen one, correct?

12 A. Not in the classic sense of a hook boil. That's true.

13 Q. And you have only peripheral experience in transporting
14 elephants, correct?

15 A. Correct.

16 Q. You've never been on an elephant transport procedure,
17 true?

18 A. That is also correct.

19 Q. And your experience in transporting elephants was
20 watching one elephant being loaded at the National Zoo during
21 your internship there, is that right?

22 A. That's right.

23 Q. And that internship was 1975-1976 timeframe?

24 A. That's correct.

25 MR. SHEA: Those are the voir dire questions I

1 have, Your Honor, we review our objections.

2 THE COURT: I will provisionally allow the expert
3 to testify, as I have, with respect to other experts in the
4 case. And when I resolve the case on the merits I'll give the
5 experts' testimony what weight, if any, it's entitled to.

6 MR. GLITZENSTEIN: Thank you, Your Honor.

7 THE COURT: And, again, the area of expertise
8 you're offering the witness?

9 MR. GLITZENSTEIN: The area of expertise. The
10 specific area of the expertise, Your Honor, is zoological
11 medicine.

12 THE COURT: All right.

13 MR. GLITZENSTEIN: And, again, I would note that
14 the focus of Dr. Ensley's testimony, as you'll see, is on his
15 review of the medical records, and that is specifically what
16 the Defendant appeared to say on Page 10 of their Daubert
17 response that he could offer an expert opinion on.

18 THE COURT: All right.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. GLITZENSTEIN:

21 Q. Dr. Ensley, do you have any philosophical objection to
22 elephants being in captivity?

23 A. No.

24 Q. Are you a member of any animal rights organization?

25 A. No.

1 Q. Are you a member of any animal welfare organization?

2 A. No.

3 Q. Are you being compensated for the time you're spending
4 and providing an expert opinion?

5 A. Yes.

6 Q. At what rate?

7 A. \$50 an hour.

8 Q. Is that the usual rate you would charge for such
9 services?

10 A. Correct.

11 Q. In your review of the medical records, did you reach an
12 overall conclusion as to the health of the animals?

13 A. I did. I'm not sure if I worded it as overall health.
14 I basically came to an opinion based on the scope of my
15 investigation. The goals of my -- the scope of my
16 investigation.

17 Q. And specifically focusing on the medical records, what
18 was the opinion you came to with regard to the scope of your
19 investigation?

20 A. That --

21 MR. SHEA: Objection, Your Honor, vague. Not
22 limited to the seven elephants at issue, as far as I can tell.
23 I don't know whether he would be testifying about Red Unit or
24 the seven elephants at -- the six elephants at issue, I
25 apologize, or Zina.

1 THE COURT: The question was: What was the opinion
2 that you came to with regard to the scope of your
3 investigation? He can answer it. Can you? Without that
4 question being further defined?

5 THE WITNESS: Yes, sir. With regards to the seven
6 elephants being focused upon in this case, I found that with
7 regards to both points, the Defendant's behavior was wounding,
8 injuring, harming or harassing. And then I further opined
9 that same conclusion with the balance of the elephants'
10 records that I had reviewed.

11 BY MR. GLITZENSTEIN:

12 Q. That would be all 140 elephants?

13 A. I cannot say that the records were complete enough on
14 all 140 elephants to offer that same opinion. But with just
15 the body of the records, the overall result was the same.

16 Q. And when you say --

17 MR. SHEA: Your Honor, we object and move to strike
18 the testimony beyond the six elephants at issue or Zina.
19 404(b) cannot be stretched to cover that, Your Honor. It does
20 not have to do with pattern or practice. It is not directly
21 relevant to the Defendant's practices, it is relevant to the
22 condition of elephants that are not at issue, and that goes
23 well beyond 404(b)'s scope.

24 THE COURT: Counsel?

25 MR. GLITZENSTEIN: Can I respond, Your Honor.

1 First of all, representations have been made to the Court
2 about the health of Defendant's elephants. We have an expert
3 here who has reviewed the body of information that was
4 available that Your Honor ordered to be provided, saying
5 specifically that the health information was critical to
6 understanding whether conditions that we see in the records
7 resulted from practices.

8 Just as you would not do in an epidemiological
9 study and look at 10 percent of the information that came
10 back. Well, you have an expert who can say, this 10 percent
11 is not aberrational. This 10 percent reflects a pattern that
12 runs throughout the entire body of the information. That's
13 critical to any expert's review.

14 THE COURT: I'll allow the question to be answered
15 over objection.

16 BY MR. GLITZENSTEIN:

17 Q. I think you already answered the question that was
18 discussed, but let me ask you a follow-up based upon your --
19 the answer you provided. And you said your conclusion was
20 that you saw, I believe, injuries and wounding, and you
21 completed the list.

22 Generally speaking, what kinds of physical
23 effects did you determine had been reflected in the records?

24 MR. SHEA: Objection, vague.

25 THE COURT: Overruled.

1 THE WITNESS: The balance of the records I reviewed
2 in effect reflected the findings in the seven. In other
3 words, the seven were essentially a microcosm of the balance.
4 Some elephants were in fact in worse -- had more serious
5 health records or serious health histories than the seven in
6 this case.

7 BY MR. GLITZENSTEIN:

8 Q. What kinds of findings are we talking about?

9 A. Chronic foot problems, split toenails, infected
10 toenails. Foot abscesses. Lamenesses. Injuries. Misshapen
11 feet. Uneven wear on the soles of their feet. Injuries
12 associated with travel, unloading. Tuberculosis.

13 Q. Let's focus on the elephants that initially -- the
14 six/seven elephants, and turn first to --

15 MR. GLITZENSTEIN: Your Honor, before we get into
16 the particular elephant records, there's a matter that we had
17 brought up at the outset of the case, it relates to what we
18 call Chart B, which is a demonstrative that we put together
19 reflecting simply data on the names of elephants, the date of
20 birth, location history, current location and the date of
21 acquisition by Defendant. This chart was developed entirely
22 from their own documents. If need be, we can put Ms. Sinnott
23 back on the stand.

24 THE COURT: For the benefit of the Court then?

25 MR. GLITZENSTEIN: It is. It's a summary, it's a

1 classic --

2 THE COURT: Does the Defendant object to any
3 information on that chart?

4 MR. SIMPSON: Well, we looked at the chart and the
5 chart is not reflective of what's on the chart that we put in,
6 our Summary Judgment Exhibit 1. Several acquisition dates of
7 these elephants are incorrect. Presumably because they didn't
8 rely on the most updated of our interrogatory answers. When
9 we put our own chart together in September of 2006, that went
10 into the case as Defendant's Exhibit 1 to our Summary Judgment
11 Motion. That is also on their exhibit list, so we don't have
12 any objection to that being used.

13 But this thing he just referred to, Chart B, has
14 several date inaccuracies with respect to elephants that were
15 acquired in the 1970s --

16 THE COURT: Is that the only objection -- to the
17 dates?

18 MR. SIMPSON: Basically it's the dates.

19 THE COURT: I can disregard the information.
20 You'll bring it out on cross-examination. I want the reliable
21 information. Is there a dispute about when the elephants were
22 acquired, though?

23 MR. GLITZENSTEIN: This does seem to be much ado
24 about very little. Apparently in their own records they've
25 got some discrepancies about when some elephants were

1 acquired. My suggestion, which I think might resolve this
2 problem. If Your Honor would let it in, if Defendant wants to
3 file some brief response saying, here are the dates that we
4 think are the accurate ones --

5 THE COURT: I'll let it in. I'm going to disregard
6 what's not correct anyway. And I'm just going to refer to the
7 competent evidence. If there's some inaccuracies in there --
8 I mean, I would hope that the parties could agree on -- you
9 may not be able to agree on dates of acquisition, though, the
10 Plaintiffs may not be able to agree on that, you weren't
11 there.

12 And evidence that has been produced is, what,
13 contradictory, is that correct?

14 MR. GLITZENSTEIN: No, it's more a matter of their
15 own records have some inconsistencies. We took their own --
16 again, this chart was not based upon any call that Plaintiffs
17 made on anything other than their own records, every single
18 underlying document has an FEI or a Feld stamp on it, so my
19 suggestion was that if Mr. Simpson thinks that some of their
20 own documents are inaccurate that we incorporate it into their
21 chart, let them file something with the Court saying that the
22 date should be 1962 instead of '63. If Your Honor concludes
23 that it's relevant to something --

24 THE COURT: I totally agree. I'll let it in and
25 give it what weight, if any. I mean, especially to those

1 portions of the chart that aren't disputed, I'm going to
2 credit that as being absolutely true. If there's a dispute,
3 then I'll either not give it any weight or give it the weight
4 it's entitled to.

5 MR. SIMPSON: I just want to clarify. It's not
6 discrepancies or inaccuracies. They didn't put the full
7 picture in. Some of these elephants were acquired in the
8 1970s, they went to another exhibitor and came back to the
9 company in 1990, that part is not there.

10 THE COURT: You can certainly supplement that,
11 Counsel. In other words, they were leased out?

12 MR. SIMPSON: They were pre-act is the basic point.
13 They weren't acquired after the statute --

14 THE COURT: That's fine. That's fine. They
15 shouldn't be difficult to document then. I'll let it in. If
16 it's going to assist the Court, but to the extent that it's
17 contradictory and doesn't assist the Court, I'm not going to
18 credit that portion of it.

19 MR. GLITZENSTEIN: Than you, Your Honor. With
20 regard to Dr. Ensley's testimony, I think these discrepancies
21 are going to be of little consequence. That would come in as
22 Plaintiff's Exhibit 169, Your Honor.

23 THE COURT: All right.

24 MR. GLITZENSTEIN: Thank you.

25

1 BY MR. GLITZENSTEIN:

2 Q. Let's first look at Karen, Dr. Ensley, and if we can
3 take a look at the exhibit that has just been admitted. At
4 least based upon that exhibit, can you indicate Karen's
5 current age or approximate age and when she was acquired by
6 Ringling Brothers?

7 A. I see that, 1969.

8 Q. For both?

9 A. I'm sorry.

10 Q. For both. When she was born and her acquisition by
11 Defendant?

12 A. Date of birth is listed as 1969 and date of acquisition
13 is 1969.

14 Q. Now, turning to Karen's medical records --

15 MR. GLITZENSTEIN: And, Your Honor, for purposes of
16 clarity, the records that we're referring to -- with a couple
17 of exceptions, I'll make clear when I get to them, are all
18 from Plaintiff's Will Call Exhibit 2A, and they all bear
19 Defendant's production -- Bates labels, either FEI or Feld.

20 THE COURT: Yes.

21 MR. SHEA: Your Honor, first off, I need to
22 clarify -- I'd like Counsel to clarify, is this what they
23 listed on their 72-hour notice as Plaintiff's Will Call
24 Exhibit 2A-Karen, and the list given there?

25 MR. GLITZENSTEIN: Yes, it is.

1 MR. SHEA: We object to the relevance of the
2 contents of these documents pertaining to elephants that are
3 not at issue, some are listed in these medical records that
4 are not at issue. We also object to entries that are remote
5 in time. And also object to the use of this list for any
6 other elephants at issue because we have lists of entries for
7 other elephants at issue that are part of these documents, yet
8 these aren't listed for some of the other elephants at issue.

9 MR. GLITZENSTEIN: A couple points, Your Honor, the
10 2A documents are specific to the seven elephants that we have
11 a slight disagreement about what's at issue. As you know, we
12 still have a standing argument that would go beyond the
13 specific elephants that Tom Rider had a relationship with.
14 But using that as a shorthand for the ones that Tom Rider had
15 a relationship with, 2A documents, including starting with
16 Karen, are only those medical records from Defendants that are
17 organized by those elephants.

18 If and when we get to a point we're talking about
19 medical records on others elephants, we get back to the point
20 I made earlier, which is that you need to get a full picture
21 of their approach to treatment and the conditions. But for
22 purposes of Karen, which is what we're talking about now, and
23 the 2A records, these are all the seven elephants that we were
24 going to start with.

25 THE COURT: Counsel?

1 MR. SHEA: Your Honor, these medical records listed
2 for 2A of each of these elephants, and obviously there are six
3 plus Zina, sets of these, do contain entries of elephants that
4 are not at issue. They pertain to elephants that are not at
5 issue, that's what we're objecting to, those entries.

6 Also, I just heard counsel say that they are going
7 to try to elicit testimony about treatment of these elephants,
8 and by that I would assume it's medical treatment, as Dr.
9 Ensley has not been offered as an expert on use of the bull
10 hook or use of chains as elephant management. And I believe
11 that treatment of these elephants is completely outside the
12 scope of this litigation based on the claims made.

13 MR. GLITZENSTEIN: Your Honor, one overall point
14 which is -- in the opening statement, Your Honor was told that
15 these were healthy animals and that Plaintiff should bring it
16 on. We've got their medical records that Your Honor, over
17 extraordinarily opposition, ordered to be provided. We have
18 had an expert look at them. The records we're talking about
19 with Karen are Karen's medical records.

20 THE COURT: What are the references to other
21 elephants that counsel --

22 MR. GLITZENSTEIN: Some of the other references are
23 to seven, and beyond that, Your Honor, and I think this is
24 absolutely crucial because you allowed Dr. Ensley to give an
25 opinions about the overall treatment of the elephants, some of

1 whom include very young elephants. And Dr. Ensley's opinion,
2 I don't want to testify for him, relates to the general
3 conditions which result in the physical manifestations that
4 we're talking about. And you can only understand why we
5 believe that these conditions resulted from those problems if
6 you get a picture of the repeated pattern of one kind of
7 condition after the other.

8 The reason they don't want Your Honor to look at
9 this, quite frankly, is that the picture just becomes
10 overwhelming. That when you've got this sort of rampant
11 incidence in the population, their explanation, which is that,
12 oh, this is simply idiosyncratic for that elephant, or this is
13 due to old age. It just doesn't become plausible, and that's
14 why it's critical for Your Honor to get a full comprehensive
15 picture as to how these conditions have taken place.

16 MR. SHEA: Your Honor, I'll direct the Court to
17 Feld 0021828, which I believe to be listed under Plaintiff's
18 Will Call Exhibit 2A for Karen. Now, the numbers they
19 provided to us were jumbled, so as I stand here right now --
20 we had these documents pulled by a legal assistant, and he
21 tells me it's in here. I'm looking at this page, and here is
22 an entry for Minyak. Minyak is not one of the six elephants,
23 nor Zina. That's what we're objecting to, are those entries
24 for any other elephants. Number two --

25 THE COURT: That's consistent with your pattern and

1 practice argument --

2 MR. GLITZENSTEIN: It's absolutely consistent, Your
3 Honor, and I think as the testimony proceeds, hopefully what
4 you will see is that the same kinds of conditions are showing
5 up for all of these animals. And so when they came back and
6 say -- the irony of this case is, let's narrow it to seven, we
7 only want this to be only focused on the seven. And we don't
8 want you to look at the rest of the elephants from the
9 standpoint of an ultimate ruling.

10 But take our word for it that when you see problems
11 with these seven, it just has to do with some peculiarity
12 pertinent to those seven. It has nothing to do with our
13 conditions, but you can't know that because you can't look at
14 the health consequences that's manifested in the rest of the
15 elephants. So, it's pattern or practice, but it's also a
16 basic evidentiary question, which is how is a scientific
17 judgment formed best? It is form based upon a small segment
18 of documents or is it based upon an entire set of materials?

19 THE COURT: I'll allow the testimony.

20 MR. SHEA: Your Honor --

21 THE COURT: Yes.

22 MR. SHEA: The Court granted summary judgment on
23 all but six elephants, that's what is at issue. Dr. Ensley
24 has conducted no quantitative epidemiological study as counsel
25 suggests here. He's done nothing of the sort. And what is at

1 issue is the practices with the seven elephants and whether --
2 as they want to say, it fits the definition of taking. That
3 the rest of these elephants do not -- cannot come in under
4 404(b) --

5 THE COURT: I'm going to allow it over objection.
6 Let's proceed. The record is clear, it's a pattern or
7 practice argument that counsel is making, and it also comes in
8 for its evidentiary relevance as well.

9 MR. GLITZENSTEIN: Thank you, Your Honor.

10 THE COURT: If it's not competent evidence when I
11 reach the merits, then I'll reject it.

12 BY MR. GLITZENSTEIN:

13 Q. If we can first take a look at what is within 2A,
14 documents pertaining to Karen, FEI 44481, going over to 44482.
15 And take a look at the reference relating to Karen in that
16 document.

17 A. Karen Elephant. BAR. That is generally an
18 abbreviation for Basically All Right or -- were not lame. The
19 observation is she has a vertical crack in her right front
20 fourth digit and a vertical crack on the left hind leg, the
21 second digit.

22 Q. With respect to that, just so we're following the same
23 terminology here. What is a vertical crack? What does that
24 mean?

25 A. What is a vertical crack?

1 Q. Right.

2 A. Maybe the best way to explain it is to say that the
3 toenails of an elephant are the same as our fingernails, and I
4 think the Court has already heard that elephants walk in a
5 semi-digitigrade, posture on the front feet. And, actually,
6 the rear feet are sort of plantigrade, they're back a bit.
7 Elephant toenails grow at approximately a quarter to a half an
8 inch a month. In the wild, elephants specifically Asian
9 elephants, their feeding habits are such that they provision
10 themselves by grazing, and they use their feet to dig and
11 graze, so the toenails wear.

12 In captivity, they don't have this activity
13 readily available. So as the nails grow they come in contact
14 with hardened surfaces and the nail tips themselves will crack
15 or split, and sometimes the cuticles will crack or split also.
16 Now, what you do in your husbandry procedures in captivity is
17 you use a rasp and you're honing the nail to keep it short a
18 couple of times a month so it doesn't do this. But part of
19 the problem there, too, is that elephants in captivity tend to
20 become overweight, and as they move forward and back and to
21 the left and to the right, the foot itself expands and
22 contracts, so that tends to precipitate cracked nails.

23 And the problem there is the potential to become
24 contaminated with urine and fecal debris in the captive
25 environment. So, this is basically just a notation

1 documenting the locations of cracks in two of the animals
2 toes.

3 Q. And if you look at the same document, do you see
4 similar notations as to the other elephants?

5 A. You see Bonnie at the top. She has a vertical crack in
6 the left hind leg, the second digit. A vertical crack in the
7 left front, second digit. And a wedge and vertical crack in
8 the right hind in the third digit. Sara has a vertical crack
9 in the left hind, second digit, and a vertical crack in the
10 right hind, third digit and fourth digit. Kelly Ann has a
11 vertical crack in the right hind, third digit, and a vertical
12 crack in the left hind, second digit.

13 Julia, a vertical crack in the left hind, second
14 digit, and a vertical crack in the right hind, third digit.
15 And at the bottom, Nicole, a vertical crack in the left front
16 third digit. And a vertical crack in the left hind, second
17 digit. A vertical crack in the right hind, third digit.

18 Q. If we take a look at FEI 7962, which is a photo of one
19 of Karen's feet. In terms of the explanation you were just
20 providing to the Court about what a toe crack is, can you
21 explain what this photo reflects?

22 MR. SHEA: Objection to counsel testifying.
23 Nothing establishes that this is any particular elephant's
24 foot.

25 THE COURT: Tell us what that is, if you can.

1 THE WITNESS: This is -- you can see in the center
2 digit here, the toenail, there is a vertical crack.

3 THE COURT: A picture of what, though?

4 THE WITNESS: An elephant's foot. I'm not certain
5 if it's a front foot or a rear foot, but you can see the crack
6 itself, it extends from the tip up to the cuticle. And you
7 can see the surface that the animal is on, and you can
8 envision if that this animal were moving back and forth or
9 left and right how it makes it difficult as that toenail grows
10 out to keep from splitting vertically. It takes months --
11 several months for these to successfully grow out.

12 BY MR. GLITZENSTEIN:

13 Q. If we can take a look at FEI 8118, which is not that
14 one. Explain the significance of that?

15 A. This is another elephant's foot and another
16 manifestation of a crack where it is widened a bit more. And
17 you can see at least in this image --

18 THE COURT: Excuse me one minute. It may well be
19 that the Doctor doesn't know this is Karen's foot. If it's
20 undisputed, I need to that know. Otherwise, I've got a ton of
21 paper and I don't know what it is. It appears to be an FEI
22 document if this is Karen's foot, I need to know it.

23 MR. GLITZENSTEIN: It's Karen's foot.

24 THE COURT: It's overruled then. I need to know
25 that.

1 MR. GLITZENSTEIN: It's not clear why we're having
2 this argument because counsel knows that these documents are
3 organized by elephant.

4 THE COURT: Counsel, please identify the names of
5 elephants. If you disagree with the identification from your
6 own documents, then tell me. But I don't want to be left
7 guessing as to what this is. If it's Karen's foot, tell me
8 it's Karen's foot.

9 MR. GLITZENSTEIN: I appreciate that, Your Honor.
10 And let me just say that the way I'm going to do this so this
11 will avoid having these kinds of problems. We're going to do
12 this on an elephant by elephant basis. When we get to the
13 next elephant --

14 THE COURT: It's extremely helpful to the Court to
15 know which elephant's appendixes these are.

16 MR. GLITZENSTEIN: And when we get to the next --

17 THE COURT: Especially the Blue Unit elephants.

18 MR. GLITZENSTEIN: Your Honor, when we get to the
19 next elephant, we will tell you we got to the next elephant.
20 And, therefore, hopefully we can proceed on the assumption
21 that the photos and documents I'm showing involve the elephant
22 that I've been talking about until we get to the next one, at
23 which point I'll make clear when we moved onto -- Nicole will
24 be the next elephant, but we're still on Karen until further
25 notice.

1 THE COURT: That's fine.

2 BY MR. GLITZENSTEIN:

3 Q. Dr. Ensley, can you again explain what we're looking at
4 with respect to this photo?

5 THE COURT: He already told me, it's a vertical
6 split of the toenail, it's Karen's foot. It's clear.

7 BY MR. GLITZENSTEIN:

8 Q. What is the medical significance of that?

9 A. If this were a front foot, elephants of interest carry,
10 you know, 60 or more percent of their weight on the front
11 feet. So, cracks on front feet are a little bit more serious
12 than the hind feet. And here you can see debris on the ground
13 here that lend itself to having that crack become infected.

14 Q. And if we take a look at FEI 8165, again, Karen's foot.
15 What does this reflect with regard to what you've been
16 discussing?

17 A. The crack here is more open, it's lending itself
18 greater to becoming -- the softer tissues beneath coming
19 infected.

20 Q. And then 8166 FEI, also, Karen's foot.

21 A. Again, a progression of the crack there. And most
22 likely this is in fact -- and it's uncomfortable and painful.

23 Q. And what, in your view, is the relationship between
24 that kind of condition, if any, and chaining on hard surfaces?

25 A. It's unable to be worn correctly on natural surfaces,

1 plus the increased opportunity for contamination, and the
2 increased opportunity for -- as the animal moves, for that to
3 maintain itself and become difficult to grow out.

4 Q. And if we take a look at Feld 0021827. If we can look
5 at the reference to Karen at the top of that page.

6 A. Well, Karen at this point is in New York City on the
7 Blue Unit, and she has a history of an NBA or a nail bed
8 abscess on the left front, fourth digit, which is down here.
9 It's noted to be healing in the left front, fourth digit. And
10 she's not lame and the assessment is that she's healing.

11 Q. What is a nail bed access?

12 A. An abscess by itself basically is a sequestered pocket
13 of pus in an organ or beneath a surface. Abscesses tend to
14 extrude and become exteriorized and then they become infected.
15 In the elephant, abscesses manifest around the cuticle and
16 around the nail and beneath the nail. The exact cause for the
17 development of abscesses in elephants' feet is not known, but
18 it is thought to be associated with the immense gravitational
19 push downward, and then circulatory change, and then the
20 formation of fluid pockets which then exteriorize and then
21 become infected in and around the nail.

22 Q. And if we can take a look at FEI 08 -- I mean 8028,
23 another photo of Karen's feet. What does that reflect?

24 A. This is either one of two conditions. A progressed
25 toenail crack that has become more infected or it can be an

1 abscess that has come out, or as terminology -- lay
2 terminology is blown out through the nail.

3 Q. Did you see other references to toenail -- excuse me,
4 nail bed abscesses in Karen's feet in the records?

5 A. Yes.

6 Q. Did you see other references to nail bed abscesses in
7 the other elephants' feet, focusing on the seven?

8 A. Yes.

9 Q. Was that a frequent observation?

10 A. Yes.

11 Q. And I think you mentioned a moment ago, relating to
12 contamination, can you explain about contamination and how
13 that relates to nail bed abscesses?

14 A. With elephant's tethered in position, moving back and
15 forth, unable to avoid slashing urine and particulate matter
16 from fecal debris, urine -- you know, elephants form maybe
17 15 gallons of urine in a 24-hour period, 200-300 pounds of
18 solid waste in a 24-hour period. So, contained in one
19 location where the elephants are moving, the crack opens and
20 closes, those events precipitate infection.

21 Q. If you can we look at FEI 0021897. And, again, look at
22 the description for Karen, which is at the bottom. And
23 there's a phrase that says small healing abrasion on left
24 axillary area. Does that have any significance to you with
25 regard to the issues in this case?

1 A. Based on the body of records I've looked at, and the
2 practice of queuing with the ankus, this would be consistent
3 with an abrasion or breaking of the skin with the bull hook.

4 Q. Is there any significance to it being on the left area
5 of the animal's body?

6 A. This is where your handler or trainer generally manages
7 his or her elephant.

8 Q. Okay. And if you move up a bit to the reference to
9 Zina, and there's a reference --

10 THE COURT: The axillary area is where?

11 THE WITNESS: Yes, sir.

12 THE COURT: Where is that?

13 THE WITNESS: Just behind the elbow on a standing
14 animal.

15 THE COURT: All right.

16 BY MR. GLITZENSTEIN:

17 Q. And if we look at Zina's reference, could you read what
18 it says under PE, starting with the reference to the LF Number
19 5?

20 A. The left front leg, fifth digit, has a horizontal crack
21 and a pressure sore over the left knee area with a focal
22 lesion, and a healed wound on the upper left or -- yes, the
23 left upper forehead, and a small healing abrasion on the left
24 axillary area. The animal was considered to have a normal
25 exam except for minor skin lesions currently being treated.

1 Q. In respect to the pressure sore, do you know what that
2 is?

3 A. A pressure sore is basically a decubital ulcer, similar
4 to, let's say, a person in a nursing home lying in bed in one
5 position for a continued period of time with pressure on one
6 location over, let's say, a bony protuberance, then you reduce
7 the circulation to that area and then you wound up with a
8 pressure sore.

9 Q. Is that the same thing as a bed sore, used in common
10 terminology?

11 A. That's a good term.

12 Q. Could that be a serious matter?

13 A. It can on an ongoing basis. They are very slow to heal
14 if they're continually contaminated or continually insulted
15 with contact either by queuing with an ankus or, in
16 particular, getting down on elbows and knees.

17 Q. Does that have any -- in your opinion, can pressure
18 sores be formed by being on hard surfaces?

19 A. That would be consistent with getting up and going down
20 on hard surfaces, yes.

21 Q. Now, if we look at the same page up at the reference to
22 Minyak, can you read that reference, again, beginning with the
23 LF Number 5 after the PE?

24 A. The left front leg, fifth digit, has an old healing
25 NBA. Two small skin wounds on the neck. And a firm

1 subcutaneous mass on the right abdomen. An old static lesion
2 and then a small healing abrasion on the left axillary area.
3 This is consistent with what we noted on the previous
4 citation.

5 Q. How many references did you see on the same page to
6 abrasion on the left axillary area?

7 A. I see Zina and Jewell and Karen.

8 Q. Okay. And is abrasion a wound?

9 A. Abrasion is a breakage of the skin. I mean, it's not
10 like a puncture or a laceration, it's just an erosion of the
11 skin, in effect.

12 Q. If we take a look at Feld 0021892, another record for
13 Karen. And look at the reference to September '99. And,
14 actually, I should have done this at the beginning, but before
15 we get to that one -- Dr. Ensley, what was the date of the
16 records that you were able to review for Karen? Or the
17 earliest date of the records that you were able to review?

18 A. I don't recall. I'd have to refer to my expert report,
19 it could be 1991, but I'm not positive.

20 Q. What was the approximate date of the records for all
21 the seven elephants as to when you could start looking at
22 their records?

23 A. The middle to late 1980s.

24 Q. And do you know why you didn't have any medical records
25 earlier than that?

1 A. No.

2 Q. If we look again at Feld 0021892 at the reference to
3 Karen, and if you can read the -- just read the part that is
4 after PE in that reference, and then I'll ask you a question
5 about that.

6 A. This is in Kansas City. She has a caudal -- the caudal
7 heel of both hind feet are worn down to pink tissue. No
8 lameness was noted on the left front. The third digit there's
9 a small crack. And on the left front between the fourth and
10 fifth digits there is interdigital tissue which is mildly
11 swollen. The right front third digit, there is an overgrown
12 cuticle.

13 Q. And do you have an opinion on what would cause hind
14 feet to be worn down to pink tissues?

15 A. There could be several reasons. One, she's moving
16 continually in one location wearing -- developing a wear
17 pattern just like somebody would standing and moving in a pair
18 of shoes in one way continually. You would wear one area of
19 your sole down more than the other. There could be a lameness
20 associated or a previous injury or an ongoing injury or any
21 combination of all three.

22 Q. And if we take a look at Sophie on the same page, look
23 at the reference to two superficial wounds on the inside of
24 the left ear, just inside the ear canal. And then two wounds
25 in the left ear. Active but moderate foot lesions. With

1 regard to the wounds in the left ear, does that have any
2 significance to you with regard to your opinion in this case?

3 A. Based on just the body of records that I've seen so far
4 that, to me, would be consistent with a bull hook or ankus
5 injury.

6 THE COURT: Why do you say that?

7 THE WITNESS: The location. The numbers of
8 abrasions I'm seeing on the left side, particularly around
9 sensory points, which historically have been used for guiding
10 or queuing an elephant. And, really, I'm unaware of any other
11 way in which the ear canal itself -- it is only about as open
12 as your small finger. I don't know what would cause that.
13 There's no other explanation I can think of.

14 THE COURT: Okay.

15 BY MR. GLITZENSTEIN:

16 Q. If we go to Feld 0002866, and again, a Karen document,
17 Your Honor. And if we look at the reference in that document
18 to the 2/15/00 date, and read what is stated there?

19 A. WAL on site. Those are initials for somebody being
20 there to look at this animal in Norfolk, Virginia. And on
21 that same date, Karen slipped during rehearsal, the right hind
22 hamstring is swollen, very lame, and a Dr. S-A-N-G-E-N-A-R-I-O
23 administered 50 milliliters of Banamine IM. And then she was
24 transported to the CEC for rehabilitation.

25 Q. What is Banamine.

1 A. B-A-N-A-M-I-N-E. This is a non-steroidal
2 anti-inflammatory drug which acts as an analgesic property,
3 anti-inflammatory property, and anti-pyretic, in other words,
4 reduces fever.

5 Q. And if we can take a look down on the same page to the
6 reference at 2/18/00 and indicate what that says?

7 A. On February 18, 10 -- I interpret that as 10
8 milliliters of Banamine IM in the morning, transferred to the
9 CEC by road. Returned to unit in Kentucky on -- it looks like
10 four months later, and then was in Kentucky four months later.

11 Q. So, four months later -- just so we're clear, are you
12 referring to the reference of June 7th, '00?

13 A. That's correct.

14 Q. So, that indicates -- your testimony indicates that the
15 elephant was returned to the road at that point?

16 A. That would be my interpretation.

17 Q. Now, if we take a look at Feld 0002866, and take a look
18 at the reference -- I'm sorry, FEI 0021822. And look at the
19 reference for Karen, and first look at the date on that
20 document.

21 A. July 19th, 2000.

22 Q. Okay. And how long after she was sent back on the road
23 is this?

24 A. Let's see, I think that would be a month later, and
25 she's in Long Beach, California.

1 Q. And if you can take a look back at the reference under
2 HX and read what that says?

3 A. Routine examination, back on the unit after a rest at
4 the CEC. Suny reports occasional right hind lameness after
5 she is asked to stretch out. Also reluctant to perform some
6 tricks that require hind limb strength.

7 Q. And if you can read what it says under A?

8 A. Assessed as a normal exam. Suspect residual pain from
9 previous injury.

10 Q. And under Note, it says: Given occasional Bute for her
11 lameness. What does that mean?

12 A. Butazolidin is similar to Banamine, it's an earlier
13 developed pharmaceutical, but it's a non-steroidal
14 anti-inflammatory like your Banamine.

15 Q. If we can take a look at Feld 0021791, and look at the
16 date for Karen on that document?

17 A. August the 10th, 2000, we're in San Diego, California.

18 Q. Okay. What does it say with regard to lameness in that
19 document?

20 A. Suny reports occasional right hind lameness after she
21 is asked to stretch out. Also, reluctant to perform some
22 tricks that required hind limb strength.

23 Q. And if you look down under P where it says: Consider
24 Adequan injections. What does that mean?

25 A. It looks as though a therapeutic plan is being

1 considered. Adequan is a drug that's used to -- it's
2 administered, it's not always effective, but it's given to
3 animals with arthritis. The product is marketed as a drug for
4 non-traumatic -- or for traumatic arthritis, or an arthritis
5 where you don't have an infection. And the mechanism of
6 action has some anti-inflammatory properties, but it
7 supposedly increases the viscosity of your joint fluid, making
8 an animal with arthritis more comfortable.

9 Q. And if you look at Feld 0002867, again, relating to
10 Karen. And look at the reference to 1/18/01.

11 A. Unannounced inspection by Fish & Game inspector. At
12 the conclusion of the inspection, said he had no -- he overall
13 had no problems today.

14 Q. What does it say under HX?

15 A. Has chronic intermittent lameness right hind, assumed
16 to be arthritis. Noted last week during performance to be
17 making bizarre hitching movements with right hind. Only when
18 show blanket on. Trainer feels that elephant was trying to
19 use blanket to scratch superficial abrasion on dorsal rump
20 (sustained when getting in and out of train or truck last
21 week).

22 Q. And what, again, is arthritis?

23 A. Arthritis is a general term given to inflammation of a
24 joint, which you -- if you suspect an arthritic joint, you
25 palpate for warmth and swelling.

1 Q. And does it appear from this document that Karen is
2 still on the road performing? Look at the whole document.
3 Look particularly at the reference to 1/7/01 and see what that
4 says.

5 A. 1/7/01. Load out from Sunrise on trucks then onto
6 trains, uneventful. Animal walk in Miami next day,
7 uneventful. I would interpret this as being -- we're on the
8 road now.

9 Q. In your opinion, is an animal with presumed arthritis
10 being on the road consistent with the treatment you'd provide
11 for an animal -- an elephant?

12 A. Not in my judgment.

13 Q. Why is that?

14 A. If you have an animal with arthritis and you're lame
15 and you're uncomfortable, and particularly if there's been an
16 indication to bring medication to the animal for relief, all
17 you're doing here is enhancing the causative factors. You're
18 not providing a full curative effect. In other words, you're
19 masking the pain to some degree with the medication, but
20 continuing to keep the animal in an environment in which
21 you're giving it no relief.

22 THE COURT: We'll take a 10 minute recess, Counsel.
23 We'll start back promptly at 12:00. You don't have to sit
24 there, you can step down. I ask that you not discuss your
25 testimony with anyone, all right?

1 BRIEF RECESS

2 AFTER RECESS

3 MR. GLITZENSTEIN: Your Honor, in response to your
4 question about how long -- we were assuming that, in terms of
5 what Plaintiffs have left, we would take most of the day with
6 Dr. Ensley. And we were hoping to do the pared down version
7 of the deposition, time permitting. The only other thing that
8 we have are exhibits, and I think what we would hope to do is
9 simply move in those that are not objected to by the end of
10 the day.

11 Our suggestion for the ones that remain that are
12 objected to that, perhaps with the Court's permission, we do
13 those in paper form. We'd simply indicate which ones we're
14 still trying to move in. Let Defendant file, hopefully, a
15 brief statement of their objections, and then we file a very
16 brief limited to no more than one page per exhibit response to
17 that.

18 THE COURT: All right. Let's go ahead and proceed
19 with the witness. We'll get to that.

20 MR. GLITZENSTEIN: Thank you, Your Honor.

21 BY MR. GLITZENSTEIN:

22 Q. Looking at the document that was still up on the
23 screen, Dr. Ensley, the reference to chronic intermittent
24 lameness, right hind, assumed to be arthritis. In your
25 opinion, would it be harmful to an animal with that condition

1 to keep it chained on a train car for many hours at a time?

2 A. In my opinion it would be contraindicated, I think
3 would be the medical jargon appropriate. In other words, you
4 would want to move this animal to a more comfortable location
5 to where it could rehabilitate.

6 Q. And when you say contraindicated, what does that mean?

7 A. It wouldn't be the correct course of therapy, in my
8 opinion.

9 Q. Do you believe that it would be injurious to such an
10 animal?

11 MR. SHEA: Objection, leading?

12 MR. GLITZENSTEIN: Do you have an opinion --

13 THE COURT: Sustain the objection. Rephrase.

14 BY MR. GLITZENSTEIN:

15 Q. Do you have an opinion on whether that would be
16 injurious to such an animal?

17 A. Would it be arthritis enhancing. The degree of injury
18 could be subjective.

19 Q. And when you say arthritis enhancing, what does that
20 mean?

21 A. You're not doing an animal with arthritis any good. It
22 would be like taking your old household pet dog and letting
23 him sleep out on the concrete at night.

24 Q. If we can take a little look lower down on that page to
25 reference -- actually, let me go to a different reference. To

1 Feld 0021828, and look at the reference to Karen on that
2 document. And this is a March 21, '01, a little bit later in
3 time, and under P it says: Consider Adequan injections for
4 lameness. Does that have any significance for you?

5 A. March 21, we're in Washington, D.C. Consider Adequan
6 injections. We're still sort of conjecturing further
7 therapy -- is how I would understand it.

8 Q. So, is this animal still on the road as far as you can
9 tell?

10 A. Washington, D.C. I would assume so.

11 Q. Now, if we can take a look at FEI 44456. And we can
12 take a look at the reference -- this is an October '06
13 document, and read what that says under the date?

14 A. October 28, '06, Troy Metzler called me to say that
15 Karen Elephant appeared sore in her right hip. He noticed no
16 significant lameness, but she appeared to be uncomfortable. I
17 authorized him to administer 25 ccs Banamine SID, that's once
18 a day, IM, today and tomorrow.

19 Q. And as far as you know, is Karen still traveling with
20 the circus?

21 A. I'm trying to see if there's a notation here on city, I
22 would assume so.

23 Q. And do you draw any significance from the fact that
24 they're still -- Karen is still being administered Banamine?

25 A. It's reasonable to assume that -- it's actually written

1 here. And it's reasonable to assume she is on the road. It
2 looks as though, to me, I would interpret it that Troy Metzler
3 has called back to give an update on Karen's status, and he
4 has received a -- I don't think this is an -- it could be an
5 e-mail or a memo from an Ellen Wiedner to Anita Santiago and
6 other individuals. I'm not sure if that would be the people
7 on the road or not, but an authorization to administer more
8 Banamine.

9 Q. Would you draw any significance from the fact that
10 she's still receiving Banamine?

11 A. She must still be symptomatic.

12 Q. What do you mean by that?

13 A. Showing signs of arthritis.

14 Q. If we can take a look at FEI 28942, another Karen
15 document, dated November '05. And under O it says: Nickel
16 size swelling on palmar surface of the left foot where the leg
17 joint joins the pad. Does that have any significance for you?

18 A. A nickel sized swelling -- there must have been some
19 focal wound, would be my interpretation, on the left side.
20 For me having had reviewed so many of the records, to me, that
21 would be consistent with an ankus injury.

22 Q. Let's take a look at the records for Nicole.

23 MR. GLITZENSTEIN: And, Your Honor, for the next
24 round of documents, Nicole would be the animal we're focusing
25 on.

1 THE COURT: All right.

2 BY MR. GLITZENSTEIN:

3 Q. And look at the document which is Feld's 8344. And
4 then under -- for Nicole, under PE, it states: Elephant walks
5 extremely stiff legged, suspect problem is in carpus primarily
6 and in elbow secondarily. Can you explain what that means?

7 A. The elephant is extremely stiff legged, that means
8 we're not demonstrating a full range of motion in a joint in a
9 leg. And the problem is suspected to be in the carpus, that's
10 the wrist, primarily, and in the elbow secondarily. And going
11 up above to history -- well, I would assume that this relates
12 to the history portion given up above.

13 Q. Does it appear that this animal is on the road?

14 A. Going to the top of the document. Visit to Blue Unit,
15 Wichita Falls, Texas, on June 16th through the 19th in 2004.

16 Q. And if you take a look down under reference to Susan,
17 read under HX. What does that say?

18 A. Susan and other elephant -- let's see. History, a bad
19 abscess. Lost nail, left front, third and fourth nails, about
20 three months ago.

21 Q. And with respect to that reference, just so I
22 understand your testimony from before, do you have an opinion
23 on whether or not abscesses relate to being chained on hard
24 surfaces?

25 A. Yes, I do. I can't tell from this record when this

1 would have begun, but being on the hard surface would make it
2 very difficult for this to heal successful. It could heal,
3 but it's only going to be -- you're making it a more complex
4 problem for it to heal under these circumstances.

5 Q. For an animal with a bad abscess, would it be your
6 veterinary advice that that animal should be placed in a
7 railroad car for an extended period of time?

8 A. No, it would not.

9 Q. Why is that?

10 A. You're keeping it under the circumstances that are just
11 making it harder for it to mend.

12 Q. If we can go to FEI 21808, and take a look. And this
13 is a June 10th, 2006 document, again, relating to Nicole. You
14 see where it says: Venue subject lameness, RH. And read --
15 see the reference where it says: Nicole is very stiff and the
16 Banamine wasn't doing much. Do you see that statement, which
17 is in the third paragraph down on the bottom part?

18 A. Nicole is very stiff and the Banamine wasn't doing
19 much. I asked him to ask Anita Santiago to call in the
20 on-call vet.

21 Q. Now, in terms of the reference to the Banamine wasn't
22 doing much, would you have an opinion on what that signifies?

23 A. It wasn't impacting a level of pain and discomfort to
24 suit the individual who was carrying and assessing, and he
25 was -- or she was obviously reporting back the response to the

1 initiating medication.

2 Q. If we take a look at FEI 41390, another Nicole
3 document. And under -- the bottom where it says 6/27/2006,
4 and if you could read what it says under the subjective
5 statement?

6 A. Stiff leg. Abduction right front leg; limited
7 flexibility of knee and ankle, slight swelling.

8 Q. Do you have an opinion about the significance of that
9 statement?

10 A. Well, Nicole still has a stiff leg, not demonstrating a
11 complete range of motion. The abduction means the animal is
12 bringing the leg out. In other words, when it walks -- adduct
13 is bringing the leg in. Abduct is swinging the leg outward.
14 So, there is limited flexibility of the knee and ankle and
15 slight swelling.

16 Q. If you could look at the note above that and just read
17 what it says under Note, which is on the right-hand side under
18 Collection Notes.

19 A. Transportation method, rail. It appears to be part of
20 the same document. So, I would interpret this that the animal
21 is on the road or in travel or in transportation when this is
22 going on.

23 Q. Okay. Do you have an opinion about whether that it
24 would be injurious to an animal that is very stiff?

25 A. In my opinion, an animal receiving medication like this

1 shouldn't be in a -- under the circumstances that it's being
2 kept in travel.

3 Q. Why is that?

4 A. You're only aggravating the ongoing condition with
5 your -- with the strain of travel.

6 Q. If we can take a look at FEI 41391. And read -- this
7 is, again, a July 11th, '06, reference in the middle of the
8 page to Nicole, and see what that says.

9 A. July 11, '06. Nicole Elephant has been approved by me
10 to return to performing.

11 Q. And read the phrase at the top under -- where -- the
12 middle of the page next to Micky Frizzel (phonetic).

13 A. Muscle pain. This is probably the -- I would assume
14 that that's more or less the reference point. This is a
15 animal that has had muscle pain and now has been returned to
16 performing.

17 Q. Do you have an opinion about whether an animal with the
18 stiffness references that we've just looked at should be
19 performing, based upon what you've seen that the performances
20 entail?

21 A. I would have to go back, I think, just to make sure I
22 knew of the dates when the symptoms started, medication and
23 therapy, and how much time -- rest time the animal had been
24 given. But it appears to me like the animal has been on the
25 road during this period of time, and now it's been returned to

1 performing. But we'd have to go back to that previous
2 notation just to see when the symptoms concluded. It looks
3 like it -- it looks as though the symptoms have concluded
4 here, but when did the -- can we go back?

5 Q. Which document would you like to go back to?

6 A. So, we're at June 27th. Okay. Now, June 27th. And
7 we've got a stiff leg. Now go forward to that next one. So,
8 it appears as though two weeks later, to me, given the animal
9 on medication, I think this animal would need a longer
10 recuperative period than two weeks.

11 Q. As a general matter, have you watched the training
12 information about the elephants, the videos and seen the other
13 information that relates to how the elephants were trained?

14 A. Training?

15 Q. Yes.

16 A. Yes.

17 Q. And the performances?

18 A. Yes.

19 Q. Do you have an opinion about whether or not the
20 training and the performances are consistent with the
21 well-being for an animal with stiffness and lameness?

22 A. No, I would not.

23 Q. You do not have an opinion?

24 A. Oh, no, I don't think that would be appropriate for an
25 animal undergoing this condition on medication.

1 Q. And why is that?

2 A. You're masking the pain with the medication. You're
3 giving an analgesic and providing pain relief, and then
4 keeping an animal under a circumstance -- travel, movement on
5 hard surfaces, reducing the range of motion on the leg. And
6 this is not something I would prescribe, in my opinion.

7 Q. If we could take a look at FEI 21836, and look for the
8 reference to Karen there. I mean, I'm sorry, Nicole. And
9 under the 11/26/02, there's a reference to mild chronic bed
10 sore lesions on both sides of face and left hip. Do you see
11 that?

12 A. Yes, I do.

13 Q. Does that have any significance for you?

14 A. The animal is in Chicago experiencing bed sores on both
15 the right -- both sides of the face and the left hip. The
16 animal is obviously laying down on hard surfaces developing
17 decubital ulcers.

18 Q. What's the relationship between laying down on hard
19 surfaces and the development of decubital ulcers?

20 A. It is a pressure sore. It's an open wound. It becomes
21 an open wound being contaminated. And they take time to heal,
22 depending on how much continued trauma the wound is receiving.

23 Q. And would it be your opinion that it would be in the
24 interest of that animal to keep it on hard surfaces?

25 A. That would be contraindicated, in my opinion.

1 Q. Why is that?

2 A. You're keeping the animal under the same circumstances
3 that produced the condition in the first place.

4 Q. And in terms of the reference to chronic in that
5 statement, does have that any significance?

6 A. Chronic just means longstanding, as opposed to acute,
7 sudden. So, you'd have to follow this record back to
8 determine how long this has been going on, but the
9 interpretation would be, it's been going on, she's dealing
10 with it.

11 Q. In the same paragraph, again, relating to Nicole, has a
12 statement, quote: Small raised lesion on the lateral aspect
13 of the LF carpus, do you see that?

14 A. Yes.

15 Q. Does that have any significance?

16 A. This would be consistent with guide queuing or bull
17 hook injury.

18 Q. Now, if we can take a look at Feld 30198, another
19 document relating to Nicole. And explain whether this -- what
20 this document signifies?

21 A. It's titled TB treatment. TB being short for
22 tuberculosis.

23 Q. And what is tuberculosis?

24 A. It's a micro-bacterial infection caused by
25 microbacterium tuberculosis.

1 Q. Is it a serious condition?

2 A. Yes.

3 Q. Is this document significant to you in anyway in terms
4 of the opinion that you have in this case?

5 A. It appears to be a -- it is a treatment schedule for
6 Nicole that's been set up. It's a calendar of medications and
7 treatment from July 1999 through the last day of treatment
8 July 2000. So, this has been a full year of treatment for
9 tuberculosis. So, in looking at this, if I were just
10 presented with this document, I'd have to assume that the
11 animal was suspected for having tuberculosis.

12 THE COURT: Hold on for one second. All right,
13 Counsel.

14 MR. GLITZENSTEIN: Thank you, Your Honor.

15 BY MR. GLITZENSTEIN:

16 Q. If we can take a look at FEI 21511. Again, another
17 document in Nicole's file. And if you can take a look at the
18 fourth paragraph down beginning with the Alana, and read that
19 statement.

20 A. Alana, Romeo, Juliet, Kelly and Nicole are also being
21 treated with two drugs, either because of past clinical
22 suspicions, positive DNA tests, or positive ELISA tests (blood
23 results).

24 Q. If you can read the first sentence in that paragraph.
25 The first sentence in that document.

1 A. At the Center for Elephant Conservation, a total of 12
2 elephants are currently being treated for MTB.

3 Q. And then finally read the last paragraph?

4 A. I am concerned that as we continue intensified testing
5 at Williston additional positives will occur. I recommend
6 that we continue to treat culture positive animals if they
7 will tolerate it.

8 Q. And the last sentence.

9 A. Something -- I think it looks like I treatment or one
10 treatment -- one treatment is not feasibly, then we would
11 likely have to -- oh, if. If, it's a misspelling there, it
12 appears to be -- if treatment is not feasible, then we would
13 likely have to consider euthanasia.

14 Q. Why would you have to consider euthanasia of an animal
15 with tuberculosis?

16 A. Perhaps the case is too far advanced. Perhaps the
17 animal's condition cannot be salvaged. Perhaps the animal has
18 a profile of being aged with tuberculosis, and there may be --
19 it may not be a salvageable situation.

20 Q. In terms of conditions that cause tuberculosis, can you
21 explain your understanding of that?

22 A. Conditions that cause tuberculosis.

23 Q. Any conditions that might be relevant to the Judge's
24 evaluation of this case?

25 A. If you have an environment -- well, in the case of

1 elephants, it's a respiratory disease. With birds, it's a
2 gastrointestinal disease. So, your mode of transmission, most
3 likely with elephants, and it's not fully understood, but most
4 likely it's a respiratory disease transmitted by sputum and
5 trunk discharge. And if you have animals being maintained in
6 darkened traveling containers for prolonged periods of time,
7 and in barn conditions where they are tethered side by side by
8 side. And if you consider this to be stressful or
9 contributing to stress, then you're setting up a condition
10 whereby the organism will thrive.

11 Q. If we can look at FEI 44334, another document, the last
12 one we'll be referring to with regard to Nicole. And it's a
13 12/14/06 document, and see the reference under PE to chronic
14 raised dermal mass on left lateral carpus. The center is
15 draining a small amount of white fluid. Does that statement
16 have any significance for you?

17 A. It appears to be a -- as I would take this, a skin
18 abscess with a draining -- an opening hole. It would be on
19 the left lateral carpus. Again, this would be consistent with
20 an ankus injury.

21 Q. And just so we're clear, why is it you say that?

22 A. The left side -- a pattern which I've seen through the
23 volumes of Defendant's medical records.

24 Q. And would a chronic raised dermal mass draining a small
25 amount of white fluid be considered a wound?

1 MR. SHEA: Objection, leading.

2 THE WITNESS: Yes, it would.

3 THE COURT: Refrain from leading.

4 MR. GLITZENSTEIN: I just asked whether it would.

5 BY MR. GLITZENSTEIN:

6 Q. Do you have an opinion on whether or not -- let me ask
7 you this. How would you characterize a condition that has
8 that description?

9 A. A hook boil that's broken and is now draining.

10 Q. One more question on tuberculosis. Would you consider
11 an animal with tuberculosis to be healthy?

12 A. No.

13 MR. GLITZENSTEIN: Your Honor, the next set of
14 documents that we're going to ask Dr. Ensley about relate to
15 Mysore.

16 THE COURT: All right.

17 BY MR. GLITZENSTEIN:

18 Q. And as a general matter, we've now gone through two
19 elephants. Did Mysore have similar kinds of problems to the
20 issues that we've just been talking about from a health
21 standpoint?

22 A. Yes.

23 Q. And, generally speaking, when you say yes, what are you
24 referring to?

25 A. Toenail cracks, abscesses, lamenesses.

1 Q. If we take a look at Feld 8358, and the reference to
2 Mysore. And it says under S: Pressure sores bilaterally on
3 cheeks. And then under O: Sore on left side of face, deep
4 puffy and oozing.

5 And then let me ask you about that. Is that the
6 same thing as the bed sores you were talking about before?

7 A. The pressure sores bilaterally, that is to say on each
8 side of the cheeks, yes.

9 Q. And what is the significance of the reference to deep
10 puffy and oozing, if there is any?

11 A. There's an abscess that is broken and draining. Or the
12 wound itself could be extensive enough to the point where it's
13 infected and you're seeing pus and swelling, meaning
14 inflammation locally, swelling and oozing or pus.

15 Q. Now, do you have an opinion on whether this kind of
16 condition is related to being chained on hard surfaces?

17 A. It's compatible and consistent with an animal lying
18 down on hard surface, yes.

19 Q. And there's a reference in the same document to -- this
20 is current treatment in human patients, do you see that?

21 A. Yes, I do.

22 Q. And in terms of treatment in human patients, do you
23 have any idea what kind of human patients would be treated for
24 this kind of condition?

25 A. Individuals restricted to bed, nursing home conditions,

1 patients with chronic ailments confined to beds.

2 Q. Patients who can't move?

3 A. Correct.

4 Q. If we can take a look at FEI 18 -- 1872. And this is a
5 reference to 10/2/05, and does it appear just -- if you look
6 at the top, does it appear that the animals are on the road at
7 this point for the Blue Unit?

8 A. Yes. Highlighted is Vet Rounds for Blue Unit,
9 Indianapolis, Indiana.

10 Q. And if you look at, again, the reference for 10/2/05
11 under HX, there's a reference to, quote, chronic healing, bed
12 sore left side of the head. Do you see that?

13 A. Yes.

14 Q. Does that have any significance for you?

15 A. The animal is now in Indianapolis traveling with
16 chronic healing bedsore on the head.

17 Q. Now, if we look at FEI 41271, and this is a
18 September 18, 2006 document. Reference to 0 for Mysore.
19 Quote: Granulating pressure sores on cheeks bilaterally. Is
20 that the same condition?

21 A. Yes, it is.

22 Q. And this animal is now at the CEC, if you look at the
23 top. Did you get to go on the inspection at the CEC?

24 A. I did.

25 Q. Did you see the conditions under which the animals are

1 maintained at night?

2 A. Yes, I did.

3 Q. How would you describe those conditions in terms of the
4 surface that they are on?

5 A. Moist concrete.

6 Q. Concrete?

7 A. Yes.

8 Q. Would that be indicated for an animal that's suffering
9 from pressure sore?

10 A. No.

11 Q. Why is that?

12 A. You're not changing the environment that produced the
13 lesions, you're making it difficult for those lesions to heal.

14 Q. Now, if we take a look at FEI 416 -- excuse me, 41461.
15 And this is a September 26, 2006 document, again, relating to
16 Mysore. And take a look at the objective, and the statement
17 is made: Granulating pressure sores on checks bilaterally.
18 And then under assessment: Chronic condition in this older
19 elephant. Do you see that?

20 A. Yes.

21 Q. And is this, again, the same condition we've just been
22 talking about?

23 A. Yes.

24 Q. Now, do you think that the age reference to older
25 elephant, do you have an opinion whether the age of the

1 elephant in and of itself would result in bed sore or pressure
2 sores?

3 A. No, I'm not sure why that -- I'm not sure why that
4 statement is there.

5 Q. If we take a look at Feld 2956, which is an April 1999
6 document. And take a look at the top under the
7 4/13/99 reference, and read that statement -- just the first
8 two sentences there that are being highlighted?

9 A. History presented for acute lameness in the left hind
10 leg, may have occurred during last night's performance.

11 Q. And if you could read on the next sentence: Walks with
12 the left -- just take a look at that phrase -- walks with left
13 leg stiffer than normal and slightly rotated laterally. Can
14 you explain what that means?

15 A. The left leg, I would assume, I can't assume, but it --
16 yeah, here we are. Up above, it's a left hind leg. So, it's
17 walking with a left hind leg stiffer, that is, it's not
18 demonstrating a good range of motion, so it's carrying it to
19 the disadvantage of your other legs because it's not carrying
20 its weight, and it's slightly rotated laterally.

21 So the animal is feeling some discomfort and is
22 trying to favor that leg to the advantage of, you know,
23 alleviating as much pain as it can.

24 Q. And does it appear that the animal is on the road at
25 this point?

1 A. We're on the Blue Unit, it says, but if we can lower
2 that and see the medical history -- that is it. So, let's
3 see. Well, it says below here: Treatment. Pulled off show
4 for three or four days. So, I would assume it's on the road.

5 Q. And the reference, again, is to Banamine. Is that the
6 same drug we were talking about before?

7 A. Yes. Banamine, two grams orally, twice daily for three
8 days.

9 Q. Now, if we look lower down on the same page to the
10 reference to September '99. And if you look at that
11 description, there's a statement there that says large active
12 NBA?

13 A. Large active nail bed abscess on the right front, the
14 fifth digit.

15 Q. What does that mean, a large active nail bed abscess?

16 A. I can only interpret it to the degree in which it's
17 notated here. A large active nail bed abscess, right front,
18 the fifth digit. And then it says, small NBA. It would be
19 hard for me to interpret the size. It's there, it's of
20 concern, that's all I can say about it.

21 Q. Does active mean that there's still infection?

22 A. That's how I would interpret it.

23 Q. And if you look above that reference to, quote:
24 Swollen interdigital tissue between L4 through 5. Does that
25 have any significance for you?

1 A. The swelling would be something as irritating in there,
2 whether it's -- the animal injured it or it's collateral
3 damage from something going on around it. There's swollen
4 tissue. I would interpret that as an area of sensitivity.

5 Q. If we take a look at -- does it have any significance
6 in terms of the issues that the Court is looking at in this
7 case?

8 A. Well, the animal is in Kansas City with a foot problem.
9 These are large terrestrial mammals, the largest -- they
10 didn't evolve to stand motionless for long periods of time on
11 solid surface. I think what you're seeing here is an
12 abundance of conditions related to an environment that they
13 weren't genetically programmed for.

14 Q. If we could look at Feld 8361, and take a look at the
15 reference under Mysore. And the statement is made: No
16 puncture marks, no abscess or obvious cause of lameness.
17 Elephant already on ibuprofen. And above that, it says: Lame
18 LH. What would be the significance of that, if any?

19 A. We've got: Mysore, lame in the left hind leg. I see
20 some swelling around the foot. The observation is that the
21 examiner did not find any puncture marks and no abscess, no
22 obvious cause for the lameness. The elephant is already on
23 ibuprofen. Ibuprofen is one another one of non-steroidal
24 anti-inflammatories. So, this animal is lame and it's on a
25 non-steroidal anti-inflammatory.

1 Q. If you look below that, where it says: Suny feels that
2 this is no worse than usual. I offered to start her on
3 Naxcel, but unit is out of Naxcel currently. What is Naxcel?

4 A. Naxcel is an antibiotic, a broad spectrum antibiotic.

5 Q. In terms of the medications, you've gone over a number
6 of them now. Do those medications, as a general matter, cure
7 lameness or other conditions like that?

8 A. Well, I consider them to be appropriate. And as I
9 indicate in my expert report, I feel the medications are
10 appropriate. It's just that they're temporary, short-lived,
11 they're not taking care of the -- rehabilitating the animal,
12 giving the animal complete recovery.

13 Q. When would be necessary for recovery from these
14 conditions?

15 A. If I had a prescription pad, I would just simply get
16 them out onto a natural substrate for as long a period of time
17 that I could, and then treat topically and monitor them on a
18 day-to-day basis.

19 Q. Now, if you look at the top of the same document,
20 there's a reference, I don't think we talked about this with
21 Karen before, where it says: Stepped on a bolt last week,
22 right hind. When you were reviewing the records, did you see
23 other injuries of that kind?

24 A. Yes, I can't recall specifically, but there were
25 foreign bodies, I think there was a screw in one case that an

1 animal stepped on. Yes, I've seen that type of injury before.

2 Q. If we take a look at FEI 3305. And this is an
3 October 3rd, 2003 reference. I'd like to look at the one
4 which is about five or so lines up. And this is, once again,
5 Mysore. You see a statement referring to Doctor's
6 Notes/Treatment Plan. Abrasion on left jaw line, treated with
7 topical AB. Does that have any significance for you?

8 A. This was a continuation of a characterization of a
9 wound that appears consistently on the left side of the
10 animal, and I would have to categorize this consistent with
11 queuing or a bull hook injury.

12 Q. And if we look at 11093 FEI, again, another document
13 relating to Mysore. And there's a paragraph I'd like you to
14 focus on about four paragraphs down beginning with Mysore.
15 And it reads: Mysore. Concern was raised over her general
16 condition. I suggest a consideration be given to bring her
17 home for several months. And then the swelling on the lateral
18 aspect of her lower forearm is non-painful and appears of no
19 clinical significance.

20 Does the reference to swelling on the lateral
21 aspect of her lower forearm have any meaning for you? Let me
22 first be clear. Is a February '06 document, and when they
23 refer to bringing the animal home, do you have know what that
24 means?

25 A. I would surmise from this that her condition is such

1 that whoever made this recommendation would like to see her in
2 a more restful rehabilitative environment.

3 Q. Do you know when they refer to bringing her home, do
4 you know what environment they're talking about?

5 A. It's reasonable for me to assume it would be the CEC.

6 Q. And when they refer to concern over her general
7 condition, from reading the records, do you have any idea what
8 that would mean? Not just based on this record, but on the
9 records as a whole?

10 A. Well, there's evidently a level of concern that there's
11 been a recommendation being made here to take her off of the
12 road.

13 Q. And if you look at the reference to Nicole under that
14 document, there's a statement there: There is an area of skin
15 loss and superficial infection on her lower left forearm.
16 Does that reference have any significance for you?

17 A. A number of things could produce that. But, again, for
18 me in looking at these records, this is consistent with -- you
19 would have to put bull hook as being one of your rule-outs
20 there as what's going on.

21 Q. If we take a look at FEI 1280. And, for the record,
22 this is another Mysore document. The one we were just looking
23 at is dated February 7, 2006, and you could see a reference --
24 third line from the bottom, does that indicate anything about
25 where Mysore is and when -- at that point in time?

1 A. Mysore arrived at the CEC from the Blue Unit on March
2 9, '06.

3 Q. And then if we look at FEI 41165. March 15, 2006. Is
4 there a reference there to Mysore going back on the road?

5 A. Last sentence: Will depart for the Gold Show. So,
6 we're going back on the road.

7 Q. Is there any indication as to whether the concern about
8 her general condition has been resolved?

9 A. Let me go back a couple documents just to check the
10 date on the recommendation, I kind of lost track of when that
11 recommendation was.

12 Q. I think that was FEI 11093.

13 A. So, in February '06 it was recommended that Mysore go
14 back to the CEC. So, February '06 -- or February 7. Okay.
15 And for several months of rest, did I -- bringing her home for
16 several months. And then bring that up to date.

17 Q. So, bringing up to date is 41165.

18 A. Well, this would appear to me that the animal didn't
19 stay there for several months.

20 Q. In the records, did it indicate whether the reference
21 to her general condition had been rectified as far as you
22 recall?

23 A. No.

24 MR. GLITZENSTEIN: The next set of documents, Your
25 Honor, that we're going to be referring to are Susan's

1 documents.

2 THE COURT: All right.

3 BY MR. GLITZENSTEIN:

4 Q. And if we can look back at the chart that we had
5 admitted into evidence, which was as Demonstrative B, and make
6 sure we're clear about Susan's status. According to that
7 chart, it indicates that Susan was born in 1951 and came to
8 the circus in 1954. And if the first document that we could
9 look at is Feld 8344.

10 And before I ask that, again, we've now gone
11 through three elephants. As a general matter, would you say
12 that Susan, based upon your review of the records, has
13 experienced the same kinds of conditions you've been
14 discussing?

15 A. Yes.

16 Q. And, again, with respect to Susan, what kinds of
17 conditions have you observed in the records?

18 A. Not only the split toenails and the nail bed abscesses,
19 but I believe Susan is now where she actually sloughed off
20 some toenails. She's an animal with a number of new medical
21 issues, in addition to what we've seen in the previous three
22 cases.

23 Q. If we look at 8344, reference other HX: Bad abscess.
24 Lost nail, left foot, third and fourth nails about three
25 months ago, is that what you're referring to?

1 A. That's correct.

2 Q. And what is the significance of that?

3 A. Well, the abscesses were significant enough that they
4 went down into the germinal tissue to the point where the
5 nails have actually loosened and sloughed off. It's like
6 losing one of your nails after -- say, hitting it with a
7 hammer and you have tissue die, and it's just sloughs off.

8 Q. Does that have any relationship to being chained on
9 hard surfaces?

10 A. I don't know how it can -- I can't account for exactly
11 how it started, but it's consistent with what we're seeing in
12 the other records in that -- regardless of how it started,
13 it's continuing, it got infected to the point where the nails
14 are actually being sloughed off.

15 Q. And if we can look at Feld 00315. And if you can take
16 a look at the reference on that document to November -- 11/28
17 through 30, '99.

18 MR. GLITZENSTEIN: And, again, this is set of
19 documents is all about Susan, Your Honor.

20 BY MR. GLITZENSTEIN:

21 Q. If you can see the reference to: Slipped off tub
22 during practice, and then right foot carpus and elbow stiff.
23 And can you, again, explain what the right front carpus and
24 elbow stiff signifies?

25 A. Well, the animal has been lame for several days, and

1 this seems to have -- the person making the entry seems to be
2 accounting for the lameness, so it slipped off the tub during
3 practice. And the right front carpus, which is the wrist and
4 elephant elbow are stiff. In other words, they're not
5 exhibiting a full range of motion. There's either pain or
6 swelling or discomfort there that the animal is trying to
7 protect it.

8 Q. And the reference of slipping off a tub, based upon
9 your review of all the materials, do you know what that means?

10 A. Yes. Now, whether that's a rubber tub or a metal type
11 stool or some other device, that's how I would interpret it.

12 Q. Used in the performance?

13 A. Yes.

14 Q. Now, if we could look at FEI 15345, referring to
15 radiographs taken December 2000, a short time after the
16 document we've just been talking about. Can you take a look
17 at the two pages on that document and explain what, if any,
18 significance it has? And, again, this relates to Susan.

19 A. Well, this was an interesting document to me for a
20 number of reasons. It's a radiographic interpretation by a
21 Dr. Biller at Kansas State University, and based on the depth
22 of the language he's interpreting some radiographs that were
23 submitted to him for consultation. And of interest to me was
24 that he doesn't make a radiographic diagnosis. But when I
25 read this and I see these terms. Let's see, on left front --

1 lysis, irregular new bone, irregular new bone, linear lucency,
2 this means clearness or bone destruction. Lysis is bone
3 destruction. Irregular new bone growth is bone or calcium
4 deposition in response to some type of trauma. Periarticular
5 changes, this is remodeling of bone. This is a foot
6 radiograph. Down here concave lucency. Lysis, again.

7 Q. What significance, if any, do these references have to
8 you?

9 A. Osteoarthritis or degenerative joint disease.

10 Q. Why do you come to that conclusion?

11 A. The language and then -- I've seen this before on
12 radiographs, at least one animal that we had at the Wild
13 Animal Park, and it's documented. These types of -- this
14 terminology is documented in the literature associated with
15 degenerative joint disease or osteoarthritis.

16 Q. Now, if you look at Feld 3147, and look at the
17 reference at the top to January 7th, 2001. A short time after
18 the document -- just looking at it -- does that indicate
19 whether Susan is still on the road?

20 A. Load out from Sunrise onto trucks then onto trains,
21 uneventful. It appears to me that she is leaving and she's
22 suffering from degenerative joint disease.

23 Q. Still traveling on the trains?

24 A. Yes.

25 Q. And if we look at Feld 3148. And look at the reference

1 to June 26th, 2001, and read what that says.

2 A. Lamé and stiff in front left leg.

3 Q. And then the reference under that, just the one for
4 6/27/01?

5 A. It would be the next day. Still stiff in left front
6 leg. Having a hard time lying down. And we're in Pensacola,
7 Florida, at this point, it looks like.

8 Q. And under 6/28/01?

9 A. The next day, stiffness seems to get better with
10 walking, but stiffens up when standing.

11 Q. For an animal like this, would you recommend keeping
12 that animal on a train for long periods of time chained?

13 A. No.

14 Q. Would you recommend keeping it on concrete overnight
15 for long periods of time?

16 A. No.

17 Q. Would those conditions make the problem worse?

18 A. They would be considered arthritis enhancing.

19 Q. If we could take a look at Feld 21823. And take a look
20 at the reference for Susan under July 19th, 2000. And, first
21 of all, there's a reference in that to a chronic NBA. What
22 does it mean to have a chronic NBA?

23 A. It's not resolving. It's a nail bed abscess that is
24 not resolving.

25 Q. And then lower down there's a statement, quote: Susan

1 chronically urinates on her feet causing a dermatitis. This
2 may be due to vaginal polyps causing abnormal urine flow.
3 Grossly, the urine appears normal. Do you have a medical
4 understanding of what that means?

5 A. Well, I've seen this before. Vaginal polyps are common
6 in older female elephants. And it does cause an uneven urine
7 flow. But in this case, she's -- her housing husbandry is
8 such that she's -- it's being aggravated because she's unable
9 to avoid getting the urine on the inner aspects of her rear
10 legs.

11 Q. She's unable to avoid it because she's being chained in
12 the same spot?

13 MS. MEYER: Objection, leading.

14 MR. GLITZENSTEIN: I will withdraw it, Your Honor.

15 THE COURT: Sustained.

16 BY MR. GLITZENSTEIN:

17 Q. If we can look at Feld 3148, and look at the reference
18 under 4/12/01. And if you could just read the first couple of
19 sentences about -- with regard to that description.

20 A. She has a history of hyperkeratosis, that is thickening
21 of your skin, due to some irritating factor. It's thickening
22 as a protective response. Hyperkeratosis with moist and
23 occasional necrotic, that's dying skin, medial aspect of hind
24 feet, likely from urine scald.

25 Q. Let me ask you about that. Do you have an

1 understanding of what urine scald means?

2 A. Scalding is -- you can equate that to burning from
3 urine -- urine irritation.

4 Q. How would that occur?

5 A. If she's unable to keep from getting urine on the inner
6 aspects of her leg.

7 Q. Does that have any relationship, in your view, to
8 chaining?

9 A. In this case it could be somewhat complicated by the
10 polyps, but the change isn't helping the situation.

11 Q. Why do you say that?

12 A. She's unable to get away from her urine.

13 Q. Would that be a painful condition?

14 A. It would be an irritating -- it would be irritating,
15 and I -- it would be -- it's a subjective sort of thing. But
16 I can't imagine it would be comfortable. In other words,
17 having the skin thicken like that, there's a medical problem
18 going on here and the body is trying to respond to it by
19 protecting itself by adding layers of cells there.

20 Q. And if we can take a look at Feld 3147. Let me -- on
21 the urine scalding -- is this a problem that you've noticed
22 with Susan in the other medical records you've reviewed?

23 MR. SHEA: Objection, leading.

24 MR. GLITZENSTEIN: I'm asking if it's a problem
25 he's seen in other records.

1 THE COURT: Has it been a problem?

2 THE WITNESS: For other animals or for Susan?

3 MR. GLITZENSTEIN: I mean for Susan in particular.

4 THE WITNESS: Yeah, she's been documented before as
5 having irritation, itching behaviors.

6 BY MR. GLITZENSTEIN:

7 Q. Take a look at FEI 10872. And the reference under
8 Susan, this is an October 2, '05 document. And, first of all,
9 at the top does this indicate that Susan is on the road at
10 this point?

11 A. Vet rounds, Blue Unit, Indianapolis. Yes.

12 Q. Reference to a healing nail crack. And next to that it
13 says, quote: Chronic constipation, managed with twice daily
14 rake out. Do you know what that would mean?

15 A. Constipation. She's having difficulty voiding solid
16 waste, and the raking out is a term used to manually assist
17 her in removing feces.

18 Q. And the reference to chronic constipation, does that
19 have any particular significance?

20 A. It appears to be ongoing. Chronic, again, ongoing.

21 Q. And did you see other references to that in Susan's
22 medical records?

23 A. I did.

24 Q. And do you have any opinion about whether a condition
25 like that would be affected by the conditions you understand

1 are at issue here?

2 A. In trying to interpret her record here, it's a little
3 difficult, but it's a condition that kind of plays out as you
4 work your way through her records. But with constipation --
5 if you're having an animal with constipation difficulty, you
6 know, voiding solid waste. That is an animal that you would
7 want to have out moving around to assist the GI tract
8 motility. So, you're complicating things somewhat by keeping
9 an animal in a stationary position that is having chronic
10 constipation.

11 Q. If we could look at Feld 3149, and the date July 17th,
12 '01. And see the reference in that document to handlers
13 report decreasing activity. Has lost significant weight in
14 the past several months. And then taking a blood test. Does
15 that have any significance to you?

16 A. Susan is losing weight to a point where it's noticeable
17 over the past several months. My assumption would be that
18 she's under scrutiny here, and having a blood sample taken to
19 look deeper into the source of why the weight loss.

20 Q. Do you have any idea what they would be looking for?

21 A. In July of '01, given the history with tuberculosis, I
22 would assume that that would be a potential rule-out of
23 concern.

24 Q. And if we take a look at Feld 20622, reference to
25 November 2001, rounds for CEC. Reference to chronic weight

1 loss. Would the statement chronic weight loss have any
2 particular significance to you?

3 A. The weight loss is ongoing. That's kind of a little
4 tag that is on her now. She's being earmarked as an animal
5 that is undergoing some weight loss.

6 Q. And if we look at Feld 003150, and look at the
7 reference to February 9th, '02, which is about -- it says:
8 Start INH, 30 tabs rectally. Do you see that?

9 A. Yes.

10 Q. What does that mean?

11 A. INH is isoniazide, which is one of the medications used
12 to treat tuberculosis.

13 Q. Okay.

14 MR. GLITZENSTEIN: Your Honor, we're going to turn
15 to the records relating to Lutzi.

16 THE COURT: We'll break for lunch until 2:15.
17 We're going to finish the trial, at least the Plaintiff's
18 portion today.

19 MR. GLITZENSTEIN: Yes, Your Honor.

20 THE COURT: We're going to finish before we leave.

21 MR. GLITZENSTEIN: We absolutely will.

22 THE COURT: Okay.

23 COURT ADJOURNED AT 1:15 P.M.

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C E R T I F I C A T E

I, Lisa M. Hand, RPR, certify that the
foregoing is a correct transcript from the record of
proceedings in the above-titled matter.

Lisa M. Hand, RPR

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