

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X

AMERICAN SOCIETY FOR THE Docket No. 03-2006
PREVENTION OF CRUELTY
TO ANIMALS, ET AL,
Plaintiffs,
v. Washington, D.C.
 February 24, 2009
 2:20 p.m.
FELD ENTERTAINMENT, INC., **PM SESSION** (Part 1)
Defendant.
-----X

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

APPEARANCES:

For the Plaintiffs: KATHERINE A. MEYER, ESQUIRE
 HOWARD M. CRYSTAL, ESQUIRE
 TANYA SANERIB, ESQUIRE
 DELCIANNA J. WINDERS, ESQUIRE
 Meyer, Glitzenstein & Crystal
 1601 Connecticut Avenue, N.W.
 Suite 700
 Washington, D.C. 20009
 202.588.5206

For the Defendant: JOHN M. SIMPSON, ESQUIRE
 LISA ZEILER JOINER, ESQUIRE
 LANCE L. SHEA, ESQUIRE
 KARA L. PETTEWAY, ESQUIRE
 MICHELLE PARDO, ESQUIRE
 Fulbright & Jaworski, LLP
 801 Pennsylvania Avenue, N.W.
 Suite 500
 Washington, D.C. 20004
 202.724.6522

Court Reporter: Catalina Kerr, RPR
 U.S. District Courthouse
 Room 6716
 Washington, D.C. 20001
 202.354.3258

Proceedings recorded by mechanical stenography, transcript produced by computer.

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

2 (2:20 P.M.; OPEN COURT.)

3 THE DEPUTY CLERK: Please remain seated and come to
4 order.

5 THE COURT: All right. Let's proceed.

6 MR. GLITZENSTEIN: Yes, Your Honor, I think I
7 indicated we were going to go to the elephant Lutzi, but
8 instead I think we're going to talk about Jewell, just for the
9 purposes of clarity, and talk about some of her medical
10 records.

11 PHILIP ENSLEY,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION (CONT'D.)

14 BY MR. GLITZENSTEIN:

15 Q Good afternoon, Dr. Ensley. If we could take a look at,
16 first of all, plaintiffs' demonstrative chart B that's been
17 admitted into evidence. And just so we know we're talking
18 about the same animal, Jewell, according to the chart, was
19 born in 1951 and acquired by defendant in 1954.

20 And take a look at Feld 21896. And before I ask you
21 specific questions about some of the documents, we've already
22 gone through a number of the elephants.

23 Does Jewell have the same kinds of health issues
24 that we've been discussing with regard to the other elephants?

25 A Yes, the same issues I do recall with Jewell. She even

1 had more advanced orthopaedic conditions while she was
2 traveling.

3 Q Okay. Now, with respect to the same issues, just so
4 we're clear about that, what are you referring to?

5 A Osteoarthritis.

6 Q And any other issues that she's had that were similar to
7 other elephants?

8 A Toenail cracks, nail bed abscesses, lamenesses,
9 on-the-road injuries.

10 Q And if we look at Feld 21896, at the top of that page --
11 well, I'm sorry. The reference to Jewell, the second
12 paragraph down, "HX, active, NBA."

13 And, again, is that a nail bed abscess on Jewell?

14 A That's correct.

15 Q If you look at the bottom of that page, there is a
16 reference to elephant, Doc. Do you know how old Doc is?

17 A Maybe three or four years old. I'd have to go back to
18 that inventory and see. It's a young animal.

19 Q Okay. And there is an indication as to that animal, mild
20 lameness in left front leg; is that right?

21 A "Mild lameness, left front leg, New York City."

22 Q And how is Doc being treated?

23 A With Banamine, 15 milliliters IM, and also received
24 Adequan.

25 Q And does this document indicate that these animals are,

1 in fact, on the road traveling with the Blue Unit?

2 A Yes.

3 Q And if we could look at Feld 6980, another -- again, a
4 set of documents relating to Jewell.

5 MR. GLITZENSTEIN: And this document is actually
6 from Defendants' Exhibit H, Your Honor.

7 THE COURT: All right.

8 Q (BY MR. GLITZENSTEIN) And looking near the top of that
9 document, medical history, February '91, does that indicate
10 anything about Jewell's condition as of that date?

11 A February '91?

12 Q Yeah. It's about the third line from the top.

13 A (Reading) Arthritis, Ibuprofen, a hundred milligrams
14 twice a day for three days.

15 Q Okay.

16 A And treat the feet on -- well, for three days. I don't
17 know the date. It says May 10, '91. I'm not -- it says
18 (reading) February '91, arthritis, Ibuprofen, a hundred
19 milligrams BID times three days. But I'm taking it that the
20 5-10-91 would probably drop down below February '91.

21 Q Okay. Now, if we look at Feld 21791. And now we are in
22 the Blue Unit, San Diego, California. And look at the
23 reference down at the bottom to August 2000.

24 A Yes.

25 Q So this is about nine years later, after that diagnosis

1 of arthritis. Does it appear that Jewell is still traveling
2 with the Blue Unit at this point?

3 A With the Blue Unit, in San Diego, California.

4 Q And if you look down at the bottom, under A, there is a
5 statement, "Arthritis of the RF carpus." What does that mean?

6 A "Arthritis, inflammation of the right front carpus." And
7 underneath that is "acute traumatic injury of the left front
8 leg." So we have two limbs involved here.

9 Q Okay. And what is the right front carpus?

10 A The right wrist.

11 Q Okay. And I think earlier you suggested that -- if I
12 understood your testimony -- that traveling around chained on
13 the trains and those kinds of conditions, I think you referred
14 to it as "arthritis aggravating" for an animal that already
15 has arthritis?

16 A Aggravating, yes. But "enhancing" would be a good term,
17 too, an appropriate term.

18 Q And "enhancing," what does that mean exactly?

19 A It's adding to. You're not helping relieve. You're
20 adding to the insult to the current -- current ongoing
21 condition.

22 Q And you're doing that how?

23 A Keeping them on solid surfaces, restricting the range of
24 motion of the limbs, which is really good physical therapy for
25 an animal to be able to naturally do this, rather than

1 restrict the range of motion at a time when the animal is
2 undergoing this -- these acute traumatic injuries.

3 Q Okay. And if we could look at Feld 6971, and look at the
4 reference under 4-12-01. And the statement under A, where it
5 says, "Likely osteoarthritis causing stiffness of left
6 foreleg." Do you see that?

7 A Yes. With the history of left foreleg lameness. And the
8 assessment is "Likely osteoarthritis, causing stiffness of the
9 left foreleg."

10 Osteoarthritis is really a term synonymous with
11 degenerative joint disease. In other words, we're seeing
12 joint surface debilitation or erosion of cartilage within the
13 joint, which is a much more painful condition.

14 Q Okay. Does it appear that that animal is traveling at
15 this point? And particularly, if we look back down at the
16 reference to 5/8 through 10/01, on site in Springfield,
17 Missouri.

18 A Yes.

19 Q And if you look further down at the same page, at the
20 7/17/01 reference?

21 A Yes, we're traveling.

22 Q Okay. And you see the reference to (reading) Lameness,
23 chronic, but this episode is acute onset, in the 7/17/01
24 reference?

25 A Yes. Houston, Texas, on a routine exam, lameness noted,

1 left front leg.

2 Q So it would appear this elephant is traveling with a
3 chronic lameness and arthritic condition; is that right?

4 A Yes.

5 Q Okay. In the same paragraph, do you see a reference to
6 a -- I'm sorry. Go ahead.

7 A I was just noticing here. In addition, you see -- I
8 mean, this is how I would look at it as a clinician as I was
9 reviewing the records.

10 I see (reading) Hind sole pads are overgrown.
11 Interdigital soft tissue swelling continues to be active. The
12 right hind leg has on its third digit a vertical crack. And
13 on the left front, fourth digit, an old healing nail bed
14 abscess.

15 So there are a number of issues going on in addition
16 to likely osteoarthritis.

17 Q Okay. Would you say that the conditions of travel would
18 be enhancing for those problems, as well?

19 A Definitely.

20 Q And definitely, why?

21 A We're standing on the same surfaces. They are helping to
22 precipitate the problem and not allowing good recuperation,
23 not allowing the limbs to repair. You're not giving this
24 animal a break.

25 Q If we look at FEI 15326 through 27 -- and these, again,

1 are radiographs relating to Jewell from December 2000.

2 And you had looked at some prior radiographs, and my
3 question would be: What do these radiographs tell you about
4 Jewell's condition as of that date?

5 A These are radiographs taken on 27 -- or, excuse me -- on
6 22-December-2004, radiographs of the left front and two of the
7 right front. The radiographs were sent to Dr. Biller, at
8 Kansas State University. We have his interpretation here.

9 And again, you're seeing this language that's
10 associated with osteoarthritis or degenerative joint disease.
11 You're seeing, let's say, on the right leg here, it says,
12 "linear lucent line."

13 In other words, we're seeing some bone destruction.

14 And the next line down, "Irregularity" -- well, no,
15 that's -- strike that.

16 The next one down is "bony lysis."

17 Next line down, "circular lucency."

18 Q Is this evidence of joint disease?

19 A Yes.

20 Q If you'd take a look at Feld 6969. This is also in
21 Defendant's Exhibit Number 8. And if we look at the reference
22 about midway down under 12/22/00, after A, where it says,
23 (reading) Elephant is chronically moderately lame left fore,
24 possibly related to foot abscess with osteomyelitis.

25 Do you see that?

1 A Yes.

2 Q Okay. What is "osteomyelitis"?

3 A This is bone infection, where you actually have a
4 bacterial agent involved. In other words, bone destruction
5 and remodeling and change. But, now, you've got a bacterial
6 agent involved, also.

7 Q Okay. Is that a serious condition?

8 A Yes, it is. And I should note it says, "possibly related
9 to foot abscess with osteomyelitis."

10 So whatever notation is there, to me, if you're --
11 if you're -- if you're highlighting this in an animal's
12 record, you wouldn't do that if you weren't leaning towards
13 that being your concrete diagnosis.

14 Q And if you look at the bottom of that page, 1/7 to 10/01,
15 with reference to load-out from semis onto trunks then onto
16 trains, is that an indication that the animal with these
17 conditions is still traveling?

18 A Yes. From previous notations I would assume this, yes.
19 It's reasonable to assume.

20 Q And if we look back at the same page of 12/22/00, under
21 "Foot Exam," there is a reference to a 2-centimeter deep ulcer
22 at the nail sole junction of the third digit. In the hind
23 feet, there were cracks in nails of both third digits.

24 Do you see that?

25 A Yes.

1 Q What is the significance of that?

2 A They were describing a 2-centimeter soft spot at the nail
3 sole junction. This would indicate that, perhaps, you have an
4 abscess or dying tissue beneath, and it could be becoming
5 ready to break out as a draining tract from an osteomyelitis
6 infection.

7 Q Would traveling for many hours in a railroad car be
8 uncomfortable for an animal with a condition like that?

9 MR. SHEA: Objection, leading.

10 THE COURT: It is leading. Sustained.

11 Tell us what impact there would be on the comfort of
12 an animal when traveling in a railcar for an extended period
13 of time.

14 THE WITNESS: The animal would be in discomfort and
15 pain. We've seen episodes where similar conditions, animals
16 have been given nonsteroidal antiinflammatories. But the
17 tough part is just simply allowing the animal time to
18 recuperate and recover from this.

19 Now, osteomyelitis is, on a scale to ten, would be
20 nine or ten. I mean, to have an animal traveling under these
21 conditions with a bone infection, it raises in my mind, as a
22 clinician with 30 years of experience, a high, high degree of
23 concern. I don't quite understand how these decisions are
24 being made. It just raises a great deal of concern in my
25 mind.

1 Q (BY MR. GLITZENSTEIN) Do you think it's harmful to an
2 elephant in that situation?

3 MR. SHEA: Objection, leading.

4 THE COURT: Let him testify. Don't lead him,
5 Counsel.

6 THE WITNESS: I would consider it harmful, yes.

7 Q (BY MR. GLITZENSTEIN) Look at Feld 21836, at the top of
8 the page. And, again, Jewell is traveling with the Blue Unit,
9 November '02.

10 And I see a reference, quote, Chronic stiffness of
11 the left leg. Do you see that?

12 A Yes.

13 Q Okay. And does it appear that this elephant is still
14 traveling with that condition?

15 A Jewell is in Chicago, Illinois, on the Blue Unit. And
16 just of note, not only the chronic stiffness, but I see a
17 resolving scratch on the left flank.

18 I see a -- which, to me, is compatible with
19 potential guide or ankus queuing, causing injury. And the
20 left hind leg, the second digit, there was vertical nail
21 crack. And on the right front, between the fourth and fifth
22 digit, has an old resolving nail bed abscess.

23 Q Okay. And if we could take a look at Feld 2828, which is
24 another document in Defendants' Exhibit 8. And if you see
25 near the bottom of that page, the date of this document is

1 January 22, '04. There is a reference to a 1/29/03 exam. Can
2 you read what it says?

3 A (Reading) Exam, elephant physical history, reported to
4 be stiff. It's a chronic problem. On physical exam on this
5 day we have moderate lameness and we're treating with
6 ketoprofen, 30 tablets -- these are 75-milligram tablets --
7 twice a day as needed. The assessment is chronic lameness.

8 And, in addition, the plan is to monitor for side
9 effects from Nsaids.

10 So ketoprofen is one of your newer -- I mean, it's
11 been around for a decade, but it's newer, more potent Nsaids,
12 and it's given intravenously. You want that immediate effect
13 to happen.

14 And then the note here (reading) Monitor for side
15 effects for Nsaids, to me, from my experience, indicates that
16 the treating clinician knows that there could be side effects
17 from treating with this level of nonsteroidal
18 antiinflammatories that he -- he's queuing up the idea, "We
19 want to watch for some side effects."

20 Q And if you see, at this point, the elephant is at CEC.
21 Does that appear to be the case?

22 A I saw that when we had the -- yes. I see it there in the
23 upper left-hand corner.

24 Q And I think you indicated that you did engage in the
25 inspection at the CEC, as well?

1 A I did.

2 Q From what you saw, was there chaining of the elephants on
3 hard surfaces at the CEC?

4 MR. SHEA: Objection, leading.

5 THE COURT: Sustained.

6 Q (BY MR. GLITZENSTEIN) Can you describe the surface of the
7 area where the elephants were housed at nighttime at the CEC?

8 A Concrete.

9 Q Do you have an opinion on the effect of chaining an
10 elephant on concrete with a condition like this?

11 A It's disease-enhancing.

12 Q What do you mean by that?

13 A The animal is not benefiting, with this given condition,
14 standing on hard -- on hard surface with limited range of
15 motion.

16 Q And there is a reference to it being a chronic problem.
17 Would that comport with your reading of these records?

18 MR. SHEA: Objection, leading.

19 THE COURT: Sustained.

20 Q (BY MR. GLITZENSTEIN) What do you think the reference to
21 "chronic problem" means? Do you have an opinion on that?

22 THE COURT: Counsel, we'll never finish if you ask
23 the questions twice. Please refrain from leading.

24 MR. GLITZENSTEIN: Okay.

25 THE COURT: Let's move along, too.

1 Q (BY MR. GLITZENSTEIN) Let's take a look at FEI 42391.
2 And you see that's a document of August '06. And do you know
3 who Murray Fowler is?

4 A Yes, I do.

5 Q And who is that?

6 A Murray Fowler is a veterinarian who's had a longtime
7 association with zoo and wild animal medicine. And this
8 appears to be a veterinary report from him written in San Jose
9 in August 2006.

10 Q And do you see the reference to a Jewell, shows gait
11 abnormality, in that first full paragraph?

12 A (Reading) Jewell, parentheses, elephant, close
13 parentheses, shows gait abnormally.

14 Q What would a gait abnormality be?

15 A An unnatural or non-normal gait. It could be a lameness,
16 it could be an awkward motion in its limbs. The consequence
17 would be you'd be unfairly tasking the other limbs to make up
18 for -- for that.

19 Q And if we could, look at FEI 16787 and the reference to
20 Jewell in that document. This is a January '02 document.

21 If you could, read the reference in there to Jewell.
22 It's at the top of the page.

23 A (Reading) Laceration on her left ribcage was cleaned and
24 treated with a Betadine ointment, and it was noted that the
25 wound was healing well.

1 Q Would that have any significance to you?

2 A Yes. This is -- this is consistent with injuries and
3 wounds on animals' left sides.

4 Q And what's the significance of that?

5 A It would be consistent with a bull hook or ankus queuing.

6 Q Okay. And how would you describe the overall condition
7 of Jewell?

8 A At this point in time?

9 Q Based -- based upon your review of the medical records.

10 A I would consider her suffering from bone and joint
11 disease that's ongoing, that's been chronic.

12 Q Okay. If we take a look at the records for Zina -- and,
13 again, based on the elephants we've seen, would you have an
14 opinion whether Zina has suffered from similar kinds of
15 ailments?

16 A A similar collage of situations, such as the split nails,
17 the nail bed abscesses, lamenesses. And I think she has a
18 history of arthritis, also.

19 Q If we could take a look at FEI 16971, and look at the
20 record for Zina.

21 A She has a nail bed abscess on the right hind leg.

22 Q Okay.

23 A She's under treatment for -- (reading) Soak daily in
24 Epsom Salts, and then an oxytetracycline powder. The goal is
25 to eliminate as much purulent material as possible. Cetacaine

1 spray, which is an anesthetic spray, on the nail bed abscess
2 if caretakers feel it is necessary, slash, helpful.

3 (Reading) After soaking, dry foot, spray
4 thoroughly. Repeat in ten minutes. Can give 20 to 25 cc's of
5 Banamine IM once daily at caretakers' discretion.

6 Q Okay. And the date on that document is what?

7 A April 20th, 2006, at the CEC.

8 Q If we could take a look at FEI 39566, a May 2006
9 document. You see a reference to, "NBA with deeper
10 inflammation."

11 Could you describe what that means?

12 A The nail bed abscess is the assessment, and it has deeper
13 inflammation. In other words, there is more reddening, more
14 swelling, most likely tenderness.

15 Q Okay. And if we could take a look at Feld 21896 and look
16 at the reference for Zina.

17 A Zina -- do you want me to read that?

18 Q Let me just ask you about A. What does that state?

19 A It says, (reading) Zina, on April 7, '02, suspect mild
20 arthritis of the spine, hips and -- suspect mild arthritis of
21 spine, hips, or stifle.

22 Q What is the stifle?

23 A That's your knee.

24 Q And is this elephant traveling with the circus at this
25 point?

1 A We're with the Blue Unit in New York City.

2 Q Okay. And what medications is the elephant on at this
3 point?

4 A It's being treated on this day with Banamine, 30
5 milliliters IM. And the animal is also currently on
6 Ibuprofen.

7 Q Okay.

8 A Both of these are nonsteroidal antiinflammatories.

9 Q If we could take a look at Feld 21835, and the reference
10 to Zina in that document. And see where says, under "HX, on
11 Rimadyl for arthritis"?

12 A (Reading) History, routine exam. Currently on Rimadyl
13 for arthritis. This is another anti-steroidal product.

14 Q And does it appear that Zina is still on the road at this
15 stage?

16 A Blue Unit, Chicago, at this time.

17 Q And then there is also a reference in the same document
18 to (reading) Bedsore lesions on left side of face and hip.
19 Do you see that?

20 A Yes.

21 Q Are these the same kind of lesions that we discussed
22 earlier?

23 A Yes. Decubital ulcers, pressure sores.

24 Q What would cause those?

25 A Lying continually on a hardened surface, over an area

1 where it's -- on the face, here, and the hip, where you have
2 bony protrusions.

3 Q And if we could take a look at FEI 8058, and look about
4 four lines from the bottom.

5 MR. SHEA: Object, Your Honor. We don't see this on
6 our 72-hour notice.

7 MS. SANERIB: It's the first one under 9289.

8 MR. SHEA: It's Feld or FEI?

9 MR. GLITZENSTEIN: Feld, I'm sorry. 8058 -- if you
10 look four lines up, there's a statement--

11 THE COURT: Any objection?

12 MR. SHEA: No objection, Your Honor.

13 MR. GLITZENSTEIN: I'm sorry, Your Honor.

14 Q (BY MR. GLITZENSTEIN) It says, "Small healing laceration
15 on the left shoulder." Do you see that?

16 A Yes.

17 Q Does that have any significance?

18 A Again, it -- there is -- this is consistent with ankus
19 queuing.

20 Q Okay. And finally, for Lutzi, just for the record as
21 indicated in the chart B, Lutzi was born in 1950, according to
22 defendants' records, acquired in 1954.

23 Is Lutzi suffering from the same kinds of medical
24 issues we've just been discussing?

25 A Yes.

1 Q And what do you mean by that?

2 A Nail cracks, nail bed abscesses, lamenesses.

3 THE COURT: Excuse me one moment.

4 (PAUSE.)

5 THE COURT: All right. Go right ahead, Counsel.

6 MR. GLITZENSTEIN: Thank you, Your Honor.

7 Q (BY MR. GLITZENSTEIN) And if you could look at Feld 7256,
8 December 22nd, '00, near the top of the page, where says, "A
9 foot exam," and there is a reference to overgrown soles, hind
10 feet. Can you explain what that means?

11 A (Reading) Forefeet are fine. The overgrown soles on the
12 hind feet, she's not wearing her -- the slipper, or the sole
13 of her foot, in comparison. So she's having uneven wear
14 between the front and the rear soles.

15 Q And with reference to, "Callus over left elbow has come
16 off, resulting in superficially ulcerated area," does that
17 have any significance?

18 A Yes. "Callus" is really nothing more than hardened skin.
19 And getting up and getting down, likely, she has tagged it or
20 traumatized it and broken off some of this hardened skin, and
21 now she has an ulcerated area over that elbow.

22 Q And what's the significance of that, from what we've been
23 discussing?

24 A Maintaining her on a hardened surface, this is an area
25 that's going to become contaminated and be slow healing.

1 Q And if we look at Feld 28072, December '05 visit to CEC,
2 it says at the top, and then again under Lutzi, it says
3 "decubital lesions on cheeks."

4 A "Decubital lesions on cheeks." These are bedsores.

5 Q Are these the same kind of sores that we discussed
6 earlier?

7 A Yes.

8 Q And if we look at Feld 20407, down at the bottom,
9 February '04, reference to "left cheek pressure sore." Do you
10 see that?

11 If we're on that page now, it's down at the bottom,
12 all the way to the bottom. February 15th, 2004. And,
13 again, is that the same kind of bedsore we've been discussing?

14 A Yes.

15 Q Does this appear to be a longstanding problem?

16 MR. SHEA: Objection, leading.

17 Q (BY MR. GLITZENSTEIN) Based upon your review of the
18 rec- --

19 MR. GLITZENSTEIN: I'm sorry. Can I rephrase,
20 Your Honor?

21 THE COURT: Yeah.

22 Q (BY MR. GLITZENSTEIN) Based upon your review of the
23 records, do you have an opinion about this condition in Lutzi?

24 A I'd have to check the dates to see, in terms of it being
25 longstanding. I'd have to check the dates and kind of go back

1 and do that. But...

2 Q All right. If you look up on the same page of
3 September 2004, it's about nine months later. There is a
4 reference to "pressure callus on left temple, opened." Do you
5 see that?

6 A Yes.

7 Q Is a pressure callus the same thing as a pressure sore?

8 A Yes, it is.

9 MR. SHEA: Objection, leading.

10 THE COURT: I'll allow it.

11 Let's refrain, Counsel. We are going to finish this
12 trial today, but we're not going to finish it when every
13 question has to be asked twice.

14 MR. GLITZENSTEIN: I apologize, Your Honor.

15 THE COURT: At some point, I am going to start
16 curtailing examination. It's not appropriate to lead one's
17 own witness.

18 Q (BY MR. GLITZENSTEIN) What is a -- what is a pressure
19 callus?

20 A It's a buildup of scar tissue, or hardening of tissue
21 associated with chronic bedsore.

22 Q And if we could look at Feld 2183 -- excuse me -- 21839.
23 No, I'm sorry. I think I'm getting --

24 MR. GLITZENSTEIN: I apologize, Your Honor.

25 THE COURT: All right.

1 Q (BY MR. GLITZENSTEIN) If we could look at FEI 40006.
2 It's a July '06 document. Under A, there is a reference to
3 "stiffness that's longstanding and was probably mechanical." Do
4 you see that?

5 A Yes.

6 Q What does that mean?

7 A Well, there is a chronic -- "longstanding" means it's
8 chronic stiffness in that left front leg, probably mechanical.
9 I don't quite understand that, that notation there.

10 Q Okay. Based upon the medical records that you reviewed
11 for these animals, how would you describe their physical
12 condition?

13 A They all seem to have split toenails, nail bed abscesses,
14 chronic nail bed abscesses, lamenesses, ongoing lamenesses,
15 degenerative joint problems.

16 I think we saw two that were treated for
17 tuberculosis or presumed tuberculosis. And they are all being
18 housed in conditions that exacerbate or accentuate their
19 ongoing problems, or cause their -- or cause their initiation
20 of their problems.

21 Q Did you attend the inspections at Auburn Hills and the
22 CEC?

23 A I did.

24 Q And, in conducting those inspections, did you discuss
25 beforehand with the other experts what you were expecting to

1 do?

2 A Other than the mechanics of the schedule, that's all I
3 recall discussing.

4 Q If we could take a look at --

5 MR. GLITZENSTEIN: Actually, before I go on,
6 Your Honor, if I could move into evidence Plaintiffs' Will
7 Call Exhibit 2B, which are, once again, defendants' own
8 medical records on the seven elephants.

9 THE COURT: Any objection?

10 MR. GLITZENSTEIN: Actually, excuse me. 2A, I mean.

11 THE COURT: 2A.

12 MR. GLITZENSTEIN: Yes, 2A. I'm sorry.

13 THE COURT: We've already heard objections. Over
14 objection, I'll admit them.

15 You stated your objection earlier to 2A, did you
16 not?

17 (PLAINTIFFS' WILL CALL EXHIBIT 2A ADMITTED.)

18 MR. SHEA: Yes. I think it's preserved, Your Honor.

19 THE COURT: It is. It is preserved.

20 MR. GLITZENSTEIN: And I would also move into
21 evidence the specific Defendants' Exhibit 8 documents that I
22 referred to.

23 THE COURT: Any objection?

24 MR. SHEA: The same objections made before,
25 Your Honor, to the extent they do not pertain to elephants at

1 issue, or there are entries on them, and that they are from
2 remote years. So those are our objections.

3 THE COURT: Counsel?

4 MR. GLITZENSTEIN: Your Honor, once again, these are
5 documents specifically about these elephants. And we think
6 that they are part of the pattern of the health problems that
7 these elephants are suffering from that are at the core of our
8 case.

9 THE COURT: What about the remoteness argument?

10 MR. GLITZENSTEIN: I think the point we're making in
11 part is when an el- --

12 THE COURT: What about the remoteness?

13 MR. GLITZENSTEIN: Well, 1991 is when the animal
14 developed arthritis. She stayed on the road for the last 20
15 years. Our argument is that that's what is injurious to an
16 animal like that.

17 THE COURT: It's admitted over objection.

18 (DEFENDANTS' EXHIBIT 8 ADMITTED.)

19 Q (BY MR. GLITZENSTEIN) Could we go to Plaintiffs' Will
20 Call Exhibit 143 and play clip 1:07:45 to 1:07:59?

21 And just take a look at that clip and tell me if you
22 see anything on that particular clip that's significant to
23 you.

24 (VIDEO CLIP PLAYED.)

25 A In the section that we just passed, it's sequella, or

1 scar tissue, from a prior bedsore or decubital ulcer.

2 MR. GLITZENSTEIN: Your Honor, we would move that
3 clip in as Plaintiffs' Will Call --

4 THE COURT: You are trying to accentuate that? I
5 think if you touch it in some kind of way -- you've been doing
6 it. There you go.

7 Q (BY MR. GLITZENSTEIN) Do you know what elephant that is?

8 THE COURT: I'm sorry. You offered that into
9 evidence?

10 MR. GLITZENSTEIN: Your Honor, if I could ask one
11 question before I do that.

12 Q (BY MR. GLITZENSTEIN) Do you know what elephant that is?

13 A This is Nicole.

14 Q How do you know that?

15 A I've seen the photograph many times and the videos
16 affiliated with it, sir.

17 MR. GLITZENSTEIN: I'll move that in as Plaintiffs'
18 Will Call Exhibit 143E.

19 THE COURT: Any objection to that?

20 MR. SHEA: No objection, Your Honor.

21 THE COURT: Admitted.

22 (PLAINTIFFS' WILL CALL EXHIBIT 143E ADMITTED.)

23 Q (BY MR. GLITZENSTEIN) Okay. Now, did you also, at the
24 Auburn Hills inspection, watch the elephants?

25 THE COURT: What else did you do at the Auburn Hills

1 inspection? I'll give you a chance to testify.

2 THE WITNESS: The witnesses met at the train and
3 watched the elephants offload. We watched them walk off
4 towards the sports arena complex parking lot, and we arrived
5 early in the afternoon.

6 We were able to conduct an inspection, which lasted
7 about 30 minutes between the three of us. And then we were
8 able to watch them just a little bit before and a little bit
9 afterwards. And then they were milling around in their pen in
10 the parking lot. Then we left.

11 And we came back in the evening, and we watched them
12 for two and a half or two and three-quarter hours after they
13 had been tethered and put up for the evening on their wooden
14 pallet platforms.

15 THE COURT: Okay.

16 Go ahead, Counsel.

17 MR. GLITZENSTEIN: Okay. Thank you, Your Honor.

18 Q (BY MR. GLITZENSTEIN) If we look at Plaintiffs' Will Call
19 143, clip 4:16, for 2 hours 16 minutes 12 seconds versus
20 4:16:45. If you could describe what it is we are watching in
21 this clip.

22 (VIDEO CLIP PLAYED.)

23 A This is Karen, to our left, having a tether -- chain
24 tether, placed on her right front leg.

25 And adjacent to her, on her left, is -- our right,

1 is Nicole.

2 Q (BY MR. GLITZENSTEIN) Okay.

3 A They are being tethered for the evening.

4 THE COURT: Were they swaying before they were
5 tethered?

6 THE WITNESS: I recall --

7 THE COURT: They show that on -- this doesn't show
8 what they were doing before they were tethered.

9 THE WITNESS: I didn't see it on this particular
10 clip here.

11 THE COURT: Have you had a chance to observe
12 elephants, though, I mean, before they are tethered, and
13 whether or not they are engaged in that swaying type of
14 activity?

15 THE WITNESS: Yes.

16 THE COURT: And what's your answer?

17 THE WITNESS: It depends on their state of mind. If
18 it's part of their routine, they generally just -- they
19 generally just walk through it. If they are excitatory,
20 anticipatory, they might display a little of this behavior.

21 In this case, as I recall, they were standing
22 outside. And, actually, Nicole was the one doing a little bit
23 of transient swaying behavior. And then they came in, and it
24 wasn't quite so noticeable with her, to the point where I
25 didn't make any notation of it in my inspection report.

1 Whereas, Karen, for pretty much the balance of the
2 evening while we were in there, her swaying behavior was
3 continuous.

4 Q (BY MR. GLITZENSTEIN) And, in fact, if we could go to
5 Plaintiffs' Will Call 143, clip 4:37:50 through 4:40, and play
6 that clip.

7 (VIDEO CLIP PLAYED.)

8 Q (BY MR. GLITZENSTEIN) And is that the kind of continuous
9 swaying you are talking about?

10 A Yes.

11 Q Okay. In terms of the elephant's legs, does that have
12 any significance?

13 A It does. They're restrained. The space here that she
14 has, really, is no greater than what she had allocated to her
15 when she was, you know, in the -- in the stock cars. And
16 if -- if you notice -- I don't know if you can.

17 THE COURT: You say "stock cars." You mean while on
18 the train; is that right?

19 THE WITNESS: Yes, sir. Yes, sir.

20 So you've got limited motion, limited range of
21 motion in the joints. And this repetitive behavior places,
22 you know, continual repetitive mechanical stress on joints.
23 It doesn't allow the joints a complete and full range of
24 motion. So you're -- you're taking an animal and you're
25 restricting the range of motion that they have.

1 And this back and forth, back and forth, you get the
2 expansion and contraction of the feet, so that you're
3 aggravating any split nails, or you're even starting -- or
4 you're precipitating nails to split.

5 And then, too, of concern to me would be the
6 confinement in the location there, because the mechanics of
7 urination, you're going to get the feet splashed and
8 contaminated with urine. And the same thing as with
9 particulate matter from solid waste.

10 I would have to be concerned --

11 THE COURT: Is it common or uncommon to return in
12 the morning? I mean, what is the common scenario? Are
13 they -- are they forced to defecate before they are chained to
14 these things or what?

15 THE WITNESS: I don't know.

16 THE COURT: Yeah.

17 THE WITNESS: I don't know.

18 THE COURT: You didn't observe them the next morning
19 or...

20 THE WITNESS: No, sir.

21 THE COURT: I mean, one would think that the place
22 would be covered with all sorts of elimination. I mean, is
23 that -- I don't want you to guess, though. You didn't see it.
24 No one takes them out for a walk in the evening, right?

25 THE WITNESS: I didn't see that when I was there.

1 THE COURT: All right.

2 THE WITNESS: Now, Karen, of course, she -- during
3 her visual inspection -- on her left rear leg was a
4 significant toe crack. And I don't know if you'll have time
5 to show those photographs of those -- of the toe crack, so
6 that, you know, the Court can appreciate how it expands and
7 contracts. But that was remarkable to me.

8 That kind of confirmed what, you know, I've seen in
9 the literature, because we just -- we don't see many toe
10 cracks at the San Diego zoo and wild animal park.

11 Q (BY MR. GLITZENSTEIN) And remarkable because why?

12 A Because it just kind of confirms, you know, what the
13 literature reports as to what -- as to how this -- how this
14 phenomenon works.

15 Q If we could take a look at one of the photos that's in
16 Will Call Exhibit 113, Appendix C.

17 And does Appendix C contain -- what does Appendix C
18 to your report contain?

19 A Are those the -- I think those are the photographs from
20 our site inspections.

21 Q And who took those photos?

22 A I made some in Auburn Hills. And then there was a still
23 photographer and a videographer there, also.

24 MR. GLITZENSTEIN: Your Honor, we would move the
25 admission of those photos in as Plaintiffs' Will Call Exhibit

1 113.

2 THE COURT: Any objection?

3 MR. SHEA: Your Honor, he has not seen them to
4 authenticate them at the point, or to lay predicate for them.
5 We were there, and there was a photographer, I guess. But I
6 don't -- I don't hear a foundation for them.

7 MR. GLITZENSTEIN: Well, the only photos in his
8 appendix are either ones he took or taken by the official
9 photographer, he just testified. So it's hard to see what the
10 problem would be with authentication.

11 THE COURT: Well, the official photographer was
12 hired by the group, both sides, or it was just the plaintiffs'
13 group?

14 MR. GLITZENSTEIN: I think it was jointly funded.

15 THE COURT: Can he identify the photos and what they
16 are photos of -- I mean, there should be some --

17 MR. GLITZENSTEIN: Your Honor, as I go through them,
18 I can certainly have him say which ones --

19 THE COURT: You know --

20 MR. GLITZENSTEIN: I think all other experts have
21 referred to the photos that were taken by the joint
22 photographer, and there was no objection.

23 THE COURT: Are you going to have your expert refer
24 to the photos taken?

25 MR. SHEA: We may or may not, Your Honor, I don't

1 know. But we'll lay a foundation if we do.

2 THE COURT: Well, he ought to be able to identify
3 it. Someone ought to be able to identify what the photos are,
4 so there is some basis for the Court crediting the appropriate
5 evidence.

6 MR. GLITZENSTEIN: How about if I go through the
7 photos, Your Honor, and then we can --

8 THE COURT: That's fine.

9 MR. GLITZENSTEIN: Okay. Actually, before we move
10 on from the video clip, I would like to move into evidence
11 clip 4:37:15 through the end of that, the official inspection
12 video, as Plaintiffs' Exhibit -- I think its 143G.

13 THE COURT: Any objection?

14 MR. SHEA: No objection.

15 THE COURT: It's admitted.

16 (PLAINTIFFS' WILL CALL EXHIBIT 143G ADMITTED.)

17 Q (BY MR. GLITZENSTEIN) Let's take a look at PKE 96.

18 THE COURT: You took some photos while you were
19 there yourself; is that correct?

20 THE WITNESS: Yes, sir.

21 Q (BY MR. GLITZENSTEIN) And what does "PKE" stand for, do
22 you know?

23 A Those are my initials.

24 Q Okay. So these are photos that you took?

25 A Yes, sir.

1 Q And what's the significance of PKE 96, if there is any?

2 A This is Nicole, and this is a toenail crack from Nicole.

3 Q And if we look at PL 15024 -- and tell me what the
4 significance of that photo is.

5 And, first of all, there is a reference to PL. Do
6 you know what that means?

7 A No. Most like- -- these are photographs made by the
8 still photographer.

9 Q Okay. Have you seen these photos before?

10 A Yes, sir.

11 Q And what does that photo reflect?

12 A This is Karen's left hind leg. And there are two things
13 that are notable to the Court. First is the ventral aspect.

14 THE COURT: Were you there when these photos were
15 taken?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. That's fine.

18 THE WITNESS: You can see -- the critical thing here
19 is how the nail crack extends deeper into the tissue, past
20 just the face of the nail.

21 And, also, this area here, you can see the uneven
22 wear. If you recall, Karen was the girl who had abnormal wear
23 down to the -- down to pink tissue here. And, in her
24 history -- I don't know if we discussed that before or not,
25 but that was in her history, and this is what it's showing

1 here today.

2 She had a history of dragging her rear feet, in her
3 medical records.

4 Q (BY MR. GLITZENSTEIN) And what is the significance of
5 that, if any?

6 A Abnormal wear, uneven wear, at a consequence of her other
7 feet. It could be due to a variety of things; three things,
8 perhaps, most likely. Uneven wear from moving back and forth,
9 a prior injury, or an ongoing injury, or a combination of all
10 three. She's an animal who's been -- historically had
11 arthritis.

12 Q All right. If we could look at PL 15037, what does that
13 reflect?

14 A This is a close-up. I'll get it here sooner or later.
15 If my wife were here, she could do it.

16 It's a toenail crack. And you can see it's gone
17 beyond the face, and it's down into the corrin there. So this
18 is ripe for becoming infected, if it isn't already.

19 Q And does that have any significance, in terms of your
20 opinion?

21 A It does. In her case in particular, with other
22 photographs I made, you can see this phenomenon as she shifts
23 her weight back and forth, back and forth. That crack opens
24 and closes, opens and closes. It's a mechanical phenomenon.

25 Q And if we could look at PKE 126 and PKE 125, both of

1 which -- if we could go back to both of those.

2 And what is the significance of that, if any?

3 A If you notice on the upper image here, you'll see the
4 foot that faces us is her left rear. And the one away is her
5 right rear. And her weight is shifted over onto her right
6 rear, and that allows the crack here to close. And then as
7 she shifts her weight off of the right rear and onto the left
8 rear, you can see now this crack is open, when we've
9 previously seen the ventral aspect of that crack.

10 And, as I mentioned earlier in testimony, the
11 strategy for managing these is to rasp and hone, so that that
12 crack doesn't come in contact with the face of the hard
13 surface. And then, as it grows out, you can resolve the
14 situation.

15 But here, the crack goes all the way up to the
16 cuticle. And, by maintaining the elephant on this hardened
17 surface, back and forth, back and forth, open and close, it
18 makes it mechanically difficult for that to close and mend.

19 Q And if we could take a look at the PKE 93 photo, which is
20 Nicole, tell us what we're looking at.

21 A Nicole is suffering from a similar situation, although
22 not as accentuated as Karen.

23 And if you look at the outer -- the right rear foot
24 that's being held up -- this -- this photograph it's hard to
25 see. But there is that same similar excessive wearing, or

1 uneven wearing, on the outside of her foot here, on the sole.

2 Your elephant should have even wear, front to rear,
3 even wear. If it's uneven, something's -- something's amis.
4 They are walking unevenly on their feet, and it just becomes
5 accentuated by walking on a -- on a surface that's going to
6 wear it, in other words, enhance that abnormal wear.

7 Q During your inspection at Auburn Hills, did you see any
8 evidence of fresh bull hook injuries?

9 A I didn't see any fresh injuries.

10 Q Did you see anything that related to bull hook injuries
11 at all?

12 A The -- on one of the two animals, I believe it was Karen,
13 on the angle of the left jaw, there was scar tissue compatible
14 with localized trauma consistent with bull hook use and then
15 repair with scar tissue.

16 And then on each of these two animals, on their
17 elbows and in front of their knees, was chronic hardened scar
18 tissue buildup compatible with queuing, queuing injuries, and
19 getting down on their elbows and knees over the years.

20 Q Take a look at --

21 MR. GLITZENSTEIN: At this point, Your Honor, I
22 would like to move into evidence as Plaintiffs' Will Call 113K
23 the photographs. He's testified that he either took them or
24 they were taken by a joint photographer and he relied upon
25 them.

1 THE COURT: And he was present when the photographer
2 took them.

3 Any objection?

4 MR. SHEA: Well, Your Honor, I was just going to say
5 I haven't heard a proper predicate for them.

6 THE COURT: I'm sorry?

7 MR. SHEA: I haven't heard a proper foundation for
8 them. He knows he did not take --

9 THE COURT: I'll let them in over objection.

10 (PLAINTIFFS' WILL CALL EXHIBIT 113K ADMITTED.)

11 MR. GLITZENSTEIN: Thank you, Your Honor.

12 Q (BY MR. GLITZENSTEIN) And you also attended the CEC,
13 inspection?

14 A Yes, I did.

15 Q And what did you do during that inspection?

16 A We viewed the animals, five elephants -- actually, there
17 were six, but five that were more focused upon for this case.

18 We viewed them for half an hour, 40 minutes, before
19 they were brought up, placed on line for visual inspection.

20 And then, after that, when they were placed on their tethers

21 at about 3:15 or 3:30, we moved over to the barn where they
22 were kept. And we watched them for -- I don't remember

23 precisely -- two and a half, two hours 45 minutes, something
24 like that.

25 THE COURT: Let me just say this. Those exhibits I

1 just admitted, I'll provisionally admit them, but you need to
2 file something, a pleading, no more than three pages, that
3 might persuade the Court that the appropriate foundation has
4 been laid.

5 I think it has. He was present. Even though he
6 didn't take them, the photographer took them in his presence,
7 and he can identify the depictions of what was taken. But
8 I'll need some authority.

9 MR. GLITZENSTEIN: Okay. Your Honor, can I try to
10 lay foundation and perhaps...

11 THE COURT: Sure. Sure.

12 Q (BY MR. GLITZENSTEIN) The photographs that were your
13 attachment C to your report, do they all accurately depict what
14 you saw during the inspection?

15 A Yes.

16 Q Did you-all look -- did you look at all those photographs
17 in the course of preparing your report?

18 A I did.

19 Q Do any of those photographs involve anything other than
20 your own photographs or the group photographs, as far as you
21 know?

22 A No.

23 Q Do any of those photographs reflect anything other than
24 what happened at the inspection?

25 A No.

1 MR. GLITZENSTEIN: Your Honor, obviously, I'll be
2 happy to file something.

3 THE COURT: What's lacking here?

4 MR. SHEA: Now, there is nothing lacking,
5 Your Honor.

6 THE COURT: Oh, all right. Okay. All right. They
7 are admitted again.

8 (PLAINTIFFS' WILL CALL EXHIBIT 113K ADMITTED.)

9 MR. GLITZENSTEIN: Thank you, Your Honor.

10 THE COURT: All right.

11 Q (BY MR. GLITZENSTEIN) You were describing the CEC. Could
12 we go to Plaintiffs' Will Call 142 and look at clip 2:10:00,
13 starting there?

14 And if you could, describe what it is we're looking
15 at.

16 (VIDEO CLIP PLAYED.)

17 A This is in the barn at the CEC, and the elephants are
18 lined up from left to right. As I recall, Jewell was the
19 first -- Jewell is the first animal on our left, Zina behind.
20 And they have been tethered, and we are watching them now.

21 And, Ms. Sinnott, I don't know if you can turn that
22 up a notch. I just feel it would be important to give you a
23 feeling for the movement and the mechanical stress on those
24 legs.

25 If we move this up and we have -- you can see this

1 consistent back and forth. It's not allowing for a range of
2 motion. And the concern to me is, as a veterinarian looking
3 at these animals on these surfaces with this restricted range
4 of motion, that that is what is exacerbating their ongoing
5 problems.

6 And keep in mind, too, these animals are past middle
7 age. They are in their middle 50s. So I would have to --

8 THE COURT: I'm sorry. Has the speed been
9 accelerated by --

10 MR. SHEA: Yes. Your Honor, we object to
11 accelerating the speed on this video. It doesn't show
12 reality.

13 THE COURT: Let's do the normal speed. That's not
14 the normal speed.

15 MR. GLITZENSTEIN: Your Honor, I think what he said,
16 with the Court's permission, was that if you speed it up you
17 can see what his testimony is reflecting with regard to the
18 reflect on the legs and feet.

19 THE COURT: I can see that with the normal speed. I
20 prefer to see it with the normal, though, because it is a
21 little bit misleading. I was wondering what was going on.

22 MR. GLITZENSTEIN: They suddenly got much faster,
23 Your Honor. We'll just keep it at the normal speed and
24 continue to describe.

25 THE COURT: Let's accelerate the question and the

1 answer. We can do that.

2 MR. GLITZENSTEIN: Your Honor, they usually complain
3 that I talk too fast. It's going the opposite direction.

4 THE COURT: Speed it up, please. You're right.
5 This is atypical, isn't it?

6 (LAUGHTER.)

7 THE WITNESS: I am doing all I can to help move this
8 along. But the feet themselves, if you can see the repetitive
9 motion there, of this first elephant's foot.

10 And, as I examined the concrete, you can see how the
11 surface has been worn and roughened. And I noted that, as the
12 animals proceed into the barn, they tracked in some of the
13 sandy soil, which gives you even more of a sandpaper effect on
14 their feet.

15 Where this is --

16 THE COURT: Is that -- what you can hear, is that --
17 I'm hearing the scraping. Is that what you hear with the
18 feet?

19 THE WITNESS: Yes, sir.

20 And when we -- I don't know if you'll have time to
21 look at those still photos. But three out of the five
22 elephants had overly-worn front feet compared to the rear
23 feet, which is --

24 THE COURT: I would like to see that, if you have
25 that.

1 THE WITNESS: -- which is unhealthy. It's unhealthy
2 for this activity to take place, particularly with these older
3 animals.

4 Q (BY MR. GLITZENSTEIN) And why is it unhealthy?

5 A They need to be out on soft natural substrate, given
6 their age and past medical -- medical history.

7 Q And the past medical history being what?

8 A Arthritis, in the case of three out of five of these
9 animals, and past lamenesses. And it will help to increase
10 their longevity and their well-being just being able to move
11 and stretch.

12 Q Take a look at --

13 MR. GLITZENSTEIN: Actually, we move that clip into
14 evidence, Your Honor, as Plaintiffs' Will Call Exhibit 142E, I
15 think it is.

16 THE COURT: Any objection?

17 MR. SHEA: No objection, if it's the normal speed.

18 THE COURT: The normal speed. All right. Admitted.

19 (PLAINTIFFS' WILL CALL EXHIBIT 142E ADMITTED.)

20 THE WITNESS: I have to apologize. I didn't know if
21 it was permitted to have the technician increase that.

22 THE COURT: I heard the word "increase." I didn't
23 hear the latter part. That's fine. That's not a problem.

24 Q (BY MR. GLITZENSTEIN) If we could take a look at photo --
25 that's -- again, all these photos are in the Appendix C that's

1 just been admitted into evidence -- PL 15269.

2 And tell us what we're looking at.

3 A This is Zina. And if you look at that right rear leg,
4 you will see a wear pattern. Raise that square just a little
5 bit more.

6 You will see a wear pattern, where there is hair
7 loss here. And then you have elevated plaques of tissue that
8 represent healed sores from chronic trauma, from a tether
9 that's been around that right rear leg.

10 THE COURT: You're not able to circle that with
11 your -- I'm sorry. I can't help you out with that technology.

12 Carol, do you know how to use that? He's not able
13 to make a mark on that thing.

14 (PAUSE.)

15 THE COURT: There it is right there.

16 THE WITNESS: There are little tiny elevations here
17 that represent chronic sores with mild ulcerations on them.
18 But you can see the line across there from where the hair has
19 been rubbed.

20 Q (BY MR. GLITZENSTEIN) You refer to "tether." How do you
21 know that?

22 A This is where a chained tether would lie on this animal's
23 rear leg, just above the ankle there.

24 THE COURT: It appears that the hair has just been
25 worn -- there is no hair there; is that right?

1 THE WITNESS: It's been rubbed off or shortened,
2 broken.

3 THE COURT: Okay.

4 Q (BY MR. GLITZENSTEIN) If we could look at PL 15- -- by
5 the way, just for the record, that is Zina, a photo of Zina.

6 If we look at PL 15337, and I'll ask you what we're
7 looking at in -- actually, it's 15337, 15367, and 15359 -- and
8 ask you, can you tell us what we're looking at?

9 A This is Susan. You recall she's the elephant with the
10 swayback confirmation. She was the Asian elephant female that
11 was having a history of vaginal polyps and urine accumulating
12 on her rear legs.

13 And here you can see where there is almost a
14 leatherlike consistency on her rear legs, where the urine has
15 come and irritated and scalded, over a chronic time, the
16 tissue of the skin. It's hard to see. I can't -- you can't
17 make a mark, but...

18 MR. GLITZENSTEIN: Your Honor, with the Court's
19 permission, I can do it on my screen, if it would help.

20 THE COURT: It would be better if the witness does
21 it. I don't know what's wrong, but maybe you can ask John to
22 come up or something.

23 THE WITNESS: This one, and then I'll try to test
24 mark, and it doesn't work.

25 I'll try it again. I'll do it this way. No.

1 THE COURT: If someone knows how to use this, they
2 are more than welcome to come up. I'm sorry, I don't.

3 MS. SANERIB: Just push really hard.

4 THE WITNESS: Okay.

5 THE COURT: Tell me what you did, so we'll know in
6 the future, because it will happen again.

7 MS. SANERIB: You don't use a pen. You want to use
8 your finger.

9 (OFF THE RECORD DISCUSSION.)

10 THE COURT: Thank you.

11 THE WITNESS: Thank you very much.

12 This is Susan. She's the girl that had the
13 swayback. But I'll see if I can do this discreetly here.

14 On the right rear, on the lateral aspect, you can
15 see how the skin consistency has changed.

16 And, on the inner aspect of the left rear leg,
17 similar situation.

18 And, over here, similar.

19 THE COURT: Just the discoloration; is that correct?

20 THE WITNESS: Yes, sir. It's from scalding of the
21 urine that's reaching the legs. And this is --

22 THE COURT: I'm sorry. The what?

23 THE WITNESS: Scalding, burning, from urine reaching
24 the skin. And she was an elephant -- when we were watching,
25 prior to the inspection, she was itching her legs against a

1 tree and back and forth against themselves. So there was some
2 dermatitis there. And that was recorded in her record, as
3 having dermatitis and itching there, too.

4 Q (BY MR. GLITZENSTEIN) Does that have any significance
5 with the issues that we've been discussing?

6 A It does, in that she would be better off on natural
7 substrate where she would have less frequency of urination on
8 those legs. In other words, you might not clear it up a
9 hundred percent, but you would be making -- you would be
10 gaining a lot of ground if you had this girl out, off of
11 chains and off of the hard surface where urine is splashing
12 and contaminating those rear legs. She would be doing better
13 in that environment.

14 Q If we could take a look at PL 15320, tell us what we're
15 looking at.

16 A This is the right and left front leg of Susan. And you
17 can see here on the anterior edge of this toenail an abscess,
18 which is broken out through the nail.

19 There we go. I need to go to the gym more. It's
20 just not going through.

21 But that's an abscess that's broken out on each of
22 those nails.

23 Q And then take a look at PL 15568. Tell us what we're
24 looking at.

25 A This depicts the concrete surface floor. On the upper

1 image, you can see where the chain goes to this one elephant's
2 leg. And you can see wear on the concrete. The wear and tear
3 is limited to the limited range of motion that the animal has
4 with its feet.

5 And then, on the lower image, you can see the change
6 in consistency. You go from smooth surface concrete to eroded
7 concrete, where it's more abrasive on the feet. That would
8 have me concerned.

9 Also, the mechanics of that is such that you're
10 going to have urine and fecal debris collect in those little
11 erosions.

12 Q And what's the significance of that?

13 A Well, again, we are dealing with an aged population of
14 animals, three out of the five with arthritis. You are
15 reducing the range of motion. You are allowing Susan to
16 further contaminate her legs -- contaminate her legs.

17 Obviously, Zina is having difficulty, or she
18 wouldn't be fighting with her chain, constantly rubbing it,
19 and creating those sores. They would do much better out on
20 soft substrate.

21 Q And what's the significance of the fecal and urine matter
22 being able to be contaminated -- I mean, being able to be
23 collected?

24 A Well, you are reducing the contamination towards these
25 toenail abscesses and nail cracks.

1 Q Just so I'm clear, I think you said that this would
2 increase the ability of urine and fecal matter to collect, is
3 that correct, this surface?

4 A This would increase it.

5 Q And what's the significance of that?

6 A Well, you are contaminating ongoing sores on the legs of
7 Zina. Any bedsores that occur, those are going to be
8 contaminated. And you're allowing the feet to wear unevenly.

9 Q Okay. And did you see any fresh bull hook injuries
10 during your inspection?

11 MR. SHEA: Objection, cumulative.

12 THE COURT: I'll allow it.

13 THE WITNESS: I saw no fresh injuries.

14 THE COURT: I'm sorry. None?

15 THE WITNESS: I saw no fresh injuries.

16 Q (BY MR. GLITZENSTEIN) Did you see anything on the
17 inspection that relates to bull hook use?

18 MR. SHEA: Objection, vague.

19 THE COURT: He can answer it.

20 THE WITNESS: On the elbows and in front of the
21 knees of each of the animals were chronic calluses associated
22 with, you know, historical queuing with an ankus and then
23 getting down on their elbows and knees.

24 THE COURT: Why do you say that as opposed to some
25 other instrument or some other cause?

1 THE WITNESS: Just looking at the volumes of records
2 and seeing the incidences of wounds and abrasions on the left
3 side, particularly, that's -- that's of major significance to
4 me.

5 THE COURT: That's the left side. That's the side
6 normally reserved for queuing; is that right?

7 THE WITNESS: Yes, sir.

8 THE COURT: Historically.

9 THE WITNESS: Historically.

10 THE COURT: Why is that?

11 THE WITNESS: I don't know how that developed. If
12 you read the literature, as far as the American literature,
13 there is a book by George "Slim" Lewis, who worked with
14 elephants in the '20s, '30s, '40s, and '50s. And in his -- in
15 the descriptions that he writes, he says, "The well-trained
16 elephant is a well-scarred elephant."

17 Adams, in 1981, in his book on elephants, training
18 elephants or managing, indicates how in circuses, in
19 particular, they are made to get down on their knees and
20 elbows in training and pretty much throughout their life.

21 So you begin to develop a feel for what these
22 animals, who are the older animals, this is what they -- this
23 was the culture that they came through, was George "Slim"
24 Lewis and Adams' period back there in the '50s, '60s, and
25 '70s.

1 So what we're seeing is kind of the end result of
2 the culture that they -- that they went through.

3 THE COURT: And they talk about queuing on their
4 left side?

5 THE WITNESS: Yes, sir.

6 THE COURT: Has that changed? Has that evolved to
7 something else, the right side, or...

8 THE WITNESS: I think it's evolved, just like get on
9 the horse on the left side. Maybe it's because most -- and
10 I'm only speculating -- because it's because most handlers are
11 right-handed.

12 THE COURT: Including the dog to walk them with?

13 THE WITNESS: Exactly. And maybe walking your wife
14 down the isle or something like that. You know, the wife is
15 on one elbow or the other. I never got it straight.

16 But it's just a -- in Lewis' book he talks about
17 walking on the left side, always hold your ankus. That way,
18 you got the point this way, and if the elephant turns to face
19 you, you've got the ankus to touch the face/jaw area and
20 prevent him from turning around to get you.

21 It's -- it kind of goes along with -- there was a
22 question about retaliation before. That's an interesting
23 phenomenon.

24 Q (BY MR. GLITZENSTEIN) Can we take a look at --

25 THE COURT: Do you want to tell us about that,

1 retaliation by elephants?

2 THE WITNESS: In --

3 THE COURT: I've not heard a lot of instances of
4 elephants retaliating against the use of the bull hook.

5 THE WITNESS: Well, it's -- the phenomenon was
6 described to me -- I -- I witnessed it before, because an
7 elephant tried to kill me once.

8 But in Roodcroft and Zoll's book, *Managing Elephants*,
9 it's called retaliatory cunning. The elephant is believed to
10 be one of the few animals, if not the only animal, that's able
11 to postpone retaliation against some perceived injustice. In
12 other words, they know what the routine is. They know what
13 you're going to be doing from moment to moment. And
14 anecdotally, as a veterinarian, I always used to think, "Be
15 careful around these elephants."

16 You hear stories of keepers getting squished up
17 against the wall, and it was an accident. I'm not so sure it
18 was an accident.

19 THE COURT: It's because they never forget; is that
20 right?

21 THE WITNESS: They know where you're going to be
22 from moment to moment, and they might just be waiting for that
23 opportune time to injure you. That's why you've just got to
24 be on your toes all the time, all the time.

25 Q (BY MR. GLITZENSTEIN) If we could take a look at

1 Plaintiffs' Will Call 142, clip 2:10:00 through 2:19- -- I'm
2 sorry. It's 1:21:11 through 1:21:13, a very quick clip.

3 (VIDEO CLIP PLAYED.)

4 Q (BY MR. GLITZENSTEIN) Do you see people wearing masks in
5 that video clip?

6 A I saw the -- I think it was the still photographer
7 wearing a mask.

8 Q Do you know why people are wearing masks at that time?

9 A The facility, I think, is under -- or at that time was
10 under quarantine for tuberculosis. I think it was the state
11 of Florida's quarantine.

12 Q And if we could take a look at FEI 44- -- 45521, which is
13 in Plaintiffs' Will Call Exhibit 102A -- I mean Plaintiffs'
14 Will Call Exhibit 102. It's FEI 45521.

15 THE COURT: Getting back to that left versus right,
16 I guess queuing on the left also shields the use of that bull
17 hook from the public's view in the circus, also, doesn't it?

18 THE WITNESS: I don't know. I don't know.

19 Q (BY MR. GLITZENSTEIN) Page 443. The document states at
20 the top, "Notice of quarantine."

21 Then, if we could look over at page 442 in
22 Plaintiffs' Exhibit -- Will Call Exhibit 102.

23 MR. SHEA: And, Your Honor, we object to this
24 document. I didn't see an elephant at issue listed in it, so
25 it's irrelevant. And it's -- under 403, it's unduly

1 prejudicial.

2 THE COURT: Counsel?

3 MR. GLITZENSTEIN: Your Honor, the next page that I
4 was referring to, which is part of the quarantine document, in
5 fact, has references to these particular elephants, as well as
6 others.

7 THE COURT: All right. Are these for the Gray Unit
8 elephants or...

9 MR. GLITZENSTEIN: These are Blue Unit elephants.
10 These are actually elephants at the CEC, but they are some of
11 the elephants we've been discussing, Your Honor.

12 MR. SHEA: Your Honor, they are not elephants at
13 issue. And I believe some of them are retired Red Unit
14 elephants and not Blue Unit elephants.

15 THE COURT: Either they are or not at issue. Are
16 they? Which ones are they?

17 MR. GLITZENSTEIN: Your Honor, if you look at
18 page -- if we could take a look at page 45520, which is
19 page -- that's FEI 45520, page 442 specifically refers to
20 Jewell, Lutzi and, Mysore as being among elephants that are on
21 travel restrictions because of tuberculosis.

22 THE COURT: I'll allow it over objection.

23 Q (BY MR. GLITZENSTEIN) And, Dr. Ensley, if you could take
24 a look at that page. Do you know why elephants would be on
25 travel restrictions in a situation like this?

1 A I would have to look at the guidelines and read the
2 correspondence. But I think it's because they have been in
3 contact with positive cases.

4 Q Positive cases of?

5 A Tuberculosis.

6 MR. GLITZENSTEIN: Your Honor, I would move for
7 admission, as Plaintiffs' Exhibit 102A, pages 443, 442, and
8 441 of Plaintiffs' Exhibit 102.

9 THE COURT: All right. Over objection, admitted.

10 (PLAINTIFFS' EXHIBIT 102 AND 102A ADMITTED.)

11 Q (BY MR. GLITZENSTEIN) Did you hear defendants' opening
12 statement, Dr. Ensley? Did you hear the statement that nothing
13 was found on the inspection?

14 A I do recall, yes. I think that was Mr. -- Mr. Simpson.

15 Q Do you agree with that statement?

16 A No, sir.

17 Q Okay. Why not?

18 A Well, at the time he made the statement, of course, I'd
19 been on the site inspections and I'd be through the medical
20 records. But, more importantly, I'd been, you know, on the
21 site inspections. And I don't recall if that video that you
22 showed was of the site inspection or at the CEC. I think it
23 was.

24 But I do recall a description that the -- the
25 experts had a chance to go over every inch of the animal and

1 found nothing, and that just wasn't true.

2 Q What did you find?

3 A Well, it's in my expert report, but I found multiple
4 findings. And we can go back on an animal-by-animal basis.

5 The split toenails, the chain trauma, the abscesses.
6 There were lamenesses. I saw lameness, in particular, that I
7 mentioned in my expert report, I believe it was Lutzi.

8 I could never -- I just didn't understand that
9 statement, based on my report.

10 Q Okay.

11 MR. SHEA: Your Honor, we object to the extent it
12 mischaracterizes opening statement, both question by Counsel
13 and this answer.

14 THE COURT: Opening statements are not evidence.
15 You heard the opening statement. And it's your answer, if I
16 understand correctly, that you found what you believe to be
17 evidence of harm to the animals, current harm; is that
18 correct?

19 THE WITNESS: Medical conditions that were harming
20 the animals precipitated by the way in which they're handled.

21 THE COURT: All right. It's fair.

22 Q (BY MR. GLITZENSTEIN) Dr. Ensley, you referred earlier to
23 a literature review that you did in coming to your opinion; is
24 that correct?

25 A Yes, sir.

1 Q Could we take a look at one of the publications referred
2 to in your report, Zoo and Wild Animal Medicine, by Fowler and
3 Miller? And I'll ask you if this is one of the publications
4 that you did rely upon.

5 A Yes, it is.

6 Q And what is this document, or this publication?

7 A This looks like the fifth edition of a series of
8 textbooks that veterinarians read and acquire that work with
9 zoo and wild animal medicine.

10 It's an ongoing series started with Dr. Fowler
11 initially, through the first, second, and third edition. And
12 then, I believe Dr. Miller then began co-editing it with him.
13 And it's proven to be a very excellent reference book, in
14 which it's updated every three -- every two to three years
15 with new information.

16 Q And if we could take a look at page 541 of this document.
17 You see written by -- a chapter on elephants written by a
18 Dennis Schmidt. Do you know who that is?

19 A Dr. Schmidt is a -- is well known as a reproductive
20 physiologist and veterinarian. And I believe his -- he's
21 consulted with the defendants' elephants for a number of years
22 and works -- I think he's the senior veterinarian with the
23 defense.

24 If you could take a look at page 547 under
25 noninfectious diseases and read the first number of sentences

1 in that paragraph.

2 A (Reading) Foot problems comprise the most common ailment
3 in the care of captive elephants and are seen in 50 percent of
4 the elephants at some point in their lifetime. The types of
5 foot problems affecting elephants include penetrating
6 injuries, sole cracks, cracks in the nail or cuticle,
7 overgrowth, and abscesses. Most foot problems are treatable,
8 but some can result in disability or death. Major
9 contributors to foot problems in elephants are lack of
10 exercise, standing on hard substrates, and contamination
11 resulting from standing in their own excrement.

12 Q Okay. Let me ask you about that. Do you agree with that
13 statement?

14 A Yes, I do.

15 Q Do you think this represents a widely-held view in the
16 scientific community?

17 A Yes.

18 Q Let's take a look at another of the publications that's
19 referred to in your literature review called The Elephant's
20 Foot. And this is, in fact, a publication that you relied
21 upon?

22 A Yes, sir.

23 Q Okay. Can you explain what this is?

24 A This is a textbook that was published that put together
25 papers that were given at a conference in 1998 in Beaverton,

1 Oregon, that was attended by individuals from over a hundred
2 institutions, 40 zoos and circuses, individuals from around
3 the world, and papers were given.

4 And I wasn't there, but the nice thing is, this book
5 came out to publish those papers and presentations. And it
6 then became an important piece of seminal literature for
7 veterinarians working with elephants.

8 Q Okay. So you've worked with this document before
9 testifying in this case?

10 A I'm sorry?

11 Q You worked with this document, or used this document,
12 before testifying?

13 A Yes.

14 Q Okay. And if we could take a look at page Roman numeral
15 seven, little Roman numeral seven in this document, the
16 introduction, and look at the last paragraph on the left-hand
17 side at the bottom. And just read that first sentence.

18 A (Reading) There is a general consensus that lack of
19 exercise, long hours standing on hard substrates, and
20 contamination resulting from standing in their own excreta,
21 are major contributors to elephant foot problems.

22 Q And do you know when this document was prepared?

23 A The papers were given in 1998. The publication, 2001 --
24 2001 or 2002.

25 Q Would you -- do you agree with that statement?

1 A Yes.

2 Q Do you believe it remains accurate?

3 A Yes.

4 Q Do you know whether the zoo community has responded to
5 this publication in any way?

6 A Yes. This just kind of solidifies the growing consensus.
7 These opinions began to surface in the late 1970s, in terms of
8 the relevant scientific community weighing in on what is
9 causing foot problems. And then there was another book that
10 came out by Dr. Susan Mikota, in 1994, where she had a study
11 population of nearly 200 elephants. And her data revealed
12 that close to -- or approximately 50 percent of the elephants
13 in her study population had foot problems at some point in
14 their life, and that up to 10 percent of them demonstrated
15 lameness.

16 Q And how has the zoo community responded?

17 A There has been a transition, at least in the 30 years
18 that I've witnessed it, both with the zoological society of
19 San Diego and other veterinarians that I've, you know, worked
20 with over the years. There has been a transition from the
21 management schemes from free contact to protected contact,
22 which then allowed elephants more contact with being on normal
23 substrate.

24 Q And if we could look at page 21 of the same document.

25 It's "Foot Care for Captive Elephants," by Alan Roocroft and

1 James Oosterhuis. Who are they?

2 A Alan Roocroft was the animal management head, or
3 animal -- or elephant management senior at the San Diego wild
4 animal park in the '80s an early '90s.

5 And Dr. Oosterhuis is a veterinarian at the wild
6 animal park and who was my supervisor for approximately 15
7 years.

8 Q Okay. If you could take a look at the right-hand side of
9 that page under "Proper Hygiene," and read that paragraph.

10 (Reading) Elephants in the wild visit waterholes
11 twice a day to drink and socialize. During these hours they
12 swim, roll in the mud, throw dirt on themselves and rub their
13 massive bodies against large objects. This process cleans and
14 scrubs their bodies and rejuvenates their skin. Also, by
15 digging with their feet in wet sand around the water source,
16 they clean and scrub between their nails and around their
17 cuticles. Although the wild elephants' feet are not typically
18 considered pretty or well-pedicured, they are healthy and
19 functional.

20 Q Okay. And then just read the first sentence continuing
21 on the next page.

22 A (Reading) In captivity, elephants' feet are constantly
23 exposed to their own feces and urine, which results from long
24 hours of confinement in their stalls, up to 16 hours a day in
25 some situations.

1 Q And if we could take a look over to page 35 of the same
2 publication and read where it says, under "Pads," just to the
3 end of that page.

4 A (Reading) Pads. An elephant in the wild traverses many
5 different types of substrates and terrain. Most often the
6 Asian elephant walks on soft yielding surfaces like the leafy
7 jungle floor, while the African elephant walks on grass and
8 sand of the savannas and the hard dry subsurfaces -- and the
9 hard dry surfaces of semiarid deserts.

10 (Reading) The pads of an elephant in the wild are
11 not smooth or well-manicured. Rather, they have deep grooves
12 and cracks that give an impression of disrepair. However,
13 this is not the case, as they are able to maintain their feet
14 by walking great distances each day for feeding, bathing,
15 digging, and dusting.

16 Q All right. And over on page 44 of the same document,
17 over on the right-hand side next to the photo of the elephant,
18 could you just read the last paragraph on that page, up
19 through number 4?

20 A (Reading) The bottom line is that abscess prevention is
21 the best course of action. Prevention of abscesses requires,
22 one, exercise to strengthen foot structures and maintain good
23 blood flow to the foot; two, reduction in weight to reduce
24 pressure on the foot; three, allowing the elephant to live on
25 soft yielding surfaces; four, elimination of behavioral

1 motions that cause abnormal stress on the foot.

2 Q Okay. Do you agree with those statements?

3 MR. SHEA: Objection, leading. It's compound,
4 asking about several different sections of this book.

5 Third, he's seeking opinions beyond which this
6 expert has been shown to be qualified, those being what
7 elephants do in the wild and how they manage their skin or
8 feet in the wild.

9 MR. GLITZENSTEIN: Your Honor, could I respond?

10 THE COURT: Sure.

11 MR. GLITZENSTEIN: He's been allowed to testify as
12 an expert on the medical condition of these elephants, and
13 he's given an opinion that their condition is a result of the
14 conditions of captivity, particularly the chaining on hard
15 surfaces. And we're asking whether he's relied upon
16 literature and what that literature is and whether he agrees
17 with it. This is a standard thing for an expert.

18 THE COURT: Tell us what your opinion is. I'll
19 allow it over objection. What's your opinion?

20 THE WITNESS: This is what we're talking about in
21 this case. This --

22 THE COURT: That's consistent with your opinion?

23 THE WITNESS: Yes, sir.

24 Q (BY MR. GLITZENSTEIN) And over on the page --

25 MR. GLITZENSTEIN: I just have two more references

1 to this, Your Honor.

2 Q (BY MR. GLITZENSTEIN) Over on page 45, under "Cracks,"
3 could you read the second full -- the second full paragraph
4 where it begins, "Nail cracks are usually the result," and just
5 read the first four sentences in there.

6 A (Reading) Nail cracks are usually the result of a
7 repetitive movement that puts abnormal pressure on the nail.
8 The environment of the elephant's enclosure can exacerbate
9 this pressure. An example is the stereotypical quote/unquote
10 rocking elephant, where an elephant stands in one place on a
11 hard surface and rocks back and forth. This puts abnormal
12 pressure on the lateral toes of the front feet eventually
13 leading to nail cracks.

14 Q Is that consistent with your opinion?

15 A Yes, sir.

16 Q And, finally, on page 147, "Concluding remarks, Murray
17 Fowler," where it states, "General agreement was reached
18 concerning the following." And then could you read the
19 right-hand column, number 5?

20 A (Reading) Each elephant facility should minimize the
21 amount of time elephants spend on hard, unyielding surfaces.

22 Q Okay. Is that consistent with your opinion?

23 A Yes, sir.

24 Q Do you believe the defendant is doing that with respect
25 to the elephant foot care at issue in this case?

1 A No.

2 Q Okay. And if you could read number 2.

3 A (Reading) A written exercise program should be designed
4 for each elephant according to its individual needs. The
5 protocol should be developed in consultation with the elephant
6 manager, keepers, and the veterinarian.

7 Q Okay. Is that consistent with your opinion?

8 A Yes, sir.

9 Q At the beginning of this document there was a reference,
10 I think you quoted, up to 50 percent of elephants with foot
11 problems. Do you know where that 50 percent figure comes
12 from?

13 A The first time I heard it was from Dr. Mikota's survey of
14 190 elephants in her study population.

15 And the next time I saw that figure was in the
16 preface of this book here. And I believe I also saw it in
17 the -- the reference you pointed out by Dr. Schmidt.

18 Q I think you testified that you reviewed the records for
19 as many of the elephants in defendants' care as you could.
20 Did you make observations about foot problems in the entire
21 elephant population?

22 A Yes, sir.

23 Q And what did you find out?

24 A In my opinion, close to a hundred percent have foot
25 problems.

1 Q And could you expand on that, what you mean by "foot
2 problems"?

3 A These would be the common problems: the nail cracks,
4 cracked cuticles, and toenail abscesses and foot pad problems.

5 Q Can you draw any conclusions from that?

6 A That's by far and away higher than the study populations
7 previously looked at.

8 Q Okay. Do you have any opinion on what would cause that?

9 A Hard surfaces; maintenance on hard surfaces for prolonged
10 periods of time.

11 Q Anything else relating to the conditions you've learned
12 about in this case?

13 A The ancillary issues that come along with those
14 restrained locations on the hard surfaces, the urine and fecal
15 contamination, and the lack of ability for elephants to move
16 and exercise their legs.

17 Q Do you believe those conditions are the cause of what
18 you've observed?

19 A They are certainly major, major contributing causes, yes.

20 Q Okay. Did you look particularly at the records relating
21 to young elephants in defendants' possession?

22 A I did.

23 Q And did you reach any findings with regard to them?

24 A I made the statement in my expert report that, of the 16
25 young elephants that were bred in captivity, 14 had similar

1 injuries and findings as to what we've noted today.

2 Q Okay. Were you surprised by that?

3 A Not after viewing the totality of the evidence that I
4 have considered, no.

5 THE COURT: In other words, they are treated the
6 same way as the other elephants, then?

7 THE WITNESS: Yes, sir. And then, too, I happened
8 to review videos that the defendants gave the plaintiffs that
9 I reviewed, also, that showed their training and repetitive
10 activity in training and performance of these growing young
11 animals. So it just -- you just kind of connect the dots
12 under those circumstances.

13 Q (BY MR. GLITZENSTEIN) Let's take a look, if we can, at a
14 couple of examples. Gunther --

15 THE COURT: All right. We are going to take a
16 15-minute recess. Let me just inquire. How much more time do
17 you need on direct?

18 MR. GLITZENSTEIN: With the Court's indulgence,
19 Your Honor, if I could have another half hour I think I can
20 wrap up.

21 THE COURT: That's fine. We'll take a 15-minute
22 recess.

23 Mr.-- -- I thought I saw Mr. O'Malley.

24 You can come on back here if you want to.

25 We'll take a 15-minute recess.

1 THE DEPUTY CLERK: This Honorable Court now stands
2 in a 15-minute recess.

3 (A BRIEF RECESS WAS TAKEN.)

4 THE DEPUTY CLERK: Please remain seated and come to
5 order.

6 THE COURT: All right. Let's proceed. You say you
7 need another half an hour?

8 MR. GLITZENSTEIN: Yes, Your Honor.

9 THE COURT: How much time do you think you might
10 need for cross-examination, Counsel?

11 MR. SHEA: Your Honor, on the order of an hour or
12 two.

13 THE COURT: All right. Then my vote is we finish
14 tonight. I have to appear before the City Council tomorrow
15 and testify about some judicial nomination commission issues,
16 so my time is spoken for tomorrow, so I think we just have to
17 finish. All right.

18 MR. GLITZENSTEIN: Yes, Your Honor.

19 THE COURT: All right.

20 MR. GLITZENSTEIN: I thank you for the time, Your
21 Honor, and the patience.

22 THE COURT: I'm sorry I spoke for everyone else this
23 time, my staff up here, I'm sorry. Except for Carol. Carol
24 is going to leave us at 6:00 o'clock. And maybe others, I
25 don't know, we'll see.

1 (OFF-THE-RECORD DISCUSSION.)

2 THE COURT: All right. Go right ahead, Counsel.

3 MR. GLITZENSTEIN: Should I start talking faster,
4 Your Honor?

5 THE COURT: Yeah, please. Speed it up.

6 (LAUGHTER.)

7 MR. GLITZENSTEIN: With the Court's permission.

8 Q (BY MR. GLITZENSTEIN) Before we get back to the young
9 animals, Dr. Ensley, one thing I'm not sure I asked before is,
10 do you know what time the elephants are chained at the CEC?

11 A At our visit, it happened, I believe, between 3:00 and
12 3:15 -- 3:15 and 3:30 p.m.

13 Q Okay. And what time did your visit last until?

14 A 8:30, 8:45.

15 Q And was the chaining still taking place at that time?

16 A Yes, sir.

17 Q Okay. If we could take a look at Feld 8373, and this is
18 a document relating to Gunther, and just so we're on the same
19 page, if we could actually first look at Chart A, which has
20 been admitted as Plaintiffs' Will Call Exhibit 151. If you
21 could tell me what age Gunther is at this time.

22 Why don't you just say when Gunther was born.

23 A Well, Gunther would be eight years old now. He was born
24 November -- excuse me -- yeah, November 18, '01.

25 Q Okay. And if we look over at Feld 8373.

1 MR. GLITZENSTEIN: And just to be clear, these are
2 all documents, Your Honor, that are contained within
3 Plaintiffs' Will Call Exhibit 1A, organized by elephants, and
4 I'll be clear which elephant I'm referring to.

5 THE COURT: All right.

6 Q (BY MR. GLITZENSTEIN) So in the year --

7 MR. SHEA: Your Honor, we object to these documents.
8 They go -- well, there are no elephants at issue in Plaintiffs
9 1A as far as we could tell. Also, we're about to have a line
10 of questions about young elephants. Those are captive bred
11 wildlife permitted. It's regulated by the USDA. The Court
12 has granted summary judgment regarding those elements --
13 elephants. They are out of the case. Thus, this is
14 irrelevant and it's evidence that now is just taking time, and
15 it is prejudicial under Rule 403.

16 MR. GLITZENSTEIN: Okay. Your Honor, I think this
17 is the same issue we addressed before in response to Your
18 Honor's questions about the relevance of the young elephant
19 injuries. We're going to talk about, he said it connects the
20 dots, and I don't want to put words in the witness' mouth but
21 I think it's the dots between what these young elephants are
22 already suffering from and the elephants we've been talking
23 about on the Blue Unit.

24 It's part of the pattern of practice, it produces
25 injuries, and perhaps most critically, if you look at their

1 *Daubert* response, what they say is all the problems we've been
2 talking about are a result of age because the Blue Unit
3 elephants are older elephants. They put this matter in issue
4 by saying it's an age-related phenomenon.

5 If we show the same kinds of problems in elephants
6 four, five, six, seven years old, it seems to me they put that
7 issue on the table. We have no choice but to respond to it.

8 THE COURT: Counsel.

9 MR. SHEA: Your Honor, age could cut either way with
10 that shelling, and also, these are captive bred wildlife
11 elephants already regulated, and in 1A, none of these
12 elephants are at issue in this case. There aren't any
13 documents here as to that at all.

14 THE COURT: All right. I'll allow it over
15 objection. Give it what weight it's entitled to if any at the
16 time I resolve the merits in this case.

17 MR. GLITZENSTEIN: Thank you, Your Honor.

18 Q (BY MR. GLITZENSTEIN) If we look at Feld 8373, a document
19 relating to Gunther. It's an April '05 document.

20 Do you know how old Gunther was at this time?

21 A It's an '01 birth, so he would be almost four years old.

22 Q And if you could read the statement under "S."

23 A (Reading) Lame and not in show for five days, and we're
24 in Hidalgo, Texas.

25 Q And then under "O."

1 A (Reading) Extremely stiff on all four, left front is the
2 worst. Eating and drinking normally. Plays and gets up and
3 down to scratch.

4 Q Okay. And can you see a little further down where it
5 says, "Billy rasped sole of foot and opened up abscess at left
6 foot P4 on under side"?

7 A Yes, Billy rasped sole of foot and opened up abscess on
8 the left front P4 on the under side. That's the phalange
9 four. I assume it means the Digit No. 4.

10 Q And under "A," can you read what it says there?

11 A (Reading) Probably has other foot abscesses.
12 Stiff-legged gait due to ele taking weight off toes and
13 walking on heels.

14 Q Okay. Are these similar to the kinds of conditions we
15 were discussing?

16 A Yes. This is the gait where an animal is now
17 transferring weight over to other legs producing uneven wear.

18 Q And if we could take a look at Feld 21831, and the
19 reference to Bonnie. And can you indicate actually, first of
20 all, from Chart A, how old Bonnie is now?

21 A I cannot remember Bonnie's --

22 Q You can go back to Bonnie on Chart A?

23 A October '94 birth.

24 Q Okay. And the document we're looking at is a March
25 2000 document, so how old would she have been at that time?

1 A Not quite six years of age.

2 Q Okay. And if you could read what it says under "PE."

3 A (Reading) Alert -- bright, alert, responsive, eating,
4 normal examination, small area of intradigital inflammation
5 between the right front. That would be the fourth and fifth
6 digits.

7 Q Okay. And if we could take a look at Feld 2762, document
8 relating to Doc. If you could first take a look actually at
9 Chart A and see how old Doc is at this time.

10 A May '97 birth.

11 Q And the Document 2762 is -- take a look at the reference
12 to May '01 and read what it says -- I mean, excuse me,
13 5/23/01.

14 A (Reading) Stiff right front leg.

15 Q Okay. And how old was Doc at this time?

16 A I think we're a '97 birth. Was that -- so it would be
17 five years -- four years, five years.

18 Q And does this document indicate how Doc is being treated?

19 A It indicates radiographs, but I don't see a treatment.

20 Q If you look down under 7/26/01.

21 A 7/26/01, we're receiving 20 MLs of Adequan and then
22 repeated in 48 and 72 hours.

23 Q And what is Adequin?

24 A Adequin is a arthritis relieving medication. It doesn't
25 have the same impact as nonsteroidal anti-inflammatories, but

1 the intention there is to increase joint fluid viscosity and
2 bring some relief.

3 Q Okay. If we could take a look at Feld 2764, another
4 document relating to Doc, and take a look at the reference to
5 9/19/02.

6 A (Reading) Mild lameness in the left front leg, 10 MLs of
7 Banamine, 10 MLs Chondroprotec and 20 MLs of strong Adequan.

8 Q Okay. And if you could read the reference to 8/10/02.
9 It's the 8/10/02 above that one. Under where it says "PE."

10 A (Reading) Minor chronic nail cracks on the right hind
11 No. 3. Right front No. 5 digit, swelling under the nail, and
12 there were assessed as a normal exam of the right front fifth
13 digit swelling due to trauma, currently being trimmed.

14 Q Now, if we could take a look at FEI 16839, another
15 document relating to Doc, and take a look at the second --
16 excuse me, about the middle of the page where there's a
17 reference to Monday, 8/9/2004, and see what it says in the
18 middle column.

19 A (Reading) Appeared stiff -- excuse me. Appeared lame,
20 slash, stiff in FR -- most likely that means front right --
21 after exiting the transport trailer.

22 Q And two boxes below that in the middle column?

23 A (Reading) Still stiff, front right.

24 Q Now, looking at documents for Juliette. First take a
25 look at Chart A, does that indicate when Juliette was born?

1 A December '92.

2 Q And if we can take a look at Feld 7068 and take a look at
3 the reference for -- Well, first of all, take a look at the
4 reference for 2/12/93, and just tell me how old she was in
5 1993.

6 A Five years. A little over five years.

7 Q What is the reference for 2/12/93. It's about seven
8 columns down. There we go.

9 A (Reading) Lame in the left front, three, and I assume
10 that means three cc's of Adequan IM, and four, I assume that
11 means four cc's Ibuprofen twice a day.

12 Q Okay. And if we could look down on the same page at the
13 10/30 reference where it says "HX."

14 A (Reading) History, young animal, date of birth, 1992 at
15 Williston. Has been treated rectally with INH for presumptive
16 TB. Treatment lasted approximately one-and-a-half years.

17 Q And look over at Feld 11917 and indicate what that
18 document is.

19 A This is a tuberculosis treatment schedule for Juliette
20 initiated on April 6, 1999, and the last day of treatment was
21 November 19th, 1999.

22 Q Okay. And then look over at October 19' -- excuse me --
23 over at Feld 21843 and look at the reference for 10/20/99 for
24 Juliette. Does that indicate that Juliette is on the Blue
25 Unit traveling?

1 A Yes. (Reading) Juliette, Blue Unit, Boston,
2 October 20th, 1999, moved from the CEC to the Blue Unit.

3 Q What does it say under that?

4 A (Reading) Animal is currently being treated for
5 presumptive TB.

6 Q And you can read down where it's a couple of lines down
7 there where it says, "mild lameness."

8 A (Reading) Mild lameness noted in the left rear leg, the
9 stifle in parenthesis. This is reported to be a chronic
10 problem.

11 Q Okay. And at Feld 2848, 3/29/01 reference. About 10
12 lines from the top, can you read the 3/29/01?

13 A (Reading) 3/29/01, stiff left front leg. When she woke
14 up, stiffness faded and went away after walking her.

15 Q Okay. And look down again at 6/14/01.

16 A (Reading) Woke up with a stiff front left leg.

17 Q Is there any significance to an animal that age waking up
18 with a stiff leg?

19 A I would assume she would be tethered at this point in
20 time, waking up in the morning, maybe getting up, likely
21 getting up and showing stiffness.

22 Q If we could take a look at Feld 2850, and this is a
23 January '04 document, and take a look at the five -- 5/12/03
24 reference, about two-thirds of the way down and indicate what
25 that says.

1 A (Reading) We're on the Blue Unit, this is May 12, '03,
2 doctor's notes, slash, treatment plan, slash, plan,
3 semi-colon, has been stiff right hind. Treatment, 25 MLs,
4 Adequan IM every other day for three doses, then every five
5 days.

6 Q And the statement below that, can you read the 4/17/03
7 reference?

8 A (Reading) Elephant exam, physical history. Past several
9 weeks she's had episodes of shifting or diffuse stiffness in
10 back, ribs, hips or upper hind legs. Seems uncomfortable
11 during hind leg stand. Treated with short courses of oral
12 Banamine.

13 Q And could you read what it says under "A" in that same
14 paragraph?

15 A (Reading) A for assessment. Suspect injury to back,
16 ribs or hips that gets aggravated with exercise.

17 Q Okay. Now, if we could look at Romeo and indicate --
18 first take a look at Chart A and tell me when Romeo was born.

19 A January 10, 1993.

20 Q Okay. And take a look at Feld 8407. I'm sorry, 7597,
21 and if we could take a look at the reference for 10/27/98, and
22 how old would Romeo be at this time?

23 A I've forgotten what her birthday was.

24 Q For the record, Romeo was born in '93.

25 A '93.

1 Q So in '98, how old?

2 A Six years of age.

3 Q And could you read the reference under 10/27.

4 A (Reading) Presented for a recurrence of a chronic, in
5 parenthesis, three-year lameness of left leg or hip. Has been
6 on, slash, off and mild. Seems to be worse after lying down
7 on that side.

8 Q Okay. And then if you could look down under "A" the
9 reference which begins with "seems to be" or "seem to be."

10 A (Reading) Assessment. Seem to be too young for typical
11 elephant arthritis. Possible trauma or injury to the leg
12 three years ago is not noted in the history, but would be a
13 likely cause. Need to investigate the possibility of
14 mycoplasma arthritis.

15 Q If we could take a look now at Feld 21843 under Romeo,
16 10/29 -- 10/20/99 and indicate what it says under "HX/"

17 A (Reading) Romeo is now in the Blue Unit in Boston.
18 Moved from the CEC to the Blue Unit, just finished TB
19 treatment.

20 Q Could you read four lines down where it begins with "mild
21 lameness."

22 A (Reading) Mild lameness noted in the left rear leg,
23 parenthesis stifle. This is reported to be a chronic problem.

24 Q Okay. Now, if we look over documents for PT, the
25 elephant, if you could take a look back at Chart A, indicate

1 when PT was born.

2 A May '02.

3 Q Okay. Now, if we look over at FEI 8407, document dated
4 August 2004, so how old would PT be in 2004?

5 A A little over two years of age.

6 Q All right. All right. Could you read what it says under
7 "HX"?

8 A (Reading) History, severe acute lameness ten days ago.
9 Nails started to slough, especially the left front fifth
10 digit. Hole has opened up on sole of right front. Gary says
11 his feet have never been right. Has been treated topically
12 with one week of Naxcel and one week of oxytetracycline.

13 Q Okay. And if we could look at FEI 20416. Look where the
14 reference is to 5/22/05. Again, this is PT where it says,
15 "Exam, elephant physical," and see if you could read that
16 statement there.

17 A (Reading) Exam, elephant physical, semi-colon, stiff
18 right front, nail bed abscess, right front central toe, third
19 toe, has erupted, hygiene and topical tetracycline plus DMSO,
20 plus metronidazole, left front may also break open at cuticle.
21 10 MLs Naxcel IM for five days.

22 Q Okay. And if you could look over at FEI 41271,
23 September 18th, 2006 document under PT and read what it says
24 under "A."

25 A (Reading) Assessment. PT was hard hit by prophylactic

1 TB treatment and is now off meds.

2 Q Okay. Take a look at Chart A for Sara and indicate when
3 she was born.

4 A April 16th, '01.

5 Q Take a look over at FEI 50395, and how old would Sara be
6 at this time?

7 A Six years of age.

8 Q This is a May 2007 document, and could you read the
9 paragraph beginning with "Troy called me."

10 A (Reading) Troy called me to say that Sara elephant was
11 stiff on her left front prior to the walk into Little Rock,
12 Arkansas. On closer examination, he found an nail bed abscess
13 on the third digit. I asked him to give her 10 cc's Banamine
14 IM. After she is trucked in, he will soak the foot and pare
15 out the nail. I told him if it is necessary, he could give
16 her another 10 cc's of Banamine tomorrow.

17 Q And if we look over at FEI 48055, a report about the Blue
18 Unit travels. If you could look at the bottom and read the
19 statement under "objective." It should be under "Assessment"
20 at the bottom of the page.

21 A (Reading) Nail bed abscess on feet. Vulvar blister
22 either due to insect bite or elephant climbing on concrete
23 barrier.

24 Q Okay. And finally, with respect to Angelica, if we could
25 take a look over at June '97 -- excuse me -- Angelica's

1 reference in Chart A and indicate how old -- or when she was
2 born.

3 A June 23rd, 1997.

4 Q Okay. And now look over at FEI 31832, and this is an
5 April 2004 document relating to Angelica titled "Blue Unit
6 Report," and if you could read what it says under "HX," under
7 "Angelica."

8 A (Reading) Seven years old. We have a right hind
9 lameness exacerbated by performing, quote/unquote ferris
10 wheel, which requires hind leg strength. Currently not in
11 show.

12 Q Okay. And if we could look at 22434, FEI. It indicates
13 what the reference is near the bottom of that page in the
14 column -- second column to the left.

15 A (Reading) This is in Grand Rapids. Angelica, toe
16 abscess -- toe abscess left -- left hind, 20 cc's of Banamine
17 and looks like 3 grams of Naxcel and it looks like, you know,
18 they were going to -- the intention was to give four
19 treatments of Banamine. I'm sure that's over a period of
20 time, and I'm sure the Naxcel is over a period of time. Of
21 course, that's the second day of treatment for each of those
22 medications. That would be my assessment.

23 Q Dr. Ensley, do you have an opinion regarding these kinds
24 of problems in elephants of this age?

25 A I probably expressed several opinions in my expert

1 report.

2 Q Do you have an opinion it's relevant to some of the
3 issues we've been talking about?

4 A Yes. I think these are younger animals. They're
5 expressing the same kinds of injuries as the older animals,
6 the older elephants at a very young age, which I wouldn't
7 expect at all under normal circumstances. These are the kinds
8 of entries into medical records you shouldn't have, not for
9 young animals like this.

10 Q Have you seen these kinds of injuries routinely in young
11 animals in your practice?

12 A I can't say we've experienced as many young animals as
13 these. There were three -- a three-year-old African elephant
14 at the San Diego zoo for probably less than a year or two, and
15 I only experienced two young animals at the Wild Animal Park
16 for only nine months with one animal and a year-and-a-half,
17 almost two years with another, and that's probably too small a
18 sample size to give you a good reading from my experience, but
19 in talking to other individuals, these are just not the kinds
20 of injuries you experience on such a broad scale with this
21 range group.

22 Q Okay.

23 MR. SHEA: We object to hearsay, Your Honor.

24 THE COURT: All right. I'll allow it.

25 Q (BY MR. GLITZENSTEIN) If we look at Plaintiffs' Exhibit

1 23 -- Will Call Exhibit 23, which is a February 4th, 2001
2 e-mail from Cathy Shilton to Mark Gaipo. That report, can you
3 read the first sentence of that paragraph or the first two
4 sentences.

5 A (Reading) The main thing I wanted --

6 MR. SHEA: Your Honor, I object. Relevance. Still
7 Red Unit. It's hearsay, and no foundation. There's no Gaipo
8 and no Shilton foundation here.

9 MR. GLITZENSTEIN: Your Honor, it's a classic
10 admission. It's vet employees at Ringling Brothers
11 specifically opining about the problems -- the leg problems
12 we've been talking about resulting from their years on the
13 road. It's critical.

14 THE COURT: Okay. Ms. Shilton is --

15 MR. GLITZENSTEIN: As understood it, Ms. Shilton
16 works with the vet people at FEI.

17 MS. MEYER: Yes.

18 THE COURT: She's an employee of Ringling Brothers?

19 MR. GLITZENSTEIN: She's an employee of Ringling
20 Brothers.

21 THE COURT: Current or former?

22 MR. GLITZENSTEIN: Certainly a former employee.

23 THE COURT: All right. I'll allow it.

24 Q (BY MR. GLITZENSTEIN) Could you read the first two
25 sentences.

1 A (Reading) The main thing I wanted to accomplish was
2 examining --

3 THE COURT: Let me just inquire. Do you dispute
4 that? Is she a former employee or possibly a current
5 employee?

6 MR. SIMPSON: She's a former employee.

7 THE COURT: All right. I'll allow it.

8 A (Reading) The main thing I wanted to accomplish was
9 examining all the elephants' feet. There's a lot of severe,
10 likely not completely treatable foot problems at Williston
11 that originated in the years the elephants were on the road.

12 MR. GLITZENSTEIN: And, Your Honor, just to make
13 sure we're clear, I'm moving the admission of that document.

14 THE COURT: I'll admit it over objection.

15 (PLAINTIFFS' WILL CALL EXHIBIT 23 ADMITTED.)

16 Q (BY MR. GLITZENSTEIN) Dr. Ensley, could we take a look at
17 Plaintiffs' Exhibit 74, and tell me if you know what this
18 document is.

19 A This is the beginning page of the AZA's Standards for
20 Elephant Management and Care guidelines.

21 Q Okay. And what's your understanding of the purpose of
22 this document?

23 A This was to give guidance to AZA member institutions
24 maintaining elephants as to what a consensus of care would be
25 in 2003.

1 Q A consensus of care among who?

2 A Member institutions maintaining elephants.

3 Q Okay. And that would include Asian elephants?

4 A That's correct.

5 Q If you could take a look at the second page of that
6 document, there's a "space" reference. Do you see that?

7 A Yes.

8 Q With regard to the "space" that the --

9 MR. GLITZENSTEIN: And, Your Honor, this document
10 has already been admitted into evidence as Plaintiffs' Will
11 Call Exhibit 74.

12 THE COURT: I believe it has, correct, Carol? It
13 has been.

14 Q (BY MR. GLITZENSTEIN) And if you could take a look at
15 that space limitation. Dr. Ensley, when you were out doing the
16 Auburn Hills inspection, did you have occasion to measure the
17 train car?

18 A Yes.

19 Q And can you say whether or not your measurements indicate
20 whether the space allowed is consistent with what's in the AZA
21 document?

22 A No, it is not.

23 Q Okay. Is it smaller?

24 A Smaller, yes, and I believe this is unrestricted space as
25 opposed to the elephants in the rail cars were tethered.

1 Q And in terms of the elephants in the pens -- outdoor pens
2 at the Auburn Hills inspection, do you believe that that was
3 in compliance with this AZA standard?

4 A I did not measure those, but in my estimation, they were
5 not.

6 Q Okay. And in terms of the elephants that were at the CEC
7 barns, do you believe that those were in compliance with this
8 standard?

9 A They were not measured, but I think it would be a fair
10 statement to say that the space they had at the time they were
11 tethered in the barn was no different than the space they had
12 tethered in the trains.

13 Q Okay. And if you take a look at the top of that page,
14 there's a statement that says, "Elephants must be kept outside
15 on natural substrates as much as possible." Do you see that?

16 A Yes.

17 Q Do you believe that the Ringling Brothers' elephants,
18 from what you've seen, would comply with that requirement?

19 A No.

20 Q Is FEI and/or Ringling Brothers a member of the AZA?

21 A I don't know. I don't think they are, but I don't know
22 for sure.

23 Q Do you believe the AZA -- Scratch that.

24 Finally, Dr. Ensley, take a look at Plaintiffs' Will
25 Call Exhibit 9 and scroll down to a reference in that exhibit

1 to bleeding wounds on Lutzi. Do you recall testimony relating
2 to that?

3 A Yes.

4 Q Did you see any discussion of that incident in the
5 medical records that you reviewed?

6 A Only this -- only this document. Nothing in the medical
7 records.

8 Q And when you say "the medical records," what do you mean
9 by that?

10 A Documents where entries were made by veterinarians or
11 veterinary technician.

12 Q Okay. And if we could take a look at what's been marked
13 as Plaintiffs --

14 MR. GLITZENSTEIN: Your Honor, Plaintiffs' Will Call
15 Exhibit 9, I think, had been at least provisionally admitted.

16 THE COURT: All right.

17 Q (BY MR. GLITZENSTEIN) And if we could take a look at
18 Plaintiffs' Will Call Exhibit 11. And take a look --

19 MR. SHEA: Your Honor, again, we object to this.
20 It's irrelevant. It's all Red Unit, and as the last document
21 was or two documents ago, it's regarding Red Unit elephants.

22 THE COURT: Over objection, admitted.

23 (PLAINTIFFS' WILL CALL EXHIBIT 11 ADMITTED.)

24 Q (BY MR. GLITZENSTEIN) Take a look at the last paragraph
25 in that document, and if you could read that, it's FEI 16648.

1 It's the last page in Plaintiffs' Exhibit 11.

2 A (Reading) I spoke to Dr. Wiedner a few minutes ago and
3 she asked me to send this on. After this morning's baths, at
4 least four of the elephants came in with multiple abrasions
5 and lacerations from the hooks. Sacha and Jimmy were, I
6 believe, the only handlers with them outside. The lacerations
7 were very visible and I had questions at the open house from
8 two members of the public about where they were from.

9 (Reading) Jimmy applied Silvadene and Wonder Dust
10 just before the show. I'm making a list of what I find once
11 the lights are back on, and it will follow shortly.

12 Q With respect to the official medical records, do you
13 recall seeing any discussion of this?

14 A An entry from a technician or a veterinarian, no, no, I'm
15 sorry, I didn't.

16 Q Dr. Ensley, yesterday there was deposition --

17 MR. GLITZENSTEIN: Just to be clear, Your Honor, I
18 think you had allowed that exhibit to be moved into evidence?

19 THE COURT: What was the number?

20 MR. GLITZENSTEIN: That was 11. Plaintiffs' Will
21 Call 11.

22 THE COURT: Was it admitted? I'm not sure there was
23 an objection. Our records show it was admitted.

24 MR. GLITZENSTEIN: Thank you, Your Honor.

25 Q (BY MR. GLITZENSTEIN) Yesterday there was testimony

1 submitted, deposition testimony about an incident involving two
2 elephants that were fighting, one of which was baby and another
3 elephant -- and from Sacha Houlik [ph.] as to those elephants
4 getting into a fight and they're bleeding as a result of that.
5 Did you see any discussions in the medical records relating to
6 that event?

7 A What year was that?

8 Q 2006.

9 A No, don't recall that.

10 Q And if we could take a look at Feld 26682, which is a
11 record for the elephant baby which is again in Plaintiffs'
12 Will Call Exhibit 1A. Does that record indicate anything
13 about whether baby has tusks?

14 A On December 6, '91 -- wait now. April 13th, 1992, it
15 indicates "remove tusks."

16 Q Okay. And Plaintiffs' Will Call Exhibit 106, first of
17 all, Dr. Ensley, do you have any idea why some of these
18 incidents we've talked about would not be discussed in the
19 medical records?

20 A No.

21 Q If we could look at Plaintiffs' Exhibit 106, which is a
22 USDA inspection report relating to Ringling Brothers.

23 MR. GLITZENSTEIN: And, Your Honor, we move this
24 document into evidence as a -- as a public record. We think
25 it meets all the standard requirements for a public record.

1 It's an official inspection report. We have a certification
2 from the USDA. We don't believe there's an objection to this
3 document.

4 THE COURT: All right. Admitted.

5 (PLAINTIFFS' EXHIBIT 106 ADMITTED.)

6 Q (BY MR. GLITZENSTEIN) And if you could just read the
7 first sentence under "Veterinary Care."

8 A (Reading) There is no documentation maintained on
9 elephants that have minor lesions, scars or abrasions.
10 Careful examination of the elephants revealed some scratches
11 or lesions that may have required medical care, but there is
12 no documentation of treatments.

13 Q Thank you. Dr. Ensley, do you believe the practices
14 we've been discussing are injuring the elephants?

15 MR. SHEA: Objection, leading.

16 THE COURT: I'll let the question be answered.

17 A Without question.

18 Q (BY MR. GLITZENSTEIN) Why is that?

19 A It's the result of the injury is physical pain. Pain
20 is -- it can be physical pain, it can be emotional pain. I'm
21 not an expert. I'm not an expert -- I'm not going to be an
22 expert on emotional pain, but veterinarians are being
23 challenged more and more today to consider a patient as being
24 untreated if they're presented with what a veterinarian might
25 consider to have emotional pain, a patient with emotional

1 pain, but injury is physical pain is what I'm seeing with
2 these animals.

3 Q And are you seeing evidence consistent with the elephants
4 being wounded?

5 A Yes.

6 Q And why is that?

7 A Wounds, and I -- if you look in the dictionary, I mean,
8 veterinarians have been treating wounds since they took the
9 oath, but wounds basically, if you look in a dictionary,
10 you'll find it's a break in the skin or mucous membrane caused
11 by, you know, with force. Wounds can also be emotional.
12 Feelings can be wounded. So these animals, I feel, physically
13 have been wounded by breaking of the skin or mucous membrane.

14 Q And with regard to harming the elephants, both in terms
15 of what you've testified to on bull hook use and chaining, do
16 you have an opinion about that?

17 A Yes. I believe there is both direct and indirect
18 wounding of the elephants.

19 Q I asked about harming.

20 A Harming, I'm sorry. Harming, yes.

21 Q Why do you say that?

22 A If you look at the definition of "harm," it means an
23 animal can be -- can be killed or injured, but it's, in
24 effect, an animal can be killed or injured by significantly
25 altering their normal behavior patterns.

1 Q And when you say -- what are you referring to in terms of
2 injury, in terms of the practices we've been talking about?

3 A To hurt or cause damage.

4 MR. GLITZENSTEIN: And, Your Honor, at this point I
5 would just move in two additional matters that I had referred
6 to. One were the records in Will Call Exhibit 1A with respect
7 to the elephant, particularly the young elephants I had talked
8 about. We are only moving into evidence under Will Call 1A at
9 this time as to those particular documents that you allowed me
10 to examine with Dr. Ensley.

11 THE COURT: I'll admit them over objection.

12 (PLAINTIFFS' EXHIBIT WILL CALL EXHIBIT 1A
13 ADMITTED.)

14 MR. GLITZENSTEIN: And the only other thing is
15 Dr. Ensley's expert report. We're not going to ask to move
16 the entire report into evidence, to enter his report, but
17 there are excerpt which reflect his review of the various
18 medical records. We think those can properly come in as
19 summaries, and particularly what I'm referring to are pages
20 132 through 235, 260 through 268, and 270 to 271. Those are
21 all the portions which summarize this painstaking review of
22 the medical records he engaged in. We think they properly can
23 be considered by the Court under Rule 1006.

24 THE COURT: Any objection?

25 MR. SHEA: Yes, Your Honor. This violates the

1 pretrial order. The expert is here to testify. He has
2 testified and we -- it's cumulative and it's information that
3 should not be afforded the Court without his testimony. It's
4 all hearsay.

5 THE COURT: I'll provisionally allow them to become
6 a part of the record. I'm not sure what weight I'll give
7 those portions, but for the time being, I will provisionally
8 admit them into the evidentiary record.

9 MR. GLITZENSTEIN: Can I give just you one citation,
10 Your Honor, if you're going to consider it, Your Honor,
11 further?

12 THE COURT: Go ahead.

13 MR. GLITZENSTEIN: And that would be *Minebea*,
14 *M-i-n-e-b-e-a, Company, Limited versus Papst, P-a-p-s-t*, 231
15 FRD 3 over at page 12, District, D.C. 2005 relating to
16 consideration of an expert report for proper reasons.

17 And with that, Your Honor, I have no further
18 questions.

19 THE COURT: All right. Cross-examination.

20 MR. SHEA: If it please the Court, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. SHEA:

23 Q Good afternoon, Dr. Ensley. Now, I believe you
24 testified, when I asked you earlier, that you had never seen a
25 hook boil; is that correct?

1 A That's correct.

2 Q And you didn't see any hook boils on the elephants that
3 you inspected in this case, correct?

4 A No, sir, I did not.

5 Q Did you say, "No, sir, I did not"?

6 A That's correct.

7 Q And you have never worked for a circus; is that true?

8 A That's true, yes.

9 Q Now, you've worked -- and I think you mentioned a few of
10 these on direct. You worked on a legal matter involving a
11 case against a circus called Cuneo; is that right?

12 A I don't recall if it was indicated as such. That was
13 around 1994, 1995. I believe he was the owner of the animal
14 involved.

15 Q I see. Is that about the elephant Tyke?

16 A Yes, sir, it is.

17 Q All right. And that was in 1994, correct?

18 A Yes.

19 Q And you testified against the exhibitor in that case; is
20 that true?

21 A I don't know if it was against the exhibitor. I believe
22 the -- it was a civil matter where the plaintiffs were against
23 the exhibitor. I'm not sure, too, if it was the owner of the
24 facility that exhibited the animal.

25 Q But you -- you testified against either the elephant

1 owner or exhibitor; isn't that right?

2 A Yes.

3 Q And you testified in 2005 in a matter against an owner of
4 tigers; is that correct?

5 A It was the same case. I gave a deposition. I don't
6 think I ever testified in court.

7 Q I see. But you realize you testify in deposition, don't
8 you?

9 A Yes, sir.

10 Q Okay. So then you testified against an owner of tigers;
11 isn't that right?

12 A That's correct.

13 Q And you worked on a third legal matter against the Oregon
14 zoo pertaining to the management of an elephant named Rose Tu,
15 T-u; is that right?

16 A Yes, sir.

17 Q And it was that case your opinion that Rose Tu had been
18 abused; is that right?

19 A That's correct.

20 Q And you worked on a fourth legal matter, which I think
21 you mentioned in part this morning that was against Ringling
22 Brothers in 2000; is that correct?

23 A That would also be correct, yes.

24 Q At your deposition, I asked you about that and you
25 couldn't remember many details. All I ask now, was that in

1 connection with the case against Mark Oliver Gabel?

2 A I don't think so.

3 Q Was it working on another matter for which no citation
4 ultimately was issued?

5 A There was a complaint that I reviewed and there was a
6 citation. I don't know ultimately how it played out. I don't
7 think it went to court.

8 Q Okay. You formed the opinion in that case that elephants
9 had been abused, correct?

10 A I think the testimony was to indicate that they were
11 indeed -- the injuries were indeed inflicted by a bull hook,
12 and I would have indicated abuse, yes.

13 Q Now, those are all of the legal matters you've worked on
14 as an expert, isn't that right, outside of this one you're
15 sitting in today?

16 A Yes, sir.

17 Q Then starting in 1994, 15 years ago, in every legal
18 matter in which you've been an expert, you've taken positions
19 against the exhibitor or owner, right?

20 A I'm not sure if I'd actually took a position. All I did
21 was offer an opinion base on the evidence submitted to me,
22 however that was going to be used.

23 Q But in each case, your opinions were unfavorable to the
24 owner or exhibitor; is that correct?

25 A Yes, sir.

1 Q Now, you took no role for your employer, the San Diego
2 Zoo, in the Born Free case brought against it to stop
3 importation of elephants from Swaziland; is that right?

4 A That's correct.

5 Q Now, I understand that you have spent, from this morning,
6 did you say you have spent about 1300 hours working on this
7 case?

8 A Up until the time of my deposition, yes, sir.

9 Q Until that time. I believe you couldn't recall that at
10 deposition. Is that 1300-hour figure, it's not accurate
11 through today, is it?

12 A No, sir.

13 Q So how many hours have you worked through today; do you
14 know?

15 A I'm sorry, I can't tell you. I just don't recall.

16 Q Okay. And you're being paid \$50 an hour in this case; is
17 that correct?

18 A That's correct.

19 Q Now, Dr. Ensley, you said that in deposition you have
20 reviewed, what, 12, 14 boxes of documents; is that right?

21 A Yes, sir.

22 Q Okay. And the medical records in this case were among
23 those; is that right?

24 A The bulk of that material was medical records.

25 Q Now, there are no studies that demonstrate that Asian and

1 African elephant behavior to be similar, for all practical
2 purposes, correct?

3 A To be similar? No studies. Not that I'm aware of.

4 Q And there are no scientific studies that demonstrate
5 arthritis to be caused by chaining, correct?

6 A That's correct.

7 Q And you -- did I understand correctly -- Well, strike
8 that.

9 Now, if I understand correctly, you visited the
10 Ringling Brothers and Barnum & Bailey Circus performance about
11 two weeks prior to your deposition in this case; is that
12 right?

13 A Yes, sir.

14 Q And you did not see any injuries from the use of the
15 guide when you visited that performance, correct?

16 A That would be correct.

17 Q And in fact, while at that performance, you didn't see
18 any handler even touch the guide to an elephant, true?

19 A That's true also.

20 Q Now, elephants sometimes kill each other at zoos, don't
21 they?

22 A That is correct.

23 Q For example, you had an elephant die at the San Diego Zoo
24 from being nudged into a moat by another elephant, correct?

25 A Yes.

1 Q And the elephant that we alluded to this morning that had
2 the injured jaw that you did a probing surgery on; do you
3 recall that testimony?

4 A Yes.

5 Q It was likely that elephant was injured by being -- that
6 the elephant who was injured and that jaw injured when she was
7 nudged into a moat by another elephant, correct?

8 A Most likely.

9 Q Now, at the San Diego Zoo, three elephants have been
10 euthanized because they had advanced arthritis, right?

11 A Correct. I had three at the zoo and the park together?

12 Q Yes.

13 A I think you're right, yes.

14 Q Okay. So that took -- me trying to keep my terminology
15 straight, between the two campuses, three elephants, to your
16 knowledge, have been euthanized because they had advanced
17 arthritis, correct?

18 A Yes.

19 Q Now, at the time of your deposition, you told me about
20 one at the Balboa Park facility, that one of them was at that
21 facility, right?

22 A Correct.

23 Q And again, that elephant was euthanized from advanced
24 arthritis, right?

25 A The exact details, I don't know because I had already

1 been transferred up to the Wild Animal Park, but this is what
2 I -- this is my understanding.

3 Q Now, do you recall that elephant's name?

4 A No.

5 Q Would it have been Maya?

6 A Could have been.

7 Q Or would it have been Lucky?

8 A Either one. It could have been. I don't -- I just don't
9 recall.

10 Q You don't recall?

11 A No.

12 Q Are you aware that those were the two elephants that died
13 from that facility within that time frame?

14 A No.

15 Q You're not?

16 A No, I don't -- I wasn't there, so sorry.

17 Q Okay. Are you aware that both of those elephants died at
18 50 years of age?

19 A No.

20 Q Okay. The second elephant at the Wild Animal Park was
21 named Hatari, is that correct?

22 A There was one of the two up there that had been
23 euthanized, yes.

24 Q All right. And in fact, that elephant, did that star in
25 the movie with John Wayne; do you know?

1 A That was my understanding, yes.

2 Q I see. Now, that elephant, do you know that the date of
3 birth, do you know whether it was 1959?

4 A Do not recall the date of birth of Hatari.

5 Q Do you recall when the elephant was euthanized, what
6 year?

7 A I would only be guessing. I think it would be after the
8 year 2000.

9 Q So it wouldn't have been in 1998 when the elephant was 39
10 years of age?

11 A Could have been, yes, could have been.

12 Q Okay. And Hatari was euthanized due to advanced
13 arthritis that had become degenerative joint disease, correct?

14 A Correct.

15 Q And Hatari had been at the Wild Animal Park since what
16 year; do you know?

17 A I don't know, but it's easy to look up. I just don't
18 know.

19 Q We would just look in the stud book?

20 A I'm not sure if that's actually listed in the stud book.
21 I do have an inventory and I know on that inventory that I
22 have the date that the animal arrived is listed. I just don't
23 know where it is. I would imagine the early 1970s.

24 Q I see. So the elephant had been at the Wild Animal Park
25 for quite a long time?

1 A Yes, sir.

2 Q Now, the third elephant at the Wild Animal Park was named
3 Carol; is that right?

4 A Yes.

5 Q And do you know Carol's date of birth?

6 A No.

7 Q Do you have any reason to disagree that Carol was 40
8 years old when she was euthanized?

9 A No, wouldn't disagree with that.

10 Q Was she euthanized in 2007; do you recall?

11 A She was euthanized after I retired in 2005, so -- and I
12 knew that she'd been euthanized, but I'm not going to -- if
13 that's what you have, I'm sure that's correct.

14 Q And Carol was euthanized due to advanced arthritis and
15 complicated toe and nail bed infections, correct?

16 A Correct.

17 Q Carol had been at the wild animal park for how long; do
18 you know?

19 A Late 1970s. I don't recall.

20 Q Okay. For decades by the time she had been euthanized;
21 is that right?

22 A Yes.

23 Q Now, to the elephants at issue in this case, the six or
24 Zina, none of them have health problems so severe that it
25 makes them candidates for euthanasia; isn't that right?

1 A I wouldn't consider them for euthanasia at this time, no.

2 Q Now, Dr. Ensley, it is fine with you that captive Asian
3 elephant herds are increased in size by captive breeding; is
4 that right?

5 A Yes, that's fine.

6 Q Now, in your experience at the -- both the zoo and at the
7 Wild Animal Park, elephants that exhibited stereotypic
8 behavior did so when they were placed in what you would refer
9 to as a stressful situation; is that right?

10 A I'm not sure I would limit it to stressful situation, but
11 certainly that would be one criteria that you might expect
12 that type of activity.

13 Q Or when they were anticipating something to be done; is
14 that right?

15 A I think that's a good -- a good assessment, yes.

16 Q Or when they were taken out of their normal routine; is
17 that correct?

18 A I think that's a good assessment, too.

19 Q And you saw elephants exhibit stereotypic behavior at
20 ZSSD, either campus, in free contact and protected contact
21 systems; isn't that true?

22 A That's true.

23 Q Now, in this case, it's your opinion that to keep from
24 taking the elephants at issue, or Zina, FEI would need to keep
25 those elephants unchained 24/7, 24 hours, seven days a week,

1 seesaw use of the guide and employee pure protected contact
2 management, correct?

3 A Can you -- something about take and to keep from taking.
4 Taking, are we placing them somewhere or I don't understand
5 your question.

6 Q I see. Well, you told me in deposition that Feld's
7 elephants would need to be unchained 24/7; isn't that right?

8 A I believe I said that would be the goal.

9 Q All right. So would it would be your goal to have these
10 elephants unchained all the time, correct?

11 A Yes, sir, yes, sir.

12 Q And you told me that all use of the guide would need to
13 cease; is that right?

14 A That would be your goal. I believe I stated that.

15 Q And that they would be managed in protected contact; is
16 that correct?

17 A That would be correct.

18 Q And you know that such would prevent the elephants from
19 being exhibited in the circus, right?

20 A Those elephants, I don't think, are going back on the
21 road, as I understand.

22 Q Two of the elephants were on the road that you -- that
23 you inspected in this case, correct?

24 A I'm sorry. That -- I don't know. I don't know if that
25 would prevent them from going on the road or not.

1 Q Well, let me direct you to your deposition page 273,
2 beginning on line 7. Now, we talked about your deposition in
3 this case. You recall the deposition, don't you?

4 A Yes.

5 Q Okay. And you were under oath at the time, correct?

6 A Correct.

7 Q (Reading) Question -- I'll ask you to follow along.

8 Question: Is it your opinion that -- then that FEI could not
9 have elephants perform in the circus without use of the ankus
10 or tethers?

11 (Reading) Answer: That would be my opinion, yes,
12 sir.

13 Did I read your testimony correctly?

14 A Yes, you did.

15 Q And in fact, that is your goal, isn't it?

16 A No.

17 Q Oh, you've said that keeping them off chains 24/7 is your
18 goal and not having the ankus is a goal and not having -- or
19 having them under pure protected contact is the goal, so that
20 makes the goal, based on this opinion, not having them in the
21 circus, doesn't it?

22 A As I recall in the deposition, we were looking at
23 alternative ways in managing them, and I said there may be
24 other ways in which they could be moved or displayed.

25 Now, when it comes to Karen with arthritis, I would

1 have a good deal of concern about keeping her on the road, an
2 animal with arthritis if we want to, you know, look at them
3 individually. Nicole, there may be some way in which she can
4 be participatory in exhibition.

5 Q But that would not be in the circus unless the guide or
6 tethers are used, right?

7 A I don't know. Maybe -- maybe there is some way, and I
8 think I indicated in my deposition that -- that that could be
9 something that would have to be looked into.

10 Q Nonetheless, it is -- you did state your opinion that FEI
11 could not have the elephants perform in the circus without use
12 of the ankus or tethers, right?

13 A There may be some other way in which they could be
14 exhibited.

15 Q Now, Dr. Ensley, at least one-half of the zoos in this
16 country have not adopted your approach; isn't that right?

17 A Well, it's not my approach. It's what the -- this is
18 what -- the trend that's been taking place over the last 30
19 years. It's not my approach when we -- I think I indicated,
20 too, in my deposition, when we made the switch from free
21 contact to protected contact, a number of us were concerned
22 that it might not work, and now it has worked.

23 So, who's to say that the Defendants couldn't devise
24 a scheme in which they can exhibit their elephants and make it
25 work without guides or tethers.

1 Q Well, Dr. Ensley, I wasn't asking that. I was asking
2 whether half the zoos in the country, at least, still use the
3 ankus.

4 A Yes, and that number is becoming less every year.

5 Q And at least half the zoos still chain, don't they?

6 A Yes, and that number is becoming less every year.

7 Q Now, Dr. Ensley, then at least, in your opinion, half the
8 zoos could be taking their animals, couldn't they, at this
9 point, by using the guide and using tethers?

10 A No, and I believe I indicated in my deposition that
11 you'd -- if that -- if you thought that about any one
12 particular institution, you would have to look at it on an
13 institution-to-institution basis to make a determination
14 whether or not their scheme of management was wounding,
15 injuring, harming or harassing.

16 Q But you would have to look at that scheme of management,
17 wouldn't you, to say one way or another, given that they're
18 using the ankus and chains?

19 A I'm sorry?

20 Q Given that they are using the ankus and chains?

21 THE COURT: Excuse me. Excuse me one second,
22 Counsel.

23 (PAUSE.)

24 THE COURT: Go right ahead, Counsel. Sorry.

25 A Can you repeat the question?

1 Q (BY MR. SHEA) Certainly. Then you would have to look at
2 those individual programs, given that they use the ankus and
3 chains, to determine whether or not they were taking their
4 elephants, correct?

5 A That's correct.

6 Q Now, Dr. Ensley, were you involved in selecting the
7 medical records designated for use in your testimony here in
8 court today?

9 A I selected medical records and entered -- placed the
10 entries, the medical entries in my expert report which were
11 then looked at by the Plaintiffs' attorneys, and I was asked
12 to clarify points, and to that degree, I'm sure that would be
13 considered, how did you put it, participation for something?

14 Q My question is, we were given a list of documents by
15 counsel as to -- that you would be using as the basis of your
16 testimony today.

17 A Yes.

18 Q And I'll represent that as to Jewell, I counted 22 pages
19 to show the Court today. Were you involved in that selection?

20 A Some of the documents, yes.

21 Q Now, do you have any basis to disagree that there are 590
22 pages of medical records in Plaintiffs' Will Call Exhibit 2A
23 for Jewell?

24 A I'm not familiar with that specific exhibit. You'd have
25 to -- could you describe that a little bit more, what that

1 exhibit is.

2 Q The medical records for Jewell. You did review medical
3 records -- a lot of medical records for Jewell in this case,
4 did you not?

5 A Yes, I'm just am not sure of the count that was in her
6 file.

7 Q Oh, okay, you don't know that count?

8 A Not off the top of my head, no, sir.

9 Q Okay. You wouldn't disagree that it's somewhere on the
10 order of 590 pages; is that right?

11 A If that's the count you have, I'm sure it's correct.

12 Q And you wouldn't disagree that there are on the order of
13 594 pages of medical records in the Plaintiffs' Will Call
14 Exhibit 2A for Karen?

15 A If you have that count, I'm sure it's correct also.

16 Q Okay. And you wouldn't disagree that there are 754 pages
17 of medical records in Plaintiffs' Will Call Exhibit 2A for
18 Mysore?

19 A If that's the count you have, I'm sure that's correct,
20 too.

21 Q And you would not contest that there are somewhere around
22 698 pages in Plaintiffs' Will Call Exhibit for Nicole, Will
23 Call 2C, the exhibit for Nicole?

24 A Again if that's the count, I'm sure it's correct.

25 Q And I meant to say 2A exhibit.

1 And for Susan, you wouldn't disagree that there are
2 841 pages?

3 A If that's -- again, if that's the count you have, I'm
4 sure it's correct.

5 Q And as to Zina, 721 pages, you would not disagree with
6 that, would you?

7 A Again, if that's the count you have, I'm sure it's
8 correct.

9 Q All right. I'd like to show you a page out of Karen's
10 exhibit or the exhibit for Karen. It is Feld 0021897.

11 Dr. Ensley, I believe you testified about this page earlier
12 today. Do you recall that?

13 A This does look familiar, yes.

14 Q Looking at the entry for Karen at the bottom of the page,
15 it states here, "small healing abrasion on left axillary
16 area"; is that right?

17 A Yes.

18 Q But also states "normal exam"; is that correct?

19 A That is also correct.

20 Q And you don't know where the small healing abrasion was
21 located specifically along the axillary area, do you?

22 A No, I do not.

23 Q Now, the axillary area in an elephant encompasses
24 basically, not to be indelicate, but the armpit region,
25 doesn't it?

1 A Yes, and the point of the elbow itself.

2 Q Okay. And the point of the elbow and continuing on
3 around to the body; is that true?

4 A I think you're correct, yes.

5 Q Okay. So this could have been anywhere in that area as
6 far as you can tell from these medical records; isn't that
7 right?

8 A It could, yes.

9 Q And you don't know -- Well, strike that.

10 Your testimony, as I understood it, was that this
11 abrasion was consistent with a -- an injury caused by a bull
12 hook?

13 A Well, there was no -- given the body of records that I
14 looked at and the documents and the inspections, et cetera,
15 this is not inconsistent. This would be one of the first
16 things I would consider based on the number of times that this
17 has appeared on an animal's left axillary area.

18 Q But you don't know this to have been caused by a bull
19 hook, this small healing abrasion?

20 A It's consistent with what I've, you know, been reading in
21 the records.

22 Q But my question was, you don't know that it was caused by
23 a bull hook, do you?

24 A It's -- it's reasonable to assume it was.

25 Q But you're assuming, aren't you, you're speculating, you

1 don't know?

2 A Within a reasonable degree of medical certainty.

3 Q Now, but you've not seen any photographs of this, have
4 you?

5 A No, sir.

6 Q And you don't know specifically where it was located, do
7 you?

8 A Well, in the axillary area -- left axillary area.

9 Q But not -- you don't know where in the axillary area,
10 whether it was at a traditional queue point or not, you don't
11 know, do you?

12 A That's correct.

13 Q Now, going to another page, it is Feld 00021892, you
14 testified about this page earlier today; isn't that true,
15 Dr. Ensley?

16 A Definitely looks familiar.

17 Q All right. Let's look at the entry for Keren, spelled
18 K-e-r-e-n, and in quotes here. It states here under this
19 entry that this is an entry back in September 12th of 1999;
20 isn't that right?

21 A Yes.

22 Q And that this is a routine exam, correct?

23 A That's what's stated.

24 Q And under "PE," it says, "caudal heal of both hind feet
25 are worn down to pink issue." And then says, "no lameness

1 noted," correct?

2 A That's correct.

3 Q And down on "A" entry, it says, "She tends to drag her
4 feet when she walks." Did I read that correctly?

5 A Yes.

6 Q And this was back in 1999, correct?

7 A Correct.

8 Q And you have no basis to contest that no -- the "no
9 lameness" notation, right?

10 A No.

11 Q Now, the entry for -- Strike that.

12 I'd like to show you another page in Karen's -- or
13 the exhibit for Karen, Feld 0002867, and you testified about
14 this page earlier today, correct?

15 A This also looks familiar, yes.

16 Q All right. Let's go to the entry for January 18th of
17 2001. First in the first paragraph or first entry it says,
18 (reading) Unannounced inspection by Game and Fish inspector
19 at conclusion of inspection said he overall had no problems
20 today.

21 Did I read that correctly?

22 A You did.

23 Q And that states that the inspection was unannounced; is
24 that right?

25 A That's correct.

1 Q And in the first line of "HX," is that history, is that
2 what that means?

3 A Yes, sir.

4 Q In the first line, talks about chronic intermittent
5 lameness right hind and says "assumed to be arthritis." Isn't
6 that the veterinarian's words?

7 A I don't know if a veterinarian -- this is a veterinary
8 entry, but I would assume it was.

9 Q Okay. But those are the words of the person who made the
10 entry; isn't that right?

11 A Correct.

12 Q Okay. And the -- so that is not a frank diagnosis of
13 arthritis, is it?

14 A All I know is what it says.

15 Q Oh, all you know is what it says; did I hear that
16 correctly?

17 A Yes, sir, you did.

18 Q All right. Looking down at the next entry on
19 January 25th of '01, and this is still a medical record for
20 Karen, it -- there is a -- an entry that says, "Note, colon,"
21 correct?

22 A Correct.

23 Q And three lines down and in, it says here, "not really a
24 lameness." Is that the entry?

25 A That's correct.

1 Q And you have no reason to contest that entry, do you?

2 A No, it is what it is, and all I can do is just
3 acknowledge that.

4 Q Okay. Because this elephant wasn't under your care at
5 the time, correct?

6 A That's correct.

7 Q And you didn't examine this elephant, correct?

8 A All I know -- Sorry.

9 Q You didn't examine this elephant?

10 A All I know is what I've seen in the record there.

11 Q Okay. I'd like to show you down right at the bottom of
12 the page, since we're on this page, there's an entry for
13 2/18/01. Do you see that?

14 A Yes.

15 Q And it says here, (Reading) During the third show, after
16 spec, she started acting uncomfortable, like she had cramps.
17 She was stretching out, but at the end of the show she would
18 not drink and would not touch her food. She laid down right
19 away and kept switching sides. Watched all night.

20 Did I read that correctly?

21 A Yes.

22 Q Now, you'll note right above that -- Well, first off, let
23 me ask. Someone watched that elephant all night; isn't that
24 right?

25 A That's what it says.

1 Q And you'll note that right up above this, there's an
2 entry 2/16 to 20/01. So February 16th to February 20th,
3 '01; is that right?

4 A Yes.

5 Q Now, the part I wanted to ask you about was the "parens,
6 W-A-L," do you know what that means?

7 A No, not positive.

8 Q Well, you've reviewed quite a few medical records in this
9 case, true?

10 A Yes.

11 Q And there is a veterinarian, or was at the time, working
12 with Ringling Brothers named William A. Lindsay; is that
13 right?

14 A Yes.

15 Q Are they -- is this not his initials in these parens
16 demonstrating that he was on site from the 16th to the
17 20th of 2000 -- February of 2001?

18 A I'm sure that's correct.

19 Q Now, I would like to show you another page for Karen. It
20 is FELD 0028942. And Dr. Ensley, I believe you testified
21 about this page this morning or even this afternoon. The day
22 is running on. Do you recognize this page?

23 A Yes.

24 Q The entry for elephant Karen is November 12th, 2005; is
25 that right?

1 A That's correct.

2 Q And I believe your testimony amounted to this
3 nickel-sized swelling on palmar surface not being inconsistent
4 with a bull hook; is that right?

5 A That's correct.

6 Q But again, you don't know what caused that nickel-sized
7 swelling on the palmer surface of the left front where the leg
8 joins the pad, do you?

9 A Not with certainty.

10 THE COURT: Counsel, we have to change court
11 reporters, unless you're going to stay till midnight. We'll
12 take a very short recess so the court reporters can change.
13 All right.

14 (A BRIEF RECESS WAS TAKEN.)

15 *-*-*-*

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

1		
2	DIRECT EXAMINATION OF PHILIP ENSLEY BY MR. GLITZENSTEIN....	2
3	CROSS-EXAMINATION OF PHILIP ENSLEY BY MR. SHAE.....	93
4	<u>EXHIBITS:</u>	
5	PLAINTIFFS' WILL CALL EXHIBIT 1A ADMITTED.....	91
6	PLAINTIFFS' WILL CALL EXHIBIT 2A ADMITTED.....	23
7	PLAINTIFFS' WILL CALL EXHIBIT 11 ADMITTED.....	86
8	PLAINTIFFS' WILL CALL EXHIBIT 23 ADMITTED.....	83
9	PLAINTIFFS' WILL CALL EXHIBIT 102 AND 102A ADMITTED.....	54
10	PLAINTIFFS' WILL CALL EXHIBIT 106 ADMITTED.....	89
11	PLAINTIFFS' WILL CALL EXHIBIT 113K ADMITTED.....	37
12	PLAINTIFFS' WILL CALL EXHIBIT 113K ADMITTED.....	39
13	PLAINTIFFS' WILL CALL EXHIBIT 142E ADMITTED.....	42
14	PLAINTIFFS' WILL CALL EXHIBIT 143E ADMITTED.....	25
15	PLAINTIFFS' WILL CALL EXHIBIT 143G ADMITTED.....	32
16		
17	DEFENDANT'S EXHIBIT 8 ADMITTED.....	24

--*-*

CERTIFICATE OF REPORTER

I, Catalina Kerr, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

 Catalina Kerr

 Date