

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE  
PREVENTION OF CRUELTY TO  
ANIMALS,

CIVIL ACTION NO. 03-2006

WASHINGTON, D.C.

VERSUS

WEDNESDAY, MARCH 4, 2009

2:30 P.M.

FELD ENTERTAINMENT, INC.

DAY 15

**TRANSCRIPT OF BENCH TRIAL - AFTERNOON SESSION**

**BEFORE THE HONORABLE EMMET SULLIVAN**

UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF,

KATHERINE A. MEYER, ESQ.  
TANYA SANERIB, ESQ.  
ERIC GLITZENSTEIN, ESQ.  
HOWARD CRYSTAL, ESQ.  
DELCIANNA WINDERS, ESQ.  
Meyer, Glitzenstein &  
Crystal  
1601 Connecticut Avenue, N.W.  
Suite 700  
Washington, DC 20009  
202-364-4092

FOR THE DEFENDANT,

LISA JOINER, ESQ.  
KARA PETTEWAY, ESQ.  
JOHN SIMPSON, ESQ.  
MICHELLE PARDO, ESQ.  
LANCE SHEA, ESQ.  
Fulbright & Jaworski, LLP  
801 Pennsylvania Avenue  
Washington, DC 20004  
202-662-4504

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTED BY: WENDY C. RICARD, RPR, CCR  
OFFICIAL COURT REPORTER  
333 Constitution Avenue, NW  
Room #6718  
Washington, DC 20001  
202-354-3111

Proceedings recorded by mechanical stenography.  
Transcript produced by computer-aided transcription.

I N D E X

<b>Witnesses:</b>	<b>Page:</b>
Kari Johnson.....	
BY: Ms. Pardo	3, 26, 30, 120, 125
BY: Ms. Sanerib	18, 83, 123
Gary Johnson.....	
BY: Ms. Pardo	126
BY:	
 <b>Exhibits:</b>	
DX-24 - Pgs. 34-36 Kari Johnson CV	17
DX-24 - Pg. 31 Gary Johnson CV	136

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

(Whereupon, court resumed after the lunch recess.)

THE COURT: All right. Call your next witness.

MS. PARDO: The defendant calls Kari Johnson.

\* \* \* \* \*

**KARI JOHNSON**, called as a witness in this case, after having been duly sworn by the deputy clerk, testified as follows:

\* \* \* \* \*

THE COURT: Good afternoon.

THE WITNESS: Hello.

**DIRECT EXAMINATION BY MS. PARDO:**

Q. Good afternoon, Ms. Johnson.

A. Hello.

Q. You can move the microphone closer. Can you state your name full name for the record?

A. Kari Johnson.

Q. And are you employed, Ms. Johnson.

A. Yes, I am.

Q. Where do you work?

A. At Have Trunk Will Travel, Incorporated.

Q. And is that your own business?

A. Yes, it is.

Q. Where is Have Trunk Will Travel located?

A. We're in Southern California.

1 Q. And what is your title or role with your business?

2 A. I'm the corporate secretary.

3 Q. Do you have experience working with elephants?

4 A. Yes. Yes.

5 Q. Can you give us an overview of that experience beginning  
6 with your first experiences?

7 A. I started when I was 14 years old, and I started  
8 apprenticeship full time under my stepfather, and I worked  
9 with elephants all the time. I learned how to how to feed,  
10 take care of, bathe, do foot care, just every part of elephant  
11 care with him.

12 Q. Do you have experience in handling elephants?

13 A. Yes. Yes. Learned to handle and train.

14 Q. And have you ever presented elephants?

15 A. Yes, I have.

16 Q. How many years have you been working with elephants?

17 A. I started when I was 14, and I'm 51, so.

18 Q. And what species of elephants have you worked with?

19 A. With both species.

20 Q. And that would that be --

21 A. Asian and African.

22 Q. Since you started working with elephants, how many  
23 elephants would you say you've worked with?

24 A. About 30 I'm -- is a good guess.

25 Q. And what years did you do your apprenticeship?

1 A. Starting when I was 14, and I can't remember the exact  
2 year.

3 Q. Did you prepare a CV and attach it to your expert report  
4 in this case?

5 A. Yes.

6 MS. PARDO: Can you call up Defendant's Exhibit 24,  
7 please. Okay. And you can go to the last page.

8 BY MS. PARDO:

9 Q. Okay. I'd like you to take a look at what's on the  
10 screen, Ms. Johnson, and we can page through it for you if  
11 you'd like.

12 A. Yes, I do.

13 Q. And what is this document?

14 A. It's the CV.

15 Q. Will that assist you in going through your background?

16 A. Yes.

17 Q. Okay. And who did you apprentice under?

18 A. Smokey Jones.

19 Q. Who is Smokey Jones?

20 A. He's my stepfather.

21 Q. Is he an elephant trainer?

22 A. Oh, yes.

23 Q. What types of things did you -- and you've spoken a  
24 little bit about your experience, but did you focus on in your  
25 apprenticeship?

1 A. On the basic care, the taking care of the elephants and  
2 the training and just absolutely every part of how to take  
3 care of an elephant.

4 Q. And did you work with Smokey Jones until you founded Have  
5 Trunk Will Travel?

6 A. Yes, I did.

7 Q. Do you have a business partner in Have Trunk Will Travel?

8 A. My husband, Gary Johnson.

9 Q. And did you have any formal education to learn how to  
10 work with elephants?

11 A. It was all hands-on experience.

12 Q. What is the nature of Have Trunk Will Travel's business?

13 A. We provide elephants for movies; commercials; television;  
14 special events; Indian weddings; religious ceremonies. We do  
15 rides at zoos and other places; performances; circus; stage  
16 shows; magic shows; just absolutely anything to do with an  
17 elephant.

18 Q. Do you remember what year your business was founded?

19 A. '81.

20 Q. And why did you found your business?

21 A. Gary and I -- well, we met because we loved elephants.  
22 We met because of elephants, and we always -- our whole lives,  
23 our dream was to be able to have a place of our own and to be  
24 able to take care of elephants and to breed them and just to  
25 be with them all the time.

1 Q. And does your business have a current mission or focus?

2 A. It's to provide the public with safe educational,  
3 recreational access to earth's most wonderful mammal, the  
4 elephant.

5 Q. And is this a for profit business?

6 A. Yes; uh-huh.

7 Q. Do you have donors that pay any of your expenses?

8 A. No.

9 Q. How many elephants do you currently have at Have Trunk  
10 Will Travel?

11 A. Seven.

12 Q. Has this number changed since you were deposed in this  
13 case?

14 A. Yes, it has.

15 Q. And why is that?

16 A. Tess, one of our elephants, and her baby, Tucker, went to  
17 the Houston Zoo for their breeding program.

18 Q. Now, of the seven elephants that you have, how many of  
19 those are Asian?

20 A. All of them.

21 Q. And can you give the age ranges.

22 A. 40's, mid 40's, and then our youngest baby is two.

23 Q. And do your elephants travel for the engagements that  
24 they work with?

25 A. Yes, they do.

1 Q. What percentage of your engagements require elephants to  
2 travel?

3 A. Pretty much all of it.

4 Q. When your elephants travel from the home facility, does  
5 your husbandry routine resemble what you do at the on-site  
6 facility?

7 A. Our elephants get the same care whether they're on a  
8 movie set, the circus, or the -- absolutely anywhere we go,  
9 they get the same quality of care.

10 Q. Have your elephants also performed in circus acts in  
11 California?

12 A. Yes.

13 Q. Can you give an example of some of the well-known movies  
14 or commercials that Your Have Trunk Will Travel elephants have  
15 done over the years?

16 A. Some of the movies?

17 Q. Movies or commercials.

18 A. Operation Dumbo Drop; Larger Than Life; George of the  
19 Jungle; Jungle Book. Some of the more current ones are Evan  
20 Almighty. Some of them were in bedtime stories; just in a  
21 little clip, and then lots of television shows over the years;  
22 Johnny Carson -- we did Johnny Carson Show when Johnny Carson  
23 was still there. Then when Jay Leno was there.

24 All kinds of commercials for every kind of car there is,  
25 I think, and we did the one not too long ago for Master Card



1 where the zookeeper got sick, and the elephant took care of  
2 him, brought him the soup, and that sort of thing. We've done  
3 a lot.

4 Q. Have your elephants at Have Trunk Will Travel been  
5 involved in any research projects?

6 A. Yes, they have.

7 Q. And have you been involved in elephant conservation in  
8 any way?

9 A. Yes, we have.

10 Q. What is your involvement?

11 A. Mostly through the International Elephant Foundation. My  
12 husband, Gary, is founding board member, and I attend those  
13 meetings with him, and we donate our time and money.

14 Q. What type of elephant management system have you used  
15 when working with elephants over the years?

16 A. Free contact and protected contact.

17 Q. And what is free contact?

18 A. It's where the handler and the elephant share the same  
19 space.

20 Q. Can you explain what protected contact is?

21 A. It's where the handler is usually behind a barrier.

22 Q. Did the free contact method that you have used involve  
23 the use of any tools to manage the elephants?

24 A. Yes.

25 Q. And what are those tools?

1 A. The guide.

2 Q. Do you have any experience in tethering elephants?

3 A. Yes; uh-huh.

4 Q. Do you consider yourself to be well-versed in the use of  
5 these tools?

6 A. Yes.

7 Q. How many elephants that you've worked with over the years  
8 were managed in free contact?

9 A. One.

10 Q. How many were managed in free contact?

11 A. All -- in free contact?

12 Q. Yes.

13 A. All but one.

14 Q. All but one.

15 A. Yes. I'm sorry. I wasn't getting it.

16 Q. Now, you mentioned some of the basic care that you  
17 rendered to elephants over the years, have you also been  
18 responsible for their exercise or enrichment?

19 A. Oh, yes, uh-huh.

20 Q. And have you had experience in transporting elephants?

21 A. Yes.

22 Q. And has that been domestically?

23 A. Both domestically and internationally.

24 Q. Do you have a breeding program at Have Trunk Will Travel?

25 A. We do.

1 Q. What type of experience have you had with breeding  
2 elephants?

3 A. Every part of it. From the -- from the actual helping  
4 with the birth to sleeping with the mom before the birth and  
5 with the mom and baby after the birth; helped with artificial  
6 inseminations; with the special exercises the moms get when  
7 they're pregnant. They need a lit bit different nutrition;  
8 just everything to do with it.

9 Q. Okay. We can go back to the CV, and I'd like you to turn  
10 to the second page; and the next page, please. At listing at  
11 the top, it says: Boards and Committees. And I'd like to  
12 take you through some of your experience here. Have you been  
13 involved with professional associations related to elephants?

14 A. Yes.

15 Q. And it lists here that you have the International  
16 Elephant Foundation. Explain what that is.

17 A. The International Elephant Foundation, it's a group of  
18 people and facilities who have gotten together to find ways to  
19 fund elephant research; mostly elephant research and just ways  
20 to make elephants better -- make it better for elephants.

21 Q. What position did you hold in the International Elephant  
22 Fund? Foundation; excuse me.

23 A. My husband is a board member, and I'm sort of co- -- if  
24 he can't go to the meeting, then I would go, and I go with him  
25 most of the time, also.

1 Q. And the next entry is the Elephant Managers Association.  
2 What is your position with respect to that?

3 A. We're members of the Elephant Managers Association. I've  
4 contributed to some of their publications; the -- "Grey  
5 Matters" is one of the little publications they put out.

6 Q. And it says you're also a member of the outdoor amusement  
7 business association. Can you explain the extent of your  
8 membership with that organization?

9 A. Yes. Well, we're there because we have elephants. It  
10 is outdoor amusement businesses, a lot of the fairs and  
11 things like that, and I'm on that Animal Welfare Committee and  
12 also helped write the original guidelines for them.

13 Q. The next entry is the Western Fairs Association. Can you  
14 explain what your affiliation has been with that organization?

15 A. We belong to Western Fairs because we go to fairs with  
16 our elephants, and I have also been on their Animal Welfare  
17 Committee and helped write their guidelines.

18 Q. It says here that the American Zoo and Aquarium  
19 Association species survival plan; what sort of membership or  
20 role have you had in that organization?

21 A. We're a related certified facility to American Zoo and  
22 Aquarium Association, and then the species survival plan is a  
23 part of that, and so we're members of the SSP. That means we  
24 cooperate with zoos and other facilities in breeding.

25 Q. Is the AZA primarily a membership for zoos?

1 A. Yes.

2 Q. But you're permitted to also have a membership; is that  
3 correct?

4 A. Yes.

5 Q. Can you explain what your role has been with respect to  
6 the California Department of Fish and Game?

7 A. Yes. In 1985, they were going to rewrite Title 71, and  
8 that's the regulations that govern like the space for the  
9 animals in California. And so we were -- we helped on that  
10 for many years, and then they brought that committee back  
11 later, and so my husband and I are on that committee also.

12 Q. And you mentioned with respect to some of these  
13 organizations that you contributed to publications?

14 A. Yes.

15 Q. Can you tell us some of the topics that you have  
16 contributed to for various publications?

17 A. Well, for the International Elephant Foundation, I was  
18 a contributor and a reviewer on the guidelines, the husbandry  
19 guidelines.

20 Q. And is that the "Elephant Husbandry Resource Guide"?

21 A. Yes.

22 Q. Any other publications that you had a role in preparing?

23 A. None are coming to mind.

24 Q. And you mentioned the "Animal Welfare Manual", were you a  
25 contributor to that for the Western Fairs Association?

1 A. Yes.

2 Q. And were you also a contributor for the recommended  
3 guidelines for performing and exhibited animals as part of the  
4 Outdoor Amusement Business Association?

5 A. Yes.

6 Q. Have you conducted educational outreach to the general  
7 public with your elephants?

8 A. Yes, we do.

9 Q. Can you describe some of those activities?

10 A. Oh, that would be -- well, it would be both at our  
11 ranch sometimes, and then we would, you know, take an elephant  
12 to like the School for the Blind where they wouldn't come to  
13 us or senior groups or the Rotary Club, Boy Scouts, just  
14 places like that.

15 Q. Have you ever conducted any training seminars with  
16 respect to the handling or care of elephants?

17 A. Yes, we have.

18 Q. Okay. And what were those?

19 A. One was for -- actually two times, we did it for the  
20 United -- USDA. And they traveled around to different places  
21 that housed elephants to see, you know, how they were cared  
22 for. So when they were there, we did -- we did a lot of  
23 different things for them. We showed them as much as we  
24 could.

25 Q. Okay. And I see --

1 MS. PARDO: If you can turn to the prior page of the  
2 CV for a moment.

3 BY MS. PARDO:

4 Q. And in the center of the page there is a listing for the  
5 Los Angeles Department of Animal Services, October 2007. Can  
6 you explain what that experience entailed?

7 A. Yes. They inspect actually any exotic animal that goes  
8 into the city of L.A., and of course elephants are part of  
9 that. So they brought their trainees out for the same  
10 reason, to look at the elephants and to ask questions, and,  
11 you know, to see how we took care of them.

12 Q. Right below that entry, you list some educational  
13 demonstrations, and there are some colleges and universities  
14 listed. Can you explain what that experience entailed?

15 A. Moorpark(Phonetic) College has an exotic animal training  
16 program, and they come out at least once a year, and they  
17 bring their graduating class, and we give them a tour of the  
18 facility and talk about training, and, you know, just every  
19 -- we show them everything we possibly can.

20 And then Pierce(Phonetic) College, usually about once a  
21 year, they bring their pre-vet class and it's one of the  
22 ethics professors that usually comes with his students.

23 Mount San Antonio College for the same reason brings their  
24 veterinary students out. And then for the Western  
25 University, I've gone there. They didn't come to our ranch,

1 but I went there to speak to them.

2 Q. Have you produced any training films about elephants?

3 A. Yes, we have.

4 Q. Can you describe what those were?

5 A. One was Guides, Tethers and Training Aids in Elephant  
6 Care, and that was done for the AVMA executive committee.

7 Q. Can you explain what the AVMA is?

8 A. It is the American Veterinary Medical Association, and  
9 it was their executive committee. They were considering  
10 doing a policy on guides and tethers, and it was just sort of  
11 an explanation to let them know what training was.

12 Q. Do you remember what year that film was made?

13 A. I think '90's -- or 2007.

14 Q. Okay. And I see it listed here on your CV; is that  
15 information correct as listed on your CV?

16 A. Yes.

17 Q. Were there any other films that you produced?

18 A. Prior to that, we did one for -- to show how to  
19 administer medication, oral medication to elephants.

20 Q. Who was the intended audience for that film?

21 A. Other elephant managers.

22 Q. Given your experience working with Asian elephants in  
23 captivity, do you think that your opinions could be helpful  
24 to the Court in deciding the issues in this case?

25 A. Yes.



1 Q. Do you consider yourself to be an expert in the field of  
2 husbandry and the management and care of Asian elephants in  
3 captivity?

4 A. Yes.

5 Q. And does that expertise include performing elephants?

6 A. Yes.

7 Q. Are you confident that you could render an expert opinion  
8 in the field of husbandry, management, and care of Asian  
9 elephants in captivity?

10 A. Yes.

11 Q. Does the CV that we are referring to on the screen  
12 accurately summarize your professional experience with  
13 elephants that you testified about?

14 A. Yes, it does.

15 Q. At this point, Your Honor, I'd like to move the  
16 admission of the CV portion of DX-24, which is pages -- PDF  
17 Pages 34 to 36.

18 THE COURT: Any objection?

19 MS. SANERIB: No objection to the CV, Your Honor.

20 THE COURT: Admitted.

21 MS. PARDO: And at this time, Your Honor, we also  
22 would like to tender Ms. Kari Johnson as an expert in the  
23 care, husbandry, and handling of captive elephants.

24 THE COURT: Any voir dire?

25 MS. SANERIB: Yes, Your Honor.

1       **EXAMINATION BY MS. SANERIB:**

2       Q.    Good afternoon, Mrs. Johnson.

3       A.    Hello.

4                THE COURT: Counsel, let me ask you to state your  
5       name for the record.

6                MS. SANERIB: Okay. This is Tanya Sanerib, for the  
7       record.

8                THE COURT: Thank you.

9       BY MS. SANERIB:

10      Q.    Mrs. Johnson, I think you testified that your business,  
11      Have Trunk Will Travel is a commercial operation; is that  
12      correct?

13      A.    Yes.

14      Q.    Okay. And you've had elephants that have been painted  
15      that appeared in art shows; is that right?

16      A.    Yes.

17      Q.    And you've had elephants participate in fashion shows,  
18      correct?

19      A.    Yes; uh-huh.

20      Q.    And recently one of your elephants appeared in a music  
21      video; is that correct?

22      A.    Yes. Two of them.

23      Q.    Two of them. Okay. In your report in this matter, it  
24      was a joint report submitted by you and your husband; is that  
25      right?

1 A. Yes, it was.

2 Q. And you typed that report, correct?

3 A. Yes.

4 Q. Okay. And you signed your husband's name to the report?

5 A. Yes, I did.

6 Q. For the court reporter, if you can just give me a second  
7 to finish my question and then state your answer, it makes it  
8 a lot easier for her because she's trying to write down what  
9 everyone is saying here.

10 A. Okay.

11 Q. Thank you. Now, a majority of the report you submitted  
12 in this matter included your views on plaintiff's experts,  
13 correct?

14 A. Yes.

15 Q. And you relied on websites, including the website  
16 Wikipedia in your report; is that correct?

17 A. Yes.

18 Q. You didn't discuss the transport of elephants in your  
19 expert report, did you?

20 A. Not that I recall.

21 Q. Okay. And you inspected some of the Ringling Brothers'  
22 elephants for this case?

23 A. We did.

24 Q. All right. You didn't inspect their train cars, did  
25 you?

1 A. No.

2 Q. And you didn't see the elephants chained on the train  
3 cars then?

4 A. No.

5 Q. You only spent an hour inspecting the elephants at the  
6 CEC for this case, right?

7 A. Yes.

8 Q. And you didn't see the elephants at the Center for  
9 Elephant Conservation, that's the CEC, chained in the barn,  
10 did you?

11 A. No.

12 Q. And did you also go to inspection on the Blue Unit of the  
13 circus?

14 A. Yes.

15 Q. And you didn't see the elephants on the Blue Unit chained  
16 for the night, did you?

17 A. No.

18 Q. You're not licensed as a veterinarian, are you?

19 A. No.

20 Q. And do you have any formal medical training at all?

21 A. No.

22 Q. And you were retained by defendant as an expert in this  
23 case in the fall of 2007; is that correct?

24 A. Sounds right.

25 Q. Okay. I just want to be clear, Have Trunk Will Travel is

1 a member of the Asian elephant Species Survival Plan or SSP,  
2 right?

3 A. Yes.

4 Q. But you're not a member of the AZA, are you?

5 A. Yes. We are certified as a related facility.

6 Q. Okay. But you're not technically considered an AZA  
7 member, you're a non-AZA member facility of the SSP,  
8 correct?

9 A. We go through the same certification process that a zoo  
10 does, but we're not called an accredited zoo because we're  
11 not a zoo. The criteria is that we don't have visitors  
12 normally to our -- we're not open to the public.

13 Q. Okay.

14 A. So we're certified as a related facility.

15 Q. Okay. All right. And Mrs. Johnson, you have done  
16 lobbying work in support of elephant exhibitors, correct?

17 A. Yes.

18 Q. All right. And you've opposed elephant related  
19 legislation in the state of Nebraska; is that correct?

20 A. Yes.

21 Q. Federal legislation that was introduced in 2000?

22 A. Yes.

23 Q. And legislation in California pertaining to elephants, as  
24 well?

25 A. Yes.

1 Q. Now, in the circus world, you'd be considered a  
2 40-miler, wouldn't you? Do you know what that term means?

3 A. I'm sorry. I don't.

4 Q. You don't take elephants out on tour for a full circus  
5 season, do you?

6 A. We have; we don't normally.

7 Q. When was the last time you did that?

8 A. It has been several years ago, not currently. It has  
9 been -- do you want me to guess?

10 Q. What's your best estimate?

11 A. Like about maybe seven, six.

12 Q. All right. When was the last time that you personally  
13 showed elephants in a ring for a circus tour?

14 Q. When I started to get bigger -- when I started to gain  
15 weight, I quit. I quit doing it myself, and my husband would  
16 do it or other people would do it.

17 Q. Okay. So about how many years ago was that?

18 A. Maybe 10; something like that.

19 Q. Okay. You've never worked a Ringling Brothers circus,  
20 have you?

21 A. No.

22 Q. And you don't know how elephants are trained at Ringling  
23 Brothers, do you?

24 A. No.

25 Q. You've never been to the Elephant Sanctuary in Tennessee,

1 have you?

2 A. No.

3 Q. And you haven't reviewed any medical records or other  
4 documents from that facility, have you?

5 A. No.

6 Q. When was the last time you spoke with Carol Buckley?

7 A. Many years ago.

8 Q. More than five years?

9 A. More.

10 Q. Do you currently have African elephants at Have Trunk  
11 Will Travel?

12 A. No.

13 Q. When was last time you had African elephants there?

14 A. I am not sure about the year. It's been a good 10  
15 years.

16 Q. Okay. And you're not an expert in the study of wild  
17 animals, are you?

18 A. No.

19 Q. And you've never studied elephants -- Asian elephants or  
20 African elephants -- in the wild, have you?

21 A. No.

22 Q. You don't have any formal training as a scientist, do  
23 you?

24 A. No.

25 Q. And you haven't developed any particular elephant

1 training technique, have you?

2 A. I'm not sure what you mean.

3 Q. You haven't developed a certain method of training  
4 elephants, have you? You were talking about using free  
5 contact training or protected contact training, but you don't  
6 use any other method than those two methods, do you?

7 A. I'm not sure -- within the free contact, it changes. I  
8 mean, it changes a lot; it progresses as time goes on, and  
9 I've been part of that. I'm not sure if that's what you mean.

10 Q. Okay. But you didn't -- for example, Gail  
11 Lally(Phonetic) developed protected contact -- you didn't  
12 develop whole management system --

13 A. No. No. No, I did not.

14 Q. And you don't know Gail Lally personally, do you?

15 A. No.

16 Q. When was the last time you were at the Oakland Zoo?

17 A. A lot of years ago.

18 Q. Over a decade?

19 A. Yes.

20 MS. SANERIB: Your Honor, plaintiffs reiterate  
21 their Daubert objection to this expert. Our primary objection  
22 is any unreliable testimony we don't believe should come in.  
23 The Johnsons are being qualified based on their practical  
24 experience working with elephants, and for an expert to  
25 testify based on their practical experience, they have to tie



1 that experience to the conclusions that they reach. And we  
2 think there's a lot of instances in their report and their  
3 depositions where they didn't do that, so -- in as much as  
4 any of their testimony is unreliable, we don't think it  
5 should come in.

6 They don't have personal knowledge of Ringling  
7 Brothers and how the elephants are trained at Ringling  
8 Brothers, so they can talk about their own experience working  
9 with elephants, but not necessarily how it's done at Ringling  
10 Brothers. And we don't think that Mrs. Johnson is qualified  
11 to render an expert opinion regarding plaintiff's experts.  
12 The credibility, the opinions of plaintiff's experts, those  
13 determinations are left to Your Honor, not to defendant's  
14 experts witnesses.

15 And then my final point is just that Mrs. Johnson's  
16 testimony should be limited to the opinions and the basis for  
17 her opinions that she expressed in her expert report and at  
18 her deposition.

19 THE COURT: All right. Counsel?

20 MS. PARDO: I just have a few follow-up questions  
21 and would you like me to ask those and then respond to --

22 THE COURT: What about that last point? What about  
23 any opinion she renders should be limited?

24 MS. PARDO: I'm sorry. I didn't hear you.

25 THE COURT: What about that last point that counsel

1 just made about any opinions that she renders should be  
2 limited to those set forth in her deposition and in the expert  
3 reports?

4 MS. PARDO: Well, we have no intention of going  
5 beyond the scope of the expert report, Your Honor. I  
6 believe Ms. Sanerib was asking her questions about  
7 transportation. She transports elephant for a living when  
8 they go to their engagements and that is part of the husbandry  
9 care and management that forms her experience in those areas.  
10 We don't have an intention of offering her as an expert  
11 outside of the bounds of her report.

12 And Mrs. Johnson is an expert in elephant handling  
13 and care. She has had decades of experience in doing that and  
14 is here to provide context and expert opinion on how the free  
15 contact training session works and how performing elephants  
16 are managed with the very tools that are at issue in this  
17 case, as well as their first-hand experience from visiting the  
18 facilities at issue in this case and the elephants at issue.

19 THE COURT: All right. You had some additional  
20 questions to ask her?

21 MS. PARDO: Just some follow-up questions to Ms.  
22 Sanerib.

23 BY MS. PARDO:

24 Q. You have handled elephants in circus acts before?

25 A. Yes.

1 Q. And have you also handled them in behaviors that are  
2 typically shown in circus acts and performances?

3 A. Yes.

4 Q. You also have -- is it true that you also have handled  
5 elephants in various performance settings outside the circus  
6 context?

7 A. Yes.

8 Q. Are you familiar with tethering practices of Ringling  
9 Brothers' elephants?

10 A. Yes, in general.

11 Q. And Ms. Sanerib had mentioned a Wikipedia reference in  
12 your report; do you remember what particular word or  
13 reference point you had made to that?

14 A. Yes. It was for domestication.

15 Q. Were you referencing that resource for any of the  
16 opinions you rendered about the guides or tethers in this  
17 case?

18 A. No. It was domestication.

19 THE COURT: The report is a joint report?

20 MS. PARDO: Yes, it is, Your Honor.

21 THE COURT: Whose opinions -- how does the Court  
22 determine which opinion belongs to which expert?

23 MS. PARDO: Would you like me to ask some questions  
24 of the witness, Your Honor?

25 THE COURT: Sure.

1 BY MS. PARDO:

2 Q. Did you prepare an expert report in this case, Ms.  
3 Johnson?

4 A. Yes.

5 Q. And was this a joint report?

6 A. Yes.

7 Q. Who was that with?

8 A. My husband, Gary.

9 Q. How did this report come about?

10 A. How did we do it?

11 Q. Yes.

12 A. We talk about it. I write. We talk about it. I write.  
13 We read it. You know, I read it to him, and we agree on it.

14 Q. Who actually wrote the written product?

15 A. I do the writing.

16 Q. And did your husband, Gary Johnson, collaborate with you  
17 on those opinions?

18 A. Yes.

19 Q. Why did you write it?

20 A. I write everything. He works outside all the time. It  
21 is not his thing, he just doesn't write.

22 Q. Does he have difficulties writing and reading written?

23 A. He has not dyslexia, but something that makes it hard  
24 for him to read, some disability like that.

25 Q. So is that how you operate your business, that you will

1 read things aloud for him often?

2 A. Always, yes.

3 Q. And how was he able to review the materials that you  
4 based the expert report on?

5 A. I read it to him, and he can read. It's just -- it is  
6 really slow for him.

7 Q. The report, Your Honor -- the opinions that you  
8 mentioned in the report, are those the opinions of both you  
9 and your husband, Gary Johnson?

10 A. Yes.

11 Q. In addition, is Mr. Johnson the person who is the expert  
12 in training at Have Trunk Will Travel?

13 A. Yes, he is.

14 Q. Do you both have knowledge of any of the other husbandry  
15 or care topics that were in that report?

16 MS. SANERIB: Your Honor, I think Mrs. Johnson can  
17 testify for herself, but not necessarily for her husband.

18 THE COURT: Right. Let's limit it to her expertise.  
19 He is going to be called as a witness today, also, correct?

20 MS. PARDO: Yes, Your Honor. We have offered this  
21 witness as an expert in the husbandry, care, and management of  
22 captive elephants and believe that her testimony will stay  
23 within the bounds of what we've offered her as an expert for.

24 THE COURT: Any other questions you want to ask?

25 MS. SANERIB: No, Your Honor.

1 THE COURT: All right. As I have done with  
2 plaintiff's experts, I'll hear from the expert, and I'll give  
3 the testimony what weight, if any, it's entitled to when I  
4 address and resolve the merits, as well as the Daubert issues  
5 and challenges. Go ahead.

6 MS. PARDO: Thank you, Your Honor.

7 BY MS. PARDO:

8 Q. Ms. Johnson, you provided us in connection with your  
9 experience an overview of free contact. And you told us most  
10 of your elephants have been managed in that; is that right?

11 A. Yes.

12 Q. How long have you been managing elephants in the free  
13 contact system?

14 A. All my life.

15 Q. And how is an elephant managed in free contact?

16 A. You stand right next to the elephant and you share the  
17 same space, basically.

18 Q. What techniques are employed in the free contact system  
19 to manage the elephant?

20 A. We use the guide to direct the elephant.

21 Q. And is there voice commands that are used in that system  
22 of free contact management?

23 A. Yes. The guide is used to reinforce the verbal cue.

24 Q. Are there any benefits to an elephant being managed in a  
25 free contact system?

1 A. Yes. I think there are.

2 Q. What are those?

3 A. That you have -- you have direct contact with the  
4 elephant; you can touch every part of their body. They're  
5 trained so that they can lift their feet, open their mouths,  
6 you know, stand still for medical inspection. For instance,  
7 if you have to give them medication, they're not going to  
8 just walk away, they'll stand there and you can give them the  
9 full dose if it's oral. They'll stand still for a shot.

10 Q. Do you have the occasion to use sedation for procedures  
11 while they're in free contact?

12 A. We don't normally have to use sedation unless it would be  
13 for like an operation where they had to be -- you know, would  
14 have to be sedated; but, in general, no, we do not use  
15 sedation for any of the procedures.

16 Q. Are there any opportunities, enrichment opportunities,  
17 that free contact affords an elephant?

18 A. Yeah, there are. For instance, if we do a commercial  
19 shoot on the beach, the elephant gets to play on the beach and  
20 the water and all that. We -- when we shot in West Virginia,  
21 they had access to fields of grass. I mean, they're  
22 different -- every time we go somewhere, there's usually  
23 something different and unusual that they can do.

24 And also just at home walk, we can walk them next  
25 door to the neighbor's field when that grass grows up and let

1       them eat and play there.     So I think it helps a lot.

2       Q.    Can you comment on the interaction between the human  
3       caretaker and the elephant in a free contact system?

4       A.    Well, you have to develop a relationship first, and part  
5       of that relationship is that the human is the leader.  And you  
6       have to find a way to communicate with the elephant, and we do  
7       that verbally and tactfully with the guide.

8       Q.    Are you familiar with the type of management system used  
9       with elephants at Ringling Brothers?

10      A.    Yes.

11      Q.    What is that system?

12      A.    Free contact.

13      Q.    Are you aware of any circuses that do not use free  
14      contact?

15      A.    No.

16      Q.    When you were testifying about your credentials, you  
17      mentioned a publication called the "Elephant Husbandry  
18      Resource Guide"; do you remember that?

19      A.    Yes.

20      Q.    What is that publication?

21      A.    We got together to make that publication because there  
22      really wasn't any resource for the whole elephant community.  
23      American Zoo and Aquarium Association had their standards and  
24      their guidelines,  but if you weren't part of that then there  
25      really wasn't anything written that would apply to everyone.



1 And that's why we thought it was so important to get that  
2 together.

3 Q. And when was this published?

4 A. I don't remember the year.

5 Q. Was it in the 2002 to 2003 range?

6 A. That sounds right.

7 MS. PARDO: If you could call up Defendant's Exhibit  
8 2?

9 MS. SANERIB: Your Honor, we object to this  
10 exhibit. It's hearsay; we don't think it should come in. As  
11 the witness just testified, she has reviewed this document.  
12 Many of the defendant's employees and expert witnesses in this  
13 case participated in creating this document. It contains  
14 hearsay statements. It's an advocacy piece; it was created  
15 after this lawsuit was filed, but conveniently before the  
16 defense expert's submitted their expert reports, and we just  
17 don't think there's any exception under the hearsay rule so  
18 this document shouldn't come in.

19 THE COURT: Let counsel attempt to lay her foundation  
20 for it. You're attempting to introduce this at some point?

21 MS. PARDO: We would attempt to introduce it, Your  
22 Honor. We believe that this witness can lay a foundation.

23 THE COURT: Go ahead. You can try, go ahead.

24 MS. PARDO: All right.

25 BY MS. PARDO:

1 Q. Can you outline the organizations that contributed or had  
2 a role in --

3 THE COURT: What is this document, "Elephant  
4 Husbandry Resource Guide"; what is that?

5 THE WITNESS: It goes from -- it is every part of  
6 elephant management and care; how to handle elephants, how to  
7 transport them, how to take care of the babies, just  
8 absolutely anything we could think of.

9 THE COURT: Did you write this?

10 THE WITNESS: No. I was just a contributor and a  
11 reviewer. There were many people that wrote it.

12 THE COURT: So there were portions that you wrote?  
13 You can identify the portions that you wrote?

14 THE WITNESS: I didn't write like a specific  
15 chapter. I just, you know, made recommendations for certain  
16 parts of it.

17 THE COURT: So you can identify your recommendations?

18 THE WITNESS: Yes.

19 MS. PARDO: And, Your Honor, in addition, we can lay  
20 a foundation for this that we believe this can be moved into  
21 evidence, but in the alternative, this would be a learned  
22 treatise that we certainly could rely on and illustrate the  
23 testimony of this witness who also mentioned it in her expert  
24 report and relied on it.

25 THE COURT: What about that?

1 MS. SANERIB: We object, Your Honor. We don't  
2 think this is authoritative at all. Again, it was written by  
3 defendant's employees, their expert witnesses; it is hearsay  
4 statements. We don't think it should come in. If this  
5 expert has opinions she'd like to offer about how elephants  
6 are trained, she can do that, but this document -- there's  
7 absolutely no foundation for it. This expert didn't write it,  
8 and there's no person it sounds like --

9 THE COURT: All right. You can brief that issue,  
10 same five-page limit.

11 MS. PARDO: Your Honor, I think the foundation will  
12 be supplied here. Colleen Kinsley(Phonetic), one of the  
13 plaintiff's experts in this case, is a contributor, along with  
14 many, many other people that we can illustrate with a lift, a  
15 cross-section of the elephant community, so we believe the  
16 foundation will be --

17 THE COURT: Brief that, it's the same five-page  
18 limitation. You don't need any more than five pages, do you?

19 MS. PARDO: No, we don't. Thank you, Your Honor.

20 THE COURT: All right. Insofar as the  
21 recommendations are set forth herein and insofar as she has  
22 some expertise, you can go ahead and question her about that,  
23 and we'll leave admissibility of this document to another day,  
24 maybe tomorrow; probably not tomorrow. You can get your five  
25 pages in when? When can you get your five pages in?

1 MS. PARDO: If we can brief that by close of  
2 business Friday, Your Honor?

3 THE COURT: Sure, that's fine.

4 MS. PARDO: Thank you.

5 MS. SANERIB: I assume I get five pages, too, Your  
6 Honor?

7 THE COURT: Sure. Absolutely. Yeah. I don't want  
8 -- well, if you get Friday, then they have to work on the  
9 weekend which is fine with me, but let's do it Thursday and  
10 Friday. I think that's fair to both sides, unless you don't  
11 mind doing it on Saturday or Sunday?

12 MS. SANERIB: We'll be working Saturday and Sunday  
13 no matter what.

14 THE COURT: I'm just trying to be fair about it. I  
15 don't want them -- you know, have you always had to work on  
16 weekend to get your submissions in? I don't think I have done  
17 that, I don't think I've required anyone to -- I've not  
18 purposely done that.

19 MS. SANERIB: I think you have tried not to, yeah.

20 THE COURT: All right. Okay. Let's do it Thursday  
21 and Friday. Any problem with that?

22 MS. PARDO: We can get it done, Your Honor.

23 THE COURT: All right. Thursday at five o'clock and  
24 Friday at five o'clock.

25 MS. SANERIB: Thank you.

1 THE COURT: All right. Sure. Go ahead.

2 MS. PARDO: Okay. If we may pull up the title page  
3 of this document at PDF Page 5.

4 MS. SANERIB: I thought we were going to wait on  
5 questioning until the briefing was --

6 THE COURT: I'm going to let her question with  
7 respect to her recommendations in this, and the admissibility  
8 of this is reserved for another day. She indicated she has  
9 some recommendations; to the extent those recommendations are  
10 part and parcel of her expertise, you can ask her questions  
11 about that.

12 MS. PARDO: And, Your Honor, she is a contributor  
13 and editor of this book and had a role in that process. There  
14 are portions of the testimony that illustrate to elephant  
15 managers what the standard is in the community and I'd like to  
16 illustrate --

17 THE COURT: To the extent it's her expert opinion,  
18 that's fine. I'm going to limit it to her expert opinion  
19 right now.

20 MS. PARDO: Well, Your Honor, and our only concern,  
21 Your Honor, is that this witness is not a local witness.  
22 There are places in the testimony that even at the very  
23 minimum it would be an exception to the hearsay rule under the  
24 learned treatise if she could establish that it is  
25 authoritative.

1           THE COURT: -- sure it's a learned treatise, though  
2 -- I'm going to give you a chance to persuade me that it is,  
3 but I'm not so sure it is. If she's not here, if we need to,  
4 you know, get her on the telephone when she returns, we can  
5 do that, but you have called her as an expert. Go ahead and  
6 attempt to elicit her expert opinion, and I'm going to reserve  
7 for admissibility to another day if this document is a learned  
8 treatise though.

9           MS. PARDO: And, Your Honor -- okay. We'll proceed  
10 with these, but there are portions of this that would  
11 illustrate her testimony, and those are the portions that, as  
12 an expert, we think that she would be able to do even if  
13 document was not admitted for its truth.

14           THE COURT: To the extent she's got recommendations  
15 in here that are as a result of her expertise, then you can  
16 elicit them from her.

17           MS. PARDO: Okay.

18 BY MS. PARDO:

19 Q. Can you name some of the people that contributed to this  
20 publication in the elephant managers community?

21           MS. SANERIB: I'm not entirely certain, Your Honor.  
22 I object. And this -- I think we're supposed to be talking  
23 about the expert's opinions, not about who wrote this  
24 document or how it was created.

25           THE COURT: Yes. You called her as an expert. I'm

1 interested in her opinions, if she has any. So let's move  
2 on. I've said it twice, I'm going to reserve until another  
3 day the admissibility of this document. Now, to the extent  
4 that you need to ask her some questions that might form the  
5 basis for your offering this as some sort of learned treatise,  
6 you can do that, but I don't want her to comment about what  
7 other people have said in this report. She's called for one  
8 purpose; I'm interested in her opinions. So to the extent  
9 that some testimony goes to the foundation for admissibility  
10 of this document as some sort of learned treatise, that's  
11 fine. But I don't want her commenting about someone else's  
12 recommendation.

13 MS. PARDO: And I would like to lay that foundation,  
14 Your Honor, about why we believe this to be -- to meet the  
15 foundational requirements as a learned treatise.

16 BY MS. PARDO:

17 Q. We were starting to say what some of the topics are that  
18 are covered in this; can you give us a cross-section of what  
19 the topics are that are mentioned in this publication?

20 A. It starts out with the history of the elephants. There's  
21 a part about the people, the personnel, how they should be  
22 trained. There is a section about guides and tool use, tool  
23 use in general. There's a section about transportation.  
24 There's a section about baby elephants. There's a lot about  
25 the facilities.

1 Q. And do you believe this publication identifies commonly  
2 accepted practices within the elephant manager's community?

3 A. Yes.

4 Q. Have you consulted this guide in your own professional --  
5 in your own profession of handling and raising elephants?

6 A. Yes.

7 Q. Would you consider this to be a comprehensive text of  
8 elephant husbandry and management topics for captive  
9 elephants?

10 A. Yes.

11 Q. Is there any other publication that's been utilized by  
12 elephant managers that has type of information in it?

13 A. The American Zoo and Aquarium has guidelines that are  
14 similar.

15 Q. And is that intended for member institutions of the AZA?

16 A. Yes. It is for zoos, yes.

17 Q. Can you estimate how many elephants that are owned in  
18 this country are owned by institutions that belong to the AZA?

19 A. As I understand it, I think it is about half and half.

20 Q. So would that mean that there's about half of elephants  
21 that are managed in this country that don't follow the AZA  
22 guidelines?

23 A. Yes.

24 Q. For that population of elephants that are not managed by  
25 people who are members of the AZA, what other publication



1       besides this would you turn to as a manual of how to care and  
2       handle elephants?

3       A.     This is the only comprehensive one that I know of; the  
4       Elephant Managers Association has guidelines, but it is not  
5       --it doesn't explain everything like this does.

6       Q.     Do you believe that this "Elephant Husbandry Resource  
7       Guide" contains generally accepted husbandry practices?

8               MS. SANERIB:  Objection.  Leading.

9               THE COURT:  I'll allow it.

10              THE WITNESS:  Yes.

11       BY MS.  PARDO:

12       Q.     Do you regard this as authoritative in your field of  
13       elephant management?

14       A.     Yes.

15              THE COURT:  It was created when; what year?

16              THE WITNESS:  In 2000 -- 2004, something like that.  
17       We worked on it for a long time and I am not positive about  
18       the date.

19              THE COURT:  Before that, what was the state of the  
20       art treatise?

21              THE WITNESS:  There really wasn't one.

22              MS. PARDO:  Your Honor, would you permit us to go  
23       to passages in this document so that we can illustrate the  
24       witness' testimony?

25              THE COURT:  The ones that are attributed to her,

1       yeah, sure, you can.

2               MS. PARDO: Okay. Let's turn to PDF --

3               THE COURT: Ask her -- what was your contribution, if  
4 any, to this document here?

5               THE WITNESS: The guide was a major one.

6               THE COURT: You did a section on the guide?

7               THE WITNESS: I didn't do the whole section, that's  
8 the thing.

9               THE COURT: What did you do?

10              THE WITNESS: One of us would start writing and then  
11 everybody would --

12              THE COURT: Tell me what your contribution is to this  
13 document, just yours.

14              THE WITNESS: The guide was one of the ones that I  
15 wrote.

16              THE COURT: All right. And that was your  
17 contribution?

18              THE WITNESS: Yes.

19              THE COURT: Ask her about the guide, then.

20              MS. PARDO: Okay.

21 BY MS. PARDO:

22 Q. Let's back up, and then we'll return to the guide  
23 section. Does the free contact system of managing elephants  
24 utilize any tools?

25 A. Yes.

1 Q. What kind of tools?

2 A. The guide.

3 Q. What is a guide?

4 A. It's -- it has a handle and then on the end, there's a  
5 straight part that we call the heel and then a curved part  
6 that would be the hook, and it is used to guide the elephant  
7 with.

8 Q. What is the purpose of the curved part of the guide?

9 A. It would be to direct the elephant toward you.

10 Q. What is the purpose of the heel part of the guide?

11 A. To direct the elephant away from you.

12 Q. And what role if any do voice commands play in using the  
13 guide?

14 A. A very important role. You ultimately want to be able to  
15 use a vocal command and not use the guide.

16 Q. Does the guide actually make contact with an elephant's  
17 body?

18 A. Yes.

19 Q. Are there particular places where you're supposed to cue  
20 an elephant with a guide?

21 A. Yes, there are.

22 Q. And have you submitted for the chapter on the guide on  
23 this any sort of chart or anything that would illustrate your  
24 testimony?

25 THE COURT: -- chapter on the guide --

1 THE WITNESS: Yes. Yes. It is the chart with the  
2 cue points on the elephant.

3 BY MS. PARDO:

4 Q. And that was submitted by Have Trunk Will Travel?

5 A. Yes.

6 Q. If we can turn to Page -- PDF 33. And we have the chart,  
7 you can call out the top part of the chart just to enlarge it  
8 a little. Actually, we might have to go a little smaller.  
9 Are you familiar with the chart that is on your screen?

10 A. Yes.

11 Q. And what is it?

12 A. It's the cut points for the guide on the elephant.

13 Q. And the photo is credited to Ken Johnson, Have Trunk  
14 Will Travel?

15 A. Yes. It is just a typo. My brother's name is Ken Jones,  
16 and my name is Kari Johnson, and they sort of put us  
17 together. My brother was on the Elephant Managers Association  
18 committee, and we did this for them and for this guide.

19 Q. So you prepared this with your brother and submitted on  
20 behalf of Have Trunk Will Travel?

21 A. Yes, this chart.

22 Q. Okay. Can you explain what the chart purports to be?

23 A. It's the cue -- the spots that you would cue an elephant.

24 THE COURT: What do you mean by that, "the spots you  
25 would cue"?

1 THE WITNESS: It is where you would -- it's the  
2 places that are -- that you would touch an elephant with the  
3 guide as a cue.

4 THE COURT: Why those places?

5 THE WITNESS: There are the places that make the  
6 most sense to get it to do the thing that you want to, and --

7 THE COURT: What do you mean "make the most sense"?

8 THE WITNESS: Well, for instance, you would touch  
9 it in front of the trunk to make her stop; that Number 3 means  
10 steady, that means stop, be still. And on the top of the back  
11 if you wanted her to stretch down, you'd touch her on the top  
12 of the back and that means go down. So you're cueing,  
13 basically, in the direction that you want the activity to take  
14 place.

15 THE COURT: Does it have anything to do -- does the  
16 sense of touching have anything to do with the sensitivity of  
17 that part of the elephant's body?

18 THE WITNESS: Yes, sir. You don't want to touch the  
19 sensitive parts of the body. You never want to -- you want to  
20 go where the skin is thick. You don't want to go anywhere  
21 where you could hurt them like around the eyes or under an arm  
22 or, you know --

23 THE COURT: And where are the sensitive parts on  
24 here?

25 THE WITNESS: Anywhere where the skin is soft.

1 THE COURT: Where would that be?

2 THE WITNESS: It would be around the eyes, around  
3 the genitals, under the arm pits.

4 THE COURT: Ears?

5 THE WITNESS: Maybe the inside of the ears, yes.  
6 Yeah.

7 THE COURT: The chin or under the tusk area?

8 THE WITNESS: No, not necessarily the chin.

9 THE COURT: Go ahead.

10 BY MS. PARDO:

11 Q. Why are there two Number 9 -- Number 9's on this  
12 document?

13 A. I don't know. It's a typo.

14 Q. Is there -- what is the appropriate cue point for the  
15 command stretch?

16 A. The one on top, up on top between the shoulder blades.

17 Q. And I see that there's a "9" on the front of the trunk?

18 THE COURT: There are two "5's" also. Who prepared  
19 this chart?

20 THE WITNESS: Five --

21 THE COURT: There's a "5" by the ear --

22 THE WITNESS: Oh, no; five is get over.

23 THE COURT: Which five?

24 THE WITNESS: Both -- both fives mean get over; you  
25 could use either one.

1 THE COURT: Is there a reason why you have two "5's"  
2 there?

3 THE WITNESS: It would depend on where you were in  
4 relation to the elephant; if you were farther ahead or if you  
5 were behind or actually some elephants may respond better to  
6 different cue points, too. It could be individual people,  
7 too, it just --

8 THE COURT: All right.

9 THE WITNESS: Either one would work.

10 BY MS. PARDO:

11 Q. Is it ever the case that an elephant would follow a  
12 verbal or other command without using a guide?

13 A. Yes; yeah.

14 Q. Can you explain how that works?

15 A. That is your ultimate goal, to be able to tell the  
16 elephant what to do and not use the guide. You have the guide  
17 there in case, for instance, the music was loud, she didn't  
18 understand or she just got confused or, you know, for whatever  
19 reason she wouldn't do it. You would back it up with the  
20 physical cue with a guide.

21 Q. When an elephant is around a handler, how often should  
22 the handler be using a guide?

23 A. The goal is not to have to use it.

24 Q. And is there any case where a handler should not have the  
25 guide when being in the same space as the elephant?

1 A. No. Any time you're around the elephant, you should  
2 have the guide. That is the tool that they're trained with  
3 and conditioned to.

4 Q. Would it be responsible to handle an elephant in free  
5 contact without a guide?

6 A. No.

7 Q. Why is that the case?

8 A. You never know when you might need it. You might have to  
9 back up that verbal cue.

10 Q. If you can go to PDF Page 71 of this document, and this  
11 is -- there's a subheading called, "Guide," in the middle of  
12 the page, and if you can highlight so we can see that  
13 section, if you can call that out. Okay.

14 MS. SANERIB: Again, Your Honor, I think if the  
15 witness knows about this document and can testify about it,  
16 but to have her just read from it, I don't think --

17 THE COURT: Did you prepare this section on the  
18 guide?

19 THE WITNESS: Yes.

20 THE COURT: Go ahead.

21 BY MS. PARDO:

22 Q. If you can go to the next column where it continues on  
23 the top part of the page, and call that right here  
24 (indicating), and if you would, the paragraph that starts with  
25 "The guide"; could you read that for us?



1 A. The guide is a tool that is used to teach, guide, and  
2 direct the elephant into the proper position or to reinforce a  
3 command. This is accomplished by adding a physical cue to a  
4 verbal command. The ultimate goal of -- it probably says the  
5 elephant trainer -- is to use the verbal and not have to use  
6 the guide.

7 Q. Right. And then it continues onto the next page.

8 A. Say as little as possible.

9 Q. Do you agree with that statement?

10 A. Yes.

11 Q. Is it possible to manage elephants in that way?

12 A. I'm sorry. I didn't understand.

13 Q. Is it possible to manage elephants in the way you just  
14 described or read?

15 A. Yes. Yes.

16 Q. Is the guide designed to penetrate the skin?

17 A. It can; it shouldn't.

18 Q. And is the guide intended to cause pain to an elephant?

19 A. No.

20 Q. In your experience, do elephants fear the guide?

21 THE COURT: The guide can penetrate the skin  
22 though?

23 THE WITNESS: Yes.

24 THE COURT: And cause bleeding?

25 THE WITNESS: Yes, it can.

1 THE COURT: That is not uncommon?

2 THE WITNESS: It's -- it's -- it shouldn't be  
3 common, but it happens, yes.

4 THE COURT: All right.

5 BY MS. PARDO:

6 Q. Okay. When that does happen, do you know why that can  
7 happen? Can you give us a scenario where that happens?

8 A. If the hook --

9 Q. -- for the guide to penetrate the skin?

10 A. Yeah. It would mostly be -- for instance, if you told  
11 your elephant to come here, and you touched it there, but if  
12 she were actually trying to go the other way, then, yes, she  
13 might pull herself into it or you could --

14 THE COURT: Someone could push it into the elephant,  
15 though.

16 THE WITNESS: Yes. Of course.

17 THE COURT: It is not just the elephant pulling  
18 herself into the prod -- into the hook.

19 THE WITNESS: No. No. No. It could go either way,  
20 or it could just be the person who goes to grab her wrong,  
21 just not being careful enough.

22 THE COURT: All right.

23 THE WITNESS: Yeah. There are instances where that  
24 can happen.

25 BY MS. PARDO:

1 Q. Now, when an instance like that would happen, how would  
2 you treat it?

3 A. If it were bleeding, you would wash it off and put some  
4 sort of medication on it.

5 Q. Is this something that you would necessarily record in a  
6 medical record?

7 A. No.

8 THE COURT: Why not?

9 THE WITNESS: It's just -- it's like a scratch. It  
10 is not like a big sore or anything. I mean, it shouldn't be.

11 THE COURT: But it is a puncture though, isn't it?

12 THE WITNESS: That's why you put some ointment on  
13 it. You wash it off and put something on it. We use  
14 Neosporin or --

15 THE COURT: Would it not fall in the category as a  
16 wound though?

17 THE WITNESS: I would think of a wound as something  
18 serious, something bigger, I don't know. In my experience,  
19 you don't -- it doesn't -- the end of the hook is not that  
20 big. It is not going to make a huge puncture.

21 THE COURT: You mean the point? The point?

22 THE WITNESS: Yeah, the point of it. Uh-huh.

23 THE COURT: It is like one of these fireplace pokers  
24 or something, isn't it?

25 THE WITNESS: Well, not really. It is different. I

1 mean, a fireplace poker is a big -- it is different.

2 THE COURT: Don't you have your exhibit? Where is  
3 your 325?

4 MS. PARDO: Yes, we do; 325.

5 THE COURT: Is that what you commonly refer to as  
6 guide or not?

7 THE WITNESS: Yes, sir. Yes.

8 MS. PARDO: We can bring it closer, Your Honor.

9 THE WITNESS: Yeah. It's -- it is different than a  
10 fireplace poker. It is not going to penetrate too deep.

11 THE COURT: Well, there is another hook, though. You  
12 put your hand on the hook, there is a spear part to this, a  
13 pointed part to it.

14 THE WITNESS: Yes.

15 THE COURT: Yeah. All right. Why does that -- if  
16 that has the potential of harming -- is that -- was that an  
17 appropriate word, "harm" the elephant?

18 THE WITNESS: I don't -- it doesn't sound right to  
19 me.

20 THE COURT: What's wrong with "harm"?

21 THE WITNESS: You're not trying to harm the  
22 elephant.

23 THE COURT: I'm talking about that point, though.  
24 That point -- does it have the potential of harming an  
25 elephant, that point?

1 THE WITNESS: I am sure it would have the potential,  
2 but that's not what it is for. It's --

3 THE COURT: Why is it there, then?

4 THE WITNESS: Yes, sir. It is there for a reason.

5 THE COURT: That's what I'm getting at. What's the  
6 reason?

7 THE WITNESS: To direct the elephant away from you.  
8 If you use the cue point on this side of the elephant's head,  
9 you'd touch her hair. You'd touch her hair with it.

10 THE COURT: Why do you need that point, though? Why  
11 couldn't you just shave that point off and just have it have a  
12 rubber end or something?

13 THE WITNESS: Well, you want it -- it's to feel it.  
14 They need to feel it. Their skin is really thick. I mean --

15 THE COURT: So you have to have something to get the  
16 elephant's attention?

17 THE WITNESS: Yes.

18 THE COURT: All right. Okay.

19 BY MS. PARDO:

20 Q. Now, is it necessary to sharpen guides?

21 A. No. You shouldn't need to sharpen them.

22 Q. Is it necessary to use force when using the guide?

23 A. No. You shouldn't have to use force.

24 Q. Have you ever seen the guide being used like a baseball  
25 bat?

1 A. No, I haven't.

2 THE COURT: In all of your life, you said --

3 THE WITNESS: Never. In all my whole life, I have  
4 not. No, sir.

5 THE COURT: Really. You've never seen elephant an  
6 elephant stricken with a --

7 THE WITNESS: It wouldn't be correct.

8 THE COURT: I understand that. But I'm saying you've  
9 never seen an elephant stricken with one of those hooks?

10 THE WITNESS: No.

11 BY MS. PARDO:

12 Q. How were you taught to use the guide?

13 A. We were taught to use it -- well, to guide the elephant.  
14 There -- we were taught that this is the end to direct away,  
15 this is the end to bring it toward. We spent a lot of time  
16 learning to use it correctly, and where not to use it.

17 Q. Are you familiar with term "hook boil"?

18 A. Yes.

19 Q. What is that?

20 A. I think it's -- if the hook part should penetrate the  
21 skin, I guess if it were dirty or whatever, and it would get  
22 infected and then it would like swell up and have pus in it.

23 Q. Are those a common occurrence in your experience?

24 A. No, not --

25 Q. Is it appropriate to show affection to elephants that you

1 care for?

2 A. Sure.

3 Q. Would this allow an elephant to take advantage of you?

4 A. No.

5 Q. Is it possible to manage such a large animal like an  
6 elephant by applying pressure or touching the guide to the  
7 elephant?

8 A. Yes.

9 Q. Do you need to use the guide in a manner to inflict pain  
10 in order to get the elephant to respond?

11 MS. SANERIB: Objection. Leading.

12 THE COURT: It was leading. I'll strike that. It  
13 was leading.

14 BY MS. PARDO:

15 Q. Is pain a component of a training system that you utilize  
16 with elephants?

17 A. No.

18 Q. What is elephant management based upon, in your opinion?

19 A. In my -- to be able to manage an elephant, first you  
20 develop the relationship with them. You do have to establish  
21 yourself as leader; you are a human being, but you can be  
22 their leader. To do that, you have got to have a plan. You  
23 have got to be consistent, repetitive, do the same things over  
24 and over. You use the same cue; they need to understand what  
25 you're trying to get them to do. So you need to find a way to

1 make them understand and you do that by using the same cue  
2 over and over, and then you expect the same results every  
3 time.

4 Q. If the testimony in this case were to reflect a method of  
5 using the guide that consists of particularly injuring a spot  
6 on the elephant so that it becomes sore, such that you can use  
7 the guide to cue in that sore spot, would that be an accurate  
8 reflection of what you have seen when managing elephants in  
9 the elephant community over the years?

10 A. No. The goal is not to hurt the elephant.

11 Q. Have you ever seen that employed as part of elephant  
12 management techniques in using the guide?

13 A. No.

14 Q. If testimony in this case were to describe the use of the  
15 handle of the guide to beat or hit bone on an elephant, would  
16 that be something consistent with what you have seen in the  
17 management and training community of elephant managers?

18 A. No.

19 Q. Have you ever seen anyone training or managing an  
20 elephant with a guide using that sort of technique?

21 A. No.

22 Q. Does it reflect any current practices that you have seen  
23 with respect to the use of the guide?

24 A. No.

25 Q. What happens if an elephant does not perform a behavior



1 on command?

2 A. You have to back up a step. I mean, for instance, if you  
3 use the verbal cue, and it doesn't do it, then you use the  
4 physical cue. And if it goes beyond that, if that doesn't  
5 work, you've got to back up yet another step. It would depend  
6 on what the action was, you know, to what that would be; but  
7 the whole problem would be -- it could be something going on  
8 -- something going by that the elephant was afraid of, so  
9 you'd have to overcome that first. You have got to figure out  
10 why, number one; and then, number two, you've got to figure  
11 out a way to communicate what you want, and remind the  
12 elephant that they do need to respond reliably every time.

13 Q. Have you ever seen a scratch or abrasion on an elephant's  
14 skin before?

15 A. Yes.

16 Q. What were the causes of these type of marks on an  
17 elephant?

18 A. Well, they can be caused from a lot of different things.  
19 We have rocks in our yard for the elephants to scratch on;  
20 you know, they'll get scratched up on that. If you turn them  
21 loose in a field to play and there are trees, we have had them  
22 come back with scratches and abrasions on them.

23 Sometimes they themselves -- the females have the small  
24 tusks and sometimes they'll do that to one of the other  
25 elephants; and the babies do it a lot to the big ones. When

1 the babies tusks are first growing in, they're real jagged and  
2 they'll do it to the big ones.

3 Q. Have you ever seen marks on elephant as a result of  
4 elephant play?

5 A. Yes.

6 Q. Have you ever seen marks on elephants as a result of an  
7 elephant fight?

8 A. Yes.

9 Q. If you were to observe an elephant with a mark on its  
10 body of any kind without seeing what caused that mark, could  
11 you tell just by looking what -- whether it was made by a  
12 guide?

13 A. Probably not. It might depend on the placement, but  
14 maybe not.

15 Q. Are you familiar with a product called wonder dust?

16 A. Yes.

17 Q. What is that?

18 A. It's anti -- or a coagulant, so if something were  
19 bleeding, you could put that on to stop bleeding.

20 Q. Is this used as a concealer of any sort?

21 A. A con -- what do you mean?

22 Q. A product that would conceal a mark or something that you  
23 put it on?

24 A. No. It is to treat it.

25 Q. Would it have any utility to cover up a mark on elephant?

1 A. No. It's light -- it is a light gray, it is real light  
2 gray powder so it would draw attention to it more than it  
3 would cover it up.

4 Q. What does it look like when applied to the skin of an  
5 elephant?

6 A. It is lighter than their skin.

7 Q. So you can see the wonderdust when it is on the skin; is  
8 that your testimony?

9 A. Yeah.

10 Q. Is it waterproof?

11 A. No.

12 Q. Would it withstand a bath and scrubbing?

13 A. No.

14 Q. And do you use the guide during the engagements that you  
15 take the elephants to?

16 A. Yes.

17 Q. Do you -- are these engagements in the view of the  
18 public?

19 A. Yes.

20 Q. Have you had occasion to see elephants play before?

21 A. Yes.

22 Q. Can you describe for the court or characterize how they  
23 play?

24 A. They squeal and run, and they run into each other and  
25 kick each other; and we have one that will -- we have a

1       bowling ball that they play with and she throws that and lets  
2       it drop on herself. They play -- we have sticks in the yard  
3       for them to play with; they will hit a -- take a small stick  
4       and use it to bang on a big stick. They play rough when  
5       they're excited and they're running around.

6       Q.    Have any of your elephants ever sustained an injury  
7       during play?

8       A.    Yes.

9       Q.    Can you give us an example of that?

10      A.    The one that comes to mind is one of the adult elephants  
11      was running and she kicked a rock. It was a rock about the  
12      size of a bowling ball, and she split her back toe nail, her  
13      back middle toe nail.

14      Q.    She had a toe nail injury from --

15      A.    Yeah.

16      Q.    How was that treated?

17      A.    Well, clean it, medicate it, and then try to keep her off  
18      of it for awhile until it started to heal. And then we would  
19      use some trimming techniques to -- you know, to keep it from  
20      hitting the ground too much.

21      Q.    Are there any other tools that you use to manage  
22      elephants in free contact?

23      A.    Ropes would be one. Ropes or some sort of tether.

24      Q.    Have you ever used tethers before with your elephants?

25      A.    Yes.

1 Q. What sort of material do you use to tether elephants?

2 A. In general, it would be chain. We find that to be -- it  
3 makes the most sense for most of the things that we tie them  
4 up for.

5 Q. Why does a chain make the most sense in managing your  
6 elephants?

7 A. It doesn't harbor a bacteria load. You can clean it.  
8 Anything that has fabric associated with it would have to be  
9 cleaned and dried. There -- if you put it on their hind leg,  
10 it has links, and you can make it snug; but because it has the  
11 links it will usually stay in the right place. If you had  
12 fabric over that, it would maybe tend to slip down.

13 Q. Would tethers and -- what do tethers, if anything, enable  
14 you to do with an elephant in free contact management?

15 A. Well, you can tie them so they will stay in a place where  
16 you need them to stay. For instance, if we are traveling and  
17 we go somewhere that -- of course, we wouldn't have our barn  
18 and our yards and our pens, so you can tie them there and you  
19 can be sure that they're going to stay there.

20 THE COURT: Let me ask you this. Did I understand  
21 you correctly to say that it is preferable to have the chain  
22 not covered by some material?

23 THE WITNESS: Yes.

24 THE COURT: And the reason for that is that the  
25 material --

1 THE WITNESS: It gets wet, especially if you are  
2 going to put it on their hind leg. They'll urinate and  
3 they'll have that on it, and then you have got to wash  
4 everything every morning, so you'd let them dry. And another  
5 reason is we have sand and decomposed granite and different  
6 dirt that they're on and that gets in there and it can be  
7 chaffing. Even hay can get in between there; but with the  
8 chain, it doesn't. It can just go right through.

9 THE COURT: All right. And then the chain though  
10 under those circumstance does not irritate the skin?

11 THE WITNESS: No, sir. Not at all. And there is a  
12 certain way that you put them on to make sure that doesn't  
13 happen. An elephant's front feet -- front foot would spread  
14 as it goes down so you would never put something tight around  
15 their ankle. You put it loose enough so that there is -- it  
16 is loose on there, when it is on their front. Their back legs  
17 are built differently; it is not straight up and down, but it  
18 almost is. So there is a smaller part of the that leg and you  
19 -- so when you put it on, you hook it and you want it to stay  
20 in that part, in that smallest part.

21 THE COURT: All right.

22 BY MS. PARDO:

23 Q. And you started to explain how the elephant is tethered;  
24 was there any more detail that you would need to explain  
25 exactly how an elephant is tethered?

1 A. Yes. If they are tethered for the night or in one of our  
2 trucks, you would do one back leg and then the opposite front  
3 leg, so that the elephant could -- she could lie down, get up,  
4 visit with her neighbors, but still stay in the place where  
5 she is supposed to be.

6 Q. The feet that are tethered, does that ever alternate?

7 A. They alternate at least every day, yeah. Every night  
8 they come in, you put it on the opposite one that it was the  
9 night before.

10 Q. And did I hear you testify that an elephant can lie down  
11 when tethered?

12 A. Yes.

13 Q. Have you made an educational video before?

14 A. Yes.

15 Q. Does it include the use of tethers?

16 A. It does.

17 Q. Would it assist you in it illustrating your testimony for  
18 the Court today?

19 A. Sure.

20 MS. SANERIB: Your Honor, I want to object. We  
21 don't think that this is an educational video. It is hearsay.  
22 It is elephants that are not defendant's elephants.  
23 Plaintiff's experts tried to use demonstratives like this in  
24 their testimony; it wasn't allowed. The gentleman who is  
25 providing testimony throughout this film isn't here so I don't

1 think it should come in for that reason.

2 THE COURT: Whose video is this?

3 MS. PARDO: This was created by Ms. Johnson, Your  
4 Honor. We'd be using it as a demonstrative to show Your  
5 Honor a picture of what she's describing on the stand about  
6 tethering.

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

8 MS. PARDO: Can we go to DX-171, please? And it's  
9 going to be a minute 411 through 547, please.

10 (Whereupon, video was played at this time.)

11 BY MS. PARDO:

12 Q. Can you describe the method of tethers in the picture  
13 here?

14 A. This is just what I was talking about; they're on the  
15 opposite front and hind legs. The one on the back is high on  
16 the back leg and the one on the front is loose, so that it  
17 doesn't tighten up. It can never tighten up on her.

18 MS. PARDO: Okay. You may continue, please, playing  
19 the video at this time. (Video played.)

20 BY MS. PARDO:

21 Q. Can you describe for us the second portion of the clip?

22 A. That was -- that's one of the reasons we think it is so  
23 important to train the elephant so that the vet can take care  
24 of them like that. And when the elephants are tied, they're  
25 tied in our barn at night for several reasons. One is so that



1 the more aggressive ones wouldn't go pick on the timid ones.  
2 We want them to be comfortable at night and we want them to  
3 feel safe to sleep. So we put the ones that are buddies  
4 closer to each other. It also helps us -- you can put the  
5 ones that gain weight too easy on one end and like a nursing  
6 mom that needs more food on this end, for instance, so you can  
7 sort of control who gets how much food.

8 THE COURT: We're getting far afield from the issues  
9 in this case, counsel. What does this have to do with the  
10 allegations in this case?

11 MS. PARDO: Well, Your Honor --

12 THE COURT: This may corroborate her testimony about  
13 how elephants can be properly tethered but that doesn't sound  
14 like the issues in this case.

15 MS. PARDO: Well, Your Honor, the tethering practice  
16 is acceptable within the elephant managers community. And Ms.  
17 Johnson's has had extensive experience and will explain --

18 THE COURT: She is not being offered as an expert  
19 on tethering though.

20 MS. PARDO: Yes; guides and tetherings within the  
21 husbandry and care that these elephants provide. She has  
22 extensive knowledge in that and can also speak to whether  
23 these practices injure or if they are necessary.

24 THE COURT: She can focus her attention on her  
25 expertise, if any, on tethering insofar as the allegations in

1 this case are concerned. So that's the extent. She can voice  
2 her opinion about how Ringling Brothers tethers, but her  
3 opinion about how elephants should properly be tethered I  
4 think is probably irrelevant.

5 MS. PARDO: Except for, Your Honor, to tell you what  
6 the standard is and that Ringling Brothers indeed, in fact,  
7 is doing what's accepted.

8 THE COURT: I realize that but let's get to the  
9 point. We're getting far afield here and it has minimal  
10 relevance, if any.

11 BY MS. PARDO:

12 Q. Okay. You mentioned that your elephants are tethered at  
13 night; is that an acceptable practice within the elephant  
14 managers community?

15 A. Yes.

16 Q. How are the elephants feces and urine cleaned while they  
17 are tethered?

18 A. Well, it is all in the back because they're not moving  
19 around so they can't soil what's in front of them. It is  
20 picked up with a shovel and a broom, or in some cases, they  
21 use a manure track.

22 Q. In your experience, does the practice of tethering an  
23 elephant result in tethering injuries?

24 A. No.

25 Q. Is it common to see that in the elephant community?

1 A. No.

2 Q. As part of your husbandry expertise, have you provided  
3 food and water to elephants?

4 A. Yes.

5 Q. Is it necessary for elephants to have free access to  
6 water throughout the day?

7 A. No.

8 Q. Why is that not necessary?

9 A. We think it is important to watch every time they drink.  
10 That's feeding and watering are two of the first indicators of  
11 ill health, and it is very important to us to know how much  
12 each one drinks each day.

13 Q. Are you aware of whether the AZA has any restrictions on  
14 the amount -- or guidelines about the amount of tethering that  
15 should be done to member institution elephants?

16 A. They do. I can't quote it exactly, but it is -- I think  
17 it is not for the majority of a 24-hour period.

18 Q. So not longer than 12 hours would be the AZA?

19 A. Yes.

20 Q. Are you aware of any -- strike that for now -- is Have  
21 Trunk Will Travel regulated by federal, state or local  
22 agencies?

23 A. Yes, all of those.

24 Q. Do you have any experience in inspections by any of those  
25 entities?

1 A. Yes.

2 Q. Are you inspected by the USDA?

3 A. Yes, we are.

4 Q. Are those inspections announced ahead of time?

5 A. No.

6 Q. Have you ever had USDA inspection that's announced ahead  
7 of time?

8 A. No. Not if it was an inspection.

9 Q. Are you regulated at the state level in California?

10 A. Yes. Yes, we are.

11 Q. Are there any other organizations that monitor the  
12 practices and management that you do of your elephants when  
13 you are on set?

14 A. On a film set, we have the American Humane Association.

15 Q. Do you know whether that organization is affiliated with  
16 the Humane Society of the United States?

17 A. They are not.

18 Q. Has the AHA ever been present while you were using a  
19 guide with the elephants?

20 A. Yes. They are present any time we do a movie or a  
21 commercial. They're on film sets.

22 Q. Do they certify movies or come up with any conclusions  
23 about your care of the elephant during the film -- the  
24 filming?

25 A. Yes. They are the ones that can give the "no animal was

1 harmed in this film" credit.

2 Q. Since you have been working with elephants, has the  
3 husbandry practices changed at all?

4 A. They've change a lot, yeah.

5 Q. Can you give us some examples?

6 A. When I was -- I was younger, 14, 15, all that, we would  
7 use tethers on the elephants almost all the time when we were  
8 going to, for instance, lay them down for the first time,  
9 things like that. And now with our last baby that we've  
10 trained, we didn't do that. We didn't use the tethers at all.  
11 As we've -- I don't know, as we learn more, we find different  
12 ways to do things.

13 Q. Did you have an opportunity to inspect Ringling Brothers  
14 elephants in connection with serving as an expert witness?

15 A. Yes.

16 Q. When was that?

17 A. I think it was in May of ' 08.

18 Q. And where did you visit?

19 A. We went to the CEC in Florida. And then we also went to  
20 Hartford, Connecticut.

21 Q. Was that the Blue Unit?

22 A. Yes.

23 Q. Regarding the CEC inspection, how many elephants did you  
24 inspect there?

25 A. Five.

1 Q. Were you aware of their ages?

2 A. Yes.

3 Q. Do you have an estimate of the age range of the elephants  
4 you inspected?

5 A. Fifties and sixties, I'm pretty sure.

6 Q. What did you do during this inspection?

7 A. We looked at the elephants. We walked through the --  
8 walked over to where they were and looked at them.

9 Q. Were you given free reign of the CEC during your  
10 inspection?

11 A. No.

12 Q. Did you have an escort during that inspection?

13 A. Yes.

14 Q. Who were they?

15 A. It was Gary Jacobson, Jim Williams, and Trudy Williams.

16 Q. Were you allowed to touch the elephants during that  
17 inspection?

18 A. No.

19 Q. How close were you allowed to get to the elephants?

20 A. In feet? We were just standing a respectable distance  
21 away. Each -- we walked to different parts where different  
22 elephants were, so I'd say from here to the -- to that -- no,  
23 here to the end of that, what is that, 10 feet? I don't know.  
24 Like 10 feet.

25 Q. Other than the elephants you inspected, did you see other

1 elephants at the CEC?

2 A. There were elephants all over the place.

3 Q. Did you perform a visual inspection, a close-up  
4 inspection of the elephants not at issue in this case?

5 A. No.

6 Q. How long were you there for that inspection?

7 A. About an hour.

8 Q. Did you have any questions while you were at the CEC?

9 A. Yes.

10 Q. What type of questions did you ask?

11 A. What's this one's name? How old is she? Just things  
12 like that.

13 Q. What types of things were you looking for during the  
14 inspection?

15 A. We were looking for -- we were interested in their  
16 weight, you know, were they a good weight. Did they appear  
17 to function normally? Were they walking normally? Did they  
18 act like elephants should?

19 Q. Did you come to any conclusions about the company of the  
20 elephants you inspected?

21 A. We thought they were in really good condition for as old  
22 they were.

23 Q. Can you give any other specifics?

24 A. None of them acted senile or -- they were all -- they  
25 were bright eyed and they responded to the handlers. We

1 thought they were in good condition.

2 Q. Did you detail any specific observations about Lutzi in  
3 your expert report?

4 A. Lutzi had a stiff leg.

5 Q. And did you have any particular observations of the  
6 elephant, Mysore?

7 A. Mysore had -- she had like a knot on her -- one of her  
8 feet, one of her -- near her ankle.

9 Q. Was there anything else remarkable about the other CEC  
10 elephants that you inspected?

11 A. Not -- no.

12 Q. Did you see any injuries that you believed might have  
13 been consistent with the use of a guide?

14 A. No.

15 Q. Were you specifically looking for those?

16 A. Yes.

17 Q. Did the elephants have hook marks on them when you  
18 inspected them?

19 A. No, they didn't.

20 Q. Did you see any wonderdust on the Ringling elephants that  
21 you inspected at the CEC?

22 A. No.

23 Q. Did you see any other marks on the elephants bodies that  
24 indicated any kind of poor welfare to you?

25 A. No.



1 Q. Did you see any injuries attributed to chaining?

2 A. No.

3 Q. Were you able to inspect the feet of the elephants?

4 A. Yes.

5 Q. How did that work?

6 A. One of the -- Jim Williams lifted up, you know, would  
7 lift their feet. He lifted all four feet on each elephant and  
8 we looked at them.

9 Q. What did you observe about the feet of the elephants at  
10 the CEC?

11 A. We saw that their toe nails were getting care. That  
12 they'd been trimmed recently. There were some -- some of them  
13 had cracks, I think, but there was nothing -- nothing that  
14 really stood out.

15 Q. Have your elephants at Have Trunk Will Travel had toe  
16 nail cracks?

17 A. Yes.

18 Q. How often?

19 A. It is hard to say how often, but, you know, we have all  
20 those elephants there and usually at least somebody has crack.

21 Q. Have you ever seen on nail cracks on a baby elephant?

22 A. Yeah. Two of baby elephants were born with nail cracks.  
23 I never had experience with that, I didn't know it was  
24 possible, but they were.

25 Q. Do you regard toe nail cracks as serious health concerns

1 for your elephants?

2 A. No.

3 Q. And you stated in your report that it was obvious to you  
4 that they received regular foot care; what did you mean by  
5 that?

6 A. Their cuticles weren't overgrown, their nails weren't  
7 overgrown. Their pads were fine. It was just -- there was  
8 nothing -- they were in good condition.

9 Q. At any point, did you examine medical records of the six  
10 elephants at issue, plus Zina?

11 A. Yes.

12 Q. Was this during the inspection itself?

13 A. No.

14 Q. It was at a different time?

15 A. Yeah. They were mailed to us, I think.

16 Q. Where were the elephants located when you inspected them?

17 A. They were in -- they were in pens toward the front of the  
18 property.

19 Q. And what sort of surface were they standing on in those  
20 pens?

21 A. It was a mixture of sand and grass.

22 Q. Did you see the barns that the elephants were kept in at  
23 the CEC?

24 A. We walked through the barn.

25 Q. Did the barn have any kind of waste removal system?

1 A. It has a manure track.

2 Q. Excuse me, what kind of track?

3 A. A track for the manure. So you can just -- you don't have  
4 to pick it up with a shovel and put it in a wheelbarrow.  
5 You can just push it off onto the track and it takes it out.

6 Q. Is there any sort of drainage system in place at the CEC?

7 A. Yeah. The floors are sloped so that the urine would run  
8 to the back.

9 Q. Did you see the elephants at issue tethered in the bar?

10 A. No, we did not.

11 Q. Did you request that the elephants be tethered for the  
12 inspection?

13 A. No.

14 Q. Have you had any other opportunities during your career  
15 to see Ringling elephants tethered?

16 A. When we visited, we've seen them in the barn before.

17 Q. Do they tether the elephants consistent with the practice  
18 that you earlier testified?

19 A. Yes.

20 Q. Did you notice anything about the demeanor of the  
21 elephants while at the CEC?

22 A. Yeah. They were all -- they were all bright eyed and  
23 they acted -- they acted like normal elephants.

24 Q. Did the handlers at the CEC who were present for your  
25 inspection have the guide while they were with the elephants?

1 A. Yes.

2 Q. How did the elephants react to their handlers?

3 A. They minded, they did what they were supposed to, they  
4 hung around.

5 Q. Were they acting fearful of the guide?

6 A. No.

7 Q. Was there any indication from the inspection that the CEC  
8 elephants were being mistreated in your opinion?

9 A. No.

10 Q. Or mishandled in your opinion?

11 A. No.

12 Q. Did you find any evidence of injuries consistent with the  
13 use of guide in any of the four CEC elephants at issue, plus  
14 Zina?

15 A. No.

16 Q. Did you find any evidence of injuries consistent with the  
17 use of tethers on any of the four CEC elephants at issue,  
18 plus Zina?

19 A. No.

20 Q. You mentioned that you also visited the Blue Unit in  
21 Hartford; is that right?

22 A Yes.

23 Q. Which elephants did you inspect at Hartford?

24 A. Karen and Nicole.

25 Q. Where were they located during your inspection?

1 A. In the building -- I don't know the name of the building.  
2 They were in the basement of the building.

3 Q. How were they being maintained when you saw them?

4 A. Well, they were just in the pen.

5 Q. Were the procedures for this inspection like those that  
6 you testified to about the CEC inspection that you did?

7 A. Yes.

8 Q. How much time did you spend at the Blue Unit?

9 A. About an hour, I think.

10 Q. What did you do during that inspection?

11 A. Just looked at the elephants the same way.

12 Q. What type of things were you looking for?

13 A. Same sorts of things.

14 Q. Did you make any observations about the elephant, Nicole?

15 A. Nicole had a crack in her toe that was healing.

16 Q. Did you make any observations about the demeanor of  
17 Nicole during that inspection?

18 A. Yes. She was -- we were standing there with her handler  
19 and she came over to try to play with him, I mean, try to  
20 get him to pet her and, you know, she was playing with his  
21 shoe and making noise and putting her head down.

22 Q. Did she show any fear toward that handler?

23 A. No.

24 Q. How did the handlers interact with the elephants during  
25 your inspection of the Blue Unit?

1 A. They looked like they had a very good relationship.

2 Q. What physical observations did you make about the  
3 conditions of Karen and Nicole?

4 A. They were bright-eyed, healthy; they both looked to be a  
5 good weight. We thought they looked to be in good condition.

6 Q. Did you see any injuries on Karen or Nicole that you  
7 believe were consistent with the use of a guide?

8 A. No.

9 Q. Were you specifically looking for those?

10 A. Yes.

11 Q. Did these elephants have hook marks on their bodies?

12 A. No.

13 Q. Did you see any other marks on their bodies that  
14 indicated any kind of poor welfare to you?

15 A. No.

16 Q. Did you see any injuries that you believe are consistent  
17 with tethering on Nicole and Karen?

18 A. No.

19 Q. And did you have a chance to inspect their feet?

20 A. Yes.

21 Q. What, if anything, did you observe about Karen or  
22 Nicole's feet?

23 A. We saw the crack on Nicole.

24 Q. And by crack, what do you mean?

25 A. It was -- it was cracked opened more -- it looked more

1 than just a little normal crack.

2 Q. Did you make any assessment about the overall condition  
3 of their feet?

4 A. That in general you could tell they were getting good  
5 foot care.

6 Q. How can you tell that?

7 A. Their toe nails weren't long, their cuticles weren't  
8 long, their pads were trimmed.

9 Q. Is there any indication from the inspection of Karen and  
10 Nicole that you believed they were being mistreated?

11 A. No.

12 Q. Now, I believe Ms. Sanerib asked you about legislative  
13 activities that you have been involved in. Can you describe  
14 some of the work that you done? In legislative body?

15 A. Yes. When there's -- well, any sort of elephant  
16 legislation, I go to wherever that might be, whatever state,  
17 or whatever town or city in California, wherever it might be,  
18 and advocate basically to be able to use the guides and  
19 tethers, and be able to manage the elephants in free contact  
20 like we do.

21 Q. And have you ever been in contact with anyone from Feld  
22 Entertainment about legislative issues?

23 A. Yes.

24 Q. Who was that?

25 A. Several of the people at Feld; the people that would

1 handle the legislative part. Tom Albert, Julie Strauss, Joan  
2 Galvin when she was there.

3 Q. Have you ever been involved in legislative activities  
4 that Feld Entertainment did not get involved in?

5 A. Yes.

6 Q. Are you aware of the issues in this lawsuit?

7 A. Yes.

8 Q. And in your career as an elephant manager and  
9 professional, have you heard of a captive elephant being taken  
10 before?

11 A. Have I heard of it myself?

12 Q. Heard of captive elephant being taken.

13 A. No.

14 Q. Do you know what that means?

15 THE COURT: Yeah. Exactly. What do you mean by  
16 that?

17 THE WITNESS: Before this suit, I had never heard  
18 that an elephant would be taken. I may have read it in the  
19 endangered species --

20 THE COURT: What do you mean when use the word  
21 "taken"? What do you mean by that?

22 THE WITNESS: I understood it to be mean harmed by  
23 interfering with sheltering, breeding, feeding, with those  
24 activities.

25 BY MS. PARDO:



1 Q. In your opinion, do the guides or tethers harm or injure  
2 an elephant?

3 A. No.

4 THE COURT: But they could harm, couldn't they?

5 THE WITNESS: It is possible, yes.

6 BY MS. PARDO:

7 Q. You mentioned that you have used protected contact before  
8 in your career with elephants?

9 A. Yes.

10 Q. And why have you had to use protected contact?

11 A. We have an adult breeding male and he's aggressive. So  
12 we don't -- you know, we don't manage him in free contact.

13 Q. Could protected contact work in the movie business that  
14 your elephants have engagements and work in?

15 A. No, it wouldn't.

16 Q. Could protected contact work for wedding or religious  
17 celebrations where the elephants participate in?

18 A. No.

19 Q. And do you believe in your opinion protected contact  
20 would work in a circus act environment?

21 A. No.

22 Q. Why is that the case?

23 A. Because the elephant has to be out in public, it has to  
24 walk among people, it has to go inside a building, and the  
25 trainer needs to have the physical contact.

1 Q. Have you ever heard of a system of elephant management  
2 called passive control?

3 A. Yes.

4 Q. Where did you heard of that?

5 A. At the Elephant Sanctuary they use it, and when we were  
6 at an Elephant Managers Association meeting, Scott  
7 Blaise(Phonetic) described it to -- in a meeting.

8 Q. And who is he affiliated with?

9 A. The Elephant Sanctuary.

10 Q. Have you ever heard of passive control being used within  
11 the elephant managers community outside of Mr. Blaise'  
12 experience?

13 A. No.

14 Q. Based on your experience handling and managing elephants,  
15 in your opinion, can elephants be in a circus without the use  
16 of a guide?

17 A. No.

18 Q. Do you think that the elephants could be in the circus  
19 without the use of tethers?

20 A. No.

21 Q. If the guide or tethers were no longer permitted to be  
22 used, in your opinion, could elephants be in the ringling  
23 Brothers circus?

24 A. No.

25 Q. What is your opinion based upon?

1 A. Well, you -- the same reason for protected contact. It  
2 won't work because you have to be beside the elephant. The  
3 elephant has to go places that you wouldn't be able to have  
4 the barrier all the time, and you can't have a permanent  
5 facility at every place where the circus plays. You've got to  
6 be able to tie them up at night.

7 MS. PARDO: I have no more questions.

8 THE COURT: All right. We'll take a 15-minute recess  
9 before cross-examination. You can step down. I have to ask  
10 you not to discuss your testimony with anyone.

11 THE WITNESS: Yes, sir.

12 THE DEPUTY CLERK: This Honorable Court stands at a  
13 15-minute recess.

14 (Whereupon, there was a brief recess at this time;  
15 thereafter, court resumed.)

16 THE COURT: All right, counsel.

17 MS. SANERIB: Thank you, Your Honor. Tanya Sanerib  
18 for the plaintiff.

19 **CROSS-EXAMINATION BY MS. SANERIB:**

20 Q. Good afternoon, again, Mrs. Johnson.

21 A. Hello.

22 Q. In 2008 when you inspected the Ringling elephants, you  
23 didn't see them chained, did you?

24 A. No.

25 Q. Okay. And you don't know how elephants at Ringling

1 Brothers are trained, do you?

2 A. Other than free contact. Other than free contact.

3 Q. You've never seen a specific training session at Ringling  
4 Brothers?

5 A. No. No.

6 Q. At Have Trunk Will Travel, typically, most of your work  
7 is in California; is that right?

8 A. Most of it.

9 Q. When you transport your elephants, how are they  
10 transported?

11 A. By truck.

12 Q. And are they chained during transport?

13 A. Usually, yes.

14 Q. Is there an option for not chaining the elephants during  
15 transport?

16 A. Sometimes we don't; in general, we do.

17 Q. But that's available in your transport vehicle a way to  
18 transport an elephant without it being chained, correct?

19 A. Yes.

20 Q. Your gross income from your business is \$600,000 a year;  
21 is that right?

22 A. Yes.

23 Q. And you said that you're a member of the Species Survival  
24 Plan or SSP for the Asian elephant; is that correct?

25 A. Yes.

1 Q. How long have you been such a member?

2 A. I'm not sure how many years. It's probably 10; that's a  
3 guess.

4 Q. Okay. Did you have to seek any variances from the AZA in  
5 order to be a member of the SSP?

6 A. No.

7 Q. So you comply with all of the AZA standards for  
8 elephants, then?

9 A. I don't think we comply with every single one. There are  
10 some that we don't, but they've accepted us, anyway.

11 Q. Okay. Do you know what standards you don't comply with?

12 A. They suggest that we don't give elephant rides, and we  
13 do.

14 Q. Anything else?

15 A. That's the one that comes to mind.

16 Q. Okay. As part of being a member of the SSP, are you  
17 required to submit information to the -- for the Asian  
18 elephant stud book?

19 A. Yes.

20 Q. And do you do that?

21 A. Yes.

22 Q. Is that information accurate?

23 A. Yes.

24 Q. Is defendant's witness, Michael Keele, the head of the  
25 Asian elephant SSP of which you are a member?

1 A. Yes.

2 Q. And he's a long-time acquaintance of yours, isn't he?

3 A. Yeah. We go to different meetings and things.

4 Q. You've known him for years, right?

5 A. Yes.

6 Q. And one of your elephants is currently at Mr. Keele's  
7 zoo; is that correct?

8 A. Yes.

9 Q. Is Ringling Brothers a member of the Asian elephant SSP?

10 A. I don't think so.

11 Q. Okay. I believe you testified on direct that you hold  
12 certain licenses and permits; is that correct?

13 A. Yes.

14 Q. Have you been involved in Have Trunk Will Travel applying  
15 for permits from the Fish Wildlife Service at all?

16 A. Yes.

17 Q. Okay. I'd like to show you your 1991 Fish and Wildlife  
18 Service permit?

19 MS. PARDO: Objection, Your Honor, to relevance.

20 THE COURT: Counsel.

21 BY MS. SANERIB:

22 Q. Isn't it true that Fish and Wildlife Service required  
23 Have Trunk Will Travel --

24 THE COURT: There's an objection on relevance  
25 grounds. Any response?

1 MS. SANERIB: Yes. This is relevant because it  
2 shows that the federal requirement required Have Trunk Will  
3 Travel to join the Asian elephant SSP as a permit condition.

4 MS. PARDO: What's the relevance, Your Honor? I  
5 don't why there membership in the SSP program --

6 THE COURT: It's probably minimal relevance, but you  
7 can answer the question. You can go ahead. Overrule the  
8 objection.

9 BY MS. SANERIB:

10 Q. Okay. If we could take a look at that permit, and if we  
11 go to the second page, there's a condition "F", and the  
12 condition "F" -- can you read that for us?

13 A. Permit team must participate in the Asian elephant  
14 species survival plan program and must follow the  
15 recommendations of the species coordinator, Mr. Dale Tuttle  
16 (Phonetic) of the Jacksonville Zoological Park -- it gives his  
17 phone number -- and any future SSP coordinator.

18 Q. And this permit is -- if we go back to the first page of  
19 the document. It's from 1991 -- does that sound about like  
20 the right time when you joined the Asian elephant SSP?

21 A. It sounds right.

22 Q. Result of Fish and Wildlife permit and condition,  
23 correct?

24 A. If it was about the same time.

25 Q. Okay. And did you in trying to get Fish and Wildlife

1 Service represent that you were a member of the Asian elephant  
2 SSP when you in fact were not a member?

3 A. I think what I did I mistakenly did. I had confused it  
4 with the stud book at that time. I wasn't so familiar with  
5 what each one was. I don't know how long each one had been in  
6 existence.

7 Q. Okay.

8 A. But, yeah, it was a mistake on my part.

9 Q. Okay. and as a result of that have you ever been  
10 investigated by the Fish and Wildlife Services Division of law  
11 enforcement?

12 A. I'm not sure.

13 MS. SANERIB: Okay. Could we pull up the August  
14 20th, 1999, letter from Fish and Wildlife Service?

15 MS. PARDO: Object to relevance, Your Honor.

16 THE COURT: I'll allow it.

17 BY MS. SANERIB:

18 Q. And if we look at the second paragraph of this letter in  
19 the first sentence there -- the second paragraph, not Number  
20 2; thank you. And that first sentence says: As you're  
21 probably aware, the transfer of this elephant to you by  
22 International Animal Exchange, IAE, in October of 1989, which  
23 was reported as a sale in IAE's 1989 Captive Red(Phonetic)  
24 Wildlife Registration Annual Report was currently being  
25 investigated by the U.S. Fish and Wildlife Division of Law



1 Enforcement. Did I read that correctly?

2 A. Uh-huh.

3 Q. Do you recall being investigated by the Fish and Wildlife  
4 Service?

5 A. I recall this. I didn't realize it was called an  
6 investigation, but, yes, I remember this.

7 Q. Do you remember what the outcome of that investigation  
8 was?

9 A. Yes. That it was -- they went ahead and issued the  
10 permit. It was a mistake in the paperwork of IAE.

11 Q. Okay. And have you been investigated by the Fish and  
12 Wildlife Service in any other instances?

13 A. Not that I recall, no.

14 Q. Okay. You've also had some issues with the State of  
15 California Department of Fish and Game; is that correct? There  
16 have been a couple of instances you brought elephants into the  
17 State of California without getting the requisite permits from  
18 that agency?

19 A. I don't recall that.

20 MS. PARDO: Okay. Could we look at the September  
21 19th, 1989, letter from the California Department of Fish and  
22 Game?

23 BY MS. SANERIB:

24 Q. And if you look at the second paragraph of this letter,  
25 it says: This is a reminder that your current permit does not

1 authorize you to import any animal prior --

2 THE COURT: Is that addressed to her?

3 MS. SANERIB: It's addressed to her husband, Gary  
4 Johnson, Have Trunk Will Travel, and she has testified that  
5 she's the executive secretary for that organization.

6 THE COURT: You can ask if she knows anything about  
7 it.

8 MS. SANERIB: Okay.

9 THE COURT: Have you ever seen that letter?

10 THE WITNESS: I'm sure I saw it, but I don't  
11 remember it.

12 BY MS. SANERIB:

13 Q. Okay. In any event, does this ring any bell to you about  
14 your attempts to acquire the elephant, Jenny(Phonetic)?

15 A. If you could just go back to the letter. I'm sorry. I  
16 don't remember.

17 Q. You don't recall. Do you think your husband might know  
18 about this letter?

19 A. It's possible. I doubt if he would remember a letter,  
20 but you can ask him.

21 Q. Okay. Mrs. Johnson, are you a member of the Elephant  
22 Managers Association?

23 A. Yes.

24 Q. Okay. And are employees of Ringling Brothers also  
25 members of that organization?

1 A. I would imagine so.

2 Q. Okay. The Elephant Managers Association --

3 THE COURT: Would it be your practice to respond to  
4 official inquiries of that nature on behalf of your --

5 THE WITNESS: Yes. It would be me.

6 THE COURT: As opposed to your husband.

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay. All right.

9 BY MS. SANERIB:

10 Q. Getting back to the Elephant Managers Association, it's  
11 also called the EMA; is that correct?

12 A. Yes; uh-huh.

13 Q. So if I refer to it that way, you'll understand that what  
14 I'm talking about, right?

15 A. Yes; uh-huh.

16 Q. They publish a journal, don't they, the journal of  
17 Elephant Managers Association?

18 A. Yes.

19 Q. Okay. And you submitted an article to that journal,  
20 right?

21 A. I can't remember if it was for the journal or "Gray  
22 Matters", but one or the other, yes.

23 Q. And do you know if the journal is peer-reviewed at all?

24 A. It's not.

25 Q. It's not. Okay. And you've also served on the Elephant

1 Managers Association Legislative Committee, haven't you?

2 A. Yes.

3 Q. And that entailed opposing bills at various locations  
4 that pertained to elephants; is that correct?

5 A. Well, it would be not only opposing, but I mean if that  
6 was what was going on at the time, yes, but it would be  
7 anything legislatively to do with elephant.

8 Q. Okay. And EMA has their own guidelines, don't they?

9 A. Yes.

10 Q. And I think you testified on direct that your husband is  
11 on the board of directors of the International Elephant  
12 Foundation.

13 A. Yes, he is.

14 Q. And that you step in to his role as a board member  
15 sometimes?

16 A. I sit in for him.

17 Q. Okay. And you testified on your direct that the  
18 International Elephant Foundation funds elephant research; is  
19 that correct?

20 A. Yes.

21 Q. And does that research pertain to study of the Herpes  
22 virus and tuberculosis in elephants.

23 A. Those are two of the things, yes.

24 Q. Now, Tom Albert who's a vice president at Feld  
25 Entertainment is on that board?

1 A. Yes, he is.

2 Q. Also, right. And you've known Tom Albert for about six  
3 years; is that right?

4 A. I think it's more than that, but I' not sure how many  
5 years.

6 Q. Would you guess it's more than 10 years?

7 A. I don't think so.

8 Q. And you met Tom Albert originally because of legislative  
9 work; is that right?

10 A. Yes.

11 Q. And you coordinated with him on different legislative  
12 matters; is that right?

13 A. Yes. We share information sometimes.

14 Q. Dennis Schmitt who's veterinarian from Feld Entertainment  
15 is also on the board of the International Elephant Foundation,  
16 correct?

17 A. Yes.

18 Q. And you've known Dennis Schmitt for about 15 years or so?

19 A. I'm not sure of the time, but a long time, yeah.

20 Q. Okay. Now, Mrs. Johnson, you've been a long supporter  
21 of Ringling Brothers, haven't you?

22 A. In what way? I don't -- we don't give them money. What  
23 do you mean?

24 Q. Well, for example, in 1997, didn't you and your husband  
25 sign a comment letter that Feld Entertainment submitted to the

1 USDA?

2 A. It's possible. I don't remember it.

3 MS. SANERIB: Okay. Could we take a look at  
4 Plaintiff's Will Call Exhibit 81?

5 BY MS. SANERIB:

6 Q. If you look at this letter signed by Joan Galvin who was  
7 then the vice-president, government relations, of Feld  
8 Entertainment, and if you go onto the second page of this  
9 document, you'll see Kari and Gary Johnson of Have Trunk Will  
10 Travel. And going back to first page of the letter, you'll  
11 see it's a letter that was sent to the U.S.Department of  
12 Agriculture, and it pertains to the handling, training, and  
13 exhibition of potentially dangerous or exotic animals. Do you  
14 recall this?

15 A. Potentially. Vaguely, yeah.

16 Q. Okay. And do you recall the EMA adopting a policy on the  
17 care and weaning of young elephants?

18 A. I don't specifically remember it.

19 Q. Okay. Would you believe that you and your husband would  
20 sign on to such a policy?

21 A. It's possible. We were involved in a lot of stuff over  
22 the years. I don't remember every single thing.

23 MS. SANERIB: Could we look at Plaintiff's May Call  
24 Exhibit 5?

25 BY MS. SANERIB:

1 Q. Does this appear to be an EMA policy on separation and  
2 weaning of young elephants?

3 MS. PARDO: Objection, Your Honor. Weaning is not  
4 an issue in this case, and plaintiff has indicated that  
5 they're not --

6 THE COURT: Well, it's cross-examination.

7 MS. PARDO: -- scope of direct examination of this  
8 witness.

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

10 MS. SANERIB: If we could go to the third page of  
11 this document.

12 THE COURT: I don't think I heard your answer to that  
13 question. Are you familiar with that document?

14 THE WITNESS: I don't remember it specifically. I'm  
15 sorry.

16 THE COURT: Did you look through it? Did you read  
17 through it?

18 THE WITNESS: I can't read it; no, sir.

19 THE COURT: You can't read it?

20 THE WITNESS: It's too small even with my glasses.

21 THE COURT: Oh. Do you have the paper document?

22 THE WITNESS: Am I supposed to read it?

23 THE COURT: Would you like to read it?

24 THE WITNESS: Sure. If I need to.

25 THE COURT: Yeah. Yeah.

1 BY MS. SANERIB:

2 Q. I actually just wanted to show that you and your  
3 husband's names appear on the third page of this document if  
4 we can go to the third page.

5 THE COURT: I think it's only fair to give her a  
6 chance to read it if she can't read it on the screen.

7 MS. SANERIB: Okay.

8 THE WITNESS: I can see it now.

9 MS. SANERIB: Okay. If it's easier to look at the  
10 paper copy, I can give you a paper copy, too.

11 THE COURT: Would you like to see the paper copy?  
12 Would it be easier?

13 THE WITNESS: If they can just move it up, I'm  
14 about done. That's good with this -- that's good. Okay. I  
15 don't specifically remember it still, but it all sounds like  
16 something that -- yes.

17 BY MS. SANERIB:

18 Q. That you were involved in?

19 A. Yeah.

20 Q. Okay.

21 THE COURT: I'm sorry. It sounds like something that  
22 --

23 THE WITNESS: It sounds like something that we would  
24 have helped with, but I just can't remember the specific one.

25 THE COURT: All right.



1 BY MS. SANERIB:

2 Q. And, again, this is from the Elephant Managers  
3 Association, it was the statement on the care and weaning of  
4 young elephants that the Elephant Managers Association  
5 created.

6 MS. SANERIB: And if we could go to the third page  
7 of the document. It was signed by -- what the Elephant  
8 Managers Association designated as experts, and if you can't  
9 go to it, let me know, I can put it on the Elmo.

10 BY MS. SANERIB:

11 Q. Okay. And do you see your name among the list of people  
12 at -- this is on the third page of that document?

13 A. Yes.

14 Q. Okay. And are you aware that the executive director of  
15 the Elephant Managers Association submitted this document to  
16 the U.S. Department of Agriculture?

17 A. I don't remember.

18 Q. Okay. And so were you aware that USDA investigated  
19 Ringling Brothers for separation practices of calfs from their  
20 mother's and that the EMA then submitted this policy and the  
21 letter to the USDA during that time period?

22 MS. PARDO: Objection. Outside scope of direct  
23 examination.

24 THE COURT: We're getting a little far afield here.  
25 I'll allow it for whatever relevance, if any, it has. You can

1 answer the question.

2 THE WITNESS: I remember something about separation  
3 and weaning. I don't remember when this was done. I don't  
4 remember the timing.

5 BY MS. SANERIB:

6 Q. Okay. , Mrs. Johnson, you've also provided Ringling  
7 Brothers with information --

8 THE COURT: Separation and weaning is not an issue in  
9 this case, correct?

10 MS. SANERIB: That's correct, Your Honor. We're  
11 just using these documents to show the work that Have Trunk  
12 Will Travel has done with Ringling Brothers in the past.

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

14 BY MS. SANERIB:

15 Q. Mrs. Johnson, you've also provided Ringling Brothers  
16 with information on Tom Rider, haven't you?

17 A. I don't remember.

18 MS. SANERIB: Okay. Could we look at FEI 38333,  
19 please. And this is a string of e-mail messages. If you look  
20 at that second e-mail message, that's an e-mail message from  
21 you to Gary Jacobson who's the manager of the Center for  
22 Elephant Conservation for Feld Entertainment, correct?

23 THE WITNESS: Yes.

24 BY MS. SANERIB:

25 Q. And the subject of that e-mail message is Tom Rider

1 info, right?

2 A. Yes.

3 Q. And if you go down the page in this document, you'll see  
4 this is information from hearing in Rhode Island; do you  
5 remember sending this information to Mr. Jacobson?

6 A. I don't.

7 Q. Okay. Do you doubt that you would have e-mailed him this  
8 type of information?

9 A. No. I see that my name is on it, yes, but, I'm sorry, I  
10 don't specifically remember it.

11 Q. Okay. But you have no reason to doubt that you would  
12 have sent this to him?

13 A. No.

14 Q. Mrs. Johnson, you've known Feld's in-house counsel,  
15 Julie Strauss, for about 12 years; is that right?

16 A. At least 12 years.

17 Q. Do you think it's been longer than that?

18 A. It probably has.

19 Q. And you speak with her at least twice a year, don't you?

20 A. Yes. We're on some same committees.

21 Q. Okay. And you've known Gary Jacobson, the manager of the  
22 Center for Elephant Conservation, since the mid 1970's,  
23 haven't you?

24 A. That's when I first met him.

25 Q. One of your employees, Troy Metzler (Phonetic), went to

1 work for Ringling Brothers, didn't he?

2 A. Yes.

3 Q. And your employee, Pat Hearn(ed)(Phonetic) also went to  
4 work for Ringling Brothers, didn't he?

5 A. Yes.

6 Q. And your employee, Jim Williams, also went to work for  
7 Ringling Brothers, didn't he?

8 A. Yes.

9 Q. And, in fact, defendant's chair of veterinary care,  
10 Dr. Dennis Schmitt(Phonetic), has also worked for Have Trunk  
11 Will Travel, hasn't he?

12 A. Minimally, but, yes.

13 Q. And you're also acquainted with defendant's witness,  
14 Dr. Ted Friend; you've known him for more than seven years,  
15 haven't you?

16 A. I've met him maybe twice.

17 Q. Okay. But he's been to your facility, hasn't he?

18 A. He did come there one time.

19 Q. Now, it's your opinion that elephants used in the circus,  
20 films, and public events must be reliably trained to keep  
21 themselves, their handlers, and the public safe, right?

22 A. Yes.

23 Q. And it's your opinion that free contact training is  
24 necessary to accomplish that, isn't it?

25 A. Yes.

1 Q. And you use free contact training with your elephants in  
2 order to accomplish that mission; is that right?

3 A. Yes.

4 Q. But free contact doesn't always work, does it?

5 A. There have been instances where -- yeah, where it didn't.

6 Q. Okay. Didn't you have one of your elephants escape and  
7 run through the Denver Zoo?

8 A. Yes.

9 Q. And that elephant knocked over her handler, right?

10 A. I don't think she knocked him over. I think she brushed  
11 against him as she went by, but she did not go after her  
12 handler, no.

13 Q. Okay. But he received injuries as a result of her  
14 pushing by him?

15 A. I don't know that he received injuries. I don't think it  
16 was any more than pushing by him.

17 Q. Your elephant knocked over a baby carriage with a baby  
18 inside at the zoo, didn't she?

19 A. Actually, it was the mom who pushed -- she bumped the mom  
20 who bumped into the carriage.

21 Q. Okay.

22 A. And the fact that the elephant was so well-trained or  
23 that she didn't want to hurt people is how she missed so many  
24 of them. The zoo was absolutely packed, it was a Sunday.  
25 Because of her good training and because she didn't mean harm,

1 she didn't run into a lot of people.

2 Q. But she did run into a few people, and people had to run  
3 away from her, correct?

4 A. Yes. Yes.

5 Q. And there was a visitor to the zoo who sprained his  
6 ankle, correct?

7 A. That's what I understand.

8 Q. And, then, another woman had an Asthma attack running  
9 away from the elephant?

10 A. I've heard that, too.

11 Q. So you're -- the bull hook, the free contact training of  
12 your elephant didn't stop her from escaping and running  
13 through the zoo.

14 A. Correct.

15 Q. Now, it's your opinion that the use of the bull hook and  
16 chains is necessary for proper care of elephants, isn't it?

17 A. I think it gives them the best care, yes.

18 Q. Okay. But despite the use of bull hooks and chains at  
19 your facility, you've lost two young elephants, haven't you?

20 A. We have.

21 Q. All right. And there's other facilities that use free  
22 contact that have also lost elephants, right?

23 A. Sure, there are.

24 Q. Now, you agree that a bull hook can be misused, correct?

25 A. Yes.

1 Q. And a bull hook can cause a scratch on an elephant?

2 A. Yes.

3 Q. And it can also cause a wound?

4 A. I don't know about a wound. It could cause a wound,  
5 certainly, but it's -- it shouldn't.

6 Q. Is it possible for a scratch from a bull hook on an  
7 elephant to become infected?

8 A. I would think so.

9 Q. Now, you testified this morning or earlier this afternoon  
10 that you learned about elephants from your stepfather, Robert  
11 Smokey Jones; is that correct?

12 A. Yes; uh-huh.

13 Q. And in your expert report, you say that Mr. Jones'  
14 training techniques -- at least some of them -- are outlined  
15 in Dr. Jack Adams' book, Wild Elephants in Captivity; is that  
16 correct?

17 A. Yes.

18 Q. And that the accounts in that book are, for the most  
19 part, accurate; is that right?

20 A. Sort of. Fairly accurate; not exactly, but close, yes.

21 Q. Do you recall the description in that book of teaching an  
22 elephant to sit up?

23 A. I think so.

24 Q. Okay. I'd like to walk you through that with you, so if  
25 we could go to Plaintiff's Will Call Exhibit 5. And on Page

1 91 of that exhibit.

2 MS. PARDO: We're going object to this as hearsay,  
3 Your Honor, and to relevancy.

4 THE COURT: Counsel.

5 MS. SANERIB: She's testified that her stepfather  
6 taught her to train elephants and that this book encapsulates  
7 his training techniques, and I wanted to go through a few of  
8 those elephant training techniques with her.

9 MS. PARDO: I don't believe there's been any  
10 testimony that this encapsulates the training techniques. I  
11 think this is hearsay that doesn't mean an exception.

12 THE COURT: Okay. Who's the author of this book?

13 MS. SANERIB: The author is Dr. Jack Adams. And  
14 that Mrs. Johnson has testified that his accounts of Mr.  
15 Jones, her stepfather's training techniques, are, for the most  
16 part, accurate. So we're not moving the admission of this,  
17 we just wanted to use it as a--

18 THE COURT: That's what I was concerned about. All  
19 right. I'll let you use it to further elucidate her  
20 testimony, but I would not allow it to become a part of the  
21 evidentiary record.

22 MS. SANERIB: That's fine, Your Honor.

23 BY MS. SANERIB:

24 Q. So if you look at this page, it's 178 of the document,  
25 and you'll see in the middle of the page there it says:



1 Procedure for training elephants to sit up. And if you can  
2 just read for me that first paragraph under the heading that  
3 starts with "an elephant in a sitting position", and I think  
4 we can make that a little larger for you. There you go.

5 A. An elephant in the sitting position is a spectacular  
6 spectacle partly because of the enormous size of the elephants  
7 and partly because of wild elephants are rarely seen in this  
8 unnatural posture. An elephant in a sitting position is  
9 frequently seen in circus acts.

10 Q. Okay. And then if we can go to the first sentence of the  
11 next paragraph; the procedure for training an elephant to sit  
12 up starts with the lying down position; do you agree with  
13 that?

14 A. Yes.

15 Q. And if we look down on the third paragraph -- there we  
16 go. If you can just read for me from that third paragraph  
17 what it says, and I think this is the description for teaching  
18 an elephant to sit up.

19 A. While the elephant is down on its side as shown in the  
20 above figure, the rope that holds the elephant down is  
21 loosened, and the trainer says "all right" to the elephant.  
22 And as the elephant proceeds to stand up, it assumes a posture  
23 of being on its front leg elbows, a halfway up position; then  
24 the pull-down rope is tightened again by an assistant, and  
25 trainer says "steady" as indicated in Figure 48.

1           The elephant is pulled back down and allowed to assume  
2 this halfway up posture several times until it remains in the  
3 halfway up position on command.

4 Q.   And in your experience is this how Smokey Jones started  
5 training an elephant to do a sit up?

6 A.   It's sort of.  It's -- yeah.  It's awkward the way it's  
7 worded, but, yes, it's sort of -- it is.

8 Q.   And if we can go --

9           MS. PARDO:  Your Honor, we're going to continue our  
10 objection.  There's been no testimony on direct on these  
11 training methods; in fact, she's not being offered as an  
12 expert in training.

13           THE COURT:  Yeah.  What's the relevance to this?

14           MS. SANERIB:  I actually thought the defendant did  
15 offer her as an expert in the handling and maintenance and  
16 training of elephants, and this is the training of elephants.

17           MS. PARDO:  And it was we offered her as an expert  
18 in the care and management handling.  We specifically said  
19 that -- "training", and we did not --

20           THE COURT:  All right.  That's correct.  She was not  
21 offered for training.

22           MS. SANERIB:  I guess I'm trying to figure out where  
23 the is between handling and training of elephants.

24           THE COURT:  There's a line.  I think there's a line  
25 there.  I think we're getting beyond the scope here.

1 BY MS. SANERIB:

2 Q. Okay. We can move away from this exhibit and go onto  
3 something else, then. Mrs. Johnson, you do agree that bull  
4 hooks are used if training and handling elephants, right?

5 A. Yes.

6 Q. And ropes are also used sometimes in training and  
7 handling?

8 A. Yes. Yes.

9 Q. Okay.

10 A. Sorry.

11 Q. And training involves discipline, doesn't it?

12 A. Yes.

13 Q. Now, it's your opinion that elephants perceive the  
14 slightest touch on their skin; is that right?

15 A. Yes.

16 Q. So they'll feel insects on their skin?

17 A. Yes, they do.

18 Q. And they'll perceive a bull hook, right?

19 A. Yes.

20 Q. But it's your testimony that elephants don't feel pain  
21 from the bull hook?

22 A. Well, if -- they would feel pain if pain were inflicted,  
23 but I don't think a fly and a bull hook -- I don't think it's  
24 the same.

25 Q. Okay. But would you draw the distinction between an

1 elephant perceiving a bull hook and an elephant feeling pain  
2 from a bull hook?

3 A. Yes. I think not -- I'm not positive -- I think  
4 "perceive" means just to feel it, right?

5 Q. Uh-huh.

6 A. Is that what you mean?

7 Q. Yeah.

8 A. Okay.

9 Q. And so it's your testimony elephants will feel bull  
10 hooks, they don't feel pain from them; is that right?

11 A. No.

12 Q. They can feel pain from bull hooks, correct?

13 A. They can feel pain from anything I would think. I think  
14 it's different than the pain they'd feel from a fly or  
15 perception.

16 Q. But they can still feel pain from it?

17 A. Yes.

18 Q. Now, it's your opinion that it's not common for the bull  
19 hook to be used to cause pain or to cause wounds, right?

20 A. Right.

21 Q. And if wounds were commonly caused, in your opinion,  
22 would that be inappropriate?

23 A. Yes.

24 Q. When the bull hook is used at Have Trunk Will Travel are  
25 wounds commonly caused?

1 A. No.

2 Q. In your opinion, how sharp should a bull hook be?

3 A. Sharp enough that it would catch the skin when you use  
4 it, but not so sharp that it would pierce the skin when, You  
5 know, when you're just normally using it.

6 Q. All right. And I'd like to show you some video footage.  
7 This is some of the video footage that we looked at your  
8 deposition to see if you agree with the use of the bull hook.  
9 This is from Plaintiff's Will Call Exhibit 133. It's at 47  
10 minutes -- or sorry, 49 minutes and 28 seconds to 49 minutes  
11 and 52 seconds.

12 MS. PARDO: We're going to object to that video,  
13 Your Honor. There's no foundation laid, and, if anything, I  
14 don't believe that it's in evidence or that it was  
15 authenticated in the plaintiff's case-in-chief.

16 THE COURT: What is this tape?

17 MS. SANERIB: Your Honor, this is video footage of  
18 Ringling Brothers' circus in Mexico. It's not -- it was not  
19 admitted into evidence in our case. It's just a  
20 demonstrative. I'm not moving it into evidence.

21 THE COURT: Use it for what purpose.

22 MS. SANERIB: Just to discuss with the expert  
23 whether it's a handler from Ringling Brothers using the bull  
24 hook and whether she believes that use of the bull hook is  
25 appropriate or not.

1 MS. PARDO: Your Honor, We believe that this is  
2 nothing more than a back doorway to get in the tape that  
3 couldn't be authenticated on direct. There were two witnesses  
4 in plaintiff's case that may have made an attempt at  
5 authenticating this, and neither of those were called, and  
6 there's been no attempt to lay the foundation or prove the  
7 authenticity of this tape, and it's also not a demonstrative.  
8 It would be actual evidence that someone came in and laid a  
9 predicate, but they chose not to do that.

10 THE COURT: I'm not going to allow it. Sustained.

11 BY MS. SANERIB:

12 Q. Okay. Now, Mrs. Johnson you said in your expert report  
13 that you were taught not to use bull hook on soft tissue or  
14 near joints of the elephants or near anywhere that would cause  
15 an injury; is that correct?

16 A. Yes.

17 Q. I'd like to go to Plaintiff's Will Call Exhibit 113-F,  
18 and I believe this is the diagram of the cue points you were  
19 discussing earlier on direct testimony. Does it appear to be  
20 that?

21 A. Yes.

22 Q. And we talked about this at your deposition, right?

23 A. Yes.

24 Q. And it's the left side of the elephant's body that's  
25 depicted in this diagram; is that correct?

1 A. Yes.

2 Q. And why is that?

3 A. The handler would most often work the elephant on the  
4 left side.

5 THE COURT: Why is that?

6 THE WITNESS: It's just -- you could do it from the  
7 right side. It's just more of the traditional way to work it  
8 on the left side, and then it makes it -- everybody does it  
9 the same way, so you wouldn't have some people on the right  
10 and some on the left.

11 THE COURT: Is there a reason other than just  
12 traditional?

13 THE WITNESS: No, sir. Not other than that, not  
14 that I know of.

15 Q. And I have a couple of questions for you about this  
16 document. Now, this Number 8 right here -- you can see that  
17 in this area here(Indicating), that's on the joint of the  
18 elephant, isn't it?

19 A. It not meant to be. It should be between the -- in the  
20 fleshy part above the joint.

21 Q. Okay.

22 A. I mean I don't know if it points directly to it, but it  
23 would be inappropriate if it is.

24 Q. All right. And the Number 5 here, that's near soft  
25 tissue on the elephant, isn't it?

1 A. I'm sorry, where?

2 Q. Do you see where the blue arrow is pointing towards,  
3 there's that Number 5.

4 A. No. It's in front of the ear, it's not on the ear.

5 Q. Okay. And there's no soft tissue there?

6 A. No. It's in front of the -- it's right here on the  
7 elephant (Indicating).

8 Q. All right. So that would be just right on the bone,  
9 then?

10 A. It is.

11 THE COURT: For the record, you're pointing to your  
12 temple, right?

13 A. Yes. It would be above where the temporal gland is.

14 Q. And there's soft tissue there, correct?

15 A. No. I don't think so.

16 Q. Okay. And then looking down at the very bottom of the  
17 elephant, Number 1, down here (Indicating).

18 A. Uh-huh.

19 Q. That's pointing to the feet of the elephant.

20 A. Uh-huh; yes.

21 Q. And that ankle area, that's soft tissue there, isn't  
22 there?

23 A. You don't use the guide in the ankle, no. It's on the  
24 fleshy part of the bottom of the front foot.

25 Q. Okay. So you said that was on the fleshy part of the



1 bottom of the front foot?

2 A. Yes.

3 Q. Okay. So that would be on soft tissue there?

4 A. It's on the back of the front foot.

5 Q. Okay. All right. And what is that -- you were  
6 explaining when you chain elephants that the front foot is --

7 A. It expands.

8 Q. It expands.

9 A. Uh-huh.

10 Q. So there's a lot of tissue there, right?

11 A. I guess so.

12 Q. Okay. Now, at Have Trunk Will Travel, you chain your  
13 elephants at night, right?

14 A. Yes.

15 Q. And I believe it was your testimony in your deposition  
16 that you chain them up a little bit later during the  
17 summertime than you do in winter; is that correct?

18 A. Yeah. They go in about dark, and that depends on the  
19 time of the year.

20 Q. Okay. If a facility chained their elephants up for the  
21 night before it got dark out, would that be inconsistent with  
22 your practice at Have Trunk Will Travel?

23 A. Well, that's how we do it.

24 Q. Okay. So it would be inconsistent?

25 A. We have -- but we live there. I mean -- we have -- we

1 sleep there, so it doesn't matter, you know, what time it is  
2 for us.

3 Q. Okay. But it would be inconsistent if someone chained up  
4 their elephants before it got dark out with what you do at  
5 Have Trunk Will Travel.

6 MS. PARDO: I'm going to object, Your Honor. I think  
7 plaintiff objected to us continuing to ask questions about the  
8 tethering practices at Have Trunk Will Travel, and we were  
9 not permitted to finish questioning on that and now they're  
10 attempting to cross on that very point.

11 THE COURT: What about that? I did curtail  
12 examination. I thought it was irrelevant.

13 MS. SANERIB: There was some examination though, and  
14 I just wanted to follow-up on it, Your Honor. I can withdraw  
15 the question if it would help to move things along.

16 THE COURT: All right.

17 BY MS. SANERIB:

18 Q. Mrs. Johnson, if a leg chain on an elephant is so tight  
19 that it leaves indents in the elephant's leg, in your opinion  
20 is that inappropriate?

21 A. It would depend on the circumstances. If it was a new  
22 elephant that wasn't use to it and they were just starting to  
23 get use to them and they pulled on them, then, yeah; it might  
24 leave indents but if it was an elephant that was used to being  
25 tethered every night then it should not leave indentations.

1 Q. Okay. And if elephant had an injury, sloughing skin and  
2 things like that on its leg from its chain, would that be  
3 inappropriate?

4 A. If it were from its chain; yeah, I would think so.

5 Q. And you testified that you used protected contact with  
6 your bull elephant; is that right?

7 A. Yes.

8 Q. Protected contact is a form of elephant training; right?

9 A. Yes.

10 Q. Now, you also talked about when elephants are chained,  
11 that you try to catch the urine and feces; right?

12 A. No.

13 Q. No? You didn't say that on your direct testimony?

14 A. I said we cleaned it up.

15 Q. That when an elephant is chained, you try to collect the  
16 urine and feces.

17 A. Oh, collect. I'm sorry. Yes. We pick it up or scoop it  
18 away.

19 Q. And even though you try to do that, sometimes the urine  
20 splashes on the elephant's feet and legs, right?

21 A. Sure

22 Q. Okay. And you talked about chaining your young elephant  
23 and training your young elephant, and you said that you did  
24 less chaining with your young elephant that you've been  
25 training; is that right.

1 A. I'm sorry. I don't remember that.

2 Q. Okay. You were talking about -- you have a young two-year  
3 old elephant; is that right?

4 A. Yes.

5 Q. Okay. And you've been training that elephant?

6 A. Yes.

7 Q. And I believe you testified on direct that you're using  
8 less chaining with that elephant in its training than you did  
9 in the past

10 A. No. I think I might have said ropes, but --

11 Q. Ropes. You're using less ropes with that elephant than  
12 you did in the past.

13 A. Yes.

14 Q. And is that because tying an elephant up is harmful?

15 A. No, not at all.

16 Q. Okay. Why did you change that practice?

17 A. We found a way to do it, to make them understand in a way  
18 that you didn't have to.

19 Q. Okay. Now, you talked about inspecting the elephants at  
20 issue in this case in your direct testimony. There weren't  
21 any representatives from plaintiffs present at your  
22 inspections, were there?

23 A. No.

24 Q. So none of plaintiff's experts were there, right?

25 A. No.

1 Q. And none of the lawyers for plaintiffs were there, right?

2 A. No.

3 Q. And those inspections weren't ordered by the Court, were  
4 they?

5 A. I don't know.

6 Q. Okay. It was something Ringling Brothers asked you to do;  
7 is that right?

8 A. I guess so.

9 Q. Okay. And you also testified today that you reviewed some  
10 of the medical records of the elephants; is that right?

11 A. Yes.

12 Q. Okay. Now, based on your inspection of the elephants and  
13 the medical records that you looked at, how many of the  
14 elephants had nail cracks; do you remember?

15 A. I don't.

16 Q. Okay. You mentioned one of the elephants on the Blue Unit  
17 had a crack on her -- on her nail that was a little bit  
18 bigger; do you recall that testimony.

19 A. Yeah.

20 Q. Okay. Could that be a problem for that elephant?

21 A. If it didn't get attention, yeah. I think it could.

22 Q. And do you remember how many of the elephants had nail  
23 bed abscesses on their feet?

24 A. No.

25 Q. Okay. If an elephant has a nail bed abscess, is that a

1 serious foot condition in your opinion?

2 A. It's something that needs to be treated. It -- there -- I  
3 mean some are more serious than others I would think.

4 Q. Okay. Did you see any bed sores on the elephants?

5 A. No.

6 Q. Did any of the elephants have chain marks on their legs?

7 A. No.

8 Q. Did you see urine marks on Susan's legs?

9 A. No.

10 Q. And is it your testimony that you conducted your  
11 inspections of the elephants from 10 feet away?

12 A. It was varying feet away. I was guessing. We were just  
13 standing near them, but not on top of them. We could see  
14 them, and we walked around them, and they turned the elephants  
15 back and forth for us to see. I don't know how many feet away  
16 it was exactly.

17 Q. Okay. Now, it's your testimony that the elephants at the  
18 Center for Elephant Conservation were in their fifties and  
19 sixties; is that right?

20 A. That's what I understood for the most of them.

21 Q. Okay. Do you remember looking at the medical records for  
22 the elephant named "Zina"?

23 A. The one with the --

24 Q. Paralyzed --

25 A. No. I looked at the records. I'm not a vet, so I mean I

1 sort of went through the records, and I was looking to see if  
2 some of the things that we saw were taken care of. You know,  
3 that they were looking after them.

4 Q. Okay.

5 A. But I don't know specific things about veterinary stuff  
6 if it's involved.

7 MS. SANERIB: Okay. I'd like to call up Defendant's  
8 Exhibit 14, please.

9 BY MS. SANERIB:

10 Q. And this is the first page of where defendant has  
11 represented are some of the medical records for the elephant  
12 Zina, and you can see her name there in the middle of the  
13 page, if we could just highlight her name, and this document  
14 purports to give her date of birth; do you see that?

15 A. Uh-huh.

16 Q. And what year was Zina born?

17 A. '61.

18 Q. Okay. Do you know how old she is now, then, if she was  
19 born in 1961.

20 MS. PARDO: We object to this, Your Honor. I believe  
21 she was asking the witness about medical records, and I don't  
22 believe that that's -- a medical record is on the screen.

23 THE COURT: Overruled.

24 BY MS. SANERIB:

25 Q. If she -- if Zina was born in 1961, about how old is she;

1 do you know?

2 A. Well, you do the math. I can't do the math right now.

3 Q. All right. It I told you that she is about 48 years old,  
4 does that sound about right?

5 A. Okay. Yes.

6 Q. So she's not in her fifties or sixties, is she?

7 A. Well, okay, she's close to 50.

8 MS. SANERIB: Okay. I have no further questions at  
9 this time.

10 THE COURT: Redirect.

11 MS. PARDO: Briefly, Your Honor.

12 **REDIRECT EXAMINATION BY MS. PARDO:**

13 Q. Hi, Ms. Johnson.

14 A. Hi.

15 Q. Ms. Sanerib had asked you about contact you had had with  
16 Ringling Brothers before over the years.

17 A. Uh-huh

18 Q. Did you have any contact with Ringling Brothers about  
19 authoring anything for the "Elephant Husbandry Resource Guide"  
20 as a response to this lawsuit?

21 A. No.

22 Q. Do you recall any discussions at the committee meetings  
23 that went into this publication about this being a response to  
24 the lawsuit?

25 A. No.



1 Q. You had mentioned that your gross income at Have Trunk  
2 Will Travel was \$600,000 in a particular year. Do you have --  
3 do any other expenses come out of that money?

4 A. Yes. That's the gross, so we have all our operating  
5 expenses

6 Q. Does that include all the care and the financial  
7 information that you spend on the elephants?

8 A. Yes. It's everything.

9 Q. What is your income adjusted after you factor in elephant  
10 expenses?

11 A. It's -- it's different, but it's sometimes down to like,  
12 you know, 10 or \$15,000.

13 Q. How would you describe the size of the elephant manager's  
14 community in the United States?

15 A. It's a fairly small community. I'm -- I think I remember  
16 in all that there are about 400 members of the Elephant  
17 Managers Association, and that includes, you know, all the  
18 keepers in zoos and some people that aren't really keepers,  
19 but, you know, are just elephant enthusiasts, but the people  
20 that actually work with elephants, it's a pretty small  
21 community.

22 Q. Ms. Sanerib asked you questions about an incident you  
23 had at the Denver Zoo with one of your elephants

24 A. Yes.

25 Q. In your 30-plus years of working with elephants, have you

1 had any other incidents?

2 A. No. I mean we're proud of that safety record. We've had  
3 one incident in all those years, and there was no, you know,  
4 no major injury or anything, so we're pretty proud of that.

5 Q. And Ms. Sanerib asked you about the death of a baby  
6 elephant at your facility. Was that due to any -- was that --  
7 did the guide have any role in causing the death of this  
8 elephant?

9 A. No. We didn't know at the time, but it presented like  
10 elephant Endotheliotropic Herpes virus, and she -- she got  
11 sick in the morning or she, you know, she started acting --  
12 not acting right in the morning, and by the evening, she was  
13 dead, and she was just seven months old. That was our first  
14 baby.

15 Q. And was that a great loss for your company?

16 A. Yeah. That was --

17 Q. I'm sorry. You can take a moment.

18 A. That was what, you know, what we'd always wanted was to  
19 -- shoot. I'm sorry.

20 THE COURT: That's all right. No shame in crying.

21 THE WITNESS: It's been a long time. We'd had always  
22 wanted to breed, and she had been our first baby, you know.  
23 I'm sorry.

24 THE COURT: That's all right.

25 MS. PARDO: I have no more questions. Thank you.

1 THE COURT: All right. You said that after  
2 expenses, the 10 or \$15,000 net, is that after salaries?

3 THE WITNESS: Yes, sir.

4 THE COURT: After salaries?

5 THE WITNESS: Yes, sir.

6 THE COURT: Are you and your husband salaried  
7 employees?

8 THE WITNESS: We each take \$10,000 a year.

9 THE COURT: As a salary?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Any questions?

12 MS. SANERIB: I have a few more, Your Honor.

13 **RE-CROSS-EXAMINATION BY MS. SANERIB:**

14 Q. Mrs. Johnson, the medical records you were sent and  
15 reviewed for this case, you were provided those by counsel for  
16 defendant, right?

17 A. Yes.

18 Q. Okay. And you talked a little bit about the "Elephant  
19 Husbandry Resource Guide" today, and you talked about a part  
20 of the document that you authored; did anyone else work on  
21 that part of the document?

22 A. Yes.

23 Q. About how many other people would you say?

24 A. There were quite a few people that worked on it  
25 altogether, and on each part, one of us would kind of lead and

1 then other people would, you know, review it and make  
2 suggestions, changes, so it was a collaborative effort.

3 Q. Okay. Would you say that there was more than five people  
4 who collaborated on that part of the "Elephant Husbandry  
5 Resource Guide" that you worked on? On that part of it.

6 THE COURT: I'm sorry. I thought you wrote the  
7 guide section.

8 MS. SANERIB: The guide section of the guide.

9 THE WITNESS: We wrote them together, and one of us  
10 would start and make the main one, and then other people would  
11 add or take away or make suggestions. So I was the leader on  
12 it, but not necessarily -- it's not every word is not mine.

13 BY MS. SANERIB:

14 Q. Okay. And then did someone else also edit it once you  
15 guys had agreed on all the language for the guide part of the  
16 "Elephant Husbandry Resource Guide"?

17 A. Yes.

18 Q. Okay. And do you know how many people edited that  
19 language?

20 A. I think the main editor was Debbie Olson(Phonetic), so I  
21 think just one.

22 Q. Okay. And you testified that the AZA guidelines are  
23 similar to the guidelines in the "Elephant Husbandry Resource  
24 Guide", but the "Elephant Husbandry Resource Guide" actually  
25 has much lower standards than the AZA standards, doesn't it?

1 A. They're different because the zoo -- a lot of the things  
2 in a zoo would not apply to elephants that are on the road or  
3 different places. That's why we saw a need for that one, so  
4 that there's something that could apply to, you know, more  
5 people, not just elephants that stayed in zoos and didn't go  
6 anywhere. That's why we saw a need for it.

7 Q. Okay. So, then, the AZA standards are very different from  
8 the standards that are in the "Elephant Husbandry Resource  
9 Guide"?

10 A. They're not very different, but, yeah, they vary quite a  
11 bit; but, basically, you know, they're caring for elephants.

12 Q. Okay. For you as a member of the SSP, though, it's the  
13 AZA standards that you have to comply with; there's no  
14 obligation to comply with the "Elephant Husbandry Resource  
15 Guide", is there?

16 A. No. Their guidelines.

17 MS. SANERIB: Okay. I don't have any further  
18 questions.

19 THE COURT: All right. Any other questions?

20 MS. PARDO: Just one, Your Honor.

21 THE COURT: Sure.

22 **RE-REDIRECT BY MS. PARDO:**

23 Q. With respect to the "Elephant Husbandry Resource Guide"  
24 after it was finalized, did you disagree with anything in the  
25 final product?

1 A. I didn't -- I don't remember any strong disagreements  
2 with anything. Some things might have -- I might have worded  
3 differently or a little bit, but, basically, I thought it was  
4 good.

5 MS. PARDO: Thank you.

6 THE COURT: All right. Thank you. You may step  
7 down. I have to ask you not to discuss your testimony with  
8 anyone. Your husband's going to testify today or tomorrow,  
9 correct?

10 THE WITNESS: Yes, sir.

11 THE COURT: You can't discuss your testimony with  
12 him.

13 THE WITNESS: Okay. Thank you.

14 THE COURT: You're welcome. We have 20 minutes. Why  
15 don't you call your next witness?

16 MS. PARDO: Defendant calls Gary Johnson.

17 THE COURT: All right.

18 \* \* \* \*

19 **GARY JOHNSON**, called as a witness in this case,  
20 after having been duly sworn, testified as follows.

21 \* \* \* \*

22 THE COURT: All right. Good afternoon, sir.

23 THE WITNESS: Hello.

24 **DIRECT EXAMINATION BY MS. PARDO:**

25 Q. Good afternoon. Can you please state your full name for

1 the record?

2 A. My name's Gary Johnson.

3 Q. Are you employed, Mr. Johnson?

4 A. I am self employed. My wife and I own a business; Have  
5 Trunk Will Travel.

6 Q. Does she have responsibilities in that business?

7 A. Yes.

8 Q. And what are they?

9 A. She does most of the office, office work, and, you know,  
10 that, e-mails and that type of thing, and then I do the daily  
11 operations, you know, running the elephants and whatnot.

12 Q. Who handles and cares for the elephants at Have Trunk  
13 Will Travel?

14 A. Both of us do, but I mainly do, and, obviously, we have  
15 employees that help us.

16 Q. How many elephants do you have currently?

17 A. We have seven currently.

18 Q. Did you submit an expert report in the case in this case?

19 A. Yes.

20 Q. And was that a joint report?

21 A. Yes, it was.

22 Q. How was that report created?

23 A. Pardon me?

24 Q. How was that report created?

25 A. Kari created it, and then we reviewed it together and

1       agreed on it.

2       Q.    Did you contribute to that report?

3       A.    Yes.

4       Q.    In the course of your business, who has the  
5       responsibility for the written paperwork?

6       A.    Kari does.

7       Q.    And do you have some difficulty in reading documents?

8       A.    I do, yes.

9       Q.    How is it that you were able to read the materials  
10       associated with the expert report?

11       A.    Basically, she does and reads it me.  I mean I can read,  
12       I'm just very slow, and, you know -- but she relays it to me,  
13       reads it me, and then agree or disagree or change or whatnot.

14       Q.    Do you have a CD that was prepared for this case?

15       A.    Yes, I do.

16       Q.    That was, in other words -- sorry -- was submitted with  
17       your expert report in this case?

18       A.    Yes.

19                    MS. PARDO:  Okay.  Can you pull up DX-24 at PDF, Page  
20       31?

21       BY MS. PARDO:

22       Q.    And I'd like you to, Mr. Johnson, to look at the  
23       document that's on the screen, and we can scroll through the  
24       pages, but I'd like to know if you recognize this document?

25       A.    Yes, I do.



1 Q. And what is this document?

2 A. It's my CV.

3 Q. Okay. Did someone help you prepare that?

4 A. Yes. Kari did.

5 Q. And did you have the opportunity to discuss it and see if  
6 it's accurate?

7 A. Yes, I did.

8 Q. And does it accurately reflect your experiences to date?

9 A. Yes.

10 Q. When were you first exposed to animal training?

11 A. Animals in general, I grew up around animals. My family  
12 had horses, and we had cattles and cattle and chickens. I was  
13 raised on a small farm, and then we always had a lot of  
14 horses. My dad furnished horses for different camp -- camps,  
15 Boy Scout, Girl Scouts, you know -- different camps, so we  
16 always had animals to take care.

17 And then when I was 16, I had a chance to get an  
18 elephant, so I did and just been doing it ever since; but  
19 prior to that, I worked for a man on weekends that had all  
20 kinds of animals in a petting zoo. We had elephant rides,  
21 camel rides, pony rides. So on weekends, I would help. I  
22 probably started about 10 years old, sweeping up in the  
23 petting zoo; the goat poop. And then as I got older, worked  
24 on the elephant ride and camel ride, and that's how I really  
25 became interested in elephants.

1 Q. And so how old were you when you began working with  
2 elephants?

3 A. I was probably 14, 15. Not actually working with them,  
4 but when I was 16, I had a chance to get an elephant so I  
5 did, and that's -- I was working with the elephant then.

6 Q. And have you worked with elephants ever since then?

7 A. Yes, I have.

8 Q. How many elephants have you worked with since you started  
9 working with them?

10 A. Probably close to 60 to 70. I tried to figure it out  
11 yesterday and came up with that number.

12 Q. Were they Asian or African elephants?

13 A. Mixed.

14 Q. When you started working in and caring for elephants, was  
15 there a school that could teach you to do that?

16 A. No, there was not. It's something that you have to learn  
17 on your own or get with someone to do an apprenticeship. What  
18 I would do is just anywhere I could that elephants were at, I  
19 would go and try to visit, talk to people, just learn what I  
20 could, you know, ask questions if they would talk to you, and  
21 so it's most of my stuff is just hands-on experience and a  
22 little bit of trial and error in the beginning.

23 Q. What aspects of elephant care did you learn?

24 A. All part of it.

25 Q. Can you name some of those?

1 A. The feeding; trimming feet; washing, washing them; taking  
2 blood. I've helped in artificial inseminations; helped in four  
3 births. We've have had four births at our facility. Giving  
4 rides; doing shows; movies; Indian weddings; religious  
5 ceremonies; educational shows. We've done circuses over the  
6 years; just a wide variety of elephant activity.

7 Q. In addition to the elephant care aspects that you spoke  
8 of, did you learn to handle an elephant?

9 A. Yes.

10 Q. And have you learned to train an elephant?

11 A. Yes, I have.

12 Q. How did you gain experience training elephants?

13 A. Again, a lot of it was just trying to go and watch and  
14 learn and talk to people, and, basically, I had to start  
15 training our elephant when I got him. He was about a four-  
16 year-old young male, and he hadn't been trained before, so we  
17 just figured it out, my brother and I.

18 Q. Has your career, since you were an adult, been focused on  
19 anything but elephants?

20 A. No, just elephants.

21 Q. What system of management do you use with elephants?

22 A. We use a free contact, but we do have a breeding male  
23 that we do sort of a protected contact with him.

24 Q. And does free contact involve the use of any tools?

25 A. Yes. A guide and chains and tethers, yes.

1 Q. Does Have Trunk Will Travel have a breeding program at  
2 their facility?

3 A. We do. We've had four babies born at our facility.

4 Q. Have you had experience providing husbandry and care to  
5 pregnant elephants?

6 A. Yes, we have.

7 Q. Okay. Have you been involved in any professional  
8 associations related to elephants?

9 A. Yes. I'm a board member of the International Elephant  
10 Foundation; actually, a founding board member; the Elephant  
11 Managers Association I'm a member of, and then was -- I used  
12 to be a board member of that years ago.

13 MS. PARDO: If you can turn to Page 3 of the CV.

14 BY MS. PARDO:

15 Q. I see here that you're a member of the Outdoor Amusement  
16 Business Association.

17 A. Yes, I am. And I've helped create a -- basically, a  
18 guide to having animals at fairs and festivals and whatnot.

19 Q. Is that the publication that's listed as "Animal Care and  
20 Training, Recommended Guidelines for Performing and Exhibited  
21 Animals"?

22 A. It is, yes.

23 Q. Have you had any -- the next entry details that you are  
24 the -- Western Fairs Association. Can you describe what your  
25 involvement is with that association?

1 A. We're a member of Western Fairs. It's, obviously, a fair  
2 association in the west. Part of our business, we do give  
3 rides, and we do shows at fairs, mostly in the west, and we've  
4 been a member for, gosh, 20 years or more.

5 Q. You have listed The American Zoo and Aquarium  
6 Association; can you describe your involvement with that  
7 association?

8 A. Right. We're actually a -- more or less an associate  
9 member of AZA, and we're inspected, you know, the same as a  
10 zoo would be.

11 Q. I see that it says that you served on a task force. Can  
12 you describe what you mean by that?

13 A. The original principle of elephant management, I was  
14 involved in putting that program together.

15 Q. And what did that involve?

16 A. A group of us met and basically outlined the school that  
17 we thought would be appropriate for elephant managers, for  
18 training staff, and whatnot.

19 Q. And you had input into that?

20 A. Yes, I did.

21 Q. Okay. I see you have listed California Department of Fish  
22 and Game Directors Advisory Committee on the Humane Care and  
23 Treatment of Wild Animals; can you just detail your  
24 participation on that -- with that organization or with that  
25 entity?

1 A. We're regulated by the California Fish and Game, and they  
2 have a -- we're on a committee to advise the Director of  
3 California Fish and Game for the Commission.

4 Q. And if you would turn to the prior page, I see that you  
5 also have had conducted training seminars with respect to  
6 elephants; can you just briefly describe for us what those are  
7 or what those were?

8 A. Right. We've done two training seminars for the USDA  
9 Department of Agriculture, and they actually came --  
10 inspectors came to our facility, and we provided our staff,  
11 elephants, and facility that -- where they could get some  
12 hands-on experience, you know, watching elephants. We trimmed  
13 a tusk for them. We trimmed feet for them. We did rides for  
14 them. Actually, gave them rides. We did shows for them. We  
15 worked elephants in harness. We just did a wide variety -- had  
16 a little logging demonstration; how we exercise -- our  
17 exercise program; just a wide variety so they can get a little  
18 taste of what elephants are about.

19 Q. At whose request did those training sessions occur?

20 A. From the USDA.

21 Q. Okay. And have you had any role in producing training  
22 films about elephants?

23 A. Yes. We produced guides in tether and training for the  
24 AVMA, American Veterinarian Association, my wife and I.

25 Q. And have you ever had the occasion to observe Asian

1 elephants in range countries?

2 A. Yes, I have.

3 Q. And how did you get that opportunity?

4 A. I've been to Thailand three different times. The first  
5 time was about in 94, 1994, and I was hired by a production  
6 company to go and look for an elephant to do a film in  
7 Thailand, so I was there for two weeks and looked at over 300  
8 elephants to try to find one for this project.

9 And then the second time, we did not find an elephant to  
10 play the role, so we took an elephant from California to  
11 Thailand for a movie for -- we were there four months.

12 Q. During your visit to Thailand, were you able to observe  
13 the use of tethers or chains at any of the places where you  
14 saw elephants?

15 A. Yes. Almost every place we visited, that's how the  
16 elephants were kept.

17 Q. And have you, also, as part of your CV explained or  
18 listed demonstrations, educational demonstrations, that were  
19 performed?

20 A. Yes.

21 Q. And can you just recall briefly what some of those were?

22 A. We've done educational shows in zoos. We do a lot of  
23 education -- not a lot, but we do some educational programs  
24 that are at our home base.

25 MS. PARDO: At this time, I would like to move the

1 CV of Mr. Gary Johnson into evidence as DX-24 beginning at  
2 Page 31.

3 THE COURT: Any objection?

4 MS. SANERIB: No objection to the CV.

5 THE COURT: Admitted.

6 BY MS. PARDO:

7 Q. Given your experience, Mr. Johnson, do you feel that your  
8 testimony about Asian elephants and their care and training  
9 could assist the Court in its understanding of the this case?

10 A. Yes.

11 Q. And are you confident that you can render an opinion  
12 about the care and management and training of elephants in  
13 captivity?

14 A. Yes, I can.

15 MS. PARDO: At this time, Your Honor, we tender Mr.  
16 Johnson as an expert in the husbandry, handling, and training  
17 of captive elephants.

18 THE COURT: All right. It's 5:25. I'll give you a  
19 chance to conduct voir dire tomorrow morning.

20 MS. SANERIB: Okay.

21 THE COURT: We'll start at ten o'clock. You'll have  
22 to come back tomorrow. I'm going to have to ask you, as I did  
23 your wife, please do not discuss your testimony.

24 THE WITNESS: Okay. Yes, sir.

25 THE COURT: So enjoy your evening.



1 THE WITNESS: Thank you.

2 THE COURT: We'll see you tomorrow. And, thank you,  
3 counsel. Have a nice evening. Now, everyone's down to about  
4 three or four hours now, according to my figures. All right.  
5 Carol's going to check with you after I leave. All right.  
6 Enjoy your evening. I'm going to be here for awhile. Enjoy  
7 your evening.

8 Who's testifying tomorrow? Mr. Johnson, obviously,  
9 will. Who else?

10 MR. SIMPSON: Gary Jacobson will be the witness  
11 after him. Lisa Weisberg(Phonetic) will follow him, and then  
12 we have a deposition we may play. And I think -- all right --  
13 I stand corrected. Yeah. I forgot. I forgot. After Mr.  
14 Jacobson is Kari(Phonetic) Coleman, then Ms. Weisberg. I'm  
15 not sure, frankly, that we'll get to Ms. Weisberg, but --

16 THE COURT: All right. Are those your last -- we  
17 have three additional witnesses other than Mr. Johnson; is  
18 that correct?

19 MR. SIMPSON: Well, we have the representatives of  
20 the organizational plaintiffs. We have a deposition by -- a  
21 video deposition by Mr. Glitzenstein; then we have Mr.  
22 Zawolsky(Phonetic). We have an expert witness, Ted Friend. We  
23 have Dennis Schmitt, and we may have a couple of others we  
24 haven't decided on. They're all on the list, but it depends  
25 on how things go.

1           Our objective, Your Honor, was to rest next  
2 Thursday. That's what we planned to do. I don't know whether  
3 that's reasonable to expect, but that was our goal and --

4           THE COURT: All right.

5           MR. SIMPSON: And we want to move through this as  
6 quickly as possible, and to that end -- I mean we've, you  
7 know, we've got these out-of-state people. We we're thinking  
8 about possibly suggesting a Friday session. I don't know  
9 whether that is realistic or not, but --

10          THE COURT: It probably isn't only because I have a  
11 fairly demanding calendar, and I've scheduled matters on  
12 Fridays. Let me just see, although, I may have to make an  
13 adjustment. I don't know.

14          MR. SIMPSON: I just threw that out. I don't --

15          THE COURT: If I make an adjustment at all, it may  
16 have to be next Friday, not this coming, not the sixth; it may  
17 have to be the 13th only because of some logistical issues on  
18 my part, as well. We can talk about it tomorrow, but that may  
19 be -- I may have to do that. I don't know.

20          MS. MEYER: Your Honor --

21          THE COURT: Yes.

22          MS. MEYER: I have two things to say. If Ms.  
23 Weisberg is not going to be called tomorrow and you're not  
24 sitting on Friday, she's from out of town, and she came here  
25 today. I would like to know if she could go home and come back

1 if she's not going to be on until Monday; that's the first  
2 thing.

3 And the second thing is I didn't hear Mr. Rider's  
4 name on the list, and if Mr. Rider's not going to be called,  
5 I'd like to have him released as a witness.

6 MR. SIMPSON: Well, first thing, I can't predict how  
7 long their crosses are going to be, so what I don't want to do  
8 is end up without a witness at the end of the day and waste --

9 THE COURT: Where is she from?

10 MR. SIMPSON: She's from New York.

11 MS. MEYER: New York City. But you have other --  
12 you have some deposition testimony you can do you've already  
13 listed.

14 MR. SIMPSON: Well, I mean, we could do that, but  
15 we also have a order of proof that we think makes sense for  
16 the Court, and it seems to me that we -- the last thing we  
17 want to do is run out -- you know -- get down to the end of  
18 the day and not have a live witness. I think that's a waste  
19 of your time.

20 THE COURT: I don't think we're going to get to her;  
21 Mr. Johnson-- you have Mr. Johnson. Did you plan to call her  
22 as your following witness after him?

23 MR. SIMPSON: Well, it would be Mr. Johnson; and  
24 then Mr. Jacobson; and then Ms. Coleman.

25 THE COURT: So you don't plan to call her at all

1 then. I'm going to excuse her then until next Tuesday.

2 MR. SIMPSON: All right. Well --

3 THE COURT: I'm not going to keep her around here.  
4 All right. Yes. I'm sorry, Monday; Until next Monday.

5 MS. MEYER: How about Mr. Rider?

6 MR. SIMPSON: Well, Your Honor, we haven't made our  
7 decision on that. He's a plaintiff in the case --

8 THE COURT: You know, counsel, I would do the same  
9 thing for you. He's a party in this case, and I'm not going to  
10 require them to make that judgment now. They may want to call  
11 him. I've tried to be reasonable about it. He's not sitting  
12 around the courthouse, I hope. He's not. He's gone home; I  
13 hope. He doesn't have to be here as long as he's reasonably  
14 available to the courthouse, then he's not otherwise  
15 restricted.

16 Does he have any travel plans impending, impending  
17 travel plans?

18 MS. MEYER: He'd like to get back on the road, Your  
19 Honor. The only reason I raised it is because I didn't hear  
20 him on the list. If they're not going to call him, I would  
21 like to --

22 MR. SIMPSON: Well, we haven't decided. He's on our  
23 witness list, but the case isn't over yet.

24 THE COURT: Right. He is a party in this case, so  
25 -- all right -- let me just huddle -- Carol, let me talk to

1 you for a second.

2 (Whereupon, there was a brief off-the-record  
3 discussion with the deputy clerk and the Court at this time.)

4 THE COURT: All right. We'll start at ten o'clock  
5 tomorrow morning. Thank you.

6 [End of proceedings]  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

1  
2  
3  
4 I, Wendy C. Ricard, Official United States Court  
5 Reporter in and for the District of Columbia, do hereby  
6 certify that the foregoing proceedings were taken down by  
7 me in shorthand at the time and place aforesaid,  
8 transcribed under my personal direction and supervision,  
9 and that the preceding pages represent a true and correct  
10 transcription, to the best of my ability and  
11 understanding.  
12  
13  
14  
15

16 \_\_\_\_\_  
17 Wendy C. Ricard, RPR, CCR  
18 Official U.S. Court Reporter  
19  
20  
21  
22  
23  
24  
25