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UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

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

CIVIL ACTION NO. 03-2006

WASHINGTON, D.C.

VERSUS

TUESDAY, MARCH 10, 2009

2:40 P.M.

FELD ENTERTAINMENT, INC.

DAY (18)

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,

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REPORTED BY:

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Proceedings recorded by mechanical stenography.

Transcript produced by computer-aided transcription.

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

(Whereupon, court resumed after the lunch recess; thereafter, court resumed as follows:) 2:45

THE DEPUTY CLERK: Remain seated.

THE COURT: All right. Let's proceed. Any cross-examination?

MR. CRYSTAL: Yes, Your Honor. Thank you.

THE COURT: All right. Counsel.

CROSS-EXAMINATION BY MR. CRYSTAL:

Q. Good afternoon, Ms. Weisberg.

A. Good afternoon.

Q. Ms. Weisberg, what is the mission of the ASPCA?

A. It is to provide effective means to prevent cruelty to all animals and to alleviate pain, fear, and suffering in animals.

Q. And on direct, you were asked some questions about the ASPCA's policies; are those policies consistent with the ASPCA's mission?

A. Absolutely.

Q. And how about the claims in this case, how do they relate to the ASPCA's mission?

A. Well, they fit perfectly in with the mission, to prevent cruelty to the elephants and to certainly alleviate the pain, fear, and suffering that they undergo.

Q. And what about the relationship between the claims in

1 this case and the ASPCA's policies?

2 A. They are consistent, as well.

3 Q. Now, would it be consistent with the ASPCA's policies,
4 for example, for your humane agents to take action against a
5 pet shop that might be abusing animals?

6 A. Oh, yes.

7 Q. And would you expect that action against a pet shop to
8 appear in ASPCA's published policies?

9 A. No.

10 Q. Thank you. You were asked a few questions about the
11 ASPCA's inspection records of the Ringling Brothers' circus;
12 do you recall that?

13 A. Yes.

14 Q. Did the ASPCA make a good-faith search for all of the
15 inspection records of the Ringling Brothers' circus?

16 A. Yes, we did.

17 Q. Did the ASPCA locate some records?

18 A. Yes, we did.

19 Q. And were those records over multiple years of
20 inspections?

21 A. Yes.

22 Q. And were all those records that were located produced to
23 the defendant?

24 A. Yes, they were.

25 Q. Now, the ASPCA produced several ASPCA's produced several

1 -- produced documents at several junctures in this case,
2 right?

3 A. Yes; that's correct.

4 Q. And did the ASPCA conduct a good faith search for records
5 at each juncture?

6 A. Absolutely.

7 Q. And were all responsive documents provided to the
8 defendant?

9 A. We provided all of our documents to Meyer Glitzenstein
10 and Crystal, but my understanding is that all the responsive
11 documents were submitted to them.

12 Q. Now, you also provided interrogatory responses at several
13 junctures in this case; isn't that right?

14 A. Yes.

15 Q. You were asked about some of those responses earlier
16 today?

17 A. Yes.

18 MR. CRYSTAL: Your Honor, the defendants moved into
19 evidence a couple of interrogatory responses, and for
20 completeness, we'd like to move the entire interrogatory
21 responses of ASPCA into evidence.

22 THE COURT: Any objection?

23 MR. SIMPSON: Well, I think some of these responses
24 are self-serving. I don't have any problems with the ones
25 that I identified.

1 THE COURT: For purposes of completeness, I'll allow
2 them to come in.

3 MR. CRYSTAL: Thank you, Your Honor.

4 THE COURT: They might be self-serving, though.
5 I'll allow them to come in.

6 BY MR. CRYSTAL:

7 Q. Now, you were asked some questions about documents that
8 were produced after the Court's discovery order in this case;
9 do you remember that?

10 A. Yes.

11 Q. And did you provide -- did you conduct a good-faith
12 search for records responsive to that order?

13 A. Yes, I did.

14 Q. And did you produce all responsive records?

15 A. Yes.

16 Q. And you also were asked about supplemental interrogatory
17 responses at that juncture?

18 A. That's correct.

19 Q. And did you provide accurate and complete responses to
20 the -- yes.

21 (Whereupon, the court asked counsel to slow down
22 somewhat.)

23 THE COURT: He can't slow -- he can't do it.

24 MR. CRYSTAL: I'll try.

25 THE COURT: I've been trying for years.

1 BY MR. CRYSTAL:

2 Q. Did you provide accurate and complete responses to those
3 interrogatories?

4 A. Yes, I did.

5 Q. Thank you. Now, you also submitted a declaration --

6 THE COURT: Let me just say this for the record --
7 let the record reflect I was just kidding with counsel.
8 Someone reads that, and they don't know what kind of -- that's
9 what happens.

10 MR. CRYSTAL: I appreciate that correction, Your
11 Honor.

12 THE COURT: And everyone was laughing in the
13 courtroom. All right. The record should reflect that.

14 BY MR. CRYSTAL:

15 Q. You also submitted a declaration in connection with your
16 responses to the Court's order.

17 A. Yes.

18 Q. Do you recall that declaration?

19 A. Yes, I do.

20 MR. CRYSTAL: And, Your Honor, I'd like to show the
21 witness that declaration at this point.

22 THE COURT: Sure.

23 BY MR. CRYSTAL:

24 Q. Is this the declaration you submitted in connection with
25 the Court's order?

1 A. Yes, it is.

2 Q. And if you could focus your attention on Paragraph 2 and
3 if you could read that for us.

4 A. However, there are records that the ASPCA believes likely
5 existed at one time that the ASPCA has been unable to locate
6 despite a thorough search of records. Those records are the
7 following: (A) The ASPCA no longer has any records from
8 inspections conducted by its Humane Law Enforcement, HLE,
9 Department that would have taken place during the years 1996
10 or 1997.

11 Although, HLE cannot be certain that such inspections, in
12 fact, took place, any such records would have been destroyed
13 pursuant to HLE's normal six-year document retention policy
14 prior to the receipt of defendant's March 2004 discovery
15 request to the ASPCA. Since the receipt of the discovery
16 request, HLE has preserved all records pertaining to
17 inspections of the Ringling Brothers circus.

18 Q. Thank you. And is that an accurate account of your
19 review of the inspection records for the ASPCA?

20 A. Yes, it is.

21 Q. You testified earlier about the evidentiary hearing
22 concerning discovery; do you recall those questions?

23 A. Yes.

24 Q. And do you recall what, if any, ruling was issued in
25 connection with that evidentiary hearing?

1 A. Yes. I believe Judge Facciola ruled that all efforts --
2 all efforts were made to find records and that I wasn't in any
3 kind of contempt of court for the requests that were made.

4 Q. Ms. Weisberg, are you familiar with the RICO lawsuit that
5 the defendants filed against the ASPCA and other plaintiffs in
6 this case?

7 A. Yes.

8 Q. And do you recall whether the Court addressed the
9 declaration --

10 THE COURT: Excuse me. No one challenged that ruling
11 on appeal to me? Was that ruling ever challenged? All right.

12 MR. CRYSTAL: No, Your Honor.

13 THE COURT: Very well.

14 BY MR. CRYSTAL:

15 Q. Do you recall whether the Court addressed the declaration
16 that we were just discussing in connection with any ruling in
17 that case?

18 A. That case was stayed, so pending the conclusion of this
19 case.

20 Q. I was actually asking you about the declaration that you
21 submitted. Would it help to see the Court's ruling in that
22 case?

23 A. Yes.

24 Q. If we could show -- this is the Court's October 16th,
25 2008 -- excuse me. I think I wrote down the date wrong;

1 November 7th, 2007 ruling in case 07-1532. If I could direct
2 your attention to Page 7 of that ruling. And I'd like you to
3 start in the middle of the second paragraph. It begins in its
4 August 23rd -- do you see that?

5 A. Yes. In its August 23rd, 2007 order on discovery
6 motions, defendants were directed to produce or account for
7 all documents relating to the payment of Tom Rider. Plaintiff
8 contends that the declaration submitted by Mr. Rider and
9 ASPCA in response to that order evidence ongoing nefarious
10 document destruction from which it requires immediate relief.

11 Again, FEI grossly distorts the facts. While both
12 declarations identify documents that may have been
13 inadvertently discarded from FEI's first discovery request,
14 neither amount to an admission of willful document destruction
15 or evidence of a cover-up scheme. In fact, the declarations
16 comply precisely with this Court's order requiring defendants
17 to provide a sworn statement accounting for all responsive
18 documents that may have been -- destroyed.

19 In these declarations, defendants have simply accounted
20 for documents they're unable to produce. Consequently FEI has
21 not shown that a stay will result in the intentional
22 destruction of evidence such that it would be prejudiced.

23 Q. And, again, Is that consistent with your understanding of
24 the searches that ASPCA conducted in connection with this
25 matter?

1 A. Yes, it is.

2 Q. Now, you were asked some questions about the inspections
3 that the ASPCA has conducted of the circus; do you remember
4 that?

5 A. Yes, I do.

6 Q. And you were asked some questions about the state law
7 that governs those inspections; do you remember that?

8 A. Yes.

9 Q. And if we could take a look at Section 353 of the
10 Agricultural Marketing Code which you were asked some
11 questions about. And, again, I just want to make sure the
12 record is clear: Is this the operative law that governs the
13 humane law enforcement officers' powers with regard to animal
14 cruelty?

15 A. Well, it certainly is our main cruelty statute.

16 Q. And when your humane law enforcement officers -- is that
17 the right word?

18 A. Yes; agents, officers.

19 Q. Agents. Are doing an inspection of the Ringling
20 Brothers' circus, are they carrying out any law other than
21 this law?

22 A. The New York City health code.

23 Q. Are they enforcing the Endangered Species Act?

24 A. No. We're not authorized to enforce that?

25 Q. Now, could you tell the Court what training your humane

1 law enforcement officers receive in connection with enforcing
2 this law?

3 A. It's 40 hours of peace officer training, which they
4 receive at John Jay Criminal College and 40 hours of firearms
5 training.

6 MR. CRYSTAL: And, Your Honor, I would move this
7 particular provision of the Marketing Code into evidence if
8 the Court would allow me to.

9 THE COURT: Any objection?

10 MR. SIMPSON: No objection.

11 THE COURT: Admitted.

12 MR. CRYSTAL: I think that would be Plaintiff's 187.

13 THE COURT: All right.

14 BY MR. CRYSTAL:

15 Q. Now, what's the typical kind of case that a humane law
16 enforcement agent would be involved in?

17 A. Typically, it would involve companion animals,
18 specifically, dogs and cats, and it would be for either
19 neglect where the owner would not provide sufficient food and/
20 or water to the animal or left the animal outdoors, dogs, in
21 particular, in inclement weather; as well as intentional
22 cruelty, various horrific acts people have performed on dogs
23 and cats.

24 Q. Do the humane agents receive any particular training in
25 inspecting elephants?

1 A. No, they don't.

2 Q. And what, if anything, would the humane agents know about
3 detecting foot problems in elephants?

4 A. Probably none.

5 Q. And what, if anything, would they know about detecting
6 stereotypic in elephants?

7 A. None.

8 Q. And what, if anything, would they know about detecting
9 arthritis in elephants?

10 A. They would have no ability to detect that.

11 Q. And what, if anything, would they know about detecting
12 hook boils in elephants?

13 A. No. They wouldn't have any basis for that, either.

14 Q. Now, I believe you testified earlier today that those
15 inspections are arranged; is that right?

16 A. That's correct.

17 Q. And what did you mean by that?

18 A. Because Madison Square Garden is private property, we
19 would need a search warrant in order to seek entry, and in
20 order to get a search warrant, we need probable cause. So
21 because we have neither of those and Ringling has challenged
22 our authority in the past, we -- this is what we need to do if
23 we want to seek entry into Madison Square Garden and inspect
24 -- conduct an inspection.

25 Q. When you say "this is what we need to do", what do you

1 mean?

2 A. The agents -- in other -- for the agents to gain access
3 into Madison Square Garden and to observe the elephants, they
4 need to contact Ringling directly to get their consent to get
5 onto the property and inspect the animals.

6 Q. And does that take place in a advance of the visit; is
7 that right?

8 A. Yes, it does.

9 Q. Okay. And how is the inspection itself conducted?

10 A. We're accompanied by a Ringling official who takes us
11 into the various areas where the animals are kept, and we are
12 kept at a distance to observe the animals, and I believe
13 that's the extent of it.

14 Q. And Ms. Weisberg, why do you think that the inspections
15 don't reflect the kind of conduct that's alleged in this
16 lawsuit?

17 A. For a variety of reasons; the agents are not trained to
18 know what to look for or they certainly are not -- excuse me
19 -- veterinarians or animal behaviorists, and they're really
20 just looking for obvious signs of cruelty or neglect.

21 Q. And, now, you were asked earlier about the ASPCA's
22 position on circuses; is that right?

23 A. Yes.

24 Q. And what is the ASPCA's position?

25 A. Well, we're -- we're against circuses because of the

1 inherent cruelty and stress involved; certainly, the travel
2 and the length of time that the elephants are chained. The
3 conditions under which they live, both on the trains and at
4 the various venues, has absolutely no semblance to their
5 native habitat. And, then, certainly, the -- the bullhooking
6 that occurs in order for them to perform on command.

7 Q. And that was the ASPCA's position when these inspections
8 that were discussed earlier today took place; isn't that
9 right?

10 A. That's right.

11 Q. So were your humane law officers carrying out your -- the
12 ASPCA's official position or were they carrying out the
13 marketing code when they conducted these inspections?

14 A. It was really more the ASPCA's mission. I mean to the
15 extent that they -- the conditions, you know, they were
16 feeding the animals and watering the animals. You know, they
17 were not neglecting the animals, you know, in that respect;
18 but in terms of being able to observe any type of intentional
19 cruelty or on-going suffering, they are not able -- they were
20 not able to detect that on these visits.

21 Q. Ms. Weisberg, why did the ASPCA decide to join this
22 lawsuit?

23 A. Well, first the ASPCA is for the well-being of all
24 animals. We had received -- we had always received complaints
25 about how animals are treated in the circus and the evidence

1 that was presented to us, as well as discussions with both Tom
2 Rider and Ms. Meyer were very compelling; and we thought it
3 was a very strong case, one that we considered seriously
4 before we decided to join but because of its compelling nature
5 and because of our mission, we believed it was the right thing
6 to do.

7 Q. Does the ASPCA have members?

8 A. Yes, we do.

9 Q. And were the members concerned about it?

10 A. Absolutely. Members had always been concerned about
11 exotic animals used in entertainment.

12 Q. Ms. Weisberg, you were asked some questions earlier about
13 the funding that the ASPCA provided to/or for Tom Rider;
14 do you remember that?

15 A. Yes.

16 Q. Now, why did the ASPCA decide to fund Tom Rider's public
17 education efforts?

18 A. We thought what he was doing, going around the country,
19 talking with the media and educating the public was very
20 important. It certainly consisted with other activities that
21 the ASPCA engages in; such as its humane education department
22 and the advocacy work of the government affairs department.

23 Q. And did the ASPCA have any other purpose for providing
24 this kind of funding?

25 A. No, we didn't.

1 Q. What does the ASPCA think of the media work that Tom
2 Rider has done over the years?

3 A. We think he's done a pretty incredible job. He's really
4 talked to so many reporters all over the country. Those --
5 those stories, both in print and tv, have been aired widely,
6 and, certainly, we've heard from our members who are very
7 grateful for the work that he's done, and we think that it
8 really has helped educate the public about how these animals
9 are treated.

10 Q. Why does the ASPCA believe that Tom Rider, in particular,
11 is an effective spokesperson?

12 A. Because he was an eyewitness to this -- eyewitness to the
13 cruelty that was inflicted.

14 Q. And is that important in terms of the public education?

15 A. Oh, absolutely. I mean, he has got a lot of credibility,
16 and he is clearly very committed to these elephants and to
17 this issue.

18 Q. Now, there was some discussion about funding in the
19 earlier years, I think in 2001 time frame, and I think you
20 mentioned that you were doing some in-house with Tom Rider; is
21 that right?

22 A. Yes. I mean I was work, you know, working with Tom, you
23 know, helping to coordinate his media visits and, also, we
24 then got our media department involved in it on a day-to-day
25 basis.

1 Q. And what did that involve?

2 A. Well, a lot of coordination. We sat down and we figured
3 out the schedule of the Blue Unit and, you know, where he
4 would be at any given time. The media department had to amass
5 all of their -- the reporters in that particular venue, get in
6 touch with them right before Tom would arrive in that city,
7 send out all our media packets, a video news release that we
8 produced featuring Tom.

9 So there's a lot of coordination, as well as finding
10 lodging for him to stay for however many days he would be in
11 that city.

12 Q. Was Tom Rider traveling from place to place?

13 A. Yes, he was.

14 Q. And why is that?

15 A. That's just what he did. He moved with the circus, so to
16 speak, so he was always on the road, for the most part.

17 Q. And, then, I think you mentioned in your direct testimony
18 that there was a time later where you were working with
19 someone named Darcey Kimnets(Phonetic); is that right?

20 A. Yes; that was early on.

21 Q. And, now, who is she?

22 A. She worked for the Wildlife Advocacy Project. I don't
23 recall what her title was.

24 Q. And what did that involve in terms of --

25 A. Well, she, basically, did what our media department

1 ultimately took over, so it was the same kind of logistical
2 arrangements.

3 Q. So, then, coordinating where Tom is going?

4 A. Correct.

5 Q. And I think you mentioned earlier that there came a time
6 that you gave a grant to the Wildlife Advocacy Project or that
7 the ASPCA gave a grant.

8 A. Yes. That was in December of 2001.

9 Q. And why was that?

10 A. It was, again, to help fund Mr. Rider's travels from one
11 city to the next and his lodging and his day-to-day living
12 expenses.

13 Q. And was there a time after that grant was provided that
14 the ASPCA provided some direct funding for Tom's efforts?

15 A. We, then, because Meyer, Glitzenstein had set up a
16 Western Union account because Mr. Rider was on the road all
17 the time; it just made sense to get the funds to him directly
18 through that Western Union account. When we decided to take
19 it in-house, again, because Mr. Rider was always on the road
20 and didn't have a bank account, we wanted to avoid some of
21 those Western Union fees and so we would arrange whenever Tom
22 was on the East Coast that he would come by our office, and I
23 would personally take him to the bank to sign travelers checks
24 so that he could use them in his travels.

25 Q. And last thing, Ms. Weisberg, what if any efforts, did

1 the ASPCA make to hide the funding that was provided for Tom
2 Rider over the years?

3 A. There was no efforts to hide his funding. I mean we were
4 pretty -- I think we were very open it, and our financial
5 records and bookkeeping practices are all standard practices,
6 and they're there for anyone to see.

7 MR. CRYSTAL: Thank you. I have no further questions
8 at this time, Your Honor.

9 THE COURT: All right. Any redirect, counsel?

10 MR. SIMPSON: Your Honor, just for completeness, I'd
11 like to also move in the other provisions of that statute that
12 I made reference to which are sections 350; 369; 371; and 372.

13 THE COURT: I think that's only fair. Any
14 objections?

15 MR. CRYSTAL: No objection.

16 THE COURT: All right. Admitted. What are the
17 numbers, again?

18 MR. SIMPSON: 350; 369, 371; and 372.

19 THE COURT: That's fine. Admitted.

20 **REDIRECT EXAMINATION BY MR. SIMPSON:**

21 Q. Ms. Weisberg, you indicated that there was a time when
22 Ringling Brothers questioned the authority of your humane law
23 enforcement officers?

24 A. Yes.

25 Q. And that -- do you remember what year that was?

1 A. I don't.

2 Q. But is it true that even though that authority was
3 questioned that those humane law enforcement officers came
4 back the following year and did an inspection?

5 A. They did, but it was under the prearranged basis.

6 Q. Now, you indicated that these HLE's were not trained in
7 the various maladies that could beset an elephant, correct?

8 A. With elephants, yes.

9 Q. But that's just something that you could provide them,
10 isn't it?

11 A. Not really.

12 Q. Well, was there any reason why the ASPCA couldn't obtain
13 elephant health training for its HLE's?

14 A. It's very hard to find a pachyderm expert. I mean even
15 Animal Medical Center in New York City doesn't have a
16 pachyderm veterinarian. So the ASPCA is a non-profit
17 organization, and it has limited resources, and it's really
18 the only entity, certainly, in New York City, that performs
19 cruelty investigations, and they really are quite busy just
20 with companion animal cruelty complaints that they go on, so
21 they have to use their resources wisely.

22 Q. Are you aware that Ringling Brothers itself provides
23 orientation courses for USDA inspectors?

24 A. I've -- I've heard of that.

25 Q. Are you aware that Ringling Brothers itself provides

1 orientation courses for local ACO's?

2 A. No, I'm not.

3 MR. SIMPSON: All right. I have no further
4 questions.

5 THE COURT: All right. Any other questions, counsel?

6 THE COURT: All right. Thank you. You may step down.
7 Thank you. I have to ask you not to discuss your testimony
8 with anyone. All right?

9 THE WITNESS: All right.

10 THE COURT: All right. Your next -- actually, I just
11 -- I need to sign something. Who's your next witness, counsel?

12 MR. SIMPSON: Michael Markarian.

13 THE COURT: Counsel, just give me 10 minutes. I need
14 to sign something. Who's your next witness after that?

15 MS. PETTEWAY: It will be Kathy Liss.

16 THE COURT: I'll take a 10-minute recess.

17 THE DEPUTY CLERK: Remain seated. This Honorable
18 Court is in a 10-minute recess.

19 (Whereupon, there was a brief recess at this time;
20 thereafter, court resumed as follows:)

21 MS. PETTEWAY: The defendant calls Michael
22 Markarian.

23 THE COURT: All right.

24 * * * *

25 **MICHAEL MARKARIAN**, called as a witness in this case,

1 after having been so duly sworn, testified as follows:

2 * * * *

3 THE COURT: Hello.

4 **DIRECT EXAMINATION BY MS. PETTEWAY:**

5 Q. Good afternoon. Could you please state your name for the
6 record?

7 A. It's Michael Markarian.

8 Q. Are you currently employed?

9 A. Yes.

10 Q. Where are you employed?

11 A. At the Humane Society of the United States.

12 Q. And what is your position there?

13 A. Executive vice-president for external affairs.

14 Q. When did you assume that position?

15 A. In January of 2005.

16 Q. Do you currently hold any position on behalf of the Fund
17 for Animals?

18 A. Yes. I'm the president of the Fund for Animals.

19 Q. And how long have you held that position?

20 A. Since 2002.

21 Q. And you served as the Fund for Animals -- if I refer to
22 that as FFA, do you understand that acronym? You served as
23 FFA's Rule 30(b)6 deponent in this case, correct?

24 A. That's correct.

25 Q. And you were deposed in June of 2005?

1 A. I believe that's right.

2 Q. And you received a notice of deposition; did you not?

3 A. Yes.

4 Q. And the list contained 22 subject matters for inquiry?

5 A. I don't remember the number of --

6 Q. Well, there were a number of subject matters that were
7 noticed.

8 A. That's right.

9 Q. And you were prepared to testify on those subjects?

10 A. Yes.

11 Q. You also verified FFA's interrogatory responses in this
12 case?

13 A. Yes; that's right.

14 Q. And you provided testimony on behalf of FFA evidentiary
15 hearing held before Magistrate Judge Facciola, correct?

16 A. That's right.

17 MS. PETTEWAY: We request to lead this witness
18 pursuant to Rule 611(c) because he's an officer of an adverse
19 party.

20 THE COURT: Any objection?

21 MR. CRYSTAL: No objection.

22 BY MS. PETTEWAY:

23 Q. FFA and the Humane Society for the United States,
24 otherwise know as HSUS, entered into an asset acquisition
25 agreement in January of 2005, correct?

1 A. That's correct.

2 Q. Could we look at Defendant's Exhibit 68, which has
3 already been admitted into evidence. Do you recognize this
4 document, Mr. Markarian?

5 A. Yes, I do.

6 Q. And this is the acquisition agreement that was entered
7 into by FFA and HSUS; is it not?

8 A. Yes.

9 Q. As part of this asset acquisition agreement, HSUS
10 acquired assets from the Fund for Animals; did it not?

11 A. That's correct.

12 Q. And if we look at Section 1.1, which is titled
13 "Acquisition of assets" and I'm paraphrasing, but this
14 paragraph indicates that the Humane Society of the United
15 States purchased, acquired, and accepted from the Fund all
16 assets with the exclusion of assets that were identified in a
17 different section, Section 1.2, correct?

18 A. That's right.

19 Q. And if we could go to Section 1.2. And this section
20 identifies the excluded assets, right?

21 A. Yes. That appears to be right.

22 Q. And the excluded assets are in letters "A" through "G";
23 cash in the amount of \$250,000, correct?

24 A. Yes.

25 Q. Books and records relating to the incorporation, correct?

1 A. Yes.

2 Q. And, then, letter "C", records relating to certification
3 of financial statements, correct?

4 A. Yes.

5 Q. Letter "E" is personal property of officers of the Fund,
6 correct?

7 A. That's right.

8 Q. "F" is the right to receive mail and other
9 communications, correct?

10 A. That's true.

11 Q. And letter "G" is certain real property, including the
12 Black Beauty Ranch?

13 A. That's correct.

14 Q. And pursuant to this agreement, the Humane Society also
15 assumed most of FFA's liabilities; did it not?

16 A. I believe that's true.

17 Q. Let's look at Section 1.3 on Page 3 of this document.
18 It's at the bottom of the page, and this is language regarding
19 the assumption of liabilities; is it not?

20 A. That's correct.

21 Q. Mr. Markarian, who pays your salary?

22 A. The Humane Society of the United States.

23 Q. And on average, how many hours do you spend working on
24 Fund for Animals matters?

25 A. It varies; maybe an hour a week, more this week.

1 Q. Okay. Fair enough. Does the Fund For Animals provide you
2 with any compensation?

3 A. No, not directly.

4 Q. And FFA reimburses HSUS for time you spend on working on
5 FFA matters; does it not?

6 A. That's correct.

7 Q. And prior to entering into the acquisition agreement that
8 we just looked at, how many employees did FFA have?

9 A. About 50.

10 Q. And how many do they currently have?

11 A. The Fund for Animals does not have any employees that it
12 pays directly.

13 Q. And the individuals who perform work on behalf of FFA are
14 actually employed by HSUS; isn't that right?

15 A. That's correct. They're employed by HSUS, and they
16 receive their payroll from HSUS, and the Fund for Animals
17 reimburses HSUS for any time those people spend on FFA
18 programs.

19 Q. And since entering into the asset acquisition agreement,
20 FFA has not operated its own fund raising department;
21 correct?

22 A. That's correct.

23 Q. And that's operated by HSUS?

24 A. That's right.

25 Q. And it has not operated its own public relations

1 department, correct?

2 A. That's correct.

3 Q. And that's operated by the Humane Society, as well?

4 A. Yes.

5 Q. FFA also has not also operated its own litigation
6 department since entering into the agreement?

7 A. That's correct.

8 Q. And FFA relies on HSUS's litigation department; does it
9 not?

10 A. Yes.

11 Q. And HSUS employees' attorneys who represent FFA in this
12 matter, correct?

13 A. That's right.

14 A. And one of those attorneys is Jonathan LaVorn?

15 A. Yes.

16 Q. And Mr. LaVorn is counsel of record in this case; is he
17 not?

18 A. Yes.

19 Q. And Mr. LaVorn signed the complaint that was filed on
20 September 26 th, 2003.

21 A. I don't remember who signed the complaint.

22 Q. Can we bring up M-13, the complaint? Mr. Markarian,
23 this is the complaint that was filed on September 26th, 2003;
24 do you recognize this document?

25 A. Yes, I do.

1 Q. And if we can go to the last page of that document, and
2 that's Mr. LaVorn's signature; is it not?

3 A. Yes.

4 Q. And, at this time, he was employed by Meyer, Glitzenstein
5 & Crystal; was he not?

6 A. I believe so.

7 Q. And he's -- and now he works at the Humane Society?

8 A. That's correct.

9 Q. FFA owns and operates the Black Beauty Ranch?

10 A. That's right.

11 Q. And that property is located in Texas, correct?

12 A. That's right.

13 Q. And, right now, there's one elephant living at the Black
14 Beauty Ranch, correct?

15 A. I'm sorry. Can you repeat?

16 Q. There's one elephant living at the Black Beauty Ranch?

17 A. That's true.

18 Q. And that elephant is known as Babe?

19 A. Yes.

20 Q. And Babe is a female African elephant?

21 A. That's correct.

22 Q. An Asian elephant named Tara lived at the Black Beauty
23 Ranch from 1993 until she died in 2003, correct?

24 A. That's right.

25 Q. Now, Babe is about 25 years old?

1 A. That sounds about right; 24, maybe 25.

2 Q. Okay. And she has severe injuries to her legs; does he
3 not?

4 A. Yes, she does. She sustained those injuries while
5 performing in a circus, and her injuries are primarily to her
6 right rear leg.

7 Q. And those leg injuries were not properly treated by the
8 circus with whom she was with before coming to the Black
9 Beauty Ranch, correct?

10 A. That's our belief.

11 Q. And as a result, Babe suffers from a chronic disability;
12 does she not?

13 A. That's correct.

14 Q. And as you stated earlier, she cannot put any weight on
15 her hind right leg, correct?

16 A. It's getting much better in recent years. but that's
17 generally true.

18 Q. None of the FEI elephants at issue in this case have
19 severe leg injuries like Babe, do they?

20 A. I'm not aware of whether they do or not.

21 Q. Do you know which elephants are at issue in this case?

22 A. Not specifically, no.

23 Q. Since Tara died in August of 2003, Babe has lived alone
24 without any elephant companionship; has she not?

25 A. That's right.

1 Q. And some of FFA's members have expressed concern about
2 Babe being housed alone; haven't they?

3 A. Yes. That's true, and we have been evaluating her

4 A. Yes, that's true. And we have been evaluating her
5 situation for a period of time, consulting with veterinarians
6 and elephant experts, and it's been our understanding that it
7 was not in her best interest to move her because of the
8 injuries to her legs, but we do believe that her legs are
9 getting much better with diet and exercise and medical
10 treatment, and we're looking into moving her to an elephant
11 sanctuary possibly in the near future.

12 Q. Well, since you just mentioned that, has the Fund for
13 Animals considered moving Babe to a zoo?

14 A. No, not particularly.

15 Q. And why is that?

16 A. We generally believe a sanctuary would be the best
17 environment for Babe, and we believe she's comfortable where
18 she is at Black Beauty Ranch and that she's in an outdoor and
19 indoor enclosure which is soft for her feet, relatively flat,
20 allows her to move around, lay down when she needs to so she's
21 not putting weight on her leg.

22 But we do recognize that it's not an ideal situation.
23 We've been hoping to improve it, and we know there are two
24 well-established elephant sanctuaries, one in California one
25 in Tennessee, and we have been contemplating moving her to one

1 of those facilities.

2 Q. Is it FFA's position that it is better for Babe to live
3 alone than to be moved to a zoo?

4 A. In our estimation, as we've been pondering this issue and
5 consulting with experts and veterinarians, it was not in her
6 interest to move her at all, whether to a zoo or to a
7 sanctuary or elsewhere. We felt the transport could
8 jeopardize her welfare, and we've been taking steps to improve
9 her feet; giving her foot care three times a day; putting her
10 on a new diet. She lost about 700 pounds in the past year,
11 putting less weight on her feet. We do hope at some point
12 that she'll be in position where it would be safe to move her,
13 and then we would most likely opt to move her to an elephant
14 sanctuary.

15 Q. So Fund for Animals has not considered moving her to a
16 zoo?

17 A. We haven't pondered that question, no.

18 Q. FFA has only considered moving her, as you said, to
19 accredited animal sanctuaries, correct?

20 A. We've considered two elephant sanctuaries which we
21 believe are the best options for her: The PAWS Sanctuary in
22 Northern California and the Elephant Sanctuary in Tennessee.

23 Q. And isn't it true that those are -- those sanctuaries in
24 addition to the Black Beauty Ranch are the only sanctuaries
25 that are accredited by the Association of Sanctuaries?

1 A. I'm not sure whether that's true or not.

2 Q. Can we look at -- This is the website of the Association
3 of Sanctuaries. And --

4 MR. CRYSTAL: Your Honor, again, we object -- not in
5 the 72-hour -- I'm not sure how this is relevant.

6 THE COURT: What are you using this for, to refresh
7 recollection?

8 MS. PETTEWAY: Yes.

9 THE COURT: Anything can be used for that purpose.
10 Overruled.

11 BY MS. PETTEWAY:

12 Q. These are the only accredited animal sanctuaries that
13 house elephants; are they not?

14 A. At the time that this was published and --

15 THE COURT: Better still, does that refresh your
16 recollection? Maybe it doesn't; if it does, all right.

17 THE WITNESS: Sure. I'm not sure that this
18 association is still doing accreditation, but, at this time,
19 these were the three accredited elephant sanctuaries.

20 BY MS. PETTEWAY:

21 Q. In fact, this association has ceased operations; has it
22 not?

23 A. I believe so.

24 Q. And it has ceased operation due to the creation of a new
25 accreditation organization which is the Global Federation of

1 Animal Sanctuaries; isn't that correct?

2 A. That's correct.

3 Q. And you are vice president of that organization; are you
4 not?

5 A. That's correct.

6 Q. And the Humane Society of the United States is a
7 supporter of that organization, isn't it?

8 A. It has supported that organization financially, yes.

9 Q. And the Animal Welfare Institute is a supporter of that
10 organization?

11 A. My understanding is "yes".

12 Q. And Born Free USA is also a supporter of that
13 organization; is it not?

14 A. That's correct.

15 Q. And that entity has merged with the Animal Protection
16 Institute, correct?

17 A. That is my understanding, yes.

18 Q. Going back to Babe for a moment, has FFA considered
19 adopting another elephant to be a companion for Babe?

20 A. We have been open to any number of options, and our
21 intent at this point is to move her to an elephant sanctuary
22 when she is well enough to be moved. We haven't -- we haven't
23 been offered another elephant or contemplated bringing in
24 another elephant because we've been going down the pathway of
25 determining whether she could be moved to an elephant

1 sanctuary.

2 Q. But there's no firm date of when she will actually be
3 able to move, correct?

4 A. No, not right now.

5 Q. And so for the past six years, FFA has not been able to
6 find another elephant to be a companion for Babe?

7 A. We have not actively been searching.

8 Q. Even though Babe has no elephant companionship, FFA
9 claims that Babe is not alone because she has the
10 companionship of other species; does it not?

11 A. That's true.

12 Q. In fact, Babe has formed a bond with a camel named "Omar"
13 whose enclosure is adjacent to Babe's enclosure?

14 A. That's correct.

15 Q. And Omar's enclosure is so close to Babe's enclosure that
16 Babe can reach over and touch the camel; isn't that right?.

17 A. That's true.

18 Q. And on at least one occasion, two burros housed at the
19 Black Beauty Ranch entered Babe's enclosure; isn't that
20 correct?

21 A. I'm not aware of whether that is correct or not.

22 Q. Would it refresh your recollection to look at the Black
23 Beauty Ranch's website?

24 A. Sure.

25 Q. If we look under the section "Friendly and Scar". I'll

1 read the first paragraph: One evening a staff member saw
2 Friendly and Scar slip through a narrow space between the barn
3 and fence. Babe, who was playing with a hanging barrel
4 outside, seemed not to notice that the burros had slipped
5 directly into her barn and were peacefully lying in her new
6 sandbox. Did I read that correctly?

7 A. Yes, you did.

8 Q. It's also FFA's view that human companions can form a
9 substitute herd for an elephant; is it not?

10 A. That was the advice that was given to us by elephant
11 experts who visited Black Beauty Ranch to look at Babe's
12 condition, and they felt that she had a very sweet
13 disposition, that she liked being around people, and that it
14 was more true for her than it was for other elephants that
15 they've been around in their estimation.

16 Q. Do you think that the FEI elephants could form a similar
17 bond with their handlers and trainers?

18 A. I'm not familiar with the FEI elephants.

19 A. The elephant enclosure at Black Beauty Ranch is
20 approximately one acre; is it not?

21 A. That sounds right.

22 Q. Does FFA consider it a taking for Babe to live in a
23 one-acre enclosure?

24 A. Well, Babe is an African elephant so she's not
25 endangered. There is a different standard. So we don't know

1 whether that is a taking or not.

2 Q. If Babe was an Asian elephant, would you consider it a
3 taking for her to live in a one-acre enclosure?

4 A. I wouldn't consider it a taking. We would look at the
5 totality of her situation and the circumstances that she's in.
6 She's not beaten or chained or stabbed with sharp sticks, and
7 I don't think that being in a one acre enclosure would
8 necessarily make that a taking.

9 Q. Would it surprise you if experts that testified for the
10 plaintiffs in this case testified to the contrary?

11 A. I'm not aware of their testimony.

12 Q. Does FFA consider it a taking for Babe to live alone
13 without any elephant companionship?

14 A. No, we don't.

15 Q. Is the Black Beauty Ranch or the Fund for Animals a
16 member of the American Zoo and Aquarium Association or AZA?

17 A. I don't think so.

18 Q. You don't know? Do you know if the Black Beauty Ranch
19 follows the AZA standards for elephant management and care?

20 A. Black Beauty Range is not a zoo, and it's not an
21 exhibitor as a zoo would be an exhibitor, o it doesn't
22 necessarily look at standards that are set for zoos or
23 exhibitors.

24 Q. Are you aware that the Black Beauty Ranch does not
25 conform to AZA standards regarding the number of elephants

1 housed there?

2 A. I'm not aware of the AZA standard, and as I said, Black
3 Beauty Ranch is not an exhibitor. It's not open to the
4 public. It's not designed to be a zoo, so it doesn't -- it
5 doesn't join or try to meet the standards of zoo associations.

6 Q. So you're not aware that the AZA standards recommend that
7 female elephants be housed in groups not fewer than three?

8 A. I'm not aware of the exact standards.

9 Q. At the time of your deposition, you were not familiar
10 enough with the Elephant Managers Association to say whether
11 or not FFA had a view of that organization, correct?

12 A. I don't remember, but I still don't have a knowledge of
13 that organization.

14 Q. Have any of the elephant caretakers at the Black Beauty
15 Ranch consulted the "Elephant Husbandry Resource Guide"?

16 A. I'm not sure whether they have.

17 Q. Active Environments has been engaged as a consultant
18 regarding the care of Babe; has it not?

19 A. That's true.

20 Q. And Active Environments is co-owned by Gail Laule; isn't
21 that right?

22 A. The name is familiar. I know Gail Laule is involved with
23 Active Environments. The person that we have mostly dealt
24 with is Margaret Whittaker(Phonetic).

25 Q. Gail Laule is an expert testifying on behalf of

1 plaintiffs in this case; is she not?

2 A. I'm not aware of whether she is or not.

3 Q. And Active Environments converted Babe to a protected
4 contact system, correct?

5 A. That's true.

6 Q. And before Babe was moved to the Black Beauty Ranch, she
7 was trained using free contact; was she not?

8 A. That's true.

9 Q. FFA offered Mr. Rider a job to work at the Black Beauty
10 Ranch, correct?

11 A. We discussed with Mr. Rider the possibility of a job
12 opening we had to see whether he would be interested. I don't
13 think we ever made a formal offer to him.

14 Q. It's your testimony that you didn't make an offer to Mr.
15 Rider, a job offer?

16 A. We discussed the job opening that we had, and we asked
17 him if he would be interested, and he said he was not
18 interested. So we never made a formal offer, but we did
19 inquire with him to see if he would be interested in that job.

20 Q. Could we go to Defendant's Exhibit 20 at Page No. 53?
21 Mr. Markarian, these are the Fund for Animals interrogatory
22 responses dated January 31st, 2007. You verified those
23 responses; did you not?

24 A. Yes, I did.

25 Q. And I'm going to start reading in the middle of the page.

1 The Fund supplemented the answer to this interrogatory by
2 stating that in addition to the communications discussed in
3 the Funds' original interrogatory responses, former Fund
4 employee, D.J. Schubert, also had a single telephone
5 conversation with Tom Rider concerning a possible job at the
6 Funds Animal Sanctuary, Black Beauty Ranch.

7 Mr. Schubert does not recall exactly when this
8 conversation took place, but he believed it was 2003. He told
9 Mr. Rider there was an opening at the ranch, and that
10 someone with Mr. Rider's experience would be a good fit. Mr.
11 Rider declined the job offer on the grounds that he needs to
12 continue to stay on the road to tell people about what goes on
13 at the circus. Did I read that correctly?

14 A. Yes, you did.

15 Q. The job at the Black Beauty Ranch would have entailed
16 working with elephants there, correct?

17 A. Possibly. I believe it was a general ranch hand position
18 and also would have included working with the elephant.

19 Q. And he was offered that job in or around 2003; isn't that
20 right?

21 A. Well, as I said, we talked to him about the possibility,
22 and he said he was not interested. So we did not make a
23 formal offer. He didn't fill out an application. We didn't
24 send him an offer letter, but we talked to him about the
25 possibility. we thought he might be interested in the job,

1 and he told us that he was not inclined to be considered.

2 Q. And the time frame of those conversations was
3 approximately 2003, correct?

4 A. I don't remember the time frame.

5 Q. Can we pull back up, Defendant's Exhibit 20? We can look
6 at your interrogatory response, again, and the middle sentence
7 there: Mr. Schubert does not recall exactly when this
8 conversation took place, but he believes it was 2003.

9 A. Yeah. Mr. Schubert believed it was 2003.

10 Q. So it was approximately 2003?

11 A. Sounds right.

12 Q. And that was after this litigation was filed, correct?

13 A. Yes, it was.

14 Q. And it was a paid position that Mr. Rider was offered?

15 A. It would have been a paid position had he decided to be
16 considered for that.

17 Q. All right. And Mr. Rider, regardless of how you phrased
18 it, he declined the job offer or he refused the suggestion
19 because he wanted to continue traveling around the country to
20 conduct his media campaign, correct?

21 A. That's my that's my understanding, yes.

22 Q. And it was also suggested that he could work at the ranch
23 on a part-time basis; was it not?

24 A. That's my understanding, yes.

25 Q. And he also declined the suggestion of part-time

1 employment, correct?

2 A. I believe so.

3 Q. And he declined part-time employment for the same reason,
4 because he wanted to continue traveling around the country to
5 conduct his media campaign.

6 A. That's my understanding, yes.

7 Q. And he was more interested in the media campaign than
8 working with elephants, including an elephant at the Black
9 Beauty Ranch?

10 MR. CRYSTAL: Objection. Calls for speculation.

11 THE COURT: Unless he told you that.

12 MS. PETTEWAY: Well, can we look at his
13 interrogatory response?

14 THE COURT: He can answer the question. Did he tell
15 you that?

16 THE WITNESS: He didn't tell me, personally.

17 THE COURT: That's all right. If he didn't tell you.
18 All right. If you want to approach it a different way, go
19 ahead.

20 BY MS. PETTEWAY:

21 Q. Could we look at Defendant's Exhibit 20 and go back to
22 the same interrogatory response we were looking at before, Mr.
23 Markarian. And I'm going to read about four lines from the
24 bottom: Mr. Schubert further recalls that he suggested that
25 maybe Mr. Rider would work at Black Beauty on a part-time

1 basis, but that Mr. Rider declined that suggestion, as well,
2 and said that he is more interested in continuing his public
3 education efforts throughout the country. Did I read that
4 correctly?

5 A. Yes, you did.

6 Q. FFA has provided funding to Tom Rider, has it not?

7 A. Yes.

8 Q. And FFA provided approximately \$4,400 to Tom Rider
9 through the law firm of Meyer, Glitzenstein & Crystal,
10 correct?

11 A. I don't recall the exact amounts, but it sounds about
12 right.

13 Q. If we could go to Defendant's Exhibit 20 at Page Number
14 69. Mr. Markarian, these are responses to the FFA's
15 responses to the interrogatories, and these responses are
16 dated 9/24/07. This is your response to Interrogatory Number
17 21. And if we could actually page through to Page Number 71
18 in this document.

19 And the first full paragraph -- actually, the second full
20 paragraph. The amount of funds the Fund contributed to Mr.
21 Rider's public education work in this fashion, including the
22 fees for wire transfers amounts to approximately \$4,433 and as
23 reflected in Meyer Glitzenstein invoices being produced by the
24 Funds. Did I read that correctly?

25 A. Yes.

1 Q. And you submit that number would be accurate, correct?

2 A. Yes, I do.

3 Q. Meyer, Glitzenstein & Crystal would actually provide the
4 money to Mr. Rider; isn't that right?

5 A. I believe they reimbursed Mr. Rider for his travel and
6 other expenses related to the media and educational campaign.

7 Q. But the money flowed from Meyer, Glitzenstein & Crystal
8 on Mr. Rider?

9 A. That's right.

10 Q. And then after MGC -- that's an abbreviation for Meyer,
11 Glitzenstein & Crystal -- after MGC provided the money to Mr.
12 Rider, the funds would then be invoiced on legal bills to the
13 Fund For Animals, correct?

14 A. That's correct, yes.

15 Q. And FFA paid those amounts, did it not?

16 A. Yes, it did.

17 Q. And the invoices that the Fund For Animals received were
18 dated between June of 2001 and April of 2003, correct?

19 A. The time frame sounds about right. I'm not sure about
20 the exact months.

21 Q. FFA was aware that ASPCA, American Society for the
22 Prevention of Cruelty to Animals and AWI, the Animal Welfare
23 Institute, were also receiving invoices for MGC for amounts
24 provided to Mr. Rider, correct?

25 A. Yes, that's right.

1 Q. And, in fact, the amounts the ASPCA and AWI were actually
2 reflected on the invoices that FFA received, correct?

3 A. I'm not sure what exactly was on those invoices. I do
4 recall at the time that Mr. Rider's expenses were included on
5 the invoices and split between the three organizations that
6 were contributing towards those costs.

7 Q. If we could look at Defendant's Exhibit 61, which is
8 already in evidence, and we'll go to Page 49 of that document.
9 Mr. Markarian, this is an invoice from Meyer & Glitzenstein,
10 correct?

11 A. It appears to be, yes.

12 Q. If we could look at the bottom right-hand corner of this
13 document, and you see the number F04504? Do you see that?

14 A. Yes, I do.

15 Q. And That indicates that this document was produced by the
16 Fund For Animals, correct?

17 A. Yes.

18 Q. And we see here it's shared expense?

19 A. That's right.

20 Q. And, in fact, these expenses were shared among ASPCA,
21 AWI, and FFA, correct?

22 A. That's right. I believe so.

23 Q. Okay. FFA has also paid Mr. Rider directly has it not?

24 A. Yes.

25 Q. And FFA paid Mr. Rider two times in July of 2004,

1 correct?

2 A. I believe that's right. It was a total of \$1,000 in two
3 separate payments is my understanding.

4 Q. And FFA coordinated those payments with the ASPCA, did it
5 not?

6 A. I don't believe the ASPCA paid Mr. Rider at that time.
7 I believe that FFA and ASPCA were going to split the payment,
8 and then FFA paid the amount itself.

9 Q. So FFA was in communication with ASPCA regarding those
10 payments to Mr. Rider.

11 MR. CRYSTAL: Your Honor, I'm now going to object
12 that we are now discussing about communications concerning
13 media and legislate -- I believe the Court has already ruled
14 that is irrelevant.

15 THE COURT: I've ruled on that early on. Some of
16 this can come in, but its owner information cannot.

17 MS. PETTEWAY: I'm not asking Mr. Markarian to
18 discuss the substance of those conversations, just merely that
19 the conversations took place in coordinating this payment.

20 THE COURT: What's the question?

21 BY MS. PETTEWAY:

22 Q. So that the Fund For Animals was in communication with
23 the ASPCA regarding payments to Mr. Rider in July of 2004,
24 correct?

25 MR. CRYSTAL: Object, Your Honor. Just to be clear,

1 our objection is that discussing whether and when there was
2 communications between the plaintiffs goes to media and
3 legislative --

4 THE COURT: Yeah. I've already ruled on that. Let's
5 move on. I've already ruled on that.

6 MS. PETTEWAY: Could we look at Defendant's Exhibit 64,
7 which is already in evidence. Mr. Markarian, do you
8 recognize this document?

9 A. Yes, I do.

10 Q. And this document memorializes the payments that were
11 provided to Mr. Rider in July of 2004; does it not?

12 A. Yes.

13 Q. And if I read from this document the second check for
14 \$500 to Tom Rider is because we were supposed to send \$500 to
15 ASPCA -- excuse me -- and the ASPCA was supposed to send \$500
16 and turns out the "A" cannot send \$500 until next week, which
17 is too late. Did I read that correctly?

18 A. Yes, you did.

19 Q. And the "A" refers to the ASPCA; does it not?

20 A. That's right.

21 Q. Since 2005, FFA has made payments to the Wildlife
22 Advocacy Project; has it not?

23 A. That's correct.

24 Q. And, in fact, it's made six payments totaling \$11,500.

25 A. I don't remember the exact amounts, but that sounds

1 approximately right to me.

2 Q. And you moved FFA's payments to Wildlife Advocacy
3 Project, correct?

4 A. That's right.

5 Q. And FFA's payments to -- I'll refer to the Wildlife
6 Advocacy Project as "WAP" -- FFA's payments to WAP were drawn
7 on HSUS bank accounts; were they not?

8 A. Those donations were processed by the HSUS accounting
9 department but they were Fund For Animals expenditures.

10 Q. And they were drawn on HSUS bank accounts because the
11 Fund For Animals now relies on the administrative function of
12 HSUS, correct?

13 A. The Fund For Animals as an affiliate of HSUS does rely on
14 the administrative functions of HSUS so that was the mechanism
15 for processing the Fund For Animals' checks.

16 Q. Now, FFA stated under oath in its answer to interrogatory
17 Number 21 -- excuse me -- that its understanding was that WAP
18 could use FFA's grant money, however it chose, in conjunction
19 with its advocacy and public education work concerning
20 elephants in captivity, did it not?

21 A. Yes.

22 Q. And, Mr. Markarian, you testified under oath at an
23 evidentiary hearing in this case that FFA's grants to WAP were
24 not to be used exclusively for Mr. Rider, correct?

25 A. I don't remember my testimony exactly.

1 Q. Would you like to look at the transcript?

2 A. Sure.

3 Q. If we go to May 30th, 2008 transcript, and we're going to
4 go to Page 60 of that transcript, and we're going to go --
5 we'll read beginning at Line 23 at the bottom of the page.
6 Okay. But at that -- question: Okay. But at that time, in
7 June 2005. you also made payments to Wildlife Advocacy Project
8 for Mr. Rider; isn't that right? Here's your answer: We
9 made payments to the Wildlife Advocacy Project for media
10 campaign regarding circus issues.

11 The money was not to be used exclusively for Mr. Rider.
12 We're not sure whether it was used for other purposes, as
13 well; is that your testimony?

14 A. Yes. We certainly knew that some of the money would be
15 used to support Mr. Rider's media and educational efforts,
16 but we didn't ask for accounting of the funds, and we didn't
17 know whether it was used for other media and educational
18 efforts, as well.

19 Q. But you knew the money was specifically going to be used
20 in connection with media efforts regarding this case; did you
21 not?

22 A. That was our understanding, yes.

23 Q. And, in fact, that's reflected in the grant letters that
24 HSUS sent to WAP; is it not?

25 A. I don't recall the language of the grants letters that

1 accompany those checks.

2 MS. PETTEWAY: If we could look at Defendant's
3 Exhibit 67, which is already in evidence.

4 BY MS. PETTEWAY:

5 Q. Mr. Markarian, this is a letter that was sent from the
6 Humane Society of the United States to the Wildlife Advocacy
7 Project; is it not?

8 A. Yes, it is.

9 Q. And it purports to send money regarding the pending case
10 concerning Ringling Brothers' Circus, correct?

11 A. That's correct.

12 Q. And it's signed by Jonathon Lovvorn, correct?

13 A. That's right.

14 Q. Mr. Rider was the only person receiving money from WAP
15 for media work related to this case; was he not?

16 A. I don't know whether he was or not.

17 Q. Well, you received an e-mail from Ms. Meyer in 2003
18 specifically requesting that funds be donated to WAP from Ms.
19 Meyer, did you not?

20 A. I don't know.

21 MS. PETTEWAY: If we could look at Defendant's
22 Exhibit 65.

23 BY MS. PETTEWAY:

24 Q. Mr. Markarian, do you recognize this document?

25 A. Yes.

1 Q. That's your e-mail address: Mmarkarian@Fund.org.

2 A. That's right.

3 Q. And this e-mail is from Katherine Meyer at
4 Meyerglitz.com, correct?

5 A. That's correct.

6 Q. And that's a Meyer, Glitzenstein & Crystal e-mail
7 address; is it not?

8 A. Yes, it is.

9 Q. And the other recipients on this e-mail are Lisa Weisberg
10 and Kathy Liss, correct?

11 A. Yes, that's true.

12 Q. If we could look at the last paragraph of this e-mail,
13 and it reads: All and all, I am personally very impressed
14 with his efforts, his persistence, his ability to get some
15 media coverage on this issue, and his total commitment to the
16 lawsuit.

17 I would very much like to keep him out there so if you
18 guys have any ideas about how we can raise more funds for this
19 effort, please let me know. The funds can be contributed to
20 our Wildlife Advocacy Project which is a C(3) organization,
21 so they are tax deductible. He only needs about \$5,000 to
22 keep him going for about six months. Did I read that
23 correctly?

24 A. Yes, you did.

25 Q. This e-mail doesn't reference media work being performed

1 by anyone other than Tom Rider, does it?

2 A. It doesn't appear to. No.

3 Q. If we could look at the -- if you could zoom out, Mr.
4 Palisoul, to the full page of this. Do you see the header of
5 this document reads Page 2 of 3, correct?

6 A. That's correct.

7 Q. Do you know what was included on Page 1 of 3?

8 A. No, I don't.

9 Q. Or on Page 3 of 4?

10 A. I don't, no.

11 Q. Actually, if we could look at the Bates label on the
12 bottom right-hand, we see a No. 270. And this doesn't have
13 an "F" prefix, does it?

14 A. It does not, no.

15 Q. So it was not produced for the Fund for Animals, correct?

16 A. No. This did not come up in any of our searches for
17 documents, so we did not produce this document since it was
18 not in our possession.

19 Q. In fact, in 2003 when this e-mail was sent, the Fund for
20 Animals did not have any policy regarding e-mail retention,
21 correct?

22 A. That's correct.

23 Q. And in 2003 you were not in the practice of saving every
24 e-mail that you received, correct?

25 A. That's correct.

1 Q. And at the time, it was not your practice to preserve
2 documents relating to Mr. Rider, was it?

3 A. That's correct.

4 Q. And in fact FFA first instructed employees to preserve
5 documents relevant to this lawsuit in 2005, correct.

6 MR. CRYSTAL: Your Honor, I'm going to object.
7 This has all been resolved in the earlier evidentiary hearing.

8 THE COURT: Counsel?

9 MS. PETTEWAY: It is relevant to the Fund for
10 Animals forthcomingness regarding their payments to Mr.
11 Rider; in fact, they never produced this document.

12 THE COURT: I'll sustain the objection.

13 BY MS. PETTEWAY:

14 Q. The Humane Society of the United States co-hosted a
15 fundraiser with ASPCA and AWI in July of 2005, did it not?

16 A. I don't know that we co-hosted it. I know that we did
17 have some involvement and participation in that event.

18 Q. And that fundraiser was held after HSUS had entered into
19 the acquisition agreement with the Fund for Animals?

20 A. I believe that's correct.

21 Q. And Mr. Wayne Pachelli(Phonetic) spoke at that event,
22 did he not?

23 A. Mr. Pachelli did, yes.

24 Q. Excuse me, Mr. Pachelli. And he is the CEO and
25 President of the Humane Society; is he not?

1 A. Yes, he is.

2 Q. And you testified earlier, you were deposed as FFA's Rule
3 30 (b)(6) witness in July of 2005, correct?

4 A. That's right.

5 Q. And by the time you were deposed in June of 2005, FFA
6 had been invoiced for MDC -- by MDC for payments to Mr.
7 Rider, correct?

8 A. I don't know whether we had or not.

9 Q. Let's look at the invoices again. Defendant's Exhibit
10 61, and we'll go to Page 34. And I'll represent to you that
11 this is the first invoice that was produced --

12 A. Uh-huh.

13 Q. -- date-wise by the Fund for Animals, and that is dated
14 June 14th, 2001, correct?

15 A. That's correct.

16 Q. So this is before the time of your deposition of June
17 2005, correct?

18 A. That's true.

19 Q. And by the time you were deposed in June of 2005, FFA had
20 also made payments to Mr. Rider through WAP, correct?

21 A. I don't know when those payments occurred.

22 Q. Let's go back to the cover letters, defendant's Exhibit
23 67. And this is the cover letter that we looked at previously
24 from Mr. Laverne, and this is dated March 1st, 2005, correct?

25 A. That's true, yes.

1 Q. And one of the topics noticed for the deposition was the
2 circumstances surrounding an amount of any money or other form
3 of remuneration, reimbursement or coverage for expenses paid
4 by any plaintiff or any animal activist to any former
5 employee, consultant or contractor of defendant during the
6 relevant time period, correct?

7 A. Yes.

8 Q. And if I may read a portion of Mr. Markarian's
9 deposition as a party admission, Page 157, beginning at Line
10 20:

11 Question: Okay. Has the Fund ever -- has the Fund ever
12 paid Mr. Rider any money? Answer: Yes. Question: On how
13 many occasions? Answer: I believe there was one occasion
14 last July of 2004, we gave Mr. Rider \$1,000 to assist with
15 his travel expenses to participate in the Denver press
16 conference which I mentioned earlier.

17 Did I read that correctly?

18 A. Yes, you did.

19 Q. And you verified FFA's interrogatory responses in this
20 case?

21 A. Yes.

22 Q. And Interrogatory No. 21 asked FFA to identify each
23 resource you have expended from 1997 to the present in
24 advocating better treatment for animals held in captivity,
25 including animals used for entertainment purposes as alleged

1 in the complaint, including the amount and purpose of each
2 expenditure; did it not?

3 A. Yes.

4 Q. And FFA only disclosed its payments to Mr. Rider through
5 MGC and WAP in September of 2007, correct?

6 A. I believe that is true. My understanding of the question
7 during my 2005 deposition was direct payments to Mr. Rider;
8 and I didn't contemplate grants to other organizations or
9 legal invoice expenses. But when the Court later clarified
10 that it wanted direct and indirect contributions, we produced
11 all of those additional payments.

12 Q. And so for the first time they were produced to the
13 defendant was in September of 2007, correct?

14 A. I believe that's right.

15 Q. And the same goes for the MGC invoices; they were first
16 produced to defendant in September of 2007, correct?

17 A. I think that's correct, yes.

18 Q. FFA co-authored a report with the Washington Humane
19 Society and other groups titled, "an Examination of Animals
20 and Entertainment in Ringling Brothers and Barnum and Bailey
21 Circus"; did it not?

22 A. I don't recall that report.

23 Q. Would it refresh your recollection to look at the cover
24 page of that report?

25 A. Sure.

1 Q. If you look at -- this is the cover page of the report.
2 And the authors there would include the Washington Humane
3 Society and the Fund for Animals, correct?

4 A. Yes.

5 Q. And in 2005, the Humane Society provided a \$25,000 grant
6 to the Washington Humane Society; did it not?

7 A. I don't recall that particular grant. In the aftermath
8 of Hurricane Katrina, HSUS gave many grants to animal
9 sheltering organizations that had participated in the relief
10 effort. So it would have made sense for Washington Humane
11 Society to be among those recipients as they were responding
12 to the Gulf Coast.

13 Q. Would you like to look at HSUS's tax form for that year?

14 A. Sure.

15 Q. Okay. This is Form 990 for the Humane Society of the
16 United States for the year 2005; do you see that?

17 A. Yes.

18 Q. If you would go to Page 23 of that document, and this is
19 the section where HSUS disclosed its cash grants; and then
20 we'll forward ahead to Page 52 of this document.

21 A. (Witness complies.)

22 Q. And the third cell from the bottom, of that -- the third
23 cell from the bottom reflects a \$25,000 grant to the
24 Washington Humane Society, correct?

25 A. Yes, it does.

1 Q. Now, it is the Humane Society of the United States'
2 position that the only federal legal protection for circus
3 elephants is the Animal Welfare Act; isn't that right?

4 A. The Humane Society's position is that the Animal Welfare
5 Act covers treatment of elephants in circuses, as well as
6 other animals in exhibits and animal care facilities.

7 Q. Doesn't the Humane Society represent on its website that
8 the only federal legal protection for circus animals is the
9 AWA?

10 A. I'm not aware of that particular page of the website.

11 Q. Would you like to see that page of the website?

12 A. Sure.

13 Q. This is pulled from the Humane Society of the United
14 States' website and it is titled, "Circuses", and if we could
15 go to -- actually, before we go to Page 2, that's a picture
16 of an elephant; is it not? It's hard to tell because it is in
17 black and white.

18 A. It appears to be an elephant, yes.

19 Q. And we go to Page 2: Who protects animals in the circus?
20 The only federal legal protection for these animals is the
21 Animal Welfare Act, AWA, which sets minimal standards for the
22 handling, care, treatment and transport of wild animals in
23 circuses.

24 Did I read that correctly?

25 A. Yes, you did.

1 Q. FFA opposes the use of elephants in circuses; does it
2 not?

3 A. Yes, it does.

4 Q. And its held that view since the organization was founded
5 in 1967?

6 A. That's correct.

7 Q. And it's FFA's position that a circus provides no
8 educational value, correct?

9 A. That's our belief, yes.

10 Q. It is FFA's position that seeing an animal in a circus
11 diminishes a child's respect for that animal, correct?

12 A. That's our belief.

13 Q. And it is FFA's position that Asian elephants should not
14 be bred in captivity?

15 A. I'm not sure whether we have a position on breeding
16 elephants in captivity generally.

17 Q. Do you recall giving testimony on that subject at your
18 deposition?

19 A. I don't recall that specifically.

20 Q. If we go to Mr. Markarian's deposition at Page 134, Line
21 17. Question: Does the Fund have an official position
22 regarding breeding Asian elephants in captivity? Answer: We
23 do not believe Asian elephants should be bred in captivity.

24 That was your testimony, correct?

25 A. That's correct.

1 Q. And in fact FFA believes that breeding elephants in
2 captivity is not a form of conservation, correct?

3 A. We believe that endangered populations of wildlife should
4 be conserved through habitat protection, anti-poaching
5 programs, and in other activities. We don't typically believe
6 that captive bred animals help their wild counterparts sustain
7 their populations.

8 Q. So it does not believe that breeding elephants in
9 captivity is a form of conservation?

10 A. That's correct.

11 Q. And FFA did not consider breeding its Asian elephant,
12 Tara, when she was alive and living at the Black Beauty Ranch,
13 correct?

14 A. No, we did not consider that.

15 Q. And FFA does not believe in producing more animals who
16 would live in captivity, right?

17 A. Typically, no.

18 Q. And tethering is permitted at the Black Beauty Ranch but
19 only in the case of emergency medical procedure, correct?

20 A. I believe that's correct.

21 Q. And FFA is opposed to the use of an ankus to train,
22 handle or care for an elephant, correct?

23 A. That's correct.

24 Q. And the use of an ankus is strictly prohibited at the
25 Black Beauty Ranch, correct?

1 A. That's correct.

2 MS. PETTEWAY: At this time, the defendant would
3 like to move in certain of the FFA's interrogatory responses;
4 its answers to Interrogatory No. 4 dated June 9th, 2004.

5 Sure. This is Defendant's Exhibit 20, and it would
6 be Interrogatory Response No. 4. It's dated June 9th, 2004;
7 Interrogatory No. 17, dated June 9th, 2004.

8 THE COURT: Interrogatory responses are from this
9 witness for the organization?

10 MS. PETTEWAY: Yes.

11 THE COURT: All right. Any objection?

12 MR. CRYSTAL: Your Honor, we would have the same
13 position that we'd ask that the entire interrogatory responses
14 get moved into evidence.

15 MS. PETTEWAY: And we'd have the same objection in
16 terms of self-serving statements.

17 THE COURT: All right. Everything is admitted.

18 MS. PETTEWAY: Okay. So all of the interrogatories
19 -- that's Defendant's Exhibit 20. Nothing further from this
20 witness.

21 THE COURT: All right. Any cross-examination?

22 MR. CRYSTAL: Yes, Your Honor. Just one second.

23 THE COURT: Okay. How long -- you know what? We've
24 been going for quite a while. We started at 20 minutes to
25 three, I think it was. How long do you anticipate the cross?

1 We're not going to finish the trial --

2 MR. CRYSTAL: Twenty minutes to half an hour or so.

3 THE COURT: That's fine. We'll just take a ten
4 minute recess though. Who is your next witness, counsel?

5 MS. PETTEWAY: That would be Kathy Liss from the
6 Animal Welfare Institute.

7 THE COURT: How long do you anticipate her direct to
8 be?

9 MS. PETTEWAY: It should be shorter than Mr.
10 Markarian, hopefully, 30 to 40 minutes, max.

11 THE COURT: All right. Is she out of town? Is she
12 an out-of-town witness? Is she local?

13 MR. CRYSTAL: She is local, but I'm sure she'd
14 appreciate going today and not having to come back.

15 THE COURT: Really?

16 MR. CRYSTAL: We will have to see where we are.

17 THE COURT: I don't know if we can do it. I've had a
18 -- we'll try. Let's take a 10-minute recess right now,
19 though. We'll try. To the extent I can accommodate her,
20 we'll do so. I have to ask you not to discuss your testimony
21 with anyone.

22 THE DEPUTY CLERK: Remain seated.

23 (Whereupon, there was a brief recess; thereafter
24 court resumed as follows:)

25 THE COURT: The Court had to deal with other matters

1 today, so after cross and redirect, we're going to call it a
2 day and start tomorrow at ten o'clock.

3 MR. CRYSTAL: I understand, Your Honor.

4 THE COURT: I had to deal with the Stevens' case and
5 some other things today, so --

6 MR. CRYSTAL: We're going -- is it okay if we
7 release her for the day so she doesn't have to --

8 THE COURT: Yeah. That's fine. And tomorrow, we can
9 start at ten o'clock -- yeah. We'll start promptly at ten
10 o'clock tomorrow.

11 All right. Cross-examination?

12 **CROSS-EXAMINATION BY MR. CRYSTAL:**

13 Q. Good afternoon, Mr. Markarian. Mr. Markarian, why did
14 the Fund for Animals decide to become a plaintiff in this
15 case?

16 A. The Fund for Animals was concerned about the mistreatment
17 of endangered Asian elephants and particular forms of abuse,
18 such as beating them with bull hooks and keeping them chained
19 for long periods of time and decided that we wanted to be a
20 plaintiff in the case.

21 Q. Is it consistent with the Fund's mission at that time
22 when the lawsuit was filed to have gotten involved in this
23 case?

24 A. Yes.

25 Q. And does the Fund for Animals believe that Ringling

1 Brothers is violating The Endangered Species Act?

2 A. Yes, we do.

3 Q. And does the Humane Society of the United States believe
4 that Ringling Brothers is violating The Endangered Species
5 Act?

6 A. I'm not sure whether HSUS has a position on it.

7 Q. There was some discussion earlier about providing funding
8 to Mr. Tom Rider; do you recall that?

9 A. Yes.

10 Q. Why did the Fund for Animals provide funding to Mr.
11 Rider?

12 A. We felt it was worth supporting his expenses to travel
13 and talk to the public and raise awareness about the cruelty
14 that he witnessed in the circus.

15 Q. And what did the Fund for Animals think about the work
16 that Mr. Rider did in that capacity?

17 A. We thought it was valuable, that it heightened the debate
18 on circus issues and the treatment of elephants in this
19 country.

20 Q. Why was Mr. Rider, if he was, a particularly good
21 spokesperson on this issue?

22 A. Because he witnessed the treatment of elephants firsthand
23 and because he was a former employee of Ringling Brothers, and
24 he knew what the elephants had been through.

25 Q. Now, you mentioned that you provided this funding for his

1 public education work; is that right?

2 A. That's right.

3 Q. And was there any other purpose for providing that
4 funding?

5 A. No.

6 Q. Now, there was some discussion earlier about some
7 funding that the Fund for Animals gave to the Wildlife
8 Advocacy Project; do you recall that?

9 A. That's right.

10 Q. And was that also to help the public education campaign?

11 A. Yes.

12 Q. And has the Fund for Animals or the Humane Society ever
13 supported any other efforts of the Wildlife Advocacy Project?

14 A. I know the Humane Society of the United States had
15 previously given a grant to the Wildlife Advocacy Project for
16 manatee protection work. So that I know that there has been
17 some previous history of HSUS supporting WAP.

18 Q. And was the kind of grant, the grant that the Fund for
19 Animals gave to Mr. Tom Rider, consistent with that same kind
20 of work?

21 A. Yes, it was.

22 Q. Now, there has been some discussion about the documents
23 that you produced in response to the document request in this
24 case; do you remember that?

25 A. Yes.

1 Q. And are you generally familiar with the document requests
2 that were served on the Fund for Animals in this case?

3 A. Yes.

4 MR. CRYSTAL: I'd like to show at this time, Your
5 Honor, Defense Exhibit 189, which is the document requests.

6 THE COURT: All right.

7 BY MR. CRYSTAL:

8 Q. And are these the document requests that we're looking at
9 now -- if you can look at your screen -- to all of the
10 organizational plaintiffs in this case?

11 A. Yes.

12 Q. And do you recall whether there was a document request
13 that asked you specifically for information about funding to
14 or from -- to or related to Mr. Tom Rider?

15 A. I don't recall.

16 Q. Would it help to look at the requests?

17 A. Yes.

18 Q. Maybe we could just go through -- I don't want to have
19 you read all the requests to the Court, but maybe we could
20 flip through the requests.

21 A. (Witness complies.)

22 Q. If you could look at those first four, and tell us when
23 you're done.

24 A. I don't see any mention of Tom Rider. (Witness
25 complies.) Nor on this page either; there's no mention

1 specifically of Tom Rider. And same for these questions.

2 And, here, as well (Indicating to document on screen).

3 Q. Are you ready to go to the next page?

4 A. Yes.

5 Q. I think we're almost done.

6 (Whereupon, scrolling document on screen.)

7 THE WITNESS: This No. 21 asks for all documents that
8 refer, reflect, or relate to any communication between you and
9 plaintiff Tom Rider.

10 BY MR. CRYSTAL:

11 Q. Did that ask you for documents related to -- documents
12 concerning the funding that you were providing to Tom Rider?

13 A. No, it doesn't appear to.

14 Q. I think -- is that --

15 A. And nothing on this page regarding Tom Rider. And
16 nothing on this page regarding Tom Rider. And same for the
17 final page.

18 MR. CRYSTAL: At this time, Your Honor, we'd like
19 to make an exhibit that these first 11 pages of this exhibit
20 that the Court has before it, the actual document requests,
21 because I don't think at the moment they are in the record.

22 THE COURT: Any objection?

23 MS. PETTEWAY: No objection, Your Honor.

24 THE COURT: That's fine with the Court.

25 MR. CRYSTAL: Thank you.

1 BY MR. CRYSTAL:

2 Q. Now, you were also over the course of this case asked to
3 provide --

4 THE COURT: I'm sorry. Are you offering that as an
5 exhibit, counsel?

6 MR. CRYSTAL: Yes. This would be No. 187. I'm
7 sorry.

8 THE COURT: 187 is admitted.

9 BY MR. CRYSTAL:

10 Q. Over the course of the case, you also provided responses
11 to interrogatories; isn't that right?

12 A. That's right.

13 Q. There were some questions about those interrogatories
14 earlier; is that right?

15 A. Yes.

16 Q. And if we could go to Defense Exhibit 20, which I think
17 we discussed earlier, and if you could just look at the first
18 page there and read for us the first sentence -- excuse me --
19 if you could just read for us the heading. Excuse me.

20 A. The heading: Plaintiff, the Fund for Animals, responses
21 and objections to defendant's first set of interrogatories to
22 plaintiff's American Society for the Prevention of Cruelty to
23 Animals, Animal Welfare Institute and Fund for Animals.

24 Q. And now I'd like to go to the question 21, which is on
25 Page 69 of the PDF, which you discussed earlier today.

1 A. (Witness complies.)

2 Q. And I'd like to ask you to read -- it is Question 21, I'd
3 like to ask you to read Question 21 for us.

4 A. Read Question 21?

5 Q. Yes, please. Interrogatory 21. Yes.

6 A. Identify each resource you have expended from 1997 to the
7 present in advocating better treatment for animals held in
8 captivity, including animals used for entertainment purposes
9 as alleged in the complaint, including the amount and purpose
10 of each expenditure.

11 MR. CRYSTAL: Thank you. Excuse me for one second.

12 THE COURT: No. Excuse me also for one second. Just
13 one second, counsel.

14 Okay. I'm sorry. Go right ahead, counsel.

15 MR. CRYSTAL: Thank you.

16 BY MR. CRYSTAL:

17 Q. If you could just read the first paragraph of the
18 response.

19 A. In accordance with the Court's August 23rd, 2007 order,
20 the Fund supplements and amends its prior responses to this
21 interrogatory by providing the following information
22 concerning funding for media and public education efforts with
23 respect to the treatment of elephants in the circus. The Fund
24 did not originally view this information as responsive to this
25 interrogatory because the Fund believed the interrogatory's

1 reference to resource you have expended from 1997 to the
2 present in advocating better treatment for animals held in
3 captivity, including animals used for entertainment purposes,
4 referred only to funds expended by the Fund's own staff to
5 advocate for elephants, as opposed to grants to other
6 activities or nonprofits.

7 The Fund makes donations to a number of individuals and
8 nonprofits each year and does not consider advocacy undertaken
9 by grantees to be Fund advocacy. The Fund is nonetheless --
10 excuse me -- the Fund is nonetheless providing the information
11 in compliance with the Court's order and because defendant has
12 stated that it views this information as responsive to this
13 interrogatory. The remaining portions of the Fund's prior
14 responses to this interrogatory remain unaltered.

15 Q. Thank you. And there have been several junctures at
16 which the Fund for Animals was asked to search for responsive
17 documents in this case; is that right?

18 A. Yes, that's right.

19 Q. And at each juncture, did the Fund for Animals make a
20 good faith effort to find responsive records?

21 A. Yes, it did.

22 Q. And at each juncture, were all responsive records
23 provided to the defendants?

24 A. Yes.

25 Q. And was there any ever any effort to hide any information

1 about the funding that was provided to or for Mr. Tom Rider?

2 A. No, there wasn't.

3 Q. You were asked a few questions about the Black Beauty
4 Ranch. What is the Black Beauty Ranch?

5 A. The Black Beauty Ranch is an animal Sanctuary in east
6 Texas. It's about 1,300 acres in size and is home to many
7 animals who have been rescued from abusive situations or have
8 been abandoned.

9 Q. And why is Babe at -- we talked about Babe earlier today;
10 why is Babe at the Black Beauty Ranch?

11 A. Babe came to Black Beauty Ranch in 1996, I believe, and
12 she had been in a circus for 10 years; two of her legs were
13 badly injured, and the circus apparently did not want her any
14 longer. She was not a very good performer with injured legs,
15 so they were willing to bring her to Black Beauty Ranch and
16 she has been there since that time.

17 Q. Does she have a better life at Black Beauty Ranch than
18 she had in the circus?

19 A. She has a much better life in our view; she has
20 veterinary care. She has exercise. She has a good diet. She
21 has enrichment. She is not forced to perform any tricks or do
22 anything that she doesn't want to do.

23 Q. Does Babe ever spend her days on chains?

24 A. No.

25 Q. And is a bull hook ever used on Babe?

1 A. No.

2 MR. CRYSTAL: Thank you. I have no further
3 questions at this time.

4 THE COURT: All right. Any redirect?

5 MS. PETTEWAY: Briefly, Your Honor.

6 THE COURT: All right.

7 **REDIRECT EXAMINATION BY MS. PETTEWAY:**

8 Q. Mr. Markarian, you were asked regarding a question
9 regarding donations that the Humane Society of the United
10 States had made to the Wildlife Advocacy Project concerning
11 manatees, correct?

12 A. Yes.

13 Q. And none of the cover letters that we looked at today
14 concerned manatees; did they not?

15 A. No.

16 Q. If we could go Defendant's Exhibit 189 -- switch over to
17 Defendant's 189. These are the document requests that we just
18 looked at, and if we could page through to document request --
19 beginning at document request No. 19.

20 A. (Witness complies.)

21 Q. And No. 19 reads: Document sufficient to show all
22 resources you have expended -- expended, excuse me -- in
23 advocating better treatment for animals held in captivity,
24 including animals used for entertainment purposes each year
25 from 1996 to the present. Did I read that correctly?

1 A. Yes, you did.

2 Q. If we could look at document request No. 20.

3 A. (Witness complies.)

4 Q. No. 20. No. 20 reads: All documents that refer,
5 reflect, or relate to any expenditure by you of financial or
6 other resources made while pursuing alternative sources of
7 information about defendant's actions and treatment of
8 elephants each year from 1996 to the present. Did I read that
9 correctly?

10 A. Yes, you did.

11 Q. And if we could look at document request No. 22.
12 And that reads: All documents that refer, reflect, or relate
13 to any communication between you and any other animal
14 advocates or animal advocacy organizations concerning: (a) any
15 circus, including but not limited to Ringling Brothers and
16 Barnum and Bailey Circus; or (b), the treatment of elephants
17 in captivity. Did I read that correctly?

18 A. Yes, you did.

19 Q. And then if we could page forward to document request No.
20 37. And No. 37 reads: All documents considered or relied
21 upon in answering any of defendant's interrogatories or
22 requests for admission. Did I read that correctly?

23 A. Yes.

24 MS. PETTEWAY: I have no further questions.

25 THE COURT: All right. Any other questions,

1 counsel?

2 MR. CRYSTAL: No, Your Honor.

3 THE COURT: All right. Thank you, sir. You may
4 step down. I have to ask you not to discuss your testimony
5 with anyone.

6 THE WITNESS: Yes, sir. Thank you.

7 THE COURT: All right. I excused the next witness.
8 We couldn't finish her. We'll call -- we'll start promptly at
9 10 tomorrow morning; and who is after that witness, counsel?

10 MR. SIMPSON: That -- well, we start with Ms. Liss,
11 and then we're going to play Mr. Glitzenstein's deposition
12 which takes about 33 minutes.

13 THE COURT: All right.

14 MR. SIMPSON: Then we'll move to Mr. Sowalsky, and
15 my part of that would probably be an hour.

16 THE COURT: All right.

17 MR. SIMPSON: Mr. French, which could be an hour
18 and a half, direct; and Angela Martin, which is deposition we
19 may not have to read if -- we have a tape we'd like to play
20 for the Court. We've had a foundational objection so we want
21 to use the deposition to lay the foundation; that would
22 probably take 30 minutes. And then we have Mr.
23 Keele(Phonetic). I think that's the most we can reasonably
24 expect to get to tomorrow.

25 THE COURT: Yeah. That is a lot for tomorrow; but

1 worst case scenario, you think you might be in a position to
2 rest on Thursday?

3 MR. SIMPSON: Well, it is looking more and more
4 remote at this point.

5 THE COURT: It's looking remote -- you have other
6 witnesses for Thursday.

7 MR. SIMPSON: Well, the remainder is as follows, at
8 least as we have told the other side: Metzler; this is after
9 Mike Keele -- Metzler; we may have two depositions I think we
10 will just hand up; and then Mr. Schmitt -- or excuse me --
11 Dr. Schmitt. It's possible we could do it all on Thursday. I
12 know Your Honor has many other things going on, too.

13 THE COURT: No. It's, you know -- I'm still playing
14 with a few things.

15 MR. SIMPSON: Dr. Schmitt is probably a several hour
16 direct.

17 THE COURT: Yeah. Well, how much rebuttal do you
18 anticipate, if any?

19 MS. MEYER: Not very much, Your Honor.

20 THE COURT: I've heard everything. I mean there are
21 two versions here about the law and facts. And so we're not
22 going to retry this case by any stretch of the imagination in
23 rebuttal. Do you anticipate any rebuttal testimony?

24 MS. MEYER: Right now I would say very, very little,
25 if any, but we haven't heard from all of their witnesses.

1 THE COURT: Yeah. But you know what they're going to
2 say, though. They've all been deposed, right?

3 MS. MEYER: I'm not sure.

4 THE COURT: Yeah. They've been deposed; I know that.
5 All right. We'll start at -- we'll get as much done
6 as we can, counsel. Let me -- Addy, let me talk to you a
7 second.

8 (Whereupon, the Court had an off-the-record
9 discussion with his law clerk at this time.)

10 All right, counsel. Here's what we're going to do.
11 I could still move some matters. Let's do this: I can give
12 you three hours on Monday morning from 9:30 to 12:30. I'm
13 sorry -- Friday morning from 9:30 to 12:30. I can do that, and
14 even if we don't finish, I'm still moving a lot of stuff. I
15 have no problems doing that. I could not start before 11
16 o'clock on Monday morning, but I'm willing to do that. We can
17 move some things on Friday to give you three hours from 9:30
18 to 12:30. Maybe we'll finish and maybe we won't. It seems as
19 though we'll finish at the very latest on Monday, though,
20 correct? Does that sound reasonable, at the very latest?

21 MR. SIMPSON: That sounds reasonable, Your Honor.

22 THE COURT: All right. Next Thursday I can tell you
23 I will not be here. I promised some elementary school kids
24 they've got me for three hours; they may not want me for three
25 hours, but they've got me for three hours next Thursday.

1 That's a longstanding commitment, but that's way off. All
2 right. Any problems with that, 9:30 to 12:30?

3 All right. And we'll start tomorrow at 10 --
4 tomorrow is Wednesday. Let's see; Thursday -- we're going to
5 start at ten o'clock. I'm moving a dental appointment; that's
6 fine, though. It was for 8:30 in the morning; that's good.
7 All right. I'm willing to make a commitment here. That's the
8 best I can do for you, though. So tomorrow at 10; Thursday at
9 10; and Friday morning, that's from 9:30 to 12:30.

10 And if we have to carry over to Monday, I can't
11 start before 11 because then that dental appointment pops up
12 again at 8:30, so 11 o'clock, and we'll move some other
13 matters. All right. We'll finish. All right. Thank you.
14 Do you have some doubts about that, Addy? Have a nice
15 evening. Enjoy your evening. Thank you.

16 [End of proceedings]
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C E R T I F I C A T E

I, Wendy C. Ricard, Official United States Court Reporter in and for the District of Columbia, do hereby certify that the foregoing proceedings were taken down by me in shorthand at the time and place aforesaid, transcribed under my personal direction and supervision, and that the preceding pages represent a true and correct transcription, to the best of my ability and understanding.

Wendy C. Ricard, RPR, CCR
Official U.S. Court Reporter