



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE	)	<u>C.A. NO. 00-1641</u> (EGS)
PREVENTION OF CRUELTY TO ANIMALS,	)	<u>C.A. NO. 03-2006</u> (EGS)
ET AL.	)	
VS.	)	WASHINGTON, D.C.
	)	NOVEMBER 25, 2003
RINGLING BROTHERS AND BARNUM AND	)	11:00 A.M.
BAILEY CIRCUS, ET AL.	)	

TRANSCRIPT OF MOTIONS HEARING  
BEFORE THE HONORABLE EMMET G. SULLIVAN  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: KATHERINE A. MEYER, ESQ.  
KIMBERLY D. OCKENE, ESQ.

FOR THE DEFENDANTS: EUGENE D. GULLAND, ESQ.  
JOSHUA D. WOLSON, ESQ.

COURT REPORTER: FRANK J. RANGUS, OCR  
U. S. COURTHOUSE, RM. 6822  
WASHINGTON, D.C. 20001  
(202) 371-0545

PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY; TRANSCRIPT  
PRODUCED BY COMPUTER.

1 THE DEPUTY CLERK: AMERICAN SOCIETY FOR THE PREVENTION  
2 OF CRUELTY TO ANIMALS VS. RINGLING BROTHERS AND BARNUM AND  
3 BAILEY CIRCUS, ET AL., CIVIL ACTION 00-1641 AND CIVIL ACTION  
4 03-2006.

5 COUNSEL FOR THE PLAINTIFFS, IDENTIFY YOURSELF FOR THE  
6 RECORD, PLEASE.

7 MS. MEYER: YES. I'M KATHERINE MEYER FOR THE  
8 PLAINTIFFS, AND WITH ME IS MY ASSOCIATE, KIMBERLY OCKENE.

9 THE COURT: ALL RIGHT, GOOD MORNING.

10 THE DEPUTY CLERK: COUNSEL FOR THE DEFENDANTS.

11 MR. GULLAND: GOOD AFTERNOON, JUDGE SULLIVAN.

12 I'M GENE GULLAND FOR THE DEFENDANTS, AND WITH ME IS MY  
13 PARTNER, JOSHUA WOLSON.

14 THE COURT: ALL RIGHT, I WOULD SAY GOOD MORNING, BUT  
15 WE'RE ON THE FRINGE. GOOD MORNING SLASH GOOD AFTERNOON.

16 I WANT TO SHARE A FEW THOUGHTS WITH COUNSEL. MY  
17 UNDERSTANDING IS THAT THE COMPLAINT IN CIVIL ACTION 03-2006 IS  
18 ESSENTIALLY IDENTICAL TO THE SECOND AMENDED COMPLAINT THAT WAS  
19 FILED IN 00-1641. IS THAT RIGHT?

20 MS. MEYER: THAT'S CORRECT, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 OKAY, THIS IS WHAT I'M INCLINED TO DO. THEN I'LL HEAR  
23 BRIEFLY FROM COUNSEL. I'VE CONSIDERED THE PENDING MOTIONS.

24 I'M INCLINED TO DISMISS CIVIL ACTION 00-1641 WITHOUT PREJUDICE,  
25 DISMISS THAT CASE WITHOUT PREJUDICE TO THE PROSECUTION OF THE

1 COMPLAINT THAT'S PENDING IN 03-2006. CERTAINLY, THEY'RE  
2 IDENTICAL COMPLAINTS, AND THERE'S NO NEED FOR TWO CASES ON THIS  
3 COURT'S DOCKET.

4 IF I PROCEED WITH THE DISMISSAL WITHOUT PREJUDICE OF  
5 THE 00 CASE, THEN I'M GOING TO REVISIT THE COURT'S ORDER  
6 PROVIDING FOR CONSOLIDATION OF THE TWO CASES AND VACATE THAT  
7 ORDER. THERE'S NO NEED FOR THAT, AND I'M ALSO INCLINED TO DENY  
8 AS MOOT THE DEFENDANTS' PENDING MOTION FOR JUDGMENT ON THE  
9 PLEADINGS INsofar AS THE AMENDED COMPLAINT IS CONCERNED.

10 NOW MOVING ON TO DISCOVERY, I'M INCLINED TO GRANT THE  
11 PLAINTIFFS' MOTION TO RESOLVE THE DISCOVERY DISPUTES AND TO  
12 ENTER AN APPROPRIATE ORDER FINDING AS A MATTER OF FACT AND LAW  
13 THAT THE PLAINTIFF IS ENTITLED TO TAKE DISCOVERY REGARDING ALL  
14 OF DEFENDANTS' PRACTICES THAT PLAINTIFFS ALLEGE VIOLATE THE  
15 ENDANGERED SPECIES ACT AND THE STATUTES AND IMPLEMENTING  
16 REGULATIONS INVOLVING PAST, PRESENT, AND ONGOING PRACTICES.

17 THAT ADDRESSES THE PENDING MOTIONS.

18 I'LL HEAR FROM PLAINTIFF BRIEFLY, BUT THAT'S WHAT I'M  
19 INCLINED TO DO. I UNDERSTAND YOU MADE AN ARGUMENT THAT AT SOME  
20 POINT, AT SOME UNSPECIFIED POINT, YOU MAY BE IN A POSITION TO  
21 FILE A MOTION FOR ATTORNEY'S FEES, THE THEORY BEING THAT YOU'RE  
22 A PREVAILING PARTY IN THE 1641 CASE. IS THAT RIGHT?

23 MS. MEYER: THAT'S RIGHT, YOUR HONOR.

24 THE COURT: MY ACTION IS NOT PRECLUDING YOU FROM DOING  
25 THAT. I DON'T NEED TO FOCUS ON THAT, BECAUSE THAT'S NOT REALLY

1 AN ISSUE BEFORE ME, AND I DON'T WANT TO START REACHING OUT AND  
2 RESOLVING ISSUES THAT AREN'T BEFORE ME. THAT'S A GOOD WAY TO  
3 GET YOURSELF INTO TROUBLE.

4 MS. MEYER: YOUR HONOR, I'M NOT SURE HOW WE WOULD EVER  
5 MOVE FOR THOSE ATTORNEY'S FEES --

6 THE COURT: FILE A MOTION.

7 MS. MEYER: -- IN THAT FIRST CASE.

8 THE COURT: FILE A MOTION.

9 MS. MEYER: BUT YOU'RE DISMISSING THAT CASE.

10 THE COURT: THAT'S ALL RIGHT. THAT'S ALL RIGHT. FILE  
11 A MOTION WITH RESPECT TO THE SUBSTANTIVE RELIEF YOU'RE SEEKING.  
12 I HAVEN'T ADDRESSED ATTORNEY'S FEES. IN FACT, IN MY ORDER OF  
13 DISMISSAL, I CAN DISMISS IT WITHOUT PREJUDICE TO YOUR FILING  
14 LATER A MOTION FOR ATTORNEY'S FEES OR ANY OTHER MOTION IF YOU  
15 BELIEVE IT'S APPROPRIATE. BUT THE CASE DOESN'T HAVE TO REMAIN  
16 A VIABLE CASE ON MY CALENDAR TO FILE A MOTION FOR ATTORNEY'S  
17 FEES, AND AT SOME POINT IF I HAVE TO REVISIT THE ISSUE, THEN  
18 I'LL BREATHE LIFE INTO IT AGAIN. BUT IT DOESN'T HAVE TO BE.  
19 THERE ARE CASES REMOVED FROM THE ACTIVE CALENDAR EVERY DAY,  
20 BECAUSE THE PARTIES HAVE ABANDONED THE ACTION OR THE PARTIES  
21 HAVE SETTLED THE ACTION SUBJECT TO A CLAIM OF ATTORNEY'S FEES  
22 THAT'S STILL NOT BEEN RESOLVED BY THE PARTIES.

23 SO I'M NOT DOING IT WITH ANY PREJUDICE. I'D BE  
24 WILLING TO GO SO FAR AS TO SAY IT'S WITHOUT PREJUDICE TO YOUR  
25 FILING A MOTION FOR ATTORNEY'S FEES.

1 MS. MEYER: A MOTION FOR ATTORNEY'S FEES DOWN THE ROAD  
2 IF WE PREVAIL IN THE CASE THAT IS PENDING?

3 THE COURT: LIKE I SAID, I DON'T WANT TO GET TOO FAR  
4 INVOLVED IN ADDRESSING ISSUES THAT REALLY AREN'T SQUARELY  
5 BEFORE ME. I'LL JUST PUT A PERIOD AFTER THAT, AND YOU'RE AN  
6 EXCELLENT LAWYER. YOU CAN FILE A MOTION FOR WHATEVER RELIEF  
7 YOU DEEM APPROPRIATE, AND IF, YOU KNOW, A YEAR FROM NOW OR TWO  
8 YEARS, OR WHENEVER, I REALIZE THAT, GEE, MY ACTIONS REALLY  
9 IMPACTED ON YOUR ABILITY TO SEEK WHATEVER RELIEF YOU'RE  
10 SEEKING, I CAN ADDRESS THAT ISSUE AT THAT TIME.

11 MS. MEYER: WELL, JUST SO I CAN MAKE A RECORD ON THIS,  
12 YOUR HONOR --

13 THE COURT: GO AHEAD.

14 MS. MEYER: -- OUR POSITION IS THAT THE MORE  
15 APPROPRIATE WAY TO PROCEED TO MAKE SURE THAT WE'RE NOT  
16 PREJUDICED BY HAVING THE FIRST CASE DISMISSED AND SEEKING FEES  
17 SHOULD WE ULTIMATELY PREVAIL IN THIS LITIGATION IS TO GO AHEAD  
18 AND DENY, AS YOU'VE ALREADY DONE, THE MOTION FOR JUDGMENT ON  
19 THE PLEADINGS AS BEING MOOT ON THE GROUNDS THAT WE NOW HAVE  
20 FILED A NEW CASE AND IT'S THE IDENTICAL CASE.

21 THE COURT: RIGHT. SO WHY SHOULD I LEAVE 00-1641 ON  
22 MY CALENDAR?

23 MS. MEYER: THERE'S NO REASON NOT TO LEAVE IT ON  
24 THERE.

25 THE COURT: OF COURSE THERE IS, AND THE MOST

1 COMPELLING REASON IS BECAUSE YOUR COMPLAINT IN 2006 IS  
2 IDENTICAL, AS YOU JUST TOLD ME. THERE'S NO NEED TO HAVE TWO  
3 CLAIMS RAISING THE SAME, IDENTICAL CAUSE OF ACTION ON THE  
4 CALENDAR.

5 MS. MEYER: WELL, YOUR HONOR, I GUESS AGAIN OUR  
6 CONCERN IS --

7 THE COURT: I MEAN, I THINK IT'S MUCH ADO ABOUT  
8 NOTHING. I UNDERSTAND IF YOU PREVAIL, ARGUABLY, IF YOU PREVAIL  
9 IN 2006, THEN, ARGUABLY -- AND THERE AGAIN, I DON'T WANT TO GET  
10 TOO FAR INVOLVED IN DISCUSSING THESE ESOTERIC MATTERS OF WHAT'S  
11 PENDING AND WHAT'S NOT PENDING. THERE'S NOT A CLAIM FOR  
12 ATTORNEY'S FEES PENDING NOW. IF YOU PREVAIL AND ARE ULTIMATELY  
13 THE PREVAILING PARTY IN 2006, THEN, ARGUABLY, YOU MAY WELL HAVE  
14 AN OPPORTUNITY AT THAT TIME TO FILE A REQUEST NOT ONLY FOR  
15 ATTORNEY'S FEES AS A RESULT OF THE PROSECUTION, SUCCESSFUL  
16 PROSECUTION OF 2006, BUT, ARGUABLY, FOR WHATEVER SERVICES WERE  
17 RENDERED IN CONNECTION WITH THE COMPANION CASE, 1641, UP UNTIL  
18 THE DATE THAT IT WAS DISMISSED WITHOUT PREJUDICE TO THE  
19 CONTINUING PROSECUTION OF THE CURRENT CASE. I MEAN, IT'S AN  
20 ACADEMIC DISCUSSION.

21 MS. MEYER: I GUESS, YOUR HONOR, IF THAT ORDER DOES  
22 INCLUDE SOMETHING TO THE EFFECT OF *WITHOUT PREJUDICE TO SEEK*  
23 *ATTORNEY'S FEES*.

24 THE COURT: I'LL DO THAT, BUT THAT'S NOT SAYING THAT  
25 YOU'RE ENTITLED TO ATTORNEY'S FEES AS A MATTER OF LAW.

1 MS. MEYER: I UNDERSTAND.

2 THE COURT: BUT IF THAT GIVES YOU THE PEACE OF MIND  
3 THAT YOU WANT, THAT'S FINE. I'LL DO THAT. I DON'T THINK IT'S  
4 NECESSARY, BUT I DON'T HAVE ANY PROBLEMS.

5 MS. MEYER: MY ONLY OTHER CONCERN, YOUR HONOR, WHICH  
6 WE RAISED IN OUR OPPOSITION TO THE MOTION FOR RECONSIDERATION  
7 BY DEFENDANTS, IS THAT THE DEFENDANTS APPEAR TO HAVE SOME OTHER  
8 AS-YET UNDISCLOSED REASON WHY DISMISSAL OF THE FIRST CASE WOULD  
9 HAVE SOME SUBSTANTIVE IMPACT --

10 THE COURT: I DON'T KNOW.

11 MS. MEYER: -- ON THE REMAINING CASE, AND I WOULD  
12 REALLY HATE TO HAVE THE COURT DISMISSING THE FIRST CASE SIMPLY  
13 BECAUSE THE COURT BELIEVES IT'S JUST A DUPLICATIVE CASE --

14 THE COURT: THAT'S ALL IT IS.

15 MS. MEYER: -- WHEN IN FACT THE DEFENDANTS BELIEVE  
16 THERE IS SOME SUBSTANTIVE REASON WHY IT WILL SOMEHOW NARROW THE  
17 CLAIMS OR ARGUMENTS THAT COULD BE MADE IN THE REMAINING CASE.

18 THE COURT: ALL RIGHT. WELL, I'LL CROSS THAT BRIDGE.  
19 IF I HAVE TO REINSTATE IT AT A LATER DATE, I'LL CONSIDER DOING  
20 SO.

21 MS. MEYER: THE ONLY OTHER THING THAT YOUR HONOR DID  
22 NOT ADDRESS AT ALL WAS THE MOTION FOR A PROTECTIVE ORDER, WHICH  
23 IS ALSO PENDING. THE DEFENDANTS MOVED FOR A BROAD PROTECTIVE  
24 ORDER UNDER WHICH THEY GET TO DESIGNATE EVERYTHING THAT'S  
25 PRODUCED IN DISCOVERY THAT THEY WANT TO AS CONFIDENTIAL, THEN