

**Meyer Glitzenstein & Crystal**

1601 Connecticut Avenue, N.W.

Suite 700

Washington, D.C. 20009-1056

Katherine A. Meyer  
Eric R. Glitzenstein  
Howard M. Crystal  
Kimberly D. Ockene  
Joshua R. Stebbins  
Tanya M. Sanerib  
Erin M. Tobin

Telephone (202) 588-5206

Fax (202) 588-5049

www.meyerglitz.com

April 28, 2006.

**By Federal Express**

Lisa Joiner, Esq.  
Fulbright & Jaworski  
Market Square  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2623

Re: Motion to Enforce Judge Sullivan's September 26, 2005 Order,  
ASPCA v. Ringling Bros., Civ. No. 03-2006 (EGS)

Dear Ms. Joiner:

I am writing with respect to the veterinary records that defendants have not yet produced in this case. As you are aware, all of the elephants' veterinary records should have been produced initially in response to plaintiffs' March 2004 discovery requests, and, at the absolute latest, by September 28, 2005 in response to Judge Sullivan's September 26, 2005 discovery Order.

Plaintiffs have reviewed all of the records that defendants produced on September 28, November 30, December 21, and February 10. Based on this review, it is clear that large categories of veterinary records still have not been produced. As a general matter, the records produced to date contain almost no narrative evaluations, diagnoses, hand-written veterinary reports, or other substantive veterinary records that one would expect to find in the files. Indeed, for certain of defendants' captive elephants, plaintiffs have received no veterinary records at all. As a result, plaintiffs are prepared to file a Motion to Enforce Judge Sullivan's September 26, 2005 Order and to move for sanctions under Rule 37. However, because the local rules require the parties to consult prior to filing non-dispositive motions, and in order to give defendants a final chance to produce the missing records without resort to judicial intervention, we list below examples of the missing veterinary records in hopes that defendants will produce all missing records immediately.



recycled paper

Because it has already been nearly two years since the parties first exchanged documents, and more than six months since Judge Sullivan issued his unequivocal Order, plaintiffs are not prepared to wait much longer to obtain these long overdue records. Accordingly, if defendants do not produce the missing records within ten business days – i.e., by May 12, 2006, plaintiffs expect to file their Motion to Enforce.

Following are examples of records that plaintiffs believe to be missing from the records defendants have produced to date. We emphasize that these are only examples of what plaintiffs believe to be absent from the records, which clearly indicate that defendants either have not undertaken an adequate search for all veterinary records – as Judge Sullivan ordered – or are withholding the records. Indeed, the examples below suggest that there are still far more records that plaintiffs have not been able to identify but that are also responsive to Judge Sullivan's September 26 Order. Any and all such records must be located and produced.

### **1. Defendants Have Produced No Veterinary Records For Certain Elephants.**

Plaintiffs have identified several of defendants' elephants for whom no veterinary records have been produced.<sup>1</sup>

Specifically, plaintiffs have received no veterinary records for a baby elephant named Irvin, who was born in June, 2005, see <http://www.ringling.com/cec/jul2005birth.aspx>, nor have they received any veterinary records for four of the six baby elephants that apparently died at defendants' "Center for Elephant Conservation" ("CEC") prior to 2002. See John Tidwell, *Making Room for Elephants*, *Zoogoer*, March/April 2002, at 6 ("The CEC alone has 26 elephants, with four pregnant cows and 11 successful births. But they have also had setbacks. Six of their 11 calves have died young, one from herpes.") (emphasis added) (Attachment 1).

Plaintiffs are aware of, and defendants have produced some veterinary records for, two baby elephants that died before 2002: Benjamin, who died in 1999, and Kenny, who died in 1998. Plaintiffs have not been provided with veterinary records for any other babies that died prior to 2002.

In addition, according to a USA Today article published in December 2003, Ringling Bros. was expecting births of four new baby elephants in the 18 months following the article's publication. See Joe Eaton, *Under the Big Top: Asian Elephant Conservation; Animal Activists Say It's Just an Act*, USA Today, Dec. 15, 2003 ("[The CEC] expects four more arrivals in the next 18 months.") (Attachment 2). However, plaintiffs are aware of, or have received records for, only three such births, including Irvin, born in June 2005; Aree, born in April 2005, see <http://www.ringling.com/cec/>

---

<sup>1</sup> There may be many other elephants for whom defendants also have not provided any records, but plaintiffs would have no way of knowing if this were the case.

[apr2005birth.aspx](#); and Bertha, who was born July 30, 2005. Defendants have not produced any records at all for the unaccounted-for additional birth.<sup>2</sup>

Defendants also have not produced any veterinary records for several other elephants that have been in their care at least since 1996.<sup>3</sup> For example, defendants have produced a few non-veterinary documents concerning elephants named Karnaudi, Seetna, Bully, Ongerly, and Katho (or Katanho), see FELD 6695-97; FELD 5891; FELD 4214-16, yet defendants have not produced any veterinary records for these animals. Similarly, defendants have not produced any veterinary records for an elephant named Myrtle, who is referenced in a weight chart dated April 21, 2005, see FELD 20549, or for an elephant named Nunya, who is referenced in a daily care log for elephants dated April 13, 1999, see FELD 22405. Nor have plaintiffs seen any veterinary records for an elephant named Shirly Ann, who is referenced in a single veterinary rounds summary. See FELD 8488.

Unless defendants have some valid reason why they have failed to produce records for these elephants, defendants have violated the Court's Order of September 26, 2005.

## **2. Defendants Have Produced Very Few Veterinary Records For Other Elephants.**

For many other elephants, defendants have produced only a paucity of veterinary records, and hardly the quantity of records that one would expect to find in a veterinary file for any animal that allegedly receives "round-the-clock veterinary attention," as Ringling Bros. contends its elephants receive. See <http://www.elephantcenter.com/pampered.aspx>. For example, defendants have produced only nine pages pertaining to a baby elephant named Aree, who was born in April 2005. See Attachment 3 (complete set

---

<sup>2</sup> Technically, July 30, 2005 – when Bertha was born – would be more than 18 months after December 15, 2003, when the article was written. Accordingly, if Bertha was not included in the four expected births, then there are two births, as opposed to one, that are unaccounted for.

<sup>3</sup> As you know, plaintiffs requested records for all elephants that have been in defendants' custody or care since 1994, but defendants refused to produce records for any elephant that has not been in their care since 1996. This dispute was recently resolved by Magistrate Judge Facciola, who ruled in plaintiffs' favor. Therefore, defendants are required to produce all medical and veterinary records for any elephant that was in defendants' custody or care since 1994. Such records, however, are not limited by any time-frame. Hence, defendants must produce all records regardless of their date, for all elephants in their custody or care since 1994. Plaintiffs are awaiting defendants' response to plaintiffs' letter of April 10, which requested an estimate for when defendants will produce records for the 1994-1996 time frame, before deciding whether to include in their Motion to Enforce records for elephants that were in defendants' custody prior to 1996.

of records produced for Aree). Seven of those pages are laboratory reports without any annotation or accompanying interpretation. It is highly unlikely that this is the entire veterinary record for Aree.

Similarly, defendants have produced only fourteen pages pertaining to the baby elephant named Bertha, who was born on July 30, 2005, and who apparently died on August 9, 2005. See Attachment 4 (complete set of records produced concerning Bertha). It is unlikely that there are so few records for this elephant, who had serious health problems that required surgery, and resulted in the elephant's ultimate death. Indeed, the surgical report for Bertha that defendants produced appears to end abruptly in mid-stream, see FELD 2439, and the records contain little surgical follow-up, evaluations, or other post-operative records discussing the procedure or what went wrong. Moreover, although Bertha was apparently euthanized following surgery, see FELD 19825, the records defendants produced contain no euthanasia report, necropsy, or any other death-related records of any kind.

In addition, defendants have produced only one page pertaining to each of the following elephants: Burma, see FELD 26673; Dalip, see FELD 26675; Anna Mae, see FELD 26678; Barbara, see FELD 26685; Rhanie, see FELD 26641; Babati, see FELD 26681; Desy, see FELD 26687; Dunja, see FELD 26689; Jumbo, see FELD 26701; Madras, see FELD 26708; Mosly, see FELD 26715; Peggy (DOB 1950), see FELD 26719; Peggy (DOB 1944), see FELD 26720; Pete, see FELD 8427; Sabrina, see FELD 26644; Said, see FELD 26646; and Tony, see FELD 26666. Unless defendants are claiming that they did not maintain control over these elephants at any point since 1994, then the complete medical records for each of these elephants must be produced immediately.

Plaintiffs reiterate that these are only examples of inadequate files. In reality, many – if not most – of the elephants' medical files appear utterly deficient as compared to what one would expect to be maintained in a medical or veterinary file – especially given that defendants are obligated to maintain records of all exams on their elephants under USDA regulations. See USDA, Animal Care Resource Guide, Veterinary Care – Policy # 3 at 3.4 (Jan. 14, 2000) (citing 9 C.F.R. §§ 2.31, 2.32, 2.33, 2.40, 3.110 and requiring medical records to contain “dates, details, and results . . . of all medically-related observations, examinations, tests, and other such procedures”).

### **3. Entire Categories of Standard Veterinary Records Are Absent From All Or Most Of The Elephants' Files.**

There are also entire categories of records that are missing from the elephants' medical files. Indeed, as noted, except for some narrative entries in the later years, almost none of the elephants' files contain the sort of narrative observational, diagnostic, or evaluative notes, or handwritten notes of any kind (i.e., the basic “medical chart”), that one would expect to see. Rather, the files routinely contain only the short-hand “medical history” of the elephant – which appears to be a typed excerpt compiled from longer narrative records – along with some pages (in some cases hundreds of pages) of

laboratory reports. See, e.g., Attachment 5 (complete set of veterinary record produced for Nichole). Clearly, key records are missing from these files. Indeed, a handful of the files that plaintiffs have received – see, e.g., Riccardo’s file (see FELD 24003-24008), Bertha’s file (Attachment 4) – do contain some narrative information beyond what is contained in the medical histories, suggesting that the rest of the elephants’ records should contain additional narrative and hand-written notations as well.

For example, for each instance in the “medical histories” where there is a notation of “examine on site” or “vet on site,” see, e.g., FELD 2966 (medical history of Nichole indicating numerous instances of a veterinarian being “on site” without further detail), there should be corresponding veterinary notes, observations, or other data entries in an animal’s file. See, e.g., USDA, Animal Care Resource Guide, Veterinary Care – Policy # 3 at 3.4 (Jan. 14, 2000) (citing 9 C.F.R. §§ 2.31, 2.32, 2.33, 2.40, 3.110 and requiring medical records to contain “dates, details, and results . . . of all medically-related observations, examinations, tests, and other such procedures”). Yet, routinely, no such corresponding records or information have been produced to plaintiffs for each elephant.<sup>4</sup>

Additional categories of records that plaintiffs have not received but that should exist are:

- Treatment plans, daily treatment notes, observation notes, and follow-up notes for each illness or ailment indicated on the “medical histories.” There are examples throughout the records of injury or ailment without any corresponding records containing substantive diagnostic or evaluative information concerning the injury, or subsequent treatment or follow-up. To take one example, Asia was reportedly lame in early 2005 and her medical history reveals that “adequan injection[s]” were recommended, but there is no further documentation in her record concerning whether such injections were administered, and no further follow-up or treatment notes concerning her lameness. See FELD 8774. Additional examples of lameness or injury are noted throughout the elephants’ medical histories, without any corresponding follow-up or treatment plans, or narrative or diagnostic entries in the records. The lack of corresponding treatment plans or narrative evaluations or follow-up suggests that the complete

---

<sup>4</sup> See also, e.g., The American Zoo and Aquarium Association’s Standards for Elephant Management and Care (May 5, 2003) (noting that proper elephant care calls for a “complete body daily exam,” and that the results of such daily exams “should be recorded” in each elephant’s chart). The records defendants have produced do not contain reports from such daily exams. Although Ringling Bros. does not belong to the AZAA, it has never stated that it disagrees with the animal care standards put forth by that organization.

veterinary records have not been produced. All such records must be produced immediately.<sup>5</sup>

- Reports or any other records prepared by any consulting veterinarian related to the observation, diagnosis, or treatment of defendants' elephants. Ringling Bros. has stated that it has veterinarians on-call in every city to which the circus travels, yet defendants have not produced records generated by such consulting veterinarians. Examples of veterinarians who have consulted with respect to defendants' elephants include: Drs. Estes and Seamonson, who are mentioned on radiograph folders reviewed by plaintiffs' attorneys on Jan. 6, 2006; Dr. Lisa Tell, who is noted in the medical history for King Tusk as having examined King Tusk, see FELD 3179; and Dr. Hildebrandt, who is mentioned on page 7 of the video log produced to plaintiffs on January 25, 2006 (indicating exams of Birka, Icky, Alana, Nicole, Louie, Sheena, and Dame). Yet plaintiffs have received no reports, clinical exam data, clinical assessments, or other records prepared by these, or other, consulting veterinarians. All such records must be produced.
- For each positive result from a laboratory test, the corresponding notes, reports, chart entries, follow-up or treatment plan, or other records concerning the bloodwork or other diagnostic tests. For example, in the case of the elephant Benjamin, one laboratory isolated a bacterial infection called *Nocardia*, yet the records contain no corresponding interpretation or treatment plan, nor any analysis of the significance of these results. See FELD 1948. Similarly, the records for the elephant Angelica reveal that laboratories isolated *Mycobacterium avian* complex in her blood, but the records contain no analysis of the significance of these findings, and no treatment plan for that elephant. See FELD 12990. Numerous other elephants, including King Tusk, Doc, Mala, Minyak, Nichole, Shirley, Kelly-Ann, and Zina, also had laboratory results come back positive for *Mycobacterium avian* complex, yet their records contain no veterinary interpretation of the results, no narrative discussion of any kind concerning the results, and no plan for follow-up or treatment noted in the medical records. The absence of such information in the records suggests that the complete records have not been produced.<sup>6</sup>

---

<sup>5</sup> See USDA, Animal Care Resource Guide, Veterinary Care – Policy # 3, at 3.4 (Jan. 14, 2000) (citing 9 C.F.R. §§ 2.31, 2.32, 2.33, 2.40, 3.110 and requiring medical records to contain “dates and other details of all treatments, including the name, dose, route, frequency, and duration of any treatment and the criteria and/or schedule for re-evaluation(s) by the attending veterinarian”)

<sup>6</sup> See USDA, Animal Care Resource Guide, Veterinary Care – Policy # 3 at 3.4 (Jan. 14, 2000) (citing 9 C.F.R. §§ 2.31, 2.32, 2.33, 2.40, 3.110).

- Health certificates for each elephant who is on the road, certifying that, to the best of the veterinarian's knowledge, each elephant was free of infectious or contagious disease at the time of interstate shipment. Many or most states require the execution of such certificates prior to import of an elephant into the state, yet defendants have produced only a handful of such records for their elephants. See, e.g., OHIO ADMIN. CODE § 901:1-17-12 (2006); ARIZ. ADMIN. CODE R3-2-602, R3-2-606 (2002); 2 Va. Admin. Code § 5-140-20(B) (1998).
- Records relating to anesthetic procedures or surgical procedures for every euthanasia or surgery performed on any of the elephants. Numerous Ringling Bros. elephants have been euthanized over the years, see, e.g., FELD 5234 (indicating euthanasia of King Tusk); FELD 21943 (indicating euthanasia of Teetchie), yet the records do not contain corresponding anesthesia reports. Nor do the records for the euthanized animals routinely contain necropsy reports. In addition, surgery is indicated in various medical histories, but no accompanying surgical report or follow-up documentation has been produced. For example, Sarah's medical history indicates a recommendation for surgery to correct a "fistula" on that elephant, yet her records contain no follow-up or surgical report concerning such a procedure.<sup>7</sup>
- Electronic mail communications from and to Ringling Bros. veterinarians that contain veterinary information concerning the elephants. Although it is clear that defendants and their veterinarians regularly use e-mail to communicate, see, e.g., FELD 9090-9091, plaintiffs have received only a handful of e-mail records concerning the elephants. Each of defendants' veterinarians (on-staff and consulting), veterinary technicians, and animal care-givers must thoroughly search their electronic mail archives and produce any communications containing elephant veterinary information.
- Veterinary records relating to each stillborn elephant or other abnormal pregnancies, of which there have been several at the CEC, and any corresponding analyses, evaluations, or follow-up concerning the health of the mother. See, e.g., FELD 2686-2687; FELD 9105 (records indicating

---

<sup>7</sup> See USDA, Animal Care Resource Guide, Veterinary Care – Policy # 3, at 3.4 (Jan. 14, 2000) (citing 9 C.F.R. §§ 2.31, 2.32, 2.33, 2.40, 3.110 and requiring medical records to contain "dates and other details of all treatments, including the name, dose, route, frequency, and duration of treatment with drugs or other medications," as well as "dates, details, and results [ ] of all medically-related observations, examinations, tests, and other such procedures"); see also Veterinary Standards Committee, American Association of Zoo Veterinarians, Guidelines for Zoo and Aquarium Veterinary Medical Programs 8 (1998) (noting that "records must indicate the nature of all . . . anesthetic procedures (type of agent, dosage, effect)").

demise of fetuses for Birka, Emma); FELD 3122-3123 (medical history of Sid, indicating that she “looks to be pregnant,” but not indicating any further follow-up concerning the pregnancy).<sup>8</sup>

Until defendants produce all such records, defendants are in ongoing violation of the Court’s plain and unambiguous Order. Defendants must either produce all of these missing records immediately, or explain why the production of such records is not possible.

#### **4. There Are Huge Gaps In Time In The Records.**

There are also large time gaps in many, if not most, of the elephants’ records. Indeed, many of the bare-bones “medical histories” – which, as noted, are the primary records other than laboratory reports that plaintiffs have received for the majority of the elephants – begin in 1998 or later even though the elephants were acquired long before then, see, e.g., Medical Histories of Vance, King Tusk, and Zina, and many end well before 2005. The records concerning the elephant named Gildah – an elephant who lived in isolation at the Mirage in Las Vegas until she died in August 2005 – do not even contain a “medical history” at all. In fact, from 1991 to 2004 there are no records of any kind for Gildah other than raw laboratory reports. Defendants must produce the entire record for each elephant, not just bits and pieces of each elephant’s file.

#### **5. Other Records Also Have Not Been Produced.**

Finally, there are additional records of which plaintiffs have become aware that defendants have not produced. It is likely that there are many more such records of which plaintiffs are not aware, for which defendants have failed to search or which defendants have been withholding. These include:

- In addition to the radiographs and radiograph interpretations discussed in letters between plaintiffs’ and defendants’ counsel on January 12, 2006, January 26, 2006, and February 1, 2006, as well as in my letter to you of April 10, 2006, defendants have not produced the existing thoracic x-rays of Benjamin and Shirley, see FELD 0026192 (noting thoracic x-rays for infant elephants Benjamin and Shirley taken to determine presence of tuberculosis, dated June 14, 1998), or any other thoracic x-rays taken to rule-out or diagnose tuberculosis.
- Defendants have not produced any veterinary records related to a recent incident during which young elephants named Rudy and Angelica escaped their trainer during a performance and apparently sustained injuries. See

---

<sup>8</sup> See USDA, Animal Care Resource Guide, Veterinary Care – Policy # 3 at 3.4 (Jan. 14, 2000) (citing 9 C.F.R. §§ 2.31, 2.32, 2.33, 2.40, 3.110 and requiring medical records to contain “descriptions of any illness, injury, distress, and/or behavioral abnormalities and the resolution of any noted problem”).



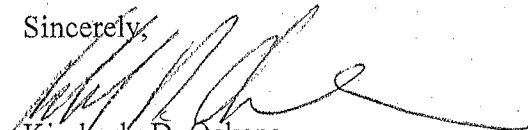
Letters from Debbie Leahy to Chester Gipson, dated December 15, 2005 and December 19, 2005 (Attachment 6); see also USDA, Animal Care Resource Guide, Veterinary Care – Policy # 3 at 3.4 (Jan. 14, 2000) (citing 9 C.F.R. §§ 2.31, 2.32, 2.33, 2.40, 3.110 and requiring medical records to contain “descriptions of any illness, injury, distress, and/or behavioral abnormalities and the resolution of any noted problem”).

\* \* \*

Until defendants produce all of the above records, as well as any other veterinary records concerning the elephants, defendants are in direct and ongoing violation of the Court’s September 26 Order, requiring defendants to produce by September 28, 2005, “all” such veterinary records. Alternatively, if it defendants position that they have in fact already produced all of the veterinary records that exist concerning each and every one of the Asian elephants in defendants’ custody or care since 1996, then please indicate that this is the case.

Thank you for your attention to this matter. As noted above, if we do not receive a complete response by May 12, 2006, we will file our Motion to Enforce. Please contact me at (202) 588-5206 if you would like to discuss any of these matters, or if you have any questions concerning the issues raised in this letter.

Sincerely,



Kimberly D. Ockene