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February 1, 2006

**By Electronic Delivery and First Class Mail**

Joshua Wolson, Esq.  
Covington & Burling  
1201 Pennsylvania Ave., NW  
Washington, DC 20004

Re: ASPCA, et al. v. Ringling Bros, et al., Civ. No. 03-2006 (EGS)

Dear Josh:

Thank you for your January 26, 2006 response to my letter dated January 12, 2006 regarding elephant radiographs not yet produced by defendants. Based on your representation that "11 additional x-rays," along with "the more than 700 x-rays that [I] reviewed on January [6<sup>th</sup>] constitute a complete set of the x-rays in defendant's custody," Letter from Wolson to Eddy at 1 (Jan. 26, 2006), plaintiffs have designated which folders of radiographs they will request copies of. I have attached a list of the requested copies at Appendix A. This list includes all of the "11 additional radiographs" mentioned for the first time in your January 26, 2006 letter. In your letter dated January 26, 2006, you stated that when the records are produced, you would indicate which if any of these radiographs defendants intend to designate as confidential pursuant to the protective order. Please produce these as soon as possible, and prior to returning them to the CEC, unless particular radiographs are required to assist in a particular elephant's diagnosis or treatment.

As explained in my letter to you dated January 12, 2006, since most of the individual radiographs are not numbered or otherwise labeled, plaintiffs request that copies of the radiograph films be grouped together with a copy of the folder containing the films, in order to identify the radiographs. We are requesting copies of every radiograph found within each folder listed in Appendix A, rather than particular radiographs. If you have any questions or concerns about the copying process that we agreed upon in person, and as described in my letter dated January 12, 2006, please let me know as soon as possible. Plaintiffs will pay for copying and shipping costs, which are expected to be between \$7.00 and \$10.00 per 18" x 27" film, based on

my review of local and nationwide radiograph copying facilities. If you require assistance in locating a radiograph copying facility, please let me know and I will provide you with the contact information of the facilities that provided me with these price quotes.

In your letter dated January 26, 2006, you describe for the first time an unspecified number of “x-rays of Feld’s elephants which were taken solely for research purposes,” and which are presently in the custody of Dr. Ramiro Isaza or the University of Florida. Letter from Wolson to Eddy at 3 (Jan. 26, 2006). Plaintiffs disagree that defendant has “no obligation to produce these x-rays,” *id.*, for two reasons. First, plaintiffs dispute that defendants are not in “possession, custody, or control” of these x-rays and that defendants have “no legal right to these x-rays.” *Id.* Defendants offer no legal or factual basis for the counterintuitive suggestion that the University would deprive Feld of access to publicly-accessible radiographs of Feld’s own elephants, whom Feld consented to have radiographed. In addition, state law requires such records to be made publicly available, as noted in your letter. *See id.* (describing plaintiffs’ Florida Sunshine Act request for similar radiographs). If the University would be obligated to produce them to Feld or other parties under state law, it does not follow that the University would “resist[ ] providing copies of them” to defendants. *Id.*<sup>1</sup>

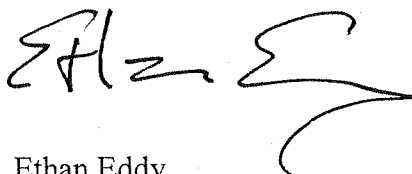
Second, plaintiffs dispute that radiographs taken “solely for research purposes” “are not medical records” and that defendants are therefore “under no obligation to produce these x-rays.” *Id.* If, as the defendants now suggest, the term “medical record” automatically excludes any radiograph or record “not used for any clinical or diagnostic purpose,” *id.*, then most of the 700 radiographs produced by defendants and reviewed by plaintiffs on January 6, 2006 would be non-responsive as well. *See id.* (explaining that “from 2000 to 2002, Feld attempted to x-ray every elephant’s feet at least once per year. . . . Except for that foot x-ray program, Feld has x-rayed elephants only if they have a clinical issue for which an x-ray might be a helpful diagnostic tool”) (emphasis added). To the contrary, plaintiffs’ request for production of documents #8 includes “all medical records” that pertain to each elephant, and is not arbitrarily limited to certain medical records based on the alleged purpose for which those medical records were obtained. Radiographs provide information as to the elephants’ medical status regardless of the purpose for which they were taken, and are therefore unquestionably “medical records” within the scope of document request #8.

Moreover, if there was any question as to the broad scope of plaintiffs’ document request #8, Judge Sullivan put that question to rest when he resolved any semantic ambiguity in the term “medical record” in plaintiffs’ favor and ordered production of “every last record.” Tr. of Oral Arg. at 36:21-22 (Sep. 16, 2005). Accordingly, plaintiffs insist that this group of x-rays be made available for their review and subsequent designation for copying in Washington, DC no later than March 1, 2006. Plaintiffs will pay for all copying and shipping costs. If defendants disagree, plaintiffs will seek judicial resolution of this matter. Thank you for your assistance.

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<sup>1</sup> The fact that these records may be publicly available to both plaintiffs and defendants does not relieve defendants of their obligation to produce them in response to plaintiffs’ discovery requests and the Court’s September 26, 2005 Order, since they are within the defendants’ control.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ethan Eddy', with a stylized flourish at the end.

Ethan Eddy

Attachment

**Appendix A – Copies Requested By Plaintiffs of Radiograph and CT Scan Folders  
 (Jan. 31, 2006)**

Elephant name	Text on envelope	Approximate # of films in envelope
Prince	[Unknown – identified by defendants in Jan. 26, 2006 letter as “Feld Elephants For Which X-Rays Recently Arrived”]	unknown
Sabu	[Unknown – identified by defendants in Jan. 26, 2006 letter as “Feld Elephants For Which X-Rays Recently Arrived”]	Unknown
India	[Unknown – identified by defendants in Jan. 26, 2006 letter as “Feld Elephants For Which X-Rays Recently Arrived”]	Unknown
Calcutta	[Unknown – identified by defendants in Jan. 26, 2006 letter as “Feld Elephants For Which X-Rays Recently Arrived”]	Unknown
Putzi	[Unknown – identified by defendants in Jan. 26, 2006 letter as “Feld Elephants For Which X-Rays Recently Arrived”]	Unknown
Cora	[Unknown – identified by defendants in Jan. 26, 2006 letter as “Feld Elephants For Which X-Rays Recently Arrived”]	Unknown
Birka	sagittal LF	(17)
Birka	transverse LF 'birka' ringling age 35 F; 5-9-01 transverse set 1 6 pages - thin slices bone window, insert, no carpus; 31-08-01 [sic] transverse set 2 - 4 pages thick slices, bone window, no inset, includes carpus ...	(17)
Calcutta II	calcutta II 01-29=01 RF and LF digits 2-5 good set of normals	(8)
Mysore	mysore - 01-09-01 RF and LF digits 2-5 (good set of "normals")	(9)
Karen	karen RF and LF digits 1-4 01-18-01 0.63 secs wood over cassette	(9)
King Tusk / Tommy	Tommy (king tusk) - 11-08-00 - left and right forefeet 3d and 4th toes	(9)
King Tusk	20 may 98 - ringling b. King tusk - digital [?]	(9) <b>NOTE: this folder originally found inside a folder labeled “King Tusk - 06-05-98 Dr. Leith”</b>
King Tusk	Tommy LF3 and 4 – 02-26-01 (with Lexan and without)	(4)
King Tusk	Tommy 04-04-01 LF digit 4, various exposures with large plates, all poor quality	(3)
King Tusk	Tommy LF + RF digits 3 and 4 11-20-01	(8)

Elephant name	Text on envelope	Approximate # of films in envelope
Siam	Siam 06-14-01 (Williston) LF digits 2-4 RF digits 2,3	(3)
Siam	Siam (williston) 04-19-01 LF and RF digits 2-4 (bone cassette foot elevated)	(9)
Siam	Siam (Williston) 10-19-01 – LF and RF digits 3-5	(6)
Siam	Siam (red unit) 09-08-01 – LF and RF digits 2-5	(9)
Doc	Doc L and R tusks, 2 exposures of each – 1-17-02 – L tusk pulp cavity is approx. 4” from end of tusk, R tusk pulp cavity is approx. 5” from end of tusk; recommend cutting 3” from left and 4” from right to be on safe side	(4)
Siam	Siam 23 June 2003 – L+R digits and carpi (78/315) (80/20) carpal views, sent to bill Reynolds 7 sept 2003	(8)
Emma	04-06-01 – L carpus – lat and DV, LF digits 3-5	
Smokey	10-30-00 – L . Stifle	(5)
Baby	01-03-01 – RF and LF digits 3-4	(5)
Baby	09-08-01 – RF and LF digits 2-5	(8)
Baby	1-21-02 – LF and RF digit 5 – various exposures	(10)
Bananna	09-08-01 LF and RF digits 2-5	(9)
Emma	9-20-01 – LF toes	(7)
Jewell	12-122-00 – RF and LF digits 3 and 4	(6)
Jewell	4-12-01 – LF and RF digits 2-4	(2)
Emma	9-20-01 RR stifle	(3)
Judy	4-24-02 Ringling Bros. – carpus RF; 4-25-02 Ringling Bros. – Judy – Carpus	(3)
Peggy	12-08-00 – LF digits 3 and 4, RF digits 2-4	(6)
Peggy	02-14-01 LF and RF digits 2-4 (poor quality) – 02-28-01 LF digits 2+4 (4 non-diagnostic)	(17)
Peggy	06-14-01 LF digits 2-5 and RF digits 3, 4; “no radiograph report” [on post-it note on film]	(5)
Peggy	1-28-02 – LF and RF 4 <sup>th</sup> digits – DV and lat.	(4)

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Elephant name	Text on envelope	Approximate # of films in envelope
Louie	LF and RF 02-04-01 – digits 2-4 (f5 nondiagnostic) – taken with 1” oak board over plate	(8)
Lutzi	12-28-00 – RF and LF digits 3 and 4	(4)
Lutzi	LF and RF digits 2-4 - 2-8-[0]2	(4)
Susan	04-12-01 RF and LF digits 2-4 (bare cassette, foot elevated)	(6)
Tova	14 Oct 2003 –RF D5, D4, D3 (D4 NBA) 78 KV 3.5 MA Rec 78 and 3.0 for better P3	(3)
Zina	Rf and LF digits 2-5 01-19-01 – 0.63 sec, nothing over cassette	
Putzi	01-05-01 RF and LF digits 2-5, LF digit 1 (normal), fairly good radiographic quality	
Sara	09-08-01 – LF and RF digits 2-5	(8)
Susan	12-22-00 ; 12-28-00 - RH and LH digit 3 – RF and LF digit 2 and 3, LF digit 4	(7)
Susie	11-28-00 – Left and Right forefeet – 3d and 4 <sup>th</sup> digits	(5)
Susie	04-04-01 – LF and RF digits 2-4 (bare cassette) (good quality)	(7)
Calcutta II	26 May 03 – RF and LF digits	(6)
Birka	Frontal LF elephant ‘Birka’ age 35, F – 05-09-01 3D frontal (2 pages); 05-09-01 frontal reconstruction (with inset, thin slices, 8 pages)	(10)
Roma	Lf and RF 3d and 4 <sup>th</sup> digits – 12-04-00	(7)
Roma	2-24-03 RT front D4 (D5, D3); LT front D\$ 9 D5, D3), 4 films . . .	(6)