

**PLAINTIFFS' EXHIBIT JJ**  
To Plaintiffs' Opposition to Defendants' Motion  
For Summary Judgment  
Civ. No. 03-2006 (EGS/JMF)

UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL PLANT HEALTH INSPECTION SERVICE  
INVESTIGATIVE AND ENFORCEMENT SERVICES  
WESTERN REGION  
FORT WORTH, TEXAS

REPORT OF INVESTIGATION

**Violator(s):** FELD ENTERTAINMENT, INC. Lic. # 52-C-0137  
d/b/a Ringling Bros. and Barnum & Bailey®  
8607 Westwood Center Drive  
Vienna, VA. 22182  
Telephone no. (703) 448-4000 or 448-4065

**Case Number:** TX99237-AC

**Violation(s):** 9 CFR, 2 and 3

**Investigator:** David Green  
c/o USDA, APHIS, IES  
P. O. Box 6258  
Fort Worth, Texas 76115 -6258  
(817) 885-6922

**Date:** September 1, 1999

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SYNOPSIS

Violator(s): Feld Entertainment, Inc., is corporation based at Vienna, VA., which is USDA licensed. Feld Entertainment currently holds USDA exhibitors license number 52-C-0137.

## Business

Information: Feld Entertainment, Inc., is an entertainment corporation and the parent company of Ringling Bros. and Barnum and Bailey®. Chairman and Chief Executive Officer is Kenneth Feld; President and Chief Operating Officer is Stuart Snyder; and Julie Alexa Strauss is Vice-president and Corporate Counsel.

## Primary

Witness(es): William Henry Lawler can testify to two elephants being on his property and to what he observed. Angela Martin and Scott Martin can testify to transporting two elephants from Houston to Huntsville, Texas and what they observed. Hugh Patrick Harned can testify to allowing the two young elephants to enter a pond to swim. He can further testify as to his training methods and prior experiences with transporting the two young elephants. [ b6  
b6 ] I witnessed the death and can testify to her observations.

Previous  
History:

USDA licensee Feld Entertainment, Inc., has been involved in the following prior violations: Florida case FL99028 which was closed on April 22, 1999, as no violation supported. Florida case number FL98026 was closed on 7/15/98 with a consent decision resulting in a \$10,000.00 civil penalty. Florida case FL98023 was closed on 4/02/98 with a ticket (APHIS form 7060). Ringling Bros. and Barnum and Bailey® was involved in case VA92015 which was closed on 4/06/92 with a ticket (APHIS form 7060).

Violation  
Events:

On July 25, 1999, Ringling Bros. and Barnum and Bailey® elephant trainer, Hugh Patrick Harned, loaded two young elephants, Benjamin and Shirley, on a trailer for transportation to Dallas, Texas. A contract truck driver, Scott C. Martin and [ b6 ] transported the two young elephants from Houston, Texas to Huntsville, Texas, where Pat Harned had decided they would stop for the night. A convoy of vehicles; consisting of Scott Martin and [ b6 ] transporting the elephant trailer; Pat Harned in a separate truck; and Pat Harned [ b6 ] in a jeep, stopped at a combined private residence and trucking company owned by William Lawler at Huntsville, Texas. The night was spent at this facility with the elephants remaining in their trailer. The morning of July 26, 1999, Mr. Harned unloaded the two elephants, as he planned to allow them to swim in a pond. He walked the two animals around the pond allowing them to drink. According to Mr. Harned, both elephants entered the water. Shirley swam briefly then exited the water. Benjamin stayed in the water. Pat Harned put Shirley back in the trailer, and Benjamin was still in the water and swam to a deeper area of the pond. Mr. Harned attempted to get Benjamin out of the water using repeated voice commands. The animal would not respond to Mr. Harned. Mr. Harned entered the water to attempt to get the elephant to exit the pond. Witnesses state the animal attempted to avoid Mr. Harned by moving to a deeper area of the pond. By the time Mr. Harned, who got in the water, was able to get close enough to "touch" the elephant, the animal was not responding. Because of Mr. Harned's calls for help, truck drivers who were in the area came and assisted in pushing the animal to the shallow area of the pond. The animal was pulled from the water by a rope attached to a back-hoe. The body of the animal was later that same day transported to the Texas Veterinary Medical Diagnostic Laboratory in a refrigerated trailer for a necropsy.

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EXPLANATION OF THE EVIDENCE

9 CFR

On or About July 26, 1999

§ 2.131 (a)(1):

Handling of Animals. The handling of the juvenile elephant "Benjamin" was not done as expeditiously and carefully as possible in a manner that does not cause trauma, behavioral stress and physical harm. USDA Application for license, APHIS Form 7003, (exhibit 1) shows Feld Entertainment, Inc., renewed their USDA license on April 8, 1999. Their renewed license, number 52-C-0137, is valid through April 28, 2000. USDA Inspection report (exhibit 2) shows Ringling Bros. and Barnum and Bailey® (Blue Unit) was inspected at Houston, Texas on July 15, 1999. There are no non-compliant items that are identified on the inspection. Affidavits of Hugh Patrick Harned (exhibit 13); Angela Deann Martin (exhibit 18); and Scott Christopher Martin (exhibit 22) show that Pat Harned loaded two young elephants, Benjamin and Shirley, on a trailer for transportation to Dallas, Texas on the evening of Sunday, July 25, 1999. Photographs (exhibit 12, page 1 photograph C, and page 2) show the trailer used to transport the two elephants. Affidavits of Scott Martin (exhibit 22) and Angela Martin (exhibit 18) shows that Scott Martin drove the truck which hauled the two young elephants, Benjamin and Shirley, and they were followed in separate vehicles by Pat Harned and [ b6 ] Affidavit of Pat Harned (exhibit 13) shows he made the decision to stop at a private truck stop and residence outside Huntsville, Texas, owned by William Henry Lawler, [ b6 ] Affidavit of William Henry Lawler (exhibit 19) states he was contacted and gave permission to use his property and facilities. The two young elephants spent the night in their trailer at this location. Affidavit of Pat Harned (exhibit 13) states on Monday, July 26, 1999, soon after he got up that morning, he unloaded the two elephants from the trailer with the intent of allowing the elephants to swim in a pond on the property which he had been informed was 10 to 12 feet deep. Affidavits of Pat Harned (exhibit 13); Scott Martin (exhibit 22); Angela Martin (exhibit 18) and Will Lawler (exhibit 19) describe what happened when the elephants entered the water and when trainer Pat Harned attempted get the male elephant, Benjamin, out of the water. Witnesses state this elephant apparently died while swimming in the pond because the elephant would not respond to the voice commands of the trainer, Pat Harned. Two eye witnesses to the incident, Scott Martin and Will Lawler, both state in their respective affidavits that the elephant would move the other direction in an attempt to avoid trainer Pat Harned when he "poked" the elephant with a stick. Video Tape (exhibit 30) shows the pond where the incident occurred and a description by Will Lawler of what the elephant did when poked with a stick by trainer Pat Harned. Photographs (exhibit 20) also show the pond and surrounding area. Affidavit of Michael Copeland Moore, D.V.M. (exhibit 27) shows he was called to the premise to view the elephant after it succumbed. Affidavits of Will Lawler (exhibit 19) and Scott Martin (exhibit 22) state the dead elephant was loaded on a refrigerated trailer and transported to TVMDL at Texas A & M University for a necropsy. Necropsy reports (exhibits 25 and 29) show that the male, juvenile elephant named Benjamin apparently drown. Trainer Pat Harden placed this elephant at risk in an unfamiliar environment where the water depth was 10 to 12 feet. Mr. Harden was unfamiliar with this body of water. The elephant seeing and/or being "touched" or "poked" by Mr. Harned with a ankus created behavioral stress and trauma which precipitated in the physical harm and ultimate death of the animal.

§ 3.132:

Employees. At the time when two elephants were allowed to swim in a pond, there was not a sufficient number of adequately trained employees present to provide care and an acceptable level of husbandry practices as set forth in this subpart which resulted in the death of male elephant. Affidavits of Hugh Patrick Harned (exhibit 13); Angela Deann Martin

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(exhibit 18); and Scott Christopher Martin (exhibit 22) show that Pat Harned loaded two young elephants, Benjamin and Shirley, on a trailer for transportation to Dallas, Texas on the evening of Sunday, July 25, 1999. Photographs (exhibit 12, page 1 photograph C, and page 2) show the trailer used to transport the two elephants. Affidavits of Scott Martin (exhibit 22) and Angela Martin (exhibit 18) show that Scott Martin drove the truck which hauled the two young elephants, Benjamin and Shirley, and they were followed in separate vehicles by Pat Harned and [ b6 ]. Affidavit of Pat Harned (exhibit 13) shows he made the decision to stop at a private truck stop [ b6 ] outside Huntsville, Texas, owned by William Henry Lawler, [ b6 ]. Affidavit of William Henry Lawler (exhibit 19) states he was contacted and gave permission to use his property and facilities. The two young elephants spent the night in their trailer at this location. Affidavit of Pat Harned (exhibit 13) states on Monday, July 26, 1999, soon after he got up that morning, he unloaded the two elephants from the trailer with the intent of allowing the elephants to swim in a pond on the property which he had been informed was 10 to 12 feet deep. Hugh Patrick Harned was the only qualified, experienced handler with the two elephants. Affidavits of Pat Harned (exhibit 13); Scott Martin (exhibit 22); Angela Martin (exhibit 18) and Will Lawler (exhibit 19) describe what happened when the elephants entered the water and when trainer Pat Harned attempted get the male elephant, Benjamin, out of the water. Witnesses state this elephant apparently died while swimming in the pond because the elephant would not respond to the voice commands of the trainer, Pat Harned. Two eye witnesses to the incident, Scott Martin and Will Lawler, both state in their respective affidavits that the elephant would move the other direction in an attempt to avoid trainer Pat Harned. Video Tape (exhibit 30) shows the pond where the incident occurred and a description by Will Lawler of what the elephant did when poked with a stick by trainer Pat Harned. Photographs (exhibit 20) also show the pond and surrounding area. Affidavit of Michael Copeland Moore, D.V.M. (exhibit 27) shows he was called to the premise to view the elephant after it succumbed. Affidavits of Will Lawler (exhibit 19) and Scott Martin (exhibit 22) state the dead elephant was loaded on a refrigerated trailer and transported to TVMDL at Texas A & M University for a necropsy. A preliminary necropsy report (exhibit 25) and final necropsy report (exhibit 29) shows that the male, juvenile elephant named Benjamin apparently drown. Only one trained employee was present to cope with two young elephants being allowed to swim in an unfamiliar environment.

§ 3.140 (b):

Care in Transit. Wild or otherwise dangerous animals shall not be taken from their primary enclosure except under extreme emergency conditions. Affidavits of Hugh Patrick Harned (exhibit 13); Angela Deann Martin (exhibit 18); and Scott Christopher Martin (exhibit 22) show that Pat Harned loaded two young elephants, Benjamin and Shirley, on a trailer for transportation to Dallas, Texas on the evening of Sunday, July 25, 1999. Photographs (exhibit 20, page 1 photograph C, and page 2) show the trailer used to transport the two elephants. Affidavits of Scott Martin (exhibit 22) and Angela Martin (exhibit 18) shows that Scott Martin drove the truck which hauled the two young elephants, Benjamin and Shirley, and they were followed in separate vehicles by Pat Harned and [ b6 ]. [ b6 ] Affidavit of Pat Harned (exhibit 13) shows he made the decision to stop at a private truck stop and residence outside Huntsville, Texas, owned by William Henry Lawler. [ b6 ] Affidavit of William Henry Lawler (exhibit 19) states he was contacted and gave permission to use his property and facilities. The two young elephants spent the night in their trailer at this location. Affidavit of Pat Harned (exhibit 13) states on Monday, July 26, 1999, soon after he got up that morning, he unloaded the two elephants from the trailer with the intent of allowing the elephants to swim in a pond on the property which he had been informed was 10 to 12 feet deep. Hugh Patrick Harned was the only qualified, experienced handler with the two elephants. Affidavits of Pat Harned (exhibit 13); Scott Martin (exhibit 22); Angela Martin (exhibit 18) and Will Lawler

(exhibit 19) describe what happened when the elephants entered the water and when trainer Pat Harned attempted get the male elephant, Benjamin, out of the water. Witnesses state this elephant apparently died while swimming in the pond because the elephant would not respond to the voice commands of the trainer, Pat Harned. Two eye witnesses to the incident, Scott Martin and Will Lawler, both state in their respective affidavits that the elephant would move the other direction in an attempt to avoid trainer Pat Harned when he "poked" the elephant with a stick. Video Tape (exhibit 30) and diagram (exhibit 14) shows the pond where the incident occurred and a description by Will Lawler of what the elephant did when poked with a stick by trainer Pat Harned. Photographs (exhibit 20) also show the pond and surrounding area. Affidavit of Michael Copeland Moore, D.V.M. (exhibit 27) shows he was called to the premise to view the elephant after it succumbed. Affidavits of Will Lawler (exhibit 19) and Scott Martin (exhibit 22) state the dead elephant was loaded on a refrigerated trailer and transported to TVMDL at Texas A & M University for a necropsy. A preliminary necropsy report (exhibit 25) and final necropsy report (exhibit 29) shows that the male, juvenile elephant named Benjamin apparently drown. Pat Harned released the elephants from their primary enclosure (the transport trailer) to let them swim in a pond which Mr. Harned was told was 10 to 12 feet deep. It was not an emergency that the animals be allowed to swim.