

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

In re:	)	
	)	
BRIDGEPORT NATURE CENTER, INC.,	)	<b>AWA Docket No. 00-0032</b>
HEIDI M. BERRY RIGGS, and	)	
JAMES LEE RIGGS, d/b/a	)	
GREAT CATS OF THE WORLD,	)	
	)	
Respondents.	)	<b>Decision on Remand</b>

**Decision Summary**

1. This Decision is not applicable to other situations arising under the same handling regulations. A Consent Decision, entered just the summer before, in August 1998 (CX 3, attached), which guided the Respondents' exhibition of tigers in "photo shoots" during two months of the summer of 1999, makes this case unique. In the summer of 1999, the Respondents had no notice of policies that would later be broadcast to Animal Welfare Act licensees, policies that the Respondents heard for the first time at their hearing, in February 2002. The principal issue is whether the Respondents, who were exhibiting their exotic cats at fairs during July through September 1999, were *safely* exhibiting their tigers during "close encounter" photo opportunities. I decide that there were occasions at the Iowa State Fair on August 20, 1999, which are fully explained below, when the Respondents violated 9

C.F.R. § 2.131(b)(1)<sup>1</sup> and 9 C.F.R. § 2.131(c)(3),<sup>2</sup> as follows: (a) the Respondents permitted more than minimal risk of harm to the tiger and to the public, in violation of 9 C.F.R. § 2.131(b)(1); (b) the Respondents failed to maintain sufficient distance and/or barriers between their animals and the general viewing public, in violation of 9 C.F.R. § 2.131(b)(1); and (c) the Respondents failed to keep their tigers under the direct control and supervision of a knowledgeable and experienced animal handler, in violation of 9 C.F.R. § 2.131(c)(3). Except for these specified occasions during the Iowa State Fair on August 20, 1999, I do not find violations of either 9 C.F.R. § 2.131(b)(1) or 9 C.F.R. § 2.131(c)(3). With regard to the Northern Wisconsin State Fair on July 10, 1999, (a) I decide that the risk of harm to Ms. Kristina (“Kris”) Sniedze and the public and the tiger was minimal or less; and that the Respondents maintained sufficient distance and/or barriers between their animals and the general viewing public, including Ms. Sniedze, and I do not find violations of 9 C.F.R. § 2.131(b)(1); and (b) I decide that the Respondents kept their tiger under the direct control and supervision of a knowledgeable and experienced animal handler, and I do not find violations of 9 C.F.R. § 2.131(c)(3). With regard to the York Fair on September 10, 1999, (a) I decide that Mr. Kevin Johns was not a member of the public but was instead a volunteer who had trained all day (a trainee), and furthermore the risk of harm to Mr. Kevin Johns and the public and the tigers was minimal or less; and that the Respondents maintained sufficient distance and/or barriers between their animals and the general viewing

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<sup>1</sup> now found at 9 C.F.R. § 2.131(c)(1); references herein are to regulation numbering in effect when the Complaint was drafted

<sup>2</sup> now found at 9 C.F.R. § 2.131(d)(3); references herein are to regulation numbering in effect when the Complaint was drafted

public, including Mr. Johns, and I do not find violations of 9 C.F.R. § 2.131(b)(1); and (b) I decide that the Respondents kept their tigers under the direct control and supervision of a knowledgeable and experienced animal handler, and I do not find violations of 9 C.F.R. § 2.131(c)(3). I decide that there was no record-keeping violation at the Dutchess County Fair on August 28, 1999; and that consequently there was no violation of 9 C.F.R. § 2.75(b). The parties' submissions filed in June 2008 addressed the appropriate sanctions to be imposed. I decide that Respondent Bridgeport Nature Center, Inc. (dissolved in July 2004; frequently herein "Bridgeport") and Respondent Heidi M. Berry Riggs (frequently herein "Ms. Berry") shall be jointly and severally assessed a civil penalty of **\$1,500.00**. I decide that Respondent James Lee ("Jay") Riggs (frequently herein "Mr. Riggs") shall be assessed a civil penalty of **\$1,500.00**. The parties agree that consideration of Mr. Riggs' Animal Welfare Act license application and denial is MOOT; *see* Mr. Riggs' June 3, 2008 filing; *see* Complainant's June 5, 2008 filing, p. 3.

2. Further, I decide that I erroneously interpreted the handling regulation 9 C.F.R. § 2.131(b)(1), in my partial Decision issued in 2006 (*In re Bridgeport Nature Center, Inc., et al.*, 65 Agric. Dec. 1039). I erroneously thought "the public" and "the general viewing public" mean two different things; I now know that the terms are used interchangeably in 9 C.F.R. § 2.131(b)(1). Below I explain my current understanding of that regulation's requirements, based in large part on subsequent testimony in subsequent hearing not involving the Respondents. Obviously, such information was not available to any of us during the hearing in 2002, and more importantly not available to the Respondents in the summer of 1999, and I conclude that the Respondents could not have discerned such fine

points of the handling regulation requirements in the summer of 1999. The incidents complained of here happened more than 10 years ago - - the Respondents were not on notice of handling regulation requirements then, as licensees have since been made aware. Thus, this Decision has little applicability to more recent allegations of noncompliance with handling regulations requirements. *See* paragraphs 91 and 92.

### **Introduction**

3. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “APHIS” or the “Complainant”). The Complaint and Order to Show Cause (frequently herein the “Complaint”), filed on May 5, 2000, alleged violations of the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.* (frequently herein the “AWA” or the “Act”); the regulations, 9 C.F.R. § 1.1 *et seq.* (frequently herein the “Regulations”); and the standards, 9 C.F.R. § 3.1 *et seq.* (frequently herein the “Standards”). The three Respondents are Bridgeport, Ms. Berry, and Mr. Riggs. The “Respondents” refers to all three Respondents (Bridgeport, Ms. Berry, and Mr. Riggs), collectively. The Respondents’ Answer timely filed on May 25, 2000, generally denied the allegations of the Complaint and asserted affirmative defenses.

4. The Respondents exhibited tigers and other exotic cats as Great Cats of the World during the summer of 1999, at fairs, in a traveling exhibit. No one was hurt; there were no accidents or incidents. Still, APHIS did not trust the Respondents’ exhibitions:

(a) The Respondents appeared to be violating the terms of a Consent Decision<sup>3</sup> entered just the summer before, in August 1998 (CX 3, attached). The Consent Decision required, among other things,<sup>4</sup> that during photographic sessions with members of the public, Respondents' tigers were to be less than **six months** in age, **and** less than **seventy-five pounds** in weight, **and collared, and on a leash** no longer than 18 inches in length **at all times**. CX 3. The **general public** was to be kept away by a **barrier at least fifteen feet** from the exhibit. CX 3.

(b) The Respondents' handler did not hold onto the tiger, or a leash attached to the tiger's collar, **at all times** during photo shoots. Such **direct contact**, according to APHIS,<sup>5</sup> was required in order to have "direct control" (*see* 9 C.F.R. §§ 2.100(a) and 2.131(c)(3)), in addition to all other safeguards.

(c) In some situations the Respondents allowed small children to be in close proximity to a photo opportunity tiger; allowed a photo opportunity tiger to be draped across people's laps, including children's laps; allowed large numbers of people to be seated in the same enclosure with a photo opportunity tiger, within 10 to 20 feet from that tiger while waiting their turn; allowed a photo opportunity tiger to be draped across people's laps in the

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<sup>3</sup> Only two of the Respondents were parties to the Consent Decision, Heidi Berry Riggs and Bridgeport Nature Center, Inc.

<sup>4</sup> including compliance with the Animal Welfare Act and its regulations and standards,

<sup>5</sup> *See* especially the testimony of APHIS Animal Care Inspector Dr. Steven I. Bellin (Ph.D., D.V.M.). Tr. 371-461. *See also* the APHIS Brief, pp. 12-13.

midst of the large number of people seated waiting their turn; and allowed their worker to be inside a tigers' enclosure that held multiple tigers, including tigers larger and older than the photo opportunity tigers, with no other worker watching to assist if needed.

(d) APHIS's concept of safety during photo shoots of human(s) with a tiger had evolved, to require more than had been delineated in the Consent Decision and more than had been required of the Respondents in the past. APHIS had come to prefer separating the tiger, by bullet-proof glass or plexiglas or another barrier, or distance, from the human(s) who would have their picture taken with the tiger.

5. The Respondents are alleged to have committed violations at four fairs, during the summer of 1999:

- Northern Wisconsin State Fair, Chippewa Falls - July 10, 1999,
- Iowa State Fair, Des Moines - August 20, 1999,
- Dutchess County Fair, Rhinebeck, New York - August 28, 1999, and
- York Fair, York, Pennsylvania - September 10, 1999.

### **Special Issues**

6. During the Respondents' photo shoots, when a tiger's actions and behavior were controlled by a number of factors including the tiger's fixation on a bottle, and the handler was in close proximity to the tiger's head and the bottle, and a human being photographed (or videoed) was the one holding the bottle - - was the tiger under "direct control and supervision" of the handler for purposes of 9 C.F.R. §§ 2.100(a) and 2.131(c)(3)?

7. During the Respondents' photo shoots, was direct contact (touching/holding) by the handler of a tiger or its leash required to keep a tiger under "direct control and supervision" for purposes of 9 C.F.R. §§ 2.100(a) and 2.131(c)(3)?
8. To comply with 9 C.F.R. §§ 2.100(a) and 2.131(b)(1)), were the Respondents required during their photo shoots to "have sufficient distance and/or barriers" between the photo shoot tiger and the human(s) posing with the tiger? Or between the photo shoot tiger and the large group of humans seated within the photo shoot tiger's enclosure, waiting their turn to pose?
9. What is the meaning of the terms "the general viewing public" and "the public," as used in 9 C.F.R. §§ 2.100(a) and § 2.131(b)(1)?
10. When the animal being exhibited is a tiger, does the term "minimal risk" mean no risk at all, for purposes of 9 C.F.R. §§ 2.100(a) and § 2.131(b)(1)? Even if so with an adult tiger, would the term "minimal risk" mean no risk at all, no matter the age and weight of the tiger?
11. Was news reporter Kevin Johns a member of the public while he was promoting the York Fair, on location at the Respondents' traveling exhibit?
12. If there were no violations of the Animal Welfare Act or its Regulations and Standards, what consequences if any flow from violating the provisions of the Consent Decision described above in paragraph 1?
13. Were the Respondents "participating in State and county fairs" and thereby excluded from being an "exhibitor," under 7 U.S.C. § 2132(h) and 9 C.F.R. § 1.1?

### Procedural History

14. For the six handling violations and one record-keeping violation alleged in the Complaint, APHIS sought license revocation, permanent disqualification from being licensed, civil penalties, and related remedies from the three Respondents, doing business as Great Cats of the World. By Remand Order filed January 18, 2008, *In re Bridgeport Nature Center, Inc.*, 67 Agric. Dec. 384 (2008), (*available on line*, AWA Docket No. 00-0032 <http://www.nationalaglawcenter.org/decisions/#awa> ), the Judicial Officer directed me to issue a complete decision, particularly to address all issues in this proceeding. (I had deferred issues; *see* paragraph 24 in my partial Decision issued November 1, 2006, *In re Bridgeport Nature Center, Inc., et al.*, 65 Agric. Dec. 1039, 1044 (*available also on line*, [http://www.dm.usda.gov/oaljdecisions/initdecisions-archive\\_pre2007.htm](http://www.dm.usda.gov/oaljdecisions/initdecisions-archive_pre2007.htm) ).

15. The hearing was held in Dallas, Texas on four days, February 25-28, 2002.

16. The transcript is referred to as “Tr.” APHIS filed proposed corrections on October 21, 2002, all of which are accepted and the transcript is ordered corrected accordingly, except that Tr. 98:17, 227:16, and 329:12 shall remain unchanged. I have physically marked all changes on the transcript accordingly. On my own motion, I ordered the additional corrections listed on Appendix C of the partial Decision, and I have physically marked those changes on the transcript as well.

17. APHIS called ten witnesses: Ms. Jan Baltrush (Tr. 35-79); Mr. Charles Frank Willey (Tr. 79-92); Mr. William John Swartz (Tr. 94-169, 488-508); Mr. David Baird Green (Tr. 174-219, 461-488); Mr. Robert Gerard Markmann (Tr. 220-258, 538-571); Mr. Julius Olson (“Pinky”) Lee (Tr. 264-278); Ms. Kristina (“Kris”) Sniedze (Tr. 279-311); Mr.

Gregory C. Houghton (Tr. 312-361); Ms. Patricia Martin Lesko (Tr. 362-370); and Dr. Steven I. Bellin (Ph.D., D.V.M.) (Tr. 371-461).

18. The Respondents called three witnesses: Ms. Heidi M. Berry Riggs (Tr. 573-685); Mr. Marcus Cook (Tr. 686-744); and Mr. James Lee (“Jay”) Riggs (Tr. 745-916).

19. The following Complainant’s or Government’s (APHIS’s) exhibits were admitted into evidence: CX 1 through CX 45 (except that CX 37 p. 15 was rejected). Tr. 537, 918. A chart referring to the transcript page(s) where each Complainant’s exhibit was admitted is Appendix A to the partial Decision.

20. The following Respondents’ exhibits were admitted into evidence: RX 4 (admitted Tr. 683-84); RX 5 (admitted Tr. 918); and RX 17, which was admitted for whatever limited purpose it might serve (Tr. 821).

21. One Administrative Law Judge exhibit was admitted into evidence: ALJX 1 (admitted Tr. 905).

22. The record also includes, in a sealed envelope, Mr. Swartz’s report. Tr. 906. *See* Tr. 919, “responsive to Rule 1.141(h),” and Tr. 920. Over Complainant’s objection, I ordered a two-page memo of Mr. Swartz’s, plus attachments, released to the Respondents. *See* Tr. 514-26. Over the Respondents’ objections, I did not order other materials disclosed. *See also* Tr. 526-36, 138-42.

23. When the hearing began, I pondered whether there were “evolving . . . requirements,” “where things that are understood now to be dangerous were not so clearly understood in 1999.” Tr. 25. As the hearing ended, I said that if the Government wants to begin to have a “no contact with the public” policy (for tigers and other “great cats”), this is

not a good case for such a beginning, because this case deals with what happened in 1999. Tr. 927. I mentioned that in 1999, the Judicial Officer's decision was not in existence in *The International Siberian Tiger Foundation, et al.*, 61 Agric. Dec. 53 (2002). Notice of requirements is, of course, an essential component of fairness.

24. This Decision on Remand now includes not only my decision on the issues related to whether any of the Respondents violated the regulations, that is, the "liability" portion of the hearing, but also consideration of the consequences, such as the appropriate sanction. Tr. 8-11, 21-25. Consideration of Mr. Riggs' license application and denial is MOOT.

25. The Complainant timely filed the Complainant's Proposed Findings of Fact and Conclusions of Law, and Brief in Support Thereof ("APHIS's Brief") on October 23, 2002. The Respondents timely filed the Respondents' Proposed Findings of Fact and Conclusions of Law and Brief in Support ("the Respondents' Brief") on February 5, 2003. The Complainant filed no Reply.

26. Colleen A. Carroll, Esq., Office of the General Counsel, Marketing Division, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, D.C. 20250-1417, represents the Complainant (APHIS). Robert A. Ertman, Esq. (with the same office), represented the Complainant through the filing of the Complaint and until November 14, 2000.

27. S. (Stephen) Cass Weiland, Esq., and Shannon W. Conway, Esq., Patton Boggs, LLP, 2001 Ross Avenue, Suite 3000, Dallas, Texas 75201, now represent only Bridgeport and Ms. Berry.

28. Mr. Riggs represents himself (appears *pro se*).

29. This Decision on Remand is ready for review by the Judicial Officer, if either party appeals.

### **Analysis**

30. The Respondents' violations allegedly occurred during two months of the summer of 1999 (July 10 through September 10), in their "Great Cats of the World" exhibit. Dr. Christensen, APHIS Animal Care Regional Director, had seen a copy of the photograph of Ms. Sniedze with a tiger (CX 8), had a copy of the Consent Decision (CX 3, attached), and asked APHIS Senior Investigator David Green to look into it. Tr. 174-75, 188-89, 190-92. Mr. Weiland: And in fact, the Consent Decision, was a - - as we say in Texas, was a burr under the saddle of the animal care people, wasn't it?

....

(objections, overruled)

Mr. Green: I would not characterize the Consent Decision as a burr under their saddle. I'm - -

Dr. Christensen had the Consent, apparently had seen the photograph that was sent in and based on that information, requested that I look into it, which I did at that particular time.

Mr. Weiland: Was that consent agreement a burr under your saddle?

....

(objection, overruled)

Mr. Green: From the standpoint I'm not sure what we mean here, I - - I think it was a step in the right direction as far as the agency was concerned to indicate what could be - - that you should not have large cats with people. Okay? And the Consent Decision, if anything,

I would think, would give an indication that there's some parameters here we have to look at.

Mr. Weiland: Okay. Well, it was a step in the right direction, is the way you've characterized the Consent Decision. It was a step in the right direction to what? Putting these folks out of business or what?

Ms. Carroll: Objection.

Administrative Law Judge: I don't like the tone of voice either, but I'd like to hear the witness' response to that question, so you may answer.

Mr. Weiland: Excuse me for - - Your Honor and also Mr. Green, if my tone was offensive, I didn't mean it to be.

Mr. Green: From the Agency stand point, I think they (APHIS personnel) wanted to attempt to protect the animals and to protect the public.

Tr. 190-92.

31. The Respondents are alleged to have violated sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)):

During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

9 C.F.R. § 2.131(b)(1).

32. Tigers, the largest land-based predators, are quick and powerful and are recognized as "dangerous animals" by the Regulations and Standards. The Respondents are alleged to

have violated sections 2.100(a) and 2.131(c)(3) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(c)(3)):

During public exhibition, dangerous animals such as lions, tigers, wolves, bears, or elephants must be under the direct control and supervision of a knowledgeable and experienced animal handler.

9 C.F.R. § 2.131(c)(3).

### **Direct Control**

33. During public exhibition of a dangerous animal such as a tiger, Dr. Bellin testified and APHIS argues (APHIS Brief, pp. 12-16) that the “direct control and supervision” by the handler required by 9 C.F.R. §§ 2.100(a), 2.131(c)(3), means that the handler is holding onto the animal. Based upon the facts of this case only, I disagree. I’ll begin by presenting Dr. Bellin’s testimony, and then APHIS’s argument.

34. Dr. Bellin testified that direct control requires direct contact. This excerpt is from Tr. 419-421.

Administrative Law Judge: And then, Dr. Bellin, before Mr. Weiland asks cross examination questions, I need clarification of a couple of phrases that you have used. And the first one is direct contact. What do you believe that means?

Dr. Bellin: My use of it is somebody who has their physical being on the animal’s physical being.

Administrative Law Judge: All right. Is that different from direct control?

Dr. Bellin: In my opinion, no.

Administrative Law Judge: You think they mean the same thing?

Dr. Bellin: Yes, under direct control of an animal means you have direct contact. If the animal starts moving, you can immediately pull them in another direction if you have to. I consider that the same.

Administrative Law Judge: Do you think the meaning is any different if the phrase is direct control and supervision?

Dr. Bellin: Not really, no.

Administrative Law Judge: So you think all three of those things require touching of the animal itself?

Dr. Bellin: I think that is the intent of Congress under the Animal Welfare Act, yes. That is my understanding of the intent of Congress is to have dangerous wild animals under direct control/contact, which make the supervision. I don't think they envision, this is my opinion, I don't believe Congress envisioned somebody standing 30 feet away and watching the animal as being a safety issue.

Administrative Law Judge: Well, how about standing three feet away and watching the animal?

Dr. Bellin: The same difference as far as I'm concerned with the large cat.

Administrative Law Judge: Even a young, large cat?

Dr. Bellin: Yes, ma'am.

Administrative Law Judge: Even a 40-pound cat?

Dr. Bellin: Yes, ma'am.

Administrative Law Judge: And to what extent does the distraction, whether it's the bottle or some other distraction, alleviate the requirement for physical contact, either with the animal's body or through a leash?

Dr. Bellin: None.

Administrative Law Judge: Okay. Mr. Weiland, you may cross examine.

Mr. Weiland: Doctor, is it your opinion that these tigers are dangerous from the day they're born?

Dr. Bellin: Could you be more specific?

Mr. Weiland: I was trying to follow up on the Judge's question. Do you believe that a tiger is dangerous to a human from the day it's born?

Dr. Bellin: Yes.

Tr. 419-21.

35. According to APHIS, Respondents failed to have the animals under their direct control and supervision. Instead (according to APHIS), "the respondents' customer handled the animal" (while the customer was holding the bottle), while "respondents and/or their employee observed the interaction." APHIS Brief, p. 12.

36. APHIS continues, "First, the Regulation requires that dangerous animals be under the handler's "direct control," not simply some form of remote control. Contrary to Mr. Riggs' belief, direct control entails some physical connection to the animal. 'Direct' means 'with nothing between.' Webster's New World Dictionary . . . ."

37. APHIS's Brief continues, after describing Complainant's evidence, "There is no restraint on the animal at all. The safety of the animal and the person depend entirely on the animal's own self-control." APHIS Brief, p. 13.

38. Unlike Dr. Bellin, and unlike APHIS, I do not conclude that the handler must have direct contact with the tiger, no matter what the age of the tiger, to exercise "direct control and supervision." Further, I find that the bottle as used by Respondents was an effective means of "direct control and supervision" but only under certain circumstances. The whole of Respondents' practices and methods must be considered to understand their use of the bottle.

39. The Respondents had control of the tigers' training from a young age, and the Respondents were able to choose those tigers whose dispositions were well-suited to the photo shoots. Although Ms. Berry was not at the shows that gave rise to the allegations, her management role from the Respondents' home site is important.

40. Ms. Berry has a bachelors degree in psychology and a masters degree in child psychology. Tr. 574. Ms. Berry had used small animals in therapy with children, including "children that are schizophrenic, autistic, that don't make real good connections with humans," and had "had some wonderful breakthroughs with children and animals." Tr. 576. At the time of the hearing, the Respondents owned about 70 exotic cats (tigers, lions, leopards, and cougars) that Ms. Berry was responsible for. Tr. 580, 586.

41. The following excerpt is from Tr. 586.

Mr. Weiland: . . . has the USDA ever suggested to you at all that your show is so inherently dangerous that you should shut down the entire photo shoot aspect to it?

Ms. Berry: Not until the last couple days in here.

Tr. 586.

42. Ms. Berry elaborated on the Respondents' use of the bottle as the principal means of control of the tigers used in the photo shoots, at Tr. 596-600.

Mr. Weiland: . . . . In your experience, describe to the Judge, just how the bottle is used and why it's a control mechanism for these small animals.

Ms. Berry: Because the tigers are mammals, they nurse their mother. We - - if the animals are born on our facility, we let them nurse for two weeks, if possible, if the mother takes care of them. They still need to be fed for a long period after that. We take a lot of time in bottle feeding and the care of the animals during that time period. They think of the human, the primary care giver, whoever is bottle feeding them, basically as their mother.

Mr. Weiland: Now during a show, would the personnel who are handling the photo shoot typically have several baby bottles full and ready for use?

Ms. Berry: Every show I have ever attended or put on or seen of Jay's, there was always bottles. There's always back-up bottles. Before your photo shoot begins, you fill your bottles and you have them ready.

Mr. Weiland: Now you heard Dr. Bellin testify yesterday, didn't you?

Ms. Berry: Uh-hum.

Mr. Weiland: I believe he testified somehow from his vantage he could tell the bottle was empty after a few minutes but the photo shoot continued. Do you recall that testimony?

Ms. Berry: Yes, I do.

Mr. Weiland: Now in your experience, let's just assume that the - - that this - - a particular baby bottle runs out of milk. Will a baby cub continue to suck on the bottle?

Ms. Berry: Yes, sir. Now wait - - let me - - can I kind of - - box myself in here? They may not. But they - - most of the time, they will continue to suck the bottle. They like that pacifying action of sucking the bottle, even if it's empty. I have full grown tigers that will still drink a baby bottle. And you put it in their mouth and when they're done after they suck it for ten minutes there may be this much milk gone, so obviously, the whole time that they've got that bottle in their mouth, they're not drinking and not taking in anything. They are simply pacifying on the bottle. And so I - - it doesn't necessarily mean that they will get up and that's it, they're done, because they don't have any milk in the bottle. They can pacify. It just all depends. A tiger can be disinterested - - become disinterested in a full bottle as easy as they can become disinterested in an empty bottle.

Mr. Weiland: Okay. Have you ever...

Administrative Law Judge: Now I would like the record to reflect the size of the amount of milk that was gone that the witness showed us...

Ms. Berry: A half an inch?

Administrative Law Judge: About a half inch...

Ms. Berry: Let me rephrase - - a half an ounce. After ten minutes.

Administrative Law Judge: Gone out of the bottle?

Ms. Berry: Gone out of the bottle. With an adult cat. Baby cats won't let that happen. But adult cats just like to...

Mr. Weiland: Just so - - so in your experience with these animals, even adult cats will continue

- - at least some of them - - continue to have interest in this bottle.

Ms. Berry: Most of them will.

Mr. Weiland: Have you ever seen them sleep with a bottle?

Ms. Berry: Sleep with a bottle?

Mr. Weiland: Right. Continue like...

Ms. Berry: Oh, after they fall asleep?

Mr. Weiland: Right.

Ms. Berry: Oh yeah. Sure. Babies fall asleep all the time when you're feeding them.

Mr. Weiland: And they'll continue to have the bottle in their mouth like a human baby would?

Ms. Berry: Uh-hum.

Mr. Weiland: In your professional opinion, as a experienced handler of these animals, is the bottle a sufficient control device in order to prevent anything more than minimal risk to the public in exhibiting these animals?

Ms. Carroll: Object on foundation. Any -- all ages and sizes of tigers?

Mr. Weiland: I'm talking about...

Administrative Law Judge: Let's see. We've been talking about babies, which are less than six months<sup>6</sup> this whole time, I believe. Is that correct, Mr. Weiland?

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<sup>6</sup> See footnote 5.

Mr. Weiland: That's what I meant, Judge.

Administrative Law Judge: Okay.

Ms. Berry: Yes, it's the best, the absolute best thing that we can find.

Tr. 596-600.

43. As Ms. Carroll brought out during her cross examination of Ms. Berry, Ms. Berry believes that using a bottle with a tiger is a way of having direct control over the animal only under certain circumstances. Tr. 623-29. Ms. Berry's testimony is persuasive: so long as the bottle is being controlled, the cat is being controlled, so long as the tiger has been reared and trained by the Respondents and selected by the Respondents for photo shoots, and an experienced handler is in close proximity, to read the cat, being alert for any signs of change, close enough to grab the bottle to make sure that it stays stable. Each cat is different, just as each person is different. Tr. 623-29. *See also* Tr. 631, 640-41.

44. The tiger's young age is essential. Ms. Berry testified on cross examination about the photo shoot tigers, who are less than six months of age. Tr. 646-47.

Ms. Berry: . . . . Their instinct is to love at that age. It's not attack.

Ms. Carroll: That's there for all - - that applies to all the tigers that you train and send on photo shoots?

Ms. Berry: I have never seen a cat under six months age try to kill someone.

Ms. Carroll: Okay. Have you seen a cat under six months of age try to play with someone?

Ms. Berry: Sure.

Ms. Carroll: Have you seen a cat under six months age try to scratch someone?

Ms. Berry: Yes.

Ms. Carroll: And have you seen a cat under six months of age try and bite someone?

Ms. Berry: Yes.

Ms. Carroll: And do you believe that tigers can outgrow their wildness or be trained out of their wildness?

Ms. Berry: Never.

Tr. 646-47.

45. Ms. Berry testified on cross examination that feeding on a platform begins at home, before the young tigers go on the road. Tr. 644.

Ms. Berry: . . . . they stay at home for awhile. And they are taught at that time to get on a platform, they are taught to drink their bottle, because they have to drink their bottle four times a day. They love their bottle. So it's good training to start them in putting the bottle in their mouth as soon as they start walking. If you don't do that pretty young and they get eight, ten weeks old and then you try to do it it's more difficult for the cat to do.

Tr. 644.

46. Ms. Berry testified on cross examination that the tigers the Respondents have trained and use in photo shoots that are less than six months old "are a minimal risk." "I do not believe they're likely to hurt anyone." Tr. 670.

47. Ms. Berry testified about the tigers used in Respondents' photo shoots. "The ones that we use in the show have - - that are either born in our facility or we've taken them from somebody that doesn't know what to do with them or needs to dump them or you know. When I say dump, that's their term, not mine." Tr. 588. Ms. Berry has had experience with exotic cats since 1988, first with other people's exotic cats, then her own. Tr. 587. Ms.

Berry testified that taking the tigers on the road helps them adapt to being in captivity; that when they are adults, they will be better behaved.

48. This excerpt is from Tr. 588-91.

Mr. Weiland: Yeah. Do you know how to handle tigers who are six months of age or less?

Ms. Berry: Yes.

Mr. Weiland: Okay. And one of the things that you have done with your - - I'll call that group baby tigers<sup>7</sup> - - if you understand what I'm referring to if I say a baby tiger? I mean six months of age or less.

Ms. Berry: Okay.

Mr. Weiland: For the purpose of my questions.

Ms. Berry: Okay.

Mr. Weiland: Now when you're dealing with these baby tigers, has it been your experience that having them travel with the Bridgeport Nature Center show is beneficial to the tigers?

Ms. Berry: I believe it's very important in their development.

Mr. Weiland: Why do you say that? Tell the Judge - - explain why you believe that's true.

Ms. Berry: Because I've tried to take care of cubs just myself and keep them in my own little world, which I would love to do with each one of them and be selfish and keep them to myself. I know that animals that have contact with people and a lot of people, are much

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<sup>7</sup> This footnote is NOT part of the transcript and contains my observation: the characterization of all tigers aged six months or less as "baby tigers" is actually not helpful. The majority of the tigers involved in the allegations here are better characterized as "juvenile tigers." Dr. Bellin testified that, in his opinion, juvenile tigers include tigers beginning at about four or five months of age. Tr. 381. Mr. Markmann testified that, in his opinion, juvenile tigers include tigers beginning at about four months of age. Tr. 552-53.

better adapted to life in captivity and we have nowhere to put them in the wild, so they are in captivity. We do have to keep them at the facility and as an adult tiger, which is dangerous, I do not want to have an adult cat at the facility, that is extremely aggressive and a greater risk than what they produce at, you know, just being a tiger in itself as an adult. So I would want to have cats that are better behaved and Jay (Mr. Riggs) does the best job of anybody that I know in taking care of animals and giving them the love and interacting with the public, too. Because the public's an important part. It's the whole interaction, it's the whole process of being around people, of being around - - being loved. Having the constant positive reinforcement. Having that bottle, which is positive reinforcement, that's their love. They love the bottle. They love to be held. They're like children in a lot of ways. They need all of those things.

Mr. Weiland: If a tiger - - a tiger cub loves to be held like a child loves to be held?

Ms. Berry: Of course it's on their terms. Yes, they do like that if they - - they're also a cat. They like to be off to themselves sometimes but when they do want love, yes they do want love. And 90 percent of the time -- 99 percent of the time, they are wanting love.

Mr. Weiland: Do they react to positive reinforcement?

Ms. Berry: Absolutely.

Mr. Weiland: Like a dog trainer might pat a dog, a puppy, on the head if it performs its sit or stand properly? I mean, a cat, a baby cat will also respond to positive reinforcement like that?

Ms. Berry: Yes.

Mr. Weiland: And it's your experience that having these baby cats on the road like that, where they're in constant proximity to people, is good for them?

Ms. Berry: Yes.

Mr. Weiland: Do you - - you mentioned the bottle and their attention to the bottle or whatever reference it was. Would you explain to Judge Clifton why the bottle - - well, first of all, if the bottle is a control device that you all use?

Ms. Berry: The bottle is a control device that we do use.

Mr. Weiland: Now how - - would you characterize the bottle as the primary control device during the course of public contact with the baby tigers?

Ms. Berry: Yes.

Tr. 588-591.

### **Minimal Risk of Harm to the Animal and to the Public**

49. How risky were the Respondents' photo shoots of members of the public with tigers during the summer of 1999? During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and/or barriers between the animal and the general viewing public so as to assure the safety of animals and the public. 9 C.F.R. §§ 2.100(a), 2.131(b)(1).

50. Dr. Bellin testified and other APHIS employees testified and APHIS argues (APHIS Brief, pp. 6-9) that when tigers are involved, "minimal risk" means all risk must be eliminated. APHIS employees are aware of grave consequences of tiger bites or even scratches, of how powerful and quick tigers are.

51. The Respondents are likewise well aware that there are dangers of allowing tigers, even juvenile tigers and even cubs, to be in close proximity with humans, to be touched and held by humans, and the Respondents' practices and methods during the summer of 1999 were formulated to minimize the risk. Mr. Riggs and Ms. Berry had developed good practices and methods for preventing harm to the animals and to the public during their photo shoots and throughout their entire exhibition.

52. Both Dr. Bellin and Mr. Swartz acknowledged that Mr. Riggs was an expert in handling exotic cats:

Dr. Bellin: We have training opportunities at national conferences, regional conferences, where experts are brought in, experts such as Mr. Riggs, or a James Fowler<sup>8</sup> type of individual, if you will, people who have expertise with the type of animals that we're going to be covering, and these people have given us the benefit of their knowledge, their education, their training, writings. Tr. 396.

Dr. Bellin: I don't purport to be an expert in the care and handling of these animals because I don't do it on a full-time basis like Mr. Riggs may do. Tr. 396-97.

Mr. Swartz: I have experience in the knowledge of how to handle the animals for safety for the public. I would defer to Mr. Riggs as being the expert as to handling, on-hands handling, of the animal. Tr. 508.

53. Ms. Berry confirmed her husband's expertise: "Jay (Mr. Riggs) does the best job of anybody that I know in taking care of animals and giving them the love and interacting with

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<sup>8</sup> See footnote 14.

the public, too.” Tr. 590. *See also* Tr. 632-33, regarding limitations that include (but are not limited to) no plastic bags, no balloons, no screaming children, no intoxicated or inebriated people; and children are accompanied by an adult there that can hold a bottle.

54. When the Respondents’ handler moved a photo opportunity (photo shoot) tiger from cage to feeding platform or back to cage, the Respondents’ handler customarily used a leash (or carried the tiger, if it was small). Once the tiger was in place on the tiger’s feeding platform, the Respondents’ handler on some occasions removed the tiger’s leash, so that there would be no leash showing in the photo. The Respondents’ handler then stood at the head of the tiger just out of range of the camera.

55. The Respondents’ handler was alert to the tiger’s behavior. On cross examination, Mr. Riggs explained. Tr. 842-44.

Ms. Carroll: Let me ask you about what your procedures are in the event of an animal attack during a photo shoot.

....

Mr. Riggs: Okay. First of all, I have never seen during any photo shoot any aggressive behavior ever, and that is ever in my years of doing this during the actual photo shoot. The .

..

Ms. Carroll: And that’s when the photograph is being taken is what you’re referring to?

Mr. Riggs: That ten, 12-second period in which the photo’s taken, the public hops up, and moves on, and we take the next photo. What is my plan if things, if you will, go south? I, the handler, first thing I would do if, if the cat begins to show signs of losing interest, I would ask the public to hop up and try switching bottles. If that didn’t work, I would end

the photo set, put the cat up, and retrieve another cat. My job as a handler is to read this animal and anticipate and judge if he's focusing and staying focused on this bottle, and it's my contention I've done that and done that very well.

Tr. 842-44.

56. The Respondents' practices and methods required Mr. Riggs'<sup>9</sup> close attention to the exotic cat and the ability to remove the cat quickly from the vicinity of humans if the cat were to behave unexpectedly, such as could occur if the cat were startled or upset.

Removing the cat would be accomplished via use of the bottle, or if that failed, the leash, or if that failed, the fire extinguisher.

57. There is no prophylactic regulation that requires licensees to separate the public<sup>10</sup> from a dangerous animal by a bullet-proof glass or plexiglas barrier, or other barrier, or distance, or to prevent the public from having a "close encounter" with a dangerous animal, or from being in close proximity to a dangerous animal, or from touching a dangerous animal. *But see* paragraphs 91 and 92.

58. So long as the Respondents adhered to their own practices and methods of preventing harm, I conclude that there was minimal risk of harm to the tiger and to the public during the Respondents' Great Cats of the World photographic sessions with members of the public during the summer of 1999. I reach this conclusion based in large part on the Respondents' extraordinary dedication to, and impressive knowledge of, their

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<sup>9</sup> (and anyone else the Respondents permitted to be in charge when exotic cats were in the vicinity of humans)

<sup>10</sup> The term "public" IS synonymous with the term "the general public," as it turns out. *See* paragraphs 91 and 92.

exotic cats, their “big” cats. I do, however, find exceptions to the Respondents’ normally responsible photo opportunity methods and practices, situations which did increase the risk of harm to the tiger and to the public to more than minimal at the Iowa State Fair on August 20, 1999. The situations were documented in video footage (CX 41) and were described by Dr. Bellin.

59. There were other situations that are not alleged to be violations in the Complaint, which arguably involved failure to handle the tigers so there was minimal risk of harm to the tigers, when the Respondents allowed their employee to be inside a tiger enclosure with multiple big tigers and no responsible handler watching.

60. Mr. Markmann observed Respondents’ employee Craig Rabideau inside the tigers’ enclosure at the York Fair on September 10, 1999. Tr. 550-51.

Mr. Markmann: I observed some things when I was inspecting Mr. Riggs where like Craig, would go in, an employee that’s been there four months - - he would go into the tiger enclosure with six cats, ranging in age from six months to ten months, weighing anywhere from 100 to 250 pounds and no one was actually watching him. Some people were busy doing other things. And I observed that around - - between eleven and twelve o’clock. Tr. 550-51. *See also* Tr. 226.

61. At a different time on September 10, Mr. Markmann observed Respondents’ employee Eric Drogosch<sup>11</sup> inside that enclosure with the six juvenile tigers ranging from 100

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<sup>11</sup> Mr. Markmann misspells Mr. Drogosch’s name “Drayosh.” Tr. 226-27, CX 25, 26, 28, 31.

pounds to 250 pounds, aged six months to ten months. Tr. 226, CX 25 (including notes on back), CX 26 (including notes on back), CX 28 (including notes on back), CX 31.

62. The situations described in paragraphs 60 and 61, involving Respondents' employees inside the tigers' enclosure that held multiple tigers, including tigers larger and older than the photo opportunity tigers, were not photo opportunities and caused no risk of harm to the public.

63. Mr. Markmann considered 9 C.F.R. § 2.131(c)(3) applicable, but the Complaint did not include such an allegation. The allegations in the Complaint all (all except the alleged record-keeping violation) specify "during public exhibition in photographic sessions with members of the public . . ."

64. Although the Respondents' employees should not have been in that tiger enclosure in that way, vulnerable, no violation is alleged in the Complaint, and neither 9 C.F.R. § 2.131(c)(3) nor 9 C.F.R. § 2.131(b)(1) was proved applicable. Both 9 C.F.R. § 2.131(c)(3) and 9 C.F.R. § 2.131(b)(1) require the occurrence to have been "during public exhibition," which appears not to have been applicable to the handling that was occurring: "cleaning up excreta," "taking photos with Shawnee," "playing in the enclosures with the same six tigers." CX 23.

65. Under the circumstances here, the employee was not a member of the public. Had the employee been harmed during public exhibition, the risk of resultant harm to the tigers is the focus of 9 C.F.R. § 2.131(b)(1). *See, The International Siberian Tiger Foundation, et al.*, 61 Agric. Dec. 53, 92 (2002).

66. There is no prophylactic regulation requiring licensees to maintain minimal risk of harm to the animals and the humans, without regard to whether the occasion is “during public exhibition,” and without regard to whether the humans are the public, the general viewing public, the employees, the independent contractors, the volunteers, the trainers, the trainees, the handlers, the inspectors, or are classified in some other manner.

#### **The Four Fair Exhibitions**

67. Every allegation arises out of the Respondents’ exhibition of animals at State or county fairs during the summer of 1999:

Northern Wisconsin State Fair, Chippewa Falls - July 10, 1999,

Iowa State Fair, Des Moines - August 20, 1999,

Dutchess County Fair, Rhinebeck, New York - August 28, 1999, and

York Fair, York, Pennsylvania - September 10, 1999.

Each of those fair exhibitions led to one or two alleged violations of the Animal Welfare Act (with each photographic session with a member of the public alleged to constitute a separate violation).

#### **Northern Wisconsin State Fair, Chippewa Falls - July 10, 1999**

68. At the Northern Wisconsin State Fair on July 10, 1999, Ms. Kristina (“Kris”) Sniedze got her picture taken with a tiger. The photograph (CX 8) is unusually fine, and Ms. Sniedze thought it was “cool” to have her picture taken with a tiger. Tr. 284, 289. The Respondents, who made the experience possible at their traveling exhibit, had no incidents at the Northern Wisconsin State Fair, no injuries of any kind. Tr. 768.

69. As the trier of fact, I love the picture, which shows a smiling, suntanned young lady (adult) sitting on the platform where the young tiger is being fed, sitting next to the tiger.

The young lady, Ms. Kris Sniedze, has one hand holding the bottle that the tiger is nursing and the other hand near or touching the tiger's fur in the neck area just below the tiger's ear.

CX 8. The picture shows most of the tiger from the whiskers to the vividly marked tail.

70. While I enjoy the beauty of that photo (CX 8), I anticipate the concern of the APHIS officials: the tiger's gorgeous face is striking, but so is the nearness of the tiger to Ms.

Sniedze; what could happen if the tiger for any reason bit Ms. Sniedze or even scratched her?

71. What was the principal means of control? The juvenile tiger's age and size; the tiger being hungry; the handler's use of the bottle; the handler's attentiveness to any disinterest in the bottle on the part of the tiger; the tiger's training with the bottle from the age of two weeks; the tiger's exposure to the atmosphere of the photo shoots from a very early age, as early as four weeks old; the "weeding out" of any tigers whose disposition was not compatible with photo shoots; the handler's methods and practices not only with the tiger, but also with the public, and the general viewing public; and the nature of the public, and the general viewing public, in these venues - - these, in combination, were the principal means of control. The issue of Ms. Sniedze's safety (and consequently the tiger's safety) will be addressed more completely, but here are some of the details that matter.

72. Ms. Kris Sniedze testified that she estimated the weight of the tiger in CX 8 to be between 120 and 180 pounds.<sup>12</sup> Tr. 291. Ms. Sniedze testified that her 178 pound dog, a St. Bernard/Great Dane mix, was about the same size. Tr. 289, 291. Ms. Sniedze had lived on a farm and grew up around animals. Tr. 294.

73. Mr. Riggs, the corporate Respondent's Vice President, who was in charge of the traveling exhibit, testified that the tiger depicted in CX 8 weighed 60 to 80 pounds. Tr. 911-12.

74. There is no leash visible and no handler visible in the photo. CX 8.

75. Mr. Riggs testified that he most often was the handler, and that the handler is always positioned at the head of the tiger, just out of range of the photo. Tr. 767, 913, 915.

76. Mr. Weiland examined Mr. Riggs about the photo and Mr. Riggs' customary practices at the time while at the Northern Wisconsin State Fair. The following excerpt is from Tr. 765-68:

Mr. Weiland: . . . . does it appear from the photograph (CX 8) that the tiger does have a collar around its neck?

Mr. Riggs: I can't really tell for sure.

Mr. Weiland: Okay. Do you see a leash anywhere?

Mr. Riggs: I don't see a leash.

Mr. Weiland: Okay. Do you know sitting here today whether there was or was not a leash on this tiger?

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<sup>12</sup> Ms. Sniedze's Affidavit estimated 180 pounds. CX 10, p. 4.

Mr. Riggs: I can't answer that for sure.

Mr. Weiland: Let's assume that there was no leash, for the sake of my question. Did you -- was that your practice at the Wisconsin State Fair to allow photographs to be taken with no leash?

Mr. Riggs: No, not at all.

Mr. Weiland: Do you understand the regulations -- which require control to be exerted over these animals, don't you?

Mr. Riggs: Yes.

Mr. Weiland: As you look at this photo, does the animal appear to be under control?

Mr. Riggs: Obviously.

Tr. 765-66.

. . . .

Mr. Weiland: (at Tr. 767) . . . . Do you recall generally the affidavit in which the affiant [ph] indicated that the nearest handler was within two and a half feet?

Mr. Riggs: Yes.

Mr. Weiland: And would that have been your practice at that time, to be within two and a half feet of any of the persons being photographed?

Mr. Riggs: I would say I was probably much closer than that. The photo was cut off, probably within six or eight inches of that bottle.

Mr. Weiland: All right, sir. And is that your customary practice?

Mr. Riggs: Is that my customary practice?

Mr. Weiland: To remain that close to the person who's being - - to the tiger and the bottle?

Mr. Riggs: My practice was to feed this tiger a bottle and to hold this bottle to put her hand under my hand until it was time to actually snap that photo. At that point I would let go of my hand and her hand, back up a little bit to get my hand out of this photo. Our photographer's job was to cut the photo off fairly close beside the bottle so my hand isn't reaching into the photo. But not to get any distance away.

Mr. Weiland: All right. And were there any incidents reported to you at the Wisconsin State Fair?

Mr. Riggs: None.

Mr. Weiland: No injuries of any kind?

Mr. Riggs: None.

Mr. Weiland: Did you have to discipline by some kind of physical means any of your cats at the Wisconsin State Fair?

Mr. Riggs: We don't even discipline these animals as - - in the reprimand-type that you're perhaps referring to. These - - this is a positive enrichment in which this animal's put up on a happy note or else it would not come back out the next time.

Tr. 765-68.

77. Mr. Julius Olson ("Pinky") Lee, the Vice President and Secretary of the Northern Wisconsin State Fair, confirmed that there were no problems with the exhibit Great Cats of the World, run by Bridgeport and owner/supervisor Mr. Riggs, no reports to him of any incidents with the animals or the public. Tr. 265-75. Mr. Lee had determined to bring that exhibit back to the fair. Tr. 275.

78. Mr. Weiland's examination of Mr. Riggs continued, with an inquiry as to how Mr. Riggs ran Bridgeport's photo sessions. The following excerpt is from Tr. 768-70.

Mr. Weiland: Okay. I think with the photograph in view, it's probably appropriate for you to tell the Judge, just how you maintain one of these photo sessions. How you stage it, how you run it and how you operate it from beginning to end. Would you just take a minute to describe that?

Mr. Riggs: It might take more than a minute, but I would be happy to. Basically, this probably began with a show. The show lasted about 25 to 30 minutes. At one point, toward the end of the show, I'm calling volunteers out of the audience to come bottle feed a baby or something and while they're switching animals, I begin to talk about this photo set. What I do is say basically, following the show, we're going to have a limited photo opportunity. I would like to talk about this for a second, while they're getting the next animal, so I can answer everybody's question at once. Because I get this question, what happens? - - a thousands times a day. So, basically I begin to talk to the folks that basically what we do is we take the tigers out. They hop up on this platform on their own. We feed them with a bottle. The tiger has a very tiny belly and when this belly is full, this photo set is over. It doesn't matter if there's two people in this line or 40 people in this line. When the tiger's full, the tiger has to be put up, and the photo set is ended. Period. At that point, probably the next cat's brought out, I continue the show. At the end of the show, we get everything ready and probably start announcing our photo set will begin in about five minutes. At this point, we're probably bringing the folks in and getting the folks in line. Once I've got the line full and these people in line, I make another announcement. I say, okay folks. We're

fixing to get this tiger out. What's going to happen, is this tiger's going to hop up here and we're going to feed him with a bottle. Whoever in your group would like to feed the tiger, come sit over here by the head, everybody else will sit over here by the tail. If you have any small children in your group, please keep them by the tail. We don't want some infant trying to hold this bottle, nor would we let that happen. And I try to explain to these folks that - - exactly how this works, step for step. So when they get up to the front and it's their turn, I don't have to explain how this process is going to work. I have a limited amount of time for this cat. His attention span on that bottle might last five to eight minutes. Either way, I want this to facilitate very quickly. So I tell these people exactly what's required. I tell them that when they sit down with that tiger, whoever is holding the bottle, I want them to hold that bottle very tightly and that we're going to ask them to look up. We want them to look up and smile. They only have one shot at this photo and we'd really like them to have a nice photo. After they get that photo made, we tell them they can pet that tiger real quick and hop and run for their life. If they live through this process, we'll give them a stick on the way out that says, I touched a tiger. And that's my little spiel before each photo set.

Tr. 768-70.

79. Training of the tigers from two weeks of age, training of Respondents' personnel, and other methods and practices of Respondents are important for this fair and each of the fairs.

80. Mr. Riggs testified that it was not his practice at the Northern Wisconsin State Fair to allow photographs to be taken with no leash (Tr. 765); nevertheless, the Respondents'

handler used no leash while the photograph of Ms. Sniedze with the tiger was shot. Not only is no leash visible in the photo (CX 8), Ms. Sniedze credibly testified as follows:

Ms. Carroll: . . . . And how was the tiger led out to the platform where you were sitting?

Ms. Sniedze: It was on a leash when they brought it out but then they take it off for the picture.

Tr. 286.

81. Given the Respondents' practice of using the leash to move the tiger to and from its feeding platform, it is more likely than not that the collar remained on the tiger during the photographing of Ms. Sniedze with the tiger, even though the collar was not visible in the photograph. CX 8.

82. The Respondents' handler held the bottle for the tiger until Ms. Sniedze had a good grasp on the bottle; then the handler stepped just out of view of the camera and stood 2-1/2 feet from the bottle and the tiger's head. Tr. 767. [The question and answer at Tr. 282 is misleading, where Ms. Carroll asked: "How long were you and the tiger in close proximity without any handler?" The knowledgeable and experienced animal handler was with Ms. Sniedze at all times, but momentarily he stood back, 2-1/2 feet from the bottle and the tiger's head, with no direct contact with the tiger.]

83. I disagree with the statement in APHIS's Brief, at pp. 10 and 13, that there was no handler; there was a handler; Ms. Sniedze credibly testified as follows:

Ms. Sniedze: There were three people that were standing in front of me when they took the picture. It was the handler who initially gave me the bottle and sat me next to the tiger.

There was the person who took the picture, and then there was one other person there.

Actually I thought it was a volunteer.

Tr. 306.

....

Ms. Sniedze: And then they put it (the tiger) up on the platform and they put the bottle in his mouth and then they told me where to sit right behind it and then gave me the bottle, and then they stepped back and took the photograph.

Tr. 308.

....

Mr. Weiland: Okay. Now during that time that the cat was on the platform the bottle was in its mouth the whole time?

Ms. Sniedze: Yes.

Tr. 309.

84. The tiger in CX 8 more likely than not was younger than six months of age. Mr. Riggs' testimony was credible that it had been his practice since 1998 to "absolutely" not use cats (tigers) over six months of age for the photo part (photo shoots). Tr. 810. [*See* paragraphs 129. through 150. regarding the use of Shawnee at the York Fair; Shawnee was older than six months, but Mr. Riggs was not thinking of that situation as the "photo part," and he did not think of the Reporter doing the video promotion as a member of the public.] *See also* Tr. 840.

85. Ms. Berry testified on cross examination that some tigers younger than six months weigh more than 75 pounds. Tr. 651.

Ms. Carroll: Approximately how much does a six month tiger weigh?

Ms. Berry: It depends on the cat. There's a lot of diff - - a lot of different kinds of tiger.

Some

- - a six month old tiger<sup>13</sup> can weigh anywhere from 50 - - this is my "guesstimate" - -50 to 150 pounds or 120 pounds.

Tr. 651.

86. Mr. Riggs estimated the weight of the tiger depicted in CX 8 to be 60 to 80 pounds.

Tr. 911-12. I have respect for Mr. Riggs' estimate and find that he was better able to estimate the tiger's weight than Ms. Sniedze because of his constant handling of tigers, which obviously are built differently from a St. Bernard/Great Dane mix. Nevertheless, based on both Mr. Riggs' and Ms. Sniedze's testimony, taken together, I find that the tiger photographed with Ms. Sniedze at the Northern Wisconsin State Fair more likely than not weighed 75 pounds or more. When the Respondents' handler used a tiger that weighed 75 pounds or more in photographic sessions with members of the public, the Respondents' handler caused the Respondents to violate the Consent Decision, which orders that the tiger be "less than seventy five pounds in weight."

87. On July 10, 1999 at the Northern Wisconsin State Fair, the Respondents violated the Consent Decision: the Respondents' handler did not hold the tiger by a leash at all times during the photo shoot; and during the photo shoot the Respondents' handler used a tiger that weighed 75 pounds or more.

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<sup>13</sup> Likewise, Mr. Marcus Cook estimated that an average weight for a six month old tiger would be 130 pounds, 150 pounds. Tr. 719. *See also* Tr. 720-21.

88. Even though I now understand that “the public” is not distinguished from “the general viewing public” in the regulation (9 C.F.R. § 2.131(b)(1)), it appears to me that “members of the public” are distinguished from “the general public” in the pertinent Consent Decision provision.

89. The Consent Decision includes the following requirement:

Respondents shall not exhibit any exotic cats or other animals in photographic sessions with members of the public unless the general public is kept away from the exhibit by a barrier at least fifteen feet from the exhibit.

CX 3, p. 5.

90. The Judicial Officer held in *The International Siberian Tiger Foundation, et al.*, 61 Agric. Dec. 53, 86-88 (2002), that the terms “the public” and “the general viewing public” do not include exhibitors and do not include the Respondents’ trainees (“premium customers” who paid \$2,500 and entered into training agreements, to obtain “close encounters” with and “exposure” to Respondents’ animals). The Judicial Officer observed:

The Regulations do not define the term “the public” or the term “the general viewing public.” However, generally, the term “the public” does not mean all people, as the Chief ALJ suggests. Instead, the term “the public” is often used to distinguish a large group of people from a smaller group of people. For instance, if one were to say “the plumber treats the public fairly,” this statement generally would not be interpreted to indicate how the plumber treats his or her employees, apprentices, or himself or herself. Similarly, the term “the general viewing public” is not always used to mean “all people

who view an event or object.” The term “the general viewing public” is often used in a way that excludes those who are presenting the event or object to an audience.”

61 Agric. Dec. 53, 87 (2002).

91. Contrary to my partial Decision, and based on information I have obtained subsequent to issuing my partial Decision in 2006, this Decision on Remand finds that “the general viewing public” and “the public” are synonymous, as used in 9 C.F.R. § 2.131(b)(1). As applicable here, the people who were admitted inside the Respondents’ enclosure that would contain one photo opportunity tiger were still part of the “the general viewing public” even though “the general viewing public” also included those kept outside by the four-foot high perimeter fence. The perimeter fence was a barrier, and there was distance between that barrier and each animal enclosure. The “general viewing public” outside the perimeter fence had not paid \$10 for a photo opportunity. Ms. Sniedze remained a member of “the public” and a member of “the general viewing public” while she was inside the exhibition, both while she was waiting her turn and while she was on the platform with the tiger.

92. The regulation requiring “sufficient distance and/or barriers between the animal and the general viewing public” and the Consent Decision provision requiring that the general public be kept away from the exhibit by “a barrier at least fifteen feet from the exhibit” applied to the people outside the exhibit (“passers-by”). Sufficient distance and/or barriers between the photo opportunity tiger and Ms. Sniedze, once she had gained admittance to the photo opportunity enclosure, ALSO applied, as I now understand, but zero distance and zero

barriers could suffice, depending on all the circumstances. I include this information NOT to hold the Respondents accountable to APHIS policy formulated AFTER the circumstances complained of here, because this information came subsequent to their alleged violations and their hearing and my partial Decision, but to illustrate what I now understand APHIS's position to be. Here I quote Robert Gibbens, DVM, from testimony he gave on March 4, 2008, in the Mazzola case (*In re Mazzola*, 68 Agric. Dec. \_\_\_\_ (2009), (available on line at <http://www.nationalaglawcenter.org/assets/decisions/mazzola3.pdf>)). Dr. Gibbens is Regional Director for the Western Region, Animal Care, APHIS, as he has been since 1997. Tr. 964-65 in *Mazzola*. Dr. Gibbens testified that with regard to (9 C.F.R. § 2.131(b)(1), as numbered in this Decision), once a big cat, such as a tiger or a lion, gets around three months of age, APHIS looks very closely at all factors to determine whether the big cat is too big for a member of the public to touch. Tr. 1052-53 in *Mazzola*. Dr. Gibbens testified that the regulation would be violated if the tiger is an adult; and that there is not in the Regulations "an engineering standard for a juvenile tiger, which is why we had to look at a number of factors to consider, such as the cat, the size of the cat, the members of the public that are present; all these factors that I mentioned earlier that I don't need to list again. Tr. 1190-91 in *Mazzola*. Dr. Gibbens believes that "public" and "the general viewing public" are intended to be synonymous. Tr. 1206 in *Mazzola*. Dr. Gibbens testified that "the Secretary has determined that there is an inherent danger present whenever there is the opportunity for the public to come into contact with a juvenile or adult big cat, and therefore that is considered to be out of compliance with (9 C.F.R. § 2.131(b)(1), as numbered in this Decision), Tr. 1221 in *Mazzola*.

Dr. Gibbens testified as follows in *Mazzola*. Tr. 1321.

Judge Clifton: All right. I want to go back to one section of the Regulations with Dr.

Gibbens just to make sure I understand APHIS' interpretation. And this is (2.131(b)(1), as numbered in this case). As I understand it, it is APHIS' interpretation of this regulation that the distance and/or barriers required in a photo shoot with a juvenile or adult tiger must be sufficient to prevent direct contact with the public, and that includes people paying to have their photos made.

Dr. Gibbens: That's correct.

Judge Clifton: All right. It's my understanding that APHIS' interpretation of this regulation with regard to tigers that are younger and smaller than juvenile or adult depends on all of the circumstances put together in order to determine what type of distance and/or barriers are adequate. Is that correct?

Dr. Gibbens: That's correct.

Tr. 1321 in *Mazzola*.

The "Commonly Asked Big Cat Questions" was posted on the APHIS Animal Care website in about 2004, following the Big Cat Symposia (Symposiums) in about 2003. Tr. 2177-78 in *Mazzola*. The Respondents, of course, had the benefit of none of that information. First, the Consent Decision which guided the Respondents during the summer of 1999 suggests an interpretation of regulation requirements which can be misleading when compared to later agency policy demands; second, the Respondents were given no notice beforehand that their techniques in ensuring the safety of their animals and the public and the general viewing public would be regarded as inadequate; and third, the United States Department of

Agriculture had not, in 1999, made clear the regulation's requirements (not clear, by the summer of 1999, through "symposia" and written guidance delivered to licensees by the Animal and Plant Health Inspection Service (APHIS); not clear, by the summer of 1999, in decisions by the Judicial Officer and Administrative Law Judges; not clear in the comments in the Federal Register, *see* the rule at 54 Fed. Reg. 36162, August 31, 1989, and the comments that preceded it at 54 Fed. Reg. 10880, March 15, 1989. The comments show that while "exhibitors do not have a right to allow contact between the public and dangerous animals", neither is contact between the public and dangerous animals altogether prohibited:

One member of the general public commented that dangerous animals should not be allowed contact with the public. The regulations in proposed paragraphs (b) and (c) of § 2.131 do not create a right of exhibitors to allow contact between wild or dangerous animals and the public. Proposed § 2.131(c) would require that in order to publicly exhibit an animal, an exhibitor must handle animals so that there is minimal risk of harm to the public. Proposed § 2.131(b) sets forth the conditions that apply to public exhibition of an animal if, and only if, handling an animal so that there is minimal risk of harm to the public would allow public exhibition. We are reversing the order of proposed paragraphs (b) and (c) in the revised rule in order to make clear that exhibitors do not have

a right to allow contact between the public and dangerous animals.

54 Fed. Reg. 10880, March 15, 1989.

Those comments fail to clarify the exhibitors' obligations under the handling regulations in cases involving big cats. Not until *Mazzola* (in 2008) did I clearly understand APHIS policy with regard to no direct contact, that means no touching, between the public and juvenile and adult felines. I find this policy very clearly stated in CX-179 in *Mazzola* and I read it into the record as part of my oral decision from the bench on the last day of the hearing.

"Public contact with certain dangerous animals may not be done safely under any conditions. In particular, direct public contact with juvenile and adult felines (e.g., lions, tigers, jaguars, leopards, cougars) does not conform to the handling regulations, because it cannot reasonably be conducted without a significant risk of harm to the animal or the public. The handling regulations do not appear to specifically prohibit direct public contact with infant animals, so long as it is not rough or excessive, and so long as there is minimal risk of harm to the animal and to the public. If you intend to exhibit juvenile or adult large felines" [and adult has a footnote that indicates basically that juvenile or adult refers to over 3 months of age] - - after the word "felines" "(e.g., lions, tigers, jaguars, leopards, cougars), and would like Animal Care to review your proposed exhibition to determine whether it will comply with the handling regulations, please include with your application a description of the intended exhibition, including the number, species, and age of animals involved and the expected public interaction."

This CX-179 in *Mazzola* is what I call the “Dear Applicant” letter and it was provided in packets for new applicants for Animal Welfare Act licenses beginning in approximately January 2003. During the following year, it was provided to licensees who already had their Animal Welfare Act licenses with their renewal packets which were sent to them roughly a month before their expiration dates. *See Mazzola* Initial Decision, online, at pages 4-7 at [http://www.dm.usda.gov/oaljdecisions/080731\\_AWA\\_06-0010\\_doTrExcrpt.pdf](http://www.dm.usda.gov/oaljdecisions/080731_AWA_06-0010_doTrExcrpt.pdf)

93. For purposes of the “Great Cats of the World” exhibit during the two months of the summer of 1999 at issue here, I initially agreed with Ms. Berry’s understanding in my partial Decision. Ms. Berry thinks the general viewing public is the public not having their photo and the public is the people having their photo. Tr. 595-96.

Ms. Berry: From the way that I understand it general public is the public not having their photo and the other . . . . (t)he public is the people having their photo.

Tr. 595-96.

Ms. Berry continued, “The general public is kept behind the four foot fence, which is in the foreground. You can see that a girl with the red shirt is behind that. Then you can see inside the exhibit whether they are volunteers or employees or people getting their photos, I really can’t see. It’s a dark photo. - - that I would consider public or employees but I don’t know which it is at that time. Tr. 596. CX 9.

94. The Respondents’ four foot high perimeter fence, plus the “inner perimeter” distance of five to six feet between the perimeter fence and the animals’ enclosures, did provide an adequate barrier plus distance to separate the general viewing public that were not waiting their turn from the Respondents’ exhibit. Tr. 788-90, ALJX 1.

95. Further, the public waiting their turn once inside the Respondents' exhibit were separated with barriers plus sufficient distance from Respondents' other animals in enclosures other than the one containing the photo opportunity tiger. APHIS seems to have confronted the Respondents for the first time at the hearing with a new requirement, the requirement that the public inside their exhibit, the public who came in for a photo opportunity after paying \$10, also need to be separated from the animal with sufficient distance and/or barriers. Now that I understand that APHIS regards "the public" and "the general viewing public" are the same, and I realize that "sufficient distance and/or barriers" is also required between the animal and the person who came in for a photo opportunity, I need to re-examine the "close encounter" exhibitions of animals (*see* 61 Agric. Dec. 53 at 89). Such exhibitions are not necessarily eliminated, because zero distance and zero barriers will suffice under certain specified circumstances, even for dangerous animals such as tigers, as well as for all other animals regulated under the Act. I find that Ms. Sniedze, who was a member of the public and a member of the general viewing public, is permitted to sit next to the tiger, touching the tiger, only so long as the amount of distance and amount of barriers suffices under those circumstances. Thus, in the summer of 1999, the plexiglas or bullet proof glass solution or one like it was not the only means of providing a photo opportunity such as that of Ms. Sniedze. I conclude that the Respondents were required during their photo shoots to "have sufficient distance and/or barriers" between a tiger and the human(s) posing with the tiger, to comply with 9 C.F.R. §§ 2.100(a) and 2.131(b)(1)), and that in Ms. Sniedze's case, given the notice the Respondents had, the Respondents were in compliance.

The terms of the Consent Decision show that the plexiglas or bullet proof solution or one like it was not expected, either by APHIS or by the Respondents, to become the Respondents' only means of providing a photo opportunity. APHIS may seek a regulation for tigers that requires the plexiglas or bullet proof solution or one like it, but there was no such requirement during the two months of the summer of 1999 in which the Respondents' violations allegedly occurred.

96. On July 10, 1999, at the Northern Wisconsin State Fair, the Respondents did fulfill their obligation to assure the safety of the photo opportunity tiger and the public through their control over that photo opportunity tiger. Even without holding the tiger by a leash at all times, and even though the tiger (a juvenile tiger) weighed 75 pounds or more, and even though Ms. Sniedze instead of the Respondents' handler held the bottle for the tiger momentarily, the Respondents handled their tiger during public exhibition so there was minimal risk of harm to the tiger and to the public, including but not limited to Ms. Sniedze. My conclusion is based on all of the Respondents' safeguards, including their dedication to their tigers and their exhibition, and their practices and procedures, and on the credible testimony of Ms. Sniedze.

#### **Iowa State Fair, Des Moines - August 20, 1999**

97. Little more than a month later, on August 20, 1999, Respondents' traveling exhibit was inspected by Steven I. Bellin, Ph.D., D.V.M., at the Iowa State Fair, Des Moines, Iowa. Dr. Bellin ("Dr. Dr.", or, as he put it, "pair o' docs"), is an APHIS Veterinary Medical Officer (VMO), field certified in felid and canid nutrition, whose responsibilities are to assure compliance with the Animal Welfare Act.

98. Mr. Riggs testified that Dr. Bellin had done a thorough inspection of records and every aspect of the Respondents' operation at the Iowa State Fair (Tr. 787), and that Dr. Bellin had told him that he was not using leashes and was not in compliance with the Consent Decision. Tr. 787, 792-93. CX 12. Mr. Riggs drew a layout of the Iowa show, in part to show Dr. Bellin's vantage point<sup>14</sup> when taking photos of Respondents' exhibit. ALJX 1. Tr. 787. Mr. Riggs testified that Dr. Bellin was 30 to 34 feet from the photo opportunity tiger when he took the photos.

99. Mr. Riggs testified that he told Dr. Bellin he was flabbergasted that Dr. Bellin did not see the leashes being used. Tr. 794. Mr. Riggs testified that Dr. Bellin said, "Don't worry. I'm saying I didn't see a leash. I am saying that this item was corrected." Tr. 794.

100. Dr. Bellin testified that the non-compliances of animal welfare regulations he observed were primarily in the area of handling of animals. Tr. 378. The animals, as well as the general public, were not being kept safe according to Section 2.131 of the Animal Welfare Act regulations, Dr. Bellin testified. Tr. 378. Dr. Bellin identified his inspection report, CX 12. Tr. 377. Dr. Bellin identified the photos he took, CX 16 through 21. Tr. 378-79.

101. Dr. Bellin's photos are of very poor quality,<sup>15</sup> in part because they were taken from such a distance, about 30 feet, through three sets of fence (Tr. 791-92, ALJX 1), and because the lighting is inadequate. The closest Dr. Bellin got was "maybe within 15 to 20

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<sup>14</sup> Passers-by ("the general viewing public"), such as Dr. Bellin, were separated from the exotic cats by four foot high chain link fence.

<sup>15</sup> Dr. Bellin's comments on the backs of the photos are informative. Also, the videotape, CX 41, which Dr. Bellin saw and obtained after he left the Respondents' exhibit, augments Dr. Bellin's photos.

feet, something like that.” Tr. 380. Dr. Bellin’s view was not up-close and personal; on direct examination, Dr. Bellin stated he never goes into an enclosure with an exotic cat, if he can help it. Tr. 395-401.

Ms. Carroll: Let me ask you, Dr. Bellin, to describe the training and expertise you have acquired during your career with the U.S. Department of Agriculture in connection with great cats, large cats, and their behavior.

Dr. Bellin: We have training opportunities at national conferences, regional conferences, where experts are brought in, experts such as Mr. Riggs, or a James Fowler<sup>16</sup> type of individual, if you will, people who have expertise with the type of animals that we’re going to be covering, and these people have given us the benefit of their knowledge, their education, their training, writings. They’ve provided us with bibliographies that we can further research if we want to know even more. As an inspector, I would say between 1989 and 1991 or 1992, I actually was responsible for even more exhibitors and then the territory was decreased a bit because we had a third inspector going to Iowa but I had done inspections, I would say, since 1989 at locations numbering well over 500 exhibitors of people who have big cats, be they home exhibitors or traveling exhibitors or people coming into the state from other - - several of my licensees or exhibitors have themselves been mauled by their animals and I’ve seen the results of that. I have read reports of these incidents. I have seen them physically myself. I have been responsible for the confiscation of large cats that had not been taken care of, successful confiscations. The scope is wide

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<sup>16</sup> Mr. Fowler is a well-known explorer personality appearing on “Wild Animal Kingdom,” a television adventure series.

and varied. I don't purport to be an expert in the care and handling of these animals because I don't do it on a full-time basis like Mr. Riggs may do. But I certainly know what a wild animal is. I certainly know what a dangerous animal is, and I certainly know the difference between an animal that is trained and an animal that is domesticated as well as being trained. There are differences. And a tiger and a lion will always be a wild animal and will always be, always be subject to unpredictability, always.

Ms. Carroll: Do you also have occasion to deal with zoo personnel?

Dr. Bellin: Yes.

Ms. Carroll: And they're also exhibitors - - zoos are also considered exhibitors?

Dr. Bellin: Yes. With my knowledge, I think the last thing I might add is I've been invited several times to partake and join in the fun of going into the cage with these tamed, trained pets that people have, and never on any occasion have I ever done it, and I think there's a reason for that and it's not because I hadn't heard what they had asked me to do.

Administrative Law Judge: If you'd go back now, Ms. Carroll, you had asked about difference the clothing could make and the witness had begun to tell that. I still don't know how he knows those things. If you could go into his background about how he's learned some of these specifics. Perhaps it's in the biographies or bibliographies rather that were provided for reading. Perhaps it's personal experience. If you could just draw some of that out before you return to your questioning.

Ms. Carroll: Okay, because I was trying to go back and find what my question was.

Ms. Carroll: Dr. Bellin, I take it you've also had discussions and interactions with the exhibitors that you described including the 500 exhibitors of exotic animals including big cats, is that correct?

Dr. Bellin: Yes, I have.

Ms. Carroll: I guess have you obtained information in your training or in your work and in the dealings that you just described concerning the effect of clothing, perfume, age, and size of the person, et cetera -- strike the et cetera. Have you obtained information specifically concerning those factors and how they play into the risk?

Dr. Bellin: Yes.

Ms. Carroll: And what specifically or from what sources have you derived that information?

Dr. Bellin: From people who have been mauled by these animals, from people that feed and water them every day, from people that write books and make television documentaries on these animals, from people who report on these animals, from people that own these animals as pets, from people that get rid of these animals as pets. Just numerous sources. Things that I've read. Perhaps a lot of hearsay but my wife happens to be the head librarian for Science Cataloging at Iowa State University and usually if I don't know something, I usually ask her to look it up, and if anybody can find it, she can. So normally if I hear something that sounds weird, I try to find out if it's true or not. I'm not saying everything I've learned is true. What I'm saying is that the sources that I've been exposed to are numerous and varied.

Ms. Carroll: Has there been agreement generally speaking in connection with the, for example, the issue of perfume among the sources that you've consulted?

Dr. Bellin: Yes.

Ms. Carroll: And is that also true in connection with the clothing? I think you had started to answer that various different kinds of clothing can affect animal behavior.

Dr. Bellin: Yes. The bottom line is anything novel is an unpredictable trigger or can be an unpredictable trigger, anything novel to the cat.

Ms. Carroll: And let me just ask you about what difference, if any, it would make as far as the level of risk as to the age of the person coming into contact with the tiger - - with a tiger.

Dr. Bellin: I don't know at what age a tiger learns to hunt necessarily when it's bred and raised in captivity but I would imagine that a smaller child would be a more palatable target if the animal were hungry than say a 6'6", 280-pound man.

Ms. Carroll: In your experience, do tigers - - can tigers cause injury without, I don't want to say meaning to, but while playing?

Dr. Bellin: Absolutely, by way of their canine teeth and large claws, their general size, their quickness.

Ms. Carroll: And you mentioned perfume. In your experience, what is the effect of perfume or lack of perfume on tiger behavior or response?

Dr. Bellin: It's unpredictable. I couldn't tell you. I know that it's novel. I know two people that were wearing perfume, I know personally two people that have been attacked by a large cat that were wearing perfume, so I know that it's not a neutral thing that goes on in the tiger's mind. I mean there was a reason for the attack. It could have been the people

doing something and it could have been the perfume. I don't know what the initiating factors were, but I personally know two people who were wearing perfume and had been attacked.

Ms. Carroll: Is it - - in your opinion, are things like type of clothing, perfume, and age of patrons something that should be considered in exhibiting animals like tigers?

Dr. Bellin: Federal law requires minimal risk to animals, and it doesn't really address that much to the public. Federal law and under the Animal Welfare Act when I hear minimal risk if anything poses a potential risk then obviously the exhibitor is not at the minimal level yet as far as I'm concerned. That's about as specific as I can get.

Tr. 395-401.

102. Dr. Bellin cemented his explanation for not being "up-close" and personal, on cross examination. Tr. 435-47.

Dr. Bellin: There's no way I will get in with a wild animal that belongs to somebody else ever, ever, ever, ever, ever, sir, nor will my wife. They are unpredictable. They're wild. They're dangerous. They carry disease. They can hurt, they can maim, they can kill. Minimize the risk. I get enough risk in my job. I would never think of it. My wife would never think of it. It never crossed our mind.

Mr. Weiland: So you have never had the thrill of touching a tiger in your whole life?

.....

Dr. Bellin: Sir, I find no thrill in touching a tiger.

Mr. Weiland: You never had the experience touching a tiger?

Dr. Bellin: That's not true.

Mr. Weiland: You have touched a tiger?

Dr. Bellin: Yes.

....

Dr. Bellin: I was three years old. I have no idea what my thoughts were at that time.

Tr. 436.

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Mr. Weiland: In fact, the kind of exhibit that the Riggses had in 1999 had become quite unusual in your experience, would you agree with that?

Ms. Carroll: Objection. I think foundation on unusual.

Dr. Bellin: I don't even understand the question. I'm sorry.

Mr. Weiland: Well, you went out to this - - you tried to go to the state fair every year.

Maybe I'm wrong. Is there an exhibit where people can come and have their picture taken with baby tigers out there every year?

Dr. Bellin: No.

Mr. Weiland: Had there ever been one in your experience?

Dr. Bellin: Yes.

Mr. Weiland: How frequently have you seen that type of exhibit?

Dr. Bellin: In the 12 years I've been a federal inspector, have I seen that type of exhibit at that state fair?

Mr. Weiland: Yes.

Dr. Bellin: Three times.

Mr. Weiland: Okay. And then the other - - at least two of those times were someone other than Mr. and Mrs. Riggs' show?

Dr. Bellin: Exactly two times, yes.

Mr. Weiland: Two times. Two other times?

Dr. Bellin: Yes.

....

Mr. Weiland: You mentioned in your testimony that you thought the bottle was a distraction but the bottle is a distraction. It's not anything you think. It clearly is a distraction to the animal during the course of the exhibit, isn't that correct?

Dr. Bellin: Yes.

....

Dr. Bellin: . . . . Because nobody is harmed or hurt during a particular exhibition doesn't mean that the risk is minimal at that point. It doesn't mean that precautions have been taken. It just means somebody is lucky maybe.

Tr. 446.

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Mr. Weiland: Well, let me ask you if - - let me ask you hypothetically.

Dr. Bellin: Certainly.

Mr. Weiland: If Mr. Riggs was at Iowa State Fair in August of 1999, and he took 1,000 photographs involving a total of say conservatively 2,000 people, and after that time there was no evidence that the animal or any human had been harmed, would you conclude that his exhibit presented a minimal risk of harm?

Dr. Bellin: No.

Mr. Weiland: Okay. Bear with me. What if Mr. Riggs at the Iowa State Fair had taken 10,000 photographs, and during that period of time no individual had reported any injury whatsoever and no animal had suffered any physical harm that any veterinarian or inspector could determine. At that point would you conclude that the exhibit posed a minimal risk of harm?

Dr. Bellin: No.

Mr. Weiland: What if Mr. Riggs during the course . . .

Dr. Bellin: Sir, you could go to infinity and the answer will be no. I'm just doing this to expedite, if you would. Give me a number, and the answer is no.

Tr. 435-47.

103. Dr. Bellin's inspection is the most significant of the four fairs. At the first fair at issue (Northern Wisconsin), there was no APHIS inspector, and the evidence addresses only one member of the public, Ms. Sniedze. Dr. Bellin's inspection was at the second fair at issue (Iowa), the first APHIS inspection to follow up on the Consent Decision issues raised by the photograph of Ms. Sniedze with the Respondents' tiger. The closest Dr. Bellin got during his observation of the Respondents' exhibition was "maybe within 15 to 20 feet, something like that." Tr. 380. The length of time Dr. Bellin observed the Respondents' exhibition was 1-1/2 to 1-3/4 hours (Tr. 380), plus he watched the videotape (CX 41). The day of Dr. Bellin's inspection, hundreds of members of the public had photo opportunities with one of Respondents' tigers, perhaps 60-70 people each session, sitting for perhaps 40 photographs each session (one photo would include one or more people, up to as many as

seven people). Tr. 382-84. Quite significant is Dr. Bellin's first write-up, CX 12, his Inspection Report. Dr. Bellin wrote one paragraph, and the noncompliance he identified was essentially "Animals are not on a leash and are not under direct control of a handler." CX 12. Dr. Bellin identified Order 1(c) and Order 4 of the Consent Decision. CX 12, CX 3.

104. Dr. Bellin's Affidavit (CX 13) was prepared after he had viewed the videotape (CX 41),<sup>17</sup> and the noncompliance Dr. Bellin identifies from the videotape is ". . . . photo session, with Mr. Riggs in control of the session, posing individuals with his tigers and the absence of any direct control by an experienced handler, or even in direct control of a leash 18 inches or shorter." CX 13, p. 4.

105. Dr. Bellin's Affidavit conclusion states, "In my inspection report,<sup>18</sup> I chose not to reference 9 CFR, Sections 2.131(b)(1) and 2.131(c)(3) under the handling statutes because the AWA Docket #98-34 addressed in it's (sic) orders specifically the issues of "direct control" and leash requirements to be employed by the Bridgeport Nature Center during photo sessions with the public. This<sup>19</sup> is a true statement." CX 13, p. 4.

106. By not holding the tiger by the leash at all times during the photographic sessions with members of the public, the Respondents' handler caused the Respondents to violate the

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<sup>17</sup> The videotape (CX 41) from the PBS station in Iowa, IPTV, shows Respondents' exhibit, Great Cats of the World, much better than Dr. Bellin's photos. The videotape was obtained by APHIS investigator Ms. Patricia Martin Lesko. Tr. 362-64. Dr. Bellin had watched the segment when it aired, and had videotaped it with his VCR. Tr. 413, 416.

<sup>18</sup> CX 12

<sup>19</sup> referring to the entire four-page Affidavit

Consent Decision, which orders that the tiger be “collared and on a leash no longer than 18 inches in length at all times.” CX 3 pp. 4-5. That the leash will be held by a handler is understood, even though the foregoing Consent Decision provision does not specifically state that the leash shall be “held by a handler.” The Consent Decision’s clear meaning was that the tiger was to be collared and on a leash held by a handler at all times, the leash to be no longer than 18 inches.

107. The consequences of violating a Consent Decision were addressed by Ms. Carroll at the hearing. *See* APHIS’s position, Tr. 169-73. The collar and leash requirement is contained in the Order portion of the Consent Decision, but not in the “cease and desist” portion of the Order, paragraph 1, which forbids future violations of “the Act and the regulations and standards issued thereunder.” CX 3, pp. 2-4. Under the Consent Decision, paragraph 7, the Respondents’ 30-day license suspension that began on September 19, 1998, would not end until the Respondents demonstrated compliance with the Act, the Regulations, the Standards, and the Order portion of the Consent Decision. CX 3, p. 5. The Consent Decision fails to specify any other consequences of violating the collar and leash requirement. Consequently, the Respondents’ violation of the collar and leash requirement will have consequences here only if “the Act and the regulations and standards issued thereunder” are violated. If so, the civil penalties provisions of 7 U.S.C. § 2149(b) apply.

108. Not only APHIS was concerned with the safety of the animals and the humans; the Respondents were also concerned with the safety of the animals and the humans. The Respondents proved themselves very capable in handling their tigers so there was minimal risk of harm to the animal and to the public. The Respondents’ practices and methods

included in pertinent part, bottle feeding a young hungry tiger on the tiger's feeding platform during the photo opportunities for the public. The young tiger had been fed that way from the age of weeks old.

109. *Handling* means petting, feeding, watering, cleaning, manipulating, loading, crating, shifting, transferring, immobilizing, restraining, treating, training, working and moving, or any similar activity with respect to any animal. 9 C.F.R. § 1.1, Definitions.

110. During a "Great Cats of the World" photo opportunity, the customer holding the bottle for one of the Respondents' tigers was, by definition, handling that tiger - - by feeding the tiger and perhaps by petting the tiger. The Respondents' employee (Mr. Riggs or someone trained by Mr. Riggs and Ms. Berry) who was supervising the customer's handling of that tiger was also handling that tiger - - feeding and perhaps petting the tiger through the action of the customer, and also working/training/moving/transferring/manipulating that tiger.

111. I disagree with Dr. Bellin on the "direct control" issue; during the Respondents' photo shoots, I conclude that direct contact (touching) of a tiger or its leash by the handler was not required to keep a tiger under "direct control and supervision," for the purposes of 9 C.F.R. §§ 2.100(a) and 2.131(c)(3). I conclude that on August 20, 1999, at the Iowa State Fair, the Respondents' dangerous animals that the Respondents exhibited (photo opportunity tigers) were under the direct control and supervision of a knowledgeable and experienced animal handler, even though that handler had stepped back to be out of the photo, and even though the direct control was achieved through methods and practices, rather than holding onto the tiger.

112. The Respondents' dedication, experience, know-how, practices and methods are essential to my conclusion that, **for the most part**, there was minimal risk of harm to members of the public who participated in the Great Cats of the World exhibit during the two months of the summer of 1999 in which the Respondents' violations allegedly occurred. Other exhibitors may not be able to put together such a safe and effective presentation, and the Respondents under other circumstances may not. But if exhibitors are to be regulated more tightly, the rules have to be announced in advance. As indicated, I also found violations on certain occasions at the Iowa State Fair on August 20, 1999

113. Part of the allure of an exhibit of exotic cats is that, besides being wondrous and gorgeous, they are dangerous. Even so, members of the public no doubt believe that an exhibit in a fair has been cleared by the authorities as safe. The public do not know not to go into a close encounter exhibit - - look at all the young parents who took their elementary school aged children in, and even pre-schoolers. CX 41. Dr. Bellin estimated that the youngest person he saw having a picture taken with a tiger was two years of age. Tr. 385. There were several instances on August 20, 1999, when the Respondents departed from their practices and methods and thereby escalated the risk of harm to more than minimal.

114. During public exhibition in photographic sessions with members of the public at the Iowa State Fair on August 20, 1999, when the Respondents allowed their bottle-feeding young hungry tiger, instead of being on the tiger's feeding platform, to be draped over the laps of people seated in the crowd while waiting their turn for their photo opportunity, the Respondents escalated the risk of harm to more than minimal. When the laps were the laps of children, or close to children, the risk of harm was even worse. Dr. Bellin testified, and

CX 41 confirms, that children under the age of 18 had their pictures taken without any adults, and that tigers were on the laps of children, being held only by children. Tr. 386-87, 401-02. These situations included more than minimal risk of harm to the tiger and to the public, in violation of 9 C.F.R. § 2.131(b)(1); failure to maintain sufficient distance and/or barriers between their animals and the general viewing public, in violation of 9 C.F.R. § 2.131(b)(1); and failure to keep the tiger under the direct control and supervision of a knowledgeable and experienced animal handler, in violation of 9 C.F.R. § 2.131(c)(3).

**Dutchess County Fair, Rhinebeck, New York - August 28, 1999**

115. Eight days after Dr. Bellin's inspection, Respondents' traveling exhibit was again inspected by an APHIS Animal Care Inspector, at Rhinebeck, New York, on August 28, 1999. Again, the APHIS Animal Care Inspector did a complete and thorough inspection. Tr. 39, 53, 57-58, 65.

116. The APHIS Inspector's report, prepared at the Dutchess County Fair in Rhinebeck, New York on August 28, 1999, is CX 22. Tr. 40. The Inspector's name is Ms. Jan Baltrush.

117. The Respondents had leashes on the tigers during photo sessions; there is no allegation related to handling on August 28, 1999, Tr. 49, 54, 56, 64.

118. Ms. Baltrush testified that the Respondents had 18 cats that day (she took a census); the specific documents Ms. Baltrush wanted were readily available for all but four; those four were three tigers and one lion cub. Tr. 40-41, 77. The four were on a health certificate given immediately to Ms. Baltrush; Ms. Baltrush remembered that there was something for the four on the health certificate, but "there was no documentation of when and where they

originated, i.e., “when they were born or where they were born, whether they were brought or whether they were born on the premises.” Tr. 40, 59, 77.

119. Ms. Baltrush didn’t recall whether the health certificate stated how old the animals were. Tr. 78. She testified that APHIS did not need the health certificate; it is required by the state. Tr. 67-68.

120. Ms. Baltrush testified that the information she was looking for did not have to be on a specific form (Tr. 62) (although a “transfer form” is commonly used), but that the record needed to show where the animals originated (Tr. 59), to include the place of birth in addition to the date of birth. Tr. 62-64. Ms. Baltrush testified that that is what she interprets 9 C.F.R. § 2.75(b) to require.

121. In contrast, Mr. Riggs testified that a transfer form does not require the exact age of the animals, but “just says young or old.” Tr. 809.

122. Ms. Baltrush testified that Mr. Jay Riggs told her the animals were born on his property, and they were just brought into his traveling group recently. Tr. 42. Ms. Baltrush testified that she wrote up a records violation, but before she left that day, Jay Riggs supplied her with the specific documentation she was looking for. Tr. 43.

123. Ms. Baltrush had gone to her car, typed up the one-page document to show a records violation, and then went back to Mr. Riggs; Mr. Riggs said he found the documentation for those three tigers and one lion cub (Tr. 71), and he gave it to her. Tr. 71, 798. Ms. Baltrush determined that the documentation met APHIS requirements. Tr. 71.

124. Ms. Baltrush explained that there was a violation “because when I first started the inspection and first asked for the information, it was not available to me.” Tr. 72.

125. Ms. Baltrush had arrived at about 11:00 in the morning and stayed about 4-1/2 hours. She did not call in advance (Tr. 64), and Mr. Riggs did not know she was coming. The length of time between the completion of her initial inspection and her return after writing up the violation in her car, was “an hour or two,” according to Mr. Riggs, during which, Mr. Riggs found the specific documentation that Ms. Baltrush was looking for. Tr. 798.

126. Mr. Riggs testified that the health certificate for Iowa did not have the four new cubs on it; “we had a health certificate generated strictly for Rhinebeck, New York that had all these cats on one page.” Tr. 797. Mr. Riggs testified that Ms. Baltrush asked where these animals came from. “And basically she was asking me for the record of acquisition or the transfer form for these cats indicating their origination, where they’re from.” Tr. 797. “I could not find the papers in the first instance that accompanied the cats that I had just shown Dr. Bellin in Iowa. I couldn’t find the transfer form or that, even that original health certificate. Those two pieces, documents, had not been placed in the permit book at that point and weren’t a part of that, and we could not find that upon our initial inspection.” Tr. 797-98.

127. Mr. Riggs continued, “Once she (Ms. Baltrush) left, I began to go through the tour bus and everything inside that, and I found both those documents, the original health certificate and the record of transfer that accompanied them from Texas to Iowa. And when she came back, I presented her with those to verify, really just verify the information on the health certificate. But I presented her with those, and she did write that we had found the document she was looking for.” Tr. 798.

128. Mr. Riggs testified that Ms. Baltrush also told him that it was a violation for Eric (Drogosch) to be handling the animals, when Heidi and Jay Riggs are the only ones listed that can actually handle the animals. Mr. Riggs testified that “she gave us basically on that inspection report 30 days to send in for pre-approval for all of our employees so that . . . I have never heard of that at all. Tr. 800. So I was shocked. Tr. 801. [No violation is alleged here concerning handling by a person other than Mr. or Ms. Riggs.]

**York Fair, York, Pennsylvania - September 10, 1999**

129. Two weeks following inspection by Ms. Baltrush, the Respondents’ traveling exhibit opened at the York Fair, York, Pennsylvania, on September 10, 1999. Tr. 803. That night, opening night, Fox 43 News at 10:00 featured Respondents’ traveling exhibit, Great Cats of the World, in a promotional video of the York Fair. A videotape of the newscast, with news reporter Mr. Kevin Johns, is in evidence. CX 33. Tr. 231.

130. APHIS Animal Care Inspector Robert Markmann inspected the Respondents’ traveling exhibit at the York Fair on opening day, September 10, 1999. Mr. Markmann testified that the reporter, Kevin Johns, from Fox 43 News, was inside the cub enclosure, handling some of the cubs, while Mr. Markmann was doing the exit interview with Mr. Riggs. Tr. 230.

131. That night on the news Mr. Markmann saw the Fox 43 News reporter with one of the big, white tigers. Tr. 231. Mr. Markmann’s memorandum to Dr. Ellen Magid about the Fox 43 News segment is CX 40. Tr. 231.

132. The reporter Kevin Johns is promoting the York Fair, with opening day video. CX 33. The news clip states that the York Fair is the nation’s oldest fair, in 1999 having begun

its 234th edition. The news clip states that the unusual new educational exhibit Great Cats of the World is part of the Fair's success. The reporter, Mr. Johns, says that the cute and cuddly cats are stealing the show - - 19 cats altogether, 7 rare species. CX 33.

133. The Kevin Johns segment of CX 33<sup>20</sup> begins with the baby cat Simbala, a four-week old white lion, adorable and very vocal (and rare; the story reports that there were only 20 white lions in existence). The news clip is excellent and makes me, the trier of fact, break out in a big grin every time I watch it. CX 33.

134. The news clip includes lots of spectator reaction and statements of both Mr. Riggs and Mr. Drogosch. Mr. Riggs tells that the cats are endangered and that they are wild, not meant to be pets. Mr. Drogosch tells that one danger is that they'll steal your heart away, that he used to be in law enforcement working with dogs and then fell in love with the exotic cats. CX 33.

135. Near the end of the news clip, the reporter, Mr. Johns, is feeding a bottle to a royal white tiger, Shawnee. The story reports that there were only 200 royal white tigers in the world. Mr. Johns is seated next to Shawnee on Shawnee's feeding platform, much as Ms. Kris Sniedze is seated next to a tiger in CX 8. Mr. Johns is holding Shawnee's bottle with one hand, and with his other hand, he is tousling Shawnee's head. Shawnee clearly is intent on the bottle.

136. I feel no tension watching Mr. Johns with Shawnee, even though Shawnee was bigger than Ms. Sniedze's tiger. CX 33, CX 8. Shawnee weighed 120 to 140 pounds. Tr.

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<sup>20</sup> CX 33 is the whole newscast, Fox 43 News at 10:00. The tape is cued to the Express Weather segment. The story on the Fair immediately follows Express Weather, which mentions that Floyd is now a hurricane, and immediately precedes coverage of the best spam cook-off competition.

854. Shawnee was at least 8-1/2 months old, born on or about December 31, 1998. Tr. 148-49. Allowing Mr. Johns to interact directly with Shawnee, to sit next to Shawnee with no barrier and to touch Shawnee and to hold the bottle for her, got Respondents into trouble with both APHIS and the Commonwealth of Pennsylvania.

137. Mr. Riggs paid a \$500 fine (plus costs, total of \$535) to the Commonwealth of Pennsylvania on September 15, 1999, the day he was given the Pennsylvania citation by Mr. Gregory C. Houghton. CX 42 is a copy of citation. Tr. 333. Mr. Houghton worked for the Pennsylvania Game Commission. At the time of the hearing was Mr. Houghton was Chief of Technical Services, Division for the Bureau of Law Enforcement. He formerly was a District Wildlife Officer in Northern York County, Pennsylvania.

138. Mr. Houghton testified that there were no reports of injuries to any humans or to any animals during the time the Respondents' show was at the York Fair. Tr. 360-61. When Mr. Houghton was at the York Fair on September 13, 1999, he did not observe any violations at Respondents' show. Tr. 328-29, CX 39.

139. But Mr. Houghton issued a Citation to James Lee Riggs for the contact that reporter Kevin Johns had with two different cats. The evidence was the Fox 43 videotape obtained through the Governor's office. Tr. 330, 333, 335. The reporter had contact with Simbala, the four-week old white lion, and with Shawnee, the royal white tiger. CX 33. Tr. 343.

The white tiger Shawnee was 8-1/2 months or 9 months old.<sup>21</sup>

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<sup>21</sup> Shawnee may have been born on December 31, 1998, as Mr. Riggs testified. Tr. 831, and *see* CX 37, p. 1, the Rabies Certificate. Shawnee would then have been 8-1/2 months old at the York Fair. I find it more likely, based on CX 37, p. 11, that Shawnee was born about two weeks earlier, on or about December 15, 1998. If Shawnee was 8 weeks old on February 9, 1999, as shown by CX 37, p. 11, she would have been nearly 9 months old at the York Fair. The Respondents prepared CX 37, p. 11, with

140. Mr. Riggs regarded news reporter Kevin Johns as being someone he was working with, not as a member of the public, and not as involved in the “photo part” or photo shoot with the accompanying restrictions. Mr. Riggs did not use Shawnee for the photo shoots with members of the public, as he understood the public. Tr. 831, 839-41. I agree with Mr. Riggs, that news reporter Kevin Johns was not a member of the public while he was promoting the York Fair, on location at the Respondents’ traveling exhibit.

141. Mr. Riggs had a temporary menagerie permit for the York Fair. Tr. 318. The reporter’s contact with the two cats was alleged to be in violation of his menagerie permit. The Pennsylvania Game and Wildlife Code requires the exercise of “due care in safeguarding the public from attack by exotic wildlife.” CX 43. Tr. 337-38. The Pennsylvania Game Commission interprets the Code to prohibit members of the public from having any contact.

142. Mr. Riggs did use plexiglas for all his photo shoots at the York Fair, to prevent the public from having any contact, but Mr. Riggs did not regard the reporter as a member of the public.

143. The videotape (CX 33) that includes Mr. Johns’ contact with Simbala and Shawnee was played numerous times at the hearing. Tr. 128-29, Tr. 342-43. (APHIS investigator William John Swartz, with Investigative and Enforcement Services, followed up Mr. Markmann’s inspection, accompanied by Mr. Houghton. Tr. 93, 96.)

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emphasis on Shawnee’s birth group: “The 4 little babies need their first round of shots.” Those 4 little babies, including Shawnee, are shown to be 8 weeks old on February 9, 1999. If CX 37, p. 10, a form prepared in the Veterinarian’s office, were entirely accurate, Shawnee would be a month older; but based on a careful reading of CX 37 p. 11 and p. 10, I find that the date (1-09-99) on that form is wrong and should have been 02/09/99. *See also*, Tr. 119-121.

144. Mr. Riggs testified that at the York Fair he did not know in advance that a reporter was coming. Tr. 804. The reporter said he wanted to shoot some film and do an ongoing story, and create a one to three-minute video that actually Mr. Riggs could use as a promo tape.

145. Mr. Riggs testified that the video was being shot all day, that the reporter was there for several, several hours, daylight and nighttime. Mr. Riggs testified the reporter did not pay admission or any kind of fee, and that the reporter was never in any kind of jeopardy. Mr. Riggs testified that he actually assigned Eric (Drogosch) to stay with the reporter. Mr. Riggs testified that he began working with the reporter, until Inspector Markmann made his appearance.

146. Mr. Riggs testified that he told Eric, stay with him, teach him, and help him develop this video. Tr. 805. About the shot in the video with the bottle, Mr. Riggs testified that Kevin Johns, the reporter, didn't feel he could remember all his lines and pull off his part of this video sitting down with this cat, holding this bottle, and remember everything. Tr. 806. Mr. Riggs continued, "So we have several dry runs to familiarize him with this cat, with this process of holding the bottle, and it was only during the live shot, the final shot, when this thing aired live, is what we see here on the video." Tr. 806.

147. When Mr. Riggs was asked how close he and Eric were to the reporter during the video, Mr. Riggs testified, "We were very close, and he felt much more at ease with that, and I would suggest the camera operator wouldn't have been a very good camera operator if it did show either one of us in that. Tr. 807.

148. When Mr. Riggs was asked if he felt like (he and Eric) were in direct control of that animal (the white tiger in the video) throughout that entire time, Mr. Riggs testified, “If you watch the video, it’s obvious that we were in direct control.” Tr. 807.

149. When Mr. Riggs was asked if he felt that assisting in that news show put Mr. Johns or the animal at any risk whatsoever, Mr. Riggs testified, “No. Not at all.” Tr. 807.

Watching the news clip on CX 33, I have to agree. *See also* Tr. 627-29.

150. There is no evidence that Mr. Kevin Johns or Simbala or Shawnee was ever at more risk than is evident from the news clip, which I find to be minimal risk or less. In addition, I find that Mr. Johns was not a member of the public but was instead a volunteer and trainee who had trained all day.

151. Evidence of the methods and practices of Las Vegas, Nevada exhibitors, such as Siegfried and Roy (Tr. 563-566), and the MGM Grand Hotel (Tr. 697-99, 717), did not impact my Decision. Evidence of the much larger number of injuries and fatalities to children caused by dogs (Tr. 704), compared to evidence of human injuries and fatalities caused by great cats (Tr. 705), did not impact my Decision. *See also* Tr. 705-07.

152. APHIS asks me to conclude that each of the Respondents operated as an “exhibitor” as that term is defined in the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*), and the Regulations (9 C.F.R. § 1.1 *et seq.*).

### **Exhibitor**

153. The Act defines “exhibitor”:

“The term ‘exhibitor’ means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined

by the Secretary, and such term includes carnivals, circuses and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary;”

7 U.S.C. § 2132(h).

154. The “Laboratory Animal Welfare Act” of 1966 (P.L. 89-544) was amended in 1970.

The pertinent legislative history of the proposed “Animal Welfare Act of 1970” (P.L. 91-579), which added “exhibitors” to those being regulated, shows that:

“country fairs” may have been meant to say “**county** fairs”<sup>22</sup>; and

“exhibitor” **excludes** “organizations sponsoring and **all persons**

**participating in State and county fairs,”** as follows,

(8) A new section 2(h) would be added to the Act defining the term ‘exhibitor’ which would extend the requirements of the Act to persons who acquire animals for purposes of exhibition. The term excludes retail pet stores, and organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary.

The term specifically includes carnivals, circuses and zoos exhibiting animals, whether operated for profit or not.

Legislative History of P.L. 91-579, referring to the “**Annual** Welfare Act of 1970” but intending the Animal Welfare Act of 1970, House Report No. 91-1651 at 5103, 5106-5109.

155. The Regulations likewise define “exhibitor”:

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<sup>22</sup> But *see* Senator Robert Dole’s explanation of the exclusions in the proposed 1970 amendments, referring to “country and State fair livestock shows and such exhibitions as are sponsored by the 4-H clubs which are intended to advance the science of agriculture.” (*emphasis added*) Complainant’s Response to Excerpt . . ., filed September 6, 2006, page 3.

9 C.F.R.:

**Title 9—Animals and Animal Products**

**CHAPTER I—Animal and Plant Health Inspection Service, Department of  
Agriculture**

**SUBCHAPTER A—ANIMAL WELFARE**

**PART 1—DEFINITION OF TERMS**

**§ 1.1 Definitions.**

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

....

*Exhibitor* means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

....

9 C.F.R. § 1.1.

156. Ms. Berry holds a class “C” license as an “exhibitor.” CX 2. *Class "C" licensee* (exhibitor) means a person subject to the licensing requirements under part 2 and meeting the definition of an "exhibitor" (§ 1.1), and whose business involves the showing or displaying of animals to the public. A class "C" licensee may buy and sell animals as a

minor part of the business in order to maintain or add to his animal collection. 9 C.F.R. § 1.1.

157. In their Answer, the Respondents admitted paragraph I.C. of the Complaint, which reads, “At all times material hereto the Respondents were licensed and operating as an exhibitor as defined in the Act and regulations.”

158. By letter filed August 18, 2006, the Respondents confirmed that they were “licensed and operating as exhibitor” *in general* during the time frame of the Complaint. The Respondents confirmed that the response “Admitted” to paragraph I.C. of the Complaint, is “literally correct.”

159. The Respondents’ letter filed August 18, 2006, continued in part, “However, since the statute did not require Heidi (Ms. Berry) to be operating as a ‘licensed exhibitor’ at the county fairs for which evidence was adduced at the hearing, the USDA failed to prove a violation.”

160. The Respondents’ letter filed August 18, 2006, responded to a request I communicated to counsel, regarding whether the Respondents were “participants in State or county fairs” within the meaning of the Act and the Regulations and consequently were not operating as an exhibitor.

161. The Complainant’s Response to Excerpt . . . , filed September 6, 2006, persuades me to agree with much of the Complainant’s Response; specifically, I agree with the following, found on p. 2:

. . . . First, a fair's midway (in contrast to its agricultural exhibits and competitions) is a carnival.<sup>23</sup> Second, it is undisputed that respondents were not the "sponsoring organization" of any of the fairs at which they displayed their animals. Third, respondents were not "persons participating" in any of the fairs, as that term is used in the Act, and intended by Congress. They were concessionaires. The respondents did not display their animals "to advance agricultural arts and sciences;" rather, they contracted with the fairs' sponsoring organizations, were required to obtain insurance, and were paid by the fairs to put on their animal display on the fair's midway as an attraction. [footnote omitted, footnote 3] This is not what "persons participating" in the enumerated events do. The word "participate" itself implies a group of persons engaging in the same activity (such as competing in events). [footnote omitted, footnote 4 contains a dictionary definition of participate, including to take or have a part or share, as with others; partake; share (usually fol. by *in*): *to participate in profits; to participate in a play*] . . . .  
 To hold that an exhibitor can suddenly cease to be an exhibitor subject to regulation if he sets up shop at a fairgrounds would be to eviscerate the Act.

162. Particularly persuasive to me is page 3 of the Complainant's Response to Excerpt . . . , filed September 6, 2006, including the quote from Senator Robert Dole, one of the bill's sponsors:

It extends humane treatment of animals to wholesale pet dealers, zoos, road shows, circuses, carnivals and auction markets . . . The bill quite properly excludes from its provisions country and State fair livestock shows and such exhibitions as are sponsored by the 4-H clubs which are intended to advance the science of agriculture.

Further, I now agree that the intent of the Animal Welfare Act was "to regulate non-agricultural animal displays; and not to distinguish among animal exhibitors based solely on the venue." Complainant's Response to Excerpt . . . , filed September 6, 2006, p. 3.

163. Considering the evidence as a whole, I now conclude:

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<sup>23</sup> See definition of *carnival* as "a traveling enterprise offering amusements; an organized program of entertainment or exhibition." Webster's Seventh New Collegiate Dictionary, 1969.

- (a) that one of the Respondents was licensed, Ms. Berry; and that Ms. Berry did business as Bridgeport;
- (b) that Bridgeport and Mr. Riggs were operating under Ms. Riggs' license; and
- (c) that, because their display of non-agricultural animals (the Great Cats of the World) was more like a carnival, a road show, than like a livestock show or 4-H club exhibition, the Respondents were operating as an exhibitor, even while appearing at State and county fairs.

164. The Respondents were not “participating in State and county fairs” and therefore were not thereby excluded from being an “exhibitor” under 7 U.S.C. § 2132(h) and 9 C.F.R. § 1.1.

#### **Findings of Fact and Conclusions**

165. The Secretary of Agriculture has jurisdiction.

166. Respondent Bridgeport Nature Center, Inc., was a Texas corporation, incorporated on February 29, 1996, with a business address of Route 1, Box 192, Bridgeport, Texas 76426. The registered agent for service of process for Bridgeport Nature Center, Inc., according to the Texas Secretary of State, was Heidi Marie Berry Riggs. Respondent Bridgeport Nature Center, Inc., was at all times material herein an “exhibitor” as that term is defined in the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*, particularly 7 U.S.C. § 2132(h)), and the Regulations (9 C.F.R. § 1.1 *et seq.*, particularly the Definitions in 9 C.F.R. § 1.1). At all times material herein, Respondent Bridgeport Nature Center, Inc.,

exhibited animals regulated under the Act under the names Bridgeport Nature Center, Bridgeport Nature Center, Inc., and “Great Cats of the World.” CX 15.

167. Respondent Heidi M. Berry Riggs, also known as Heidi Marie Berry Riggs, is an individual whose address at the time of the hearing was 245 CR 3422, Bridgeport, Texas 76426. At all times material herein, Respondent Heidi M. Berry Riggs was an owner of, principal in, and an officer (President) of Respondent Bridgeport Nature Center, Inc. At all times material herein, Respondent Heidi M. Berry Riggs was licensed as an “exhibitor” as that term is defined in the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*, particularly 7 U.S.C. § 2132(h)), and the Regulations (9 C.F.R. § 1.1 *et seq.*, particularly the Definitions in 9 C.F.R. § 1.1), and she operated under AWA license number 74-C-0337. At all times material herein, Respondent Heidi M. Berry Riggs exhibited animals regulated under the Act under the names Bridgeport Nature Center, Bridgeport Nature Center, Inc., and “Great Cats of the World.” CX 15.

168. Respondent James Lee Riggs, also known as Jay Riggs, is an individual whose address at the time of the hearing was 245 CR 3422, Bridgeport, Texas 76426. At all times material herein, Respondent James Lee Riggs was an owner of, principal in, and an officer (Vice President) of Respondent Bridgeport Nature Center, Inc. At all times material herein, Respondent James Lee Riggs was employed (though unpaid) by Respondent Bridgeport Nature Center, Inc., and he operated as an “exhibitor” as that term is defined in the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*, particularly 7 U.S.C. § 2132(h)), and the Regulations (9 C.F.R. § 1.1 *et seq.*, particularly the Definitions in 9 C.F.R. § 1.1), and he operated under his wife’s AWA license, number 74-C-0337. At all times material herein,

Respondent James Lee Riggs exhibited animals regulated under the Act under the names Bridgeport Nature Center, Bridgeport Nature Center, Inc., and “Great Cats of the World.” CX 15.

169. The testimony of each witness but Marcus Cook was credible and impressive. In weighing the differing opinions on safety issues (judgment calls), I found most persuasive the opinions of Mr. Riggs and Ms. Berry, each of whom was a long-term and conscientious participant in the methods and practices the Respondents utilized for their photo opportunity tigers. The testimony of Ms. Sniedze, who likewise was a participant, was persuasive. Based upon APHIS’s filing June 5, 2008, I no longer find the testimony of Marcus Cook to be persuasive, except where I have specifically relied on it in this Decision. The APHIS inspectors who observed the Respondents’ exhibitions were highly qualified and valuable witnesses. The Respondents’ noncompliance with the Consent Decision was their initial concern; my Decision focuses on whether the Respondents complied with the Act, Regulations, and Standards. Dr. Bellin interprets the two handler regulations (9 C.F.R. § 2.131(b)(1), and 9 C.F.R. § 2.131(c)(2)) differently from my interpretation, and that causes me to disagree with some of Dr. Bellin’s opinions. Dr. Bellin opined that “minimal risk of harm” meant that all potential for harm must be eliminated (Tr. 401), requiring more of the Respondents than is required by the Act, Regulations, and Standards. Dr. Bellin opined that “direct control and supervision” meant direct contact, requiring more of the Respondents than is required by the Act, Regulations, and Standards. Mr. Green opined, based on his observations of the evidence presented at the hearing prior to his testimony, “With the number of the size of the cats that I saw, I don’t think that’s a minimal risk” (Tr. 473).

Whether Mr. Green is including situations that are not alleged in the Complaint is not clear. *See* paragraphs 59 through 66. Mr. Green opined that there would not be sufficient distance or barriers between the animals and the public, because that's the question he was asked (Tr. 473). I understand now that 9 C.F.R. § 2.131(b)(1) utilizes "the public" and the "general viewing public" interchangeably, so I realize now that sufficient distance and/or barriers between the animals and the person being photographed is required. To determine what is sufficient, all circumstances have to be taken into account. There can be circumstances, even with dangerous animals such as lions, tigers, wolves, bears, or elephants, where zero distance and zero barriers may suffice, depending on the animal including its age, size, disposition, nurturing, and all other factors, depending on the animal handler, depending on the person being photographed, depending on the surroundings, depending on the techniques utilized, depending on all relevant factors. Mr. Green opined that the animals in direct contact with the subjects having the photographs made were not under the direct control and supervision of experienced animal handlers (Tr. 473-74); Mr. Green opined that when people and animals have direct contact with each other, "it is my opinion that you will always have the opportunity for injury to either the animal or the human. Any time you'd have direct contact between that person and that animal, you're going to have the opportunity for an injury to occur." Tr. 465, *see also* Tr. 466, 469. The Act, Regulations, and Standards do not require elimination of all direct contact, even with a dangerous animal such as a tiger. *See* paragraphs 91 and 92.

170. The videotapes, CX 41 and CX 33, weighed heavily in my evaluation: CX 41 persuaded me, together with Dr. Bellin's testimony, to find violations (based on several

instances of the risk of harm being escalated to more than minimal); and CX 33 persuaded me, together with the testimony of Mr. Riggs, contrary to the testimony of APHIS officials, to find no violation.

171. APHIS's evidence of other situations where a tiger killed or injured a human proved that even a juvenile tiger can seriously injure a human and even a tiger cub can injure a human, but those situations were different and distinguishable from the situations at issue here, "during (the Respondents') public exhibition in photographic sessions with members of the public." The Respondents' adherence to their own practices and methods of preventing harm in situations involving the Respondents' photo opportunity tigers was essential to maintaining minimal risk of harm to the animals and to the public. I agree with the Respondents that holding the tiger by the leash at all times was not essential to maintaining minimal risk of harm,<sup>24</sup> so long as all their other safeguards were utilized. The Respondents used a bullet-proof glass or Plexiglas board as a barrier<sup>25</sup> between the tiger and the member of the public in the states that required it (including Pennsylvania), but I agree with the Respondents that such a barrier was not essential to maintaining minimal risk of harm, taking into account all the other circumstances of the Respondents' photo opportunities at issue here.

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<sup>24</sup> Holding the tiger by the leash at all times was, of course, essential to maintaining compliance with the Consent Decision. *See* paragraph 107.

<sup>25</sup> "Mr. Riggs had a way of photographing the juvenile cats with the board - - with the bullet-proof, Plexiglas board. And having a professional handler bring the animal to the glass, looking like it's in the photo, but the person is actually on the other side. I think that's a safe way." Mr. Robert Gerard Markmann, Tr. 554. *See also* Tr. 149, 244-46, 495-96.

**Northern Wisconsin State Fair, Chippewa Falls - July 10, 1999**

172. On July 10, 1999, at the Northern Wisconsin State Fair, the Respondents' tiger depicted with Ms. Sniedze in CX 8 was handled so that there was minimal risk of harm to the tiger and to Ms. Sniedze and to the public. Minimal risk of harm was maintained by the Respondents through their methods and practices, even though the tiger's leash was removed after the tiger was on the feeding platform while the photo was taken; even though the tiger (a juvenile tiger younger than six months old) weighed 75 pounds or more; and even though Ms. Sniedze instead of the Respondents' handler held the bottle for the tiger momentarily (long enough to pose for the photo and to be presented with the photo). Additionally, the Respondents maintained sufficient distance and/or barriers between their animals and the general viewing public, including Ms. Sniedze, who was touching the tiger, considering all the circumstances. Consequently, the allegation that the Respondents violated sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)) during public exhibition in photographic sessions with members of the public at the Northern Wisconsin State Fair at Chippewa Falls on July 10, 1999, was **not proved** by a preponderance of the evidence.

173. On July 10, 1999, at the Northern Wisconsin State Fair, the Respondents' tiger depicted with Ms. Sniedze (CX 8) was under the direct control and supervision of a knowledgeable and experienced animal handler, even though that handler had stepped back to be out of the photo, and even though the direct control was achieved through methods and practices, rather than holding onto the tiger. Consequently, the allegation was **not proved** by a preponderance of the evidence, that the Respondents violated sections 2.100(a)

and 2.131(c)(3) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(c)(3)) during public exhibition in photographic sessions with members of the public at the Northern Wisconsin State Fair at Chippewa Falls on July 10, 1999.

**Iowa State Fair, Des Moines - August 20, 1999**

174. On August 20, 1999, at the Iowa State Fair, for the most part, minimal risk of harm was maintained by the Respondents even when a tiger's leash was removed<sup>26</sup> after the tiger was on the feeding platform while the photo was taken, even though the Respondents' handler stepped back momentarily to be out of the photo, and even though the Respondents' handler allowed the customer (so long as the customer was 18 years of age or older) to hold the bottle for the tiger momentarily. Dr. Bellin estimated the weight of the tiger he observed to be "approximately 60 pounds, between 45 and 75." Tr. 390. So long as the Respondents employed their methods and practices and kept the tiger on the feeding platform, so long as the tiger was not draped over the laps of people seated in the crowd while waiting their turn for their photo opportunity, so long as the tiger was not draped over children's laps, so long as the person positioned at the head of the tiger holding the bottle for the tiger was an adult 18 years of age or older, there was minimal risk of harm to the tigers and to the public, and the Respondents maintained sufficient distance and/or barriers between their animals and the general viewing public so as to assure the safety of animals and the public, and thus, for the most part, the allegation that the Respondents violated sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a),

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<sup>26</sup> See footnote 22.

2.131(b)(1)) during public exhibition in photographic sessions with members of the public was **not proved** by a preponderance of the evidence. However, the Respondents failed to employ such methods and practices in several instances, so that there was **more than minimal risk of harm** to the tigers and to the public, where the tiger was not on the feeding platform, the tiger was draped over the laps of people seated in the crowd, the tiger was draped over the laps of children, or there was no adult 18 years of age or older at the head of the tiger holding the bottle for the tiger; for these several instances, the Respondents failed to handle tigers during public exhibition so there was minimal risk of harm to the tiger and to the public, and failed to maintain sufficient distance and/or barriers between their animals and the general viewing public so as to assure the safety of animals and the public, in violation of sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)).

175. On August 20, 1999, at the Iowa State Fair, the Respondents' dangerous animals that the Respondents exhibited (photo opportunity tigers) were under the direct control and supervision of a knowledgeable and experienced animal handler, even though that handler had stepped back to be out of the photo, and even though the direct control was achieved through methods and practices, rather than holding onto the tiger. Consequently, the allegation that the Respondents violated sections 2.100(a) and 2.131(c)(3) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(c)(3)) during public exhibition in photographic sessions with members of the public at the Iowa State Fair on August 20, 1999, was **not proved** by a preponderance of the evidence, **except** in those several instances where the tiger was not on the feeding platform, the tiger was draped over the laps of people

seated in the crowd, the tiger was draped over the laps of children, or there was no adult 18 years of age or older at the head of the tiger holding the bottle for the tiger; for these several instances, the Respondents' dangerous animals that the Respondents exhibited (photo opportunity tigers) were **not** under the direct control and supervision of a knowledgeable and experienced animal handler, in violation of sections 2.100(a) and 2.131(c)(3) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(c)(3)).

**Dutchess County Fair, Rhinebeck, New York - August 28, 1999**

176. The preponderance of the evidence proves that on **August 28, 1999**, the Respondents did maintain the records of animals required of an exhibitor that included any offspring born of any animal while in Respondents' possession or under Respondents' control. The "hour or two" (Tr. 798) required for Mr. Riggs to find the transfer form and the original health certificate was a reasonable amount of time to respond completely to the APHIS Inspector Ms. Baltrush's record request. This is particularly so since (a) the transfer form and the original health certificate were consistent with other records including health certificates that Mr. Riggs immediately supplied to APHIS inspector Ms. Baltrush regarding the three tiger cubs and one lion cub; (b) Dr. Bellin in Iowa (also an APHIS inspector) had been shown the transfer form and the original health certificate by Mr. Riggs eight days earlier; and (c) APHIS inspector Ms. Baltrush had arrived unannounced. Further, even if the health certificates that Mr. Riggs immediately supplied did not specify birth date or birthplace, neither did 9 C.F.R. § 2.75(b) specifically require birth date or birthplace. Tr. 61, 64. Consequently, I conclude that the allegation that Respondents violated section 10 of

the Act (7 U.S.C. § 2140), and section 2.75(b) of the Regulations (9 C.F.R. § 2.75(b)), was **not proved** by a preponderance of the evidence.

**York Fair, York, Pennsylvania - September 10, 1999**

177. On September 10, 1999, at the York Fair, York, Pennsylvania, Mr. Kevin Johns, the reporter who had contact with tiger cub Simbala and juvenile tiger Shawnee as shown in the video, was **not a member of the public** but was instead a volunteer who had trained all day (a trainee) with Bridgeport employees Mr. Drogosch and Mr. Riggs, both of whom were knowledgeable and experienced animal handlers. Consequently, the allegation that the Respondents violated sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)) during public exhibition in photographic sessions with **members of the public** at the York Fair on September 10, 1999, was **not proved** by a preponderance of the evidence.

178. On September 10, 1999, at the York Fair, York, Pennsylvania, minimal risk of harm to the tigers and to the public was maintained by the Respondents even though the Respondents' handler did not hold tiger cub Simbala by a leash at all times and even though the Respondents' handler did not hold juvenile tiger Shawnee by a leash at all times when they were exhibited for a videotape, CX 33, which aired that night on television news, and the Respondents maintained sufficient distance and/or barriers between their animals and the general viewing public so as to assure the safety of animals and the public.

Consequently, the allegation that the Respondents violated sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)) during

public exhibition in photographic sessions with members of the public was **not proved** by a preponderance of the evidence.

179. On September 10, 1999, at the York Fair, York, Pennsylvania, minimal risk of harm to the tigers and to the public was maintained by the Respondents even though juvenile tiger Shawnee was 8-1/2 months or 9 months of age and weighed 120 to 140 pounds when she was exhibited for a videotape, CX 33, which aired that night on television news, and the Respondents maintained sufficient distance and/or barriers between their animals and the general viewing public so as to assure the safety of animals and the public. Consequently, the allegation that the Respondents violated sections 2.100(a) and 2.131(b)(1) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(b)(1)) during public exhibition in photographic sessions with members of the public at the York Fair on September 10, 1999, was **not proved** by a preponderance of the evidence.

180. On September 10, 1999, at the York Fair, the Respondents' dangerous animals tiger cub Simbala and juvenile tiger Shawnee, that the Respondents exhibited for a videotape (CX 33) which aired that night on television news, were under the direct control and supervision of a knowledgeable and experienced animal handler, even though that handler had stepped back to be out of the video, and even though the direct control was achieved through methods and practices, rather than holding onto the tiger. Consequently, the allegation that the Respondents exhibited dangerous animals (tigers) that were not under the direct control and supervision of a knowledgeable and experienced animal handler, in violation of sections 2.100(a) and 2.131(c)(3) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 2.131(c)(3)) during public exhibition in photographic sessions with members of

the public at the York Fair on September 10, 1999, was **not proved** by a preponderance of the evidence.

181. Consideration of Mr. Riggs' Animal Welfare Act license application and denial is MOOT. *See* Mr. Riggs' June 3, 2008 filing; *see* Complainant's June 5, 2008 filing, p. 3.

### **Order**

182. The Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder.

183. Respondent Bridgeport Nature Center, Inc. (dissolved in July 2004) and Respondent Heidi M. Berry Riggs are jointly and severally assessed a civil penalty of **\$1,500.00**, which they shall pay by certified check(s), cashier's check(s), or money order(s), made payable to the order of "**Treasurer of the United States**," within 60 days after this Decision becomes final as to them.

184. Respondent James Lee ("Jay") Riggs is assessed a civil penalty of **\$1,500.00**, which he shall pay by certified check(s), cashier's check(s), or money order(s), made payable to the order of "**Treasurer of the United States**," within 60 days after this Decision becomes final as to him.

185. Respondents shall reference **AWA Docket No. 00-0032** on their certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties **shall be sent by a commercial delivery service, such as FedEx or UPS**, to, and received by, Colleen A. Carroll, Esq., at the following address:

United States Department of Agriculture  
Office of the General Counsel, Marketing Division  
Attn.: Colleen A. Carroll, Esq.  
South Building, Room 2325B, Stop 1417  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-1417

### **Finality**

186. This Decision shall be final and effective thirty five (35) days after service, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A to this Decision). Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.  
this 24<sup>th</sup> day of May 2010

s/ Jill S. Clifton

Jill S. Clifton  
Administrative Law Judge

Hearing Clerk's Office  
U.S. Department of Agriculture  
South Building Room 1031  
1400 Independence Ave SW  
Washington DC 20250-9203  
202-720-4443  
Fax: 202-720-9776

## APPENDIX A

### 7 C.F.R.:

#### TITLE 7—AGRICULTURE

#### SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

#### PART 1—ADMINISTRATIVE REGULATIONS. . . .

#### SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

#### ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

#### VARIOUS STATUTES

. . .

#### § 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in

§ 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision;

such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145