

November 6, 2013

Christi Griffin
Director
Atlanta West Area Office
Occupational Safety and Health Administration
1995 N. Park Place, SE, Suite 525
Atlanta, GA 30339

Via first-class mail and fax: (770) 984-8855
Accompanying exhibits to be sent via email: griffin.christi@dol.gov

Dear Ms. Griffin:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) to request that the Occupational Safety and Health Administration (OSHA) immediately investigate Soul Circus, Inc. (SCI), which presents the UniverSoul Circus, for allegedly exposing employees to recognized life-threatening hazards in connection with the handling of tigers and elephants, in apparent violation of the Occupational Safety and Health (OSH) Act's general-duty clause, 29 U.S.C. § 654(a)(1).

According to the attached sworn affidavit of a former SCI employee, the company endangers employees by:

- requiring or permitting them to work in dangerously close proximity to big cats—leading to tigers biting off the fingers of at least two employees in 2012 alone;
- failing to train employees working with potentially deadly tigers; and
- using small temporary barriers, which a person of average size could easily move, to confine multi-ton elephants.

If you confirm these reports, PETA requests that you assess the maximum civil penalty against SCI and, to prevent future injuries, exercise your authority to require that there be a safe distance between employees and dangerous animals and that all work with these animals occur through adequate protective barriers. So long as employees work in dangerously close proximity to apex predator tigers and multi-ton elephants, the significant risk of serious injury or death persists, and it is imperative that OSHA take all preventive steps necessary to avoid this risk.¹

¹ OSHA may petition the federal district courts

to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be

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Legal Framework

OSHA has recognized that “the issue of workers exposed to large animals [is] a serious occupational health and safety concern.” Letter from David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, OSHA, to Delcianna Winders (June 16, 2011); *accord* Letter from David Michaels to Delcianna Winders (Dec. 7, 2011); *see also* *SeaWorld of Florida, LLC*, -- BNA OSHC --, at 41-42 (No. 10-1705, 2012) (ALJ) (affirming SeaWorld’s violation of the OSH Act’s general-duty clause in the death of trainer Dawn Brancheau, who was killed while working in direct contact with an orca, and finding that “[p]roximity to the killer whales is the factor that determines the risk to the trainers” and “using physical barriers and minimum distances eliminate[s] the trainers’ exposure to the recognized hazard”). The general-duty clause requires employers to furnish employees with an environment and workplace “free from recognized hazards that are causing or likely to cause death or serious physical harm to [its] employees.” 29 U.S.C. § 654(a)(1). An employer is liable for a recognized hazard that is likely to cause serious physical harm or death unless there were no “feasible means to eliminate or materially reduce the hazard.” *Fabi Constr. Co. v. Sec’y of Labor*, 508 F.3d 1077, 1081 (D.C. Cir. 2007) (citing *Int’l Union v. Gen. Dynamics Land Sys. Div.*, 815 F.2d 1570, 1577 (D.C. Cir. 1987)).

“The duty imposed by section 5(a)(1) to furnish employees with a workplace free from recognized hazards likely to cause death or serious physical injury requires an employer to take steps to prevent and suppress” such “hazardous conduct by employees, including proper training . . . of employees.” *Gen. Dynamics Corp., Quincy Shipbuilding Div. v. Occupational Safety & Health Review Comm’n*, 599 F.2d 453, 458 (1st Cir. 1979); *accord* *Banovetz v. King*, 66 F. Supp. 2d 1076, 1084 (D. Minn. 1999) (the general-duty clause imposes liability on employers that fail to heed “OSHA’s directive to train employees ‘in the recognition and avoidance of unsafe conditions’”); *Brennan v. Butler Lime & Cement Co.*, 520 F.2d 1011, 1017-18 (7th Cir. 1975) (the employer’s duty under the general-duty clause to “take reasonable precautionary steps to protect its employees from reasonably foreseeable recognized dangers that are causing or are likely to cause death or serious physical injury . . . include[s] the employer’s providing an adequate safety and training program”).

In the last ten years alone, there have been at least forty-one attacks by tigers in the United States, including multiple deaths, most on workers and volunteers. *See* PETA, *Big Cat Incidents in the United States*, *available at* <http://www.mediapeta.com/peta/pdf/Big-Cat-Incident-List-US-only.pdf> (hereinafter “Big Cat Incidents”). Many of these attacks occurred when employees were allowed to get too near to the tigers’ cages. Just last month, on October 5, 2013, for example, an employee at the Garold Wayne Interactive Zoological Park in Oklahoma had to be airlifted to the hospital and have an arm reattached after putting her hand in a tiger’s enclosure. Sara Gates, *Tiger Attack at Oklahoma Zoo Leaves Worker Injured after She Sticks Her Arm Inside Cage*, HUFFINGTON POST, Oct. 5, 2013.²

eliminated through the enforcement procedures otherwise provided [by the OSH Act].

29 U.S.C. § 662(a). “Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger or exists . . .” *Id.*

² *See also, e.g.*, Tim Damos, *Big Cat Rescue Volunteer Describes Tiger Mauling*, BARABOO NEW REPUBLIC, Nov. 1, 2010 (reporting that a volunteer at a facility required surgery and suffered puncture wounds, torn tendons, and serious nerve

SCI's reported violations of the OSH Act relating to tigers

Workers in the United States have been killed and seriously injured by tigers when they entered the cats' enclosures without protective barriers between them and the animals, got too close to the tigers' cages, stood on top of a tiger's cage to clean it, and attempted to pet the animals. Tigers have also escaped when workers were moving them, left their cage doors open, and failed to close gates. *See* Big Cat Incidents. According to the whistleblower, SCI either requires or permits lot crew members who have absolutely no training in handling or controlling tigers to work in dangerously close proximity to potentially deadly tigers while performing husbandry tasks. Redacted Affidavit, Oct. 17, 2013, at ¶¶ 18, 24 (hereinafter "Aff."). As a result, during just the 2012 tour alone, tigers reportedly reached through their cage bars and **bit parts of the fingers off of two crew members** in separate attacks: once when a lot crew member was feeding the cats and the other when a crew member was hosing down the big cat cages. Aff. ¶ 24.

In addition, during the 2012 tour, the circus reportedly does not present any acts that utilize experienced tiger trainers. Instead, tigers are used in a magic act where they are made to "appear" or "disappear" for the audience. *Id.* ¶ 19. Crew members untrained in handling and/or controlling tigers allegedly are responsible for moving the tigers and placing them in a small cage with only a false bottom and/or false sides separating them from the human performers, who share the cage with them. The tigers are in such close proximity to the performers that, according to the whistleblower, the performers often complain about the tigers urinating on them. *Id.* ¶¶ 18-20. The danger to crew members and performers alike is obvious.

Allowing employees into dangerously close proximity to tigers is exacerbated by SCI's alleged failure to provide these employees with any training in handling or controlling the potentially deadly animals. Indeed, given the known risks involved in working with dangerous apex predators, failing to provide training to lot crew members working directly with potentially deadly tigers independently violates the OSH Act's general-duty clause.

SCI's alleged general duty clause violations regarding elephants

The sworn affidavit also reports that elephants are left unsupervised for long periods of time while chained at performance venues in areas enclosed by no more than rudimentary police barriers. These unconnected barriers—which are each approximately four-feet high and six-feet wide—could easily be moved by a person of average size and are absolutely no match for a 4,500- to 12,000-pound elephant who stands up to ten-feet tall at the shoulders. *See* Aff. ¶¶ 9, 13. This is a recognized

damage after a tiger puled his arm into his cage); *San Francisco Zoo Investigates Attack by Siberian Tiger*, AP ALERT – CALIFORNIA, Dec. 23, 2006 (reporting that a zoo keeper sustained deep lacerations and needed surgery to save an arm after a tiger reached through cage bars and grabbed the woman); *Teenage Zoo Worker Loses Finger to Tiger Bite*, DESERET NEWS, Nov. 20, 2008 (reporting that a teenage volunteer at the Luray Zoo in Virginia lost a finger when a tiger bit her through the cage); Complaint, *In re Nick Sculac*, AWA Docket No. 12-00223, at ¶ 17 (USDA Feb. 1, 2012) (alleging that a tiger at Serenity Springs Wildlife Center in Colorado scratched a person walking past the tiger's enclosure in October 2008); *Zookeeper Injured by Tiger*, News-Messenger, May 13, 2008 (reporting that a keeper at the Toledo Zoo was treated for three lacerations to his chest after a tiger clawed him through a double-mesh barrier); Bob Downing & Gina Mace, *Vet Has Close Call with Tiger*, AKRON BEACON JOURNAL, Oct. 25, 2006, at B1 (reporting that a USDA inspector was injured when a tiger reached through her cage, grabbed the inspector, and pulled the inspector toward the cage); *Owner Sentenced for County Fair Incident*, DAILY GAZETTE, Feb. 27, 2008 (reporting that, in 2006, a tiger reached through his cage and scratched a four-year-old boy in the face, requiring fourteen stitches).

hazard likely to cause death or serious injury to employees, in violation of the OSH Act's general-duty clause.

"[W]orking with elephants has statistically been the most dangerous job in the country." Russ Mitchell, *The Truth About Elephants: Statistically More Dangerous Than Police Work*, CBS News, Aug. 8, 1999; accord Guy Toscano, U.S. Bureau of Labor Statistics, *Safety and Health: Dangerous Jobs*, Compensation and Working Conditions 57, 58 (Summer 1997), available at <http://www.bls.gov/iif/oshwc/cfar0020.pdf>. Elephants on the run from circuses and zoos have crashed through windows, buckled walls and door frames, smashed through metal gates, and broken through doors. See PETA, *Elephant Incidents in the United States* (Jan. 19, 2011), available at <http://www.mediapeta.com/peta/pdf/elephant-incident-list-us-only.pdf>. And chaining the elephants does not substitute for a suitable perimeter fence. In January 2000, for instance, an elephant chained to a tree broke loose at the Ramos Family Circus winter compound and trampled to death a woman who was walking around the facility. *Elephant Stomps, Kills Handler*, UPI NEWS, Jan. 27, 2000.³ A small movable barrier will do nothing to stop a rampaging eight-thousand-pound elephant.

By apparently requiring or allowing employees with absolutely no training in handling or controlling tigers to work in dangerously close proximity to the dangerous predators, and by relying on woefully inadequate movable barriers to safeguard employees from multi-ton elephants, SCI has willfully and repeatedly disregarded its responsibility to protect its employees from recognized hazards. PETA respectfully requests that OSHA cite and penalize SCI for willfully and intentionally endangering its keepers in apparent violation of federal law and that OSHA also act promptly to prevent future injuries by requiring only protected contact by SCI employees with those animals.

The whistleblower would be willing to speak to OSHA upon request and PETA is happy to coordinate a conversation. Thank you for your attention to this serious matter. I can be reached directly at CarneyN@petaf.org or 504-274-9381.

Very truly yours,



Carney Anne Nasser, Esq.
Counsel
Captive Animal Law Enforcement

³ See also, e.g., Gayle Weber, *Storms Cause Elephant Parade*, HAYS DAILY NEWS, June 5, 2008 (reporting that two elephants, who were spooked by tornado sirens, broke free from their tethers as they were preparing to perform with a circus in Kansas and ran through town); Lou Ortiz, *Elephant's Trainer Sues over Injuries*, CHICAGO SUN TIMES, Mar. 26, 1994 (reporting that an elephant handler suffered broken ribs, a broken sternum, a collapsed lung, and a wound on her back after she was attacked by an elephant, who snapped through her chains and ropes in the holding area at the Lincoln Park Zoo); *Elephant Kills Worker at Coast Animal Park*, AP, July 25, 1983 (reporting that an elephant broke free from his chains at a California park, killed the park's game warden, and escaped).