

1 where I think we need to be when we talk about numbers.

2 We talk about incidents. We know within the  
3 incidents we've had 98 of them within our company since  
4 1988, right?

5 Q. Wait a second. 98?

6 A. 98 incidents that are recorded since 1988.  
7 It's all information you have, right?

8 Q. Well, that's a different number than what --  
9 you realize I took your deposition in this case?

10 A. You've got to let me finish where I'm going  
11 with it and you will understand why I --

12 Q. Well, I can't agree with you, I guess,  
13 intermediately if I don't know where you're going.

14 A. Okay.

15 Q. Please, you were explaining 98 incidents were  
16 recorded corporately?

17 A. Correct. Out of those 98 incidents, 12 of  
18 them were injuries.

19 Q. And, tell me what that has to do with being  
20 able to predict an animal's behavior 98 plus percent.

21 A. When I look at 98 times we've noted behavior  
22 that we thought could have been aggressive, and when you  
23 look at how many positive sessions we've had compared to  
24 that 98, which we roughly know is about 1.6 million  
25 interactions. When you do the math, that's like a tick

Charles Tompkins

1 away from being a hundred percent.

2 Q. And, you would hate to be that tick if you  
3 were the one who had serious injury or death, right?

4 A. Yes.

5 Q. So, instead of talking about ticks, there are  
6 110 incident reports that Sea World has reported in its  
7 log, right?

8 A. Some of those are -- if you go to that log,  
9 you will realize that some of them are duplicates. What  
10 we know is 98 of them were ones that were recorded in  
11 our Sea World Parks.

12 Q. So, now, I'm just trying to understand how  
13 you went from -- do you recall telling me that there  
14 were 110 incidents when you had your deposition taken in  
15 this case before?

16 A. Yes, but I'm breaking it down to how many  
17 we've had in our Sea World Parks.

18 Q. So, 98 reported in Sea World Park. So, are  
19 you saying that 12 of those incidents were not at the  
20 Sea World Parks?

21 A. No.

22 Q. So what happened to the other 12?

23 A. Well, excuse me, yes, we've had ones in other  
24 facilities with other killer whales.

25 Q. So that would be Loro Parque?

Charles Tompkins

1 A. Loro Parque.

2 Q. Were there some from Marine Land that are --

3 A. No, none from Marine Land.

4 Q. How many from Loro Parque?

5 A. There was only three. And, again, I think we  
6 need to go back and look at the number of incidents.  
7 Some of them were duplicated on there.

8 Q. I'm sorry, you keep talking about "on there."  
9 What do you mean "on there"?

10 A. The list of how many incidents you have on  
11 there. The actual number we have, the recorded number  
12 is incorrect. We have 101 different incidents on that.  
13 Just so you know, do you recall that Sea World provided  
14 hard copy incident reports to OSHA in this case?

15 Q. I understand.

16 MR. BLACK: Let me pull those out.

17 JUDGE WELSCH: What tab is that?

18 MR. BLACK: In his Tab Number 1, Your Honor.

19 **(Whereupon, Complainant's Exhibit C-6 was marked**  
20 **for identification and entered into the record)**

21 BY MR. BLACK:

22 Q. Mr. Tompkins, you have in front of you a  
23 notebook containing several hundred pages of incident  
24 reports?

25 A. Yes.

Charles Tompkins

1 Q. And, you've gathered these incident reports  
2 together to produce to the Government during this case,  
3 right?

4 A. We did.

5 Q. And, you have reviewed the incident reports,  
6 right?

7 A. Yes, we have.

8 Q. And, these are all incident reports that  
9 you're familiar with and that are in the possession of  
10 Sea World at its parks, right?

11 A. Yes.

12 MR. BLACK: At this time, we would offer what  
13 has been marked as C-6.

14 JUDGE WELSCH: What is the period of time?

15 THE WITNESS: From 1988 to 2009.

16 JUDGE WELSCH: December 2009 or January 2009?

17 THE WITNESS: Before 2009.

18 JUDGE WELSCH: December.

19 MR. BLACK: It's December of 2009 because  
20 there's an incident from Loro Parque from December 2009.

21 JUDGE WELSCH: Any objections?

22 MS. GUNNIN: Can we just have an opportunity to  
23 review this? I don't anticipate one, but I just want to  
24 look at my copy.

25 JUDGE WELSCH: How much time do you need? Do

Charles Tompkins

1     you want me to hold the ruling until you've reviewed it?

2             MS. GUNNIN:     Yes, Your Honor.   Not right now.

3             JUDGE WELSCH:   I'll reserve the ruling.

4             MS. GUNNIN:     Okay, thank you.

5             BY MR. BLACK:

6             Q.     So, this is all of the recorded incidents.

7     You say 101 recorded incidents from Sea World Park from  
8     1988 through December 2009?

9             A.     Yes.

10            Q.     And, you have reviewed this on enough  
11     occasions to feel very comfortable with that number?

12            A.     Yes.

13            Q.     So, there are not any incident reports that  
14     have been created at Sea World that are not in here?

15            A.     No, there's not.

16            Q.     And, then, you said something about it  
17     includes three incidents from Loro Parque?

18            A.     It does.

19            Q.     And, since you're familiar with it, I think I  
20     only saw two incidents from Loro Parque, but you may be  
21     far more familiar with that than I am. I saw an  
22     incident report from December 2009, involving trainer  
23     Alexis Martinez?

24            A.     Yes.

25            Q.     And, he was killed in December of 2009?

Charles Tompkins

1 A. Yes.

2 Q. And, then, the incident report I guess I  
3 don't think I saw in here was the trainer -- and I'm  
4 sorry, her first name was Claudia Bovhort (ph)?

5 A. Bovhort, yes.

6 Q. Can you spell that?

7 A. No, I couldn't. It's a German name.

8 Q. Because I didn't see that incident report in  
9 here.

10 A. Um-hum.

11 Q. And you've reviewed these. Is that incident  
12 report somewhere in here?

13 A. Without going through the entire notebook, I  
14 can't answer that.

15 Q. I'll represent to you that this is the  
16 entirety of everything that Sea World produced to us,  
17 and you gathered to produce to us in this case?

18 A. Yes. To the best of my knowledge, yes.

19 Q. And, we'll have some time so that maybe you  
20 can find that incident report because I did not see it  
21 in here.

22 By the way, the incident involving Ms.  
23 Bovhort, what year was that?

24 A. It was -- you know, I have some notes that I  
25 put together to help my memory in this situation. If I

Charles Tompkins

1     could ask for those notes, it would help my accuracy in  
2     being able to --

3             JUDGE WELSCH:     Counsel, do you want him to --

4             MR. BLACK:        That's fine as long as we can look  
5     at his notes.

6             JUDGE WELSCH:     You understand if you bring your  
7     notes up here, he can look at your notes. If that's a  
8     problem for you and your Counsel -- you might want to  
9     show your Counsel the notes before you do that.

10            Do you want to do that, Ms. Gunnin?

11            MS. GUNNIN:     Your Honor, can we just verify with  
12     him?

13            JUDGE WELSCH:     Why don't you get down and find  
14     your notes and show them to Ms. Gunnin and see if she  
15     has any problem with them.

16            THE WITNESS:     (Witness Complies)

17            JUDGE WELSCH:     Are those the notes you're  
18     talking about there?

19            THE WITNESS:     Yes, it is.

20            JUDGE WELSCH:     Have you shown them to Mr. Black  
21     before you take them up to the stand?

22            MR. BLACK:        Are we able to either take a break  
23     to make a copy because I don't want to stand over the  
24     witness's shoulder while he's referring to his notes.  
25     It might be easier if we can take a brief recess and go

Charles Tompkins

1 to the clerk's office. My concern is, like I say, I  
2 don't want to stand over his shoulder if he's --

3 JUDGE WELSCH: My understanding was he was just  
4 going to use his notes to refresh his recollection to  
5 answer your question. So, I don't know if it's  
6 necessary to really --

7 THE WITNESS: I think I can do this without the  
8 notes. Since it's a problem, it's not worth it.

9 JUDGE WELSCH: If you don't remember, you don't  
10 recall, just say you don't recall.

11 I do want to ask you what are on Exhibit C-6, the  
12 incident reports, are there 110 separate incident  
13 reports in here or are there 101 because what I  
14 understood was there were 98 involving the Sea World  
15 operations in the United States, the three parks.

16 THE WITNESS: Right, 98.

17 JUDGE WELSCH: So, there's 98 and then there are  
18 three incidents where you own the whales but they're not  
19 in your parks.

20 THE WITNESS: Right.

21 JUDGE WELSCH: And then you said there were  
22 duplications. What I'm asking you in this Exhibit C-6,  
23 does that include the duplications?

24 THE WITNESS: Yes, it does, sir.

25 JUDGE WELSCH: So, in your mind, there are 101

Charles Tompkins



1 a whole lot better.

2 If you look at our incident trend, if you  
3 want to look at the amount that we currently have and  
4 what we're recording, you can see the accuracy of what  
5 we're talking about.

6 For Sea World of Florida, for example, from  
7 April of 2005 to 2009, we didn't have one incident. Not  
8 one. Somewhere in there, there had to be a learning  
9 curve, right? If we weren't learning and getting  
10 better, then why did we not have incidents at Sea World  
11 of Florida for almost five years.

12 Q. Maybe you were lucky.

13 A. We don't think so. We think it came from  
14 learning from these situations, getting better about it,  
15 whales learning, trainers learning and us getting really  
16 good at our craft.

17 Q. When you say the number of incidents is down,  
18 we have already established that your incident reports  
19 are incomplete and that's part of the basis for the  
20 statement that incidents are down, right?

21 A. Yes.

22 Q. You're not a statistician?

23 A. No, I'm not.

24 Q. And no statistical analysis has been  
25 performed of the incident reports, right?

Charles Tompkins