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2                                BRIAN E. ROKEACH,

3                                having been first duly sworn, was

4                                examined and testified as follows:

5                JUDGE WELSCH:     Please be seated, sir.

6                Sir, for the record, would you state your full  
7                name, spell your last name and state your address,  
8                please?

9                THE WITNESS:     My name is Brian Eric Rokeach,  
10               R-o-k-e-a-c-h. My address is [REDACTED]

11               [REDACTED].

12               JUDGE WELSCH:     Mr. Black, your witness.

13               MR. BLACK:        Thank you, Judge.

14                                ---o0o---

15                                DIRECT EXAMINATION

16               BY MR. BLACK:

17               Q.     Mr. Rokeach, good afternoon. How are you?

18               A.     Good.

19               Q.     What is your position at Sea World of  
20               California?

21               A.     Right now, I'm supervisor of animal training  
22               at Dolphin Stadium.

23               Q.     And, when did you begin that position?

24               A.     I believe it was September 12th.

25               Q.     Of 2011?

                              Brian Rokeach

1 A. I'm sorry, of 2011.

2 Q. Prior to that, what was your position at Sea  
3 World?

4 A. I was a supervisor of animal training, one of  
5 the supervisors of animal training at Shamu Stadium in  
6 San Diego.

7 Q. How long were you in that position?

8 A. Most recently, I was there from May of 2010  
9 until I moved to Dolphin Stadium, and prior to that, I  
10 was promoted prior to moving to Loro Parque, so I  
11 believe it was April of 2008 until August of 2008.

12 Q. Does that mean from August of 2008 until May  
13 of 2010, you were at Loro Parque?

14 A. Yes, that's correct.

15 Q. You were still employed by Sea World at that  
16 time?

17 A. Yes, I was.

18 Q. And, were you in the same position, that is,  
19 supervisor of animal training of Sea World, even though  
20 you were stationed at Loro Parque?

21 A. I believe my title at the time was supervisor  
22 of animal training, Sea World California.

23 Q. Sea World California?

24 A. Correct.

25 Q. I'm sorry, thank you.

Brian Rokeach

1 basically are a compilation of all of the standard  
2 operating procedures that we use in the training.

3 Q. And, I'm sorry, I said SOP's. Standard  
4 operating procedures you understand are SOP's?

5 A. Yes, I understand.

6 Q. Then, you mentioned at Loro Parque for the  
7 nearly two years that you were there, what were your  
8 duties at Loro Parque?

9 A. I was there to oversee the animals' care to  
10 make sure that they were being taken care of  
11 appropriately, as a liaison between Sea World and Loro  
12 Parque, basically, eyes on site, and also assisted with  
13 daily husbandry, assisting in mentoring their trainers,  
14 making sure that the water quality was at the  
15 appropriate levels that we require for our animals,  
16 making sure that the fish quality was up to our  
17 standards, addressing any concerns that we might have  
18 that the animals are being taken care of in the manner  
19 that we find appropriate.

20 Q. And, part of taking care of them would be how  
21 they are worked with by trainers, right?

22 A. I want to make sure that the trainers are  
23 appropriately taking care of them, yes.

24 Q. That they're training them properly?

25 A. Well, they are being trained, yes, but

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1 they're also being just managed appropriately as well.  
2 So, there are training aspects of it, but we also want  
3 to make sure that they're being properly cared for.  
4 Training does have a -- there is an aspect of training  
5 in that, per se, but we also want to make sure that  
6 they're being properly cared for.

7 Q. And, is animal husbandry another term for  
8 caring for the animals?

9 A. Animal husbandry is something that we do,  
10 yes.

11 Q. Do you have other areas or topics that you  
12 consider under the proper care for the whales?

13 A. Like I said, just make sure their food  
14 quality is appropriate, that the water quality is  
15 appropriate, that the facility is being maintained  
16 appropriately and maintain our standards.

17 Q. Things in the animal environment, making sure  
18 they're up to snuff?

19 A. Exactly.

20 Q. And, how is that animal training related to  
21 -- strike that -- that animal trainers are having the  
22 whales perform certain behaviors or do certain things,  
23 right?

24 A. Yes, we ask animals to do different behaviors  
25 that have been trained.

Brian Rokeach

1           Q.   How does that relate to the care of the  
2 whale, if you will? Not are they training the whales to  
3 be cared for, but how does what behaviors they do with  
4 the animals relate to whether they are receiving  
5 appropriate care or not?

6           A.   Well, there are certain standards that we  
7 like to maintain. We want to be able to take voluntary  
8 blood samples, actually any type of voluntary samples  
9 from the animals, and that can be fecal samples, urinary  
10 samples, blow hole cultures, if there's any type of a  
11 skin sample. So, we have to make sure that the animals  
12 are comfortable being close to the trainers, and then we  
13 actually do train certain husbandry behaviors in order  
14 to receive these samples or to take these samples.

15          Q.   I can see my question wasn't very clear.

16                I meant, what is it about how the animals are  
17 working in shows, for example? What is it that you are  
18 trying to make sure of in being the eyes on site that  
19 Loro Parque does with the animals during shows, for  
20 example?

21          A.   During shows, during sessions, whatever it is  
22 that we do, that they're applying appropriate principles  
23 to properly take care of the animals, properly reward or  
24 reinforce the animals, that they're not doing anything  
25 that's going to create a situation that could be

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1 dangerous because they're inappropriately interacting  
2 with them.

3 Q. Are you finished?

4 A. Yes.

5 Q. And applying the appropriate principles to  
6 prevent dangers, is that danger to the trainers as well  
7 as the animals?

8 A. It can be, yes.

9 Q. Well, was your responsibility to make sure  
10 that the Loro Parque trainers were working with the  
11 animals in such a way that the Loro Parque trainers were  
12 keeping safe?

13 A. I was watching, I was observing sessions, I  
14 was participating with them, and I did want to make sure  
15 that they were interacting appropriately when I was  
16 there. I wasn't always there, though, as well.

17 They also had been trained by both their  
18 staff and prior to my arrival to interact with these  
19 whales, using the operant conditioning principles that  
20 we apply at Sea World.

21 Q. So, Loro Parque was trying to apply positive  
22 reinforcement training to the animals in the same way  
23 that Sea World of California or Sea World of Florida  
24 would apply those principles with the killer whales?

25 A. Yes.

Brian Rokeach

1 Q. And, the Sea World whales that were at Loro  
2 Parque, those have been at Loro Parque since around  
3 2006?

4 A. February of 2006.

5 Q. Now, Sea World still owns those whales?

6 A. I'm not familiar with the contracts.

7 Q. They owned those whales at the time that you  
8 were there, right?

9 A. Again, I'm not familiar with the particulars  
10 of the contracts. My understanding was that they were  
11 on breeding loan, but I don't know any particulars about  
12 the contracts.

13 Q. What would be the purpose of your being the  
14 eyes on site if Sea World didn't have an interest or  
15 ownership in those whales?

16 A. It sounds like a reasonable question, but  
17 like I said, I'm not familiar with the particulars of  
18 the contracts.

19 Q. Now, the trainers at Loro Parque, they follow  
20 certain standard operating procedures in their animal  
21 training?

22 A. Yes.

23 Q. Similar to the kinds of standard operating  
24 procedures for animal training that the Sea World  
25 trainers back in the States would follow?

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1 A. Yes.

2 Q. I mean, there might be some differences, but  
3 the principles were to have this relationship, positive  
4 relationship, operant conditioning type of animal  
5 training used?

6 A. Yes.

7 Q. And, Loro Parque also created incident  
8 reports if there was an incident with the whales there  
9 at Loro Parque?

10 A. In the event that something occurred, they  
11 did write up a report, yes.

12 Q. The same type that Sea World here in the  
13 States would create incident reports if something were  
14 to occur?

15 A. They emulated similar reports, using a  
16 similar form.

17 Q. In fact, they used the same template or  
18 whatever, if you will, as Sea World's corporate  
19 incidents?

20 A. Yes.

21 Q. I want to come back to your time here in the  
22 States for a minute and talk about some things like  
23 that; about your time in the States.

24 Sea World of California owns a killer whale  
25 named Orkid?

Brian Rokeach



- 1 A. Yes.
- 2 Q. And they still own Orkid today, right?
- 3 A. Yes.
- 4 Q. And Orkid is a she; it's a female?
- 5 A. Right.
- 6 Q. And, you're familiar, of course, with the
- 7 term, "incident," as used by Sea World?
- 8 A. Yes.
- 9 Q. And, incidents, it notes, unwanted behavior
- 10 by the whales?
- 11 A. Yes.
- 12 Q. That is behavior that Sea World doesn't want?
- 13 A. Undesirable behavior.
- 14 Q. Undesirable behavior, okay. And, you agree
- 15 that behavior -- it also would note behavior that is
- 16 unpredicted; that is, behavior when something abnormal
- 17 happens?
- 18 A. If it's an undesirable behavior, regardless
- 19 of where it stems from, an undesirable behavior.
- 20 Q. Now, you, in fact, have worked with the
- 21 killer whale, Orkid, before?
- 22 A. Yes.
- 23 Q. And, before you went to Loro Parque in August
- 24 of 2008, you were on Orkid's team of trainers?
- 25 A. No.

Brian Rokeach

1 Q. At some point you were on Orkid's team of  
2 trainers?

3 A. No, never.

4 Q. And, are you familiar with Orkid?

5 A. I'm familiar with her as one of the members  
6 of our group. I'm familiar with her behaviorally, yes.

7 Q. And, as a senior trainer at Sea World of  
8 California or Sea World of San Diego, before going to  
9 Loro Parque, you would have been familiar with her  
10 behavior by reviewing her behavioral profile?

11 A. Behavioral profile plus I worked in the area  
12 every day, so I was around the area, around all the  
13 animals. Trainers discuss everything about them, and  
14 there are times where every training interacts with all  
15 the whales, whether it's for husbandry in the mornings  
16 or control during their separation of the whales, but I  
17 was just never on her team; I was never one of her team  
18 members.

19 Q. And, back prior to August of 2008, how many  
20 killer whales were there at Sea World San Diego?

21 A. I believe at the time we had seven.

22 Q. So, she was one of seven whales?

23 A. Correct.

24 Q. Others would include Kasatka, Ulises?

25 A. Yes.

Brian Rokeach

1 these. Okay?

2 BY MR. BLACK:

3 Q. Let's turn if you will to Page 471.

4 A. Page 470 --

5 Q. Page 471 of C-6. Are you with me?

6 A. I'm with you.

7 Q. And this incident report is from 1995, right?

8 A. Yes.

9 Q. And, the session that was occurring was  
10 during a show, right?

11 A. That's what it says, yes.

12 Q. And, now, if you would turn to the next page,  
13 Page 472, and I want to turn to the very last paragraph  
14 on that page. The very last sentence says:

15 "Also, several incidents had occurred over  
16 the past week either each whale separately or  
17 both together," and those whales being Orkid and  
18 Takara, "which should have served to alert the  
19 trainers as to the severity of the progression of  
20 inappropriate behavior."

21 Do you see that?

22 A. Yes.

23 Q. So, am I understanding Sea World's language  
24 correctly when it says "several incidents had occurred  
25 over the past week," that those are incidents that are

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1 incident report type incidents?

2 A. I can't answer that by reading one statement.  
3 I've got to read the whole report.

4 Q. Well, let me ask you -- and I'll be happy to  
5 have you read the whole report, but my question was,  
6 really, does the word "incident" for Sea World, is that  
7 a term of art that is in an incident with the whale?

8 A. I can't out of the context of one sentence  
9 tell you what that means. I can tell you these are  
10 called incident reports, but I can't tell you that every  
11 day. I mean, there's like incidents --

12 JUDGE WELSCH: Did you write this sentence?

13 THE WITNESS: I didn't write this sentence. I  
14 wasn't even a Sea World employee when this was written.

15 JUDGE WELSCH: Sustained. Mr. Black --

16 MR. BLACK: That was a question. If he can't  
17 answer it, that's fine.

18 JUDGE WELSCH: He didn't draft the report as to  
19 what it means.

20 BY MR. BLACK:

21 Q. Is it important that you be able to  
22 understand the incident reports in order to perform your  
23 job as an animal trainer?

24 A. Yes.

25 Q. So, if you're given the time to read one,

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1 then you would be able to understand it, you think?

2 A. I think that if there were any questions,  
3 that I could ask the people that were present who may  
4 have further information about it to clarify.

5 Q. Okay, but sometimes the reports will be  
6 pretty clear on their face?

7 A. Ideally, we like to write the reports to be  
8 as clear as possible.

9 Q. Let's try one other. Let's turn to Page 542  
10 of the incident report.

11 MS. GUNNIN: Judge, 542 is the same kind of  
12 issue. It's before Mr. Rokeach was at the stadium. He  
13 did not write the report, so this is the same --

14 JUDGE WELSCH: I don't know what the question  
15 is. Let's wait. Hold your objection.

16 BY MR. BLACK:

17 Q. Do you want to take just a second so you  
18 won't have the same difficulty of not having read the  
19 report?

20 A. I'll take the time to read it if I can read  
21 the whole thing.

22 Q. Sure.

23 A. Okay.

24 THE WITNESS: Is that okay?

25 JUDGE WELSCH: Yes.

Brian Rokeach

1 THE WITNESS: Thank you.

2 BY MR. BLACK:

3 Q. If you would turn to the second page of this  
4 report, and it's page Sea World 544.

5 A. 544?

6 Q. Yes, sir. That's the third. And do you see  
7 where it says, "Did the acts of the employee contribute  
8 to this incident?" And it says, "yes," right?

9 A. Okay.

10 Q. And, it says, "What could have been done to  
11 prevent this incident?" Do you see that?

12 A. Yes.

13 Q. And, it indicates that the trainer should  
14 have done something differently, right?

15 A. Yes.

16 Q. It indicates that the trainer made an error,  
17 right?

18 A. Yes.

19 Q. And, that in that indication, it says that  
20 the error or what could have been done to prevent this  
21 incident, it says:

22 "The kneeling position is very close  
23 proximity to the whale and is less mobile to the  
24 trainer. Bob could have decided to give the  
25 line-up, SD, from a standing position at a safer

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1 distance."

2 Right?

3 A. Correct.

4 Q. So, that's pretty clear, isn't it?

5 A. I would say that that assessment is clear as  
6 it's written. Yes, I understand it.

7 Q. And, you understand it to mean that you don't  
8 want to kneel in close proximity to the whale, right?

9 A. I would say that's what this is saying is  
10 that if he was not kneeling next to the whale, when he  
11 gave that signal, she would not have had that  
12 opportunity right there to touch his leg. That's my  
13 understanding.

14 Q. Because being in that position there gave the  
15 whale an opportunity to touch the leg?

16 A. I would say that he could be -- if he's  
17 standing, it might give less of an opportunity to touch.

18 Q. And, it's a safer position to be standing up  
19 rather than kneeling?

20 A. Yes, I would say it's more mobile.

21 Q. Does that make it safer for the trainer?

22 A. Depending on what's going on. It could if he  
23 needs to move somewhere rather than being right there,  
24 but it can also cause other issues being standing up and  
25 far away.

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1 Q. Well, it said:

2 "Bob could have decided to give the line up  
3 SD from a standing position at a safer distance."  
4 That was the analysis, right?

5 A. That's what the analysis says, correct.

6 Q. Do you disagree with that analysis?

7 A. I don't disagree that if he was standing up  
8 and gave that signal there, then she wouldn't have the  
9 opportunity to touch his thigh.

10 Q. And, touching the thigh doesn't sound very  
11 bad. Why were you concerned about the whale touching  
12 the thigh?

13 A. I think it's important to communicate  
14 anything that looks out of the ordinary with these guys.

15 Q. Isn't the real concern more than that the  
16 whale is just going to touch his thigh; but, instead,  
17 the whale might do something that has far worse  
18 consequences?

19 A. We always want to make sure that we're taking  
20 every precaution possible for any eventuality, but the  
21 reason that we write this is to communicate, "Hey, this  
22 was out the ordinary. Be aware of the situation."

23 Q. And, so don't kneel and put yourself in a  
24 vulnerable position?

25 A. I think that's saying in this situation, if

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1 he wasn't kneeling, he wouldn't have been touched. It's  
2 not saying don't ever kneel next to a killer whale.

3 Q. But, it's a recognition that when you're  
4 kneeling, you're less mobile?

5 A. You can be less mobile, correct.

6 Q. And, lying down would be the less mobile than  
7 kneeling?

8 A. Generally, lying down is less mobile.

9 Q. I want to go back to --

10 JUDGE WELSCH: The question I have is on an  
11 incident report like that, when the trainers get that  
12 incident report, and you read it over, is a rule put in  
13 place amongst the trainers that you're no longer going  
14 to be kneeling down with this particular whale? And I  
15 think we're talking about Orkid. You don't kneel down  
16 when you're dealing with Orkid? Is that a rule that's  
17 put in place, or is that just information passed about  
18 this behavior at this particular time and no other  
19 changes are made?

20 THE WITNESS: In this situation, I think it's  
21 be aware. I don't think it's a rule. I think if the  
22 circumstance presented itself, it could become a rule  
23 like --

24 JUDGE WELSCH: So, if he does it a second time  
25 or third time?

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1 THE WITNESS: Perhaps or if it was something  
2 more egregious, I guess, rather than just touching your  
3 thigh; like, hey, this is a situation that presents  
4 itself to be very unsafe to us so let's don't put  
5 ourselves in that situation. Then, it could become a  
6 rule.

7 JUDGE WELSCH: But, at that point in time, as  
8 far as you know, there wasn't a rule?

9 THE WITNESS: No. My understanding from this  
10 is that there wasn't a rule, and when I was working at  
11 Shamu Stadium, there was no rule to my knowledge of not  
12 kneeling next to Orkid.

13 BY MR. BLACK:

14 Q. And, now, I want to talk about the incident  
15 you were involved in with Orkid on Page 1150. Do you  
16 have what in front of you?

17 A. Yes.

18 Q. And, in that incident, Orkid left the area of  
19 the pool where he had been swimming and came after and  
20 grabbed you and took you under water?

21 A. Yes.

22 Q. Did I say "he"?

23 A. Yes. She.

24 Q. Orkid, she grabbed you and dumped you.

25 A. Yes.

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1 Q. And, you suffered some strained ligaments,  
2 tendons as a result of that incident?

3 A. Correct.

4 Q. You were injured in that incident?

5 A. Correct.

6 Q. And, it was after that incident, that Sea  
7 World decided that until further notice they were going  
8 to go dry, if you will, with Orkid. They were going to  
9 cease water work with Orkid?

10 A. Correct.

11 Q. What was it about that incident in your  
12 understanding that caused Sea World to decide to go dry  
13 with Orkid?

14 A. With Orkid?

15 Q. Yes.

16 A. Well, I know that for one thing, after we saw  
17 something like that, we wanted to give her an  
18 opportunity not to really think about it, don't want to  
19 give any opportunity to -- just basically forget the  
20 occurrence, kind of get it out of their head and also  
21 allow us the opportunity to review and make sure that  
22 we're in a good place and then when we're ready to get  
23 back in, if we're going to, to take the opportunity to  
24 approximate the steps back in, make sure that we're  
25 reinforcing the appropriate behavior and not giving any

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1 opportunities to rehearse inappropriate behavior.

2 Q. And, in that instance after the November 2006  
3 incident, Sea World of California did not resume water  
4 work with Orkid prior to Ms. Brancheau's death?

5 A. I can't say for certain. I don't believe. I  
6 don't know for certain. I don't recall anybody doing  
7 any type of water work from the point that this occurred  
8 until when I left, which was in August of 2008. I don't  
9 recall that ever happening.

10 Q. And, so in the two years before you left, Sea  
11 World hadn't returned to water work with Orkid?

12 A. Again, not that I recall.

13 Q. And, so they had spent -- at least as of that  
14 point, they had spent two years evaluating and trying  
15 the figure out what the next steps were?

16 A. I know that we didn't return to the water  
17 with her. I don't know the specific reasons as to why  
18 -- or I shouldn't say that. I should say I don't know  
19 that it was directly related to Orkid or other events  
20 that occurred as to why we didn't get back in or why the  
21 decision was made not to get in.

22 I know initially, after the incident, we made  
23 that determination that we were to stay out of the  
24 water, but then beyond that, I wasn't party to the  
25 decision as to why we weren't going to get back in with

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1 her specifically.

2 Q. You were a Senior 1 trainer -- excuse me, you  
3 had already before you had left to go to Loro Parque,  
4 become an assistant supervisor, right?

5 A. Supervisor.

6 Q. Supervisor?

7 A. Correct.

8 Q. And as a supervisor at Sea World, the people  
9 above you didn't tell you why they weren't getting back  
10 in the water with Orkid?

11 A. Like I said, I wasn't part of that  
12 conversation, that decision as to why, but I know that  
13 it was decided that we were not going to get back in  
14 with her until the future.

15 Q. Do you know the reason for that decision?

16 A. The reason why we weren't getting back in  
17 with her?

18 Q. Yes, sir.

19 A. We were, I believe, eventually going to plan  
20 on a water work approximation, but I know that she and  
21 Kasatka, we decided not to get back in with her until a  
22 time that they decided was appropriate that we would  
23 start again.

24 And, those decisions are made by the  
25 assistant curators and the VP of Zoological who are both

Brian Rokeach

1 above me.

2 Q. Did they communicate to you the reason for  
3 their decision?

4 A. Not specifically.

5 Q. How about less than specific? Did you hear  
6 in your duties as a trainer, as a supervisor why Sea  
7 World wasn't getting back in the water with Orkid?

8 A. I did not talk to them specifically about  
9 their specific reasons as to why they were not getting  
10 back in.

11 Q. It sounds like you maybe have some indication  
12 or some knowledge as to why Sea World chose not to get  
13 back in. Do you?

14 A. About why we chose not to get back in?

15 Q. Correct.

16 A. Like I said, after they decided not to get  
17 back in because at the initial time they decided not to  
18 get back in with either Orkid or Kasatka until further  
19 notice in the future when they decided that they wanted  
20 to start the water work approximation process.

21 They didn't tell me what their reasoning was  
22 or the time table would be, and that's a question for  
23 those people that were above me.

24 Q. I understand it's their decision, but I'm  
25 asking you about the communication of that decision to

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1 you as a supervisor, one step below, the assistant  
2 curator?

3 A. Correct.

4 Q. They didn't in any way communicate to you  
5 what the reason was?

6 A. They didn't communicate to me specifically  
7 why we're not going to get back in the water with them.  
8 If anything, I would ask, "Are we going to, or is there  
9 a time table?" And, I would get no specific answer.

10 Q. So, for that nearly two years after you got  
11 out of the water with her until you went to Loro Parque,  
12 you don't recall there being any of the water work  
13 approximations that you described?

14 A. I don't recall, no.

15 Q. Is it commonplace in your career at Sea World  
16 for them to cease water work with whales?

17 A. It occurred from November of 2006 until I  
18 left. So, that's the only experience I have of that  
19 occurring.

20 Q. And, it occurred with three of Sea World of  
21 San Diego's whales, right, Ulises being the third?

22 A. I think that was stopped with Ulises as well.

23 Q. And, what was it about those three whales as  
24 opposed to the other four whales that Sea World had that  
25 caused Sea World to stop doing water work with them?

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1           A.   Well, Orkid and Kasatka was history, and  
2   Ulises was just a -- I believe it was a general concern  
3   because he was a larger male.

4           Q.   And, tell me what you mean when you say,  
5   "history." Does that mean because those whales had been  
6   involved in some serious aggressions?

7           A.   Because of the incidents that had occurred,  
8   correct.

9           Q.   So, there was a safety concern; a safety  
10  consideration?

11          A.   Yes.

12          Q.   Now, returning to Loro Parque, how long after  
13  -- you said you returned to Loro Parque or you went to  
14  Loro Parque in August 2008?

15          A.   Correct.

16          Q.   And, then, the trainer, Alexis Martinez, was  
17  killed on Christmas Eve of 2009?

18          A.   Correct.

19          Q.   And, you were working during that session in  
20  which Mr. Martinez was killed?

21          A.   Yes.

22          Q.   And, you were on stage of the stadium?

23          A.   Correct.

24          Q.   And, we have heard testimony that there were  
25  several small ordinary commonplace and minor occurrences

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1 that caused that death or caused that incident?

2 A. Speculated, yes.

3 Q. And, that was the evaluation that Sea World  
4 had made?

5 A. Correct.

6 Q. And, that wasn't anything big or egregious or  
7 anything wrong. It was a bunch of minor things that  
8 likely attributed to the incident?

9 A. Yes.

10 Q. Now, can you tell us what happened? Can you  
11 describe the incident and how it happened, briefly?

12 A. From what points?

13 Q. Well, as far as back as you need to go to  
14 give us a picture of what was going on there.

15 A. Okay. Alexis sensed a behavior from one of  
16 the back pools to the front pool which Keto did  
17 correctly, and Keto was received or taken under control  
18 of the slide-out area which is closest to the audience  
19 and rewarded with -- actually, I'm not positive what he  
20 was rewarded with. I believe in the report it says with  
21 fish, and then I believe he went on a perimeter behavior  
22 which is just a slow swim along the surface of the pool  
23 around the perimeter where he received on side stage, to  
24 the right side of the stage by Alexis where he was given  
25 a rubdown.

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1 I believe at that point Alexis got in and did  
2 a spy hop which is a high energy behavior in the center  
3 of the pool where he kind of rides up on Keto.

4 And, the criteria wasn't exactly correct so  
5 he did not receive the whistle, the bridge. So, when he  
6 surfaced, he was LRS'd, least reinforcing scenario, at  
7 which point I believe he recalled Keto.

8 He asked for a stage call to the slide-out  
9 area. Basically, Keto would be called over where he was  
10 reinforced. Actually, you know, I think I need to look  
11 at the report because I think I'm getting --

12 Q. It's actually at the very end. I believe the  
13 last report.

14 A. So, yes, so far I'm good.

15 He was pointing back to Alexis in the water  
16 where Alexis was --

17 Q. Just for the record, you're reading from the  
18 report that's at pages Sea World 2722 to 2728. Okay, go  
19 ahead, I'm sorry.

20 A. So, Alexis received him in the center of the  
21 pool -- and I totally skipped something. All right,  
22 after the initial spy hop, that high energy behavior at  
23 the center and after what LRS was applied, Alexis came  
24 back to stage with Keto where I was, and he rewarding  
25 him with a big snow ball, something that Keto finds very

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1 reinforcing.

2 He then did another perimeter ride. He  
3 actually rode Keto around the perimeter of the pool,  
4 dove off of Keto with a foot push, foot pushed towards  
5 the bottom where he performed another stand-on sky hop  
6 another high energy behavior in the center.

7 Again, it was a good spring, but it was a  
8 little twisted on the criteria, so he didn't receive the  
9 whistle. The three-second LRS, the usual response was  
10 applied again, and that's when he was called over to the  
11 slide-out area and rewarded with food.

12 Keto was then pointed by Alexis back in the  
13 center of the pool, and Alexis said he was just going to  
14 bring him to stage on what's called a haul out and  
15 basically pulled on Keto's nose or rostrum and ride him  
16 underwater and then up on the stage.

17 At that point, Keto went very deep toward the  
18 bottom of the pool, and I think Alexis really wasn't  
19 correct. So, he let go and they both floated up  
20 together. Alexis looked at me and said, "he doesn't  
21 look quite right," or something to that effect, and he  
22 asked for a stage call and actually an underwater tone  
23 which asks the animal to come to stage.

24 Keto responded correctly, but his control was  
25 very vague, looking at Alexis in the pool. So at that

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1 time, I asked for the trainer to bring me some  
2 reinforcement, a bucket of fish so that I would have  
3 something available.

4 And, I was trying the get into control with  
5 Keto, and when I thought I had the best control I could  
6 get, realizing that something didn't look right, I asked  
7 Alexis to swim out toward stage but in an area I call a  
8 slide-over which is a little easier to get out. And at  
9 that point, Keto left control with me and spun around  
10 and pushed into Alexis's chest.

11 Q. Now, you said he pushed him into the chest.  
12 Actually, he rammed him such that he suffered  
13 compression injuries to his chest?

14 A. I can't really testify to when he received  
15 those injuries. I know that he turned around and he was  
16 taken down under water, and at what point he was  
17 injured, I don't know.

18 Q. But, you do know that not only did he drown,  
19 but the autopsy showed that he had serious compression  
20 injuries to his chest?

21 A. Yes.

22 Q. And, he died as a result of that incident?

23 A. Correct.

24 Q. Now, when you said that you were, I think you  
25 said you were turning around, and then you were

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1 signalling or telling Alexis to exit at the slide-out  
2 area?

3 A. Slide-over.

4 Q. Slide-over, I'm sorry. Those are slightly  
5 different places. Was it immediately after that that  
6 Keto then left you at the stage and went over to Alexis?

7 A. Yes, but one thing, I never turned around. I  
8 was facing Keto.

9 Q. And, I'm sorry I didn't -- so, in a split  
10 second, Keto left you and went over and made contact  
11 with Alexis?

12 A. Yes, in a fairly fast motion, yes, he did.

13 Q. How many seconds?

14 A. I mean, I think that when he started swimming  
15 he started to turn, even though Alexis was over here, he  
16 started moving this way, maybe a second or two; I don't  
17 know. Maybe.

18 Q. And, then took him down apparently to the  
19 bottom of the pool?

20 A. Correct.

21 Q. Now, there wasn't any time to implement  
22 emergency call-back procedures, was there?

23 A. I mean, I called him back but not before he  
24 was already engaged.

25 Q. So, Sea World knows from experience that

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1 emergency call-back procedures performed while the whale  
2 is in a heightened state, if you will, will rarely  
3 succeed in getting the whale to come back?

4 A. I guess -- I'm sorry, there hasn't been a lot  
5 of success in that specific scenario.

6 Q. Now, as a result of this incident, Loro  
7 Parque decided that it would perform its shows with the  
8 whales with the trainers out of the water with those  
9 whales, right?

10 A. Yes.

11 Q. And, are you aware that the Government of  
12 Spain concluded that swimming with the whales was  
13 inherently dangerous in the water?

14 MS. GUNNIN: Judge, I'm going to object to that  
15 question because there's not been a foundation about  
16 whether what --

17 JUDGE WELSCH: Sustained, sustained.

18 BY MR. BLACK:

19 Q. And, I just have a couple more questions.

20 Now, at the same time that Loro Parque chose  
21 to stop doing water work, Sea World continued its water  
22 work interactions?

23 A. I don't know. Are you saying the moment of  
24 or sometime after?

25 Q. Yes, that's a fair point. In the immediate

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1     aftermath, Sea World briefly ceased water work at its  
2     parks until Mr. Scarpuzzi went around and  
3     provided training regarding the incident?

4             MS. GUNNIN:       Judge, I'm going to object to that  
5     question because we've had Mr. Scarpuzzi testify, who  
6     actually walked us through in detail about the decision  
7     to go back in the water, and he discussed going to the  
8     other parks.

9             There is no foundation that Mr. Rokeach had  
10    anything to do with that. In fact, his testimony is  
11    that he stayed at Loro Parque after that event.

12            JUDGE WELSCH:    Mr. Black, you need to lay a  
13    foundation.

14            MR. BLACK:        Certainly, Judge.

15            BY MR. BLACK:

16            Q.    As a trainer -- excuse me, as an assistant  
17    supervisor at Sea World of San Diego, do you have an  
18    understanding, a genesis, of how it came to be that  
19    events followed what happened at Loro Parque?

20            A.    That's a really broad question. I need  
21    something more specific.

22            Q.    Do you have some understanding?

23            A.    I understand that they did get back in the  
24    water, but I was not at all a party to any of those  
25    decisions.

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1 Q. And, they got back in the water at some point  
2 after December 24th?

3 A. At some point after Alexis, at some point, I  
4 don't know the time table, they did get back in the  
5 water, yes.

6 Q. And, they stayed in the water, whatever that  
7 point was, until two months later, Ms. Dawn Brancheau  
8 was killed at Sea World of Florida?

9 A. That is my understanding.

10 Q. And, they did that despite knowing that  
11 relatively commonplace and minor occurrences had caused  
12 the death of Alexis Martinez?

13 MS. GUNNIN: Judge, I'm going to object to  
14 that question because there is no foundation that Mr.  
15 Rokeach makes any decisions at Sea World of Florida.

16 JUDGE WELSCH: Sustained. I don't think he  
17 can answer that question.

18 Go ahead.

19 MR. BLACK: I'm not sure what was -- and this  
20 is my last question, but I'm not quite sure --

21 JUDGE WELSCH: The way I understood your  
22 question, you're asking about the motivation of Sea  
23 World corporation, what the motivation was as to whether  
24 or not to get back in the water.

25 MR. BLACK: I will ask it more carefully.

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1 JUDGE WELSCH: He's a trainer or a supervisor  
2 trainer or whatever. He doesn't make those decisions.

3 MR. BLACK: Let me ask it more carefully.

4 BY MR. BLACK:

5 Q. Whatever the basis for Sea World's decision  
6 to go back in the water prior to Ms. Brancheau's death,  
7 you understand that Sea World's evaluation was that  
8 relatively commonplace and minor occurrences caused that  
9 death of Mr. Martinez?

10 A. Our evaluation was there was a series of  
11 occurrences that accumulated that we think caused that  
12 issue.

13 Q. And, there were minor commonplace  
14 occurrences; would you agree with that? That was the  
15 evaluation that Sea World made?

16 A. Commonplace as in they occur. These are  
17 things that we saw that we noticed that combined  
18 together occurred, yes, that we have seen in the past  
19 that there's a history of.

20 Q. So, they were not things that had never  
21 occurred at Sea World Parks?

22 A. That's correct, they were not things that had  
23 never occurred.

24 MR. BLACK: I have no further questions.

25 JUDGE WELSCH: Ms. Gunnin?

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1 MS. GUNNIN: Yes, Your Honor. I think I may  
2 have some Cross, but how long are we going to be able to  
3 be in the courtroom?

4 JUDGE WELSCH: I think we need to leave by  
5 five. Is he available tomorrow morning?

6 MS. GUNNIN: Judge, he has a flight out at  
7 8:00 a.m. tomorrow. So, I don't really want to delay  
8 him to leave.

9 JUDGE WELSCH: Can he catch a little bit later  
10 flight? We could start at 8:00 in the morning.

11 MS. GUNNIN: I don't think that he can, Judge.

12 JUDGE WELSCH: How long is your questioning?

13 MR. BLACK: Judge, we made the reservations,  
14 Government reservations. I'm sure we can get him on a  
15 later flight.

16 JUDGE WELSCH: Do you know if there's a later  
17 flight to San Diego?

18 MR. BLACK: I can look it up, but what we  
19 certainly don't want to do is not finish with this  
20 witness and leave this witness.

21 JUDGE WELSCH: No, no, I'm not going to do that.

22 Do you have any problem if he takes a later flight  
23 tomorrow?

24 MS. GUNNIN: Judge, I would prefer to finish  
25 tonight if possible.

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1 JUDGE WELSCH: But, how long are your questions  
2 going to take?

3 MS. GUNNIN: Judge, we have no questions for  
4 this witness. We'll let him go back.

5 JUDGE WELSCH: You're excused. I will instruct  
6 you not to discuss your testimony with other persons who  
7 may be called later as witnesses in this case.

8 Thank you very much.

9 (Witness Excused)

10 JUDGE WELSCH: With that, we stand adjourned  
11 until 9:00 tomorrow morning.

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13 (Whereupon, the proceedings  
14 were adjourned at 4:50 p.m.)

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