

**IN THE DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA
SOUTHERN DIVISION**

A.I.C., a minor child, by and through)	
CHRISTOPHER CALLAGHAN and)	
CATHERINE CALLAGHAN, as)	
parents and natural guardians; and)	
CHRISTOPHER CALLAGHAN and)	No. 1:11-cv-162
CATHERINE CALLAGHAN,)	JURY DEMANDED
individually.)	
)	
Plaintiffs,)	
)	
v.)	
)	
TENNESSEE AQUARIUM,)	
)	
Defendant.)	

COMPLAINT

The Plaintiffs, for their cause of action against Defendants, state to the Court:

I. NATURE OF THE CLAIM

This is a claim for severe and permanent personal injury to a minor child which resulted from Defendant's ultra-hazardous and/or abnormally dangerous activities, premises liability failure to warn, and negligence.

II. PARTIES AND JURISDICTION

1. Plaintiff A.I.C. is a minor and in the care and custody of his parents and natural guardians, Plaintiffs Christopher Callaghan and Catherine Callaghan. Plaintiffs are all citizens of Cobb County, Georgia. Christopher and Catherine Callaghan are the parents and legal guardians of A.I.C., a minor.

2. Defendant Tennessee Aquarium is an active, nonprofit corporation registered with the State of Tennessee which owns and operates The Tennessee Aquarium in Chattanooga, Hamilton County, Tennessee. Service of process for Defendant Tennessee Aquarium may be served on its registered agent, Gordon A. Stalans, 201 Chestnut Street, Chattanooga, TN 37402.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

4. Venue is appropriate pursuant to 28 U.S.C. § 1391(a) as jurisdiction is founded on diversity of citizenship and a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of Tennessee, specifically in Chattanooga, Tennessee.

III. FACTS

5. Defendant Tennessee Aquarium operates a public aquarium (“the Aquarium”) located at One Broad Street, Chattanooga, TN 37402. Defendant charges an admission price to enter the Aquarium.

6. On or about November 13, 2010, Plaintiff A.I.C. and his parents, Plaintiffs Christopher and Catherine Callaghan, purchased tickets for admission into the Aquarium, thereby obtaining the status of business invitees and lawfully entering Defendant’s property.

7. While visiting the Aquarium, Plaintiff A.I.C. along with his parents, Plaintiffs Christopher and Catherine Callaghan, approached an exhibit which invites patrons of the Aquarium to insert their hands into water and touch several aquatic animals, including stingrays and sharks, swimming inside a container.

8. Plaintiff A.I.C. reached into the aquatic container and physically came into contact with aquatic animals within the container as aquatic animals swam by.

9. Within six days of his visit to the Aquarium, Plaintiff A.I.C. began experiencing pain localized to his right index finger. The pain increased in severity, and by the tenth day, the pain was excruciating and had spread to his entire right hand.

10. On November 23, 2010, Plaintiff A.I.C. visited Kennestone Hospital in Marietta, Georgia. Plaintiff A.I.C.'s pain was attributed to physical trauma to his right index finger, even though he had no recollection of such physical injury.

11. The next day, Plaintiff A.I.C.'s finger continued to swell and grow in size. Plaintiffs Christopher and Catherine Callaghan contacted Plaintiff A.I.C.'s primary care physician but were unable to obtain an appointment.

12. Plaintiff A.I.C.'s pain grew in magnitude until November 25, 2010, at which point he was taken by Plaintiffs Christopher and Catherine Callaghan to Hillside Hospital in Pulaski, Tennessee.

13. After attempting to diagnose and treat Plaintiff A.I.C., Hillside Hospital ordered an emergency transfer to Vanderbilt Children's Hospital in Nashville, Tennessee.

14. At Vanderbilt Children's Hospital, the Pediatric Infectious Disease Department diagnosed Plaintiff A.I.C. with a septic infection caused by the *erysipelothrix rhusiopathiae* bacteria. *Erysipelothrix rhusiopathiae* infections are otherwise known as "fish-handler's disease" and are common worldwide in industries which require workers to regularly handle fish. Plaintiff A.I.C.'s only contact with carriers of these bacteria within the timeframe of infection was at the Tennessee Aquarium.

15. Vanderbilt Children's Hospital treated Plaintiff A.I.C. by performing multiple surgeries and procedures, including several rounds of nail plate avulsion and tendon sheath incision of his right hand for debridement of suppurative tenosynovitis,

16. Throughout this period, the erysipelothrix rhusiopathiae infection continued to worsen and spread to the tendon sheath running the length of his right hand. Despite the aforementioned procedures, Plaintiff A.I.C.'s finger continued to swell, his nail bed turned dark blue, the skin on his right index finger turned necrotic, and he endured excruciating pain throughout his right hand, having to be put under anesthesia just to change the bandages.

17. Plaintiff A.I.C. was required to spend eleven days being treated at Vanderbilt Children's Hospital to control this systemic septic infection.

18. After being released, Plaintiff A.I.C. continued and still continues to suffer from pain and loss of mobility in his right index finger and right hand and has undergone extensive therapy in an attempt to return his right index finger and right hand to normal use and function. He continues treatment at present at Emory University Hospital in Atlanta.

IV. CAUSES OF ACTION

A. Premises Liability and Negligence

19. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows:

20. Defendant Tennessee Aquarium, as owner or occupier of the premises located at One Broad Street, Chattanooga, TN 37402, owed Plaintiff A.I.C. a duty to exercise reasonable care with regard to business invitees on the premises.

21. A dangerous and defective condition was created by Defendant Tennessee Aquarium. Specifically, Defendant created an exhibit which allowed patrons to touch aquatic animals, specifically stingrays and sharks. Defendant knew that these animals carried the bacteria erysipelothrix rhusiopathiae and failed to warn their invitees and Plaintiff A.I.C. of these hazards.

22. Alternatively, a dangerous and defective condition was created by the presence of the dangerous bacteria, *erysipelothrix rhusiopathiae*, and Defendant Tennessee Aquarium, as an entity familiar with the handling and management of marine life, had actual or constructive notice of the dangerous and defective condition. Defendant Tennessee Aquarium knew or should have known of this dangerous condition and negligently failed to warn the Plaintiff or his parents of the danger associated with contact with these aquatic animals.

23. Exposing patrons of the Aquarium to this dangerous and defective condition constitutes negligence by the Defendant Tennessee Aquarium which falls below the standard of care, and breaches Defendant Tennessee Aquarium's duty to business invitees, namely Plaintiff A.I.C. These negligent actions of the Aquarium were the direct and proximate cause of the minor Plaintiff's injuries.

24. Plaintiff A.I.C.'s exposure to the bacteria *erysipelothrix rhusiopathiae* from interacting with the dangerous and negligent condition created by or known to Defendant Tennessee Aquarium was the cause in fact and proximate cause of his severe and extensive injuries, resulting in extensive medical treatment.

25. Furthermore, Defendant was negligent in not providing adequate resources to its business invitees to allow them to prevent contracting this disease in the form of proper supervision and sanitation. This negligent conduct was the proximate cause of Plaintiff A.I.C.'s injuries and Plaintiff was injured accordingly.

B. Ultrahazardous and/or Abnormally Dangerous Activity

26. Plaintiffs hereby incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further allege as follows:

27. The aquatic-animal-petting exhibit operated by Defendant Tennessee Aquarium constitutes the harboring of a wild animal, aquatic animals carry bacteria harmful to humans. Defendant's actions in harboring these wild animals and allowing their business invitees to pet them constitutes an ultrahazardous and/or abnormally dangerous activity for which they are strictly liable for any injuries caused.

28. Alternatively, assuming arguendo that the aquatic animals in the aquatic-animal-petting exhibit are not wild animals, then the Defendant's actions in allowing patrons, and children in particular, to touch the skin of aquatic animals which carry a necrotic bacteria like *erysipelothrix rhusiopathiae* is an ultrahazardous and/or abnormally dangerous activity.

29. *Erysipelothrix rhusiopathiae* is a well-known danger for workers in fish-related injuries, a danger Defendant Tennessee Aquarium, as an operator of a public aquarium knew or should have known.

30. The injury that can be caused by *erysipelothrix rhusiopathiae* is severe and can lead to permanent injuries and/or death.

31. The risk of *erysipelothrix rhusiopathiae* cannot be eliminated using reasonable care.

32. Interacting with aquatic life is unfamiliar to the general public and carries risks which ordinary individuals would not be aware.

33. Defendant is strictly liable for all injuries caused to the minor Plaintiff as a result of this ultrahazardous and/or abnormally dangerous activity.

34. Defendant's acts in creating an exhibit and allowing business invitees to freely pet the aquatic animals constitute an ultrahazardous and/or abnormally dangerous activity that was

the sole proximate cause of the minor Plaintiff's injuries, as well as the injuries and losses suffered by these Plaintiffs.

35. Plaintiffs would show that as a result of the negligence of the Defendant Tennessee Aquarium in exposing this child to dangerous aquatic bacteria and as a result of this ultra-hazardous and/or abnormally dangerous activity, that minor Plaintiff A.I.C. has suffered severe and painful injuries to his body. These injuries have resulted in severe and prolonged pain, suffering, discomfort, multiple surgeries, medical expenses and the continued requirement to obtain medical care and treatment and remain under the care of medical professionals in an attempt to remove this septic infection.

36. The injuries Plaintiff A.I.C. has suffered are permanent in nature and he will continue to suffer in mind and body as a result. Additionally, Plaintiff A.I.C. suffers from disfigurement of his right finger and hand. He will continue to require the care of physicians, and he has incurred and will incur substantial medical expenses as a result of the negligence and ultrahazardous and/or abnormally dangerous activities of the Tennessee Aquarium.

37. Plaintiff A.I.C. has suffered a severe, painful and permanent injury and will continue to suffer a reduction in his productive capacity in the use of his right finger and hand as he ages. Plaintiff A.I.C. would show that he has sustained a reduction in the quality of his ability to earn a living and to enjoy life as a result of the negligence of the Tennessee Aquarium and the ultrahazardous and/or abnormally dangerous activity of the Tennessee Aquarium.

38. Christopher Callaghan and Catherine Callaghan, on the date of the accident and at all times material to this action, were and remain the parents and natural guardians of Plaintiff A.I.C. As a result of the negligence and the ultrahazardous and/or abnormally dangerous activities of the Tennessee Aquarium, Plaintiffs Christopher Callaghan and Catherine Callaghan

and Catherine Callaghan have lost the services of their minor child, A.I.C., and have become liable for medical expenses related to the care of A.I.C. for his injury.

39. Plaintiffs allege and would show that all losses, medical expenses and damages set forth in this Complaint are the direct, proximate and sole result of the negligence of the Defendants and/or of the ultrahazardous and/or abnormally dangerous activities of the Defendant and that Plaintiffs are without fault in this exposure to deadly and dangerous bacteria to the minor Plaintiff by the Tennessee Aquarium.

WHEREFORE, Plaintiff A.I.C., by and through his parents and natural guardians Christopher and Catherine Callaghan, and Christopher Callaghan and Catherine Callaghan individually sue Defendant Tennessee Aquarium for the sum of two million four hundred thousand dollars (\$2,400,000.00) for medical damages, pain and suffering, permanent impairment, permanent disfigurement, parental loss of consortium, post-judgment interest, attorney's fees, discretionary costs, court costs, and any and all other relief to which they may be entitled or this Court deems proper. Plaintiffs further demand that a jury of their peers be seated for trial of this action.

Respectfully submitted this 20th day of June, 2011.

PAINE, TARWATER, AND BICKERS, LLP

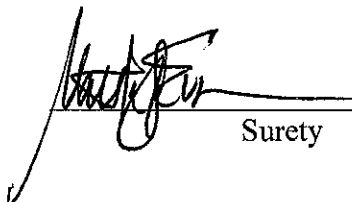
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COST BOND

We acknowledge ourselves as surety for costs in this cause in accordance with
Tenn. Code Ann. § 20-12-120.

Paine, Tarwater, and Bickers, LLP



Surety