

JURY

DC-22-01547

CAUSE NO. _____

<p>SAMANTHA JORGENSEN ON BEHALF OF I.J., A MINOR Plaintiff,</p>	<p>§ § § § § § § § § §</p>	<p>IN THE DISTRICT COURT OF</p> <p>DALLAS COUNTY, TEXAS</p> <p>193rd JUDICIAL DISTRICT</p>
<p>VS.</p>		
<p>THE DALLAS WORLD AQUARIUM CORPORATION Defendant.</p>		

PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiff SAMANTHA JORGENSEN ON BEHALF OF I.J., A MINOR complaining of the Defendant listed below and for cause of action would show the Court and Jury as follows:

**I.
DISCOVERY CONTROL PLAN AND RELIEF**

1. Pursuant to T.R.C.P. 190.1 Discovery will be conducted under Level 3 (T.R.C.P. 190.3).
2. The damages Plaintiff seeks are within the jurisdictional limits of this court. As required by Texas Rule of Civil Procedure 47(c), Plaintiff states that they seek monetary relief over \$250,000 but not more than \$1,000,000 for the injuries alleged in this Petition. Plaintiff further seeks any relief in equity to which they are justly entitled.

**II.
PARTIES**

3. Plaintiff **SAMANTHA JORGENSEN** is an individual and resides in Fort Worth, Tarrant County, Texas. Ms. Jorgensen brings this action on behalf of **I.J.**, her minor child who, at all times relevant, has resided with her at the above location. As the biological mother and custodial parent of I.J., Ms. Jorgensen has the authority and capacity to bring this action.

4. Defendant **THE DALLAS WORLD AQUARIUM CORPORATION** is a Texas corporation with its principal place of business in Dallas, Texas, and may be served through its registered agent for service of process, John W Lilley III at 3006 Cole Ave, Dallas, TX 75204.

III.
VENUE AND JURISDICTION

5. Both jurisdiction and venue are proper in Dallas County, Texas pursuant to the Texas Civil Practice and Remedies Code. Venue is proper in this case in Dallas County as all or part of the cause of action that is the basis for this lawsuit occurred in Dallas County. Further, the Defendant named herein is a Texas Corporation with a principal office in Dallas County, Texas. Further, all claims or actions against all Defendant arose out of the same series of transactions or occurrences resulting in Plaintiff's damages, and occurred in Dallas County.

6. The amount in controversy is over \$250,000 but not more than \$1,000,000 for and is within the jurisdictional limits of this court.

IV.
FACTUAL SUMMARY

a. Two-Year-Old I.J. Suffered a Vicious Attack at the Dallas World Aquarium.

7. On September 2, 2019, a family's trip to the Dallas World Aquarium ("DWA") took a dangerous turn when a Giant Otter at the DWA's Giant Otter exhibit brutally attacked two-year-old I.J. The attack left the little girl with permanent scarring.



8. Immediately upon being attacked, I.J. began screaming and bleeding profusely. Mr. Jorgensen lowered his daughter from his shoulders and he and his wife began shouldering their way through the crowd as quickly as they could so that they could better assess their daughter's injuries.

9. The Jorgensen's eventually ended up in a DWA office where an on-site medic came and rendered some basic first aid.

10. Once the blood was cleaned, I.J.'s injuries were obvious: **the DWA's Giant Otter bit the little girl, cutting her right middle and ring fingers, pulling the middle fingernail clean off.**

11. Shortly after their horrific DWA visit, Ms. Jorgensen took I.J. to her pediatrician. Her doctor looked at the injuries and, having significant concern that I.J.'s wound would become infected due to the bacteria within the Giant Otter's mouth, prescribed a powerful antibiotic as a preventative

measure.

b. The Jorgensen's Visit to Defendant' Giant Otter Exhibit.

12. On September 2, 2019, Ms. Jorgensen and her husband, Harlow Jorgensen, took their young daughter to the DWA.

13. The facility was completely full that day; people were lined up shoulder to shoulder on all of the walkways.

14. To better keep track of their young daughter—and so that she could better enjoy the sights the DWA had to offer—Mr. Jorgensen hoisted his little girl up onto his shoulders.

15. The family walked through the aquarium and soon made their way to the Giant Otter Exhibit. Visitors to the Giant Otter Exhibit can approach from both directions on a walkway stationed directly in front of a plexiglass wall that is approximately five and a half feet tall. Behind the plexiglass is the Giant Otter's home – a spacious cave-like atmosphere with a large body of water at the bottom.



Photo taken from walkway above the Giant Otter exhibit looking down into the exhibit. From this angle, the Jorgensens were standing approximately where the unidentified individuals in the yellow and blue shirts in the photograph are standing. Taken on October 14, 2021.



Panoramic photograph of the Giant Otter Exhibit. The exhibit stretches approximately 20 feet wide. Taken on October 14, 2021. The panoramic nature of the photograph creates the appearance of a sharper curvature.

16. When Ms. Jorgensen and her family approached the Giant Otter Exhibit, they walked past these branches and to approximately the right, middle of the exhibit and were standing approximately here at the time the otter attacked I.J.:



17. At the time of the attack, I.J.'s was still hoisted atop Mr. Jorgensen's shoulders. Mr. Jorgensen stands at approximately six feet and three inches tall.

18. As seen in the above photographs, the DWA's exhibit does not have a caution line or other safety measure to keep visitors from standing too close to the plexiglass. The DWA's exhibit does not have any signage warning visitors not to get too close to the plexiglass. The DWA does not provide written materials to visitors advising them not to get too close to the plexiglass at the Giant Otter Exhibit.

19. On the top right corner of the Giant Otter Exhibit, a tree and branches stretch down into the walkway, requiring visitors to tangle with branches and limbs to stand there.

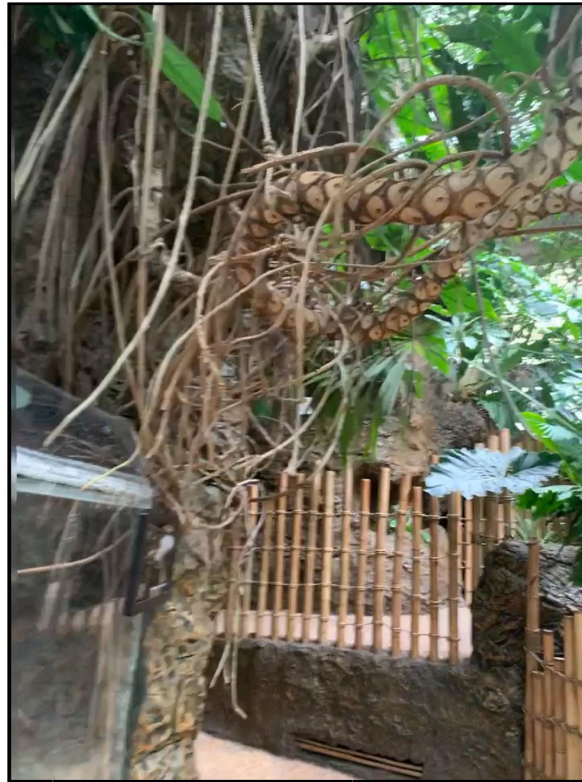


*Photograph of the tree limbs and branches hanging into the walkway on the exhibit's right side.
Taken on October 14, 2021.*

20. The right side of the exhibit also contains a plexiglass extender, providing an additional layer of coverage that stands approximately eight inches tall and approximately two feet wide.

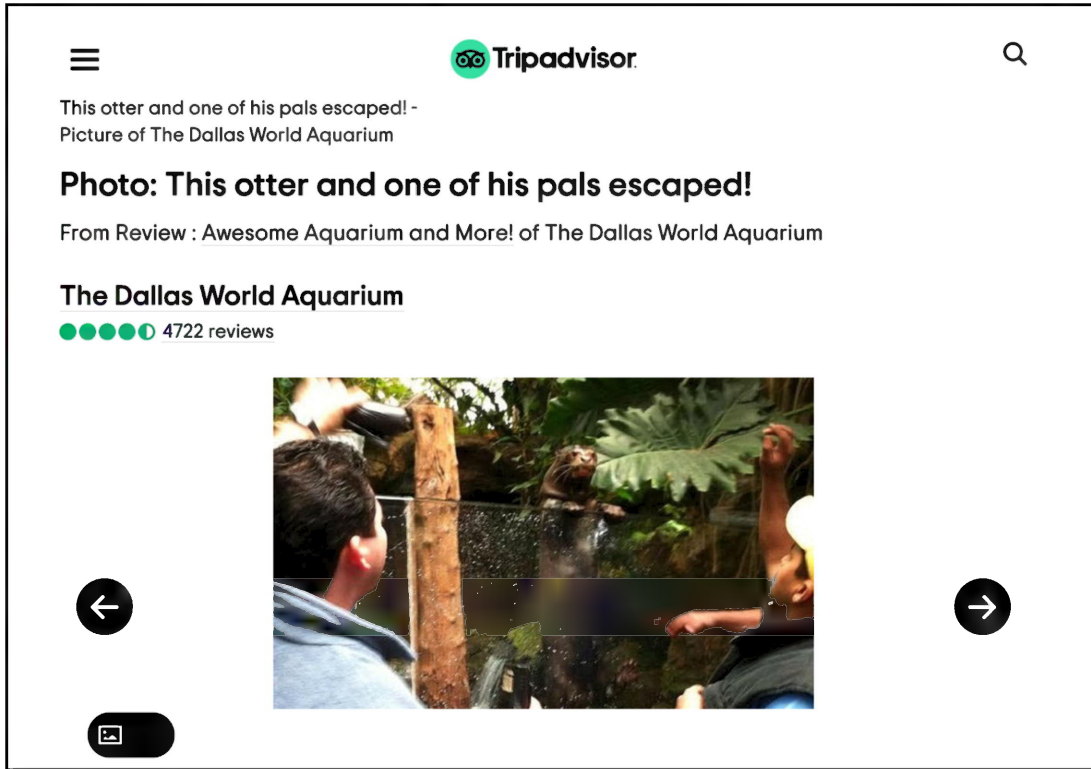
21. As of at least October 14, 2021, the top far corners of the exhibit sit two screens approximately the size of a small iPad. These screens display videos of Giant Otters swimming and playing underwater. At the bottom of each of these small screens is a scrolling ticker approximately one inch tall. The scrolling language reads: BE AWARE: GIANT OTTERS ARE ACTIVE

ANIMALS AND CAN INJURE YOU.

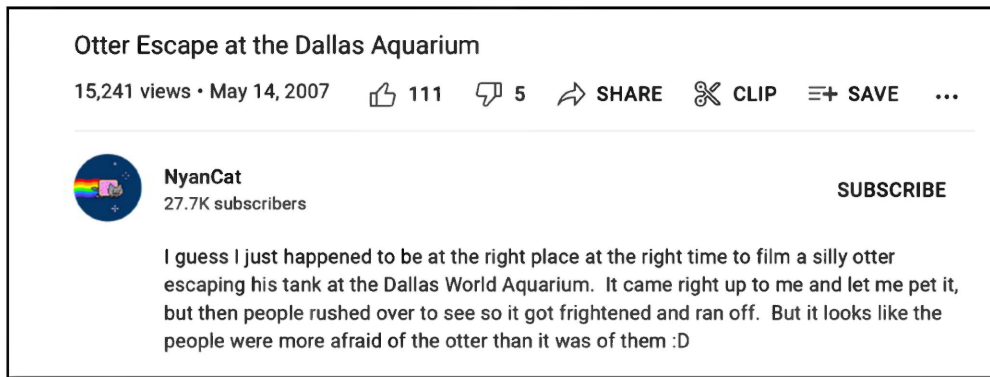


Photograph of the tree limbs and branches hanging into the walkway on the Exhibits' right side, partially obscuring the small screen in the top right corner. Taken on October 14, 2021.

22. These screens were not present on the day of I.J.'s attack.
23. The Dallas World Aquarium provided no information regarding the animals' potentially aggressive behaviors. Nothing on the DWA's website, informational pamphlets, or animal information screens advise visitors that the otters can be aggressive, can leap several feet out of the water, can reach over the exhibit, and can cause significant infections and injuries.
24. Importantly, the attack on I.J. is not the first time the Giant Otters have reached over their exhibit. On at least two prior occasions, these Giant Otters have escaped their enclosure:



*According to this reviewer, this photograph was taken in **October 2013**. Visible in this photograph is a giant otter that has climbed to the top of the exhibit's plexiglass and is within reach of two visitors.*



*A **May 2007** video available on YouTube captured a Giant Otter escape, The approximately four-minute video shows DWA employees trying to catch the escaped Giant Otters as they ran around the building. The video is available at <https://www.youtube.com/watch?v=CUxDSyeb6Vk>.*

25. Defendant did nothing with over 15 years' worth of knowledge these Giant Otters' ability to escape their enclosure. Though Defendant certainly had the capability of enclosing the Giant

Otters' exhibit, the Defendant declined to do so, leaving unsuspecting visitors, like Plaintiff, accessible to these dangerous creatures.

c. Giant Otters—“El Lobo De Rio”—The Wolf of the River

26. As one of the top predators in the South American aquatic ecosystem, Giant Otters are also known as “Lobo Del Rio,” Spanish for “wolf of the river” or “river wolf.”

27. These carnivorous mammals grow to be much larger than your standard otter, with males averaging between five and six feet long and weight 55-70 pounds on average and females coming in just under those numbers.

28. Its webbed feet are tipped with sharp claws—claws Plaintiff knows are sharp enough to rip through human skin like paper.



Giant Otter photograph from National Geographic, available at <https://www.nationalgeographic.com/animals/mammals/facts/giant-otter> (last visited Oct. 15, 2021).



Giant Otter photograph from The Guardian, available at <https://www.theguardian.com/environment/2021/may/25/a-huge-surprise-as-giant-river-otter-feared-extinct-in-argentina-pops-up-aoe> (last visited Oct. 15, 2021).

d. Prior to Housing the River Wolves, the Exhibit Was Fully Enclosed for Jaguars.

29. According to a 2007 interview with the DWA's otter keeper, Natalie Lindholm, the DWA added the River Wolves in approximately 2005. Prior to housing the River Wolves, the exhibit housed jaguars who were, of course, fully enclosed behind acrylic panels:

Q: How long have you had the exhibit, Lobo Del Rio, at the Dallas World Aquarium?
A: Lobo Del Rio has been in existence for approximately 8 years (original interview conducted in 2007; existence dates were updated to post here). It was previously the Jaguar exhibit, which, of course, had panes of acrylic completely enclosing the exhibit at that time.

The interview and article are available at <http://otter-news.blogspot.com/2013/04/dallas-world-aquarium-giant-otters.html> (last visited Oct. 15, 2021).

30. Had the DWA never removed the “panes of acrylic completely enclosing the exhibit,” or, alternatively, added those panes in 2007 after the River Wolves escaped, or in 2013 when the River Wolves escaped again, the mammals never would have had access to unsuspecting DWA visitors like Plaintiff and her two-year-old daughter.

31. As of the date of this filing, the DWA, though aware of the Giant Otter attack on I.J., has still failed to fully enclose the exhibit.

V. CAUSES OF ACTION

A. Count 1: Strict Liability—Wild Animal

32. Plaintiff hereby incorporates all preceding paragraphs and further alleges as follows.

33. Defendant reduced Giant Otters (aka Lobo del Rio), a nonindigenous wild animal, to Defendant’ possession and control.

34. Defendant introduced the Giant Otters into their premises at the Dallas World Aquarium and housed them in a partially enclosed habitat from which the mammals could (and did) escape and could (and did) reach, touch, and injure Defendant’ invitees.

35. The Giant Otters had dangerous propensities, including sharp, dangerous claws and aggressive, violent behaviors.

36. The Giant Otter’s dangerous propensities were the producing cause of injuries to minor I.J., as described in detail herein.

B. Count 2: Premises Liability

37. Plaintiff hereby incorporates all preceding paragraphs and further alleges as follows.

38. At all relevant times, Defendant was the owner and possessor of the Dallas World Aquarium premises.

39. At the time in question, Plaintiff entered the premises in question as a guest of the Defendant and was thus an “invitee” to whom Defendant owed a duty to exercise ordinary care,

including the duty to discover any unreasonably dangerous conditions existing on the premises, the duty to warn Plaintiff of the existence of such dangerous conditions, and the duty to make the premises safe for use by Plaintiff.

40. A condition on the Defendant's premises posed an unreasonable risk of harm to Plaintiff. Specifically, the unreasonably dangerous, unenclosed Giant Otter exhibit.

41. Defendant either knew, or in the exercise of ordinary care should have known, that the hazard presented posed an unreasonable risk of harm to users of the premises.

42. Defendant had a duty to exercise ordinary care to discover this dangerous condition of the premises, and to make the premises safe for reasonable use by Plaintiff and other invitees of Defendant. This duty includes the duty to inspect and the duty to warn or to cure. Defendant breached their duty of ordinary care in at least the following ways:

- i. Failing to provide adequate and reasonable safeguards at the Giant Otter Exhibit;
- ii. Failing to entirely enclose the Giant Otter Exhibit;
- iii. Failing to raise the acrylic barrier to a proper height;
- iv. Failing to provide adequate warnings of the Giant Otter's ability to reach over the acrylic barrier;
- v. Failing to warn invitees to stay back a safe distance from the acrylic barrier;
- vi. Failing to warn invitees to keep children away from the acrylic barrier;
- vii. Creating a condition on Defendant's premises that posed an unreasonable risk of harm to individuals such as Plaintiff; and
- viii. Failing to make a safe condition on Defendant's premises which Defendant knew, or in the exercise of ordinary care should have known, posed an unreasonable risk of harm to individuals such as Plaintiff.

43. Such indifference and failure to act on the part of Defendant proximately caused the injuries and other damages suffered by Plaintiff as further detailed below.

C. Count 3: Negligence / Negligent Handling of an Animal

44. Plaintiff hereby incorporates all preceding paragraphs and further alleges as follows.

45. Whenever in this Petition it is alleged that Defendant did any act or thing, it is meant that each of Defendant' officers, agents, servants, employees, or representatives did such act and/or that at the time such act was done, it was done with the full authorization or ratification of the defendant or was done in the normal and routine course and scope of employment of each of defendant's officers, agents, servants, employees, or representatives.

46. At all relevant times, Defendant owned and possessed Giant Otters. The Giant Otters had dangerous propensities, including sharp, dangerous claws and aggressive, violent behaviors.

47. Defendant had a duty to exercise reasonable care to prevent the Giant Otters from injuring others.

48. Defendant breached this duty of care in at least the following ways:

- i. Negligently handling the Giant Otters, knowing the mammal's dangerous propensities;
- ii. Failing to properly enclose the Giant Otters to prevent them from having access to visitors;
- iii. Failing to provide adequate and reasonable safeguards at the Giant Otter Exhibit;
- iv. Failing to entirely enclose the Giant Otter Exhibit;
- v. Failing to raise the acrylic barrier to a proper height;
- vi. Failing to provide adequate warnings of the Giant Otter's ability to reach over the acrylic barrier;

- vii. Failing to warn invitees to stay back a safe distance from the acrylic barrier;
and
- viii. Failing to warn invitees to keep children away from the acrylic barrier.

49. Defendant's breach of the applicable duty of care proximately caused injury to minor I.J., which resulted in the injuries and damages discussed herein.

D. Count 4: Gross Negligence

50. Plaintiff incorporates by reference the facts and allegations asserted above regarding Defendant's negligence.

51. Each and all of the foregoing negligent acts and omissions, taken singularly or in combination, constitute grossly negligent conduct on the part of Defendant in that such conduct, when viewed objectively from the standpoint of Defendant at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others and of which Defendant had actual, subjective awareness of risk involved, yet nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Plaintiff.

VI.
DAMAGES

52. Plaintiff sustained personal injuries and damages proximately caused by the negligence of Defendant, as set forth above, including but not limited to:

- a) Physical Pain and Suffering: Plaintiff I.J. has endured severe physical pain and suffering in the past.
- b) Mental Anguish: Plaintiffs I.J., has endured severe mental anguish in the past and will continue to endure severe mental anguish in the future.
- c) Permanent Disfigurement: Plaintiff I.J. has suffered permanent, physical disfigurement in the past and will continue to suffer physical impairment in the future; and
- d) Plaintiff seeks exemplary damages based on Defendant's gross negligence.
- e) Plaintiff also claims both pre-judgment and post-judgment interest.

- f) As a result of the above, Plaintiff seeks damages within the jurisdictional limits of the Court for which she seeks recovery from Defendant, Plaintiff states for notice purposes that by this pleading she is claiming any and all damages to which she is entitled under Texas law.

**VII.
SPOILIATION OF DOCUMENTS & EVIDENCE**

53. Defendant is hereby given notice that any document or other material, including electronically stored information and physical evidence, that may be relevant to any issue in this case is to be preserved in its present form until this litigation is concluded. Plaintiff alleges that to the extent Defendant has intentionally and/or negligently destroyed documents and other evidence pertinent to this case, Plaintiff requests the Court issue proper sanctions, including an instruction to the jury presuming all things are against the Defendant.

**VIII.
DEMAND FOR JURY TRIAL**

54. Plaintiff hereby demands that a jury of her peers be empaneled to hear and decide the issues presented in this case.

Dated: February 7, 2022

Respectfully submitted,

/s/ Amy Carter
Amy Carter
State Bar No. 24004580
Heather V. Davis
State Bar No. 24092324
CARTER LAW GROUP, P.C.
5473 Blair Road
Suite 106
Dallas, TX 75231
Telephone: (214) 390-4173
hdavis@clgtrial.com
amy@clgtrial.com