

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT  
CIVIL ACTION NO. 21-2246 F

KARSON BETHAY and HOLLY BETHAY,  
Individually and as the Parents and Guardians of  
SAVANNAHA BETHAY and KARSON BETHAY, JR.,  
Plaintiffs,

E-FILED 9/30/2021

v.

KONE, INC., MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY and JOHN DOE,  
Defendants.

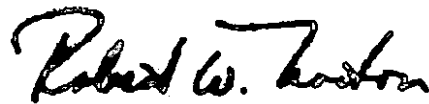
AFFIDAVIT OF COUNSEL SUBMITTED IN SUPPORT  
OF ISSUANCE OF TEMPORARY RESTRAINING ORDER

Now come counsel for the plaintiffs, and first being duly sworn, hereby depose and say as follows:

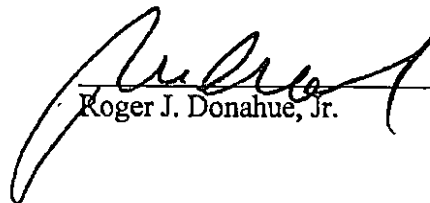
1. We, Robert W. Norton and Roger J. Donahue, Jr., are duly licensed to practice law within the Commonwealth of Massachusetts.
2. We are co-counsel for the plaintiffs, Karson and Holly Bethay, in the above-captioned civil action.
3. On September 26, 2021, the plaintiffs were visiting Boston with their two minor children, Savannah and Karson Bethay, Jr.
4. The Bethay family attended a football game between the New England Patriots and New Orleans Saints that afternoon then returned back to Boston's Back Bay Station by train.
5. Counsel has been informed that after disembarking the train at Back Bay Station, the Bethay family used an escalator to ascend to the street-level of the transportation terminal from the underground train platform.
6. The escalator malfunctioned while the Bethay family was using the escalator causing all the steps or treads of the escalator to rapidly reverse direction causing them, and numerous other passengers, to slide and fall down to the bottom of the escalator.

7. The Bethay family sustained multiple injuries as a result of the escalator's malfunction and failure, including multiple fractures of the upper and lower extremities; extensive facial, scalp, head and body lacerations and other injuries.
8. The Bethay family was transported to the Massachusetts General Hospital where they were admitted on an inpatient basis.
9. Counsel's ongoing investigation has revealed that the subject escalator is in the possession, custody and control of the Massachusetts Bay Transportation Authority. Further, its vendor, Kone, Inc., or its parent, subsidiary, affiliated or related entities, remains under contract to service, test and maintain the escalator.
10. Plaintiff's counsel has retained an expert to inspect, examine and test the escalator involved in the incident, review the service and maintenance records applicable to the escalator and offer his opinions, in part, as to the cause of the escalator malfunction and failure at the time of the incident and to assess whether the defendant, Kone, Inc., complied with their obligations under the applicable codes and exercised the requisite care relative to the preventative maintenance and the servicing of the escalator.
11. In order to formulate his opinions, the expert needs to inspect, examine and test the escalator and its parts *before* post-incident repairs are made to the escalator; observe the testing and repair of the escalator by or on behalf of the defendants in this action; to review the records pertaining to the servicing testing and repair of the escalator before and after the incident; and to view the surveillance and video recordings showing the incident and its aftermath.
12. Plaintiff's counsel also seeks to preserve the parts of the escalator that failed at the time of the incident; the service, testing and maintenance records before and after the incident; and the surveillance and video recordings showing the incident and its aftermath for use during pretrial discovery and trial.
13. Since the escalator is in the exclusive control of the Department of Transportation and/or Massachusetts Bay Transportation Authority and the defendant, Kone, Inc., is still under contract to service, test and maintain the escalator, a significant risk exists that the evidence may be, either intentionally or unintentionally, lost, tampered with, altered or destroyed.
14. Further, any inability on the part of the plaintiff's expert to inspect, examine and test the escalator and its component parts before it is repair provides an unfair advantage to the defendants, their experts, investigators, consultants, employees and representatives, who have unrestricted and unsupervised access to the above-described evidence.
15. As a result of the foregoing, counsel moves for the issuance of the subject Ex Parte Motion for the Issuance of a Temporary Restraining Order and incorporates by reference the grounds set forth within the motion for issuance of the Order.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 30<sup>th</sup> DAY OF  
SEPTEMBER 2021.



Robert W. Norton



Roger J. Donahue, Jr.