

and the stationary wall of the escalator and were sucked into the escalator down to the palm of her hand.

2. To her parents' horror, A.W. could not get her hand out of the moving escalator as she continued toward the bottom despite her parents' desperate attempts to remove her hand. The escalator's skirt safety switches that should have stopped the escalator automatically when her hand got stuck on the side were inoperable due to TKE and HEB's failure to maintain, monitor, and keep the escalator in a safe operating condition per its intended design. Horrifically, A.W.'s fingers were eventually amputated by the escalator freeing the remainder of her hand. A.W. and her family were faced with the shock that she had lost her four fingers on her dominant hand when only moments before she had no care in the world. Despite the doctors' best efforts, they were unable to reattach A.W.'s fingers resulting in her being left with only her thumb on her right hand.

3. TKE and HEB's failures are numerous and allowed the escalator to pose an unreasonable danger to A.W. and her family. These failures include the significant gap between the skirt and the step, broken comb teeth at the bottom of the escalator, incorrect comb plates at the bottom of the escalator, and the inoperable skirt switches which would have stopped the escalator as soon as A.W.'s fingers got caught instead of allowing them to be sucked in further and to be cut off. Because of these dangers and the lack of maintenance, monitoring, and training on these hazards, TKE and HEB are liable for A.W.'s life altering injuries. To make matters worse, TKE and HEB failed to preserve the evidence and keep the escalator out of service as required by law until the TDLR could investigate the issue. Ultimately, this has led to a destruction of evidence to hide their liability.

4. What began as an innocent trip to the store with her family, ended with a traumatic and catastrophic loss of A.W.'s four fingers on her dominant hand. A.W. now must live with these

issues due to the negligence and reckless conduct of Defendants. Plaintiffs bring these claims to get justice for A.W. and to provide her some hope for the future.

II. DISCOVERY CONTROL PLAN

5. Plaintiffs request that discovery be conducted under Level 3 of Texas Rule of Civil Procedure 190.3. Further, Plaintiff pleads that this suit is not governed by the expedited actions process in Texas Rule of Civil Procedure 169, as Plaintiff seeks monetary relief over \$1,000,000.00.

III. PARTIES

6. Plaintiff Alake Williams is the biological mother and next friend of A.W., a minor, and is an individual residing in Memphis, Tennessee.

7. Plaintiff Carnell Williams is the biological father and next friend of A.W., a minor, and is an individual residing in Memphis, Tennessee. A.W. resides with both Mr. Williams and Ms. Williams in Memphis, Tennessee.

8. Defendant TK Elevator Corporation is a Delaware corporation with its principal place of business at 788 Circle 75 Pkwy. SE, Suite 500, Atlanta, Georgia 30339. TKE may be served with process by serving its registered agent Prentice Hall Corporation SY, at 211 E 7th Street, Suite 620, Austin, Texas 78701. TKE does business throughout Texas, and its location at 1101 Brooklet Drive, Suite 340, Houston, Texas 77099 served this specific HEB location.

9. Defendant H-E-B, LP which was formerly HEB Grocery Company, is a Texas company with its principal place of business at 646 South Flores St., San Antonio, Texas 78204. HEB owned and operated the location where A.W. was injured at 5106 Bissonnet Street, Bellaire, Texas 77401. HEB may be served with process by serving its registered agent Abel Martinez, at 646 South Flores St., San Antonio, Texas 78204.

IV. CLAIM FOR RELIEF

10. Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs are required to make an affirmative statement of the monetary relief sought in this case. The damages sought herein are within the jurisdictional limits of this Court. *See* TEX. R. CIV. P. 47(b). Although the damages Plaintiffs suffered are incalculable for the loss of A.W.'s four fingers on her dominant hand, Plaintiffs states that they seek monetary relief over \$1,000,000.00. *See* TEX. R. CIV. P. 47(c)(4). The amount of monetary relief, however, will be ultimately determined by a jury. Additionally, Plaintiffs seek pre-judgment and post-judgment interest at the highest legal rate, costs of court, and for such other and further relief, whether at law or in equity, to which Plaintiffs may be justly entitled.

V. VENUE

11. Venue is proper in Harris County, Texas, under Texas Civil Practice & Remedies Code § 15.002, because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Harris County. *See* TEX. CIV. PRAC. & REM. CODE § 15.002.

VI. FACTS

12. On March 30, 2024, Ms. Williams, Mr. Williams, A.W. (3 years old), and other members of their family were at the HEB store located at 5106 Bissonnet St., Bellaire, Texas 77401, shopping for groceries and other essentials. Unbeknownst to them, this visit would forever change their lives through a tragic and traumatic injury to A.W.

13. This store is unique because it is located on the second floor of a building with a parking garage and other items below the building. To get to and from the first floor, shoppers can take an escalator, stairs, or an elevator. The most common way to get from the store to the first floor after shopping is to take the escalator that has an adjoining shopping cart escalator for getting

their carts to the first floor as well. The passenger escalator is very narrow and at the time leading up to this incident, had not been adequately maintained. Because of the slow speed of the elevator, shoppers are encouraged to take the escalator since they either have a cart or have their hands full with several bags of groceries.

14. On the fateful afternoon, Ms. Williams, Mr. Williams, and A.W. took the escalator down after shopping to return to their car. A.W. was standing between Ms. Williams and Mr. Williams and was holding onto the side railing most of the way down.

15. When A.W. got near the bottom of the escalator, A.W. fell and placed her hands down on the escalator step to try to keep her balance before being carried to the end. Tragically, the escalator was not properly maintained and contained an extremely dangerous condition with the gap between the step and the skirt of the escalator being larger than allowed. The gap was large enough that A.W.'s fingers on her right hand (excluding her thumb) were sucked into the gap and pulled her fingers all the way down to the palm of her hand.

16. Her parents immediately tried to rescue her and get her out of the moving escalator. Her fingers were fully enveloped between the skirt and the wall of the escalator preventing her from getting released immediately. Instead, as her parents tried to get her hand out of the escalator, her hand remained in the escalator while her parents were trying to carry her to safety. Horrifically, A.W.'s four fingers were torn off and fell into the bottom of the escalator. Her parents had to deal with this sight of their little girl's fingers gone and her hand bleeding profusely.

17. Although the EMTs were able to retrieve A.W.'s fingers, the injuries were so severe that the doctors were unable to reattach the fingers. Now A.W. must live the remainder of her life without her four main fingers on her dominant hand. These injuries have forever altered her life.

18. The escalator was on the property and under the control of HEB. The escalator was manufactured, monitored, and maintained additionally by TKE. The escalator posed a threat of severe danger to customers in the HEB. In addition to the large gap in the side of the escalator, the escalator's skirt switches which are supposed to stop the escalator from moving once they sense an obstruction between the step and the skirt were inoperable on the day of the incident which caused the escalator to continue moving, slicing A.W.'s fingers, instead of causing the escalator to immediately stop. In addition, the escalator was severely undermaintained, and contained the inappropriate comb plates at the end of the escalator which were also missing comb teeth and were compacted with debris. These issues placed the escalator in an unreasonably dangerous condition which ultimately caused A.W.'s injuries. Both HEB and TKE knew or should have known of these conditions and owed nondelegable duties to Plaintiffs to keep and maintain the escalator in a reasonably safe condition.

19. To make matters worse, HEB and TKE intentionally failed to report this incident to the Texas Department of Licensing and Regulation (TDLR) as required by law. Instead, both companies immediately placed the escalator back in service within a few minutes of the incident, conducted undocumented repairs, took possession of evidence, and conducted numerous inspections and replacements prior to reporting the issues to TDLR. Each of these actions spoliated evidence and violated the law despite clearly knowing the statutory requirements for Texas.

20. Because Defendants' actions and inactions caused A.W.'s life-altering injuries, Plaintiffs bring this lawsuit to get justice for themselves and their daughter.

VII. CAUSES OF ACTION

21. Plaintiff re-alleges and incorporates the facts and allegations set forth above as if fully set forth herein.

A. Count 1: Premises Liability
(Against All Defendants)

22. Defendant HEB had a nondelegable duty to maintain their premises free from any unreasonably dangerous conditions. This nondelegable duty includes maintaining the escalator (a known dangerous passenger carrier) in a reasonably safe condition for their customers. This duty also includes the duty to inspect and the duty to warn and cure.

23. Defendant TKE also had a duty to maintain the escalator in a reasonably safe condition because TKE also had control of the escalator. This duty also includes the duty to inspect and the duty to warn and cure. TKE also had the duty to fix dangerous conditions it created.

24. Defendants owed these duties to Plaintiffs as they were business invitees.

25. Defendants knew or should have known of the dangerous conditions posed by the escalator including but not limited to the broken and incorrect comb plates, the gaps between the skirt and the steps of the escalator, the inoperable skirt switches, and the incorrectly maintained escalator. Each of these issues posed a threat of serious physical harm to Defendants' invitees. Defendants breached their duties by permitting these dangerous conditions to exist on the property. The injuries suffered by A.W. with the tearing off of her finger by the escalator could not have occurred if the escalator had been properly maintained and had the proper gap between the step and the skirt and if the skirt shut off switches were in operation. The escalator was within the exclusive management and control of Defendants.

26. Each of such acts and omissions, singularly or in combination with others, constituted negligence and negligence per se which proximately caused the injuries and damages to Plaintiffs.

27. Defendants' actions and omissions which led to the dangerous conditions violated industry standards, rules and regulations, and state statutes which adopted industry standards that

governed the safety of escalators. Plaintiffs were within the class of persons that each of the statutes and ordinances were intended to protect and were harmed by Defendants' violations of those statutes rules and regulations which is negligence per se.

**B. Count 2: Negligence: Negligent Maintenance, Monitoring, Training, Hiring, Retention, Supervision, Failure to Control, and/or Assumed Duty
(Against All Defendants)**

28. Defendants owed a duty of care to Plaintiffs to properly monitor and maintain the escalators in accordance with industry standards. Defendants also owed a duty of care to Plaintiffs to employ reasonably competent employees to maintain and monitor the escalator and to train them on how to properly monitor and maintain the escalator.

29. Defendants breached these duties by negligently maintaining and monitoring the escalator. HEB specifically failed to monitor the gaps and condition of the escalator which they saw and used on a daily basis. If HEB had properly monitored the escalator and monitored the performance of TKE to assure the escalator had been properly maintained, they would have noticed the gaps, missing comb teeth, and the lack of maintenance on the escalator which would have allowed them to put it out of service until these issues were resolved. HEB violated Texas Health and Safety Code § 754.019(a)(5) by failing to maintain the escalator equipment in compliance with the standards and codes adopted by the state.

30. HEB also breached these duties by negligently hiring managers and supervisors of the HEB store who were not trained on proper monitoring of escalators, proper escalator shut off procedures, or on the rules applicable to incidents involving escalators. HEB failed to train their employees, managers, and supervisors on how to monitor escalators for dangers, how to shut down escalators that are involved in incidents, how to preserve evidence, and how to respond to incidents in accordance with the law.

31. TKE breached these duties by negligently maintaining and monitoring the escalator. TKE's employees failed to identify the issues with the escalator and maintain it to eliminate the dangerous conditions with the escalator including identifying the gaps in the side of the escalator, identifying that the skirt switches/sensors were inoperable, and failing to identify that the comb plates were incorrect and intentionally breaking off comb plate teeth creating a danger to the public. TKE also failed to train and monitor their employees and hire competent employees who understood industry and state requirements, proper maintenance and monitoring practices, and proper practices and items to use on the escalator and how to respond to escalator incidents in accordance with the law. TKE violated Texas Administrative Code § 74.72 by testing and working on the escalator after an incident without preserving the information and without the presence of a proper inspector.

32. Defendants also committed other negligent acts and omissions to be identified as discovery is conducted.

33. Each of the above acts and omissions, singularly or in any combination, amount to negligence and/or negligence per se, and were a proximate cause of the incident involving Plaintiffs made the basis of this suit and their injuries and damages.

C. Count 3: Bystander Recovery
(Against All Defendants)

34. The negligent and grossly negligent acts mentioned above by Defendants directly and proximately caused Ms. Williams and Mr. Williams mental harm and emotional distress as a bystander to the incident causing the deforming and grotesque injuries to their daughter, A.W.

35. Ms. Williams and Mr. Williams are closely related to A.W. as they are her parents who live in the same house and spend significant time together as parents should.

36. Both Ms. Williams and Mr. Williams saw the events that led to A.W.'s injuries and held her hands after they were mutilated by Defendants' dangerous escalator.

37. Ms. Williams and Mr. Williams' witnessing of these tragic events caused them to suffer significant shock that has caused them direct emotional impact from these events. Both of them continue to suffered severe mental harm from these conscience shocking events.

D. Count 4: Gross Negligence
(Against All Defendants)

38. Defendants' acts and/or omissions as set forth above, when viewed objectively at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of potential harm to others. Defendants' acts were gross and reckless actions that disregarded the safety and well-being of A.W. Defendants had actual, subjective awareness of the risks involved, yet they nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Plaintiffs. This amounts to gross negligence; such gross negligence was a proximate cause of the injuries and damages suffered by Plaintiffs. As such, Plaintiffs are entitled to exemplary damages pursuant to Texas Civil Practice and Remedies Code § 41.003, in the amount determined by the trier of fact.

E. Count 5: Spoliation
(Against All Defendants)

39. Defendants as the owner and maintainer of the escalator have a statutory duty in cases involving severe injury (i.e. amputation) with an escalator to report those incidents within 24 hours to TDLR and remove the escalator from service until the TDLR has done its inspection and returned it to service. *See* Tex. Health & Safety Code Ann. § 754.019(e); Tex. Admin. Code Ann. §§ 74.69, 74.72. The purpose of these statutes and regulations is to prevent the spoliation of evidence, allow all parties and the state to inspect the cause of the injuries including any defects

in the maintenance and condition of the escalator, and to determine the liability of any party for causing the conditions. Both TKE and HEB are statutorily bound and are required to acknowledge these requirements to be licensed to have, install, maintain, and possess an escalator in Texas.

40. As shown above, TKE and HEB did not report this incident to TDLR for several weeks. During that time, both TKE and HEB allowed the escalator to remain in service (even within minutes of pulling A.W.'s severed fingers out of the escalator) and they inspected and improperly repaired the escalator multiple times before a TDLR inspector was notified or permitted to inspect the escalator. TKE and HEB intentionally violated these statutes and worked on and failed to preserve this evidence. These intentional actions directly interfered with TDLR's own investigation as well as Plaintiffs' prosecution of their claims. As such, Plaintiffs' request the strongest of sanctions the Court can enter against Defendants.

VIII. DAMAGES

41. As a direct and proximate cause of Defendants' negligent acts and omissions as set above, Plaintiffs have suffered the following damages:

- a. Pecuniary loss in the past and future;
- b. Past medical expenses;
- c. Future medical expenses reasonable and necessary to treat A.W.'s injuries;
- d. Physical pain and suffering incurred by A.W. in the past;
- e. Physical pain and suffering reasonably likely to be incurred by A.W. in the future;
- f. Physical impairment;
- g. Physical disfigurement;
- h. Mental anguish and emotional distress incurred by A.W. in the past;

- i. Mental anguish and emotional distress reasonably likely to occur to A.W. in the future;
 - j. Mental anguish and emotional distress incurred by Alake Williams in the past and reasonably likely to occur in the future;
 - k. Mental anguish and emotional distress incurred by Carnell Williams in the past and reasonably likely to occur in the future;
 - l. Pre- and post-judgment interest; and
 - m. Such other and further relief, both at law and in equity, to which Plaintiffs are justly entitled.
42. In addition to these damages, Defendants' gross negligence entitles Plaintiffs to exemplary damages.

IX. RULE 193.7 NOTICE OF DOCUMENTS TO BE USED

43. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs hereby give notice to Defendants of their intent to use all documents exchanged and produced between the parties (including, but not limited to, correspondence, emails, pleadings, records and discovery responses) during the trial of this matter.

X. RULE 609 REQUEST

44. Pursuant to Texas Rule of Evidence 609, Plaintiffs hereby request written notice of all convictions, if any, Defendants intend to introduce or offer into evidence at the trial of this matter concerning Plaintiffs.

XI. JURY DEMAND

45. Plaintiffs request a trial by jury and tenders the appropriate fee.

XII. PRAYER

46. WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully ask that the Court issue citation upon Defendants to appear and answer herein, and that after trial of this matter, Plaintiffs be awarded judgment against Defendants for, but not limited to the following:

- a. Actual damages;
- b. Exemplary damages;
- c. Pre- and Post-judgment interest;
- d. Court Costs; and
- e. All other relief to which Plaintiffs are entitled.

Respectfully submitted,

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Adriane Rihn on behalf of Paul Grinke
Bar No. 24032255
Adriane@bencrump.com
Envelope ID: 93219477
Filing Code Description: Petition
Filing Description: Plaintiffs Original Petition
Status as of 10/16/2024 12:08 PM CST

Associated Case Party: Alake Williams

Name	BarNumber	Email	TimestampSubmitted	Status
Aaron Dekle		aaron@bencrump.com	10/16/2024 11:50:37 AM	SENT
Paul Grinke		paul@bencrump.com	10/16/2024 11:50:37 AM	SENT
Adriane Rihn		adriane@bencrump.com	10/16/2024 11:50:37 AM	SENT