

## SEPTA and Safety Agency had better heed jury's wake-up call

### The Philadelphia Inquirer

By Inquirer Staff Writers

DECEMBER 19, 1999

As expected, Septa is appealing last week's stupendous \$51 million jury award to 7-year-old Shareif Hall and his mother for the preventable transit escalator accident that ripped off Shareif's foot in 1994.

At first blush, that may seem arrogant, given Septa's many sins in this case. But the verdict is so huge that, if upheld, it could damage the transit agency's fiscal future.

Still a couple of things are clear. First, Septa owes Shareif and his mother, Deneen, considerable compensation. Second, the glimpse this case provided into Septa's internal safety procedures argues for a complete overhaul.

[Thomas Kline](#), the Halls' lawyer, called the monster \$51 million award a wake-up call to Septa to upgrade the safety of its escalators. He's right.

The Septa board showed some good faith Thursday by creating a three-person, outside panel of two retired judges and a lawyer to investigate the origin and possible solutions to this transit-safety breakdown. (Including on the panel someone who's an expert in transit safety or management controls might have helped.)

Septa general manager John Leary also has initiated a badly needed internal investigation that ought to result in consequences for individuals and major corrective actions for systems.

Sadly, the best case for Septa and its bureaucrats is that they were grossly incompetent at various stages before and since young Shareif, then age 4, lost his foot in an escalator accident at the Cecil B. Moore Station on Nov. 27, 1996.

The worst case is that the agency showed a "deliberate indifference" toward public safety that justifies awarding some damages - though not the full \$25 million the jury did - on the basis that Septa violated Shareif's civil rights.

Documents that were allegedly lost then somehow found indicate Septa knew its escalators were faulty as far back as 1994; knew it was failing to do thorough long-term inspections of its elevators; and had a memo on how to improve escalator safety.

The jury award included a \$1 million penalty for Septa's failure to turn over such documents.

The other \$25 million in the award was for actual damages resulting from the injury, an amount far above a state-imposed cap of \$250,000 in such damage claims. The cap is designed to protect the viability of public transit.

Even if the \$25 million for actual damages is knocked down to the state cap on appeal, Septa will likely be required to pay \$4.1 million in "pre-trial interest." This would happen under a state law requiring the agency to settle the claim or start a trial within a year of a lawsuit being filed. Yung Shareif also received an unknown award from the manufacturer of the escalator in an earlier settlement.

As awful as the boy's injury was, and as indefensible and reprehensible as Septa's actions have been, having some kind of cap on damages in lawsuits such as this makes sense. Affordable public transit, upon which thousands of working people depend daily, could become a memory in this city if awards like this one became the norm.

This single award equals about 7 percent of the self-insured transit agency's \$700 million annual operation budget.

Septa board member Robert T. Wooten predicted "an award of this magnitude" would lead to service cuts and fare increases. That might drive suburban riders back to their cars, while punishing city residents with no choice but to use mass transit.

For all these reasons, Septa must rigorously investigate all the safety and management breakdowns in the ugly course of the Shareif Hall case, and revamp its apparently porous safety systems.

Meanwhile, it should hope that the appeals process in Pennsylvania works out a reasonable award decision in this case - one fair to the Halls without being devastating to Septa's finances.

### **Septa held in contempt of court**

A judge ruled the agency intentionally withheld key documents in a civil suit. The fine was \$1 million.

A Common Pleas Court judge yesterday fined Septa \$1 million for contempt of court, ruling that the transit agency intentionally withheld key documents in a civil lawsuit brought by the mother of a 4-year-old boy whose foot was sheared off by a subway escalator.

In blistering remarks, Judge Frederica A. Massiah-Jackson said the paper trail discovered during the hearing "established without any doubt that Septa's management at the highest levels" knew about internal documents relating to the case.

Nevertheless, she said, the agency still failed to turn over required evidence about the Nov. 27, 1996, accident at the escalator at the Cecil B. Moore subway station on North Broad Street - and even planted a shoelace at the scene to make it appear that the boy's untied lace triggered the injury.

"The most devastating evidence which remained hidden by Septa was a May 1994 memo which stated the Cecil B. Moore station escalator, and others, were dangerous" the judge said.

For 2 ½ years, she said, Septa knew that the escalator needed repair, yet took "no action" and "engaged in no maintenance" on any of its 27 subway escalators.

A jury last Tuesday awarded the boy, Shareif Hall, \$50 million and his mother, Deneen, \$1 million in damages - plus \$65 to pay for the sneakers that Shareif wore that day. The boy's mother watched in horror as the escalator sheared off the foot of her son, who is now 7 and wears a prosthesis.

Massiah-Jackson noted that Septa should have turned over all documents related to the case before the civil trial started or asked a judge to overrule the request by Hall's lawyer, Thomas R. Kline.

"Septa hindered justice and impeded the judicial process," the judge ruled.

Massiah-Jackson said that Septa hid and altered documents on the case. Referring to a Septa photograph produced into evidence, she said the agency placed an unmatched white shoelace on top of the boy's mangled black sneaker to make it look as if his untied shoelace caused the accident.

While Shareif's "blood is still wet on the ground" after the accident, "somebody from Septa was manipulating with physical evidence," the judge said.

In last week's civil trial, Kline argued that a step on top of the escalator dropped and that Shareif's foot was caught and mangled underneath. Kline asked the judge to hold Septa in contempt of court last week after a top Septa director of safety and risk management was ordered to bring documents - some of which were not introduced until midway through the weeklong trial - to court.

"We are pleased and tickled," Kline said after yesterday's ruling. "It's exactly what we asked for. The court found in direct, blunt terms that Septa subverted the legal process, that they obstructed justice and the evidence of the tampering goes all the way to the highest levels of Septa."

On the witness stand yesterday, Septa's general manager, John K. Leary Jr. conceded under questioning by Kline that the integrity of Septa's top management was in doubt.

"If some specific person failed to perform their duties, then that will be dealt with," Leary said afterward. "This is very serious. The people in the organization are taking it very seriously. I think it's possible people could lose their jobs if they deliberately withheld documents."

Leary said outside the courtroom that he wanted the public to know "my heart goes out to the Hall family over this tragedy. This is clearly a wake-up call for Septa. I want you to know we received the wake-up call.

"Something good can come out of something bad. We will fix what is broken at Septa, and it won't happen again."

He also said Septa might appeal both judgments.

Earlier in the day, G. Roger Bowers, the agency's general counsel, told the judge the failure to turn over materials was "bureaucratic bungling" and not an intent to deceive.

Bowers, whose legal staff received the requests for the documents from Kline, said in court that he never saw the final accident investigation report in the case until last week. However, other Septa witnesses presented papers showing that Bowers received a copy of the report and other documents,

and a former top safety officer for the agency said Septa's investigation was rife with "loss of evidence and constant report editing."

The judge ruled that "Mr. Bowers blamed this on pure bureaucratic bungling. I suggest that the correct label is 'contempt of court.' The failure to produce voluminous records must be considered willful."

Among her findings based on Septa's own documents, Massiah-Jackson said the agency's preliminary report on the accident said that the escalator screws had been "sheared off." The agency's final report - six months later - stated that the screws were undamaged.

Massiah-Jackson ordered Septa to pay \$1 million to the Common Pleas Court prothonotary for "disrespect to the court," saying "the parade of witnesses and thousands of pages of materials produced by Septa after the jury verdict - and without rational explanation - leaves the court no choice."

Last week, a dozen top Septa officials appeared in court, carrying newly released documents in manilla envelopes, briefcases and even a Macy's shopping bag. Some said that no one in Septa's legal department ever asked them for the papers. Others testified that they did not know the documents existed.

"Septa believed it was immune from the laws we all live by, and the court today said no," Kline said after the ruling. "We are pleased. The bigger message is the escalators were unsafe in 1994, unsafe in 1996 and they are broken and in disrepair today. The good that will come from this contempt hearing is beyond measure."

Leary said findings from Septa's "blue-ribbon panel" of attorneys appointed to investigate the agency's actions in defending the lawsuit would be made public. A spokeswoman for District Attorney Lynn Abraham said last night that Abraham would review Massiah-Jackson's ruling to consider whether obstruction of justice charges in a civil lawsuit amount to criminal behavior.