

## SEPTA Settles Escalator Suit for \$7.4 Million

*Also Promises Big Changes in Legal Department*

### The Legal Intelligencer

By Claudia N. Ginanni

Of the Legal Staff

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With earnest courtroom promises to mend its escalators and its ways - and \$7.4 million - SEPTA has settled all its disputes with Shareif Hall, 7, whose foot was torn off by a SEPTA escalator in 1996, and his mother Deneen Hall, who witnessed the gruesome accident.



The agreement puts to rest SEPTA's appeal of a whopping \$51 million verdict a jury awarded the Halls last month, after the mid-trial revelation that the transit authority had hidden from the plaintiffs' lawyers documents showing that it was aware of the dangerous condition of its escalators long before the accident occurred.

The surprise appearance of the documents led to a dramatic post-trial proceeding during which more and more damaging documents were revealed and the Halls' lawyer, [Thomas R. Kline](#) of Kline & Specter, eventually called SEPTA General Counsel G. Roger Bowers and General Manager Jack Leary to testify.

When the hearing was over, Philadelphia Common Pleas Judge Frederica A. Massiah-Jackson fined the agency \$1 million for contempt of court and issued a scathing opinion finding that the agency had tampered with evidence, obstructed justice and shown "gross indifference to its obligations to the court."

Yesterday, the agency demonstrated its stated determination to turn over a new leaf by showing up in court with an all-new team of lawyers led by Assistant General Manager for Risk, Prevention, Loss Management and Claims James B. Jordan, who was appointed late last month to address endemic problems at SEPTA's legal department that were brought out in the hearing.

The settlement agreement was negotiated by two other lawyers who appeared in court yesterday on SEPTA's behalf: Barbara W. Mather and Nina M. Gussack, both of Pepper Hamilton, who were retained by SEPTA last week.

The settlement includes Deneen Hall's promise to forego a suit against the authority for wrongful use of civil proceedings over its counterclaim against her. During the hearing, both Bowers and Leary acknowledged that the decision to countersue was "wrong."

While the settlement figure represents just a fraction of the jury's \$51 million award, there were serious questions as to how much of that verdict was collectible, given the statutory liability cap of \$250,000 per personal-injury claim for commonwealth defendants.

Mid-trial, after the hidden documents surfaced, Massiah-Jackson allowed Kline to amend his complaint to add a novel civil-rights claim under a "state-created danger" theory, and the jury awarded \$25 million to Shareif Hall on that claim - but the appellate future of that award was also uncertain.

Kline pointed out that the \$7.4 million settlement is 30 times the statutory cap.

He also said that Deneen Hall had made it clear to him that while she wanted make sure that Shareif was fully and fairly compensated for his injuries, she also wanted to ensure that the settlement would not take such a big chunk out of the authority's operating budget as to "affect other children who ride SEPTA."

"We recognized that the public interest had a place at the bargaining table," Kline said.

Kline said the appointment of Jordan, as part of the authority's commitment to "revamp its entire legal department," was "a material factor" in his clients' decision to settle.

More important, Kline said, was the \$16 million SEPTA has committed to escalator repair and maintenance.

"Our job in this case was not to destroy SEPTA," Kline said. "Our job was to effectuate change."

Massiah-Jackson, too, was clearly impressed by the authority's efforts: she reduced the contempt-of-court fine from \$1 million to \$100,000, although she was careful to point out that the contempt citation still stood.

Before the judge reduced the fine, Jordan promised to oversee a wholesale transformation of the way the authority handles claims against it, listing several specific steps he would take to institute change.

Among Jordan's promises to the court:

- \* To "do whatever it takes to change the attitude of every lawyer at SEPTA."
- \* That SEPTA's legal department will not have an "attitude problem" premised on an idea that the authority is protected by the statutory liability cap.
- \* "We will stop the notion that this is a game to be won or lost."
- \* That all documents relevant to claims against SEPTA will be turned over and that SEPTA will initiate a filing system and other procedures that will ensure that such documents are produced.

\* That when fines are imposed on any SEPTA lawyers, the lawyers themselves will be responsible for paying the fines.

\* That there will be "early and meaningful review of every case."

\* That SEPTA will treat plaintiffs and their lawyers fairly.

\* That the authority will set up a system of trained investigators who will respond to every accident and "will be given the directive to investigate the facts truthfully."

\* That there will be no tolerance by the general manager of anything less than a fair and impartial investigation of all claims, and "we will not have accident investigation reports rewritten to shade the truth."

SEPTA's lawyers repeatedly referred to the Hall lawsuit and its aftermath as a "wake-up call" that they promised to heed, and the judge thanked the plaintiffs for the bringing the problems at SEPTA to the public's attention.

"I think that we did some real public good here," said Kline. "We've always known that this case was bigger than Shareif Hall.

"And I'm proud that lawyers have been recognized, especially in the mainstream press, as instruments of social change instead of objects of derision."

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