

Judge: SEPTA is in contempt

\$1 million fine for tampering and hiding memos



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Septa entered a personal injury trial two weeks ago, confident it could be held liable for only \$250,000 in damages for a 1996 subway escalator accident that tore off a 4-year-old boy's foot.

What a difference two weeks and \$52 million makes.

Among the lessons Septa learned in 14 days: Judges and juries don't like it when state agencies hide, lose and tamper with evidence or launch counterattack lawsuits on victims.

Common Pleas Judge Frederica Massiah-Jackson yesterday fined Septa \$1 million, finding the agency in contempt of court.

That follows a \$51 million verdict against Septa last week.

In a 12-page ruling released yesterday, the judge wrote:

The "paper trail" of reports and memos detailing the Nov. 27, 1996, accident that caused Shareif Hall to lose his right foot reaches "Septa management at the highest levels."

Requests for information about the accident were made in May 1997 but Septa documents were not turned over to the boy's attorneys until halfway through the trial.

The judge called that obstruction of justice by Septa.

One of those documents, a 1994 report saying several subway escalators needed repairs, showed "Septa had actual knowledge of the deteriorating escalators two and a half years before Shareif Hall's accident."

That, Massiah-Jackson decided, showed a "cavalier disregard for the court process" and "extraordinary bad faith" by Septa.

Shareif Hall's attorney, [Thomas Kline](#), asked the judge to give Septa a "wake-up call" with a contempt of court ruling.

Septa General Manager Jack Leary, the 1st of 13 agency employees to turn over documents and to testify in four days of contempt hearings, said after the verdict he got the message.

"This is clearly a wake-up call for Septa," Leary said. "Something good can come out of something bad. We will fix what was broken at Septa, and it won't happen again."

The judge also took issue with Septa's decision to sue the boy's mother, Deneen Hall.

"Septa chose to blame the mother even though no expert witness would testify that she was the cause - not even Septa's expert," she wrote.

Septa dropped that claim last week and did not present a defense in court.

A jury last Tuesday awarded Shareif Hall \$25 million for pain and suffering and another \$25 million, ruling Septa violated the boy's civil rights with a "deliberate indifference" to a "state-created" danger.

The jury also ruled Septa should pay Deneen Hall \$1 million, plus \$65 for the sneakers her son wore that day.

Leary and G. Roger Bowers, Septa's top attorney, who also testified yesterday, said suing Deneen Hall was a mistake.

Kline said "Septa believes it is immune to the laws we all live by" and emboldened by a state law limiting the amount of damages in personal injury cases against state agencies to \$250,000.

He referred to a startling memo released Friday by Robert Allman, Septa's former director of systems safety, who complained that "critical physical evidence was withheld" from investigators by Septa, other evidence was lost and facts were changed in the agency's reports.

"They didn't try to fix the elevators. They tried to fix the report," Kline told the judge. "It's a fraud and a phony and a fix."

Leary said he did not want to make any "rash judgments" about blame, but a Septa investigation, started last week and supervised by two former judges and a former law school dean, will right the agency's wrongs.

"I think the people who work for a state agency must be held to a higher standard of honesty and integrity," Leary said.

"As this unfolds, I think you will see that standard will be applied to Septa."

Leary said some employees could lose their jobs, and deliberately hiding documents "would constitute a criminal offense".

A series of documents released by Septa since Dec. 15 show the agency has known for at least five years that some of its escalators needed repairs.

Septa employees brought the memos and reports to court in envelopes, file folders, briefcases and, in one case, a large Macy's department store shopping bag.

One Septa memo, written 19 days before Shareif Hall's accident at the Cecil B. Moore station of the Broad Street subway, said that escalator needed immediate repairs or it would not be safe to operate.

Shareif's foot snagged in the machinery at the top step.

Leary challenged claims that his agency's escalators continue to be dangerous but hired two independent firms Friday to inspect equipment.

Septa's attorney, Gino Benedetti, told the judge Septa regrets not turning over the documents. But he disputed claims that the documents were "willfully" hidden since they were "littered throughout Septa".

And Benedetti said a big contempt of court ruling would hurt the people Septa serves.

"Septa is a public body," he said. "It is supported by public dollars. The sanction and the amount being requested in this case is going to come out of the pockets of the public."

Septa has vowed to appeal last week's \$51 million verdict, calling it "more money than any person could reasonably need."

Leary said Septa will most likely also appeal the \$1 million fine for contempt. The judge ordered Septa to pay the fine to the city's prothonotary office, which serves as clerk of the courts.

"I think we need to keep in focus the fact that these dollars are your dollars, they're my dollars, they're tax dollars," he said.

That disgusted Kline. "They still refuse to take their medicine," he said. "It just goes to show you the arrogant, above-the-law attitude Septa has. They just don't get it."