

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DISABLED IN ACTION OF
PENNSYLVANIA,

Plaintiff,

v.

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY,

Defendant.

CIVIL ACTION NO. 03-1577

CONSENT DECREE

I. INTRODUCTION

1. Disabled in Action of Pennsylvania ("DIA") filed this lawsuit on March 14, 2003 against Southeastern Pennsylvania Transportation Authority ("SEPTA"). The lawsuit, as described in the Fourth Amended Complaint, alleged that SEPTA violated Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12141-12165, Section 504 of the Rehabilitation Act ("RA"), 29 U.S.C. § 794, and 42 U.S.C. § 1983 by: (1) failing to install an elevator when SEPTA demolished a staircase between the street and concourse levels at the northwest corner of 15th and Market Streets in Philadelphia; (2) failing to install an elevator when SEPTA replaced an inoperable escalator between the street and concourse levels in the southeast corner of City Hall Courtyard; and (3) failing to designate 15th Street Station of the Market-Frankford Subway-Elevated Line ("Market-Frankford Line") and the City Hall Station of the Broad Street Subway Line ("Broad Street Line") as "key stations" and to make both stations fully accessible for people with disabilities, including those who use wheelchairs.

2. By Order and Opinion dated November 17, 2006, the Court granted summary judgment in favor of SEPTA and against DIA. The District Court held that: (1) DIA's "alterations" claims were time-barred and (2) DIA did not have a private right of action to enforce federal regulations concerning SEPTA's determination of which stations should be "key stations."

3. DIA appealed the Court's ruling on the statute of limitations issue, but did not appeal the Court's decision on the "key station" claims. The Third Circuit reversed this Court's ruling that DIA's alterations claims were time-barred and remanded for further proceedings on the merits.

4. On September 11, 2009, this Court granted summary judgment in favor of DIA and against SEPTA. The Court concluded that SEPTA had violated the ADA and the RA when it failed to install elevators as part of the renovations at 15th and Market Streets and in the southeast corner of the City Hall Courtyard. This Court further ordered SEPTA to submit to the Court a proposed schedule of compliance.

5. On October 9, 2009, SEPTA filed a Notice of Appeal concerning this Court's decision granting summary judgment in favor of DIA and against SEPTA. On February 16, 2011, the U.S. Court of Appeals for the Third Circuit affirmed this Court's decision granting summary judgment in favor of DIA.

6. On March 29, 2011, DIA filed a Motion for Attorneys' Fees, Litigation Expenses and Costs. SEPTA opposed DIA's motion in part, and the Court heard oral argument on DIA's motion on June 2, 2011. During the hearing, the parties advised the Court that they had been in discussions concerning a proposal by SEPTA to implement this Court's Order of September 11, 2009 and possible resolution of DIA's petition for fees and costs.

7. DIA and SEPTA now enter into this Consent Decree to provide a remedy that will resolve the remaining issues in this case amicably and to avoid the risks and expense of further litigation.

II. SEPTA'S OBLIGATIONS

A. Center City District's Dilworth Plaza Project

1. SEPTA will pay to the Center City District the full cost necessary to install two elevators at Dilworth Plaza, an open bi-level public space that is located between the western wall of Philadelphia City Hall and the eastern edge of 15th Street and affords pedestrians the ability to connect street level to concourse level at Penn Center and at City Hall Subway Station Concourse.

2. One elevator to be installed pursuant to Section II.A will be located at the southern end of Dilworth Plaza (Elevator PE1 in Exhibit A, which is incorporated by reference in this Consent Decree). This elevator will connect the street level with the concourse level.

3. The second elevator to be installed pursuant to Section II.A will be located at the northern end of Dilworth Plaza (Elevator PE2 in Exhibit A). This elevator will connect the street level, the concourse level, and the westbound platform level at 15th Street Station on SEPTA's Subway-Surface Trolley Line.

4. Center City District, a private-sector business improvement district authorized under Pennsylvania's Municipality Authorities Act, has secured federal and state grants to renovate Dilworth Plaza.

5. The elevators identified in Section II.A will be installed no later than December 31, 2013, provided that if SEPTA discloses to DIA, through a status report as required by Section II.F, that there are any construction interruptions caused by weather conditions; or by strikes, lock-outs, embargoes, fire, unavoidable casualties, or any other causes that are deemed to

be beyond SEPTA's control, the parties will meet within (30) days of receipt of SEPTA's status report to discuss and, if possible, agree to an extension of the completion deadline. If the parties are unable to reach an agreement for an extension of the completion deadline, the parties shall submit the issue to the Court for resolution.

B. Elevators at 15th Street Station on the Market-Frankford Subway-Elevated Line

1. SEPTA will install two elevators that provide access between the concourse level underneath Dilworth Plaza and the platform levels at 15th Street Station of the Market-Frankford Line so that 15th Street Station will be fully accessible to and usable by people who use wheelchairs.

2. One of the elevators to be installed pursuant to Section II.B will provide access between the concourse level underneath Dilworth Plaza and the eastbound platform level at 15th Street Station of the Market-Frankford Line (Elevator PE3 in Exhibit A).

3. The second elevator to be installed pursuant to Section II.B will provide access between the concourse level underneath Dilworth Plaza and the westbound platform level at 15th Street Station of the Market-Frankford Line (Elevator PE4 in Exhibit A).

4. The elevators identified in Section II.B will be installed no later than December 31, 2013, provided that if SEPTA discloses to DIA, through a status report as required by Section II.F, that there are any construction interruptions caused by weather conditions; or by strikes, lock-outs, embargoes, fire, unavoidable casualties, or any other causes that are deemed to be beyond SEPTA's control, the parties will meet within (30) days of receipt of SEPTA's status report to discuss and, if possible, agree to an extension of the completion deadline. If the parties are unable to reach an agreement for an extension of the completion deadline, the parties shall submit the issue to the Court for resolution.

C. Elevator to the 15th Street Eastbound Subway Surface Platform

1. SEPTA will install an elevator between the concourse underneath the Dilworth Plaza and the eastbound platform at 15th Street Station of the Subway Surface Trolley Line.

(Elevator P12 in Exhibit A).

2. The elevator identified in Section II.C will be installed no later than December 31, 2013, provided that if SEPTA discloses to DIA, through a status report as required by Section II.F, that there are any construction interruptions caused by weather conditions; or by strikes, lock-outs, embargoes, fire, unavoidable casualties, or any other causes that are deemed to be beyond SEPTA's control, the parties will meet within (30) days of receipt of SEPTA's status report to discuss and, if possible, agree to an extension of the completion deadline. If the parties are unable to reach an agreement for an extension of the completion deadline, the parties shall submit the issue to the Court for resolution.

D. Accessible Fare Lines

1. SEPTA will construct new fare lines at concourse level beneath Dilworth Plaza. The fare lines will be fully accessible for people with disabilities, including those who use wheelchairs, and will serve 15th Street Station on the Market-Frankford Line.

2. The new fare lines also will serve City Hall Subway Station on the Broad Street Line, replacing the existing fare lines at City Hall Subway Station. SEPTA will not undertake any additional construction at or below concourse level that impacts City Hall Subway Station.

3. SEPTA retained a consultant to advise the agency on ADA compliance with regard to the Dilworth Plaza project. The consultant, Don Kloehn, has provided a declaration that is attached to this Consent Decree as Exhibit B.

4. DIA does not endorse Mr. Kloehn's opinion,¹ but, as described in Section III below, has agreed to grant SEPTA a release from claims with regard to the new fare lines.

5. The accessible fare lines identified in Section II.D will be installed no later than December 31, 2013, provided that if SEPTA discloses to DIA, through a status report as required by Section II.F, that there are any construction interruptions caused by weather conditions; or by strikes, lock-outs, embargoes, fire, unavoidable casualties, or any other causes that are deemed to be beyond SEPTA's control, the parties will meet within (30) days of receipt of SEPTA's status report to discuss and, if possible, agree to an extension of the completion deadline. If the parties are unable to reach an agreement for an extension of the completion deadline, the parties shall submit the issue to the Court for resolution.

E. Payment of Attorneys' Fees, Litigation Expenses, and Costs

1. SEPTA will pay Disability Rights Network \$267,745.19 in fees and costs within three (3) days from the date the Court approves this Consent Decree. The amounts that SEPTA will pay to Disability Rights Network have been negotiated and agreed to by the parties and represent a full and complete settlement of DIA's claim for attorney's fees and costs in this litigation through the date the Court approves this Consent Decree.

2. SEPTA will pay Stephen F. Gold, Esquire \$228,144.18 in fees and costs within three (3) days from the date the Court approves this Consent Decree. The amounts that SEPTA will pay to Mr. Gold have been negotiated and agreed to by the parties and represent a full and complete settlement of DIA's claim for attorney's fees and costs in this litigation through the date the Court approves this Consent Decree.

¹ Entry of this Consent Decree shall not be interpreted as an adoption or a rejection by the Court of Mr. Kloehn's declaration or opinion.

3. Nothing in this Consent Decree should be construed to entitle Plaintiff or to preclude Plaintiff from making application for or recovering attorneys' fees, expenses and costs incurred after the date the Court approves this Consent Decree.

F. Status Reports

1. No later than January 31, 2012 and every three (3) months thereafter until this Consent Decree is terminated, SEPTA's counsel will provide to Plaintiff's counsel a report concerning the status of implementation of SEPTA's obligations under this Consent Decree. The reports shall identify and describe any construction interruptions caused by weather conditions; or by strikes, lock-outs, embargoes, fire, unavoidable casualties, or any other causes that SEPTA deems to be beyond its control.

III. PLAINTIFF'S RELEASES

1. In exchange for SEPTA's promises contained herein, and SEPTA's compliance with the obligations set forth in this Consent Decree to pay for the two elevators included in the Center City District project, as set forth in Section II.A. above, and to install the three elevators as described in Sections II.B. and II.C. above, and without waiving DIA's right to reinstate the litigation pursuant to Section IV.2, DIA releases SEPTA from any and all claims relating to SEPTA's failure to install an elevator when it built a new stairway at the northwest corner of 15th and Market Streets and relating to SEPTA's failure to install an elevator when it replaced the inoperable escalator in City Hall Courtyard.

2. In exchange for SEPTA's promises contained herein, and SEPTA's compliance with the obligations to install new fare lines as described in Section II.D. above, DIA releases SEPTA from any and all claims that SEPTA violated federal or state laws by installing those fare lines without making the City Hall Station on the Broad Street Subway Line fully accessible to and usable by people with disabilities, including those with mobility disabilities.

IV. APPROVAL, JURISDICTION, ENFORCEMENT, AND TERMINATION

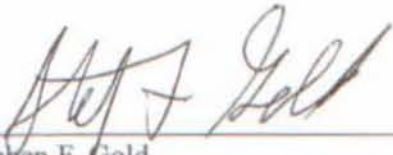
1. DIA and SEPTA will jointly present this Consent Decree to the District Court for approval. If the District Court does not approve the Consent Decree, the case will resume in the same procedural posture as it existed prior to the presentation of the Consent Decree.

2. If the elevators are not installed as provided in Sections II.A, II.B, and II.C of this Consent Decree, DIA may reinstate its request for injunctive relief that the Court order SEPTA to install an elevator at the northwest corner of 15th and Market Street and an elevator at the southeast corner of City Hall Courtyard, and SEPTA retains all defenses thereto.

3. If the District Court approves the Consent Decree, it will retain continuing jurisdiction over this lawsuit for purposes of interpretation and enforcement of the Decree and, if necessary, for reinstatement of the litigation pursuant to Section IV.2.

4. At least thirty (30) days before DIA files any motion for enforcement of the Consent Decree, DIA will provide notice to SEPTA of the alleged violation and offer SEPTA the opportunity to meet with DIA to discuss the alleged violation in an effort to resolve the dispute without judicial intervention.

5. The Consent Decree will terminate ninety (90) days after SEPTA has fulfilled all of its obligations under Section II of the Consent Decree, unless there is an enforcement motion pending, the lawsuit has been reinstated pursuant to Section IV.2, or the Decree has been amended to change the termination date.

By: 
Stephen F. Gold
1709 Benjamin Franklin Parkway
2d Floor
Philadelphia, PA 19103

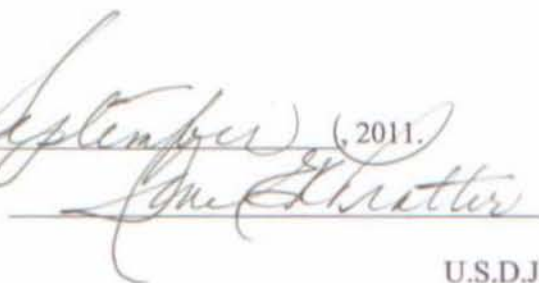
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Attorneys for Defendant

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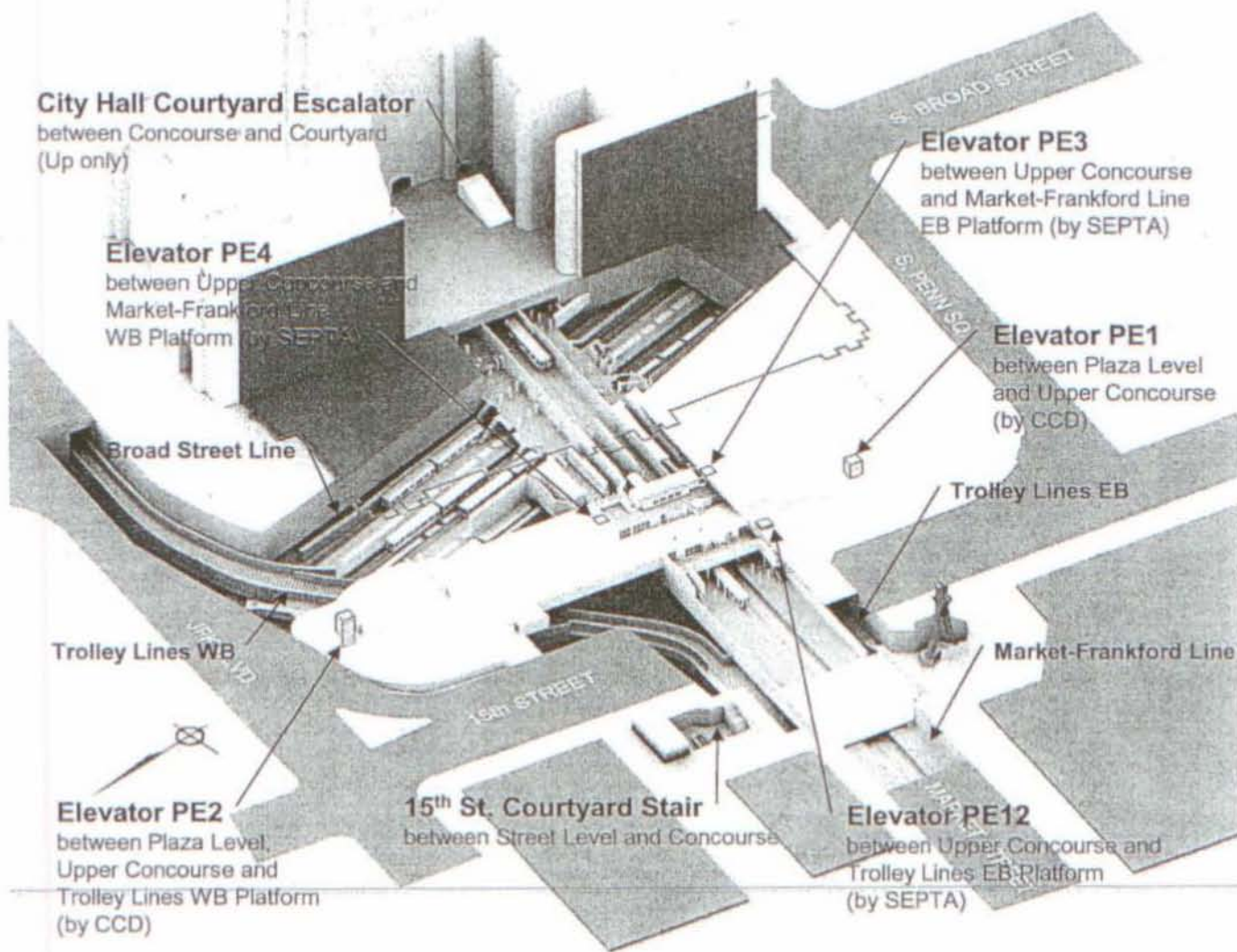
Attorneys for Plaintiff

SO ORDERED this 15th day of September, 2011.



U.S.D.J.

EXHIBIT A



**CENTER CITY DISTRICT'S DILWORTH PLAZA PROJECT
AND SEPTA'S CITY HALL STATION EARLY ACTION PHASE
PROPOSED ELEVATOR LOCATIONS
AXONOMETRIC CUT-AWAY VIEW**

12 May 2011

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DISABLED IN ACTION OF
PENNSYLVANIA,

Plaintiff,

v.

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY,

Defendant.

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CIVIL ACTION NO. 03-1577

DECLARATION OF DON KLOEHN

Don Kloehn hereby declares that:

1. I am currently employed as a Senior Project Manager for Tindale-Oliver & Associates, Inc., a planning and engineering firm based in Florida. I have more than 36 years of experience in the transportation field, with involvement in all aspects of transit facility design, construction, maintenance, and operations. I have been certified as an Accessibility Inspector and Plans Examiner by the International Code Council.

2. I am familiar with state and federal codes relating to the application of the Americans with Disabilities Act ("ADA") to the transportation industry, including the U.S. Department of Transportation's Final Rule, 49 CFR Parts 27 and 37, and the ADA Accessibility Guidelines promulgated by the U.S. Access Board. The Department of Transportation in large part has adopted the Accessibility Guidelines as the regulatory standard for the construction of new transportation facilities and the alteration of existing facilities.

3. I also am familiar with SEPTA's City Hall Station Early Action Phase Proposed Elevator Locations ("Early Action Phase") project and with the Center City District's

planned renovation of Dilworth Plaza. Both projects include alterations to areas that connect to SEPTA rail facilities beneath Dilworth Plaza. I have reviewed the plans for both projects and made a site visit.

4. Subpart C of Department of Transportation regulations require that all newly constructed transportation facilities be readily accessible and usable by individuals with disabilities. The regulations also require that any alterations to existing transportation facilities be made in such a way that the altered portions be readily accessible to the disabled to the maximum extent possible.

5. As part of the Early Action Phase project, SEPTA intends to construct new fare lines at the concourse level below Dilworth Plaza to serve City Hall Subway Station on the Broad Street Subway Line and 15th Street Subway Station on the Market-Frankford Subway-Elevated Line. The fare lines will accommodate individuals who use wheelchairs with an accessible fare gate.

6. Based on my review of SEPTA's Early Action Phase project plan, the new fare lines comply with Department of Transportation regulations because the fare lines will be accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. The Early Action Phase project does not include any modifications at City Hall Subway Station other than construction of the fare lines.

7. The Center City District's Dilworth Plaza project includes two new stairs between street level and concourse level and two elevators between street level and concourse level. The elevators will provide individuals who use wheelchairs with access to the concourse, as well as access to the new fare lines.

8. Individuals who use wheelchairs will be able to access both the eastbound and westbound platforms of 15th Street Subway Station on the Market-Frankford Subway-Elevated Line by elevators that provide access between concourse level and platform level.

9. It is my opinion that the work to be performed at Dilworth Plaza by SEPTA complies with Department of Transportation regulations. The concept of the regulations is to ensure that each of the elements that are newly built or altered include the required accessibility improvements so that when, over time, all elements of a facility are improved or replaced, the entire facility will become accessible.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 22, 2011

A handwritten signature in cursive script, reading "Don Kloehn".

Don Kloehn