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Amtrak Derailment Plaintiffs Petition to Create MDL

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As personal injury lawsuits continue to be filed against Amtrak in federal court, a request has been made to funnel all of the cases surrounding the Philadelphia derailment into a single multidistrict litigation.

The MDL petition was filed by plaintiffs jointly represented by the law firms of **Kline & Specter** and Saltz Mongeluzzi Barrett & Bendesky. The petition called for all similar cases in different jurisdictions, including New York and New Jersey, to be transferred to the U.S. District Court for the Eastern District of Pennsylvania where the bulk of the Amtrak derailment cases have already been filed.

Amtrak had not filed a reply to the petition as of press time. Reached Wednesday, Amtrak's lawyer, Yuri J. Brunetti of Landman Corsi Ballaine & Ford, declined to comment.

According to the MDL petition, 19 lawsuits involving 42 plaintiffs have been filed in federal courts; one was filed in the District of New Jersey, another in the Eastern District of New York, four in the Southern District of New York, and 13 in the Eastern District of Pennsylvania.

All of the cases in Pennsylvania have been assigned to a single judge: Legrome D. Davis.

An MDL and the direction of a single judge, according to the petition, would be critical for distributing potentially \$200 million in damages.

"The Amtrak Reform and Accountability Act of 1997 imposes a liability of \$200 million on the aggregate allowable award to all rail passengers, against all defendants, including claims of punitive damages, arising from a single accident relating to rail passenger transportation," the petition said, adding, "The aggregate damages in litigation related to the derailment may exceed \$200 million, in which case coordinated supervision by one judge would be essential."

Contacted for comment, **Thomas R. Kline** and Robert Mongeluzzi, co-founders of their respective firms, both said they felt the consolidation of proceedings would lead to greater judicial efficiency.

Prior to the filing of the MDL petition, Amtrak responded to a motion from the plaintiffs requesting Amtrak, the National Transportation Safety Board, and the Federal Railroad Administration preserve and track the custody of evidence.

In court papers, Amtrak said the NTSB is in charge of the investigation of the accident and the com-

pany has no control over the evidence gathered. Moreover, Amtrak asked that the motion be denied as premature.

"While the NTSB has designated Amtrak as a formal party to the investigation," court papers said, "the NTSB expects Amtrak to observe confidentiality rules; specifically, Amtrak is not permitted to disclose any 'investigative information' to anyone outside the NTSB investigation."

Amtrak also said the NTSB has the last word in conducting the investigation.

"Accordingly, given these confidentiality requirements, and the fact that the NTSB has possession and control of the evidence at issue in plaintiff's motion, Amtrak cannot make the evidence at issue available for inspection and cannot take responsibility for the preservation of all such evidence," court papers said.

A reply filed by plaintiffs Bruce and Kalita Phillips asked the court to compel Amtrak and the NTSB to itemize every piece of evidence and notify the plaintiffs' counsel when evidence is to be released.

Additionally, the plaintiffs' reply said confidentiality had already been disregarded, since Amtrak and NTSB officials have publicly commented on the accident.

Lastly, the reply noted, "Amtrak's representation that it will preserve evidence once released by the NTSB is insufficient to ensure plaintiffs' rights and to provide necessary protection of the evidence. Amtrak's negligence killed and maimed too many innocent employees and passengers to simply trust Amtrak to do the right thing. The passengers on train No. 188 had placed their trust in Amtrak and the result was death and devastating injuries."