

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843 - 2016

PHILADELPHIA, TUESDAY, FEBRUARY 2, 2016

VOL 253 • NO. 21 \$5.00 An **ALM** Publication

REGIONAL NEWS

Lawyers Eye Amtrak Engineer's Account of Accident

BY P.J. D'ANNUNZIO

Of the Legal Staff

Just one hour after the National Transportation Safety Board released 2,000 pages of documents on the May 12 derailment of Amtrak Train 188 in Philadelphia, lawyers for passengers in the case picked apart statements given by the train's engineer about his memory of the accident.

Thomas R. Kline and Robert Mongeluzzi, heads of the respective firms representing passengers in 29 of the 111 lawsuits filed against Amtrak, specifically called out engineer Brandon Bostian for what they claimed were discrepancies in separate accounts he gave to the NTSB about the night of the accident.

At a news conference Monday afternoon, Mongeluzzi zeroed in on Bostian's statements in two interviews with NTSB officials; one conducted in May, shortly after the derailment, and another in November.

In the May interview, Bostian said his memory was blank after passing train platforms in North Philadelphia after leaving 30th Street Station—the next thing he remembered was coming to in the cab of the train after the accident. In the November interview, he recalled that he “may have” accelerated to 80 mph coming up to the



KLINE

curve where the train derailed in the Port Richmond section of the city—although he said he wasn't sure whether that was on the night of the accident—stating, “I remember feeling as though I was going too fast around the curve.”

Mongeluzzi said, “His change of testimony in this case is extraordinary.” Kline added that there were “glaring inconsistencies” with Bostian's accounts.

Bostian's attorney, Robert Goggin III, and Amtrak's attorney, Yuri Brunetti, did not immediately return calls seeking comment.

Train 188's derailment left more than 200 people injured and eight dead. At the time of the accident, the train had been traveling around a curve at more than 100 mph—twice the speed limit for that section of rail. Amtrak has admitted fault in the accident.

Kline said Bostian illustrated in his November statement to the NTSB that he maintained situational awareness: he knew



MONGELUZZI

where he was, recalled details such as passing a stopped SEPTA train that had been hit with a rock, accelerating and then applying pressure to the brakes to try to slow down the train around the curve.

“He went into that curve knowing what he was doing,” Kline said.

Mongeluzzi added Bostian refused to speak to police after the accident and asked for his lawyer. “That is something hallmark of someone who has their wits about them,” he said.

In his November interview with the NTSB, Bostian described the moment the train went off the rails.

“I remember holding onto the controls tightly and feeling like, OK, well this is it, I'm going over,” Bostian recalled. “And so I tried to brace myself. The only visual memory I have from that sequence of events is I remember seeing objects fly in front of me.”

He continued, “The next memory I have is, like I said before I think, of coming to after the event was over in the cab.”

Kline said the litigation is still in its infancy; the release of documents by the NTSB was one of the first steps. Additionally, he said the key to figuring out what happened that night, and in deciphering Bostian's “evolving memory,” lies in putting the engineer on the witness stand and questioning him under oath.

Amtrak continues on 11

Amtrak

continued from 3

“We have a long way to go, but what we've learned today is very informative and very telling,” Kline said.

The last major development affecting the cases against Amtrak was the increase of the maximum combined compensation for injured Train 188 passengers from \$200 million to \$295 million.

In December, Congress agreed to raise the damages cap, which the passengers'

attorneys had feared would not be enough to adequately compensate the injured parties. Even with \$95 million increase, Mongeluzzi said the combined damages would likely surpass the new cap.

Kline had said while Amtrak may argue the passengers' injury claims may not be worth

\$295 million altogether, potential punitive damages against the rail carrier will also be drawn from that figure.

P.J. D'Annunzio can be contacted at 215-557-2315 or pdannunzio@alm.com. Follow him on Twitter @PJDannunzioTLI. •