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Amtrak Consents to Derailment MDL

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Of the Legal staff

Amtrak has agreed with plaintiffs in the Train 188 derailment litigation that all cases should be funneled into a multidistrict litigation in the U.S. District Court for the Eastern District of Pennsylvania.

Amtrak replied Tuesday to the plaintiffs' petition to create an MDL. 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.

As noted in Amtrak's reply, the nascent MDL originally included 19 personal injury lawsuits involving 42 plaintiffs 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. In the time since the plaintiffs filed their MDL petition, two wrongful-death suits have been filed in the Eastern District of Pennsylvania.

"Amtrak anticipates that numerous additional lawsuits will be filed relating to the derailment of Train 188, including wrongful death and

survival actions and personal injury claims," court papers said. "Amtrak has been contacted by counsel representing other passengers who have not yet filed suit, including counsel located in the Eastern District of Pennsylvania. The expectation of additional lawsuits further supports the order transferring all related cases to the Eastern District of Pennsylvania for coordinated or consolidated pretrial proceedings under Judge [Legrome] Davis' supervision."

Amtrak's lawyer, Yuri J. Brunetti of Landman Corsi Ballaine & Ford, declined to comment.

The bulk of the plaintiffs' cases are being handled jointly by the law firms of Kline & Specter and Saltz Mongeluzzi Barrett & Bendesky.

Kline & Specter co-founder Thomas R. Kline said in an email that he and Saltz Mongeluzzi co-founder Robert Mongeluzzi are "pleased to see that Amtrak has joined our request to consolidate the cases in federal court in Philadelphia, and now hope for a prompt ruling by the [MDL] panel. We believe that early consolidation will lead to organization, structure, and uniform supervision of the litigation."

The litigation could potentially have hundreds of plaintiffs, as the derailment left more than 200 people injured and eight dead. Despite

that, the potential damages available for the victims of the derailment are capped at \$200 million as per a 1997 federal law.

The law, which has come under fire over the years for not adequately covering victims' damages from serious train accidents, mandates Amtrak have \$200 million in liability coverage for a single incident.

According to the plaintiffs' MDL petition, an MDL under the direction of a single judge is critical in the event that the \$200 million needs to be parsed out.

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 company 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."