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# Faction of Plaintiffs Lawyers Contest Amtrak MDL

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Although most plaintiffs in the Amtrak derailment litigation and the railroad company itself agreed to the establishment of a multidistrict litigation, three plaintiffs attorneys have argued consolidation is not the way to go.

On Oct. 1, the U.S. Judicial Panel on Multidistrict Litigation is set to hear argument from plaintiffs attorneys in the litigation over handling all of the cases in the U.S. District Court for the Eastern District of Pennsylvania.

New Jersey lawyer Bruce Nagel objected to the formation of the MDL, which has been requested by Kline & Specter and Saltz Mongeluzzi Barrett & Bendesky, the law firms jointly handling the lion's share of the cases in the litigation.

Nagel, joined in his opposition of the MDL by two other lawyers, said in a letter to the panel that any benefits to consolidating the cases—such as coordinated discovery and judicial efficiency—are now gone since Amtrak admitted fault and said it would not contest compensatory damages.

"Since there remains no legal issues to contest or need for protracted discovery, the only issues that need to be resolved are the plaintiffs' individual claims for damages," Nagel wrote. "The need to investigate individual injuries and damage claims is a particularly fact-intensive venture which does not require centralization of discovery."

However, both the co-heads of the respective firms handling the majority of the plaintiffs' cases, **Thomas R. Kline** and Robert Mongeluzzi, said an MDL is still needed to handle punitive damage issues.

"We continue to believe that the catastrophe is more efficiently handled under an MDL," Mongeluzzi said, "with uniformity of rulings and discovery."

**Kline also added, "We have been told informally but directly that many out-of-state lawyers are in support of the Eastern District of Pennsylvania for consolidation."**

According to Kline and Mongeluzzi's reply brief, coordination would help with cases on a plaintiff-by-plaintiff basis better than individual litigations, especially relating to the distribution of funds from the statutorily capped $200 million in damages that could be awarded.

"If multiple fact-finders determine damages in multiple jurisdictions at different points of time, without coordination, wildly disparate results may occur that may create gross inequalities for the plaintiffs who suffered from a common disaster yet whose aggregate recovery may be subject to statutory limitation. In the near term, coordination on individualized damages can facilitate assessment of whether aggregate damages reach $200 million," the brief said.

Nagel did not return a call seeking comment. Amtrak's attorney, Yuri J. Brunetti of Landman Corsi Ballaine & Ford, declined to comment.

In its court papers supporting consolidation, Amtrak also said the issue of damages potentially exceeding $200 million was one best handled by an MDL.

"In the event that a federal cap on damages is implicated, it will be extremely difficult to resolve cases in multiple courts and involving multiple judges without ending up with disparate results and uneven handling," Amtrak's papers said. "The objectors completely ignore the $200 million liability limitation in their opposition even though consolidation is the best means to ensure each injured passenger is fairly compensated."

Amtrak's papers went on to note that in the 42 cases involving 51 passengers, there is a "real possibility" that damages will exceed that statutory cap.

The Legal previously reported that of the 42 personal injury cases filed in federal court, 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, multiple wrongful-death suits have been filed in the Eastern District of Pennsylvania.

The plaintiffs in the litigation had previously asked the MDL panel to expedite its decision as to whether to create an MDL by its July 30 meeting in San Francisco, but the panel denied the request.

"The panel considers all motions in due course and is not persuaded to depart from its longstanding practice," the panel said in a July 9 docket entry denying the motion to expedite.