

Amtrak already settling claims from its May 12 crash last year

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With the National Transportation Safety Board set to release its final report May 17 on the disastrous Amtrak crash in Philadelphia last year, the rail line has already begun to settle a handful of claims and has spent millions on health care for passengers injured in the crash.

Meanwhile, litigation over the crash is starting to take shape, with lawyers for both Amtrak and hundreds of passengers cataloguing injuries, lost wages and other economic losses.

The extent of losses is critical because the amount of money Amtrak can pay out in claims is limited by law to \$295 million. Some of the lawyers involved in the case say there's a good chance claims will exceed that, and that passengers will be competing among themselves for compensation.

"What you are seeing in the courtroom now is the beginning point," said plaintiffs' lawyer Thomas Kline, who along with lawyer Robert Mongeluzzi is representing 32 passengers. "The

first question we have to get to is what is the collective value," of the claims against Amtrak.

Eight people were killed and more than 200 injured May 12 in the derailment of a northbound Amtrak train on the Frankford Junction curve in the Port Richmond section of the city.

At the time of the crash, the train was traveling 106 m.p.h. as it entered the curve, which had a posted speed limit of 50 m.p.h.

Some 119 lawsuits have been filed in the case, and lawyers for Amtrak and injured passengers have taken the first tentative steps toward deciding how claims will be sorted out. On April 12, federal district court Judge Legrome Davis named Kline and Mongeluzzi as liaison counsel with responsibility for managing communications among plaintiffs' lawyers, their clients the court and defense.

Davis said he expects sometime soon to appoint a management committee of lawyers for injured passengers who will likely have an outsized role in overseeing the case against Amtrak.

David Cook, a lawyer with the New York-based firm of Kreindler &

Kreindler, expects the bulk of the cases eventually will be settled. "I think Amtrak will make a real solid attempt to settle cases," Cook said.

One development that has simplified the process is that Amtrak has admitted legal responsibility for the crash. At an April 1 hearing before Judge Davis, Amtrak's lawyer David Landman emphasized the rail line would not contest claims for injuries, economic damages and other losses, so called compensatory damages.

While Amtrak is not conceding that it should be exposed to punitive damages, effectively a punishment for its conduct, the point may be moot in the end. That's because the compensatory damages alone may consume all of the money set aside to pay claims.

Landman told the court that Amtrak so far has settled 19 claims, for amounts less than \$50,000, and spent about \$4.5 million on medical care for injured passengers.

"What comes across here is that there are a lot of people who really want to resolve these cases quickly," he said.

Officials so far have offered no explanation for why the train was

traveling at more than twice the posted speed limit when it derailed. And the engineer, Brandon Bostian, has told investigators he remembers very little about the crash.

Even if the anticipated May 17 NTSB report sheds new light on the derailment it is unlikely to have much impact on the litigation, since Amtrak already has admitted liability.

"I don't think there is any information that we will get that would be a game changer," Mongeluzzi said.

How to resolve the remaining claims short of full blown trials is a question the court has yet to address.

Lawyers involved in the case say a critical threshold is whether damages claims exceed the \$295 million cap. If they do, it's possible Amtrak might pay the entire amount into a fund administered by the court, which would have responsibility for overseeing its distribution.

Such was the case following the calamitous crash of a commuter rail train in Chatsworth, Calif. on Sept. 12, 2008.

The crash occurred when the engineer, who was texting at the time, ran a red light on its route north of downtown Los Angeles and collided with a freight train, killing 25 and injuring more than 100. The rail line, Metrolink, was covered by the same cap as Amtrak, then \$200 million. It quickly became apparent that damages would exceed the money available to pay claims.

Metrolink paid the full \$200 million into a fund overseen by the court.

But it wasn't enough. Los Angeles Superior Court Judge Peter D. Lichtman said the \$200 million was about half of what was needed.

He described the allocating funds as "triage," parceling out money to victims most in need.