

\$200 million criticized by train victims

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Southern California's Metrolink system and Connex Railroad filed court papers Wednesday accepting the maximum \$200 million in liability for a 2008 head-on train collision that killed 25 people and injured more than 100, but victims said it is far too little.

The sum is the maximum for a train accident under federal law, said Keith Millhouse, board chairman of Metrolink.

"The rationale is this is the maximum that could be recovered in any event and will expeditiously get the maximum compensation to the victims and their families," Millhouse said.

Millhouse, who is also a Moorpark city councilman, said anything more would constitute a gift of public funds from the governmental agency.

Twenty-one people killed in the Sept. 12, 2008, crash were from Ventura County, including 10 from Simi Valley, where the train was headed when it crashed.

But relatives of dead and injured passengers said Wednesday it's not enough.

"I don't think \$200 million is going to be sufficient to cover the families' losses and the medical bills," said Melissa Grisales of Santa Paula, whose 31-year-old brother, Manuel Macias, was killed.

She said Metrolink and Connex are hiding behind the \$200 million cap.

"Sorry is not good enough," she said.

Her mother filed one of the 109 pending lawsuits, but, Grisales said, she did not know what the family's legal recourse would be if the U.S. District Court in Los Angeles accepts the offer.

The family's attorney, Ed Pfister, said he will have to discuss the next step with his clients.

"My strong guess is they will object," he said. "It's not fair."

His Los Angeles law firm represents 20 injured passengers and the families of four people who were killed.

One of them, Curtis Whitney, 25, is facing more than \$600,000 in medical bills, the attorney said.

Whitney underwent major back surgery and is living with his mother, Cheryl Whitney, in Simi Valley. He was uninsured at the time of the crash and is still uninsured, his mother said.

“He’s got the rest of his life to live with back injuries and head injuries and everything else,” she said.

He was riding back from a construction job on the day of the crash but can no longer work in that field, she said. Nor does she believe he would qualify for Social Security disability because of the amount of previous work experience required in the federal program.

“He can’t sit too long, lay too long, stand too long,” she said. “He can walk and get around. He can’t lift anything. He can’t bend over to pick anything up.”

Engineer probably texting

Investigators believe the commuter train’s engineer was texting when he ran a red light and collided head on with a Union Pacific freight train in the Chatsworth area.

Engineer Robert Sanchez, who was among those killed, was provided by Connex.

The U.S. District Court in Los Angeles, which has to approve the settlement, would distribute the fund to victims.

The filing noted that the lawsuits, almost all involving passengers, are pending in Los Angeles County Superior Court and asked that all passenger claims be consolidated into the federal proceeding.

“This will avoid months and perhaps years of litigation over liability and causation issues while making compensation available to passengers on an expedited basis,” the filing said.

Paul R. Kiesel, coordinating counsel for all the lawsuits, said the upside is that victims and families won’t have to wait years for resolution of claims, but there is a downside as well.

Largest single settlement

“It is unfortunate that because of the scope of the harm here, the actual recoveries will be far less than the losses they’ve truly suffered,” Kiesel said.

Kiesel said it may be the largest single train accident settlement.

“I’m not aware of any settlement exceeding this amount,” he said.

A conservative estimate found that claims could total \$600 million, said Oxnard-based attorney Mark Hiepler. The attorney, who is representing nearly two dozen victims in the crash, is a member of the Plaintiffs’ Steering Committee in the Consolidated Chatsworth-Metrolink cases.

“They forced these people to fight for two years and through this legal maneuver today toss them one-third of the damage they really caused,” Hiepler said. “They are out there paying a third of the bill while trying to take great credit.”

Hiepler has been working closely with federal legislators, particularly Congressman Elton Gallegely, R-Simi Valley, on the \$200 million liability cap.

Gallegely’s spokesman, Tom Pfeifer, said the congressman “is working to ensure the victims have their needs taken care of from this tragedy.”

Neither Metrolink nor Connex revealed how much each was paying into the fund. If accepted by the court, the payment would free the companies from any further liability, the court document says.

The proposed fund involved the cooperation of several insurance carriers, according to Connex, a subsidiary of Veolia Transportation, which operates bus, rail and other services throughout North America.

A Connex statement says the proposed fund would “provide financial recovery to victims of the accident in the full amount available to passengers of a commuter rail accident in the U.S., and to do so years ahead of when financial recovery for victims would otherwise likely be realized.”

Kiesel said that once Metrolink and Connex deposit the \$200 million with the court, the process will move on to allocation of funds to claimants.

Limit may be appealed

“It’s anticipated that every single claimant here will have an opportunity to fully present their claims to a judicial officer,” he said.

Pfiester said the payment limit may be subject to appeal on the grounds it violates the constitutional rights of the victims. “It deprives them of the right to due process,” he said.

Critics are trying to get Congress to change federal law so that the \$200 million cap would not apply to nongovernmental agencies, he said. If approved, that could allow Veolia, the French corporation that owns Connex, to be held to a higher standard, he said.

Metrolink, created in 1992, is a regional heavy-rail commuter system serving Los Angeles, Orange, Riverside, San Bernardino and Ventura counties.

The 2008 eight crash was the system's second disaster.

In 2005, 11 people were killed and about 180 were injured when a man who later claimed he was suicidal parked his sport utility vehicle on train tracks in suburban Glendale, causing a Metrolink train to derail and hit another Metrolink train. The driver of the SUV was convicted of murder.

— The Associated Press contributed to this report.

<http://www.vcstar.com/news/2010/aug/25/victims-say-proposed-200-million-metrolink-isnt/>