

Metrolink crash victim from Moorpark says a \$200 million liability cap is not enough

By Teresa Rochester

Thursday, August 26, 2010

A thick scar stretches from Mike Kloster's abdomen to his chest. Smaller scars branch to the left and right.

They are visible reminders of five surgeries to repair the severe abdominal injuries that Kloster, 50, suffered when he slammed into a metal table as Metrolink 111 collided head on with a Union Pacific freight train in Chatsworth at 4:22 p.m. on Sept. 12, 2008.

The collision, the worst in Metrolink's history, killed 25 people — including 21 from Ventura County — and injured 135. Kloster, of Moorpark, was among the 10 with the worst injuries.

Kloster's splenic vein was torn away, his duodenum, the small intestine's first section, was torn, and three ribs were broken. His spleen and 80 percent of his pancreas had to be removed. One his kidneys no longer functions, and Kloster is now diabetic because of the loss of his pancreas. He physically braces himself to cough or sneeze because of the pain. And because his digestive system was so badly damaged his diet is restrictive.

The father of two has accrued medical bills topping \$2 million. The family of four is faced with insurance co-payments and credit card bills, incurred during the nine months Kloster was out of work. Along with the financial burden, Kloster grapples with the knowledge that his insurance policy has a cap and he likely will need ongoing medical care for the rest of his life.

On Wednesday, Southern California's Metrolink system and Connex Railroad filed court papers accepting the maximum \$200 million in liability for a potential settlement fund for the crash victims. The U.S. District Court in Los Angeles, which has to approve the settlement, would distribute the fund to victims.

Some would think that is welcome news. But Kloster and his mother, Barbara Kloster of Thousand Oaks, have become critics of the \$200 million liability cap for rail accidents laid out in the Amtrak Reform and Accountability Act of 1997. Their concern, echoed by other victims, is the amount likely won't cover the claims submitted by those injured and families of those killed.

Oxnard attorney Mark Hiepler, who is representing nearly two dozen victims in the crash, has said a conservative estimate found that the claims could total \$600 million.

“How can you cap somebody’s negligence?” Kloster said. “Do whatever you want you know. Kill as many people as you want, ruin as many lives as you want, but you’re only on the bill for \$200 million. No matter what happens we’ll protect you. It’s unfathomable.”

Investigators say the crash was caused when the Metrolink train ran a stop signal and plowed into a freight train. The National Transportation Safety Board found the Metrolink engineer was distracted because he was sending text messages. The engineer, Robert Sanchez, who was among those killed, was provided by Connex, a subsidiary of Veolia Transportation, a French company that operates bus, rail and other services throughout North America.

Some victims and their attorneys question whether Veolia should qualify for the \$200 million cap, a provision intended to help protect public entities.

Claudia Souser of Camarillo is the wife of Doyle Souser, 56, who was killed in collision. She said it is wrong of the corporation to pay what many estimate will amount to a third of the bill.

“Apparently, they would like to escape accountability for their actions while burdening American taxpayers with the huge costs of medical bills and future surgeries for the injured,” Souser, a mother of three, said in a statement. “This cannot be what Congress intended, especially when the defendants have over \$600 million in insurance available.”

Kloster said the company should stop hiding behind the cap.

“I think Veolia should accept the responsibility,” he said. “They can afford this. This is not something that’s going to bankrupt them. ... They should step up and do the right thing and take care of business correctly instead of hiding behind the cap.”

When asked to comment about whether or not Connex is covered by the federal liability cap, a Connex spokeswoman said the document filed Wednesday in federal court, called an interpleader, was the fastest way to get money to victims and it would help bring closure to families.

“This allows us to provide the maximum level of compensation to injured passengers and deceased passengers and their family members,” Metrolink board chairman Keith Millhouse said in an interview on Wednesday. “And it provides it potentially years faster than without the interpleader action.”

The strategy will put some pressure on the plaintiffs, said John Nockleby, a law professor at Loyola Law School. Some may find the amount they receive would be adequate, while others may not.

“I think it’s a very, very smart strategic move,” Nockleby said of filing. “It put the burden on the plaintiffs now to figure out if they want to continue fighting.”

Hiepler said if the cap remains intact the costs of life care for the severely injured, those who are unable to work and the costs for families that lost a main breadwinner will be shouldered by

taxpayers in the form of social services. Hiepler, who serves on the plaintiff's steering committee, is working with lawmakers on a possible remedy.

Congressman Elton Gallegly, R-Simi Valley, said the issue is a priority for the constituents in his district and he has been working with the House of Representatives' transportation committee. Of those killed in the crash, 10 were from Simi Valley.

Gallegly will meet with some of the victims Tuesday.

Hiepler said members of Congress have been peppered with 1,700 letters on the collision and compensation for the victims.

Seven of those letters came from the Kloster family.

"There are people who lost their jobs, lost their homes, and their lives will never be the same for them, and they will get a pittance, a pittance," Barbara Kloster, Mike's mother, said. "I want to see the law amended some. I don't think the two non-governmental agents should fall under the cap of the federal government. We the taxpayers are the ones who are going to be paying this."

On the evening of the crash, Barbara Kloster was at a grandson's sporting event in Valencia. She got a call to come quick because there had been accident. Kloster and her husband rushed to a hospital in Northridge only to learn her son was taken to UCLA Medical Center in Westwood.

Mike Kloster had just changed seats with a friend in the third car of the Metrolink train that afternoon, when he was thrown forward by a fast, violent and loud jolt.

"We just crashed," Mike remembers telling his friend. As soon as he spoke the words, he felt a searing pain in his gut. As they tried to exit the train, Mike's leg turned to rubber. He still doesn't know how it was gashed down to the bone. He tried not to pass out.

"I was really thirsty," he said.

Christi Kloster, Mike's wife, did something she rarely did that afternoon. She turned on the television to watch "Ellen." A breaking news alert told about the train crash.

"I just had a sinking feeling," she said.

Kloster, his belly fully distended by internal bleeding and laid out on a gravelly slope, was among the first airlifted from the scene.

Mike battled infections and complications before emerging from the hospital after 59 days. Today, he has good days and bad days, but he generally remains upbeat, as is his nature. He has returned to work full-time as a sound engineer. But the lingering physical and financial ramifications are ever present.

"It's changed everything," Kloster said. "It's changed everything."

<http://www.vcstar.com/news/2010/aug/26/metrolink-crash-victim-from-moorpark-says-a-200/>