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Challenges Await Those Who Sue Over Hoboken Train Crash

Charles Toutant, New Jersey Law Journal

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Recovering on behalf of those injured in the Sept. 29 crash of a New Jersey Transit train in Hoboken could be challenging, according to lawyers who have made claims against the transit agency.

New Jersey Transit's self-insured status makes it a tough opponent in injury litigation, and some suits could be tripped up by the many rules and requirements of New Jersey's Tort Claims Act, lawyers said.

"Navigating New Jersey Transit is like navigating a minefield, and you'd better know what you're doing," said Denville lawyer Christopher Musmanno. "They make it very difficult to sue New Jersey Transit because the money is coming out of the taxpayer's pocket," said Musmanno, of Einhorn, Harris, Ascher, Barbarito & Frost who won \$2.25 million settlement from the transit agency in a 2015 motor vehicle injury suit.

At least one tort claim notice was filed against New Jersey Transit on Friday in connection with the Hoboken train crash. The firm of Nagel Rice in Roseland filed the notice, it said on its website. The claimant was identified on NJ.com as Keri Gormeley, 39, of Hasbrouck Heights, who suffered traumatic brain injury, back and neck injuries and severe emotional distress.

The train, which witnesses said pulled into the Hoboken station at a high rate of speed, claimed the life of Fabiola Bittar de Kroon, 34, who was hit by falling debris while standing on the train platform. She was a Brazilian lawyer who recently moved to the U.S. and worked for the software company SAP. At least 114 others were treated for injuries in local hospitals. The crash remains under investigation by the National Transportation Safety Board.

Musmanno said some litigants might overlook requirements of the Tort Claims Act that a notice of intent to sue be served on New Jersey Transit within 90 days of the injury, and its exclusion of claims for injuries that are less than permanent. The 90-day deadline could pose difficulties for someone such as the husband of the woman who was killed, who might not act promptly in light of his bereavement, said Musmanno. Many cases are regularly dismissed for being time-barred, he said. And most of those injured in the train crash appear to have cuts and bruises, the type of injury that isn't considered permanent, he said.

"A handful of people who were hurt badly have a case against New Jersey Transit, but the other 85 percent don't have a case," Musmanno said.

New Jersey Transit's self-insured status means it's slow to settle large cases, said Frank Cofone Jr., who obtained a \$750,000 settlement from the agency in 2013. "They were more reluctant to get to an

appropriate settlement figure than most insurance companies. They weren't giving up anything easily," said Cofone, of D'Amico & Cofone in New Brunswick.

But while bringing a tort suit against New Jersey Transit is full of challenges, the agency's failure to install an automatic braking system called Positive Train Control would work to the benefit of plaintiffs lawyers, said Adam Cahn of Sakkas, Cahn & Weiss in New York, who has spoken to several passengers from the ill-fated Hoboken train. The federal government has been pressing New Jersey Transit to install Positive Train Control for several years but the agency has received extensions because of the cost of installing it, said Cahn.

Cahn said some passengers have told him the train was short one car, which forced some riders to stand in the train's vestibules, which is less safe than the passenger compartment.

Lawyers said New Jersey Transit is self-insured because the large number of trains and buses it operates makes it particularly vulnerable to accident claims. As a self-insured agency, it pays claims out of its own operating budget, lawyers said. New Jersey Transit officials did not respond to a reporter's questions about its self-insured status.

Even if the agency sees a sudden influx of claims, those who make a recovery don't have to worry about getting paid, said John Grady of Craig Annin Baxter in Haddonfield, who previously served as a deputy attorney general in the state's tort litigation section, providing representation to New Jersey Transit and other state agencies. Grady said New Jersey Transit would manage to pay claims from the Hoboken train crash, even in light of likely claims from an Aug. 19 bus crash in Newark that killed two and injured 19. "It will be a matter of managing their budget," he said.

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