

# NURENBERG, PARIS

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## **Amtrak City of New Orleans Passenger Train Cases Resolved for over \$21 Million Dollars<sup>1</sup>**

On March 15, 1999, at 8:03 p.m., an Amtrak passenger train left Chicago, Illinois, heading southbound with a final destination of New Orleans, Louisiana. This train, known as the "City of New Orleans," carried 206 passengers and 23 crew members. It consisted of two locomotives pulling fourteen cars, and was operating on tracks owned and maintained by the Illinois Central Railroad Company.

At around 9:46 p.m, the City of New Orleans entered the village of Bourbonnais, Illinois. The Birmingham Steel Company plant is located in Bourbonnais, adjacent to the train tracks. A road running away from the Birmingham Steel plant intersects the tracks. The traffic at this crossing is controlled by a warning system consisting of gates and signals. This warning system is designed to activate at least 30 seconds before any train's arrival at the crossing to prevent any vehicular traffic from entering the path of an oncoming train. Illinois Central is responsible for maintaining this warning system.

Around the time the City of New Orleans was entering the village of Bourbonnais, a tractor trailer truck, owned and operated by Melco Transfer, Inc., was leaving the Birmingham Steel plant. The truck, driven by John Stokes, was carrying close to 400 steel reinforcing ("rebar") bars. These sixty foot long rods overhung seven feet from the rear of the trailer. As the truck, heading eastbound, began to traverse the



crossing, the City of New Orleans, heading southbound, approached the crossing at 79 m.p.h.

Just as the tractor trailer was part way through the crossing, the Amtrak train violently struck it, hitting the trailer's rearmost axle on the side. This caused both locomotives, and 11 of the 14 passenger cars, to derail. The first six cars of the train, including a sleeper car, piled together and came to rest near one of the locomotives. A fire erupted as a result of a ruptured fuel tank in one of the locomotives. The fire spread and engulfed the sleeper car where many of the passengers were trapped. Eleven of the passengers in the sleeper car were unable to escape the raging fire,

1). See docket, U.S. Dist. Court N.D. Ill. (Motions for Good Faith Findings).

and died as a result of thermal injuries and inhalation of toxic fumes.

Immediately after the crash, rescue, fire, and other personnel came upon the horrific scene and discovered that while many of the passengers escaped with minor injuries, others were not as fortunate. In the early morning hours and days following the crash, teams of National Transportation Safety Board ("NTSB" investigators), Illinois State Police, and other governmental personnel combed through the wreckage and crossing area to begin the difficult task of determining the causes of this calamity.

As is the case with other major transportation accidents, the potentially responsible parties (Amtrak, Illinois Central, and Melco Transfer) each focused on finding evidence to exonerate themselves and implicate the others. Amtrak blamed the truck driver for failing to stop at the crossing and await the passing of the train. Amtrak and Illinois Central both believed the gate and signal crossing system were functioning properly and that the truck "drove around" the gates. Amtrak also took the position that its train engineer, Angel Flores, did "everything he could" to avoid the collision. Amtrak claimed that Flores had applied the train's brakes to minimize the force of the collision.

Melco Transfer believed that its driver operated its vehicle in an appropriate manner and that the

truck entered the crossing while the gates were still up and before the signals were activated. Melco Transfer argued that it was not until the truck was nearly on the tracks that the lights activated and halfway across the tracks when the gates began to lower.

Eyewitnesses to the accident corroborated Melco Transfer's position. Nevertheless, Amtrak and Illinois Central attempted to discredit these witnesses, and to convince the government investigators that the fault lay with the truck driver.

Many of the victims and their survivors filed lawsuits against Amtrak, Illinois Central, and Melco Transfer in both state and federal courts in Chicago, Illinois. As with all mass disaster litigation, the lawsuits were consolidated before a single judge in both the Cook County State Court and the Federal Court. Judge Matthew Kennelly presided over the consolidated actions in federal court; Judge Timothy Evans presided over the consolidated actions in state court.

**Attorneys Jamie R. Lebovitz and David M. Paris of the Nurenberg Paris Law Firm** were two of just a handful of lawyers from around the United States appointed by Judges Evans and Kennelly as members of a Steering Committee to conduct the litigation on behalf of the victims and their families. Lebovitz is among the few air crash and railroad accident attorneys in the United States who is regularly court-appointed to Steering Committees that represent the victims of such disasters.

Over the next five years, Lebovitz, Paris, and their colleagues in the Amtrak City of New Orleans litigation used a vast amount of resources to discover and identify the evidence that would answer the many complex questions raised by this train crash. The litigation was complicated by the fact that Melco Transfer carried only 1 million dollars in liability insurance – a wholly inadequate amount to



remedy the losses of so many victims. As such, it was imperative for the lawyers representing the families to prove that the greater percentage of fault fell on the shoulders of Amtrak and Illinois Central so as to maximize the recovery for the families and the survivors.

The litigation was hard-fought, with pretrial preparation involving numerous battles. Lebovitz, Paris, and their colleagues took scores of depositions – of eyewitnesses, train engineers, signal maintainers, supervisors, and other personnel from Amtrak and Illinois Central. Thousands of pages of documents were produced which provided key information and evidence implicating Amtrak and Illinois Central's wrongdoing. The lawyers for the families and victims retained numerous expert witnesses in the fields of accident reconstruction, train engineering, procedures and training for passenger operations, gate crossing signal maintenance, forensic medicine, and other areas.

During the course of the litigation, the government investigators concluded their respective investigations, with contrary findings. The NTSB concluded the accident was the result of the truck driver's inappropriate response to the grade crossing warning devices and driver fatigue. The Illinois State Police, on the other hand, concluded that the gates and signal systems failed to operate and provide the appropriate advance warning interval, and that the gates descended onto the truck's trailer well after the truck had entered the crossing. Neither the NTSB nor the Illinois State Police addressed the issue of whether the train engineer failed to take appropriate evasive action to avoid the collision.



Despite the conflicting findings of the governmental investigators (most of which are not admissible in a civil trial), the attorneys for the victims and their families developed extensive and compelling evidence of Amtrak's and Illinois Central's misconduct leading to this crash. The following lists only some of the facts

that were revealed during discovery which were relied upon by the lawyers and their experts in preparing the cases for trial:

- The gates and signals at the Bourbonnais crossing were not properly configured to activate and provide the appropriate warning interval for vehicles approaching the crossing when a passenger train was near.
- Illinois Central knew that the gates and signals at the Bourbonnais crossing were malfunctioning on occasions prior to the crash, but failed to take any steps to repair the system.
- Although Amtrak engineer, Angel Flores, testified at his deposition and before a panel of NTSB investigators that when he saw the tractor trailer in the crossing ahead of him, he applied the train's emergency brakes, THIS WAS NOT TRUE. The Event Data Recorder system "Black Box" (which is contained on the locomotive) revealed that at no time prior to the collision did the engineer activate the emergency brakes. In fact, the train continued to travel at the maximum speed of 79 m.ph. for a distance of 1/4 mile until impact, and it was only because of the impact that the emergency brakes automatically engaged.
- Amtrak failed to provide any type of training or procedures to its engineers as to what

actions are to be taken in situations when engineers believe a collision with a vehicle in their path is imminent, despite a long history of similar accidents.

- Had the Amtrak engineer timely and properly applied the emergency brakes, the train would have slowed sufficiently to avoid striking the truck and thus avoid causing the substantial loss of life and injuries that occurred.

The trial of the actions consolidated in federal court was set to begin in May 2004. Shortly before trial, the defendants, knowing how strong the victims' case was, aggressively engaged the lawyers for the victims and their families in settlement discussions. The week prior to trial, numerous pretrial motions had been filed with the district court, and the rulings from the court spelled serious problems for the defense.

Through the efforts of one of the Nurenberg, Paris Law Firm's legal scholars, **Brenda M. Johnson**, the lawyers for the families were successful in preventing the defense from introducing prejudicial testimony, and in obtaining a favorable ruling of first impression in the United States concerning Amtrak's failure to provide proper procedures for operating passenger trains in like circumstances.

The families of the dead and the surviving passengers were determined to publically expose the wrongs committed by the defendants, in the hope that their efforts would prevent future catastrophes. Since the conclusions reached by the NTSB and the Illinois State Police were conflicting, it was the resourcefulness of the lawyers, and the patience and persistence of the families, that finally brought to light Amtrak's and Illinois Central's misdeeds and held them accountable.

NURENBERG, PARIS, HELLER  
& McCARTHY CO. L.P.A.  
1370 Ontario Street, Suite 100  
Cleveland, OH 44113-1792  
(800) 562-7438 or (216) 621-2300  
FAX (216) 771-2242

Internet Address: [www.nphm.com](http://www.nphm.com)  
E-mail Address: [JLebovitz@nphm.com](mailto:JLebovitz@nphm.com)  
or [DParis@nphm.com](mailto:DParis@nphm.com)