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MASS-CASUALTY RAILROAD ACCIDENTS AND LIABILITY CAPS

In 1997, as part of a deal to bail out financially-struggling Amtrak, Congress passed a law setting a \$200 million overall liability cap for passenger rail accidents (not just Amtrak's).¹ The cap has no exceptions, so it applies to claims against the railroad no matter how horrific the crash, how reckless the rail company or how many people are killed or injured. There is also no inflation adjustment.

There have been a number of mass-casualty railroad crashes since the cap took effect. Below are some examples, including cases where aggregate damages for passengers exceeded or may have exceeded the \$200 million cap.

May 12, 2015 (Philadelphia, PA) – 8 killed, over 200 injured

An Amtrak regional train derailed while going more than double the speed limit. The cause of increased speed is still under investigation.² To date, over a half-dozen lawsuits have been filed.³ Legal analysts believe that the \$200 million cap will not be enough to compensate all the victims.⁴

February 3, 2015 (Valhalla, NY) – 6 killed, over a dozen injured

A Metro-North passenger train collided with an SUV parked on the railroad tracks. Although the train's engineer applied the emergency brake, the train did not stop in time. The railroad has been served 34 notices of claim. In addition, 27 claims have been filed against the town of Mt. Pleasant.⁵ While it's unclear whether claims against the railroad (*i.e.*, those subject to the cap) will exceed \$200 million, claims against the town of Mt. Pleasant reportedly exceed \$325 million. All claims are still pending.⁶

December 1, 2013 (Bronx, NY) – 4 killed, at least 70 injured

A Metro-North passenger train going 82 mph in a 30 mph zone derailed on a left-hand curve. The train operator had fallen asleep due to a combination of undiagnosed sleep problems and shifts in his regular work schedule.⁷ Several suits have been filed on behalf of killed and injured passengers. Among the victims turning to the civil courts: a former rail employee who is now a quadriplegic; a home health-care aid whose ankle and leg bones were broken; a former police officer who suffers from post-traumatic stress; and a woman who suffered a severely broken

back after being trapped beneath wreckage for over an hour. Total claims for these four victims alone exceed \$125 million.⁸

June 24, 2011 (Churchill County, NV) – 6 killed, 16 injured

A heavy commercial truck slammed into an Amtrak passenger train after the distracted truck driver missed initial railroad crossing warnings. The crash sent a fireball into the train's passenger cars.⁹ Eleven lawsuits were filed on behalf of several victims,¹⁰ including the families of killed travelers and several surviving Amtrak employees who couldn't escape because the train's baggage car door was locked.¹¹ In 2014, a jury awarded Amtrak and Union Pacific Railroad over \$4.5 million in their lawsuit against the trucking company.¹² Victims' lawsuits are still pending.¹³

June 22, 2009 (Washington, DC) – 9 killed, 80 injured

A Washington Metropolitan Area Transit Authority (MATA) commuter train collided with a train already stopped at a station. The National Transportation Safety Board (NTSB) found that, because of improper testing, a faulty track circuit component on the rear failed to detect the train directly in front of it.¹⁴ Lawsuits were filed on behalf of victims injured or killed. MATA settled with families of the nine people killed for undisclosed amounts. The rail company also settled with 84 passengers, whose cases did not go to court, for a total of \$1.6 million, or between \$333 and \$150,000 each. Four years after the crash, Metro had settled all crash-related lawsuits.¹⁵

September 12, 2008 (Chatsworth, CA) – 25 killed, 135 injured

A Metrolink train engineer, who was texting while driving, missed a signal and collided with an oncoming freight train. Lawsuits were filed on behalf of 24 people killed and over 100 people injured in the crash. Victims included "Rachael Mofya, a foreign exchange student with extensive medical bills who had third-degree burns and a fractured skull and had to have part of her brain removed."¹⁶ A state court found liability in the amount of \$264 million but was forced to reduce the total award to \$200 million because of the liability cap. As L.A. County Superior Court Judge Peter Litchman explained, "[I]mpossible decisions had to be made. What was given to one victim had to be taken from another. Essentially a Sophie's Choice had to be made on a daily basis. One Sophie's Choice is enough for a lifetime, but over 120 of them defies description."¹⁷

September 25, 2005 (Glendale, CA) – 11 killed, 180 injured

A Metrolink commuter train derailed after it collided with a Jeep that was purposely parked on the railroad tracks during an abandoned suicide attempt.¹⁸ The Jeep driver was convicted of murder and sentenced to 11 consecutive life sentences in prison.¹⁹ In 2009, Metrolink settled all 11 wrongful death lawsuits and all but one serious injury lawsuit for \$39 million.²⁰ The remaining victims' settlements have not been disclosed.

April 18, 2002 (Crescent City, FL) – 4 killed, 142 injured

An Amtrak Auto Train carrying 446 passengers derailed on the left-hand curve of a CSX-owned track.²¹ The NTSB concluded that the track buckled due to CSX's inadequate track resurfacing operations.²² Individual and class action lawsuits were filed on behalf of many crash victims.²³ Settlement amounts in those cases remain unclear.

NOTES

¹ 49 U.S. Code § 28103: "(2) The aggregate allowable awards to all rail passengers, against all defendants, for all claims, including claims for punitive damages, arising from a single accident or incident, shall not exceed \$200,000,000."

² NTSB Office of Public Affairs, "NTSB Issues Second Update on its Investigation Into the Amtrak Derailment in Philadelphia," <http://www.nts.gov/news/press-releases/Pages/PR20150610.aspx>.

³ Chris Mondics, "Newlyweds sue Amtrak over train crash," *Philadelphia Inquirer*, June 16, 2015, http://www.philly.com/philly/business/20150616_Couple_sues_Amtrak_over_train_crash.html.

⁴ Sophia Pearson, "Amtrak Train Crash Victims Face \$200 Million Injuries Cap," *Bloomberg News*, May 14, 2015, <http://www.bloomberg.com/news/articles/2015-05-14/amtrak-train-crash-victims-face-200-million-injuries-cap-by-law>.

⁵ Hoa Nguyen, "Metro-North Valhalla crash: 34 potential lawsuits on tap," *Journal News Media Group*, May 5, 2015, <http://www.lohud.com/story/news/transit/2015/05/05/metro-north-valhalla-crash-claims/26934599/>.

⁶ Hoa Nguyen, "Valhalla Train Crash Claims Exceeds \$325 Million," *Journal News Media Group*, May 8, 2015, <http://www.lohud.com/story/news/transit/2015/05/08/valhalla-train-crash-claims-exceed-million/27010601/>;

"Commuter Initiates Lawsuit Against Metro-North In Fatal Valhalla Crash," October 28, 2014, <http://putnam.dailyvoice.com/news/commuter-initiates-lawsuit-against-metro-north-fatal-valhalla-crash-0>

⁷ "NTSB: Engineer's Sleepiness Caused Deadly Bronx Metro-North Train Derailment," *CBS New York*, October 28, 2014, <http://newyork.cbslocal.com/2014/10/28/ntsb-issuing-likely-cause-of-deadly-bronx-metro-north-train-derailment/>.

⁸ Nolan Feeney, "Man Paralyzed in Metro-North Crash Sues For \$100 Million," *Time Magazine*, April 9, 2014, <http://time.com/56024/man-paralyzed-metro-north-crash-lawsuit/>; Dareh Gregorian, "First two lawsuits filed over derailment of Metro-North train in the Bronx, including one demanding \$100 million in compensation," *New York Daily News*, April 8, 2014, <http://www.nydailynews.com/new-york/bronx/nypd-vet-sues-metro-north-10-million-year-bronx-train-derailment-article-1.1749443>; Heather Yakin, "Injured New Windsor man files suit in derailment," *Times Herald Record*, April 8, 2014,

<http://www.recordonline.com/apps/pbcs.dll/article?AID=/20140408/NEWS/404080334>; Theresa Juva-Brown, "4 derailment victims file notice for suits," *Journal News Media Group*, December 4, 2013, <http://www.lohud.com/story/news/local/westchester/2013/12/04/bronx-derailment-feds-to-metro-north-accidents-unacceptable-/3867249/>.

⁹ Martha Bellisle, "Nevada has made no changes to intersection where truck crashed into Amtrak train, killing 6," *Reno Gazette-Journal*, June 24, 2012, <http://archive.rgj.com/article/20120624/NEWS49/306240059/Nevada-has-made-no-changes-intersection-where-truck-crashed-into-Amtrak-train-killing-6>.

¹⁰ *Ibid.*

¹¹ Scott Sonner, "Nevada Amtrak Crash: Trial Begins In Wreck That Killed 6," *Associated Press*, August 6, 2014, http://www.huffingtonpost.com/2014/08/06/nevada-amtrak-crash_n_5654037.html; Martha Bellisle, "Two more lawsuits filed in fatal Nevada Amtrak crash," *Reno Gazette-Journal*, September 13, 2011, <http://www.rgj.com/article/20110913/NEWS01/106050006/Two-more-lawsuits-filed-fatal-Nevada-Amtrak-crash>; "Lawsuit Blames Amtrak In Deadly Nevada Crash," *Associated Press*, July 4, 2011, <http://sacramento.cbslocal.com/2011/07/04/lawsuit-blames-amtrak-in-deadly-nevada-crash/>; Corboy & Demetrio, "Corboy & Demetrio Jointly Files Second Lawsuit on Behalf of Nevada Family Killed in Amtrak Crash," May 28, 2011, <http://www.corboydemetrio.com/news-325.html>.

¹² Irvin Jackson, "Lawsuit Over Truck Accident With Amtrak Train Results in \$4.7M Verdict," *About Lawsuits*, September 23, 2014, <http://www.aboutlawsuits.com/amtrak-train-crash-truck-accident-verdict-71335/>.

¹³ *Ibid.*

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- ¹⁴ Amber Ferguson, "Saturday Marked 4 Years Since Deadly Red Line Crash," *NBC News*, June 26, 2013, <http://www.nbcwashington.com/news/local/Saturday-Marks-Fourth-Anniver-212454961.html>.
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- ²² NTSB Accident Report, "Derailment of Amtrak Auto Train on the CSXT Railroad," August 5, 2003, <http://www.nts.gov/investigations/AccidentReports/Pages/RAR0302.aspx>.
- ²³ Greg Groeller, "Lawsuit Already Filed On Behalf Of Passengers," *Orlando Sentinel*, April 20, 2002, http://articles.orlandosentinel.com/2002-04-20/news/0204200144_1_amtrak-csx-auto-train; Law Offices of Harvey J. Kulawitz, "Verdicts & Settlements" <http://lawyerct.com/SandyHook/CM/Custom/Verdicts-Settlements.php> (accessed June 10, 2015).