

Danielle Wong Thu Jul 19 2012

Via Rail ordered to open up to lawsuit

Judge tells company to disclose offers, settlements to riders on derailed train



DERAILMENT An Ontario Superior Court judge has ordered Via Rail to disclose to members of a proposed class action the settlements it made with passengers who were aboard a train that derailed in February.

WILLIAM WATSON/Special to The Hamilton Spectator

The federal Transportation Safety Board has said speed was a factor in the derailment.

An Ontario Superior Court judge has ordered Via Rail to disclose to members of a proposed class action the settlements it made with passengers who were aboard a train that derailed in February.

Via Rail sent out letters offering \$3,000 to each commuter who was on Train 92 on Feb. 26, when three Via engineers were killed and 45 people were injured after the Toronto-bound train went off the tracks in Burlington.

However, one of the lawyers representing a group of passengers seeking a class action against Via Rail and the Canadian National Railway Company said they were “shocked” to learn Via had approached the train riders directly to settle.

“We went to court because we were concerned that Via would continue in its efforts to communicate directly with the passengers, which could considerably impact the viability of this class action,” said Ted Charney of Toronto-based Falconer Charney LLP, one of the four law firms working together to pursue the class action.

The ruling on July 13 orders Via to disclose its settlement offers and signed agreements. The decision allows for the completion of the signed settlements and sets out regulations on how Via ought to correspond with the passengers going forward.

Four passengers out of the 75 took Via's offer, said Harvey Strosberg, of Windsor-based Sutts, Strosberg LLP. Strosberg and Charney are working with the law firms Koskie Minsky and Howie Sacks & Henry in the class-action lawsuit.

“(The ruling) is important in precedential value,” Strosberg said, adding the decision sets out guidelines for how future defendants ought to communicate with potential class-action members before a proposed class action has been certified.

Via's lawyer, John Campion, agreed.

“We are thrilled with the result,” he said.

“It's got a broad application across any field where defence counsel or defendants ... (who) wish to make an offer to the group now knows how to do it, and can do it legitimately.”

While Campion called Via's \$3,000 offer a “good corporate-citizen response,” Charney said it was “inadequate compensation.”

Thirty-five passengers are currently part of the class action, which is seeking \$10 million in general damages. Their motion for certification, when the court will decide whether the lawsuit can go ahead, will be heard Nov. 1 and Nov. 2.

In March, the Transportation Safety Board of Canada (TSB) announced investigators had determined Train 92 had been travelling four times faster than it should have when it changed tracks at a crossover.

On Wednesday, TSB spokesperson Julie Leroux said that there were no updates regarding their investigation and that there was no set timeline regarding the release of information.

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