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# First wrongful death claim filed over '12 S. Jersey freight train derailment

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By JON CAMPISI

What appears to be the first wrongful death complaint arising out of last year's freight train derailment in South Jersey has been filed in Philadelphia's Common Pleas Court.

Attorneys with Philadelphia-based Messa & Associates filed a civil action Feb. 25 on behalf of Paulsboro, N.J. resident Viola L. Scott, who is suing in her capacity as administratrix of the estate of the late Wessie L. Hardy and also on behalf of Michael Hardy.



Joseph Messa Jr.

The suit is tied to the headline-making freight train derailment over the Mantua Creek in Paulsboro on Nov. 30, 2012, that resulted in four train tankers loaded with tens of thousands of gallons of hazardous substances, including the dangerous vinyl chloride, spilling into the waterway after the collapse of the East Jefferson Street Bridge.

Consolidated Rail Corp. and CSX were first named as defendants in a negligence suit filed back in mid-December in Philadelphia arising out of the toxic chemical spill.

That suit was soon transferred to the federal court in Philadelphia, but U.S. District Judge Michael Baylson in February granted a plaintiffs' request to remand the case back to the Philadelphia Court of Common Pleas.

The latest complaint alleges that Paulsboro resident Wessie Hardy was exposed to the "thick toxic fog of vinyl chloride fumes" that engulfed her home, and that Hardy's son, Michael, who lived at home with his mom, was also exposed to the chemical.

"Wessie Hardy told her son that she believed that the cloud was harmless morning fog, unaware that it was actually a toxic substance which would kill her," the complaint reads.

As a result of her exposure to the vinyl, Wessie Hardy developed chest pains, had difficulty breathing and experienced a burning and irritation in her eyes, the suit says.

She was soon admitted to Underwood Memorial Hospital for treatment of vinyl chloride monomer exposure where she soon died as a result of coming into contact with the chemical.

Michael Hardy also ended up developing respiratory problems, chest pains, coughing, chest tightness and other problems due to his exposure to the toxic agent, the lawsuit states.

The lawsuit further states that the railroad defendants quickly sought to buy-off some Paulsboro residents with the payment of small cash settlements in exchange for their signing releases foregoing their rights in court.

The alleged payoff was first reported by WPVI Channel 6 in Philadelphia late last month after undercover news investigators caught employees of the defendants offering the payoffs that would bar residents from bringing lawsuits against the companies.

The complaint makes reference to the payouts, claiming that Michael Hardy was one such resident approached by the railroad companies, even after he had already retained legal representation.

Michael Hardy ended up declining the defendants' \$2,500 offer, the lawsuit shows.

"Defendants did not offer Wessie Hardy a small cash settlement because she died from her exposure to vinyl chloride monomer before they had the chance," the complaint states.

Aside from Conrail and CSX Transportation, the other defendants named in the lawsuit are Norfolk Southern Railway Corp., Seminole Gulf Railway L.P., Oxyvinyls L.P., Exxon Mobil Corp., Union Tank Car Co., Murex LTD and Gatx Corp.

The suit faults the defendants for failing to warn Paulsboro residents living near the chemical spill site that the toxic chemicals that were released through the train derailment could cause catastrophic injuries, illness or death.

The suit also asserts that the train engineer on that day back in November, in concert with the dispatch operator, "consciously and recklessly" decided to proceed across the East Jefferson Street Bridge with freight that included hazardous and toxic substances, even while the light on the railroad tracks was red.

This action, the suit maintains, constituted a disregard for the health, welfare and safety of the residents and business owners in Paulsboro, N.J.

The complaint contains counts of strict liability, recklessness, negligence, negligent supervision/entrustment, negligent infliction of emotional distress and wrongful death.

The plaintiff seeks damages in excess of the arbitration limits, which is \$50,000 at Philadelphia's Common Pleas Court.

*The case ID number is 130202534.*

This entry was posted in Issues, News, Philadelphia Court of Common Pleas, wrongful death and tagged Conrail, CSX Transportation, Exxon Mobil Corp., Murex LTD and Gatx Corp., Norfolk Southern Railway Corp., Oxyvinyls L.P., Seminole Gulf Railway L.P., top, Union Tank Car Co.. Bookmark the permalink.

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