

## Rail death lawsuit move requested

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PHILADELPHIA — Local railroad companies and employees being sued for the 2012 death of a 17-year-old girl are requesting the case be transferred from Philadelphia to the Northumberland County Court of Common Pleas.

While the motion is pending in Philadelphia courts, a case management conference is scheduled for 9 a.m. Thursday in Room 613 of the Case Management Center in city hall.

Maxine Eschbach, 17, was killed when a car she was riding in was hit by a train while traveling west on Center Street in Milton. There are crossing lights, but no gates at the crossing where the accident occurred.

Philadelphia law firm Messa & Associates announced May 21 that Maxine Eschbach's mother, Roxanne, filed a wrongful-death lawsuit against several local parties, including Norfolk Southern Railroad, North Shore Railroad Co., the SEDA-COG Joint Rail Authority, Consolidated Rail Corp., the driver of the car, Kimberly Bergenstock, and Bergenstock's father, Douglas, as well as the operator of the train, Joshua Weisen, of Sunbury, and the engineer of the train, Donald Bickel, of Northumberland. The suit was filed in the court of common pleas of Philadelphia County.

The railroad's attorneys with Nauman, Smith, Shissler & Hall wrote in court documents on Aug. 5 that, while the defendants maintain offices and do business in Philadelphia, the action should be transferred to Northumberland County, where the incident took place, for the "convenience of the parties and witness."

"The railroad defendants are headquartered and regularly do business there, and the railroad employees live and work there," the attorneys argue. "All of the eyewitnesses in this case are located in either Northumberland County or Union County. No witnesses are located in Philadelphia County."

The motion to transfer included sworn affidavits from North Shore superintendent Shane Smith, Sgt. Curt Zettlemyer and Cpl. Todd Ulrich of the Milton State Police barracks; Cpl. Wade Danley of the Watsonstown Police Department; EMT Sharon Wertz, of the White Deer Township Volunteer Fire Department Ambulance Service and witness Amanda Hicks, Paula Hullihen, Fay Tipler and Joan Sampcell, all of Milton.

Each individual stated traveling to Sunbury instead of Philadelphia for dispositions and a trial would be more convenient due to various reasons including monetary, age, pregnancy and physical health.

"Furthermore, as discovery has not yet begun, no depositions have yet been taken, and this court has not yet entered a scheduling order with respect to the pending action, no prejudicial delay will result

from a venue transfer,” according to court documents.

## Objections filed

Since the lawsuit was filed in May, additional court documents have also been filed on behalf of the defendants.

The suit states that Maxine’s death was “a direct consequence of Norfolk Southern Corp., Norfolk Southern Railway Co. and Consolidated Rail Corp.’s failure to install the automatic crossing gates at the Center Street Railroad crossing,” according to court documents.

The suit seeks unspecified monetary compensation from the parties, according to court documents.

According to the filing, Maxine and Kimberly Bergenstock were heading west on Center Street to go to the gym on May 14, 2012, with Kimberly driving a car owned by her father.

The pair came up to the railroad tracks, where “houses and other obstructions limited a westbound car driver’s ability to see trains traveling from the right side into the Center Street crossing,” according to court documents.

The Center Street crossing is also bordered by crossings north and south with gates, though “inexplicably Norfolk Southern and Conrail failed to place armed crossing gates at the Center Street crossing,” according to court documents.

The lawsuit claims the companies were negligent and acted with reckless disregard for Maxine’s safety.

The suit also alleges negligence on the part of the Bickel, Weisen and the Bergenstocks, for failure to avoid or prevent the crash, according to court documents.

The attorneys for Nauman, Smith, Shissler & Hall argue that many of the claims in the original suit are not based upon a legal duty that the railroad defendants owes to Eschbachs’ decedent; thus, these claims are not a proper basis for a negligence action.

She also fails to allege specific claims or show evidence for her claims, the attorneys said.

Although railroads have a duty to warn motorists of the approach of a train, neither state common law nor statutory law imposes a general duty upon a railroad to stop its train at a crossing, and doing so would impose unreasonable burdens upon the railroad industry, the attorneys argue.

The Public Utility Commission has exclusive jurisdiction over rail-highway crossing, including warning and traffic control devices. The railroad would then have no duty to install gates or improve the conditions, according to the attorneys.

Furthermore, they argue, the state Supreme Court more than 100 years ago “made it clear that a parent may not recover damages for the loss” of a child in terms of companionship, which is reserved for

spouses.

Eschbach fails to allege specific conduct on the part of any of the defendants that would satisfy the requirements necessary to support claims for punitive damages, the attorneys said.

Philadelphia attorney Gary S. Williams, legal council with Baginski Mezzanotte Hasson & Rubinate for the Bergenstocks, wrote in court documents that the lawsuit contains no specific action that would show the Bergenstocks acting recklessly or reckless indifference. Roxanne Eschbach must show malicious intent, which she has not, according to court documents.

On Tuesday, Philadelphia Judge Mary Colins ruled that the objections to the complaint were partially granted. One request for punitive damages was stricken because it is not an independent clause of action while a request for recklessness/punitive damages was sustained.