New York City seeks to limit liability in Staten Island ferry disaster

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Ninety-one survivors of the Staten Island ferry crash of October 15 have filed notices indicating that they will sue the city of New York for combined amounts estimated at more than $2.2 billion. The crash into a Staten Island concrete maintenance pier led to the deaths of 10 people and injured more than 60 others. The lawsuits cover both wrongful deaths and severe injuries.

The widow of a man who called her on his cell phone to complain that the ferry was going too fast just before he was killed is suing for $500 million. Paul Esposito, 24, who lost both of his legs, is seeking $300 million. The family of Debra Castro, 39, who lost both legs, suffered a broken arm and remains unconscious in intensive care, is suing for $220 million. Lloyd Joseph, a construction worker, who suffered lung injuries, a broken back and ribs, and a crushed lower left leg, is seeking $105 million. Some are suing for emotional trauma.

In response to these lawsuits, the city has filed legal papers seeking to limit its financial liability to $14.4 million. It is invoking an 1851 federal maritime law that limits liability to the value of the ferry. To enjoy the protection of this law, the city would have to establish that it was unaware of, and thereby not responsible for, any actions of the crew that led to the crash.

By using the crew as the scapegoats for the accident, the city administration hopes to not only severely limit the amount of money it would be forced to pay out to victims, but to also avoid all political responsibility for the disaster.

As one of law firm with expertise in maritime injury suits stated recently, " If you take a look at the liability on the case based upon the facts uncovered so far, it looks like a cut-and-dried kind of thing, where there was negligence of supervision of the officers in charge." This is precisely what the city is seeking to deny, despite the overwhelming evidence of its responsibility at the highest levels for managing the ferry system.

If the city does win in court, it will force all the victims to fight each other for the small amount of money available. Mayor Michael Bloomberg has indicated that he would like to see the victims drop their lawsuits and settle out of court.

The accident took place at 3:20 p.m. at a time when winds were gusting at up to 50 mph. Assistant Captain Richard J. Smith, 55, who was piloting the boat, apparently blacked out, causing the crash. Immediately afterwards, he went home and attempted to commit suicide in his bathroom by slitting his wrists and shooting himself with a pellet gun. He was rescued by his co-workers, who knocked down the bathroom door and carried him to an ambulance.

Smith has met with federal prosecutors and city police, and according to one press report, has told them that he has high blood pressure and had taken his medication that day, suggesting that this was the reason he lost consciousness. However, his testimony has not been made public. Smith has been suspended without pay.

The ferry's captain was Michael Gansas, 38, who according to various eyewitnesses was not in the pilothouse when the ferry crashed. The city has repeatedly claimed that its rules state that he was required to be in there with Smith. But Gansas's lawyers contend that the regulations on this matter are written so vaguely that in reality there is no rule requiring both captains to be in the pilothouse.

His lawyers have also stated that the city has never, in practice, maintained such procedures. Many ferry

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personnel agree. A retired ferry worker has testified before the Department of Transportation (DOT) that directives were never enforced. Other ferry workers have said that the directives were very confusing, and that they did not know which were or were not in effect. Moreover, neither state nor federal regulations require that the captain be in the pilothouse when his assistant is piloting the ferry.

As a result of these issues, federal prosecutors and the New York City Police Department have begun investigating whether the director of ferry operations, Patrick Ryan, regularly enforced the agency's own regulations. If they find that he did not, he could face criminal charges under a federal maritime law that provides for a maximum prison sentence of 10 years.

The director is in charge of all safety rules, updating them when needed, and is responsible for having them enforced. He has supervisors called "Port Captains" working under him, whose job it is to observe the crews during the crossings in order to ensure that safety procedures are being properly followed.

Ryan originally became the director in 1995, but was dismissed from that position after he was charged with padding the payroll for himself and his brother-in-law, as well as other abuses. It appears that he falsely claimed overtime for himself on at least two occasions as well as falsely claimed overtime for his brother-in-law, Port Captain John Maudlin. Because of Ryan's favors, Maudlin managed to nearly double his $56,000 annual base salary last year with overtime. It was also discovered that Ryan was driving his girlfriend, who is not a city employee, on city time in a city car while his driver's license was suspended.

Nevertheless, he was reappointed director in 2001. Faced with intense public scrutiny since the accident, DOT commissioner Iris Weinshall decided to remove Maudlin from his position. She also sent out a memo stating that agency managers' direct supervision of their relatives is illegal.

A 1998 Coast Guard report stated that the city rules requiring the captain to be in the pilothouse during docking were not being followed, and it recommended that they be enforced. This report's conclusion, like other safety recommendations issued by the Coast Guard over the years, was routinely ignored by the city.

This is why Gansas's lawyers are charging the city with scapegoating the captain in order to avoid taking responsibility for the disaster. City officials have frequently condemned the captain for refusing to testify before various agencies investigating the crash such as the DOT, the National Transportation Safety Board (NTSB), and the US Coast Guard. Gansas has repeatedly invoked his Fifth Amendment rights allowing him not to answer any questions that may incriminate him.

Mayor Bloomberg has condemned the captain's refusal to talk, calling it "an outrage...to not be willing to talk and to help us find the truth—he can't be on the city's payroll." Meanwhile, both the mayor and his transportation commissioner, Iris Weinshall, have been silent about all the information that has surfaced indicating high-level culpability.

It is generally recognized by the various investigative agencies that Gansas would be extremely foolish to provide any testimony that could be used against him later in criminal proceedings. Both the United States attorney in Brooklyn and the Staten Island district attorney are currently conducting separate criminal investigations into the accident. If convicted of manslaughter, the crew members could receive a maximum 10-year prison term under federal law, while a similar state law carries a 4-year maximum term.

The city's DOT hearing officer has decided to fire Gansas. The captain's lawyers have said that they will appeal the decision in arbitration. In explaining their appeal, they said, "It appears the city Department of Transportation, the ferry Commission, the entire Bloomberg administration want to deflect attention from the city's management of the ferry operations by focusing all attention on Captain Gansas. Their charges are bogus."

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