

July 15, 2011

## Judge laments liability limits

A Superior Court judge saddled with the “impossible” task of dividing a maximum of \$200 million among scores of victims in the fatal 2008 Metrolink crash was praised for his grace and humanity Thursday by two local lawyers who represented many of the injured train passengers.

Local lawyers Greg Owen and Rick Patterson, with the Santa Clarita Valley firm Owen, Patterson & Owen, reflected on the “impossible decisions” handed down Thursday by Los Angeles Superior Court Judge Peter D. Lichtman in what is arguably the single worst commuter train crash in the history of the country.

The pair called Lichtman compassionate, intelligent and patient for the way he handled a limited compensation package awarded to the victims.

“He said, ‘I have \$200 million to take care of this problem,’ and, he said, ‘I have about \$900 million in injuries.’” Owen said, quoting the judge.

“He said, ‘I’m faced with compensating these folks partially’ and he went on to explain how much it hurt him inside.”

### Head-on collision

On Sept. 12, 2008, 24 people were killed and scores injured when a Metrolink commuter train collided head-on with a Union Pacific freight train.

Crash survivors, and the surviving relatives of those who died, filed a lawsuit against Metrolink train owners, the Southern California Regional Rail Authority, and the train operators, Connex Railroad LLC.

However, a federal law passed in 1997 called the Amtrak Reform and Accountability Act of

1997 sets a cap of \$200 million as the limit for which anyone can sue a railroad company.

“That law should be changed,” Owen said, tapping the table loudly as he said each word.

### Court strategy

Lichtman wrote a 33-page account of the Metrolink crash in handing down his final judgment.

“He wanted to get a feel for what each family went through, for somebody who was either injured or killed,” Owen said Thursday.

The judge came up with a “unique system” in which he allowed each lawyer representing a train crash victim to present his or her case within 30 minutes.

“We did something unique,” Owen said. “We took an orthopedic surgeon who digested all our client’s medical records, sat him down and put him in front of a video camera, and I interviewed him.

“He testified by way of video camera what would be necessary to take care of our client in the future under the worst-case scenario,” he said, adding he made similar video clips for his other clients.

His challenge, Owen said, was in the editing.

“I chose the most poignant and most emotional points in their interviews,” Owen said.

“I focused on what the future held for my clients,” he said. “And it’s a very difficult future.”

The judge expressed his response to presentations depicting human suffering.

“He was almost apologetic when he addressed

us,” Owen said. “He apologized that there wasn’t more money. He apologized about this law. He talked about how unfair it was, and how it should be changed.”

“He came up with \$1.2 million for the loss of a child. ... and that’s very difficult to tell a parent that that’s what your child is worth,” Owen said. “That’s why, I believe, Judge Lichtman wrote such a lengthy and such an emotional decision, so that the parents would understand the decision he had to make.”

### Judicial triage

Lichtman in his final judgement called the task of distributing \$200 million “judicial triage.”

“Imagine the two of us returning to the scene of the accident, and you were handed a bag containing only 10 bandages,” he wrote.

“You were then instructed to care for the victims as you saw fit and use your discretion as to which victim you thought should receive a bandage. You then returned to the court and asked for more bandages and were told there were none to give.

“You were instructed to cut the bandages in halves, quarters, eighths and even sixteenths, but that under no circumstances would you receive more bandages.”

As horrific as it was, the 2008 Metrolink disaster could have been worse and still the cap on liability would be \$200 million, Owen said.

“There could have been 500 people or a 1,000 people that were killed or maimed and still (the awards) would be limited to \$200 million,” he said.