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Stabbing victim's mother files claim with MTA

Lawyer says transit system in Los Angeles created dangerous conditions on Red Line.

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By Ciaran McEvoy

LOS ANGELES - The mother of a man stabbed to death while riding a Metro Red Line subway train in Hollywood last month has filed a claim with the Los Angeles County Metropolitan Transportation Authority, alleging it tolerated dangerous conditions and negligent security.

The move is the first step toward filing a lawsuit against the agency. But holding county transit officials liable for the death - despite a heightened standard of care - could come down to any history of security lapses, as well as whether the victim contributed to his own death, legal analysts said.

C. Michael Alder of AlderLaw PC, who represents plaintiff Janie Garay, the victim's mother, said he expects to file a lawsuit in November in connection with the Garay slaying.

Jesse Garay, 59, was the first passenger slain on the Red Line since it opened in 1993, but it wasn't the only violent incident on Los Angeles County mass transit this year. One week after Garay's death, an MTA passenger was stabbed on the Gold Line in Pasadena. Security patrols have been beefed up in the wake of the stabbings, the MTA said in a statement.

"You don't get to kill one person before you start doing what you should have done," Alder said in an interview Thursday.

Alder argues the MTA owed Garay and its other passengers a heightened duty of care because it serves the public as a common carrier. California Civil Code Section 2100 requires common carriers to "use the utmost care and diligence" for their passengers' safe travel.

Although the Garay case is the first of its kind for the Red Line, other states have experienced similar subway safety litigation. This year, plaintiff Joseph Lozito sued New York City and its police department for failing to protect him when an alleged mass murderer attacked him in a subway car in February.

California case law has held that the elevated standard of care is "based on a recognition that the privilege of serving the public as a common carrier necessarily entails great responsibility, requiring common carriers to exercise a high duty of care towards their customers." *Squaw Valley Ski Corp. v. Superior Court*, 2 Cal.App.4th 1499, 1507 (1992).

Garay was hit on the head with a skateboard, then stabbed in the chest during an altercation with another passenger Aug. 19 in transit on the Red Line . The suspected killer, Gene Sim, a 33-year-old transient, fled the scene after the train stopped at the Hollywood-Vine station. He was arrested three days later.

In a statement, the MTA said it "will not comment on the threat of litigation."

Proving the county's mass transit system is an unsafe place for passengers is a critical issue for the plaintiff, legal analysts said.

"The more common the violence is, the better for the plaintiff," said Richard L. Cupp Jr., a professor at Pepperdine University School of Law. "It should show a stronger foreseeability and likelihood of risk."

Alder said he plans on proving what he has heard "anecdotally" about the violence on local subways and light-rail trains.

Determining whether Garay instigated or escalated the altercation could allow MTA to reduce its liability, analysts said.

"The deep-pocket defendant can raise this person acted in a comparatively negligent manner and try to get liability reduced on that basis," Cupp said.

Alder said the incident between Garay and Sim was brief and quickly turned violent. He also downplayed reports that Garay swung a plastic chain at Sim during the argument.

John T. Nockleby, a professor at Loyola Law School, called the Garay case "complicated factually on the causation question."

"It's more likely that the causation question gets easier if they were arguing for 20 minutes," Nockleby said, adding Alder's challenge is to construct "a plausible scenario where security on the scene would have made a difference."