

Staten Island Advance

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TUESDAY, FEBRUARY 27, 2007

PUBLISHED SINCE 1886 | 50 CENTS

No limit on awards for victims in ferry crash



STATEN ISLAND ADVANCE/IRVING SILVERSTEIN

Kathy Healy, whose husband, John, was among the 11 who died, said of the ferry crash ruling: "The city should step up to the plate and do what's right. If these people worked for a private company, they would have been held responsible." At right is West Brighton attorney Anthony Bisignano.

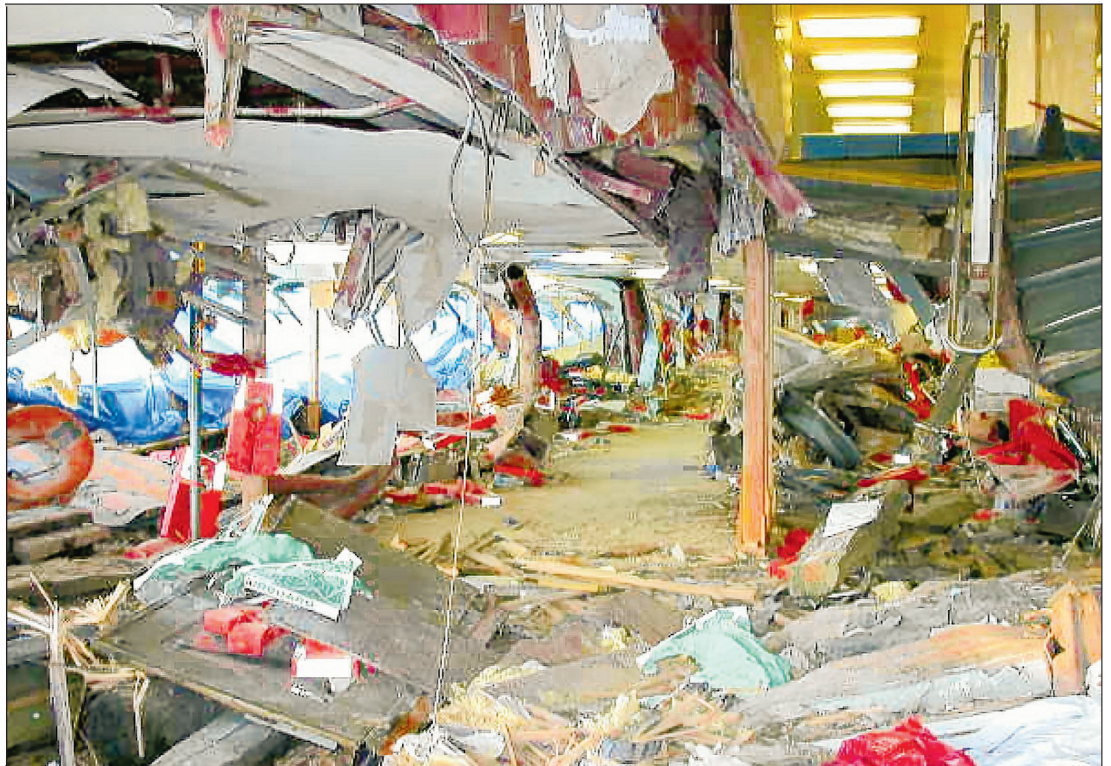


PHOTO COURTESY OF NATIONAL TRANSPORTATION SAFETY BOARD

The main deck of the ferryboat Andrew J. Barberi was devastated in the Oct. 15, 2003 crash.

BY JEFF HARRELL
and JUDY L. RANDALL
[STATEN ISLAND ADVANCE](http://STATENISLANDADVANCE.COM)

A Brooklyn federal court judge yesterday rejected the city's bid to cap its liability in the deadly Staten Island Ferry crash, opening the door to tens of millions of dollars in damage awards to relatives of those who perished and to those maimed and injured aboard the ferryboat Andrew J. Barberi more than three years ago.

In a 25-page decision, U.S. Chief District Judge Edward R. Korman criticized the city Department of Transportation for its failure to enforce its own safeguards, which might have averted the tragedy.

The city contended that the crash of Oct. 15, 2003, in which 11 passengers died and several were injured, was covered by an 1851 act that limited a boat owner's liability to the value of the boat — \$14.4 million, in the case of the Barberi.

City corporation counsel Michael A. Cardozo, in voicing the city's "disappointment" with Korman's decision, said the crash could not have been foreseen because assistant captain Richard J. Smith's medical condition made him "unfit" to pilot the Barberi, and he "did not disclose that

fact to anyone." However, Korman's ruling pointed out that the city had appropriate precautions in place — including mandating two captains in the pilothouse — but did not enforce them.

That point was hammered home yesterday by West Brighton attorney Anthony Bisignano, who is representing a number of litigants, and by the wife of a New Jersey man killed in the crash.

"The city perceived the risks from the early 1900s," said Bisignano, noting the two-pilot rule. "But they had no formal procedure manual, just an eight-page pamphlet that was never disseminated" to ferry workers. Bisignano noted that the city's invocation of the obscure act echoed that of the owners of the Titanic, who sought to "limit the amount of damages to the value of a couple of dozen lifeboats."

Bisignano accused the city of "attempting to hide behind a legal loophole in maritime law," for trying to limit its liability payouts to the worth of the boat.

"There's no question that justice was served and the right decision was made," said Bisignano, who scoffed at city corporation counsel's claims that without a ceiling, future awards to crash victims could

cost the city \$3 billion in damages.

"That's a gross misrepresentation. There's nothing further from the truth that that's the amount of money the city will have to dole out," Bisignano said.

While 119 claims have been settled to date for a total of \$27.6 million — the highest being \$8.9 million awarded in March last year to survivor Paul Esposito, of New Springville, who lost both legs in the crash — the city's attorneys had sought to limit the amount of compensation available to the 80-100 remaining plaintiffs to the Barberi's assessed value of \$14.4 million.

But with no cap on liability, the question now is, how much?

INDIVIDUAL ASSESSMENTS

"This is not a case which will bankrupt the city," Bisignano said, noting that putting a dollar amount on any future awards is impossible.

"You can't even ballpark it," he said. "What we would have to do is go to each claimant and make an assessment on an individual basis. You can say it will be in the millions, but you can't say where in the millions it will be."

"But this decision does pave the way for these people to be

properly compensated without a ceiling, and without the city escaping its responsibility for this tragedy," Bisignano said.

The 3,300-ton Barberi veered off course and slammed into a maintenance dock when Smith collapsed at the helm while Capt. Michael Gansas was elsewhere on the boat, a clear violation of standard operating procedure rules detailed in Korman's decision requiring two pilots in the wheelhouse at the time of docking.

Gansas, who has ties to Staten Island and resides in Hazlet, N.J., was fired by the city in November 2003. Smith, a Westerleigh resident, pleaded guilty to 11 counts of seaman's manslaughter in March 2006 and was sentenced to 18 months in the Federal Medical Center Devens in Massachusetts.

Yet Cardozo denied the city's negligence and laid blame for the disaster squarely at the feet of Smith.

"The accident occurred" because (Smith) took over the operation and navigation of the Ferry, when he was unfit to do so, and did not disclose that fact to anyone," Cardozo said.

"We believe that the Ferry's policies and practices were safe on October 15, 2003, as

they have been throughout its hundred-year history," Cardozo added. "We are considering our appellate options."

The city has 30 days to appeal Korman's decision.

Maritime counsel James E. Ryan, who worked with Bisignano and the plaintiff's attorneys countering the city's maritime lawyers, called the judge's ruling "well-written," legally "lock-tight," and leaving no room for appeal.

The boat belonged to the city, Ryan reasoned. And there was only one pilot in the wheelhouse during docking when both the "1908 rules" and the "1958 rules" clearly stipulated "that a second pilot be in the pilothouse." Enforcing the rule was cost-free and the city's failure to do so constituted a breach of the duty of care owed to the Barberi's passengers, who entrusted their safety to the city," the judge wrote.

"It doesn't take a maritime expert to figure it out," Ryan said.

Some family members of the crash victims held a brief conference outside the courthouse immediately after the ruling was released. Kathy Healy of Middletown, N.J., whose husband, John Healy, was among the 11 who died,

said, "This wasn't just about one person passing out behind the wheel of the ferry. This was about an entire crew, an entire department, from the deck hands all the way up to the commissioner of DOT, Iris Weinshall, simply not doing their jobs in providing a safe travel environment."

'DO WHAT'S RIGHT'

"The city should step up to the plate and do what's right," added Mrs. Healy. "If these people worked for a private company, they would have been held responsible. ... This was an accident waiting to happen. And there are no more excuses."

Added John Healy's sister, Patricia Roughan: "If the city does file an appeal it will be because they are trying to stall things, hoping this will all go away."

Attorney Sanford Rubinstein, who served as co-lead counsel with Bisignano, said the judge "did the right thing."

"Will the mayor do the right thing?" Rubinstein asked. "Or will it drag on even longer with appeals? We hope the mayor does the right thing and allows these victims to have their day in court now."

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