

Bailey Glasser fighting for justice for the victims of the Flower Branch gas explosion tragedy in Silver Spring, MD

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Slow probe by federal agency delays redress for victims of deadly Silver Spring explosion

By Steve Thompson

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More than two years after an explosion destroyed two apartment buildings and killed seven people in Silver Spring, lawsuits that could bring relief to dozens of victims are stalled while a federal agency finishes investigating the blast.

The judge presiding over the cases, Montgomery County Circuit Court Judge Ronald B. Rubin, spent a recent hearing venting frustration over the pace of the inquiry by the National Transportation Safety Board. He said he planned to sign an order – which he acknowledged may be ineffective – demanding answers from the agency.

“This accident didn’t happen on Mars; it’s Silver Spring,” Rubin said, noting the explosion’s proximity to the nation’s capital, where NTSB is headquartered.

The prolonged investigation has also gained the attention of members of Maryland’s congressional delegation, several of whom have asked NTSB for updates.

In a letter Friday to the agency, Sen. Chris Van Hollen (D-Md.) asked that NTSB representatives brief his staff in person by early next month.

“My constituents remain eager for answers and closure from this horrible event,” he wrote.

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A spokeswoman for Sen. Benjamin L. Cardin (D-Md.) said he also has asked for an update, and Rep. Jamie B. Raskin (D-Md.) said he spoke Friday with an NTSB official by phone. "I tried to underscore the importance and the urgency of the whole thing," Raskin said.

NTSB officials defended the agency in interviews, saying thorough investigations take time and citing staffing issues, including the sudden retirement this year of the investigator in charge of the Silver Spring inquiry.

"In the explosion and post-accident fire, much of the evidence was destroyed, and that makes it one of our most difficult investigations," said Robert Hall, director of NTSB's Office of Railroad, Pipeline and Hazardous Materials Investigations.

Hall said he expects to issue a final report on the investigation next year, when the NTSB will also hold a public hearing on the matter.

During the Nov. 9 court hearing, Rubin noted NTSB's \$106 million budget and its more than 400 employees. "But apparently they can't investigate one apartment explosion in less than two years," he said.

Looking around at those in his courtroom, Rubin said he couldn't understand why "somebody's not beating the [NTSB's] doors down, in an appropriate way," asking "why you people aren't doing your job."

Hall, the NTSB official, said the agency has two pipeline investigators, one of whom is based in Washington. The other works from home in Lake Charles, La.

Two other pipeline-investigator positions are unfilled, he said. "We've actually had difficulty hiring into those positions because we can't compete salary-wise with pipeline companies."

The division has been stretched particularly thin after gas line explosions in September north of Boston killed one person, injured many more and prompted the governor of Massachusetts to declare a state of emergency.

Hall said "because we're so shorthanded on pipeline," the agency "sent one of our rail investigators up to help."

In its 2017 report to Congress, the NTSB listed eight open pipeline investigations, of which the Silver Spring explosion was the oldest. In addition to significant gas line and pipeline accidents, the NTSB is responsible for investigating all civil aviation accidents and many rail, marine and highway accidents.

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“One other complicating factor in Silver Spring is that our investigator in charge retired suddenly without notice, and we were left a bit scrambling to bring somebody else up to speed to complete the investigation,” Hall said. “Otherwise, it would have been out probably a couple of months ago.”

That investigator, Ravi Chhatre, told local journalists and officials within days of the blast that the NTSB aimed to finish investigating within a year.

Reached by phone Friday, Chhatre said he gave “two weeks notice, standard,” before his retirement this spring and had finished his portion of the investigation. “I did complete the investigation,” he said.

An NTSB spokesman, Keith Holloway, said issues beyond Chhatre’s work must be included in the final report, including recommendations for how to avoid similar incidents in the future.

“We’re not blaming him,” Holloway said of Chhatre. “There are a lot of other things that impact the length of the investigation.”

The NTSB has known for years of the potential for coming retirements to prolong investigations. A decade ago, the agency said it needed to increase its staff by 22 percent to carry out its mission. In the years afterward, the agency’s staff increased by about half that amount, a 2016 report by the Congressional Research Service said.

“The NTSB has raised specific concerns about potential staffing shortages due to retirements and emerging skill gaps in certain management and mission-critical occupations,” the CRS report said, adding data suggested “ongoing staffing challenges are most acute” in the division that handles pipeline, railroad and hazardous-material incidents.

The lawsuits over the Aug. 10, 2016, explosion at Flower Branch Apartments have pitted dozens of low-income, Spanish-speaking residents against their landlord, Kay Management, as well as the supplier of the complex’s natural gas, Washington Gas. Both defendants declined to comment.

In December 2017, Rubin, already frustrated with the NTSB’s prolonged investigation, issued a “show-cause order” threatening to hold the agency in contempt if it didn’t at least say when the investigation would conclude.

The NTSB defeated the order in federal court, asserting sovereign immunity from such actions. Rubin, acknowledging at this month’s hearing that he’d essentially been told to “blow off,” said he intended to soon issue another show-cause order.

Any NTSB conclusion about the explosion’s cause would be restricted by law from use as evidence in court, lawyers say. But the delay hinders the legal process in other ways. For one thing, the NTSB

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has custody of physical evidence – such as burned wreckage of gas lines and meters – that attorneys in the lawsuits want their own experts to examine.

Also, Washington Gas has been made an official participant in the investigation, so it is barred from handing over certain types of information to the plaintiffs' attorneys while the inquiry proceeds. That's also why the gas company has said it can't comment.

At the hearing, Rubin urged the gas company's attorneys to press the NTSB to wrap up its work. "Have you said to them, 'What can we do to make this get done?'" Rubin said. "Have you asked the congressional committee with oversight of them?"

"We are as anxious as any of the litigants in this matter to be able to proceed," replied Chase Johnson, an attorney for Washington Gas.

One of the plaintiffs' lawyers, Cary Joshi, says the case will come down to which defendant was responsible – or, if they were both responsible, in what proportions.

The blast stemmed from a gas leak in a basement utility room where the meters were housed, a report from the Bureau of Alcohol, Tobacco, Firearms and Explosives concluded.

"It wasn't because somebody's stove was leaking, and it wasn't because someone was smoking and fell asleep," Joshi said. "It has been narrowed to that meter room. That at least takes out some other factors, certainly any liability on the part of my clients."

A key question will be whether the gas leaked from the portion of the lines owned by Washington Gas, or the portion owned by Kay Management. There's no guarantee the NTSB will provide an answer.

"It would be reasonable to think if there's not something definitive from the NTSB, the parties will either sit down and talk about a settlement, or it would go to trial, and the jury would end up deciding who's more liable than who, based on what the experts say," Joshi said.

Meanwhile, victims of the explosion wait. Some lost family members, some were injured, others lost possessions. Many suffered mental and emotional trauma.

"Most of my clients did not have health insurance, weren't necessarily savvy with the medical system and certainly not the mental health system," Joshi said.

The immigrant advocacy group Casa and other organizations stepped in to help, but the lack of legal compensation has left victims short of resources that they need to recover.

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“We do have people who have outstanding bills, and we have to write to the medical providers and say, ‘Hey, they’re represented and any recovery they get we will pay you first,” Joshi said. “But it is stressful to get calls from bill collectors. That is a terrible feeling.”

Attorneys

Cary Joshi

Practice Areas

Catastrophic Personal Injury