

Long Island Office

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April 21, 2009

Mark V. Rosenker, Acting Chairman
National Transportation Safety Board
490 L'Enfant Plaza, SW
Washington, DC 20594

Re: SMEAD v. LIRR

Dear Mr. Rosenker:

The National Transportation Safety Board is an organization which has always been held in high respect. In your investigation with respect to the accident of Natalie Smead, you were not the attorneys for the Long Island Railroad, or the attorneys for Natalie Smead, and your investigation was not rushed. You had a full two and a half years to investigate this accident.

I am the attorney who represented the parents of Natalie Smead and I want you to know that the case has been settled and was settled before your report was issued on March 13, 2009, so that your report had no effect whatsoever on the settlement. The purpose of this letter has nothing to do with the case. It has to do with letting you know what happened after you generated this report. I am going to spell out in this letter all of the factors that you did not take into consideration in any respect, did not recite in your report which was so one-sided, so sloppy, so negligent and you can draw your own conclusion as to the effect it had at the end of this letter.

Your probable cause paragraph states as follows:

The National Transportation Safety Board determines that the probable cause of the passenger fatality on August 5, 2006, at the Long Island Rail Road Woodside station in Queens, New York, was the passenger falling through a gap between the rail car and the platform while attempting to disembark the train, not following instructions from the train conductor to remain still until help arrived, and then crawling under the platform and into the path of a moving train on the opposite side of the platform. Contributing to the accident was the passenger's alcohol-impaired condition.

Breaking the paragraph down to three items, you state:

- 1) "passenger falling through a gap between the rail car and the platform while attempting to disembark the train"
- 2) "not following instructions from the train conductor to remain still until help arrived and then crawling under the platform and into the path of a moving train on the opposite side of the platform"
- 3) "contributing to the accident was the passenger's alcohol impaired condition"

Before getting into the details of what you stated and what you did not state, it should be mentioned that you listed all of the items that you reviewed and investigated in coming to this conclusion. Taken from the CD you sent to us, they are as follows:

- 389332 - Platform Clearances
- 383933 - Vertical Height from Torr to platform edge
- 383934 - Gap Survey Data
- 383935 - Gap Measurement by Station
- 935526 - NTSB Incident Report
- 395629 - Rules of the Operation Department
- 395630 - Timetable #3
- 395631 - Woodside Blueprint
- 395702 - Risk of Gaps - Special Study #11
- 397942 - Picture of 9457 train
- 397944 - Picture of 9902 train
- 397945 - Picture of 7508 train

403138 - Agenda from Commuter Rail Safety & Security
Committee Annual Meeting
407773 - Findings from Inspection of Car 7548
409967 - Blueprint
409968 - MTA's Status Report on Gaps
412278 - Passenger Count for Woodside on 2/18/09

Please note that not included in the items that you reviewed are the testimony given under oath by the actual conductors and engineers of the Long island Railroad which will be referred to later in this letter. Also, you do not mention one witness statement by the witnesses who were interviewed not by the Smead's attorney, but by the Long Island Railroad police themselves and included in the Long Island Railroad Police Report. They will also be enumerated later.

Referring to Item 1 in your probable cause paragraph, you state that Natalie fell through a gap between the rail car and the platform while attempting to disembark the train. Nowhere in your cause of the accident paragraph do you mention the fact that the conductors gave the "all clear" sign and then closed the doors on not one person, but an entire group of people trying to get off the train. Attached hereto as **Exhibit A** is the police statement taken from Georgeanne Andreasi which states "I looked out the train door to see if all was clear and it was. I gave the appropriate hand signal for the all clear to the conductor for door closure". Attached hereto as **Exhibit B** is the statement of Nicholas Valdemira, the other conductor on the train who confirmed that Georgeanne indeed did give the all clear signal. He states "Georgeanne gave me a clear sign that there were no commuters in the doorway. I turned and faced westbound and gave a clear sign to Beth Novak (conductor) stating that there were no commuters in the doorway." Attached hereto as **Exhibit C** is the statement given by Beth Novak the conductor who closed the doors after receiving the all clear signals which states "Georgeanne and Nick (the prior two conductor statements) were on the platform and hand signaled to me that it was all clear to close the doors. As I was closing the doors I saw a girl on the outside of the train hitting the side of the door or window of car number 7548. I re-opened the doors and saw a girl jump out from the inside of the train towards the platform with her hands raised above her head. As she was landing, she fell into the gap between the train and the platform." Attached as **Exhibit D** is the sworn deposition of Beth Novak where on Page 21 she testifies that from her vantage point she can't see whether people are still getting off the train and on Page 29 she describes seeing that when she opened

the door Natalie "instantaneously went straight down in one motion all the way down." Ask yourself the following question: Was Natalie Smead the last passenger getting off? Because according to you, she was drunk, a straggler. Then look at the following statements, **Exhibit E**, statement of Ariel Cohen "When the train arrived at Woodside Station the doors opened and everyone began to get off. As she began to walk up to the vestibule there were approximately 4-5 people in between her and Natalie. She could see that there were still a large number of people that still had to get off the train." In other words, according to Ariel Cohen, including herself there were 5-6 people behind Natalie still trying to get off the train. Consider the statement of Kaitlin Ganswent, **Exhibit F**, "as we were walking off, the train doors closed in front of Natalie. Behind her was Vanessa Cavalieri and then myself". Consider the statement of Mara Molefeld attached as **Exhibit G** "as we were exiting at the Woodside Station there were a large number of people exiting the train. The doors were closing and people in front of me were holding them open."

Exhibit H, the statement of Jenny Genaro. Significant because she was not one of the group of friends going to the concert, but was a totally independent witness who states "I saw that people from this group were getting off the train when all of a sudden I heard the sound of the doors beginning to close on the rest of the group. Several people were attempting to get the door open."

See **Exhibit I** a statement of Ashley Toala: "her friend Natalie Smead was right in front of her with the rest of the group."

See the statement, **Exhibit J** of Vanessa Cavalieri: "as I was walking towards the doors Natalie was directly in front of me. When Natalie approached the doors they closed right in front of her."

Very significantly see the statement of Sofia Villani, **Exhibit K**, who exited before Natalie but when she looked back "the doors were not fully closed and as this was happening she could see that one of Natalie's legs was extended outward from the train. The doors then opened. The doors then opened and Natalie fell in between the train and platform through a large gap."

Questions:

1) How could the conductors be giving an "all clear" sign when so many people were still trying to get off the train?

2) How is it that you did not mention once in your report anywhere that the conductors had given an "all clear" sign and that there were numerous witnesses who gave statements to the police saying they were all trying to get off the train behind Natalie?

Natalie did not step into the gap as is the normal gap accident. Had the doors not closed on Natalie she would not have fallen into the gap. Even the Long Island Railroad Conductor Beth Novak stated that when she opened the doors she saw Natalie arms raised (stuck in the door) fall straight down in one motion through the gap.

With respect to item 2 of your concluding paragraph as to the cause of the accident "not following instructions from the train conductor to remain still until help arrived and then crawling under the platform and into the path of the moving train on the opposite side of the platform."

Admittedly, there were a number of people yelling that she should stay still. What you left out of your report was that there were approximately twenty people yelling things to Natalie who was down on the tracks and that you have no idea what she heard. Significantly, you left out Ariel Cohen's statement that when the door closed "she could see that there was still a large number of people that had to get off the train" and pertinent to this point Ariel admits "I then told her to tell Natalie to wait there and don't move OR GO UNDERNEATH THE PLATFORM AND WAIT. . . "

Most damning of all is leaving out the statement of Kaitlin Ganswit who stated "I heard someone say to move under the platform, waiving their hands and arms towards the other side of he platform."

How was Natalie to know whether this was the conductor or just some well-meaning passenger who was wrong. How do you know whether Natalie heard stay still or the person who said go under the platform. You completely left that out, intentionally, purposely.

The reason you left it out intentionally is that there are two aspects to this accident, first did she step in the gap or did the doors close on her causing her to fall into the gap when the doors were re-opened. If she stepped into the gap, perhaps alcohol was involved. If the doors were closed on her, as even

the conductors admit, then alcohol had nothing to do with her falling. As to the second point, you want her to have made an alcohol driven choice of crawling under the platform and coming up to what seemed to be a safe side. Even if no one had told her to do that, it is not a movement that would not be made by anyone who was cold sober and an adult. It was an apparent means to safety, but more significantly you left out that she clearly was told to do that by someone and we will never know by whom, and certainly Natalie didn't know whether it was a conductor, someone in authority or another passenger. Once you take out the stepping into the gap and you put in the fact that she was told to crawl under the platform, you lose your final conclusion which is that the accident was alcohol related. You did not attribute any fault whatsoever to the Long Island Railroad. How, if the conductors gave an all clear sign, if the conductors closed the door on a passenger when there were so many people waiting to get off after her can you leave out the Long Island Railroad's responsibility for such an action? You didn't care.

Your report is sloppy and you simply did a lazy job. Had you bothered to obtain the transcripts and/or the witness statements and read them, you would have known differently.

The real reason for this letter is that your report was released on March 13, 2009. I want you to know that on March 20, 2009 Susan Perry, the mother of Natalie Smead sent an e-mail to her friends, a copy of which is attached hereto as **Exhibit L**. You can see her crying out that they "only blamed the victim" and put none of the blame on themselves. The next attachment is **Exhibit M**, my e-mail to her trying to assure her that your report and stating what I will not back down from "the report is bullshit, pure and through". The final e-mail, **Exhibit N**, is the next day which is the last communication anyone will ever hear from Susan Perry, Natalie's mother who signed it - "Natalie's Forever Mother" and committed suicide on April 5, 2009. Finally, attached is a photo of Natalie and her mother.

You certainly had nothing to do with the death of Natalie Smead and your only connection to it is an investigation that I don't think you should be proud of. As to her mother, Susan Perry,

who had survived 2 ½ years and had agreed to the settlement prior to the issuance of your report and committed suicide three weeks after the issuance of your report, I will leave you to your own rationalization.

Very truly yours,

SULLIVAN PAPAIN BLOCK
McGRATH & CANNAVO P.C.

By: _____
Robert G. Sullivan

RGS:at

Cc: Robert L. Sumwalt, Member
Deborah A. P. Hersman, Member
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