



The party-bus industry

A NEW BREED OF COMMON CARRIER WITH THE NEED FOR ENHANCED REGULATION

For 24-year-old CJ Saraceno and his friends, the night of September 29, 2013, was supposed to be a night filled with laughter and fond memories, as well as a good night out on the town. CJ was a recent college graduate from Connecticut; a young man with many friends and a bright future who had just moved to California to pursue his dreams working at a digital design agency. Instead of drinking and driving, or getting into a car with a drunk driver, CJ and his friends responsibly did what they thought was the right thing to do; they rented a party bus to drive them for the night.

The night was going just as planned. The group was out celebrating a birthday party and had just finished eating dinner at a restaurant in Hollywood when the party bus picked them up to transport them to a local club. That is when the nightmare began for everyone.

Other passengers on the bus say that while the bus was traveling south on the 101 Freeway near Universal Studios Drive, CJ was standing near the front, changing the music on the radio when the bus swerved and he lost his balance. He then fell down the stairway, and was ejected through the bus door. Friends tried to grab him as he slipped down the stairway to the exit, and CJ attempted to hold onto a handle and the bottom step, but he fell out of the bus onto the freeway and was violently struck by several cars.

It was later revealed that CJ's death was caused by the poorly maintained bus door. The party bus, like many of its kind, was equipped with a pneumatic door system designed to provide enough air pressure to ensure the bus doors remain closed when the vehicle is moving. Due to poor maintenance, the compressor that was supposed to keep the door to the bus closed wasn't functional. The bus owner knew or should have known about the problem, but didn't fix it, and it cost CJ Saraceno his life.

The party bus owner and the specific bus in question had been cited by the California Highway Patrol for safety violations five months before the September 2013 incident, but the bus was still in operation on the night of CJ's death, still without repairs even after it was ordered off the road. Specifically, the owner's terminal was inspected and given several "unsatisfactory" ratings by the California Highway Patrol Motor Carrier Specialists prior to the date of the incident, including in a Terminal Inspection Report dated April 12, 2013, in which various aspects of the subject party bus were noted to not be in compliance with safety regulations. Despite it all, the bus remained on the road and CJ and his friends were never informed or warned of its unsafe character.

Unfortunately, preventable tragedies involving party buses seem to be happening with alarmingly increased frequency. This article will examine the growing party-bus industry, party-bus regulations, and highlight the need for enhanced regulation and legislation for these vehicles.

A growing and dangerous industry

The party-bus business is relatively new, and business appears to be booming. According to a Los Angeles Times article from September of 2014, the "number of party-bus carriers nationwide has skyrocketed in the last five years — from 6,000 to 9,000 in California alone, records show." <http://www.latimes.com/local/la-me-party-buses-20140920-story.html>.

In April of 2014, the State of Washington Utilities and Transportation Commission published an investigation report regarding Party Bus Regulation. <https://www.utc.wa.gov/docs/Documents/2014%20Party%20Bus%20Investigation%20Report.pdf>.

The investigation was prompted by several news articles from across the country about party bus related deaths.

The purpose of the study was "to determine to what extent party buses exist in Washington, and to identify problems Washington or other states have seen specific to party buses and to explore options for increasing safety of party buses."

The Washington Commission Report identifies that from January of 2009 through August of 2013, "party buses were involved in 22 incidents in the United States and British Columbia, Canada. These resulted in 21 fatalities and an additional 48 personal injuries." The Washington Commission also found that, similar to CJ Saraceno's death, "in 10 of the 22 incidents, and 10 of the 21 fatalities (47 percent), a passenger fell from the party bus." The second leading cause of death was passengers hitting their heads on overpasses. The vast majority of these victims were either in their teens or twenties, and drinking was involved in many of the cases. Unfortunately, numerous fatalities and severe injuries, including CJ's horrific death, have continued to occur since the date of these findings. The problem has not yet been solved.

What exactly is a "party bus?"

In its report, the Washington Commission noted that, the term "party-bus company" was not used in any statute in the state, that there was no state agency that regulated all party-bus companies, and that there were no "regulations specifically addressing party-bus companies or the unique safety challenges presented by such companies." Since no legislative definition for "party bus" existed, for purposes of its report, the Washington Commission defined a "party bus" as "a motor vehicle specifically configured to accommodate a party on the motor vehicle itself. Amenities may include greater floor space, the addition of a bar to serve alcohol, flat-screen televisions, DVD players, enhanced audio

Nickerson, Next Page

system, karaoke equipment, DJ equipment, smoke machines, laser lights, disco lights, strobe lights or dance or 'stripper' poles." Following its investigation, the Washington Commission recommended that legislative amendments be made to provide a more clear definition of what exactly constitutes a party bus, and that such amendments would be useful in promoting party-bus regulation.

Other states have encountered similar problems in party-bus regulation. Recently, in an effort to correct ambiguities regarding the definition of a party bus under New York law, Senator Jeffrey D. Klein sponsored Senate Bill S7028B, which proposed an amendment to the existing transportation law to define party bus as "any motor vehicle having a capacity of twenty or more passengers, operated by a contract carrier of passengers by motor vehicle, within which passengers are capable and permitted to regularly stand and circulate throughout the vehicle, and in which food, beverages and entertainment may be provided or sold to such passengers." <https://www.nysenate.gov/legislation/bills/2013/S7028/amendment/B>.

Like most states, including Washington and New York, the definition of what exactly constitutes a "party bus" under California law remains somewhat ambiguous, thereby creating issues for regulation of the industry and law enforcement, and potential loopholes for party-bus owners and operators. The Passenger Charter-Party Carriers' Act under the California Public Utilities Code currently governs the regulation of party buses. (Cal. Pub. Util. Code, § 5351, et seq.). While the Passenger Charter-Party Carriers' Act does not specifically define the term "party bus," Pub. Util. Cod § 5360 defines a "Charter-party carrier of passengers" as "every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state" (subject to the exclusions of Pub. Util. Cod § 5353). (Cal. Pub. Util. Code § 5360). Pub. Util. Code § 5353 provides the numerous exclusions as to what

vehicles do not constitute a "Charter-party carrier of passengers," including, but not limited to, obvious exclusions such as transportation services rendered by a publicly owned transit system, licensed taxicabs and school buses transporting school pupils pursuant to the Education Code. (Cal. Pub. Util. Code § 5353). Other exclusions are less obvious, and only create more confusion and ambiguity (e.g., Cal. Pub. Util. Code § 5353(c) — "Common carrier transportation services between fixed termini or over a regular route which are subject to authorization pursuant to Article 2 (commencing with section 1031) of Chapter 5 of Part 1 of Division 1"; Cal. Pub. Util. Code § 5353(a) — "Transportation service rendered wholly within the corporate limits of a single city or city and county and licensed or regulated by ordinance). A singular, concise definition of what a party bus is under California law would make it much easier for law enforcement to police and regulate the industry, and ultimately provide further protection for consumers.

Laws related to party-bus regulation

The party-bus industry is currently monitored by the California Public Utilities Commission and the California Highway Patrol, and, as indicated above, many of the laws related to party-bus regulation may be found under the "Passenger Charter-Party Carriers' Act." (Cal. Pub. Util. Code, § 5351, et seq.) The Act is divided into six Articles, including Article 1 which provides the general provisions and definitions as referenced above. (Cal. Pub. Util. Code, § 5351-5362). Articles 4, 5, and 6 cover the insurance requirements for party-bus owners, the bases for charges for transportation, and the imposition of fines and penalties, respectively.

Article 2 sets forth requirements that party-bus owners must follow in order to legally operate in California (Cal. Pub. Util. Code § 5371-5375.9). Under this Article, among other things, party-bus owners must pass an annual bus terminal inspection, and furnish a list, prepared under oath, of all vehicles used in transportation for compensation during

the period since the last inspection. (Cal. Pub. Util. Code §§ 5373.1, 5374.5). California Highway Patrol motor carrier specialists carry out these inspections and write Terminal Inspection Reports which refer to and cite various rules and regulations which form the basis of their ratings of the Terminal, which can range from Satisfactory (S) to Unsatisfactory (U). The motor carrier specialists refer to and use Highway Patrol Manual 84.1 to evaluate the various aspects of a carrier's operations. The bus that killed CJ Saraceno was ordered off of the road as a result of one of these inspections. Unfortunately it remained in operation until the night of CJ's death. Article 2 further requires party-bus owners earning over (\$350,000) in annual gross operating revenue to file a report under oath indicating the number, classification, and compensation of all employees and owner-operator drivers hired or engaged during the reporting period, and provides the Commission with the power to cancel, revoke, or suspend the bus owners' permit or certificate for violations of the Act, and issue civil penalties. (Cal. Pub. Util. Code, §§ 5374.6, 5378).

Article 3 of the Act provides the provisions for the regulation of Charter-Party Carriers of Passengers. In this author's opinion, this is another area where legislative improvements could be made. Cal. Pub. Util. Code § 5381 provides the Commission with broad powers to supervise and regulate every charter-party carrier in the State. (Cal. Pub. Util. Code § 5381). The code section states that the Commission "may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." It should be noted that the California Public Utilities Commission maintains certain records related to party-bus owners, their drivers, and their fleets, which could prove useful in a civil case. These records are easily obtainable via a Freedom of Information Act Request.

Although Article 3 provides the Commission with broad powers to police the party-bus industry, specific rules and

Nickerson, Next Page

regulations to give the Commission's powers teeth are lacking. However, one recent positive development in party-bus regulation for the protection of young consumers is Assembly Bill AB45, which was signed into law by Gov. Jerry Brown on Sept. 23, 2012, effective Jan. 1, 2013.

The bill was drafted in response to the tragic death of 19-year-old Brett Studebaker, who crashed his vehicle into a wall on the 101 Freeway after attending his friend's 21st birthday party aboard a party bus. Although he was underage, Mr. Studebaker was permitted to consume alcohol on the party bus, and his blood alcohol level was more than three times the legal limit at the time of his death. Among other things, AB45 requires the party-bus carrier to ask the chartering party (1) if alcoholic beverages will be served onboard or will be transported during the trip and (2) if any passenger will be under 21 years of age.

The bill requires the chartering party to designate an adult chaperone (25 years of age or older) who will be legally responsible for any reasonably foreseeable personal injury or property damage that is proximately caused by underage drinking onboard. Most importantly, however, the bill imposes certain obligations on the party-bus owner and driver and makes any violation of its requirements subject to civil penalties imposed by the Commission. Notably, in certain situations, the party-bus operator must verify the age of all passengers to confirm that they are 21 years of age, and must not commence or continue a trip if underage passengers are consuming alcohol or are present onboard. (2012 Cal AB 45.) Similar legislative amendments in the spirit of AB45 should be made to provide further protection for party-bus passengers.

Party bus is a common carrier

It should also be noted that party buses are considered common carriers under California law, and therefore special considerations apply. Indeed, Civ. Code, § 2168 provides: "Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic messages, is a common carrier of whatever he thus offers to carry."

Thus party-bus drivers have a heightened duty of care as common carriers. Under Civ. Code, § 2100, a common carrier "must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill." ("Common carriers bind themselves to carry safely those whom they take into their vehicles, and owe both a duty of utmost care and the vigilance of a very cautious person towards their passengers. Such carriers are responsible for any, even the slightest, negligence and are required to do all that human care, vigilance, and foresight reasonably can do under all the circumstances." (*Acosta v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 19, 27, internal citations omitted.) Further, Civ. Code, § 2101 provides that a common carrier is "bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care."

The CACI jury instructions are also helpful on the issue. For example, CACI 903 states: Duty to Provide and Maintain Safe Equipment. ("Common carriers must use the highest care in constructing, servicing, inspecting, and maintaining their vehicles and equipment for transporting passengers. A common carrier is

responsible for a defect in its vehicles and equipment used for transporting passengers if the common carrier: (a) Created the defect; or (b) Knew of the defect; or (c) Would have known of the defect if it had used the highest care. Common carriers must keep up with modern improvements in transportation. While they are not required to seek out and use every new invention, they must adopt commonly accepted safety designs and devices in the vehicles and equipment they use for transporting passengers.")

Conclusion

This article has provided an overview of the party-bus industry and some of the laws and issues that are applicable to party buses. Consumers often responsibly choose to be passengers on these buses for the right reasons, with safety first in mind. Unfortunately, the preventable horrific deaths of young passengers aboard these types of vehicles are tragic stories that have become all too familiar in recent years. These tragedies highlight the need for additional regulations and legislation for this burgeoning industry. It is apparent that such action is now needed more than ever in order to provide the utmost protection for California's consumers, and to prevent the next tragic party-bus death from occurring.

Christian Nickerson is an associate at Greene, Broillet & Wheeler, LLP. He graduated from Penn State University in 2008 and from Pepperdine University School of Law in 2011. His trial practice focuses on catastrophic personal injury, wrongful death, business litigation, and employment litigation.

