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Passenger vs. passenger bus assaults

THE DUTY OWED BY BUS OPERATORS, GREYHOUND IN PARTICULAR, TO PASSENGERS ATTACKED ON THE BUS

Passenger attacks on buses are nothing new and, unfortunately, are becoming far more prevalent. Indeed, California alone has seen multiple incidents in recent years. For example, in February 2022, five passengers who were exiting a bus in Oroville, California were shot by one of the other passengers. (Associated Press, *Naked man arrested after allegedly opening fire on bus* (Feb. 2, 2022) <<https://apnews.com/article/greyhound-bus-shooting-75ab89ed8c5522b4ef3ca2385455de68>> [as of Jan. 30, 2023].) Additionally, just two years earlier on a bus traveling from Los Angeles to San Francisco, a passenger opened fire, injuring and killing other passengers. (Dazio, *1 dead, 5 wounded in shooting on Greyhound bus in California* (Feb. 3, 2020) <<https://apnews.com/article/shootings-us-news-ap-top-news-ca-state-wire-san-francisco-aa181523b657a0dfcd331778e7a86292>> [as of Jan. 30, 2023].)

The purpose of this article is to explain the legal duty that bus operators, such as Greyhound, owe to passengers when they are attacked by other passengers. This article will also provide some tips for what evidence to search for to support liability claims against Greyhound in passenger vs. passenger personal-injury and wrongful-death cases.

Bus operators are “common carriers”

Bus operators are considered “common carriers” under California law. (See, e.g., *Wilson v. Los Angeles Trona Stages* (1955) 133 Cal.App.2d 756, 756.) As Civil Code section 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.” Accordingly, bus operators owe a

statutory, heightened duty of care with respect to their passengers: “A carrier of persons for reward 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.” (Civ. Code, § 2100.)

This duty of utmost care does not require a bus operator to “insure [] ... the absolute safety of its passengers . . .” (*Rocray v. Pasadena City Lines, Inc.* (1958) 159 Cal.App.2d 265, 269.) Yet it does require that it “do all that human care, vigilance, and foresight reasonably can do under the circumstances.” (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 785.) In other words, “the degree of care and diligence which they must exercise is only such as can reasonably be exercised consistent with the character and mode of conveyance adopted and the practical operation of the business of the carrier.” (*Ibid.*) This includes “keep[ing] pace with science and art and modern improvement in their application to the carriage of passengers.” (*Greyhound Lines, Inc. v. Superior Court* (1970) 3 Cal.App.3d 356, 359.) Thus, the heightened duty of care owed by common carriers requires them to stay abreast of the latest technology that can help make bus travel safer for passengers.

Bus operators have a duty to protect their passengers from other passengers

According to California law, “each person has a duty to use ordinary care and ‘is liable for injuries caused by his failure to exercise reasonable care in the circumstances. . . .” (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 771.) This

“general duty to exercise due care includes the duty not to place another person in a situation in which the other person is exposed to an unreasonable risk of harm through the reasonably foreseeable conduct (including the reasonably foreseeable negligent conduct) of a third person.” (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1148.)

Thus, under certain circumstances, the common carrier heightened duty of care requires bus operators to protect passengers from other passengers who are dangerous. (*Lopez, supra*, 40 Cal.3d at 791.) For example, in *Lopez*, the plaintiffs were injured when a fight broke out on their bus. The bus driver was aware that a violent argument was taking place on the bus before the fight started but did nothing about it. The plaintiffs alleged that “there was a history of violent and assaultive conduct by passengers on this particular bus route, that violent incidents occurred daily or weekly, and that [the bus operator] was fully aware of this history of violence and the risk posed to passengers riding its buses.” (*Id.* at 784.)

The Court of Appeal ruled that the bus operator owed “a duty of utmost care and diligence to protect their passengers from assaults by fellow passengers.” (*Id.* at 791.) In so finding it rejected the bus operator’s argument that budgetary constraints prevented it from protecting its passengers from other passengers. The court first pointed out that budgetary constraints were alone insufficient to prevent the bus operator from owing a duty.

Moreover, the court noted several things the bus operator could do that would not cost anything, such as “the bus driver . . . warn[ing] the unruly passengers to quiet down or get off the

bus . . . alert the police and summon their assistance . . . or, if necessary, eject the unruly passengers. . .” In other words, it was not necessary for the bus operator to incur the cost of providing armed security guards on every bus in order to prevent attacks.

The court concluded by reiterating “that carriers are not insurers of their passenger’s safety and will not automatically be liable, regardless of the circumstances, for any injury suffered by a passenger at the hands of a fellow passenger.” (*Id.* at 791.) “Rather, a carrier is liable for injuries resulting from an assault by one passenger upon another only where, in the exercise of the required degree of care, the carrier has or should have knowledge from which it may reasonably be apprehended that an assault on a passenger may occur, and has the ability in the exercise of that degree of care to prevent the injury.” (*Ibid.*)

Finding operator liability

In finding liability on the part of the bus operator for not protecting its passengers from assaults by other passengers, the *Lopez* court relied on a train case involving similar circumstances. In *Terrell v. Key System* (1945) 69 Cal.App.2d 682, 684, two craps games were being allowed to occur in the last car of a moving train. Even though several participants were “drunk, boisterous, abusive and quarrelsome,” no employee of the train company did anything to stop it. After the plaintiff boarded the train and entered the car where the gambling was taking place, some of the participants got into a fight resulting in a “general melee.” Attempting to avoid the altercation, the plaintiff withdrew to the front platform of the car, but the mob followed, and one man in the group knocked him off of the moving train.

The Court of Appeal held that the train company could be liable for the plaintiff’s injuries. “There was evidence that over a considerable period of time craps games had been regularly engaged in . . . not only in the last car of the train but in other cars as well; that fights had

resulted from such games on earlier occasions in which knives had been drawn; there is no evidence that the trainmen had ever interfered in any way; and in some instances they had been seen to stake certain of the players.” (*Id.* at 684.)

The court noted that the train company’s “duty can only arise if in the exercise of the required degree of care the carrier has or should have knowledge of conditions from which it may reasonably be apprehended that an assault on a passenger may occur [citations], and has the ability in the exercise of that degree of care to prevent the injury [citations].” (*Id.* at 686.) Based on the facts of the case, “[i]t was for the jury to say whether the carrier, with knowledge of these facts, in the exercise of the utmost diligence required of it should have foreseen the danger of assault upon other passengers.” (*Ibid.*)

The train company argued in response that it was not proven that it had the ability to protect the plaintiff from the harm he suffered. However, the court pointed out that the craps game was not an isolated incident. “In the face of those previous experiences of disorders arising from similar games, it was clearly a jury question whether the carrier should have taken some steps either to suppress the games or to protect its passengers from their consequences.” (*Id.* at 688.) “Indeed we are satisfied that on the evidence in this case it was a jury question whether the conductor, with notice of the boisterous and vituperative conduct of the drunken crap shooters engaged in the particular game, should not have taken some steps to maintain or restore order before tempers got so far out of control that he was powerless to prevent the injury which occurred to plaintiff.” (*Ibid.*)

The train company also argued that the evidence did not clearly show that a conductor was present in the gambling car of the train. However, the court rejected this argument as well: “Whether or not the conductor was present would be, at most, a jury question to be resolved from conflicting testimony, and if the jury

determined that no conductor was in the car it might find that the failure to have any employee in the coach was itself negligence in view of the carrier’s notice of disorderly and violent conduct on other occasions.” (*Ibid.*)

The train company further argued that it could not be held liable for the plaintiff’s injuries because they were the result of an intervening tort. But the court once again pointed out that “[t]he intervention of independent concurrent or intervening forces will not break causal connection if the intervention of such forces was itself probable or foreseeable.” (*Id.* at 689.) The train company’s final argument, that the plaintiff was contributorily negligent as a matter of law and not a question for the jury, also fell on deaf ears.

Not always easy

But not every passenger vs. passenger attack on a common carrier bus results in liability for the bus operator. Unlike *Lopez*, in *City and County of San Francisco v. Superior Court* (1994) 31 Cal.App.4th 45, the court ruled that the bus operator was not liable for a passenger vs. passenger injury. In that case, the plaintiff was injured while riding a bus when another passenger stabbed her with a knife. The passenger who committed the assault was wearing dirty clothes, but there was nothing unusual about him or his behavior, and the driver only saw him pull out a knife seconds before he stabbed the plaintiff. The fact that there had been two prior assaults on the same bus line in the previous year was insufficient to put the bus operator on notice. In sum, “the prior assaults cannot impose liability for a sudden and unheralded attack.”

Greyhound and duty to passengers

Given this liability landscape, there are several things that plaintiffs’ attorneys can do to show that Greyhound violated its duty of utmost care to its passengers when another passenger harms their clients. As the caselaw above demonstrates, presenting the court with multiple prior, similar incidents and/or a

consistent pattern of incidents involving the bus operator defendant is key to proving that the bus operator had knowledge or was otherwise on notice that the subject attack was possible. For example, in the *Lopez* case, the plaintiffs alleged that violent incidents were occurring on the defendant's buses daily or weekly. However, the court in *City and County of San Francisco* ruled that two prior incidents within the past year were not enough.

Indeed, Greyhound has been in the past, and continues to be, acutely aware of the frequent criminal attacks that occur on its buses. Attacks on buses occur on a yearly basis; scarcely a month passes without one. Greyhound belongs to industry organizations that regularly discuss these attacks in their publications and at meetings, and Greyhound's Director of Safety and Security, Alan Smith, chairs the Bus Industry Safety Council. During a 2017 California Bus Association meeting, Mr. Smith spoke about the October 17, 2017 Las Vegas shooting, even though it had no connections with terrorism. (*Interview with Al Smith from Greyhound and ABA BISC*, December 12, 2017. <<https://www.youtube.com/watch?v=rzsa66jcOY>> [as of Feb. 7, 2023].) As any security professional would say, it made no difference to Mr. Smith whether an active shooter is labeled a terrorist after the shooting; all shooters are treated the same.

Greyhound has also applied multiple times, and obtained significant federal funds for security, more so than any other intercity bus carrier. Recently, over a 14-year period, the Department of Homeland Security gave out \$106 million in intercity bus security grants, and Greyhound was successful in obtaining them, with approximately 38% (or \$38 million) going to Greyhound, even though its passenger trips account for less than 3% of all annual passenger trips. (*FEMA awards \$2 million in security grants to operators*, Bus and Motorcoach News, September 27, 2017, <<https://www.busandmotorcoachnews.com/fema->

[awards-2-million-security-grants-operators/](#) [as of Feb. 3, 2023].) It reportedly received these funds, in part, because it travels to the areas believed to be subject to terrorist attacks more frequently than other locations.

TSA-approved security training

On March 23, 2020, the Transportation Safety Administration issued a rule that required all surface transportation operators, including Greyhound, to give their employees TSA-approved security training. The curriculum of this training must educate employees on observing, assessing, and responding to terrorist incidents and threats. (*Security Training for Surface Transportation Employees*, Federal Register, Volume 85, Number 56, March 23, 2020, <<https://www.tsa.gov/sites/default/files/security-training-final-rule-03.23.2020.pdf>> [as of Feb. 7, 2023].) This training also applies equally to criminal assaults, and is not limited to just terrorist attacks.

The origin of the TSA's rule stems from the 9/11 Commission's 2004 recommendations which became law as part of the "Implementing Recommendations of the 9/11 Commission Act of 2007." (Implementing Recommendations of the 9/11 Commission Act of 2007 – Public Law 110-53, 110th Congress, United States Government, August 3, 2007.) The act directs the Secretary of Homeland Security to create and publish security training regulations to prepare public transportation employees for potential security threats.

Then, in 2010, the "Surface Transportation Security Priority Assessment" stated that: "The surface transportation modes recognize security training as a high priority and have invested significant resources and implemented programs to train personnel at all levels, both in accordance with and in the absence of Federal regulations." (*Surface Transportation Security Priority Assessment*, March 2010 <https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/STSA.pdf> [as of Feb. 7, 2023].)

Thereafter, in 2012, the American Public Transportation Association advised that efforts "to improve transit security awareness within all transit systems by establishing the baseline security awareness training objectives for all transit employees. . . In addition to the baseline, more specialized training should be provided for specific job categories with additional security responsibilities, such as frontline employees and law enforcement positions." (American Public Transportation Association, *Security Awareness Training for Transit Employees*, March 2012 <https://www.apta.com/wp-content/uploads/Standards_Documents/APTA-SS-SRM-RP-005-12.pdf> [as of Feb. 7, 2023].)

Next, in 2019, the Baseline Assessment for Security Enhancement ("BASE") Motorcoach Report included, within its best practices for security on buses, "regularly using some type of cargo, baggage, or passenger screening." (Department of Homeland Security, Transportation Security Administration, *2019 BASE Assessment Benchmarking Report*, <https://www.buses.org/assets/images/uploads/pdf/Motorcoach_BASE_Report_Final_06192020.pdf> [as of Feb. 7, 2023].)

In light of all of this, it is clear that increased security measures, specifically passenger screening methods, are paramount to ensure safe bus travel.

Not just a local problem

When seeking evidence of prior attacks from bus operators like Greyhound, there can sometimes be pushback where the bus operator tries to limit the scope of what should be produced, geographically speaking. In other words, the bus operator may try to limit discovery of prior attacks to just the subject bus route or specific stations on that route. However, the bus operator likely has many routes and stations in many areas, sometimes in multiple states. Any incident where one passenger attacks another is relevant because it puts the bus operator on notice that such attacks are possible and provides the bus operator

with an opportunity to make changes on its end to prevent future attacks.

Internal reviews

Other important pieces of evidence are internal reviews regarding attacks that the bus operator has conducted. This can include an internal review from the subject attack as well as internal reviews from other prior attacks. Again, bus operators may attempt to limit this discovery by arguing that these attacks are not similar to the subject attack or pointing to arguably distinguishing factors (e.g., attacker used knife vs. attacker used gun). However, these are distinctions without a difference because no matter how the dangerous passenger attacked other bus riders, had the operator undertaken efforts to mitigate or eliminate the risk of such attacks from occurring, the subject attack may not have occurred. For example, a mitigation effort that would prevent someone from bringing a gun on the bus could also be used to prevent someone from bringing a knife on the bus.

Possible mitigation efforts

There are, of course, some protocols that bus operators could adopt in order to either reduce future attacks on their passengers by other passengers. Bus operators typically argue that, given that they are a low-cost travel option, they cannot afford the costs of additional security measures. However, there are still things bus operators can afford to do.

For example, a bus operator could require passengers to successfully pass through screening before boarding its buses at all stops. These screenings could be performed by the bus driver using a hand-held wand metal detector to uncover weapons. If a passenger is discovered to have a weapon, the driver can turn them away and not allow them to board. While the bus operator could also employ security personnel to perform these measures at all of its stations, this would not prevent passengers from obtaining weapons during stops on the trip between stations. Having the driver wand passengers would also save the bus

operator from having to incur the cost of hiring additional employees just for security.

Greyhound's history of attacks and attempts at increasing security demonstrate that the above measure is necessary. In 2008, David Leach, the president and CEO of Greyhound at the time, stated in an interview that Greyhound had "taken to being very aggressive in enforcing a zero-tolerance policy with respect to unruly or aggressive passengers. We do periodically screen for prohibited items through a wand program supported by the Department of Homeland Security." (Zipkin, *Smoothing the Rides on Greyhound*, The New York Times, May 17, 2008. <<https://www.nytimes.com/2008/05/17/business/17interview-long.html>>.)

Sadly, shortly after this interview took place, a horrific murder happened aboard a Greyhound bus traveling in Canada. (Friesen, *A quiet ride – then carnage*, The Globe and Mail, August 1, 2008 <<https://www.theglobeandmail.com/news/national/a-quiet-ride--then-carnage/article657355/>> [as of Feb. 7, 2023].) This attack prompted Greyhound to commence additional security measures, such as going through a security checkpoint where a guard wands passengers before boarding. (*Metal Detectors To Be Installed For Greyhound Bus Passengers*, CityNews, December 3, 2008 <<https://toronto.citynews.ca/2008/12/03/metal-detectors-to-be-installed-for-greyhound-bus-passengers/>> [as of Feb. 7, 2023].)

Apparently, Greyhound had already invested \$23 million (more than two-thirds of which was a TSA grant) instituting baggage checks and wand in random U.S. locations, with Greyhound admitting that its security was "a work in progress." (Chuchmach, *Beheading Raises Bus Security Concerns*, ABCNews, March 12, 2009 <<https://abcnews.go.com/Blotter/story?id=5526371&page=1>> [as of Feb. 7, 2023].)

Thereafter, in 2011, Greyhound had another attack on one of its buses where a

passenger stabbed another passenger in Reno. (*Preston v. Greyhound Lines, Inc.*, No. C082571, 2018 WL 2676558, at *2 (Cal. Ct. App. June 5, 2018).) Greyhound adopted additional security measures, including the use of "hand-held wand devices to screen passengers at its company-owned terminals for weapons. . . the [2014] Alion risk assessment ..., the [2015] updated [Greyhound] Security Plan ..., and Mike Ennis[s] security recommendations to screen passengers at all locations where Greyhound employs security guards." (*Id.* at *4.)

In addition to the harms described above, passengers can also be hurt or killed when a dangerous passenger attacks the bus driver, causing the bus to crash. (See, e.g., Rimer, et al., *6 Killed in Greyhound Crash in Tennessee After Passenger Slits Driver's Throat* (Oct. 4, 2001) New York Times <<https://www.nytimes.com/2001/10/04/us/6-killed-in-greyhound-crash-in-tennessee-after-passenger-slits-driver-s-throat.html>> [as of Jan. 30, 2023].) These attacks can be and are prevented by adding a protective case around the driver to shield the driver from harm.

These are just some of the options available to bus operators. A qualified expert in transportation security can help point out additional places where a bus operator failed to prevent a foreseeable attack and what it could have done differently.

Greyhound owes duty of utmost care

In sum, Greyhound, which squarely fits the definition of a common carrier, owes its passengers a duty of utmost care in protecting them from harm, even if that harm comes from third parties. Greyhound has exacerbated the risk of harm by not wanding all passengers before boarding its buses given that the risk of criminal attack is known.

Evidence of prior attacks is key to proving that Greyhound was on notice and could have foreseen the subject attack. Getting past the roadblocks put up by defendants in order to reach trial can be challenging. But keep in mind that many issues in these cases, such as

whether the attack was foreseeable, are issues of fact that cannot be decided on summary judgment and must be determined by a jury.

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