

# *The Unique Characteristics of* **Bus Crash Cases**

by Joseph L. Cantor

**B**uses are unique in the world of commercial motor vehicles. Unlike other types of commercial vehicles, buses are designed and operated for the sole purpose of transporting passengers.<sup>1</sup> According to statistics published by the National Highway Transportation Safety Board (NTSB), buses tend to be involved in fewer accidents than other types of motor vehicles.<sup>2</sup> The NTSB reported that, of the approximately 6.73 million highway crashes that occurred in 2019, only 65,000 involved buses.<sup>3</sup> However, when bus crashes occur, they often result in more injuries, and more serious injuries, than other types of motor vehicle crashes. Buses are large, heavy vehicles that often contain numerous passengers who tend to be less protected by safety precautions, including airbags and proper seatbelts.

Bus crash litigation can be quite complex. First, there are several types of buses, each with its own unique set of issues: (1) public transport buses (sovereign immunity; notice requirements); (2) private and charter buses (multiple potential defendants; complex insurance issues); (3) freight buses (compliance with the Federal Motor Carrier Safety Regulations); and (4) school buses (sovereign immunity; specific governing statutes). Second, bus crash litigation typically involves injuries to multiple parties, requiring an examination of conflict of interest questions and potential multi-claimant litigation. Third, bus crash litigation, like tractor-trailer litigation, requires significant crash and forensic investigation, including preservation of evidence, accessing information from data accumulation and video systems, and examining compliance with specific federal and state regulations.

This article will address four unique features of bus crash injury cases: (1) the higher duty of care imposed on “common carriers;” (2) the federal laws and regulations specific to commercial buses; (3) insurance requirements; and (4) the distinct issues involved in school bus crash cases.

## **Common carriers**

Unlike with other types of commercial motor vehicles, most bus carriers and drivers are considered “common carriers” under Virginia law. A “common carrier” is defined as “any person who undertakes, whether directly or by a lease or any other arrangement, to transport passengers for the general public by motor vehicle for compensation over the highways of the Commonwealth.”<sup>4</sup> Almost all “for-hire” buses fit this definition. Buses that undertake to transport passengers for free, such as school buses<sup>5</sup>, or privately for-hire, such as chartered buses, are not considered “common carriers” under Virginia law.

A common carrier has the duty to “use the highest degree of practical care for the safety of its passengers.”<sup>6</sup> It is “liable for the slightest negligence causing injury that could have been foreseen and guarded against.”<sup>7</sup> Although this duty is higher than the “reasonable person” standard, and even the standards imposed on drivers of other commercial vehicles, it does not require a common carrier to insure “the safety of its passengers.”<sup>8</sup> The “highest degree of practical care” means “no more than every care which

is practicable by common carriers engaged in the business of transporting passengers.”<sup>9</sup> A common carrier is not liable for “jerks and jolts which are necessarily incident” to their use<sup>10</sup> or for a passenger who voluntarily and unnecessarily places herself in a position of danger.<sup>11</sup> However, a common carrier has a duty to use the highest degree of practical care” to prevent injury to other passengers if it “knows, or by the use of proper care should know, that a passenger probably will become a source of danger. . . to other passengers.”<sup>12</sup> For a deeper analysis of “common carrier” law in Virginia, see Ryan Quinn’s article, entitled “*Common Carrier Litigation: An Overview of Relevant Case Law*,” in this edition of the VTLA Journal.

### Federal laws & regulations

Not all buses are the same. The Federal Motor Carrier Safety Regulations (FMCSRs) define “bus” as “any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs” engaged in interstate travel.<sup>13</sup> Whether a bus is considered a “commercial motor vehicle” under the FMCSRs, depends on the number of passengers it is designed or used to transport. Buses that are “designed or used to transport more than eight passengers (including the driver) for compensation” and those that are “designed or used to transport more than 15 passengers (including the driver)” not for compensation are considered “commercial motor vehicles.”<sup>14</sup> The FMCSRs provide standards for how these types of buses are to be inspected and maintained, safety precautions for maintenance and operation, and qualifications<sup>15</sup> and fitness of drivers.

The FMCSRs also provide strict “hours of service” regulations that apply specifically to “drivers of passenger-carrying commercial motor vehicles.”<sup>16</sup> Such drivers, unless exempted by 49 C.F.R. §395.1, are only permitted to drive for limited amounts of time, both consecutively and over the course of a week.<sup>17</sup> They are required to keep detailed records of their driving status for 24-hour increments and then submit them to their respective motor carrier within 13 days.<sup>18</sup> The driver must retain the records for at least seven consecutive days and the carrier must retain them for at least six months from the date of receipt.<sup>19</sup> Therefore, in any case involving a driver subject to the FMCSRs, make sure to send a preservation letter to the carrier demanding preservation of the driver’s duty status records as soon as possible, and then request the records in discovery.

The Federal Motor Carrier Safety Administration (FMCSA), the government agency that enacts the FMCSRs, keeps detailed information on all registered commercial motor carriers, including buses. The FMCSA has a system called SAFER (Safety and Fitness Electronic Records), which is accessible online.<sup>20</sup> A simple SAFER search should be performed at the onset of every bus crash case. It

is free, easily accessible, and often reveals important information about an applicable motor carrier, including the cargo carried, inspection records, reported crashes, and safety ratings. A FOIA request to the FMCSA should also be made in every applicable bus crash case. It will often lead to more detailed information about a motor carrier’s background and safety record.

Another federal agency, the National Transportation Safety Board (NTSB), has the authority to investigate any highway accidents, including bus crashes, but they tend to focus on the most “catastrophic” or “recurring” types of accidents. Should the NTSB decide to investigate a bus crash in which you represent an injured victim, make sure to obtain the results by way of FOIA request.

### Insurance requirements

Insurance requirements for buses, like with other commercial motor vehicles, depend on the type of vehicle at issue. Commercial buses engaged in interstate travel are subject to the insurance requirements of the FMCSRs. Under the FMCSRs, any commercial bus designed to transport 15 or less passengers is required to carry \$1.5 million in liability insurance coverage, while any commercial bus with a seating capacity of 16 or more passengers is required to carry \$5 million in coverage.<sup>21</sup> The FMCSA’s website<sup>22</sup> contains a database, separate from the SAFER system, for motor carriers’ licensing and insurance information, which often includes the amounts of a carrier’s required minimum coverage limits and actual limits on file with the FMCSA. Make sure to check it in every case involving a commercial bus regulated by the FMCSRs.

The FMCSRs’ insurance requirements only apply to carriers engaged in *inter*-state travel. If a carrier only engages in *intra*-state travel, state law minimum insurance coverage limits apply, which are often less than required by the FMCSRs.

In Virginia, the insurance requirements for commercial buses is based on the number of passengers, including the driver, that the bus is designed or manufactured to transport.<sup>23</sup> The minimum coverage limits are as follows: buses designed to transport one to six people – \$350,000; buses designed to transport seven to 15 passengers – \$1.5 million; and buses designed to transport 16 or more passengers – \$5 million.<sup>24</sup>

It is always important to find out a defendant’s liability coverage limits early on in a case, but it’s especially important in bus crash cases. Since buses are designed for transport of multiple passengers, bus crashes often result in many more injured people than any other type of motor vehicle crash. More injured people means more potential claimants to divide up any available coverage. Therefore, it’s essential to find out how much coverage is available early on in a bus crash case involving numerous passengers, and then act accordingly. When

there is limited coverage, conflict of interest issues may arise with one attorney representing multiple injured people. Another factor to consider in bus crashes is Va. Code §8.01-267.1, *et seq.*, which is Virginia's Multiple Claimant Litigation Act.

In every motor vehicle case, it is essential to look at your client's available uninsured/underinsured motorist coverage.

### School buses

School buses differ from other types of buses in that they are usually operated on behalf of local governments or school boards. Consequently, the doctrine of sovereign immunity is the most distinct, and most important, characteristic of school bus crash cases. The Supreme Court of Virginia has long held that "a public school board is entitled to sovereign immunity from liability for injuries resulting from the school board's simple negligence unless that immunity is abrogated by statute."<sup>25</sup> Virginia Code §22.1-194 abrogates a school board's immunity "to a limited degree."<sup>26</sup> It allows for a public school board or locality to be liable up to, but not beyond, the limits of "valid and collectible insurance in force to cover the injury complained of," as required by Va. Code §22.1-190. In enacting Va. Code §22.1-194, the General Assembly created an exception to the common law principle of sovereign immunity, "and imposed liability on a school board for simple negligence, even if its employee is liable only for acts of gross negligence."<sup>27</sup>

Va. Code §22.1-190 requires all public school buses to be covered by an insurance policy affording *at least* \$50,000 in both liability and uninsured/underinsured motorist coverage for injury to any one person, and \$500,000 in coverage for all persons injured in any one accident. Counties, cities, towns, or school boards may be self-insured equal to the amounts required by the statute, if they qualify for and receive a certificate of self-insurance from the Commissioner of the DMV.<sup>28</sup>

The insurance requirements imposed on school buses pursuant to Va. Code §22.1-190 are the minimum amounts of coverages required by law. A school board or locality may choose to contract for more coverage than is required. In the Supreme Court of Virginia's recent decision in the case of *VACORP v. Young*, the Court held that a contract between VACORP and the City of Richmond afforded \$1 million in uninsured/underinsured coverage to an insured school bus passenger, rather than the minimum \$50,000 in coverage required by Va. Code §22.1-190.<sup>29</sup> The Court acknowledged that "nothing precludes a school board from contracting for more UM/UIM coverage than the strict minimum."<sup>30</sup>

Despite sovereign immunity being abrogated for school boards or localities up to the limited insurance requirements of Va. Code §22.1-190, uninsured/underinsured motorist coverage may be available to your client under his or her personal

auto policy. Virginia's uninsured motorist coverage statute states that "the immunity from liability for negligence of the owner or operator of a motor vehicle shall not be a bar to the insured obtaining a judgment enforceable against the uninsured/underinsured insurer of the negligence of the immune owner or operator."<sup>31</sup> Consequently, be sure to determine all sources of UM/UIM coverage for your client in any school bus crash case.

Although sovereign immunity limits a school board or locality's liability for simple negligence up to the limits required by Va. Code §22.1-190, a bus driver may still be liable for acts of gross negligence. The actions necessary to prove gross negligence require egregious conduct on the part of the driver. The model jury instruction defines gross negligence as "that degree of negligence which shows indifference to others as constitutes an utter disregard of caution amounting to a complete neglect of the safety of another person."<sup>32</sup>

The Supreme Court of Virginia has found the conduct did not support a finding of gross negligence in numerous cases.<sup>33</sup>

### Conclusion

Bus crash cases present a myriad of issues for the plaintiff's attorney. Success in bus crash cases requires the attorney to consider and analyze these issues at the outset of the case in order to ensure tailored investigations, discovery, and research.

## Endnotes

1. Although there exist buses that are used exclusively for transportation of cargo, such as freight buses and combination (or mixed-use) buses, this article will examine buses designed and used for the transportation of passengers.
2. <https://www.bts.gov/content/transportation-accidents-mode>
3. *Id.*
4. Va. Code Ann. §46.2-2000.
5. See *Corriveau v. State Farm Mut. Auto Ins. Co.*, 298 Va. 273, 279 (2019) (“Operation of school buses does not meet the ‘general public’ or the ‘for compensation’ requirement” of Va. Code §46.2-2000). However, as discussed below, school bus crash cases involve a host of other unique issues.
6. VMJI 22.000.
7. *Id.*
8. *Id.*
9. *Shamblee v. Virginia Transit Co.*, 204 Va. 591, 594 (1963) (citing *Richmond-Ashland Ry. Co. v. Jackson*, 157 Va. 628, 641 (1932)).
10. See *Richmond Greyhound Lines, Inc. v. Ramos*, 177 Va. 20, 22 (1941) (holding that a bus company was not liable for injuries the plaintiff sustained when she tried to change seats on a bus and the bus jerked forward).
11. See *Eggleston v. Broadway, Etc., Corp.*, 194 Va. 584 (1953) (holding that the plaintiff was contributorily negligent for not exercising reasonable care in exiting a taxicab).
12. VMJI 22.030.
13. 49 C.F.R. §390.5T.
14. 49 C.F.R. §390.5.
15. Under the FMCSRs, a commercial driver’s license is required for any operator of a “commercial motor vehicle,” including buses that meet the definition of 49 C.F.R. §390.5. 49 C.F.R. §383.23. In Virginia, a commercial driver’s license is required for any operator of a vehicle “designed to transport 16 or more passengers including the driver.” Va. Code §46.2-341.16.
16. 49 C.F.R. §395.5.
17. *Id.*
18. 49 C.F.R. §395.8.
19. *Id.*
20. <https://safer.fmcsa.dot.gov/CompanySnapshot.aspx>
21. 49 CFR §387.33.
22. [https://li-public.fmcsa.dot.gov/LIVIEW/pkg\\_carrquerry.prc\\_carrlist](https://li-public.fmcsa.dot.gov/LIVIEW/pkg_carrquerry.prc_carrlist)
23. See Va. Code §46.2-2053(B).
24. *Id.*
25. *Wagoner by Wagoner v. Benson*, 256 Va. 260, 262 (1998) (citing *Kellam v. School Board*, 202 Va. 252, 255 (1960)).
26. *Id.*
27. *Linhart v. Lawson*, 261 Va. 30, 34 (2001).
28. Va. Code Ann. §22.1-190(D).
29. Va. Code §22.1-190, 840 S.E.2d 334, 337 (2020).
30. *Id.*
31. Va. Code §38.2-2206(f).
32. Virginia Model Jury Instruction No. 4.030.
33. See, e.g., *Elliott v. Carter*, 292 Va. 618 (2016); *City of Lynchburg v. Brown*, 270 Va. 166 (2005); *Green v. Ingram*, 269 Va. 281 (2005); *Colby v. Boyden*, 241 Va. 125 (1991); *Community Motor Bus Co. v. Windley*, 224 Va. 687 (1983).



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