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Founder of The LMC Group
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Kristen Carroll joined the Grace Limousine team in November 2012 in the role of executive director. Carroll previously worked as a human resources and operational consultant for a wide range of clients and industries. She has a strong background in business development, benchmarking, leadership training and development, organizational structure planning, and budgeting. Carroll most recently founded The LMC Group, a firm specific to the industry that specializes in all areas of business management.

Andi Gray

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Andi Gray founded Strategy Leaders in 1995 to help owners of established, privately held businesses achieve growth, profit, stability, predictability, and peace of mind. Using proprietary systems, Strategy Leaders puts clients on track to double revenue and triple profit in repetitive 5-6 year cycles. Educated in the U.S. and Europe, Gray earned an Executive MBA from Columbia University while conducting research on success and failure drivers for entrepreneurial businesses. Gray has earned recognition for business leadership, including Working Women of Westchester and two Westchester County Association APEX Awards.

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David Hartson is a 27-year veteran of the industry and has vast experience in many different areas of operations, management, and driver training. Since 1993, he has been the VIP transportation consultant and coordinator for the Oakland Raiders. For the past several years, he has been hired to produce customized visual training programs for operators around the country. More recently, he is the cofounder of Solutions!, which offers packages for government compliance, training, and operations management.

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Bill Faeth left his position as chief strategy officer at Grand Avenue Worldwide to found Inbound Marketing Agents, an online and digital agency that specializes in SEO, social media marketing, lead generation, website design, and targeted sales conversions. He was also the founder and CEO of Silver Oak Transportation, which he sold to Grand Avenue in 2010.

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Liz Hunter is a freelance writer and editor living in South Jersey. She gained extensive knowledge of the chauffeured ground transportation industry through her time as associate editor for Limousine Digest, where she was a regular at association meetings and industry events.

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Patrick O'Brien is an attorney with the California law firm of Daniel Crowley & Associates and focuses on general civil litigation with an emphasis on complex business, trust, and personal injury matters. He also specializes in providing litigation representation to the transportation industry. O'Brien founded Panama Luxury Limousine and acted as its CEO and General Counsel from 2007 to 2012, and continues to work with the company as a consultant and board member.



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Liability Waiver: *Transferring the Risk to the Passenger*

BY PATRICK O'BRIEN



In my previous two articles, I discussed common carrier law liability and the potential for transferring risk to your affiliates and their insurance companies. There is one more strategy we suggest to our clients that attempts to transfer risk directly to the passenger in certain circumstances. This is called a liability waiver.

We are seeing a dramatic increase in passenger-related injuries, specifically on party buses, and are currently handling lawsuits ranging from slip-and-fall accidents to passengers falling out of a vehicle on a freeway. These cases involve major injuries and negative exposure for our industry. They also present a very difficult situation for the operator: In many cases, it appears that the operators did nothing wrong, yet are entangled in expensive, time-consuming litigation with widespread exposure.

Express liability waivers have been around for years and are based on the concept that, in the case of activities carrying an increased likelihood of risk or injury, a business owner can request that customers or participants sign a contract absolving the owner of liability for any injuries that may occur.

Courts throughout the country routinely uphold these waivers, as the participant was informed of the risk and consciously chose to forge ahead, effectively releasing the company owner from liability. If properly executed, the strategy can lead to an early exit from a case on a summary judgment motion by an attorney. We have successfully employed this strategy on multiple occasions in the past few years, although not in the chauffeured transportation setting. The practical result of these waivers is to allow businesses with inherent risks to continue operating; without enforcement of their waivers, litigation costs would put these companies out of business.

Party buses present a complicated and particularly high-liability situation for the operator, as their passengers are frequently intoxicated, even if the operator does not provide alcohol. Guests stand, dance, and move around in the vehicles, despite being instructed not to do so by

both the operator and posted signs inside the vehicle. Passengers fall and the operator is sued.

We believe that a good strategy is to have each participant sign a liability waiver upon entering the vehicle. The chauffeur can stand at the door and obtain a quick signature on a form that is clearly labeled "LIABILITY WAIVER" and explains that passengers should not stand, dance, or move around while the bus is in motion (note that minors cannot sign these waivers in many states). There needs to be irrefutable proof of passengers' understanding that becoming too intoxicated to abide by the vehicle's rules can lead to serious injury and/or death. The form must clearly state that the passenger releases the operator, the company, and its employees from any and all liability for

“ We believe that a good strategy is to have each participant sign a liability waiver upon entering the vehicle. ”

injuries or deaths that may occur during the party bus ride.

To date, we are unaware of this strategy being used in any jurisdiction by chauffeured transportation operators. As a result, our preliminary analysis hasn't turned up any case law directly on point. The potential problem with this approach, and the major hurdle for any lawyer attempting to uphold such an agreement, is that these types of agreements will not be upheld where they conflict with a strong public policy. In this case, the public policy would be common carrier law, as discussed in a previous article. However, we believe that, while the waivers may not be effective in every transportation situation, the party bus is a unique transportation environment that presents unique risks, such that the waiver may be held to outweigh the public policy.

It is likely that the use of this strategy will work in some states or jurisdictions and not in others. The worst case is that a court may not grant summary judgment in your favor; however, you will have a very strong piece of evidence to utilize in a trial—namely that the rules of the bus were provided to its passengers, all of whom expressly agreed to follow them.

Liability waivers are governed by contract law rather than by tort law. This means if the activity and scope of the injury is contemplated by the agreement, the default will be that the agreement is valid. Thus, these releases are upheld in all types of activities, from health clubs (many appellate court cases have been upheld), entertainment events, and even parking lots to more obviously dangerous activities like auto racing and rock climbing—but remember that a liability waiver won't mean much if your company is responsible for something like an accident while transporting passengers. In short, it is always permissible, at least in California, to attempt to contractually limit your risk, unless such limitation would violate a statute or public policy: The public policy must be of great importance to the public and be of a very compelling need.



In this case, we do not feel there is any weighty public policy protecting intoxicated party-goers on buses. The only public policy which might be relevant is the common carrier statute; however, California courts have already ruled that common carrier policy will not overcome a liability waiver, at least as it relates to tour companies. We see no reason to believe that the same logic will not apply to a party bus or similar activity.

As a former operator, I am always mindful of the interplay between the practical necessities of and inconveniences caused by instituting this type of procedure, but the benefit to the operator should outweigh the few minutes spent collecting signatures while passengers board. It will be interesting, indeed, to see how this creative risk transfer solution begins to play out in the courts. **[CD]**

Disclaimer: The foregoing is provided solely as general information, is not intended as legal advice, and may not be applicable within your jurisdiction or to your specific situation. You are advised to consult with your attorneys for guidance before relying upon any of the information presented herein.

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