



CLM 2018 Hospitality Conference  
February 7-9, 2018 in Dallas, TX

**Hotel Shuttle Vans-Setting up a Safer Program, Recent Decisions and What Should be Done when the Bad Things Happen**

**I. Starting a Shuttle Van Program (Brian Chance, 20 minutes)**

One of the first issues a risk manager must face before implementing or altering a Hotel Shuttle Van program is focusing on the primary component, as with any program's success, the drivers. Balancing how much experience should be the minimum, what is considered related experience, what is maximum allowable age of a driver and just a starting point. Working with other departments, for example Human Resources components such as Military Service, Driving Record, Criminal Records need to be sorted out and agreed upon to be consistent with fair hiring practices and customer standards of care.

**II. Best Practices for Retention**

Critical to having a safe hotel shuttle program is the monitoring of drivers. While scheduled reviews of drivers' violations and/or points are a straightforward endeavor, drug testing could be more problematic if other company employees are not tested routinely. Is it allowable to have a certain segment of employees held to an additional standard? Addressing positive drug tests becomes more complicated when marijuana is now legal; can an employee based in a state that does not have legalized marijuana be allowed a positive drug test after coming back from a state where it is legal?

In some instances, where accidents take place an at-fault accident meets the threshold for termination, or it can be a threshold that is a combination of points and violations in conjunction with an at fault accident. What should be the policy if there are injuries or deaths, and do you want such a policy in writing, so employees know what is expected, or unwritten, so the company has the discretion.

### **III. Proven Risk Management Axioms.**

Carriers have a myriad of costs and efforts to balance when starting or modifying their hotel shuttle program. Issues tied fleet age, size of fleet, the equipment selected, maintenance programs, as well investments into continuing driver training education are all important but the reason carriers spend so much of their focus on the drivers themselves is because no other component mitigates claim costs like having the best possible drivers. Hiring the best driver's available will often mean the need for a newer and maintained fleet, because quality people expect quality equipment.

### **IV. Types of Equipment for Hotel Shuttle Vans**

Companies keeping pace with escalating standards of care means investing in protective devices that are readily available and have reasonable costs. With enhancements in GPS abilities, the right investment can help protect drivers, equipment, and passengers. Certain GPS systems can communicate a van's location live and let managers know if the standard route is being breached and identify aggressive drivers. Various DriveCam systems can enhance driver accountability and if necessary an additional camera on the passenger's side will help record and protect the company from litigation if a passenger created an unsafe condition.

### **V. Correct Licenses for the Hotel Shuttle Van Drivers. (Peter VanDyne 10 minutes)**

In certain states the law requires drivers carry a CDL or Commercial Drivers' License, depending on vehicle, but there are exceptions. State law can vary and federal law is also in play, so knowing the intricacies of these laws will help a risk manager or attorney deem if the company is complying with the law in any given location. Determining what qualifies as interstate commerce and what qualifies as intrastate commerce is critical in knowing how to stay in compliance.

Proper basic fleet safety program controls such as a list of approved drivers, documented policies, and performance monitoring will help defend a company should an accident occur.

### **VI. What to do when the worst has happened. (Dirk Smith, PhD., ACTAR). (20 minutes)**

The best way to handle the issues tied to an accident is to get in front of it. That means working with your broker, carrier, and various counsels to vet experts before dealing with a serious accident. Common experts needed can range from, but are not limited to, an accident reconstructionist, toxicologist, as well as human factors and biomechanical experts. Your team needs to decide on minimum credentials and experience, and if you want your experts to have a hand in training your drivers.

Putting together a response team means your experts must have the cutting edge technology and devices. A Nikon Total Station and FARO 3D Scanner can be invaluable in reconstruction and depiction on how the accident took place and visually communicating all the

physical aspects of the collision. We will review samples of each technologies final work product and review the strengths and weaknesses of each electronic platform.

## **VII. Hotel Shuttle Accidents and their Unique Forensic Concerns**

Typical accidents only have a couple occupants, but a shuttle can easily have 10 or more, that means a lot more time evaluating seatbelts. Often, because a shuttle van has a large number of drivers using it, maintenance responsibility can be clouded. Tire blowouts on a shuttle have greater severity due to the higher center of gravity making roll over more likely.

A van also has a black box from which evidence is retrievable, depending on the make and model. Some of the data collected is speed, braking, air bag deployment, etc.

Site inspections involving shuttles also can be more complicated due to a larger number witnesses than a typical vehicle accident, and opens the door for conflicting statements and inaccurate memories.

## **VIII. Litigation, where is the case law taking us? (Matt Anderson) 20 minutes**

*Bergeron v. Starwood Hotels & Resorts Worldwide, Inc., No 2006 CA 1568 (La. App. 2007)*

### Brief Facts and Holding:

Plaintiffs were guests at the Sheraton Baton Rouge Convention Center Hotel. They intended to attend a Mardi Gras ball at the Centroplex Convention Center that evening. After the plaintiff asked about transportation, a receptionist at the hotel advised them that there was a shuttle available to take them to the Centroplex for the ball and directed them outside to board the shuttle. According to the plaintiff, there were several shuttles going in and out of the area around the hotel at that time. As Mrs. Bergeron attempted to board one of the shuttles, she slipped on an alleged defective condition on the shuttle and injured her leg. Plaintiffs sued Starwood, Centroplex, and Zurich (the insurance carrier for both entities). Defendants filed motions for summary judgment contending that they did not have custody or control over the vehicle that the plaintiff was boarding at the time of her accident. Starwood further contended that plaintiffs could not prove that the defendants knew or should have known of the alleged defect in the vehicle. Court granted the defendants' MSJ; upheld by the Court of appeals

### Court Analysis and Rules Learned:

- Louisiana Civil Code article 2317.1 provides for the liability of an owner or custodian of a thing for damage occasioned by its ruin, vice, or defect only when: (1) the owner or custodian knew or, in the exercise of reasonable care, should have known of the ruin, vice, or defect that caused the damage; (2) the damage could have been prevented by the exercise of reasonable care; and (3) the owner or custodian failed to exercise such reasonable care. As a preliminary matter, the plaintiffs bear the burden of proving at

trial that the property that caused the damage was in the "custody" of the defendants. *Tyler v. Our Lady of the Lake Hospital, Inc.*, 696 So.2d 681, 685 (La. App. 1<sup>st</sup> Cir. 6/20/97).

- Custody, distinct from ownership, refers to a person's supervision and control over a thing posing an unreasonable risk of harm. Control is the obligation imposed by law on the proprietor of a thing, or on one who avails himself of it, to prevent it from causing damage to others. The fault of the person thus liable is based upon one's failure to prevent the thing from causing unreasonable injury to others. *Tyler*, 696 So.2d at 685.
- Here, **the plaintiff did not meet her burden of proving that the defendants had custody or control of the shuttle at issue.** Instead, the plaintiffs argued, unpersuasively, that the defendants had custody or control over the shuttle simply because the receptionist of the hotel had directed them to a van outside. However, the plaintiff testified that there were several vans outside, as many people were going from the hotel to the Centroplex for the Mardi Gras ball. While there was no dispute that the defendants provided a shuttle, there was no evidence to connect the defendants with the particular shuttle used by the plaintiffs that evening.

*Schiller v. Home-Owners Ins. Co., No. 310085 (Mich. App. 2013)*

Brief Facts and Holding:

Plaintiff's flight was redirected to Detroit due to adverse weather conditions. The airline arranged for her to stay at the Howard Johnson hotel in a nearby city. The following morning, the plaintiff boarded a courtesy van at the Howard Johnson hotel; the van was provided by the Comfort Inn, which is also in the same city near the airport. Upon exiting the van at the airport, the plaintiff fell and injured her neck and back. Home-Owners issued an insurance policy which covered the courtesy van. Plaintiff had no-fault insurance through a personal Allstate policy. Initially Allstate paid benefits to the plaintiff, but later instructed her to seek benefits from the policy insuring the courtesy van (Home-Owners). Plaintiff eventually filed a complaint against Home-Owners and Allstate seeking outstanding benefits. Home-Owners moved for

summary disposition pursuant to MCR 2.116(C)(10), asserting that Allstate had higher priority under Michigan law. Home-Owners argued that it was not required to cover plaintiff's injuries **because the vehicle at issue was not owned or operated by a business [i.e., Comfort Inn hotel] that was primarily "in the business of transporting passengers."** MCL 500.3114(2). Home-Owners maintained that the businesses that owned and operated the courtesy van were in the "hotel/motel business," and the operation of the courtesy van was merely incidental to their primary business of operating a hotel. Allstate also moved for summary disposition pursuant to MCR 2.116(C)(10). Allstate claimed that the primary use of the courtesy van was transportation of passengers and that the transportation of passengers was a significant part of the Comfort Inn's business because the Comfort Inn is located near an international airport. The trial court ruled in favor of Allstate, finding Home-Owners had the highest priority to pay no-fault benefits to the plaintiff; affirmed on appeal.

Court Analysis and Rules Learned:

- A hotel's airport shuttle van is "operated in the business of transporting passengers," thereby triggering the van's insurer's liability to pay no-fault benefits, if the following criteria are met:
  1. The operation of the hotel's airport shuttle van involved in a commercial situation.
  2. The van's "primary purpose" was to transport passengers (in this case, to and from the airport).
  3. The shuttle service provided by the van "is a significant part" of the hotel's business given the close proximity to the airport and that the airport shuttle van was advertised as a "significant hotel amenity."