A bold voice for transportation workers

TIME TO RAISE THE BAR ON MARKET ENTRY IN MOTORCOACH INDUSTRY

Intercity bus transportation has grown rapidly in the last several years, offering Americans additional travel options as routes expand across the country. But this growth must not come at the expense of passenger and public safety, a fear that has become magnified by an influx of poorly regulated new entrants that have flooded the intercity bus sector.

Transportation labor has a long history of promoting federal regulations that ensure the diverse motorcoach industry is held to the highest safety standards. Previously TTD's Executive Committee called for action to eliminate the bus carve-out in the Fair Labor Standards Act (FLSA) that denies overtime protections for drivers and in turn makes the bus industry more dangerous. We renew our call for action to close this loophole.

Since sweeping deregulation policies were enacted almost 40 years ago, there has been a steady deterioration of "entry standards" that are imposed on those seeking to do business as interstate bus carriers. The lowering of these standards has severely limited the ability to ensure that only well-capitalized companies willing and able to uphold federal safety requirements are granted operating authority. Fortunately, the Federal Motor Carrier Safety Administration (FMCSA) has recognized this problem and undertaken an aggressive enforcement effort to remove unsafe bus carriers from our highways. While we support FMCSA's efforts, we believe it is just as important to prevent bad actors from gaining operating authority in the first place by establishing a new floor for market entry standards. As part of this effort, FMCSA must raise the minimum level of financial responsibility required to be maintained by a passenger motor carrier to satisfy liability claims and property damages resulting from a commercial bus accident.

We were therefore pleased when Congress included section 32104 of MAP-21, which required FMCSA to report on the appropriateness of the current liability minimums. Last year, FMCSA sent that report to Congress, and we are encouraged that the study's findings offer preliminary support for increasing the minimums. We also are encouraged by the agency's consideration of a rulemaking to increase the financial requirements, and we strongly urge the agency to pursue such a rulemaking as a necessary next step in making bus transportation safer.

When Congress imposed minimum liability requirements in the 1982 Bus Act, it intended for this new requirement to enhance safety, believing that "motor carriers would have greater incentives to create and maintain more effective safety programs to help keep their premiums lower." The DOT fulfilled the congressional mandate, and the minimum financial responsibility requirements became effective in 1985. But to the detriment of safety, those minimum requirements have remained unchanged from the original levels established 30 years ago. It is indefensible that the minimum liability insurance requirements in a safety-sensitive industry such as intercity bus transportation have been frozen since the 1980s.

Over the past three decades, medical costs and other expenses related to bus crashes have vastly increased due to inflation. According to a recent FMCSA report, adjusting the 1985 financial liability requirement for inflation would increase the current minimum level from $5 million to over $21 million for a large passenger carrier. But the minimums have languished, decreasing in real terms and thus eroding the ability of a carrier maintaining the current standard to adequately cover the growing costs of fatal or catastrophic injury crashes. Further, as the minimums have eroded, the deterrent effect of requiring adequate insurance coverage has eroded as well.

The original minimum levels were likely put in place with the expectation that they would provide adequate coverage for most crashes and that beyond that limit of protection would extend only the most expensive and rarest accidents. However, due to inflation and the decreased real value of the insurance minimums, not only are serious crashes more expensive today than in 1985, but the cost of a growing number of crashes exceed that upper limit above which insurance cannot provide coverage. As a result, passengers involved in a greater number of crashes may not receive the compensation they deserve.

FMCSA should help restore passenger protection by increasing the current minimums to levels that will provide crash victims with the most comprehensive coverage. In doing so, FMCSA will also restore the incentives Congress intended for the limits to create. Increasing insurance companies' exposure will encourage them to diligently investigate prospective motor carriers to ensure they are safe operations and to monitor insured carriers' safety performance. Likewise, higher premiums will incentivize carriers to maintain strong safety programs in order to keep premiums low and to prevent being dropped by their insurer due to crashes or violations. Additionally, low-cost, risky carriers that notoriously pay their workers abysmal wages and violate safety regulations could be eliminated from the market when insurers unearth their atrocious safety records and egregious business practices.

Surely, advocates of deregulation cannot defend a federal regulatory regime that does not insist on the highest level of safety for bus travelers. It is time for our government to update bus market entry standards, not as a new policy direction, but as a recognition that current standards are out of date. Absent these actions, we will continue to see bad actors flood the bus marketplace, placing carriers that play by the rules at a competitive disadvantage and ultimately exposing bus passengers and employees to carriers that are unsafe and poorly insured.

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