

TRANSPORTATION

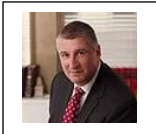
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The “Jerk and Jolt” defense of buses requires plaintiff-passengers to demonstrate that a start, stop, or lurch allegedly causing an injury was an extraordinary event different from what is routinely encountered by a bus operating on the roadways. It renders ordinary “jerks and jolts” non-actionable.

The “Jerk and Jolt” Defense: Relief from a Bumpy Road

ABOUT THE AUTHOR



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In many States, buses are considered to be “common carriers” owing a duty of utmost care to their passengers. This heightened duty is mitigated to some extent in those jurisdictions recognizing a “jerk and jolt” defense.

The jerk and jolt doctrine developed under urban driving conditions and recognizes that traffic congestion inevitably causes starts and stops that can cause an unwary passenger to lose balance and possibly suffer injury. It requires plaintiff show more than that the bus started, stopped or lurched. As formulated in New York, “There must be ‘objective evidence of the force of the stop sufficient to establish an inference that the stop was extraordinary and violent, of a different class than the jerks and jolts commonly experienced in city travel and, therefore, attributable to the negligence of the defendant’”. *Mastrantonakis v. Metropolitan Transp. Auth.*, 170 A.D. 3d 823, 824-825, 96 N.Y.S. 3d 250 (2d Dep’t 2019), citing, *Urquhart v. New York City Transit Auth.*, 85 N.Y. 2d 828, 830, 647 N.E. 2d 1346, 623 N.Y.S. 2d 838 (1995). In Pennsylvania, “... the plaintiff must establish that the jerk or stop of the bus was so unusual and extraordinary so as to be beyond his reasonable anticipation by demonstrating either that the stop had an extraordinarily disturbing effect on the other passengers or evidence of an accident, the manner of the occurrence of which or the effect of which upon the injured person inherently establishes the unusual character of the jerk or jolt”. *Green v. SEPTA*, 124 A. 3d 426 (Pa. Cmwlth. 2015), appeal denied, 637 Pa. 685 (2016), citing, *Connolly v. Phila. Transp. Co.*,

420 Pa. 280, 283, 216 A. 2d 60 (1966). In the District of Columbia, plaintiff must show “that the bus driver caused a jerk ‘so violent or extraordinary that it could not have been consistent with the safe operation of the bus’” (noting that “Because ‘jerks’ occur often in the normal operation of a bus, evidence of a jerk that results in injury is not usually enough for a jury to infer negligence”). *Robinson v. Wash. Metro Area Transit Auth.*, 774 F. 3d 33, 41-42, 413 U.S. App. D.C. 290 (D.C. Cir. 2014), citing, *Johnson v. Wash. Metro. Area Transit Authority*, 946 F.2d 127 (D.C. Cir. 1991).

The cases are clear that more is needed than “descriptive adjectives and conclusions alone” to overcome the defense. *Boyko v. Wash. Metro. Area Transit Authority* 468 A.2d 582 (D.C. Cir. 1983). Using language describing a “terrific jolt”, “very terrible-very severe jerk or jolt” or “unusually hard jerk” is insufficient. *Kaufman v. Balt. Transit Co.*, 197 Md. 141, 146, 78 A.2d 464 (Ct. of Appeals 1951). Instead, plaintiff must produce evidence demonstrating the extraordinary nature of the event. This is best seen in cases considering the jerk and jolt defense.

In *Urquhart, supra*, plaintiff testified that he boarded a bus in downtown Brooklyn, paid his fare, obtained a transfer, and then walked to a seat he selected at the rear of the bus. The bus accelerated rapidly to an estimated 25-30 M.P.H. then braked hard, causing plaintiff to fall and slide the length of the bus on the floor and stop near the driver’s feet. The Court found these circumstances demonstrated an “unusual

and violent event” of a different class than commonly experienced in city bus travel.

In *Buzzelli v Port Authority of Allegheny County*, 674 A. 2d 1186 (Pa. Cmwlth. 1996), plaintiff was one of many passengers standing in a bus when the bus accelerated away from a bus stop at an estimated 35-40 m.p.h. (in a 25 m.p.h. zone) then braked, sending many standing passengers into plaintiff, with the “crush” of passengers pushing plaintiff to the floor. The Court found that operation of the bus both as described by plaintiff in detail, coupled with the result of affecting multiple passengers, overcame the jerk and jolt doctrine.

In contrast, in *Green v. SEPTA, supra*, the Appellate Court reversed a jury verdict for plaintiff by finding the action barred under the jerk and jolt doctrine. Plaintiff testified to boarding his bus in downtown Philadelphia and moving into the bus to find a seat when the bus driver forcibly applied his brakes. Plaintiff grabbed a pole but his body twisted, causing a tear of his rotator cuff requiring surgical repair. At trial, plaintiff said that his fellow passengers were moved within the seats by the sudden braking and several gasped audibly. In reversing, the Court stated that this testimony was insufficient to distinguish the incident from an ordinary event that occurs in urban traffic.

Finally, in *Martin v. SEPTA*, 52 A.3d 385 (Pa. Cmwlth. 2012)), the Court rejected plaintiff’s claim when she described falling as she moved toward her seat when the bus accelerated then stopped; the Court found, “Plaintiff merely testified the bus started

and stopped before she could reach her seat. Such circumstances are not beyond a passenger’s reasonable anticipation”. *Id.* at 391.

In sum, the jerk and jolt doctrine is a powerful tool in the jurisdictions where it is recognized. Defendants would be well-served in obtaining detailed testimony on the bus’s operation and “locking out” plaintiffs at deposition so as to bring the case within the parameters of ordinary operation where jerks and jolts are everyday occurrences.

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