

## THE NEGLIGENCE STANDARD APPLICABLE TO A COMMON CARRIER IS REASONABLE CARE UNDER THE CIRCUMSTANCES

February 23, 2012 | Law Alerts

*Nunez v. Professional Transit Management of Tucson, Inc.*  
Ariz. Supreme Court, February 23, 2012

Authored by the [JSH Appellate Team](#)

Linda Brown was confined to a wheelchair. She boarded a Tucson city bus operated by Suntran. Zoellner, the bus driver, secured the wheels to the bus floor. After the bus resumed its trip, a car abruptly stopped in front of it. Zoellner braked sharply and Brown was thrown from her wheelchair. She sustained serious injuries.

Brown sued Suntran and Zoellner, alleging that Zoellner was negligent both in driving the bus and in failing to fasten Brown's seatbelt. Suntran argued that brown's refusal to wear a seatbelt caused her injury, and that her injuries were caused by the negligence of the driver of the car that stopped in front of the bus.

Suntran requested a jury instruction that common carriers have a duty to passengers to exercise reasonable care under the circumstances. The judge instead instructed the jury that "[Suntran] – as a common carrier of passengers for hire, is bound to exercise the highest degree of care practicable under the circumstances" and that "a failure to exercise the highest degree of care practicable under the circumstances is negligence." The jury found the bus driver 70% at fault and awarded Brown \$186,777.00. The court of appeals affirmed, holding that case law required the "highest degree of care" instruction.

The Supreme Court reversed, holding that the appropriate standard of care in negligence actions by passengers against common carriers is the objective, reasonable person standard used in traditional negligence law. Under English common law, the rationale for applying the "highest degree of care practicable" standard was that passengers depended on the carrier to protect them from hazardous conditions frequently encountered in the early days of public transportation. Those same concerns are not present today. Today, if a common carrier acts with reasonable care in light of all circumstances, it has discharged its duty to its passengers.