

Dennis Expands Common Carriers' Liability

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In Illinois, it is a long-settled rule that common carriers owe a special duty to their payload—whether it be people or goods—and, as a result, they face more expansive liability for the acts of their employees under the theory of *respondeat superior*, or vicarious liability. In the recent Illinois decision of *Dennis v. Pace*, the liability faced by common carriers was extended to reach employee's unlawful acts "initiated" against a passenger while she was still onboard.

Generally, an employer's liability under the theory of *respondeat superior* extends only to wrongs performed "within the scope of employment" and for the benefit of the employing company but, because of their special duty, common carriers are an exception to the rule.

An Illinois court will decide whether a company is a "common carrier," as opposed to a "private carrier," on a case-by-case basis, but several factors are highly relevant in a court's determination. As noted by an Illinois appellate court in *Illinois Highway Transportation Company v. Hantel*, a common carrier "undertakes for the public to transport from place to place such persons or the goods of such persons as choose to employ him for hire," meaning that it takes on all customers who seek its services. A common carrier must also insure the safety of the people or goods which it carries; therefore, it will be liable for all injuries to or loss of its cargo. Of course, a company's holding itself out as a common carrier will also be taken into consideration by the court. Illinois – like many other states – holds common carriers to the highest duty of care.

In contrast, private carriers, also known as contract carriers, still fall within the general tort principles. A private carrier provides service under written bilateral contracts. Most, but not all, trucking companies fall under the "common carrier" umbrella.

Chicago & Eastern R.R. Co. v. Flexman first established the expanded liability for common carriers. The *Flexman* case involved a plaintiff seeking personal injury damages when a train's brakeman smashed the plaintiff, who was a passenger on the train, in the face with a lantern. In that 1882 case, the Illinois Supreme Court decided that common carriers must "use all reasonable exertion" to protect persons onboard from both third parties and the carrier's own employees or agents.

In *Dennis v. Pace*, an Illinois appellate court went one step further. The court decided that liability attaches to the employer as long as the legal wrong is "initiated" while the passenger or goods remain onboard the common carrier's means of transportation.

In *Dennis*, decided on September 5, 2014, a passenger on a Pace bus alleged that the driver took her home and "sexually assaulted her while she was in an intoxicated condition and unable to consent." The appellate court decided that Pace could be found vicariously liable because the sexual assault was initiated while Dennis, the passenger, was still riding on the bus—that is, while a "common carrier and passenger relationship existed." Thus, the Illinois Appellate Court held that the plaintiff-passenger's complaint was improperly dismissed at the trial level. The Illinois Supreme Court declined to hear an additional appeal.

Though *Dennis* certainly expanded the vicarious liability of common carriers, the extent by which their liability will be expanded is thus far unclear. The greatest challenge to the Illinois courts will be in interpreting and developing the “initiated-while-onboard” test to determine its potential time and space limits. Because of the potential increase of costs correlating to the expansion of liability, all common carriers should take notice of the *Dennis* decision and any forthcoming developments.