Admissibility of Seat Belt Nonuse Evidence

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As defenses remain limited by an unsupportable rationale, efforts to change the legislation that prevents the introduction of evidence may be the best option.

It is universally agreed that seat belts save lives and prevent injuries. Overwhelming evidence amassed from crash tests and real-world accident investigations demonstrates that the single most significant source of automobile occupant protection is a properly worn seat belt restraint system. Federal law requires manufacturers to equip passenger cars with seat belts and 49 states have laws requiring motorists to wear seat belts. Yet, along with laws requiring seat belt use, a disturbing number of states still have various forms of evidentiary rules that preclude or limit a defendant’s ability to introduce evidence of a plaintiff’s failure to wear a seat belt.

In those states, defendants are not permitted to tell juries that injured parties ignored warnings, disregarded available vehicle safety features and violated mandatory seat belt laws by failing to wear seat belts. These states may also prohibit auto manufacturers from defending a vehicle’s design by demonstrating its effectiveness in protecting belted occupants.

These limitations on seat belt evidence are outdated vestiges of a time when seat belts were viewed with suspicion and were not widely used. Today, the benefits of seat belts are widely recognized, and use rates exceed 90 percent in many jurisdictions. The limited rationales that may once have existed to support legislation limiting seat belt evidence are no longer applicable.

Seat belt evidence exclusion undermines the deterrent effect of seat belt laws, encourages irresponsibility and leads to unfair and often even ridiculous litigation results. The time has come for a change in the law. Defense counsel and their clients should work to have laws excluding evidence of seat belt use repealed and, in the interim, should seek to limit their applicability. Counsel should also encourage the enactment of legislation that would result in uniform laws favoring the introduction of evidence of seat belt use at trial.

Seat Belt Legislation and Seat Belt Use Statistics

In 1968, in response to overwhelming evidence that seat belts prevent deaths and injuries in automobile accidents, the National Highway Traffic Safety Administration (NHTSA) issued Federal Motor
Vehicle Safety Standard (FMVSS) 208 on “Occupant Crash Protection,” which mandated that automakers install lap belts for all passenger car occupants, with shoulder harnesses for drivers and front seat passengers. Subsequent amendments to FMVSS 208 have mandated rear outboard lap and shoulder belts as of model year 1989 and center rear lap and shoulder belts for occupants as of model year 2008.

Although federal law requires manufacturers to equip passenger cars with seat belts, federal law does not mandate that occupants actually use them. Rather, seat belt use legislation in the United States has traditionally been the province of state governments. New York enacted the first mandatory seat belt use law in 1984. Currently, all states except New Hampshire have mandatory seat belt use laws for adults in front seats. Seventeen states and the District of Columbia require that adults use seat belts in all seating positions.

In terms of enforcement, the states are divided. Thirty states and the District of Columbia have “primary enforcement laws” under which motorists may be stopped and ticketed simply for not using their seat belts. These 30 states are Alabama, Arkansas, Arizona, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Maine, Michigan, Minnesota, Mississippi, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Washington and Wisconsin. The remaining states have “secondary enforcement laws,” which prohibit police officers from stopping motorists solely for seat belt use violations. Studies show that states with primary enforcement laws typically have seat belt usage rates 10 to 15 percentage points higher than states with secondary laws and as a result have lower death and injury rates.

From the 1950s—when seat belts were first installed in automobiles—through the 1970s, seat belt use was minimal. In 1977 belt use was only about 12 percent nationwide; by 2008 belt use averaged 83 percent nationwide. Seat belt use is higher in front seats (82 percent) than in rear seats (76 percent). In 2008, usage rates ranged from a high of 97.2 percent in Michigan, a primary enforcement state, to a low of 66.8 percent in Massachusetts, a secondary enforcement state.

Research indicates that in passenger cars, seat belt use reduces the risk of fatal injury by 45 percent, and it reduces the risk of moderate-to-critical injury by 50 percent. As evidenced by 2007–2008 statistics, the safety benefits of seat belts are especially apparent in rollover accidents: 75 percent of passenger vehicle occupants who were ejected from vehicles in rollover accidents were killed. See National Highway Traffic Safety Facts 2007/2008, http://www.nhtsa.gov. Seat belts are highly effective in preventing total ejections: 31 percent of unrestrained occupants were totally ejected from rollover crashes, compared with only one percent of restrained occupants. Id.

The reason that seat belts are so effective in preventing ejection and reducing injuries is clear and was perhaps best stated by Newton’s first law that a body in motion stays in motion unless acted upon by another force. In a frontal collision for example, when a vehicle begins to absorb energy from the impact and starts to slow down, unrestrained occupants continue moving forward at their pre-impact speeds until they experience a second collision, with a steering wheel, dashboard or windshield, for example, or are ejected. Seat belts allow occupants to slow down with a vehicle and prevent ejections and second collisions, protecting internal organs and minimizing excessive neck motion and head contacts with a vehicle’s interior.

The Seat Belt Defense and Its Limitations

The acknowledged effectiveness of belt-type restraints in reducing fatalities and minimizing injuries has prompted the legislatures and courts in a growing number of states to recognize and apply the so-called “seat belt defense.” Under the seat belt defense, a plaintiff’s recovery for personal injury may be reduced in whole or in part due to his or her failure to wear an operable, available seat belt. These seat belt defense rules further the public policy of reducing motor vehicle injuries and fatalities that underlie both the federal mandate requiring manufacturers to equip vehicles with seat belts and state laws requiring that occupants use seat belts. Seat belt defense rules also encourage individual responsibility and are in keeping with modern trends regarding equitable apportionment of fault. In the majority of jurisdictions in the United States, however, the fact that a plaintiff was not wearing a seat belt may only be admitted into evidence for limited purposes or is not admissible at all.

Set forth below are some of the ways that states have dealt with seat belt evidence and, conversely, some of the strategies and arguments that defense counsel can employ to have this evidence admitted.

Inadmissibility of Seat Belt Nonuse For Any Purpose

At present, several state statutes provide that seat belt nonuse is inadmissible for any purpose. A Connecticut statute, for example, provides that “Failure to wear a safety belt… shall not be considered as contributory negligence nor shall such failure be admissible evidence in any civil action.” CONN. GEN. STAT. §14-100a(C)(3)(d). Other states that do not allow evidence of seat belt nonuse for any purpose in a civil action include Georgia, Maine, Massachusetts, New Mexico, North Carolina, North Dakota, Pennsylvania, South Dakota and Vermont. Nevada explicitly excludes seat belt nonuse evidence in product liability suits and provides that a violation of the Nevada seat belt law “(b) May not be considered as negligence or as causation in any civil action… and (c) May not be considered as misuse or abuse of a product or as causation in any action brought to recover damages for injury to a person or property resulting from the manufacture, distribution, sale or use of a product.” Nev. Rev. Stat. §484.641(4)(b)–(c).

When people first hear about these laws, they often react with incredulity. If a speeding driver crashes and sues the manufacturer of his or her car, the manufacturer should be allowed to introduce evidence of the speeds involved and argue that the
driver’s injuries resulted from his or her own reckless conduct. Other reckless conduct, such as drunk driving, may be admissible against a plaintiff in litigation. There is no legitimate reason why the reckless decision to drive without a seat belt in violation of seat belt laws should be treated differently from other reckless conduct.

Excluding evidence of a party’s failure to wear a seat belt is particularly unfair in rollover cases in which a vehicle overturns after a severe driving maneuver or collision, often resulting in the ejection of unbelted occupants. In these cases, the states that preclude seat belt nonuse evidence allow unbelted, ejected occupants to sue vehicle manufacturers but prohibit these manufacturers from defending their vehicles’ safe design by showing that these vehicles can effectively protect belted occupants.

**Admissibility of Seat Belt Nonuse Evidence for Limited Purposes**

Several jurisdictions do not entirely preclude seat belt nonuse evidence but still significantly limit the defense by admitting seat belt evidence only for limited purposes, such as proof of comparative fault, causation or mitigation of damages. Some states do allow evidence of seat belt nonuse in crashworthiness cases or in cases in which plaintiffs claim that a restraint system was defective.

**Comparative Fault**

California, for instance, allows evidence of seat belt nonuse to prove comparative fault. California Vehicle Code §27315(i), provides that “In a civil action, a violation of [the seat belt use law] does not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as fact without regard to the violation.” Although a violation of the California seat belt statute does not “constitute negligence as a matter of law or negligence per se,” the statute does not “totally ban use of the seatbelt statute as a factor in determining negligence.” Housley v. Godinez, 4 Cal. App. 4th 737, 746 (1992). In California, for purposes of determining comparative fault, not only may the jury learn of a plaintiff’s failure to use his or her seat belt, the jury may also “decide what weight, if any, to give the [seat belt use] statute in determining the [plaintiff’s] standard of reasonable care.”


**Crashworthiness Cases**

Courts in several jurisdictions have held seat belt nonuse evidence admissible in crashworthiness cases, with the argument that evidence of the motorist’s seat belt use in these cases was not offered to impute negligence or fault to the motorist, but to show that the seat belt was designed to protect occupants from ejection and injury and that the motorist did not take advantage of available safety features. In a case involving allegations of crashworthiness and airbag defect, the Ohio Supreme Court held that, under Ohio’s mandatory seat belt statute, evidence that the plaintiff had not been wearing a seat belt was admissible because the passenger alleged that his quadriplegia was caused by a second collision of his body with the allegedly defective airbag. Gable v. Gates Mills, 103 Ohio St. 3d 449 (2004). Similarly, in Jimenez v. DaimlerChrysler Corp., the Fourth Circuit Court of Appeals held that “because [the defendant] offered the [seat belt] evidence neither to show contributory negligence by [the plaintiff] nor a pre-injury failure to minimize damages, the district court erred when it concluded that ‘South Carolina [would hold]… that evidence of seat belt usage is inadmissible respecting crashworthiness…. federal and state courts admit evidence of seatbelt non-use to determine whether an automobile was unreasonably dangerous for crashworthiness purposes, even if state law bars such evidence to establish contributory negligence or failure to mitigate damages.” Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 457 (4th Cir. 2001).

Pennsylvania, however, explicitly excludes evidence of seat belt nonuse even in crashworthiness cases. In Carrasquilla v. Mazda Motor Corp., the court held that the failure of the front and back seat passengers to wear the available manual lap seat belts was inadmissible in the plaintiffs’ crashworthiness claim against the manufacturer. Carrasquilla v. Mazda Motor Corp., 197 F. Supp. 2d 169 (M.D. Pa. 2002). The Carrasquilla court found that the Pennsylvania Occupant Protection Act (75 Pa. C.S.A. Paragraph 4581(e)) barring evidence of seat belt use in personal injury actions was rationally related to the state’s goals of permitting recovery for victims and of avoiding potential prejudice against persons not wearing seat belts. Thus, excluding evidence that the occupants failed to utilize seat belts did not deny the defendant due process or equal protection, even though the plaintiffs’ design-defect claims pertained to an alleged seat back failure that arose when an unbelted rear seat passenger was thrown forward by the collision into the front seat back. Id. at 177.

**Restraint System Cases**

Some states explicitly allow nonuse evidence in cases in which a plaintiff claims that the restraint system is defective. Under Minnesota law, seat belt nonuse may be introduced in an action involving “a defectively designed, manufactured, installed or operating seatbelt or child passenger restraint system.” Minn. Stat. Ann. §169.685(4)(b). The Supreme Court of Texas also held that a plaintiff could introduce evidence of seat belt use in an action claiming that the seat belt system was defective. Bridgestone/Firestone Inc. v. Glyn-Jones, 878 S.W.2d 132, 134 (Tex. 1994). Similarly, a federal district court in Montana held that “When a defective or inoperable restraint system is at issue in a design case, §61-13-106, M.C.A. [Montana law generally precluding evidence of seat belt nonuse] does not apply. This is so because it is the condition of the car that is at issue, not the conduct of the seatbelt users.” Chapman v. Mazda Motor of Am. Inc., 7 F. Supp. 2d 1123, 1127 (D. Mont. 1998). The Supreme Court of Louisiana has also held that evidence of seat belt nonuse is admissible “if… it has probative value for some purpose other than as evidence of negligence, such as to show that the overall design, or particular component Seat Belt Nonuse, continued on page 89
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ponent of the vehicle was not defective.” *Rougeau v. Hyundai Motor*, 805 So. 2d 147, 158–59 (La. 2002).

Admissibility to Prove Causation

In some jurisdictions, seat belt nonuse evidence has been held admissible to prove causation. For example, the First Circuit Court of Appeals held that, under New Hampshire law, seat belt nonuse is admissible to prove causation but inadmissible to prove comparative negligence or failure to mitigate damages. *See Connelly v. Hyundai Motor Co.*, 351 F.3d 535, 542 (1st Cir. 2003). Similarly, a federal district court in Tennessee held that, in product liability cases, seat belt use is admissible to prove a causal relationship between nonuse and injury, but is inadmissible to prove contributory negligence or failure to mitigate damages. *Tenn. Code. Ann. § 55-9-604(a) does not exclude evidence about whether failure to wear seat belts was the proximate cause of the plaintiff’s injuries.* *MacDonald v. Gen. Motors Corp.*, 784 F. Supp. 486, 497 (M.D. Tenn. 1992). Other courts have reached similar rulings in interpreting South Carolina and Mississippi law. *Jimenez v. DaimlerChrysler Corp.*, 269 F.3d 439 (4th Cir. 2001); *Palmer v. Volkswagen of Am., Inc.*, 904 So. 2d 1077 (Miss. 2005).

Reduction of Damages

Provisions regarding the reduction of damages for seat belt nonuse by car crash occupants seeking to recover damages vary considerably from state to state. Some states such as Florida do not allow evidence of seat belt nonuse for purposes of reducing damages. *Fla. Stat. §316.614(10).* Some states allow unlimited damage reductions, while others set relatively low damage reduction caps.

In Missouri, for example, failure to wear a seat belt in violation of Missouri’s mandatory seat belt use law may be admitted to mitigate damages, but only when the defendant introduces “expert evidence” proving that the failure to wear a seat belt contributed to a plaintiff’s claimed injuries. If the trier of fact finds that the failure to wear a seat belt contributed to a plaintiff’s claimed injuries, it may reduce the plaintiff’s recovery by up to one percent of the damages. *Mo. Ann. Stat. §307.178(4)(2); see, e.g., Newman v. Ford Motor Co.*, 975 S.W.2d 147, 154 (Mo. 1998). Under Iowa or Nebraska law, if the failure to wear a safety restraint contributed to a plaintiff’s injuries, seat belt nonuse may be admitted to mitigate damages, but the reduction in damages is capped at five percent. *Iowa Code §321.445(4)(a)–(b); Neb. Rev. Stat. §60-6,273.* In Wisconsin, “Defendants may assert plaintiff’s failure to ‘buckle up’ in defending against a cause of action for personal injury and negligence.” *Gaertner v. Holka*, 580 N.W.2d 271, 277 (Wis. 1998). Seat belt nonuse, however, cannot be used to reduce damages by more than 15 percent. *Wis. Stat. Ann. §347.48(g).* New York also allows seat belt nonuse to be introduced into evidence for mitigation of damages if the defendant can demonstrate that the seat belt would have prevented some of the plaintiff’s injuries. *The New York statute does not provide caps.* *N.Y. Veh. & Traf. Law §1229-c(8); see also DiPirro v. United States*, 181 F.R.D. 221, 223 (W.D.N.Y. 1998). Colorado allows nonuse evidence in product liability cases only to mitigate pain and suffering damages but not to mitigate economic damages. *Colo. Rev. Stat. §42-4-237(7); Miller v. Solaglas California, Inc.*, 870 P.2d 559, 567 (Colo. Ct. App. 1993) (“§42-4-237(6) [now §42-4-237(7)] applies in products liability action only for the purpose of mitigating pain and suffering damages.”).

Conclusion

The overwhelming evidence demonstrates that seat belts greatly reduce the likelihood of death and the extent of injuries in motor vehicle accidents. This evidence is so well-established that 49 states have laws requiring occupant seat belt use, and wearing seat belts for safety purposes is now regarded as common sense by the general public. Whatever rationales may once have existed for excluding seat belt use evidence in product liability and personal injury cases are no longer supportable. Consistent with state laws requiring the use of seat belts and the overwhelming evidence of the benefits of seat belts, as well as the general fault principles embracing pure comparative negligence, all states in the United States should adopt or expand the application of the seat belt defense. Product and component manufacturers should actively pursue all available avenues to introduce evidence of a plaintiff’s failure to use available seat belts and other similar safety devices. Because these defenses are often very limited, efforts to change the legislation that currently prevents manufacturers and others from introducing evidence of seat belt nonuse may be the best option. Existing provisions that insulate people from financial consequences of failing to wear a seat belt should be repealed. Initially, defense attorneys might push for continued public education and the enactment of primary enforcement laws nationwide as a means of increasing seat belt use rates. As seat belt use continues to rise, the public will have less tolerance for those who ignore the clear science and the law thereby diminishing support for the exclusion of seat belt use evidence. Presenting the public with existing evidence that seat belt nonuse ultimately increases the costs of automobile insurance and medical bills and raises taxes for everyone might also secure support for legislative change. By whatever means available, the time for change has come, and defense counsel, clients and industry organizations should work together to repeal the current rules excluding or limiting evidence of a party’s failure to buckle up.