

Unintended Consequences

By D. Alan Thomas,
Gregory L. Schuck
and Jennifer H. Reid

Should a plaintiff really be able to preclude evidence of his or her choice to not buckle up, thereby thwarting some of the most basic and longstanding principles of civil law?

The Application of Seat Belt Laws in Automotive Trials

In the 1980s, states across the country began enacting laws mandating seat belt use. However, as a part of these mandatory use laws, many states also added provisions excluding evidence of non-use of seat belts in civil

cases. See Geissl and Varney, “Unduly Restrained—The Admissibility of Seat Belt Nonuse Evidence,” on p. 74 of this issue of *For The Defense*. Though the legislative history of mandatory seat belt laws suggests a limited rationale for implementation (thereby supporting limited application of the exclusion), plaintiffs continue to argue a broad construction of these statutes and seek expansive exclusions regarding seat belt evidence.

While the public policy considerations pertaining to this type of evidence in the typical “who beat whom to the stop sign” cases can be debated, the application of this evidentiary preclusion in automotive product liability cases has produced very impractical and unintended outcomes decades later in both first collision and crashworthiness (second collision) product liability cases. These broad exclusions

are especially problematic for automobile manufacturers because they unreasonably hamper any manufacturer’s ability to adequately defend its product.

This article utilizes a “real world” multi-case analysis model to explore the unintended effects of this evidence preclusion on automobile manufacturers’ abilities to defend against product liability and negligence claims where the practical application of such legislation has resulted in not only absurd results, but inconsistencies between jurisdictions. The authors also advocate for a change from the current trend of precluding evidence of plaintiffs’ seat belt use, to courts permitting automobile manufacturers to introduce seat belt evidence to establish proximate cause, overall vehicle safety and available affirmative defenses in automotive product liability cases.

■ D. Alan Thomas and Gregory L. Schuck are partners and Jennifer H. Reid is an associate with Huie Fernambucq & Stewart, LLP, in Birmingham, Alabama. Mr. Thomas is a member of DRI’s Product Liability Committee. He serves as national and regional trial counsel in the area of defense of automotive product liability actions in local and regional state and federal courts. Mr. Schuck is also a member of DRI’s Product Liability Committee, and currently serves as national and regional trial counsel for automobile manufacturers in rollover litigation. Ms. Reid’s practice is concentrated on the areas of automotive product liability, as well as general insurance litigation and professional liability.



Courts Latch onto the Evidentiary Exclusions of Seat Belt Laws

Automotive manufacturer defendants are prejudiced by a broad interpretation and application of evidentiary exclusions in seat belt statutes in many ways, including that 1) they are effectively precluded from defending against plaintiffs' allegations regarding proximate cause; 2) they are barred from establishing adequate vehicle design and from defending against plaintiffs' evidence of alleged alternative safer designs; and 3) their responses to plaintiffs' demands for punitive damage awards are substantially stifled. Such an approach is problematic both for automotive product liability defendants as well as the integrity of our legislative process and judiciary system.

The arguments toward courts barring defendants' use of the seat belt defense begs the question: Should a plaintiff be permitted to preclude evidence of his or her choice of not buckling up the seat belt in an automotive product liability case?

When courts interpret the seat belt statutes to exclude all evidence of seat belt non-use in product automotive liability cases, plaintiffs are given an "evidentiary windfall" in terms of the requirement that they prove that their injuries are the direct result of product defect. Imagine a scenario in which a plaintiff and her experts concede that her failure to use her seat belt was the proximate cause or efficient intervening cause of her injuries, but an automotive manufacturer defendant is still precluded from defending its product based on plaintiff's "proof shortcoming." Specifically, plaintiff's expert can concede that plaintiff was unbelted and would have been uninjured or substantially less injured in the subject crash if she had been belted, but a court that broadly (mis)construes the seat belt laws could bar all such evidence. If these circumstances seem farfetched, they should not—this very situation has already occurred.

Case Application: Proximate Cause

In one case, plaintiff alleged defects regarding vehicle stability and rollover protection to prevent occupant injury in the event of a rollover. Amazingly, plaintiff's only injury and causation expert agreed with the manufacturer that plaintiff was not wearing his seat belt, that he received all of his injuries

outside of the vehicle due to his ejection and that he would have walked away from the crash "without any serious injuries" if he had utilized the seat belt provided. Hence, plaintiff's own expert testified that the alleged defect was not the proximate cause of plaintiff's injuries.

Plaintiff sought to exclude all evidence related to seat belt non-use, including related evidence of plaintiff's ejection and how he incurred his injuries, pursuant to a broad interpretation of the seat belt statute. Though the court acknowledged that many jurisdictions were veering from a strict interpretation of the seat belt statute, it granted plaintiff's motion so far as to exclude explicit reference to the decedent's failure to utilize his seat belt. In spite of plaintiff's concession regarding injury causation from plaintiff's only causation expert, the court precluded the defense from demonstrating the true cause of the plaintiff's injuries.

In another case, plaintiffs also asked the court to take an expansive interpretation of the jurisdiction's seat belt statute so as to preclude any evidence of seat belt use—a broadly described category of evidence that was irrefutably relevant. The defense countered, requesting that the court permit it to introduce evidence of (1) the cause and mechanism of injuries to the vehicle occupants; (2) the ejection of vehicle occupants; and (3) the presence in the subject vehicle of three-point restraints equipped at each of the seating positions used by the occupants in the subject occurrence. None of these factors was explicitly covered by the evidentiary exclusion under the statute at issue. However, the court precluded evidence that vehicle occupants were unbelted and precluded any testimony indicating that occupants were unbelted during the course of the crash, and specifically excluded evidence that a plaintiff was ejected because he was unbelted.

Interestingly, in *Estrep v. Mike Ferrell Ford Lincoln-Mercury, et al.*, the seat belt statute at issue excluded evidence of seat belt non-use to show negligence or contributory or comparative negligence in any civil action or proceeding for damages, but permitted a maximum five percent reduction in plaintiff's recovery for medical bills if the court determines that plaintiff's failure to wear a seat belt was a proximate

cause of her injuries. 223 W.Va. 209, 672 S.E.2d 345, 351 (2008). The court may submit a special interrogatory to the jury to determine whether the injured party failed to wear a safety belt and whether that failure constituted plaintiff's failure to mitigate his damages. *Id.* Accordingly, jurors may reduce plaintiff's medical damages by a maximum of five percent. *Id.* How-

Automobile
manufacturers are effectively deprived of the full "benefit" or "utility" side of any risk-utility analysis with regard to product defect and alternative safer design.

ever, if a plaintiff stipulates to the five percent reduction, no special interrogatory regarding proximate cause and seatbelt use is ever presented to the jury. *Id.* This exception creates a double-edged sword for automotive manufacturer defendants. On one hand, the legislature acknowledged the importance of consideration of seat belt evidence pertaining to the proximate cause of a party's injury, evidenced by its carving out an exception for a five percent reduction in plaintiff's medical bills in that regard. However, limiting the effect of plaintiff's failure to mitigate damages to a five percent reduction in medical bills, and conducting that reduction without the jury's awareness or knowledge, completely undermines the significance of proximate cause the plaintiff's proof of his or her case.

Such a ruling enables plaintiffs to avoid proving injury causation and proximate cause entirely, to make a quantum leap from accident occurrence to recovery for injury. Further, this type of precedent transfers the role of issue determination from the jury and places it squarely in the plaintiff's hands, as the jury is not allowed

to hear a presentation of evidence as to what actually caused the injuries.

Why Courts Should Buckle Down If Plaintiffs Don't Buckle Up

Many jurisdictions that construe seat belt laws to broadly exclude evidence of non-use, but at the same time also require proof of proximate cause or alternative safer

Requiring defendants

to walk this evidentiary tightrope potentially misleads and confuses the jury on the issue.

design, create a legal contradiction that is insurmountable for automotive defendants. If the failure to wear an available seat belt is per se inadmissible in product liability cases, automobile manufacturers are effectively deprived of the full “benefit” or “utility” side of any risk-utility analysis with regard to product defect and alternative safer design.

Even more absurd is the application of mandatory use laws in wholly unintended areas of civil litigation. This is especially important because the entire basis of a defendant's liability in a crashworthiness or “second collision” case is not that the vehicle caused the crash (*i.e.*, accident causation), but rather that its “design enhances the injuries sustained in the collision” (*i.e.*, injury causation).

Case Analysis: Establishing Adequate Vehicle Design

As a sample case, three children were completely ejected and sustained fatal injuries in a car crash. Plaintiffs' own expert determined that none of the three were restrained and that their fatal injuries were caused by ejections. Plaintiffs' expert further concluded there was a greater than 90 percent chance the children would not have been ejected and killed if they had remained inside the vehicle during the crash. The defendant automobile manufac-

turer conceded that under the current status of the law, evidence of seat belt non-use would not be admissible to show contributory negligence or personal fault. However, the defendant argued that plaintiffs' expert placed at issue the ability of the subject vehicle to retain its occupants, rebuttable only with evidence that the subject vehicle is capable of containing those occupants who utilize the restraint system. Notwithstanding plaintiffs' expert's conclusions, the defendant was precluded from defending the design of its vehicle regarding its ability to contain properly belted occupants because of the component of mandatory seat belt use laws that prohibits the admission of such evidence.

The court rejected defendant's argument that the non-use of the restraint system(s) provided should have been admissible as to the proximate cause of the injuries, as opposed to contributory/comparative negligence. The court, noting its reluctance to literally apply the law as written, acknowledged that sometimes the law does not make common sense. The unintended practical effects of an all-encompassing ban on the introduction of evidence of seat belt non-use imposed an unduly prejudicial duty on the defendant automotive company by indefensibly putting at issue a non-defective vehicle component.

Case Analysis: Allegations of Lack of “Alternative Restraint Systems”

Another case involved an unbelted vehicle occupant who was ejected from the vehicle through a side window as a result of her seat belt non-use. Neither party disputed that a seat belt was available for the decedent's use. In her crashworthiness suit, plaintiff alleged that the automobile manufacturer should have used a different side window design and type of glass to improve occupant retention and ejection mitigation. Specifically, plaintiff alleged that the manufacturer's choice of window design and glass rendered the vehicle unreasonably dangerous and defective with regard to its ability to contain occupants in a rollover event. In response, the defense contended that evidence of plaintiff's failure to utilize the seat belt provided should be admissible to demonstrate contributory negligence, product misuse, and assumption of the risk because of failure to use the avail-

able occupant containment system to mitigate or eliminate her injuries.

While it would seem logical—if not axiomatic—that evidence of plaintiff's failure to wear her seat belt would be relevant and admissible on these grounds, the court denied defendant's request and ruled in favor of plaintiff.

What Happens When the Seat Belt Statute Exclusions Are Contained

Attempts to exclude seat belt evidence can be particularly significant in cases where the alleged defect pertains to technology developed after the mandatory seat belt laws were drafted, such as certain airbag technology. The legislature could not possibly have contemplated the effect of seat belt use exclusions in cases alleging defects in the vehicle's safety system as the technology did not yet exist. Moreover, though the law typically requires that a product be considered as a whole when determining defect, automobile manufacturers are prejudiced if prevented from advising a jury of a plaintiff's failure to utilize all safety features provided as one complete safety system.

Case Analysis: New Technologies

In yet another case, a court permitted evidence of plaintiff's failure to use her seat belt, producing a strikingly different result. Plaintiff filed a wrongful death action alleging the airbag failed to deploy properly. Neither party disputed that plaintiff's decedent was unrestrained at the time of the crash. Accordingly, defendant asserted that plaintiff's failure to wear her seat belt contributed to her injuries and that plaintiff's decedent would not have sustained fatal injuries had she been properly seated and wearing her seat belt as advised by the manufacturer. The defense contended that the vehicle's safety system components were designed to be used in conjunction with one another to provide optimal occupant protection. Hence, plaintiff's failure to use her seat belt contributed to her position at the time of impact and the vehicle components that she contacted within the car, thereby contributing to her injuries. The court permitted evidence of plaintiff's failure to avoid or mitigate her injuries by not wearing her seat belt, and the case ultimately resulted in a defense verdict.

How to Prevent Your Defense from Unbuckling—Use Restraint!

In many instances, courts recognize the impracticality of the broad interpretation of stringent seat belt laws typically sought by plaintiffs, yet these same courts are reluctant to legislate from the bench. Judges are often hesitant to steer from their judicial lanes into the legislative lanes of actually changing the law. Until legislators more clearly pen exceptions for automotive product liability suits under the seat belt statutes, counsel for automotive manufacturers must find ways to use these overly broad evidentiary exclusions to their benefit in defending against a plaintiff's allegations. Some have been forced to resort to an "anything but" approach to a court's application of the evidentiary exclusions regarding seat belt use in an attempt to defend products as best possible.

If courts continue to buckle under plaintiffs' demands for an overbroad construction of seat belt statutes, defendants can use an equally literal interpretation to their benefits. For example, defendants are often not prohibited from describing the events that took place in the vehicle or from establishing that plaintiffs' injuries were sustained outside of the vehicle. Though the term "seat belt" is never uttered by defense counsel or defense witnesses in violation of the statute or the court's order, the testimony permissibly and appropriately demonstrates to the jury that plaintiff's injuries were not sustained in the vehicle due to vehicle defect. This approach also thwarts plaintiffs' attempts to skirt their burden of proving the essential element of proximate cause and counterbalances the "legal proof windfall" to plaintiffs created by misapplication of mandatory seatbelt provisions.

Similar defense methods have also been permitted in first collision cases. For example, in *Fulton Fritchlee v. Douglas*, the court ruled that evidence regarding the use or non use of seat belts was inadmissible. 240 Ga. App. 413, 523 S.E. 2d 349 (1999). At trial, defendant's counsel asked plaintiff if the impact caused her to strike anything inside her vehicle and how far the crash caused her to move toward the steering wheel. On review, the court found that this line of questioning did not interject the issue of the use or non-use of seat belts into evidence in violation of the ruling *in limine*. *Id.* at 416. In support of its decision, the court stated that "the questioning never mentioned the issue of seatbelts..." but merely dealt with the relevant issue of force of the impact and how that force, or lack thereof, caused Fulton Fritchlee's body to react." *Id.*

These types of rulings represent courts' awareness of the absurd results produced by an expansive evidentiary exclusion of the seatbelt defense. Further, it suggests that courts understand that the seat belt statutes were never intended to be applied in such a broad scope. Requiring defendants to walk this evidentiary tightrope potentially misleads and confuses the jury on the issue, and defense counsel must be abundantly cautious not to violate the court's order, but sufficiently descriptive to adequately defend his or her client's position in the case.

The Clincher

In addition to being unreasonably hampered in putting on a defense, automotive manufacturers are also handicapped in defending against demands for punitive

damages. Plaintiffs are generally required to show that the automotive manufacturer's conduct in designing the subject vehicle was so reprehensible that no reasonable manufacturer would have developed such a product, but under these exclusions the manufacturer is precluded from telling the jury about all of the safety features that it did employ to protect consumers. The evidentiary windfall created by removing the requirement that plaintiffs establish proximate cause can in fact lead to an economic windfall by way of a misinformed or uninformed jury's punitive damage award, a result that is patently unfair.

The bottom line is this: when a court broadly construes a state's seat belt statute to preclude evidence regarding the use, availability, or efficacy of the subject vehicle's safety devices, its decision often yields impractical consequences not contemplated by legislators when they drafted the laws. Moreover, these unintended consequences stand to diminish a plaintiff's proof requirements in automotive product liability litigation. Even an aspect of plaintiff's case as fundamental as injury causation is permissibly muddied by these types of rulings regarding the seat belt defense. Admissibility limitations placed on seat belt evidence thwart the most basic and longstanding principles that a plaintiff has to prove each element of his or her case and, instead, shifts the burden to the defendant to creatively (but not unlawfully) demonstrate that plaintiff has failed to establish proximate cause, alternative safer design, or an imbalance of product risk-utility. If you think that was difficult to discern or comprehend, imagine what the jury thinks.

