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## Time to Unbuckle the Seat Belt Defense?

The legislative bar may no longer comport with the reality of vehicle safety

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In *Gaudio v. Ford Motor Co.*, PICS No. 07-1066 (C.P. Pike June 14, 2007), Thomson, J. Judge Harold A. Thomson, Jr. of the Pike County Court of Common Pleas addressed the ambit of the so-called "seat belt defense" as applied to products liability actions.

Thomson's suggestion that the defense may be able to be utilized in a limited fashion in certain cases raises a question as to the continuing validity of the legislative bar against the use of the "seat belt defense" in all civil matters.

According to the Superior Court decision *Grim v. Betz*, 539 A.2d 1365 (Pa.Super. 1988), prior to the passage of the amendments to the Pennsylvania Seat Belt Statute, 75 Pa.C.S.A. Section 4581, 20 years ago in 1987, the validity of a "seat belt defense" was considered an open question. In fact, in the late 1970's and early 1980's, the appellate courts of Pennsylvania were refusing to foreclose the possibility of a "seat belt defense" in civil matters, particularly where expert testimony was presented demonstrating a causal connection between a plaintiff's injuries and a plaintiff's failure to wear a seatbelt. See, e.g., *Parise v. Fehnel*, 406 A.2d 345, 347 (Pa. Super. 1979).

Around the time of the enactment of the prohibition against the "seat belt defense" by the Pennsylvania legislature, there was a strong push, nationally, to compel people to use their seat belts by law. According to Richard J. Kohlman's article, "The Seatbelt Defense," 35 Am.Jur. Trials 349 (2007) [numerous citations omitted], various studies completed in the 1980's indicated that motor vehicle accident-related trauma was the fourth most important public health problem in the United States across all age groups. In fact, for adults between the ages of 15 and 24, such trauma ranked No. 1 as the leading cause of death. At that time, it was also known that motor vehicle accidents produced more paraplegics and quadriplegics than all other causes combined. It was additionally noted that the estimated direct and indirect costs of injuries due to car and truck collisions exceeded \$17 billion in 1980.

According to overwhelming evidence which had been acquired as far back as the 1980's, the most significant source of automobile crash protection for occupants was a properly worn seatbelt restraint system. As such, the obviously effective way of minimizing injuries and deaths from motor vehicle accidents was to require motorists to use the seatbelts provided in all cars.

As pointed out in "The Seatbelt Defense" article, even as early as twenty years ago, experts estimated that, through seat belt use, half of all fatalities could be avoided or reduced. Other experts estimated back then that universal seatbelt use could decrease the number of serious injuries and fatalities by at least sixty percent, which would reduce medical costs stemming from the same in the mid-1980's by \$10 billion each year.

The article further noted that by the mid-1980's, even the United States Supreme Court was weighing in on the issue by stating in *Motor Vehicle Manufacturers Association v. State Farm*, (1983) 463 U.S. 29 (1983), that the safety benefits of wearing seatbelts were no longer in doubt.

Accordingly, in 1987, Pennsylvania joined the trend by strengthening the Pennsylvania Seat Belt Statute with certain amendments to the law. As part of those amendments, the "seat belt defense" was legislatively barred. In that regard, the current Pennsylvania seat belt statute, 75 Pa.C.S.A. Section 4581(c), provides, in pertinent part, that "[i]n no event shall a violation or alleged violation of this subchapter be used as evidence in a trial of any civil action...nor shall failure to use a...safety seat belt system be considered as

contributory negligence nor shall failure to use such a system be admissible as evidence in the trial of any civil action."

In prohibiting the "seat belt defense," Pennsylvania joined the majority of jurisdictions with such a prohibition. Over the years since its enactment, the ban against the defense has withstood constitutional challenges. The Federal Court for the Middle District of Pennsylvania found in *Carrasquilla v. Mazda Motor Corp.*, 166 F.Supp.2d 181 (2001), that the prohibition was constitutional in that it was rationally related to the state's goals of permitting recovery for victims and of avoiding potential undue prejudice against persons not wearing seat belts.

Yet, even while statutes compelling seat belt use were coming into vogue in the mid-1980's, there was still a substantial minority of jurisdictions that did allow for the "seat belt defense" given the obvious effectiveness of seat belts in reducing fatalities and injuries. See 'Nonuse of seatbelt as reducing amount of damages recoverable,' 62 A.L.R.5th 537 (1998), by Christopher Hall. In those jurisdictions, the "seat belt defense" could be utilized to support contributory negligence or mitigation of damages defenses in cases involving the nonuse or misuse of seat belts.

Now, twenty years after its enactment, there are several reasons why a reconsideration of the ban against the "seat belt defense" may be in order. In addition to the defense already being allowed in some other jurisdictions, as noted above, some Pennsylvania courts are even questioning as to whether the defense should be allowed in limited circumstances here in the Commonwealth. These indications beg the question as to whether the defense should now be allowed in all civil matters, particularly with the changes in society's use of seat belts as well as changes in legislatively and judicially recognized public policy in Pennsylvania.

More specifically, according to the National Highway Traffic Safety Association Web site ([www.nhtsa.gov](http://www.nhtsa.gov)), national seat belt use has increased from 11 percent in 1982 to 68 percent in 1996 to 82 percent in 2005. With there now being only a minority of motorists still not using seatbelts, it would appear that only a few plaintiffs may ever be faced with such a defense in any event. Additionally, those plaintiffs who may be faced with the "seat belt defense" would likely be able to find experts to testify on their behalf that the same injuries would have resulted even if the plaintiff was wearing a seat belt at the time of the accident.

Furthermore, in addition to the scientific data continuing to offer more and more support for the common sense notion that wearing a seat belt can provide an automobile occupant with greater safety, the recent trend of Pennsylvania courts recognizing the legislative public policy of cost containment in automobile insurance cases should also serve to compel a change in the law. Seat belt use has been shown to decrease the extent of injuries, which thereby also curtails the extent of damages, i.e. automobile insurance proceeds, to be paid out. The "seat belt defense" could also serve to contain rising automobile insurance costs by otherwise limiting damages recoveries for those motor vehicle occupants who continue to obstinately refuse to obey the law and use seat belts as a common sense safety measure.

However, with the Pennsylvania courts repeatedly refusing to allow a "seat belt defense" to be pursued in light of the clear mandate of the statute precluding the same, it appears that the change in the law can only be effected by legislative action. Perhaps the legislature will come to eventually review the issue both as a positive effort to increase safety on Pennsylvania highways as well as an additional method of containing the ever-rising automobile insurance costs.

Simply put, what better way is there to provide an incentive for at least some of the remaining non-compliant public to wear seat belts than to inform them that if they are injured in a motor vehicle accident while not wearing a seat belt, such evidence could be used against them to reduce, or even preclude, their recovery at a trial on their personal injury damages claims. •