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LEGAL ISSUES PRESENTED BY MOTOR VEHICLE RESTRAINT SYSTEMS

INTRODUCTION

EACH YEAR, motor vehicle accidents kill approximately 50,000 Americans and injure an additional two million people.¹ Slightly more than half of these deaths and injuries come about as a result of the "second collision," in which the occupant is either hurled against the vehicle's interior or ejected.² Lap and shoulder seat belts reduce an occupant's chances of death and serious injury by fifty to sixty percent,³ but only ten percent of the nation's drivers regularly use seat belts.⁴ Surveys indicate that many people choose not to use seat belts because of discomfort and inconvenience,⁵ and because they fear being trapped in a burning or submerged vehicle.⁶ There is also evidence indicating that people significantly underestimate their risk of becoming involved in an accident.⁷

In response to this problem, Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966⁸ for the sole purpose of "reduc[ing] traffic

¹The accident and injury death toll is not distributed proportionately among the population: while people under the age of 25 account for 23% of licensed drivers, they represent over 40% of drivers involved in accidents. The motor vehicle death rate for persons 15 to 24 years old stands at twice the national average. In 1979, the 18,900 fatalities within that age bracket accounted for more than a third of all motor vehicle accident fatalities. The death rate per 100 million vehicle miles has been declining in recent years. That figure was at an all-time low of 3.4 in 1979, down from the teens in the 1940's and earlier. Warner, *Bags, Buckles, and Belts: The Debate over Mandatory Passive Restraints in Automobiles*, 8 J. HEALTH POL. POL'Y. AND LAW 44, 45 (1983).

² Of the 56,000 people killed in highway crashes during 1973, 40,000 were occupants of motor vehicles. At least 30,000 of these vehicle occupants died as a result of being hurled against their dashboards or ejected onto the roadway. Our analyses indicate that as many as half of these 30,00 people could have been saved had they used a proper restraint system.

120 CONG. REC. 27,820 (1974). (letter from Secretary of Transportation Claude S. Brinegar, to the Chairman of the House of Representatives' Subcommittee on Commerce and Finance, John E. Moss).

³The effectiveness of various protection systems varies with the level of injury severity. See Table A3 — Occupant Crash Protection System Effectiveness Estimates, 41 Fed. Reg. 24,070, 24078 (1976) (to be codified at 49 C.F.R. pt. 571 and 23 C.F.R. pt. 1204) (proposed June 14, 1976).

⁴Hoadley, Macrina & Peterson, *Child Safety Programs: Implications Affecting Use of Child Restraints*, 1981 J. SCH. HEALTH 352, 353.

⁵The National Highway Traffic Safety Administration (NHTSA) recently delayed the effective date of its comfort and convenience requirements for both manual and automatic belts until September 1, 1985. 49 C.F.R. § 571.208 (1983).

⁶The probability of an accident in which the vehicle burns or becomes submerged is less than one percent. Note, *The Seat Belt Defense: A Comprehensive Guide for the Trial Lawyer and Suggested Approach for the Courts*, 56 NOTRE DAME LAW. 272, 281 (1980).

⁷Werber, *A Multi-Disciplinary Approach to Seat Belt Issues*, 29 CLEV. ST. L. REV. 217, 241 (1980). Although the actual risk of being involved in an accident is one in seven per year and the risk of suffering a disabling injury is one in 67 per year, in one survey less than 25% of the drivers interviewed recognized the actual risk of an accident and over a third believed the risk to be one in a thousand. *Id.*

⁸15 U.S.C. §§ 1381-1481 (1983).

accidents and deaths and injuries to persons resulting from traffic accidents.”⁹ Since its inception in 1968, the United States National Highway Traffic Safety Administration (NHTSA) has placed heavy emphasis on increasing the use of occupant restraint systems. In addition, the states have taken an active role in attempting to encourage, and in some instances mandate, the use of restraint devices. This comment will examine the various means employed by each in attempting to increase the driving public’s use of motor vehicle occupant restraint systems.¹⁰

I. SEAT BELT INSTALLATION LAWS

In 1964, front seat lap belts were installed in all cars as standard equipment, after fourteen states required them.¹¹ Virtually every state now requires them.¹² Federal Motor Vehicle Safety Standard (FMVSS) 208 requires that passive restraint systems, or in the alternative, lap and shoulder belts be installed in newly manufactured vehicles.¹³

II. EDUCATING THE PUBLIC

The Reagan administration has adopted as its policy the alternative of actively promoting the use of manual belts, through media campaigns and other educational efforts.¹⁴ This approach attributes the problem of belt nonuse to the driving public’s ignorance of both the actual risk of automobile accidents and the effectiveness of seat belt protection. Educating the public is a method of encouraging voluntary belt usage without mandating it.¹⁵ The Highway Safety Act of 1978¹⁶ requires the states to use at least two percent of their federal highway safety program funds on measures to encourage the use of seat belts. NHTSA is asking the ABA Traffic Court Program and traffic court judges to participate in a “National Safety Belt Use Educational Program.” NHTSA asks judges and lawyers to consider reducing traffic offense penalties where

⁹*Id.* at § 1381.

¹⁰This comment will not consider other methods of reducing motor vehicle accident deaths and injuries, such as increasing the minimum legal age for drinking or driving; constructing safer roads and highways; and designing vehicles to better withstand collision forces.

¹¹Warner, *supra* note 1, at 47.

¹²Every state except South Carolina now requires that seat belts be installed in new cars. For a list of seat belt installation statutes by state, see Note, *A Realistic Look at the Seat Belt Defense*, 1983 DET. C. L. REV. 827, 830, n.17.

¹³49 C.F.R. § 571.208 (1983). NHTSA requires lap and shoulder belts in each front outboard seating position (where possible), and lap belts in all other seating positions. Prior to the rescission of the passive restraint requirements of Standard 208 in October, 1981, manual belts were scheduled to be phased out of production in passenger cars in favor of automatic seat belts and airbags. With the passive restraint decision forthcoming, manual belts are, at least temporarily, still required to be installed in new cars. *Id.*

¹⁴Warner, *supra* note 1, at 50. One commentator suggests that states could educate the public regarding the benefits of seat belt use by requiring all applicants for renewal of driver’s licenses to view a film depicting automobile collision simulations utilizing restrained and unrestrained dummies. See also Weber, *supra* note 7, at 241.

¹⁵Many experts have concluded that seat belt usage will not increase more than five to fifteen percent by means of education programs alone, but when coordinated with mandatory seat belt use laws these programs have been extremely effective. Weber, *supra* note 7, at 242.

¹⁶Federal-Aid Highway Act, Pub. L. No. 95-599, § 213, 92 Stat. 2689, 2734 (1978).

belt usage is involved and suspending incarceration portions of sentences with the stipulation that the defendant wear seat belts. The program also calls for an examination of "the concept (of) contributory negligence where nonbelt usage is involved," and asks courts to provide information pamphlets "in areas where fines are paid and in waiting area."¹⁷

III. INSURANCE INCENTIVES

A few insurance companies now offer discount rates on insurance premiums of up to thirty percent on medical or personal injury protection coverage for vehicles equipped with passive restraints.¹⁸ At least one insurer increases medical payments for belt-wearing accident victims, and it has been suggested that payments could be conditioned on seat belt use at the time of the accident.¹⁹ One problem with such an approach is in verifying compliance, but with the introduction of passive restraints, verification might be more easily accomplished. It seems likely that these incentives would continue to be offered even if a no-fault insurance system is adopted in that jurisdiction.²⁰

IV. THE SEAT BELT DEFENSE

The majority view in the United States rejects the seat belt defense, but a small minority of states now admit evidence of seat belt non-use under several theories.²¹ This section begins with a summary of the various theories upon which defense attorneys have attempted to introduce such evidence, followed by a discussion of the arguments that are often raised in support of and in opposition to the seat belt defense. This section then concludes with a look at the proof requirements that must be met in those courts which admit evidence of the failure to use a seat belt.

A. *Negligence Per Se*

The theory has been offered that mandatory seat belt installation laws imply a duty to use seat belts; however, this theory has been universally rejected²²

¹⁷Snorf, *Traffic Court: Encouraging Restraint*, 21 JUDGES 35, 36 (1982).

¹⁸Warner, *supra* note 1, at 52. While the government chooses not to interfere, discretion is left with insurance companies to offer proportionate rates to belt-using drivers. Although never formally considered by Congress, this alternative was advocated by one member of the House of Representatives during floor debates in preference to Federal Motor Vehicle Safety Standard (FMVSS) Number 208, which at that time required the automobile industry to install either passive restraints or an ignition interlock/sequential warning system (continuous buzzer) under the front outboard seats of all new cars. 120 CONG. REC. 27,821 (1974) (statement of Rep. Myers).

¹⁹Warner, *supra* note 1, at 52.

²⁰In most Canadian provinces and in many European countries where no-fault compensation is provided to the insured victim through private or government administered insurance schemes, the insurance company which compensated its client may still sue the other party's insurance company in tort. Moreover, some legal systems permit the victim to sue the tortfeasor for additional compensation. Wayand, *Seat Belts — A Comparative Study of the Law and Practice*, 30 INT'L & COMP. L. Q. 165, 186 (1981).

²¹Eight states — California, Connecticut, Illinois, Mississippi, New York, Pennsylvania, South Carolina and Wisconsin — now accept the seat belt defense. Note, *supra* note 12, at 829 n.10. Twenty-seven states, (five of these by statute), and the District of Columbia reject the seat belt defense. The remaining 15 states have yet to decide the question. For a summary of the status of the seat belt defense in each jurisdiction, see Note, *supra* note 6, at 274 n.10.

²²See Note, *supra* note 12, at 841.

in the United States,²³ even where the language of the statute states "for use" by the occupant,²⁴ on the ground that such statutes are directed toward the manufacturer rather than the occupant-user of the belt.²⁵

Many states require the use of seat belts by drivers and passengers in school buses, emergency vehicles and other specified vehicles.²⁶ A plaintiff may be found negligent per se if he violates the statute and his injuries are substantially aggravated by his failure to use a seat belt.²⁷

B. Mitigation of Damages

The mitigation theory imposes a duty on a motorist to minimize his injuries in the event of an accident. This duty is based upon a duty of self protection, which arises before an accident and requires an individual to anticipate the dangers of automobile travel and to recognize the self-protection benefits offered by seat belts. The theory is offered as a compromise solution between the harshness of totally barring recovery to an injured occupant on the one hand and enabling the occupant to disregard a proven safety device on the other. A number of courts have accepted this approach under the theories of contributory negligence, avoidable consequences, the Restatement (Second) of Torts view, or comparative negligence. In each case the liability issue was independently determined, and evidence of failure to use an available seat belt was strictly limited to the issue of damages.²⁸

C. Contributory Negligence

Although courts have uniformly rejected the argument that failure to wear a seat belt totally bars recovery, in some cases the defendant can plead contributory negligence for purposes of reducing damages.²⁹ The defense in such cases asserts that the plaintiff neglected a duty of care to himself and that this

²³The Court of Appeal in England derived a duty to wear seat belts and invoked the seat belt defense in *Froom v. Butcher*, [1975] 3 All E. R. 520, 525 from a provision requiring their installation.

²⁴Statutes requiring the installation of seat belts "for use" by the occupant are contained in the statutory codes of Alabama, California, Connecticut, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Tennessee, Washington, and Wisconsin. Note, *supra* note 12, at 831, n.18.

²⁵Note, *supra* note 6, at 278.

²⁶The following statutes affirmatively require a person to wear a seat belt: ALA. CODE § 16-27-6 (1975) (school bus drivers while transporting school children); CAL. VEH. CODE § 27304 (West 1974) (driver and passengers in driver's training vehicle); CAL. VEH. CODE § 27305 (West 1974) (firefighting vehicles); ILL. ANN. STAT. ch. 95½, § 12807 (Smith-Hurd Supp. 1983) (school bus driver); ME. REV. STAT. ANN. tit. 29, § 2014(1978) (operator and passengers of school bus while in motion); MASS. ANN. LAWS ch. 90, § 7B(8) (Michie/Law. Co-op 1980) (school bus driver); N.Y. VEH. & TRAF. LAW § 383 (4-a) (McKinney 1970) (school bus driver); OKLA. STAT. ANN. tit. 70, § 24-121 (West 1972) (school bus driver); R. I. GEN. LAWS § 31-23-41 (1968) (operators of buses and authorized emergency vehicles); VA. CODE § 46.1-1-287.2 (1980) (school bus driver). *Id.* at 278 n.24.

²⁷*Id.* at 278.

²⁸*Id.* at 275-76.

²⁹*Id.* at 275. Every province in Canada permits apportionment of damages according to fault under their respective contributory negligence statutes. See Wayand, *supra* note 20, at 168-69.

negligent act proximately caused some or all of his injuries.³⁰ Most courts have rejected the seat belt defense based upon a contributory negligence claim because the act of negligence — failure to wear a seat belt — did not contribute to or cause the accident.³¹ In at least one cause it was held that permitting the jury to compare damages would, in practical effect, bring about the same result as comparative negligence.³² Some courts permit the defense on the ground that the plaintiff's act causally contributed to his injuries. These courts permit the jury to reduce the award of damages by an amount equal to the percent of injuries the plaintiff could have avoided by wearing a seat belt.³³

D. Avoidable Consequences

Although the doctrine of avoidable consequences traditionally applied only to post-accident conduct, Dean Prosser suggests that injuries which have been aggravated by the plaintiff's own antecedent negligence should result in damages which are apportionately reduced by the extent of the aggravation.³⁴ He also concludes that the better view is to throw off the "artificial emphasis upon the moment of impact and the pure mechanics of causation"³⁵ and take a more realistic view that is more closely aligned with the realities of automobile use.³⁶

E. Restatement (Second) of Torts

Restatement (Second) of Torts, § 465 comment (c) states:

(c) Where, however, there are distinct harms, or a reasonable basis is found for the division of a single harm, the damages may be apportioned, and the plaintiff may be barred only from recovery for so much of the harm as is attributed to his own negligence. Such apportionment may also be made where the antecedent negligence of the plaintiff is found not to contribute in any way to the original accident or injury, but to be a substantial contributing factor in increasing the harm which ensues. There must of course be satisfactory evidence to support such a finding and the court

³⁰Evidence of failure to wear seat belts will not be admissible under a theory of contributory negligence unless the court finds a common law duty to wear them. See *infra* note 54 and accompanying text.

³¹See, e.g., *Nash v. Kamrath*, 21 Ariz. App. 530, 521 P.2d 161 (1974); *McCord v. Green*, 362 A.2d 720 (D.C. 1976); *Brown v. Kendrick*, 192 So.2d 49 (Fla. App. 1966); *Hansen v. Miller*, 93 Idaho 314, 460 P.2d 739 (1969); *Gibson v. Henninger*, 350 N.E.2d 631 (Ind. App. 1976); *Hampton v. State Highway Comm'n*, 209 Kan. 565, 498 P.2d 236 (1972); *Lawrence v. Westchester Fire Ins. Co.*, 213 So.2d 784 (La. App. 1968), *cert. denied*, 252 La. 969, 215 So. 2d 131 (1968); *Romankewiz v. Black*, 16 Mich. App. 119, 167 N.W.2d 606 (1969); *Miller v. Haynes*, 454 S.W.2d 293 (Mo. App. 1970); *Miller v. Miller*, 273 N.C. 228, 160 S.E.2d 65 (1968); *Barry v. Coca Cola Co.*, 99 N.J. Super. 270, 239 A.2d 273 (1967); *Carnation Co. v. Wong*, 516 S.W.2d 116 (Tex. 1974); *Derheim v. N. Fiorito Co.*, 80 Wash.2d 161, 492 P.2d 1030 (1972).

³²*Britton v. Doehring*, 286 Ala. 498, 242 So.2d 666 (1970).

³³*Bentzler v. Braun*, 34 Wisc. 2d 362, 149 N.W.2d 626 (1967).

³⁴W. PROSSER, *THE LAW OF TORTS*, § 65 at 424 (4th ed. 1971).

³⁵*Id.*

³⁶*Id.* In the case of *Spier v. Barker* the New York Court of Appeals noted:

The opportunity to mitigate damages prior to the occurrence of an accident does not ordinarily arise . . . and the chronological distinction, on which the concept of mitigation of damages rests, is justified in most cases. However, . . . the seat belt affords the automobile occupant an unusual and ordinarily unavailable means [of] minimiz[ing] . . . damages prior to the accident.

35 N.Y. 2d 444, 451-52, 323 N.E.2d 164 (1974) (emphasis in original).

may properly refuse to permit the apportionment on the basis of mere speculation.³⁷

Under this theory apportionment of damages is possible even when a particular jurisdiction finds no common law duty to wear a seat belt.³⁸

F. Comparative Negligence

The seat belt defense has had its greatest acceptance in those jurisdictions which have adopted the doctrine of comparative negligence.³⁹ Under the "pure" comparative negligence theory, once the liability issue is resolved the focus shifts to the apportionment of damages. At that point the plaintiff's conduct becomes relevant to the extent that it is found to be a proximate cause of his injuries, not of the accident which produced the injuries. Particular care must be taken in states which have adopted the "hybrid" comparative negligence rule. Plaintiff's ability to recover could depend upon whether the seat belt evidence is considered in apportioning fault between plaintiff and defendant or solely to mitigate plaintiff's damages.⁴⁰

G. Exceptional Circumstances

Under this approach seat belt non-use evidence is admissible against the plaintiff because of exceptional circumstances. The reasonableness of the plaintiff's failure to wear a seat belt is questioned because the harm incurred was foreseeable and the plaintiff's conduct very nearly approximates an assumption of the risk. If the plaintiff has prior knowledge of a specific hazard, such as a defective door lock, defective brakes or steering, etc., and the use of a seat belt would have reduced or prevented his injuries, the law imposes a duty of extraordinary care by requiring him to wear a seat belt.⁴¹

H. Wrongful Death Actions

This theory distinguishes the admissibility of seat belt evidence in wrongful death actions from its admissibility in actions involving non-fatal collisions. In *Noth v. Scheurer*,⁴² the district court held that because the use of a seat belt might have prevented the extreme result of death and the wrongful death action arising out of it, expert testimony was admissible to show that death

³⁷RESTATEMENT (SECOND) OF TORTS § 465, comment c (1965).

³⁸*Pritts v. Lowery Trucking*, 400 F. Supp. 867, 872 (W.D. Pa. 1975).

³⁹*But see Melesko v. Riley*, 32 Conn. Supp. 89, 339 A.2d 479 (1975), where the court determined that the adoption of comparative negligence in Connecticut did not alter the principles of causation. Merely increasing or adding to the extent of one's injuries without in any way contributing to the cause of the accident could not be considered as being at fault for the accident itself.

⁴⁰*See generally*, Note, *supra* note 6, at 277. Under the "hybrid" comparative negligence rule a plaintiff can recover damages as long as his negligence does not exceed the defendant's. Thus if the jury considered the defendant's fault for the accident to be a certain percentage, the plaintiff can only recover if the percentage of his fault for aggravating his injuries, due to his failure to use a seat belt, is less. For a good discussion of the admissibility of seat belt non-use evidence under the Uniform Comparative Fault Act, see Sullivan, *The Seat Belt Defense Should Be Resurrected Under Pure Comparative Negligence*, 1982 MICH. B.J. 560.

⁴¹*Remington v. Arndt*, 28 Conn. Supp. 289, 259 A.2d 145 (1969).

⁴²285 F. Supp. 81 (E.D.N.Y. 1968).

would have been prevented.

I. *Products Liability Actions*

Crashworthiness or defective design actions against the manufacturer or seller of a motor vehicle often raise opportunities for the seat belt defense. These actions were initially brought under a theory of pure negligence, but more recently decisions have imposed liability under the doctrines of strict tort liability or breach of warranty.⁴³ The determinative factor courts have looked to in deciding whether the alleged defect exists has been the adequacy of the overall design. Since seat belts are considered an integral part of modern day motor vehicle design, they too are considered.⁴⁴ Evidence of the safety benefits seat belts afford when used, or judicial notice of this fact, is adequate to support a jury instruction to consider the seat belt restraint system when weighing the allegations of defect.⁴⁵ In strict tort liability actions against a manufacturer or seller, the question of whether failure to use an available seat belt constitutes misuse of the product is usually considered a proper question for the jury to decide.⁴⁶ The underlying rationale for the admission of the seat belt defense is simply that because the manufacturer

is under a duty to use reasonable care in the design of its vehicle to avoid subjecting the user to an unreasonable risk of injury in the event of a collision, it is no less proper for a court to permit a jury to determine whether the plaintiff [sic] has exercised ordinary care, not only to avoid injury to himself, but to mitigate any injury he would likely sustain.⁴⁷

J. *Arguments Opposing and Supporting the Seat Belt Defense*

Opponents of the seat belt defense often argue that an individual has the freedom to choose whether or not to use a seat belt, since the decision whether or not to protect oneself only affects the choicemaker.⁴⁸ This claim loses sight of the fact that plaintiff choicemaker seeks recovery for injuries from the defendant, which were aggravated by the plaintiff's decision not to wear a seat belt.⁴⁹ In addition, seat belt use increases the driver's ability to control his car and to protect other occupants and pedestrians in a crash situation.⁵⁰ This freedom of choice also has a profound effect upon the accident victim's family, dependents and employer. The overall loss to society through increased medical

⁴³Werber, *supra* note 7, at 251.

⁴⁴*Id.* at 253.

⁴⁵*Id.* at 254.

⁴⁶*Id.* at 256. (citing *Melia v. Ford Motor Co.*, 534 F.2d 795 (8th Cir. 1976); *General Motors Corp. v. Walden*, 406 F.2d 606 (10th Cir. 1969); and *Roberts v. May*, 583 P.2d 305 (Colo. App. 1978). The California Supreme Court refuses to admit seat belt non-use evidence on the issue of product misuse, on the ground that this type of misuse was foreseeable. See *Horn v. General Motors Corp.*, 17 Cal.3d 359, 551 P.2d 398, 131 Cal. Rptr. 78 (1976).

⁴⁷Werber, *supra* note 7, at 265.

⁴⁸Note, *supra* note 12, at 828.

⁴⁹*Id.* at 828, n.6.

⁵⁰120 CONG. REC. 27,806 (1974) (Statement of Rep. Steggers).

costs,⁵¹ and the increase in costs for auto insurance premiums⁵² also negate the assertion that only the choicemaker is affected by his decision.

Another common assertion in opposition to the seat belt defense is that the utility of wearing a seat belt is not worth the inconvenience.⁵³ But the injuries prevented and lives saved clearly outweigh the inconvenience that seat belts cause.

No statutory duty to wear seat belts is imposed on the general public.⁵⁴ Moreover, many courts have been reluctant to impose a common law duty to wear seat belts, since they perceive the problem as one of public policy which should be left to the legislature.⁵⁵ Courts permitting the seat belt defense usually find a duty of self protection as the basis for the duty to wear seat belts.⁵⁶ The remaining arguments in this section are those upon which courts have either denied or accepted the existence of a common law duty to protect oneself by means of a seat belt.

Courts finding no duty point to the fact that the failure to wear a seat belt did not cause the accident⁵⁷ and that the plaintiff is under no duty to anticipate the negligent acts of another.⁵⁸ They also find that seat belt nonuse is not necessarily unreasonable conduct considering that many experts disagree on the safety value of seat belts,⁵⁹ and that some people fear being trapped in a burning or submerged car.⁶⁰ They also point out that it is unfair to the plaintiff and a fortuitous windfall to the defendant to deny any or all of the plaintiff's damages for a negligent act of the defendant simply because the plaintiff was not wearing a seat belt.⁶¹ Traditional tort doctrines are altered when the defense is allowed,⁶² apportionment of damages could lead to "rampant speculation,"⁶³ and court trials over this issue might very well end up a "bat-

⁵¹Every time medical resources are depleted by an individual for injuries that were preventable by the simple act of buckling a seat belt, the availability of these services is unnecessarily reduced. Additionally, permanently disabled accident victims drain societal programs. Note, *supra* note 12, at 828, n.7.

⁵²Estimated savings to consumers in insurance costs have been conflicting, probably due to biased opinions. For an estimate of insurance savings that would result from the introduction of passive restraints, see 125 CONG. REC. 36,921 (1979) (Statement of Rep. Maguire).

⁵³Note, *supra* note 12, at 845-46.

⁵⁴*Britton*, 286 Ala. 498, 242 So.2d 666; *Melesko*, 32 Conn. Supp. 89, 339 A.2d 479; *Segaldo v. Commercial Warehouse Co.*, 88 N.M. 579, 544 P.2d 719 (N.M. Ct. App. 1975).

⁵⁵*Id.*

⁵⁶See *Pritts*, 400 F. Supp. 867; *Kavanaugh v. Butoric*, 140 Ind. App. 139, 221 N.E.2d 824 (1967); *Spier*, 35 N.Y.2d 444, 323 N.E.2d 164; *Bentzler*, 34 Wisc. 2d 362, 149 N.W.2d 626.

⁵⁷See cases cited *supra* note 54.

⁵⁸*Amend. v. Bell*, 87 Wash. 2d 124, 570 P.2d 138 (1977).

⁵⁹*Peterson v. Klos*, 426 F.2d 199, 204 (5th Cir. 1970).

⁶⁰See *supra* note 6.

⁶¹*Fischer v. Moore*, 183 Colo. 392, 517 P.2d 458 (1973).

⁶²*Miller*, 273 N.C. at 239, 240, 160 S.E.2d at 74.

⁶³*Fischer*, 183 Colo. 392, 517 P.2d 478.

tle of experts.”⁶⁴

Courts finding a duty emphasize that motorists can be charged with knowledge that automobiles are inherently dangerous instrumentalities capable of producing great harm and injuries. This knowledge gives rise to a duty to exercise ordinary care for their personal safety by wearing a seat belt.⁶⁵ Although experts have historically disagreed about the efficacy of seat belts, it is generally accepted today, after twenty years of experience, that seat belts enhance motor vehicle safety when used.⁶⁶ Public policy arguments support the seat belt defense; the fact that legislatures have required seat belt installation evidences this fact.⁶⁷ The seat belt defense, it is argued, is not unfair in denying the plaintiff recovery for his aggravated but preventable injuries, since the modern trend in tort law is to apportion damages according to respective faults and to avoid “all or nothing” judgements.⁶⁸ Proponents of the defense also argue that “rampant speculation” can be avoided by expert evidence, and that juries are quite capable of handling apportioning of damages.⁶⁹

K. Proof Requirements

Even in a jurisdiction which allows the defendant to plead the seat belt defense, evidence of seat belt non-use is not admissible without proof establishing that the vehicle was equipped with seat belts.⁷⁰ The burden of proof rests entirely on the defendant⁷¹ to demonstrate a causal connection between the plaintiff’s failure to use an available seat belt and the damages sustained.⁷²

V. IGNITION INTERLOCK/SEQUENTIAL WARNING SYSTEM

A proposed two-year delay of the effective date for installing airbags permitted automobile manufacturers to comply with interlock devices in the

⁶⁴*Amend*, 87 Wash. 2d at 135, 570 P.2d at 143.

⁶⁵Note, *supra* note 12, at 844. Since many motorists have either witnessed a traffic accident or been involved in one, or at least known someone who was, their knowledge of the danger is increased. In addition, morning traffic reports, holiday weekend fatality counts, and media campaigns all significantly increase the motorist’s knowledge of the danger, making the harm of another’s negligent act more foreseeable. *Id.* at 844-45.

⁶⁶*See supra* note 3.

⁶⁷Note, *supra* note 12, at 847.

⁶⁸W. PROSSER, *supra* note 34 at 433-34.

⁶⁹Note, *supra* note 6, at 287.

⁷⁰*Hale v. Cravens*, 129 Ill. App.2d 466, 263 N.E.2d 593 (1970).

⁷¹*Spier*, 35 N.Y.2d at 450, 323 N.E.2d at 166.

⁷²*See Glover v. Daniels*, 310 F. Supp. 750 (N.D. Miss. 1970); *Quinn v. Millard*, 358 So. 2d 1378 (Fla. Dist. Ct. App. 1978); *Bartlett v. State*, 40 App. Div. 2d 267, 340 N.Y.S.2d 63 (1979). To establish a prima facie case that the plaintiff’s failure to wear a seat belt caused all or some definable portion of his injuries, expert evidence should be presented as to the following: (1) the particular crash behavior of the subject vehicle; (2) the trajectory of the claimant’s body in the accident; (3) the relationship of the vehicle crash events to occupant kinematics; (4) the particular injuries suffered; (5) the trajectory which a restrained occupant would have taken; and (6) the extent of lesser injuries which the restrained occupant would have sustained as a result of the impacts he would have made with the vehicle. Bowman, *Practical Defense Problems — The Trial Lawyer’s View*, 53 MARQ. L. REV. 191, 198 (1970). Expert testimony in New Jersey should be based upon a hypothetical question of detailed specificity, strictly tailored to the facts in evidence. *Barry*, 99 N.J. Super. at 270, 239 A.2d at 280.

interim.⁷³ Most manufacturers began installing the ignition interlock and sequential warning systems⁷⁴ in model year 1974 cars.

In October, 1974 Congress prohibited NHTSA from requiring the interlock/continuous buzzer option in any federal motor vehicle safety standard.⁷⁵ Although these systems were not passive restraints in that they require action on the part of the occupant, they were intended to increase manual belt usage. As such, they were similar to a mandatory seat belt use requirement, except that the only penalty for non-compliance was annoyance.

VI. MANDATORY SEAT BELT USE LAWS

Currently twenty-nine foreign countries have mandatory seat belt use laws.⁷⁶ Seat belt usage in these countries has increased significantly.⁷⁷ Automobile fatalities have decreased by twenty to thirty percent and injuries by fifty percent⁷⁸ as a result of such legislation.⁷⁹

The primary arguments against mandatory seat belt use legislation are public resistance and the political ramifications of such resistance.⁸⁰ Such legislation would probably pass Constitutional muster in the United States, since a state could meet the compelling state interest standard in invoking the police power to protect both the individual and the general public.⁸¹ In today's political climate of deregulation, however, this type of legislation seems unlikely in this country.

⁷³49 C.F.R. § 571.208 (1972).

⁷⁴The ignition interlock system prevents the car from being started while the seat belt is unfastened. The sequential warning system is a continuous buzzer which continues to sound after the engine is started until the seat belt is fastened. Both systems are linked to electronic sensors under the seats.

⁷⁵The Motor Vehicle and School Bus Safety Amendments of 1974, Pub. L. No. 93-492, 88 Stat. 1470 (1974). The House Bill, (the Wyman substitute), for H.R. 5529 repealed DOT's authority to require ignition interlocks, sequential warning systems and passive restraints. The House prohibition of DOT's authority to require passive restraints was ultimately dropped by House-Senate conferees in favor of a legislative veto provision. Graham & Gorham, *Commentary: NHTSA and Passive Restraints: A Case of Arbitrary and Capricious Deregulation*, 34 AD. L. REV. 193, 199 (1983). Reasons for the ignition interlock/continuous buzzer repeal included: adverse public opinion, freedom of choice whether or not to wear a seat belt, inconvenience, nuisance, cost and mechanical problems. See 120 CONG. REC. 27,805-26 (1974).

⁷⁶Note, *Toward a Uniform Child Restraint Law*, 21 J. FAM. L. 301, 307 n.27 (1982). The City of Brooklyn, Ohio adopted a mandatory seat belt use law in 1966. BROOKLYN, OHIO, ORDINANCES § 37.25 (1983). See Werber, *supra* note 7, at 239 n.103. For a list of mandatory seat belt use laws for drivers and/or occupants of school buses, emergency vehicles and other designated vehicles see *supra* note 26.

⁷⁷Compliance rates were reported as follows: Victoria, Australia 70-80%; Contario and Quebec 40-50%; New Zealand 80-90%; Sweden 80%; West Germany 45-80%. Warner, *supra* note 1, at 51. Although belt usage increased greatly after the adoption of mandatory legislation in Canada, compliance rates have declined over time as the public has adjusted to the level of the law's enforcement. Snorf, *supra* note 17, at 35.

⁷⁸125 CONG. REC. 39,621 (1979) (Statement of Rep. Mineta).

⁷⁹In Ontario and Saskatchewan the statutes have eliminated the need for courts to determine questions of duty, the standard of care, and other negligence questions. Violation of the statute presents a case of *prima facie* liability. Wayand, *supra* note 20, at 177.

⁸⁰Mandatory seat belt usage legislation has been presented in at least 30 states, but none has been enacted to date. Werber, *supra* note 7, at 239.

⁸¹Motorcycle helmet law legislation has been upheld on similar grounds. *Simon v. Sargent*, 346 F. Supp. 277 (D. Mass. 1972) *aff'd*. 409 U.S. 1020 (1972) See generally, Werber, *supra* note 7, at 242-46.

VII. CHILD PASSENGER RESTRAINT DEVICES

Studies have shown that eighty to ninety-five percent of children are unrestrained when traveling in passenger cars.⁸² Motor vehicle accidents rank above all childhood diseases as the single greatest health hazard.⁸³ Deaths and injuries can be reduced by as much as fifty to sixty percent through use of child restraint devices (CRD'S).⁸⁴ The reasons for non-use of CRD'S have been identified as discomfort, inconvenience, cost, and the belief that restraint devices are ineffective.⁸⁵ Since 1978, thirty-three states have enacted legislation in response to this problem.⁸⁶ Five states have education programs to promote proper usage of CRD'S.⁸⁷ Arguments of Constitutional validity under the equal protection clause of the fourteenth amendment have been raised by legislators proposing and opposing child restraint legislation, but the fundamental infringement of parental rights can easily be justified as a proper invocation of a state's police power.⁸⁸ Arguments of unenforceability have been refuted by experience.⁸⁹

Twenty states expressly prohibit a finding of contributory negligence upon violation of their CRD statutes, and evidence of the violation is inadmissible in civil trials.⁹⁰ Kansas and North Carolina do not expressly prohibit evidence

⁸²Note, *supra* note 76, at 303-04.

⁸³*Id.* at 301. Between 50,000 and 70,000 children are injured annually, with more than 2,000 deaths. *Id.*

⁸⁴*Id.* at 303, n.8.

⁸⁵*Id.* at 305.

⁸⁶ALA. CODE § 32-5-222 (1983); ARIZ. REV. STAT. ANN. § 28-907 (Cum. Supp. 1983); ARK. STAT. ANN. §§ 75-2601 to 2607 (Cum. Supp. 1983); CAL. VEH. CODE §§ 27360 — 27364 (Deering Cum. Supp. 1984); CONN. GEN. STAT. ANN. § 14-100a (West Cum. Supp. 1984); DEL. CODE ANN. tit. 21 § 4199C (Cum. Supp. 1982); FLA. STAT. § 316.613 (Cum. Supp. 1984); HAWAII REV. STAT. § 235-15 (Cum. Supp. 1982); 1983 ILL. LEGIS. SERV. Ch. 95½ §§ 1101-1109 (West); IND. CODE ANN. §§ 9-8-13-1 to 9-8-13-9 (West Cum. Supp. 1983); KAN. STAT. ANN. §§ 8-1343 to 1347 (1982); KY. REV. STAT. § 189.125 (1983); ME. REV. STAT. ANN. tit. 29, 1368-B (Cum. Supp. 1983); MD. TRANSP. CODE ANN. § 22-412.2 (Cum. Supp. 1983); MASS. GEN. LAWS ANN. ch. 90, § 7AA (Cum. Supp. 1983); MICH. COMP. LAWS ANN. § 257.710d (Cum. Supp. 1983); MINN. STAT. ANN. § 169.685(4) & (5) (West Cum. Supp. 1984); MISS. CODE ANN. §§ 63-7-301 to 313 (Cum. Supp. 1983); 1983 MO. LEGIS. SERV. 489-91 (Vernon); MONT. CODE ANN. §§ 61-9-419 to 423 (1983); NEB. REV. STAT. §§ 39-6,103.01 to 103.03 (R.S. Supp. 1983); 1983 N.J. SESS. LAW SERV. ch. 128 (West); N.Y. VEH. & TRAF. LAW § 1229-C (McKinney Cum. Supp. 1983); N.C. GEN. STAT. § 20-137.1 (1983); OHIO REV. CODE ANN. §§ 4511.81 and 4511.99 (Baldwin 1983); OKLA. STAT. tit. 47 §§ 11-1112 - 11-1113 (Cum. Supp. 1983); R. I. GEN. LAWS § 31-22-22 (1982); S. C. CODE ANN. §§ 56-5-6410 to 6470 (Law. Co-op 1983); TENN. CODE ANN. § 55-9-214(b) (Cum. Supp. 1983); VA. CODE §§ 46.1-314.2 to 314.7 (Cum. Supp. 1983); 1983 WASH. LEGIS. SERV. ch. 215 (West); W. VA. CODE § 17C-15-46 (Cum. Supp. 1983); WIS. STAT. §§ 347.48(4), 347.50, (Cum. Supp. 1983).

⁸⁷FLA. STAT. § 316.613(4) (Cum. Supp. 1984); KAN. STAT. ANN. § 8-1347 (1982); MD. TRANSP. CODE ANN. § 22-412.2(m) (Cum. Supp. 1983); 1983 MO. LEGIS. SERV. 489-91 (Vernon); 1983 N.J. SESS. LAW SERV. ch. 128 (West).

⁸⁸Note, *supra* note 76 at 308-09. See also Note, *Child Safety in Automobiles: Mandatory Restraint-Use Laws*, 52 U. COLO. L. REV. 125, 136 (1980).

⁸⁹See generally, Note, *supra* note 76, at 321.

⁹⁰ARIZ. REV. STAT. ANN. § 28-907G (Cum. Supp. 1983); ARK. STAT. ANN. § 75-2606 (Cum. Supp. 1983); CONN. GEN. STAT. ANN. § 14-100a(c) (West Cum. Supp. 1984); DEL. CODE ANN. tit. 21 § 4199C(d) (Cum. Supp. 1982); FLA. STAT. § 316.613(3) (Cum. Supp. 1984); 1983 ILL. LEGIS. SERV. ch. 95½ § 1105 (West); KY. REV. STAT. § 189.125(5) (1982); ME. REV. STAT. ANN. tit. 29, 1368-B.7 (Cum. Supp. 1983); MD. TRANSP. CODE ANN. § 22-412.2(i) (Cum. Supp. 1983); MASS. GEN. LAWS ANN. § 7AA (Cum. Supp. 1983); MINN. STAT. ANN. § 169.685(4) (West Cum. Supp. 1984); 1983 MO. LEGIS. SERV. 489-91 (Vernon); 1983 N.J. SESS. LAW SERV. ch. 128 (West); OHIO REV. CODE ANN. § 4511.81(F) (Baldwin 1983); R.I. GEN. LAWS § 31-22-22

of CRD non-use, but such evidence constitutes neither negligence per se nor contributory negligence.⁹¹ Alabama and Mississippi expressly provide that no additional duty or standard of care between parents is now required because of the CRD requirement.⁹² Oklahoma bars CRD non-use evidence in aggravation or mitigation of damages.⁹³ In Wisconsin and Montana evidence of CRD non-use does not by itself constitute negligence, but evidence of use or non-use is admissible in civil actions for personal injuries or property damage arising out of a motor vehicle collision.⁹⁴

VIII. PASSIVE RESTRAINTS

Because voluntary manual belt usage levels are so unacceptably low, NHTSA has looked to passive restraint devices — airbags and automatic seat belts.⁹⁵ The automobile manufacturers have opposed the mandatory passive restraint requirements for economic reasons.⁹⁶ The American Mutual Insurance

(1983); S.C. CODE ANN. § 56-5-6460 (Law Co-op 1983); TENN. CODE ANN. § 55-9-214(b) (Cum. Supp. 1983); VA. CODE § 46.1-314.5.B (Cum. Supp. 1983); 1983 WASH. LEGIS. SERV. ch. 215 (West); W. VA. CODE § 17C-15-46 (Cum. Supp. 1983).

⁹¹KAN. STAT. ANN. § 8-1346; N.C. GEN. STAT. § 20-137.1(c) (1983).

⁹²ALA. CODE § 32-5-222(b) (1983); MISS. CODE ANN. § 63-7-303 (Cum. Supp. 1983).

⁹³OKLA. STAT. tit. 47 § 11-1112F (Cum. Supp. 1983).

⁹⁴MONT. CODE ANN. 61-9-422 (1983); WISC. STAT. § 347.48(4)(d) Cum. Supp. 1983). For a discussion of a uniform child restraint law developed by the Physicians for Automotive Safety see Note, *supra* note 76, at 323-25.

⁹⁵The history of passive restraint requirements under Occupant Protection Standard No. 208, 49 C.F.R. § 571.208 (1983), has been somewhat chaotic. Last term, Mr. Justice White wrote, "Over the course of approximately 60 rulemaking notices, the requirement has been imposed, amended, rescinded, reimposed and now rescinded again." *Motor Vehicle Mfrs. Assoc., Inc. v. State Farm Mut. Auto. Ins. Co.*, ___ U.S. ___ 103 S. Ct. 2856, 2862 (1983). In 1969 the Federal Highway Administration of the Department of Transportation proposed a standard requiring the installation of passive restraints. 34 Fed. Reg. 11,148 (1969). In 1970, NHTSA revised Standard 208 to include passive protection requirements 35 Fed. Reg. 16,927 (1970). In 1972, NHTSA amended the Standard to require full passive protection for front outboard seat occupants of vehicles manufactured after August 15, 1975. 37 Fed. Reg. 3,911 (1972). NHTSA's passive restraint requirement was upheld on review and found to be supported by "substantial evidence." *Chrysler Corp. v. Dept of Transp.*, 472 F.2d 659 (6th Cir. 1972). The effective date for mandatory passive restraint systems was extended for a year until August 31, 1975. 40 Fed. Reg. 16,217 (1975). In June, 1976, Secretary of Transportation William Coleman suspended the passive restraint requirement because he expected widespread public resistance, and instead proposed a demonstration project of up to 500,000 cars equipped with passive restraints. 41 Fed. Reg. 24,070 (1976). In 1977, Coleman's successor, Transportation Secretary Brock Adams, decided against the demonstration project and issued Modified Standard 208 which mandated the phasing in of passive restraints beginning with full-size models effective September, 1981, mid-sized cars effective September, 1982, and all other cars effective September, 1983. 42 Fed. Reg. 34,289 (1979). The manufacturers could choose either airbags or passive belts for compliance. Modified Standard 208 was upheld as a rational, nonarbitrary regulation in *Pacific Legal Found. v. Dep't of Transp.*, 593 F.2d 1338 (D.C. Cir. 1979) cert. denied, 444 U.S. 830 (1979). In April, 1981, Secretary of Transportation Andrew Lewis ordered a one year delay of the application of the Standard to large cars. 46 Fed. Reg. 21,172 (1981); In October of that year NHTSA issued a final rule rescinding the passive restraint requirement of Modified Standard 208. This decision was based upon a finding that the automobile manufacturers planned to install automatic belts in more than 99% of the new cars, most of them being easily and permanently detachable. 46 Fed. Reg. 53,419, 53,420 (1981). The Supreme Court held the rescission to be arbitrary and capricious and without an adequate basis and explanation, and required NHTSA to either consider the matter further or adhere to or amend the Standard along the lines which its analysis supported. *Motor Vehicle Mfrs. Ass'n.*, ___ U.S. ___ , 103 S. Ct. 2856 (1983). The automatic restraint requirement of Modified Standard 208 has been suspended until September 1, 1984 while NHTSA decides whether to retain it or rescind it. 48 Fed. Reg. 39,908 (1983).

⁹⁶See Warner, *supra* note 1, at 68-69. GM announced that it would favor a mandatory seat belt use law over the passive restraint requirement. *Id.* at 69.

Alliance and the National Association of Independent Insurers strongly favor mandatory passive restraints.

The cost to consumers for airbags has been estimated to be somewhere between \$250 and \$425, and for passive belts, between \$42 and \$85.⁹⁷ NHTSA estimated that airbags could save approximately 12,000 lives and prevent 104,000 serious injuries per year.⁹⁸ Passive belts could increase usage rates to sixty percent, thereby saving 9,800 lives and preventing 117,000 serious injuries per year.⁹⁹

The products liability theory has been considered by at least one commentary in the area of passive restraints.¹⁰⁰ Under this approach the manufacturer has a duty to "provide a means of safe transportation or as safe as is reasonably possible under the present state of the art."¹⁰¹ Since a manufacturer is under a duty to provide a crashworthy car and since airbags have been feasible for more than ten years, the manufacturer could be held liable to an injured plaintiff for failure to make air bags available. Although federal standards do not require the installation of airbags, these standards represent only a minimum duty of care and in no way do they exempt the manufacturer from its common law duty to act reasonably in providing safe transportation to the public.

IX. CONCLUSION

This paper has articulated the multi-faceted attempts of the legal system in the United States to deal with a problem of tragic proportions. Efforts to encourage voluntary use of restraint devices through educational programs and insurance incentives are commendable and should be continued. However, they have not been effective enough. Over the last twenty years, the effectiveness of the seat belt in reducing motor vehicle accident deaths and injuries has become an established fact. Courts should no longer permit injured plaintiffs to purposefully neglect their own safety and at the same time require others to compensate them for their neglect. Although mandatory seat belt use laws seem politically impossible at the present time, child restraint device legislation has gained public acceptance in two-thirds of the states in the last six years. Perhaps the only feasible means of increasing restraint device usage to acceptable levels is the passive restraint alternative. Airbags and passive belts, (nondetachable except in emergencies) may be the surest method of obtaining compliance. That remains to be seen.

⁹⁷*Id.* at 60.

⁹⁸Table II, Effectiveness of Occupant Crash Protection Systems, 42 Fed. Reg. 34,289, 34,298 (1977).

⁹⁹*Id.*

¹⁰⁰Teret & Downey, *Air Bag Litigation: Promoting Passenger Safety*, 18 TRIAL MAG. 93, 96-99 (July, 1982).

¹⁰¹Larson v. General Motors Corp., 391 F.2d 495 (8th Cir. 1968).

Motor vehicle occupant restraints present many issues for litigation. The arguments presented herein have been articulated in actual or proposed cases before state and federal courts.

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