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PRODUCTS LIABILITY

Seat Belt Defense Ban Wearing Thin

[A Superior Court panel upholds the ban but illustrates its weaknesses](#)

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Although a Superior Court panel in **Gaudio v. Ford Motor Co.**, PICS Case No. 09-0927 (June 1, 2009), voted 2-1 to uphold the legislative prohibition against the seat belt defense found under 75 Pa.C.S.A. Section 4581(e), the constrained tone of the majority opinion -- and the strong dissent by Senior Judge James J. Fitzgerald -- can be viewed as another assault on what had been previously viewed as an ironclad ban on use of the defense in civil litigation matters.

Gaudio involved a strict products liability action in which the plaintiff attempted to prove that the vehicle's airbag system was defective and caused the plaintiff's decedent's injuries in a single-car crash. During the accident, the decedent's vehicle slid off a road and landed in a ditch. The unbelted decedent was later found in the vehicle by emergency personnel along with an exposed and deflated airbag.

Ford Motor Co. defended the case by asserting that the airbag system was not defective and that the decedent's injuries were caused by other pre-accident factors including the fact that the decedent was not wearing his seat belt, was unnecessarily closer to the steering wheel, and was also reaching down to the floor area at the time the airbag was deployed.

The trial court, in an opinion issued by Pike County Common Pleas Judge Harold A. Thomson Jr., acknowledged the general legislative prohibition against mentioning a plaintiff's non-use of a seat belt during a civil trial. However, the trial court judge, striking a blow against the rarely questioned prohibition against the seat belt defense, held that defendants should be allowed to use the defense in very limited circumstances, such as the *Gaudio* case, where the plaintiff was seeking a monetary recovery in a matter where the issue of the lack of seat belt use by the injured party was a key factor in the resolution of the central question of whether the airbag system was defective. More specifically, the trial court felt that, as long as the defense was not being used to assert contributory negligence on the part of a plaintiff, it could perhaps be used for other limited purposes relevant to the case.

Thomson's decision was originally analyzed in my Oct. 1, 2007, *Pennsylvania Law Weekly* column titled "Time to Unbuckle the Seat Belt Defense?" That article noted Thomson's finding that the seat belt defense should be allowed 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."

In that previous article, it was also proposed that, in this day and age, now over 20 years after the seat belt law went into effect in 1987, the time had come to allow for the seat belt defense as an additional incentive to those last remaining non-compliant drivers to use seat belts, particularly given all of the scientific evidence existing today confirming that seat belts serve to prevent or minimize injuries in motor vehicle accidents.

However, the previous article concluded with the notion that, in light of the clear statutory mandate prohibiting the seat belt defense in civil litigation matters, it appeared that the change in the law would have to come from the Legislature as opposed to the courts of Pennsylvania.

A Constrained Superior Court

As anticipated, the judges in the majority of the Superior Court's decision in *Gaudio* opted to follow the letter of the law of the statutory prohibition against the seat belt defense and "construe[d] the legislative intent of the provision to be a blanket exclusion of evidence of seat belt usage in civil actions for any purpose, including to prove not only contributory negligence but also defect, causation and/or damages."

The majority in *Gaudio* also noted that it was not a proper function of the court to insert its judgment as to the propriety of the prohibition against the seat belt defense where the Legislature had already resolved the issue by a clearly worded statute. Thus, the majority opinion, including the emphasis that any change in the law would have to come from a Legislative amendment, appears to indicate that the court felt constrained to follow the law in this regard. This apparent dissatisfaction of the Superior Court with the scope of the prohibition against the seat belt defense can be viewed as another chipping away of the strength of that prohibition.

Fitzgerald's Dissent

The ironclad prohibition against the seat belt defense was also dented by Fitzgerald's clear dissent on the seat belt issue and his confirmation that the state's appellate courts have struggled with some of the issues involved and would benefit from guidance from the Pennsylvania Supreme Court on the question of the continuing validity and breadth of the prohibition.

In his dissenting opinion, Fitzgerald cited *Daddona v. Thind*, 891 A.2d 786 (Pa. Commw. 2006), and *Foley v. Clark Equipment Co.*, 523 A.2d 379 (Pa. Super. 1987), in support of his decision that the trial court judge had properly allowed Ford Motor Co. to introduce evidence of the decedent's seat belt use, or lack thereof. Since contributory negligence

was not a valid defense in this products liability case, the use of the seat belt defense in that regard was not squarely addressed by the *Gaudio* court. However, Fitzgerald noted that those prior appellate decisions supported allowing the seat belt defense to be utilized at least for the purposes of showing the lack of a defect (with respect to the airbags) and attempting to defeat any causation argument put forth by the plaintiff.

Time for Change

The time has come for a change in the law. As noted in my previous article on this topic, in more than 20 years since the passage of the law prohibiting the seat belt defense, scientific evidence has clearly established that using seat belts minimizes the chances of death and can minimize the extent of injuries in motor vehicle accidents. This evidence is so well-established that the wearing of seat belts for safety purposes is now deemed as common sense by the general public.

Compared to the few people who routinely used seat belts more than 20 years ago when the seat belt law was first passed, a large majority of motorists now use seat belts on such a routine basis that a seat belt defense at trial would likely only be applicable to that small number of non-law-abiding motorists lacking common sense and still foolish enough to break the law by riding in motor vehicles without belting up.

Fears by the plaintiff's bar that unbelted parties injured or killed through no fault of their own in a motor vehicle accident may be completely and unfairly barred from recovery by virtue of the injured party's failure to wear a seat belt can be tempered by Legislative limitations on the breadth of the seat belt defense. For example, the Legislature may mandate that an injured party's recovery may be limited up to a certain percentage but not entirely barred by the seat belt defense. Plaintiff's fears in this regard may also be addressed by their ability to secure expert witnesses to defeat the seat belt defense by showing that, even if the Plaintiff had been wearing a seat belt, the forces of the impact would have resulted in the same or similar injuries.

Realistically speaking, the allowance of the seat belt defense in automobile cases would really be no different than the currently allowed defense in premises liability cases that people have a duty to exercise due care in protecting themselves from injury by watching where they are walking. Also, in almost every situation, a plaintiff has a duty to mitigate his damages. What better way is there for a motor vehicle occupant to mitigate his potential damages and injuries than by simply clicking on a seat belt? Click. Done.

Last but certainly not least, it would also appear that the abolishment of the prohibition against the seat belt defense would further the now currently recognized policy of cost containment with respect to spiraling automobile insurance costs by limiting the damages recoverable by those few injured parties who continue to break the law by still refusing to wear seat belts after all of these years.

Only the Legislature Can Act

Treatises have noted that a substantial minority of jurisdictions allow for the seat belt defense given the obvious effectiveness of seat belts in reducing fatalities and injuries. See "Use of seatbelt as reducing amount of damages recoverable," 62 A.L.R.5th 537 (1998) by Christopher Hall. In those jurisdictions, defendants are permitted to point to the injured party's failure to use the seat belt to support contributory negligence or mitigation of damages defenses in automobile accident cases.

Pennsylvania should join those jurisdictions. However, it appears that any such change in the law will have to come from the Legislature. Public support may be secured for this change by asserting that an amendment doing away with the prohibition against the seat belt defense could, as noted, ultimately serve to contain the spiraling costs of automobile insurance rates for the law abiding citizens of Pennsylvania who do wear their seat belts as required. •

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