



## Admissibility of Seat Belt Non-use Evidence

### Traffic Issue Brief (January 2016)

This Brief was produced by the Traffic Resource Center for Judges, an initiative of the National Center for State Courts (NCSC). The Traffic Resource Center is a cooperative effort between the Department of Transportation and the National Center for State Courts (NCSC) to establish a resource for judges, court administrators, court clerks, and other court staff on issues related to traffic adjudication.



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The Texas Supreme Court's recent ruling in *Nabors Well Services, Ltd. v. Romero*, 456 S.W.3d 553 (Tex. 2015) is a welcome reversal of an evidence rule that a majority of state courts follow: a prohibition of evidence showing that a crash-involved motorist failed to use a seat belt. The *Romero* decision reversed the exclusionary evidence rule Texas had followed for over forty years, replacing it with a new rule allowing juries to consider evidence that a plaintiff failed to use an available seat belt in assessing comparative fault.

According to the National Highway Traffic and Safety Association (NHTSA), twenty-nine states, including the District of Columbia, completely bar evidence of a motorist's failure to use a seat belt in car-accident cases. See *Summary of Vehicle Occupant Protection and Motorcycle Laws*, NHTSA (12<sup>th</sup> Ed., April 2015). Yet, forty-nine states, plus the District of Columbia, have laws requiring motorists to wear seat belts. *Id.* The Texas Supreme Court called this "an



anachronism” that “may have been appropriate in its time, but today it is a vestige of a bygone legal system and an oddity in light of modern societal norms.” *Romero*, at 555.

The state laws that completely exclude or severely limit seat belt evidence were written at a time when seat belts were viewed with suspicion and were not widely used. From the 1950s through the 1970s, seat belt use was minimal. In 1968, 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. In 1989, FMVSS 208 was amended to require rear outboard lap and shoulder belt as of model year 1989. In 2008, it was amended to require center rear lap and shoulder belts for occupants as of model year 2008.

While federal law requires manufacturers to install seat belts, federal law does not require occupants to use them. Traditionally, seat belt use legislation has been within the domain of state governments. Not until 1984 did states begin passing mandatory seat belt use laws. Most of these laws included a subsection that explicitly excluded evidence of seat belt non-use to prove comparative or contributory negligence or to mitigate damages or from use in any civil action or insurance claim adjudication. Leading up to the passage of these laws in the early 1980s, seat belt use was relatively minimal. In 1984, as few as 14% of people nationwide reportedly wore seat belts. *Romero*, at 564. In the intervening time since seat-belt use became mandatory by state laws across the country, the number has jumped to 83%. See National Highway Safety Traffic Safety Facts (2008). As the Texas Supreme Court stated in *Romero*, seat belts “have become an unquestioned part of daily life for the vast majority of drivers and passengers.” *Romero*, at 555.

The fact that seat belts reduce injuries and save lives is well established and evidenced by a wealth of research. A 2008 Traffic Safety Facts report from the NHTSA indicates that seat belt use reduces the risk of fatal injury to front-seat passenger car occupants by 45% and the risk of moderate-



to-critical injury by 50%. Seat belts are highly effective in preventing total ejections: research showed 31% of unrestrained occupants were totally ejected from rollover crashes compared with only 1% of restrained occupants. See National Highway Safety Traffic Safety Facts (2008).

Yet, the anachronism persists in a majority of states where juries will never hear evidence that a plaintiff suing for damages was not wearing a seat belt. Perhaps the greatest injustice are those states that even exclude seat belt evidence from product liability cases. If a speeding driver crashes and sues the car manufacturer, the manufacturer is permitted to introduce evidence of speeding. Other reckless conduct, such as drunk driving, may also be admitted against such a plaintiff. But, in a majority of those 29 states banning seat belt non-use evidence, the fact that the plaintiff failed to obey the law and wear a seat belt is deemed inadmissible. This exclusion is particularly unfair in rollover cases where car manufacturers are prohibited from defending their vehicles' safe design by showing that these vehicles effectively protect belted occupants 99% of the time.

Of the nineteen states that allow seat belt non-use evidence (Massachusetts and Hawaii are unsettled on the matter and not included in either count), most states restrict the admission of such evidence for limited purposes, such as proof of comparative fault or to mitigate damages. The Texas Supreme Court reasoned in *Romero* that the failure to use a seat belt does not *cause* an accident, but neither does it "immunize a plaintiff from his own injury-causing conduct." *Romero*, at 565. The Court went on to overrule 40 years of possible windfalls for plaintiffs who are "likely to be punished with a criminal citation carrying a monetary fine from the police officer investigating the accident, but in the civil courtroom his illegal conduct will be rewarded by monetary compensation." *Id.* Texas' evidence rule is similar to Arizona, California, Florida, Michigan, New Jersey and North Dakota which all permit evidence of seat belt nonuse to prove comparative fault. See chart. However, these states do not allow evidence of seat belt nonuse for purposes of reducing damages. As the *Romero* decision explains, a



plaintiff's failure to mitigate damages traditionally occurs post-accident. Therefore, a plaintiff's pre-accident decision to not wear a seat belt should not be a factor in assessing the amount of damages incurred after the defendant's negligence. *Romero*, at 564.

The other twelve of nineteen states that allow seat belt non-use evidence limit its admission for the mitigation of damages. Some of these states allow unlimited damage reductions (Alaska, Kentucky, New York, and Tennessee) while others set relatively low damage reduction caps. For example, under Iowa, Nebraska, and Oregon 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 5%. *See chart.* Wisconsin also caps its damages, but up to 15%, while Missouri only allows up to 1% of a damages award to be mitigated by seat belt nonuse evidence. *See chart.* Ohio does not cap its reduction; instead it limits the evidence to mitigate only noneconomic loss (like pain and suffering). *See chart.* Colorado is even more limited, allowing nonuse evidence only to mitigate pain and suffering damages and only in product liability cases. *See chart.* West Virginia may have the most unique procedure wherein the trial judge may consider seat belt nonuse *in camera* to determine whether an injured party's failure to wear a seat belt was a proximate cause of the injuries. If the judge finds that it was a proximate cause of the injuries, the jury will learn of the non-use and may then reduce the recovery up to 5%. If the injured party stipulates to seat belt non-usage and forgoes the *in camera* hearing, the judge automatically withholds 5% of any future damages award, but the jury never hears evidence of the seat belt nonuse. *See chart.*

It is important for litigants and their representatives to know and understand their state laws regarding evidence of seat belt use or nonuse. While the Texas Supreme Court's 2015 decision is a welcome change, there needs to be more national dialogue concerning the unjust irony, pointed out by



the Texas Supreme Court, that a vast majority of our states and their citizens can receive a criminal citation for not wearing a seat belt, but be rewarded for it in civil damages.

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