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ARTICLES

CAVEAT VIATOR*: THE DUTY TO WEAR SEAT BELTS UNDER COMPARATIVE NEGLIGENCE LAW

John A. Hoglund** and A. Peter Parsons***

The saga of highway carnage continues to unfold as we approach the seventh decade of man's love affair with the horseless carriage. One troubling detail of this tale of mobile independence is the relative neglect for our own safety. Despite the increasingly sophisticated devices provided in automobiles for self-preservation, voluntary utilization of those devices remains discouragingly low. As a consequence, the number of fatal and disabling injuries steadily mounts along with the social and personal costs of such injuries.

Fortunately, the legal system has at last resolved that 19th century concepts of negligence are unsatisfactory in balancing the burdens incurred from automobile deaths and injuries. In rejecting the outmoded "single-party fault system" for the assessment of responsibility, the Washington Legislature has adopted a "pure" comparative negligence formula which allows each of the parties involved in an accident to recover the amount of his damages from the other, reduced by the percentage of his negligent contribution to the causation of the accident.¹

Implicit within this comparative equation is the principle that each person should bear the responsibility for injuries due to his or her negligence. Perhaps less obvious but still encompassed by the equation is the concept that every individual must bear the duty of taking affirmative steps to prevent his own injury. Thus, the subject of seat

* "Let the traveler beware." BALLENTINE'S LAW DICTIONARY WITH PRONOUNCIATIONS 184 (1969).

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1. Ch. 138, [1973] Wash. Laws, 1st Ex. Sess. 949, *codified as* WASH. REV. CODE §§ 4.22.010, .020, .900, .910 (Supp. 1973); *see* Note, *Comparative Negligence*, 49 WASH. L. REV. 705, 709 (1974) [hereinafter cited as Note].

belts is of some consequence for both plaintiff and defendant under the theory of comparative negligence. Courts and legislatures in recent years have declined to impose seat belt use upon reluctant motorists, due in part to residual doubt as to the effectiveness of the devices, concern for the resulting infringement of personal liberties, and recognition of the harsh inequities which would result from barring otherwise deserving plaintiffs under theories of contributory negligence.

The first portion of this article will attempt to show that neither judicial nor legislative reluctance, nor its underlying reasoning, is justifiable in light of the current state of law and society. Substantial evidence will be presented to demonstrate the need for our society to adopt the seat belt habit and for the law to recognize and respond to this societal need. Reactions of courts and legislative bodies to suggestions of mandated use are then explored as a preliminary to an analysis of the common law basis for adoption of the seat belt rule. A careful explanation will then be presented regarding introduction and application of the seat belt rule under Washington's comparative negligence law. Finally, it is hoped that the article will be of use to legislators, judges and lawyers alike, not only in Washington, but in all jurisdictions contemplating changes in the law relating to the use and misuse of our "insolent chariots."²

I. THE CARNAGE AND THE SEAT BELT

The availability of occupant restraint systems for automobiles is a comparatively recent phenomenon.³ Although Washington does not

2. JOHN KEATS, *THE INSOLENT CHARIOTS* (1958).

3. The earliest expression of concern located by the authors, regarding the role of vehicular restraint systems in highway safety, was the statement of Earl of Andrews: "Quoth what fool darest upon the highways of this realm without properly strapping his ass to his cart." Address before His Majesty's Order of Scribes, Hamfin on Tyne, Clarkshire, England, Oct. 4, 1683, *reported in F. ACCAD, THE BARRISTER'S TOME* xvi (1814).

It was not until 1964 that most U.S. automobile manufacturers began installing two lap belts in the front seats as standard equipment; and not until 1966 were four lap belts placed in all new cars. By January 1968, standards issued by the National Highway Safety Bureau (now the National Highway Traffic Safety Administration) required that lap belts be installed for each seating position in the vehicle and that upper torso restraints be installed for the front seating positions. 32 Fed. Reg. 2408, 2415 (1967). This rule, finally denominated as Federal Motor Vehicle Safety Standard (FMVSS) No. 208, 49 C.F.R. § 571.208 (1973) was promulgated under authority of the National Traffic & Motor Vehicle Safety Act of 1966, 15 U.S.C. § 1381 (1970). In addition, seat belt warning devices are now required on vehicles manu-

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require the installation of seat belts in automobiles manufactured before January 1, 1964,⁴ the number of these vehicles in operation on Washington highways is rapidly declining. The enactment of legislation requiring seat belt installation derives from recognition of the ever increasing social and economic losses occasioned by automobile accidents.⁵ While the traffic accident death rate per Washington vehicle mile has gradually decreased, the total number of deaths remains at a high level with the number of injury producing accidents on the rise.⁶ Correlatively, the economic costs of automobile accidents have reached near astronomical levels.⁷

There is a high probability that the average motorist will be involved in at least one accident, resulting in death or injury to himself, during his lifetime.⁸ Many drivers are under the erroneous assumption that these fatal or injury producing accidents occur only at higher

factured after January 1, 1972 and before August 15, 1975. 49 C.F.R. §§ 571.208 S4.1.1, S4.1.2 (1973). FMVSS No. 208 was also extensively revised to cover multi-purpose passenger vehicles, trucks and buses made after July 1, 1971. *Id.* §§ S4.2, S4.3.

More recent revisions of FMVSS No. 208 reflect a movement toward a system of passive restraints, *i.e.*, restraints which automatically protect a vehicle occupant in a crash without voluntary activation of the device. The revisions will become effective on Jan. 1, 1972, Aug. 15, 1973, and Aug. 15, 1975. *Id.* §§ S4.1.1, S4.1.2, S4.1.3.

4. WASH. REV. CODE § 46.37.510 (1963).

5. Nationally, 48 % of the total accidental deaths and 18% of the total accidental disabling injuries (injuries which prevent a person from performing usual activities for a full day beyond the day of accident) occurring in 1972 resulted from motor vehicle accidents. See NATIONAL SAFETY COUNCIL, ACCIDENT FACTS 2-3 (1973) [hereinafter cited as 1973 ACCIDENT FACTS]. The above percentages have remained rather constant over the past 5 or 6 years. Death from motor vehicle accidents still ranks as the leading cause of death from ages 1 to 25 years. *Id.* at 8.

6. Total number of automobile accident deaths in Washington for 1972 was 852, for 1971 was 876, and for 1970 was 875. The total number of persons nonfatally injured in accidents in 1972 was 55,454, in 1971 was 55,099, and in 1970 was 53,465—for a cumulative increase of 3.07% over the 3-year period. WASHINGTON STATE PATROL, WASHINGTON STATE TRAFFIC ACCIDENT FACTS 37 (1972) [hereinafter cited as WASH. ACCIDENT FACTS].

7. Of the total national estimate for all accidental injuries of \$23.5 billion, 82.5% or \$19.4 billion of cost resulted from motor vehicle accidents. 1973 ACCIDENT FACTS at 5. This total includes a \$13.4 billion estimated cost of injuries (including wage losses and medical expenses) and insurance administrative costs and an estimate of \$6 billion for property damage. Other costs not included in this figure are those of certain public agency activities such as police, fire and courts, damages awarded in excess of direct costs, and indirect costs to employers. *Id.*

The economic losses incurred in 1972 in the State of Washington from automobile accidents were estimated at \$244,300,000. This amount represented a substantial increase of \$700,000 over the estimated losses for Washington during 1971. WASH. ACCIDENT FACTS at 4.

8. Over 1,000 Americans are killed every week in traffic accidents; almost 10,000 are injured each day. The combined figure, computed on an annual basis, approximately equals the number of babies born in the United States yearly. These statistics

speeds. Statistics indicate, however, that approximately 26 percent of *fatal* accidents and 65 percent of *injury producing* accidents occur *under* 40 miles per hour.⁹

Use of seat belts will not only increase safety by reducing the severity of "second collisions" an occupant might have with the interior surfaces of a vehicle,¹⁰ but will also minimize accident-causing driver discomfort and distractions.¹¹ Despite these compelling realities the general public prefers not to "buckle up."

At least one reason for this public sentiment seems to be a continuing doubt as to the effectiveness of safety belts.¹² The public's doubts are unwarranted, however. Numerous researchers conducting field studies in recent years have unanimously concluded that use of restraint systems, such as the lap belt and a single diagonal torso restraint, reduce vehicular accident injury and mortality.¹³ While the

lend credibility to the statement that "every American born from today forward may be killed or injured in an automobile crash."

One's exposure to death by automobile collision is considerably higher than one's exposure to death by involvement in warfare. From 1900 through 1972, motor vehicle deaths totaled more than 1,900,000, whereas U.S. military casualties in principal wars (including battle and other causes of death) from the Revolutionary War (1775) through the Viet Nam War (1972) totaled approximately 1,155,000. 1973 ACCIDENT FACTS at 49.

9. *Id.* at 53. "Driving too fast" has been noted as a *factor* in only 15% of all accidents. It tends to be a factor of greater importance in accidents occurring in rural, as opposed to urban, areas. *Id.* at 48.

10. NAT'L HIGHWAY TRAFFIC SAFETY ADM'N, U.S. DEP'T OF TRANSPORTATION, AUTOMOBILE SAFETY BELT FACT BOOK 3 (1972).

11. When in place, seat belts increase the driver's control of the vehicle and help to prevent concurrent accidents; by keeping the driver in a comfortable position, they can reduce fatigue and make driving safer; and by restraining children, they deter the driver from becoming distracted from the pressures of driving. *Id.*

12. NAT'L HIGHWAY TRAFFIC SAFETY ADM'N, U.S. DEP'T OF TRANSPORTATION, THE CASE FOR SEAT BELTS 9-13 (Jan. 1973). Other common rationalizations for nonuse include: inconvenience, lack of necessity for short trips, possible failure in the event of a serious crash, fear of being trapped in case of fire or submergence in water, and possibility of injury (*e.g.*, to pregnant women), caused by the belts. Several courts have also stressed that there is still conflicting evidence on the value of seat belts. *See* Britton v. Doehring, 286 Ala. 498, 508, 242 So.2d 666 (1970); Lipscomb v. Diamiani, 226 A.2d 914, 917-18 (Del. Super. 1967); D. W. Boutwell Butane Co. v. Smith, 244 So.2d 11 (Miss. 1971); Barry v. Coca Cola Co., 99 N.J. Super. 270, 275, 239 A.2d 273 (1967).

13. Bohlin, *A Statistical Analysis of 28,000 Accident Cases with Emphasis on Occupant Restraint Value*, 11TH STAPP CAR CRASH CONFERENCE 299 (1967), abstract reprinted in 12 TRAFFIC SAFETY RESEARCH REVIEW 29 (1968). Mr. Bohlin found that use of Volvo's three-point harness reduced injuries between 40% and 90% depending on the accident speed and type of injury. He also observed that "[n]on-belted occupants sustained fatal injuries throughout the whole speed scale, whereas none of the belted occupants was fatally injured at accident speeds

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statistical calculations vary, common among these surveys is the conclusion that use of seat belts can reduce the possibility of serious injury or death from 50 to 100 percent and that the possibility of any or slight injury can be reduced from 30 to 40 percent.¹⁴

Thus, while it is generally conceded that seat belts do not render users free from harm,¹⁵ they do appear to significantly reduce users' chances of suffering a fatal or disabling injury.¹⁶ Nevertheless,

below 60 mph." *Id.* See also J. K. Kihlberg, Efficacy of Seat Belts in Injury and Noninjury Crashes in Rural Utah: Technical Report, May 1969 (Cornell Aeronautical Laboratory, Inc.) (data collected on 14,261 crash victims); A Study of Seat Restraint Use and Effectiveness in Traffic Accidents, Jan. 1970 (Highway Safety Foundation); D. N. Levine & B. J. Campbell, Effectiveness of Lap Seat Belts and the Energy Absorbing Steering System in the Reduction of Injuries, Nov. 1971 (U. of N. C. Highway Safety Research Center); Tourin & Garrett, Safety Belt Effectiveness in Rural California Automobile Accidents, Feb. 1970 (Cornell Aeronautical Laboratory, Inc.).

Another more recent study conducted in North Carolina indicated that use of seat belts can reduce serious injuries on the average of 43%, and all injury on the average of 36.5%. Levine & Campbell, *The Energy-Absorbing Steering System In the Reduction of Injuries*, 4 J. SAFETY RESEARCH 106 (1972).

14. Kihlberg, *supra* note 13, at 2; Tourin & Garrett, *supra* note 13, at 6; Levine & Campbell, *supra* note 13, at 108. The Washington State Patrol has found that only one person using seat belts has died in an accident for every 13 nonusers that were killed. Moreover, "for every three seat belt users who received a disabling injury in a traffic accident, there were twenty two nonusers who received a disabling injury." Washington State Patrol, 1972 Seatbelt Study at 1.

15. Washington State Patrol, 1971 Seatbelt Study at 2. The possibility of different, though less serious, injuries produced by lap belts is fairly well documented. See Schneider, Smith, Grabb, Turcotte & Huelke, *Lap Seat Belt Injuries, The Treatment of the Fortunate Survivor*, 67 MICH. MEDICINE 171 (1968). Some courts have also recognized that seat belts may cause or aggravate certain injuries. See *Hampton v. State Highway Comm'n*, 209 Kan. 565, 498 P.2d 236, 249 (1972); *Romankewiz v. Black*, 16 Mich. App. 119, 167 N.W.2d 606 (1969); *Miller v. Miller*, 273 N.C. 228, 160 S.E.2d 65 (1968). See also Note, *Seat Belt Negligence in Automobile Accidents*, WIS. L. REV. 288, 292 (1967).

Most cases describe a distinctive pattern of injury due to impingement of the belt itself upon flexion of the upper body over the belt. Additionally, a single diagonal shoulder belt may produce serious injuries if worn without a lap belt. However, many of the hazards are reduced significantly when the seat belt is properly installed and worn, and the trauma resulting from flexion of the upper torso can be eliminated through use of a shoulder belt in combination with a lap belt. See Snyder, *The Seat Belt as a Cause of Injury*, 53 MARQ. L. REV. 211, 223-4 (1970). While seat belts may contribute to injury in specific cases, they have never been shown to aggravate injury and have certainly prevented more serious, albeit different injury. *Id.*; accord, Garrett & Braunstein, *The Seat Belt Syndrome*, 2 J. TRAUMA 220 (1962); Porter & Green, *Seat Belt Injuries*, 96 ARCHIVES OF SURGERY 242-46 (1968). Safety belts rarely cause intra-abdominal injury. Doersch & Dozier, *The Seat Belt Syndrome*, 116 AMER. J. SURGERY 831, 831-33 (1968); Le Mire, Earley & Hawley, *Intra-abdominal Injuries Caused by Automobile Seat Belts*, 201 J.A.M.A. 735, 735-37 (1967).

16. See notes 13-14 *supra*. In addition, a few of the more common fears of wearing seat belts, *i.e.*, being trapped in a burning or submerged vehicle or becoming more seriously injured if pregnant (occasionally asserted as justification for denial of

despite the millions of dollars that have been expended by federal and state governments for educational campaigns,¹⁷ and despite the increased availability of safety belts, less than 30 percent of all automobile occupants use seat belts.¹⁸ It is submitted that the legal system must respond to this lack of citizenry concern for self-preservation and the resulting carnage.

mandatory use of safety belts, see *Hampton v. State Highway Comm'n.* 209 Kan. 565, 498 P.2d 236, 249 (1972)), have been specifically found to have little or no statistical merit. 1971 Seatbelt Study, *supra* note 15, at 1.

Generally, it has been found that less than 0.5 % of all injury-producing accidents are followed by fire or submersion. Even in these cases, belted occupants are more likely to have less serious injuries than unbelted occupants and be better able to cope with the situation. See B.J. Campbell & K. Kihlberg, *Automobile Fire in Connection with an Accident*. 1964 (Cornell Aeronautical Laboratory, Inc.).

And, in the case of a pregnant female and her fetus, data indicate that the use of the seat belt prevents more serious injury. Candler, *A Safe Ride for Mother and Child*, WOMAN'S DAY, Sept. 1971, at 8; Crosby & Costiloe, *The Effect of Lap Belt Restraint on Pregnant Victims of Automobile Collisions*, 14 ANN. CONF. AMER. ASS'N AUTOMOTIVE MEDICINE 97 (1970); Snyder, *supra* note 15, at 224.

17. Efforts such as the "Buckle Up for Safety" campaign have been dismal failures. In a recent study sponsored by the Insurance Institute for Highway Safety, the seat belt usage rate of television viewers exposed to a series of six messages over a 9-month period was compared to that of a control group whose members were not exposed to the messages. At the end of the exposure period, the researchers concluded that the campaign had had no effect whatsoever on safety belt use. Robertson, *et al.*, *A Controlled Study of the Effect of Television Messages on Safety Belt Use*, June 1972 (Ins. Inst. for Highway Safety).

Lack of material incentives, absence of positive reinforcement through the media in supporting the esthetic ethic of wearing the belts and the psychological "denial" of the personal impact of not wearing seat belts (which infers that most drivers "block out" the high threat message of death or serious injury) have all been cited as critical factors to overcome in solving the consumer acceptance problem of voluntary seat belt usage. Interviews with Dr. Carl L. Klingberg, Research Supervisor, Div. of Research & Technology, Wash. Dep't of Motor Vehicles, in Olympia, Nov. 1973-Jan. 1974. See also Wilson, Lonero & Ish, *Increasing Seatbelt Use Through A Program Presented In Elementary Schools*, 16TH CONF. AMER. ASS'N AUTOMOTIVE MEDICINE 372 (1972).

18. Robertson, O'Neill & Wixom, *Factors Associated With Observed Safety Belt Use*, 13 J. HEALTH & SOCIAL BEHAVIOR 18 (1972).

In a 1967 study based on 709 observations collected by four observers in North Carolina, seat belt utilization was reported at 32%. B. J. Campbell, P. F. Waller & F. M. Council, *Seat Belts: A Pilot Study of Their Use Under Normal Driving Conditions*, Nov. 1967 (U. of N.C. Highway Safety Research Center). A follow-up study in 1969 produced a similar report of 35.8% utilization. F. M. Council, *Seat Belts: A Follow-Up Study of Their Use Under Normal Driving Conditions*, Sept. 1969 (U. of N.C. Highway Safety Research Center).

The Washington State Patrol reports that the seat belt usage rate of automobile occupants involved in investigated accidents was a mere 25% during 1972, and that this percentage has shown a diminutive increase over recent years. 1972 Seatbelt Study at 1.

Some courts have cited the low usage level as a reason for not imposing mandatory seat belt usage. *Romanekewiz v. Black*, 16 Mich. App. 119, 167 N.W.2d 606, 609 (1969); *Miller v. Miller*, 273 N.C. 228, 160 S.E.2d 65, 69 (1968).

II. THE LAW AND THE SEAT BELT

The legal system's response to this conundrum of societal loss and citizen indifference has been woefully inadequate.¹⁹ Although the federal government has been moving in the direction of requiring the installation of passive restraint systems in automobiles after 1975,²⁰ this development clearly will not supersede the need for seat belts.²¹ Indeed, Congress has made a firm policy commitment to mandatory seat belt use and has seen fit to encourage state passage of such laws by way of incentive grants under the Federal-Aid Highway Act of 1973.²²

19. Only 34 states and the District of Columbia have passed laws requiring seat belt *installation* in passenger cars. As of January 1, 1972, these 34 jurisdictions were: Alaska, California, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia and Wisconsin. One additional state, Kentucky, requires anchorage units for seat belts in the front seat. See NAT'L HIGHWAY TRAFFIC SAFETY ADM'N, U.S. DEP'T OF TRANSPORTATION, 1 LAWS REQUIRING SEAT BELTS 3 (1972) [hereinafter cited as SEAT BELT LAWS]. The descriptions of the vehicles covered vary substantially from state to state, see *id.* at 37-9 nn.18-38, and only five jurisdictions, California, Nevada, New York, Virginia and the District of Columbia, require belts to be installed in all passenger seating positions. *Id.* at 9. Washington requires seat belts to be installed only in the front seats. See note 4 *supra*.

20. See note 3 and accompanying text *supra*.

21. Even if the automobile industry is successful in developing the air bag as standard equipment, seat belts should still be worn to prevent either overshooting or submarining the bag. Belts offer protection against injuries from side impacts and roll-overs, where air bags would be ineffective. Belts also offer protection against air bag failure and at deceleration levels below that at which the air bag is inflated. See Bowman, *Practical Defense Problems—The Trial Lawyer's View*, 53 MARQ. L. REV. 191, 195 (1970). Moreover, from a practical standpoint seat belts will be the only safety restraint system available to most passengers for some years to come. See SEAT BELT LAWS at 210.

22. Congress voted to support state-level, mandatory belt-use legislation when it passed the Highway Safety Act of 1973, 23 U.S.C.A. § 402(j) (Supp. 1974) (originally enacted as Federal-Aid Highway Act of 1973, § 219, 87 Stat. 250). The law allows the Department of Transportation to increase a state's highway safety funds by 25% of its Highway-Aid apportionment if the state has a mandatory seat belt use law. Section 402(j) (2) also provides additional incentive grants, up to 25% of a state's apportionment, to those states making the most significant progress in reducing traffic fatality rates. The State of Washington will receive approximately \$3 million in safety funds under this Act for fiscal 1974. Were a mandatory seat belt usage law passed in this regular session, the State would receive approximately \$750,000 in additional monies to promote already existing safety programs under the Act. Interview with Finance Office, Accounting Div. of Management Servs., Wash. State Dep't of Highways, in Olympia, Washington, Jan. 30, 1973.

Of perhaps greater import to the theme of this article are the statements of Congress relating to national highway safety policy. See H.R. REP. NO. 118, 93d Cong., 1st Sess. (1973).

It should also be noted that a mandatory seat belt use law has been considered by the Washington State Legislature. State Senator Joseph Stortini (D-Tacoma) introduced

The judiciary, however, has hesitated to require the citizenry to protect themselves by use of seat belts for fear that such impositions may not only infringe upon "constitutional rights and personal privileges" of motor vehicle occupants, but also unfairly preclude or diminish the right of recovery in negligence actions.²³ This latter concern has been the subject of much of the legal commentary concerning the contributory negligence problems that may arise from the nonuse of seat belts.²⁴

A. *The Seat Belt Rule: Theory*

1. *The seat belt defense and contributory negligence*

The mandatory installation of seat belts has inevitably led defense counsel to assert in their client's behalf the so-called "seat belt rule": That if the plaintiff had worn his seat belt, then his injuries would have been reduced.²⁵ In view of recent statistical data, this inference is more often than not justified in fact.²⁶

the first Washington mandatory seat belt use bill, S. 3154, 43d Legis., 3d Ex. Sess. (1974). The measure died in the Senate Rules Committee after passing out of the Senate Transportation and Utilities Committee. The bill provided, *inter alia*, for mandatory belt use by persons operating vehicles or riding in the front seat, with certain exceptions.

It is suggested that such a law should not unduly penalize violators with onerous fines, if its object is to encourage greater belt usage by the motoring public. Hopefully, the legislation will not bar introduction of seat belt nonuse evidence in negligence actions; rather, it should allow the flexible consideration of such evidence by the courts to appropriately reduce damages. Interviews with State Sen. Joseph Stortini, in Olympia, Washington, Jan.-Feb. 1974.

23. See, e.g., *Romankewiz v. Black*, 16 Mich. App. 119, 167 N.W.2d 606 (1969); *Cierpisz v. Singleton*, 247 Md. 2d 215, 230 A.2d 629 (1967); *Lipscomb v. Diamiani*, 226 A.2d 914 (Del. Super. 1967).

This response may be understandable in view of the harsh result obtained if nonuse of safety belts is considered contributory negligence, thus totally barring recovery by an otherwise deserving plaintiff. Five jurisdictions which operate under contributory negligence theory have adopted provisions to assure that any failure to use available seat belts will have no effect upon the question of negligence. Three states provide that evidence of a failure to use seat belts is not admissible in a law suit brought to recover damages resulting from a collision. SEAT BELT LAWS, *supra* note 19, at 22-3 nn.120-22; see *Derheim v. N. Fiorito Co.*, 80 Wn. 2d 161, 492 P.2d 1030 (1972).

24. See, e.g., Marks, *Does the Failure to Wear Seat Belts Constitute Contributory Negligence?* 1968 INSUR. L. J. 5; Note, *Contributory Negligence For Failure to Use a Seat Belt*, 47 ORE. L. REV. 204 (1968); Note, *Failure to Use Seat Belts As A Basis For Establishing Contributory Negligence, Barring Recovery For Personal Injuries*, 1 U.S.F.L. REV. 277 (1967); Note, *Failure To Wear Seat Belts As Contributory Negligence: The Development of the Wisconsin Rule*, 50 MARQ. L. REV. 662 (1967).

25. During the past decade, numerous actions have been brought in which the seat belt defense has been interposed by defendants as an affirmative defense to bar recovery or, at the least, to diminish the amount of recoverable damages. See Kircher, *The Seat Belt Defense—State of the Law*, 53 MARQ. L. REV. 172 (1970).

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The two legal theories under which most proponents would subsume the seat belt rule are the doctrines of contributory negligence and avoidable consequences.²⁷ However, the assertion that nonuse of seat belts is contributory negligence per se has been uniformly rejected by the courts.²⁸ Judicial reticence to adopt the seat belt rule is understandable, since the allowance of such a defense would bar any recovery by the plaintiff. No court has been willing to go so far as to ignore the negligence of the defendant, and deny *all* recovery merely because the plaintiff failed to "buckle up."²⁹ Defendants asserting the

See also *Derheim v. N. Fiorito Co.*, 80 Wn. 2d 161, 167 n.2, 492 P.2d 1030, 1034 n.2 (1970); *Appendix A & Appendix B*, 53 MARQ. L. REV. 226, 226-28 (1970).

The authors choose to use the phrase "seat belt rule" as distinguished from "seat belt defense." The term "defense" has the connotation of a total legal bar to the claims of an adversary party. As will be demonstrated, the seat belt rule only operates to reduce a claimant's recovery attributable to his nonuse of seat belts. *See* section III-E *infra*.

26. *See* notes 2-22 and accompanying text *supra*.

27. The Washington Supreme Court has recently considered the role of the "seat belt defense" in *Derheim v. N. Fiorito Co.*, 80 Wn. 2d 161, 492 P.2d 1030 (1972). In a 1968 traffic accident, when contributory negligence was still the law in Washington, the plaintiff sustained personal injuries, including an injured knee. The defendant had amended his answer raising the issue of contributory negligence due to the lack of seat belt usage, and offered expert testimony to the effect that the knee would not have been damaged had the plaintiff worn his seat belt. The court, speaking through Justice Hunter, noted:

[W]hile states with comparative negligence do not have the problem to the same extent, contributory negligence in many states (such as Washington) is a complete bar to any recovery by a plaintiff—an obvious unjust result to apply in seat belt cases.

Id. at 168, 492 P.2d at 1035. Justice Hunter recognized that the doctrine of avoidable consequences had been suggested to fit this "conceptual dilemma," but refused to expand the doctrine to encompass a standard of care before an accident. In considering the damage apportionment approach used in other states to reduce a plaintiff's damages for failure to take reasonable precautions before the accident, Justice Hunter stated that "the admission of evidence on the [mitigation of damages] . . . issue is tantamount to adopting the rule of comparative negligence." *Id.* at 171-72, 492 P.2d at 1037. Thus, in *Derheim*, the Washington court denied the existence of the seat belt rule under the doctrines of contributory negligence and avoidable consequences.

It is apparent, however, that the court in *Derheim* rejected the seat belt rule only as a *complete defense* under the standard of contributory negligence. In *Kjellman v. Richards*, 82 Wn. 2d 766, 770, 514 P.2d 134, 136 (1973), the court refused to reverse a jury instruction given by the superior court which had couched the seat belt rule in terms of a diminution of damages recoverable by the plaintiff if injuries were proven attributable to the nonuse of seat belts.

28. *See, e.g.*, *Glover v. Daniels*, 310 F. Supp. 750 (N.D. Miss. 1970); *Noth v. Scheurer*, 285 F. Supp. 81 (E.D. N.Y. 1968); *Moore v. Fischer*, 31 Colo. App. 425, 505 P.2d 383 (1972); *Cierpisz v. Singleton*, 247 Md. 2d 215, 230 A.2d 629 (1967); *Romanekwiz v. Black*, 16 Mich. App. 119, 167 N.W.2d 606 (1969); *Bertsch v. Spears*, 20 Ohio App. 2d 137, 252 N.E.2d 194 (1969); *Bentzler v. Braun*, 34 Wis. 2d 362, 149 N.W.2d 626 (1967).

29. *But cf. Sams v. Sams*, 247 S.C. 467, 148 S.E.2d 154 (1966).

doctrine of avoidable consequences have also been summarily rebuffed, as that doctrine is in theory addressed to the duty to mitigate one's damages *after the accident's occurrence*.³⁰

Both the contributory negligence and avoidable consequences doctrines are judicially created.³¹ Yet many courts, engaging in classic examples of "pigeonhole jurisprudence," have declined to fill the void left by the two concepts by inferring a duty to avoid the consequences of an accident *before* its occurrence without completely barring recovery for contributory negligence.³²

However, tacit recognition of the inequities involved in the rejection of the seat belt rule has led many jurisdictions to adopt a damage apportionment technique. Apportionment of damages is, in effect, the judicial merger of the doctrines of contributory negligence and avoidable consequences whereby evidence of the nonuse of seat belts by the plaintiff will not be considered as contributory negligence, but may be considered to diminish a damage recovery.³³ The growing number of states utilizing this approach have explicitly adopted a rule of comparative negligence by reducing the amount of damage recovery to the extent that the plaintiff's injuries have been aggravated by plaintiff's failure to wear a seat belt.

Judicial agonizing over the seat belt rule and its role under a standard of contributory negligence may be alleviated to some degree by use of a two step analysis. The majority of the courts which have re-

30. See, e.g., *Derheim v. N. Fiorito Co.*, 80 Wn. 2d 161, 492 P.2d 1030 (1972).

31. The late Dean Prosser suggested that the two doctrines are in reality the same. W. PROSSER, LAW OF TORTS 424 (4th ed. 1971).

32. See, e.g., *Libscomb v. Diamiani*, 226 A.2d 914 (Del. Super. 1967), *Brown v. Kendrick*, 192 So. 2d 49 (Fla. App. 1966); *Romankewiz v. Black*, 16 Mich. App. 119, 167 N.W.2d 606 (1969); *Miller v. Miller*, 273 N.C. 228, 160 S.E.2d 65 (1968); *Derheim v. N. Fiorito Co.*, 80 Wn. 2d 161, 492 P.2d 1030 (1972).

33. See quoted language from *Derheim*, note 27 *supra*. The number of American jurisdictions that allow diminution of damages because of a party's failure to fasten an available seat belt is growing. See *Mays v. Dealers Transit, Inc.*, 441 F.2d 1344 (7th Cir. 1971) (applying Indiana law); *Glover v. Daniels*, 310 F. Supp. 750 (N.D. Miss. 1970); *Noth v. Scheurer*, 285 F. Supp. 81 (E.D. N.Y. 1968); *Truman v. Vargas*, 275 Cal. App. 2d 976, 80 Cal. Rptr. 373 (1969); *Uresky v. Fedora*, 27 Conn. Supp. 498, 245 A.2d 393 (1968); *Josel v. Rossi*, 7 Ill. App. 3d 1091, 288 N.E.2d 677 (1972); *Cierpisz v. Singleton*, 247 Md. 2d 215, 230 A.2d 629 (1967); *Miller v. Haynes*, 454 S.W.2d 293 (Mo. Ct. App. 1970); *Sams v. Sams*, 247 S.C. 467, 148 S.E.2d 154 (1966); *Sonnier v. Ramsey*, 424 S.W. 2d 684 (Tex. Ct. Civ. App. 1968); *Bentzler v. Braun*, 34 Wis.2d 362, 149 N.W.2d 626 (1967). See also *Yuan v. Farsted*, [1968] 66 D.L.R. 2d 295 (1967). *But cf.* *MacDonnell v. Kaiser*, [1968] 68 D.L.R.2d 104 (1968). It is, however, difficult to discern with exactitude the number of jurisdictions which will allow diminution, as in many cases there has been no offer of proof as to the damages traceable to seat belt nonusage.

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jected a finding of contributory negligence per se have noted that the plaintiff was not the party that initiated the chain of causation resulting in injury.³⁴ Those courts suggest that by analyzing the actions of the initiating tortfeasor and the injured party together, judges do violence to traditional tort concepts.³⁵ Bifurcation of the analysis, however, into the respective roles of (1) the active negligence which began the chain of causation, and (2) the passive negligence of the injured party, makes it possible to separate an accident into two severable occurrences. Thus, without modifying the rule of contributory negligence, the separation of the respective acts or omissions of each party allows a court to assess the initiating, active tortfeasor for damages owing to the causation of the accident, and offset the recovery of the passively negligent injured party by the degree of damages proximately caused by his failure to take reasonable safety precautions.³⁶

2. Judicial imposition of the duty to wear seat belts

An obvious prerequisite to the reduction of damages due to nonuse of seat belts is the imposition of a duty to wear such equipment. The passage of seat belt installation legislation should indicate a legislative intent that such installed equipment actually be used.³⁷ The majority of courts, however, have not shared this perspective, and have expressed the view that a duty to wear must await legislative creation.³⁸ Some courts, however, have utilized the elusive common law

34. See cases cited note 32 *supra*.

35. *Id.*

36. See C. R. HEFT & C. J. HEFT, *COMPARATIVE NEGLIGENCE MANUAL* § 1.240 (1971). Washington generally recognizes the active/passive distinction. See, e.g., *Rufener v. Scott*, 46 Wn. 2d 240, 280 P.2d 253 (1955). See also section III-E *infra*, for examples of how this process will operate in particular fact situations.

37. If the English cases are any indication of judicial trends, the position that there is no legislative intent to create a duty to wear safety belts grows increasingly tenuous. The Highway Code (a nonstatutory motoring guide) declared that it was prudent to wear seat belts while traveling in an automobile. From this general indication of national policy, English courts have interpreted a duty to wear seat belts. See notes 41-46 and accompanying text *infra*. Thus, a plaintiff's damages may be reduced if he has disregarded this policy. See Kerse, *Some Recent Decisions on Wearing Seat Belts*, 117 *SOLICITORS' J.* 625 (1973).

It may be argued that the Highway Safety Act of 1973, 23 U.S.C.A. § 402(j) (Supp. 1974) has conclusively established a national policy encouraging seat belt utilization. Therefore, the legislative intent found wanting by some courts arguably has been established in the federal legislation. See note 22 *supra*.

38. See *Romankewiz v. Black*, 16 Mich. App. 119, 167 N.W.2d 606 (1969); *Miller v. Miller*, 273 N.C. 228, 160 S.E.2d 65 (1968); *Robinson v. Lewis*, 254 Ore.

“reasonably prudent person” standard to support a conclusion that the plaintiff is under a duty of care to make use of seat belts.³⁹ In *Bentzler v. Braun*, the Supreme Court of Wisconsin reasoned:⁴⁰

[A]s a matter of common knowledge, an occupant of an automobile either knows or should know of the additional safety factor produced by the use of seat belts. A person riding in a vehicle driven by another is under the duty of exercising such care as an ordinarily prudent person would exercise under similar circumstances to avoid injury to himself.

A similar duty has been created by the English courts.⁴¹ In a motor-cycle-car collision case, *O'Connell v. Jackson*,⁴² the defendant claimed that the damages levied against him at trial should have been diminished in proportion to the degree that the plaintiff's injuries were caused by his failure to wear a safety helmet. In holding for the defendant, the court stated that a reasonably prudent cyclist would wear a helmet, and, therefore, the plaintiff “should bear part of the responsibility for the severe consequences of the accident.”⁴³ In propounding a duty to take reasonable precautions to protect oneself, the *O'Connell* court relied heavily upon the case of *Jones v. Livox Quarries Ltd.*,⁴⁴ in which Lord Justice Denning succinctly summarized this facet of the reasonably prudent person standard:⁴⁵

Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm

52, 457 P.2d 483 (1969); *Derheim v. N. Fiorito Co.*, 80 Wn. 2d 161, 492 P.2d 1030 (1972).

39. See *Mortonsen v. Southern Pacific Co.*, 245 Cal. App. 2d 241, 53 Cal. Rptr. 851 (1966) (action for damages under Federal Employer's Liability Act); *Mount v. McClellan*, 91 Ill. App. 2d 1, 234 N.W.2d 329 (1968); *Bentzler v. Braun*, 34 Wis. 2d 362, 149 N.W.2d 626 (1967).

40. 34 Wis. 2d 362, 149 N.W.2d 626, 640 (1967).

41. The English decisions in this area should be highly persuasive in the development of an American standard not only for their lucid development of a purely common law approach, but also because seat belt installation legislation in that country has paralleled our own. Thus, the seat belt rule has been adopted without a legislative imposition of the duty to wear seat belts. See the evolution of this development in *Davies v. Swan Motor Co.*, [1949] 2 K.B. 291 (C.A.); *Jones v. Livox Quarries*, [1952] 2 Q.B. 608 (C.A.); *O'Connell v. Jackson* [1972] 1 Q.B. 270 (C.A. 1971); *Pasternack v. Poulton*, [1973] 1 W.L.R. 476 (Q.B.), noted in Kerse, *supra* note 37.

42. [1972] 1 Q.B. 270 (C.A. 1971), noted in 35 MOD. L. REV. 525 (1972) & 116 SOLICITORS' J. 440 (1972).

43. [1972] 1 Q.B. at 277 (C.A. 1971).

44. [1952] 2 Q.B. 608 (C.A.).

45. *Id.* at 615. See also *Davies v. Swan Motor Co.*, [1949] 2 K.B. 291 (C.A.).

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to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless.

The rationale of the *O'Connell* case has subsequently been extended to the use of seat belts.⁴⁶

The reasonably prudent person standard is unquestionably the proper approach to the seat belt rule. The standard is flexible and can evolve with the times.⁴⁷ In recent years, our mythical prudent person has been barraged by media advertisements, safety lectures and highway signs all designed to remind the motoring public of the desirability of "buckling up." There no longer exists a shield of ignorance which a party may raise to defeat the standard of care owed to himself. The reasonably prudent person has gained an education from which he cannot retreat.⁴⁸

B. Adoption of the Seat Belt Rule: Analysis

1. Contributory negligence jurisdictions

There remain, however, practical difficulties which may bar the application of this standard in many jurisdictions. The Wisconsin and

46. See *Pasternack v. Poulton*, [1973] 1 W.L.R. 476 (Q.B.); Kerse, *Some Recent Decisions on Wearing Seat Belts*, 117 SOLICITORS' J. 625 (1973).

47. See generally W. PROSSER, *LAW OF TORTS* 149-51 (4th ed. 1971). The effect of current standards of contemporary behavior upon the judicial concept of a reasonably prudent person is illustrated in the concurring opinion of Justice Neill in *Derheim v. N. Fiorito Co.*, 80 Wn. 2d 161, 492 P.2d 1030 (1972): "I agree with the affirmation on the basis that a failure by plaintiff to wear a seatbelt would not, in the present state of things, amount to a breach of his duty to exercise reasonable care in his own behalf." *Id.* at 172, 492 P.2d at 1037. (emphasis added). The accident in *Derheim* occurred in June 1968.

48. The fact that a claimant may not ignore the standard of the reasonably prudent person was aptly characterized by the court in *Purnell v. Shields*, unreported decision noted Kerse, *Some Recent Decisions on Wearing Seat Belts*, in 117 SOLICITORS' J. 625, 626 (1973) (emphasis added):

I do not think that a driver in the position of this man had to anticipate folly in every form in which it manifests itself. *But I do not think he was entitled to reject, as he must have rejected, all the teachings that have been given in recent years about the desirability of wearing seat belts.*

The dangers of the highway and the concomitant duty to care for oneself were recognized in *Owens v. Kuro*, 56 Wn. 2d 564, 573 n.5, 354 P.2d 696, 701 n.4 (1960): "The rule that a motorist has a right to assume that other users of the highway will not drive negligently . . . applies only in favor of those whose conduct measures up to the standard of due care." (Emphasis added).

English authorities experienced little difficulty in establishing a duty of care to oneself, since both jurisdictions have operated under a standard of comparative negligence for decades.⁴⁹ Jurisdictions which have not yet adopted the comparative negligence standard have only three choices: (1) allow the seat belt rule as contributory negligence and bar all recovery; (2) deny the seat belt rule and, thereby, require the defendant to compensate the plaintiff for self-aggravated injuries; or (3) adopt the damage apportionment technique to achieve, in essence, the same damage distribution as occurs in some comparative negligence jurisdictions.⁵⁰ The inequities in approaches (1) and (2) are self-evident. The first defeats the public policy favoring the *just* compensation of accident victims. The second unfairly burdens defendants with the costs of the plaintiff's own self-neglect and undermines the public interest in safety equipment utilization. The third choice, however, essentially involves only a judicial modification of the judicially created doctrine of contributory negligence in order to achieve an equitable result.

2. *Comparative negligence jurisdictions*

Jurisdictions employing the standard of comparative negligence need not engage in any flights of intellectual fantasy to use the seat belt rule as a mechanism to assure the proper apportionment of damage recoveries. By its very nature, the concept of comparative negligence contemplates the inclusion of all relevant factors in arriving at the appropriate amount of damages to be recovered by each of the claimants.⁵¹ It must be concluded, therefore, that the advent of the comparative negligence standard, when coupled with the refined version of the reasonably prudent person standard, will ineluctably

49. See WIS. STAT. ANN. § 331.045 (1958); Law Reform (Contributory Negligence) Act of 1945, c. 28.

50. See cases cited note 33 *supra*. The Washington court in *Derheim* dealt with this problem. See note 27 *supra*.

51. See C. R. Heft & C. J. Heft, note 36 *supra*. This more complex and equitable apportionment was recently summarized by Justice Finley in *Lyons v. Redding Construction Co.*, 83 Wn. 2d 86, 96, 515 P.2d 821, 826 (1973): "Adoption of the standard of comparative negligence is necessarily accompanied by a more flexible weighing of the relative fault attributable to each party." In *Lyons*, the court recognized that the more complex weighing of factors under a standard of comparative negligence obviates the need for the operation of the doctrine of assumption of risk and the maxim *volenti non fit injuria*.

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lead to the adoption of the seat belt rule as a significant element of the damage apportionment equation.⁵²

As the Washington comparative negligence statute is of the "pure" type, the seat belt rule, when adopted, may take an unusual but desirable twist. Unlike the Wisconsin version⁵³ of the comparative negligence concept which bars recovery in cases where the claimant is more than 50 percent at fault, the Washington "pure" comparative negligence statute permits damage recovery irrespective of the claimant's degree of fault.⁵⁴ Hence, each party in an automobile accident, whether plaintiff or defendant, is potentially subject to the seat belt rule.⁵⁵ The failure of either the plaintiff or the defendant to take the reasonably prudent precaution of "buckling up" may operate to reduce his respective damages.⁵⁶

52. Adoption of the seat belt rule could have a dramatic effect upon the level of usage in Washington by informing the motoring public that they can look only to themselves for compensation for self-aggravated injuries.

Moreover, despite public reluctance to use seat belts, a 1973 survey conducted by the Washington Traffic Safety Commission indicated that 58% of those responding favored a compulsory seat belt use law. Washington Traffic Safety Comm'n, *Seat Belt Survey 1*, 17-27, Sept. 1973 (unpublished report for Governor's Highway Safety Representatives & Coordinators, filed at WTSC offices, Olympia, Wash.). However, a 1972 survey by the Automobile Club of Washington indicated that although 62% of its members always used their belts, only 40% would favor a mandatory seat belt use law. *Seattle Times*, Nov. 23, 1972, § G, at 24, col. 1.

At least two foreign jurisdictions have enacted mandatory seat belt use laws. New Zealand passed its seat belt use law in 1971. Transport Amend. No. 2, § 7 (N.Z. Nov. 27, 1971). The more interesting experience has been in Australia, where all states have adopted mandatory seat belt use statutes. SEAT BELT LAWS, *supra* note 19, at 16. The experience in the State of Victoria, the first state to do so, Victoria Motor Car (Safety) Act of 1970 (No. 8074), supports the contention that many individuals voluntarily comply with the mandate, despite the presumed difficulty of enforcement. In a recent study in Victoria it was found that 76% of drivers and passengers wore seat belts when they were available. In addition, despite public resistance in Australia prior to the time the law became nationwide, 76% of drivers interviewed before enactment expressed their agreement with the new compulsory wearing laws. See Ontario Ministry of Transportation & Communications, *Australian Safety Researcher Here*, 16 ONTARIO TRAFFIC SAFETY 1, 2 (1973). See also SEAT BELT LAWS, *supra* note 19, at 16-21.

53. WIS. STAT. ANN. § 331.045 (1958).

54. WASH. REV. CODE §§ 4.22.010, .020, .900, .910 (Supp. 1973); see Note, *supra* note 1, at 705-6, 709.

55. See text accompanying notes 39-46 *supra* & 83-85 *infra*.

56. The seat belt rule may also spur the creation of a criterion which could be utilized by insurance carriers to offer lower rates on automobile personal injury coverage. If the insured party has suffered injuries due to the nonuse of safety belts, his damages, of course, will be reduced by an appropriate amount. The claimant, if covered by automobile personal injury insurance, may then make a claim against his insurance carrier. The insurance carrier would be liable for the balance of the injuries not compensated by the liability insurance of the adverse party.

An enterprising carrier might capitalize upon the seat belt rule by offering a reduction in premium. Personal injury coverage could be made contingent upon the

3. *Infringement on personal liberties by use of the seat belt rule*

To justify the imposition of a seat belt rule, society must be benefited. Conversely, the duty to wear a seat belt must not be designed merely to protect the individual from his folly,⁵⁷ because imposition of such a duty may unjustifiably or unconstitutionally impinge upon the individual's freedom of choice.⁵⁸

In this respect the theories supporting the constitutionality of the mandatory helmet laws for motorcycles are most instructive.⁵⁹ The traditional justification for legislation of this nature has been the public welfare theory.⁶⁰ The imposition of mandatory helmet and seat belt laws is said to protect society, as their nonuse may result in injuries whose costs far exceed the resources of the individual and therefore must be borne by the state. To protect the government fisc, the state must impose upon the individual a duty to protect himself.⁶¹

The inherent desirability of the seat belt as a device to assure that the driver maintains control of his vehicle is a more attractive justification for a legislative or judicial rule mandating seat belt

insured's use of available passenger restraint systems. Hence, personal injury coverage would be denied to the insured who was found not to be wearing a seat belt at the time of an accident. Another approach to personal injury coverage under the seat belt rule would encompass a scheduling of coverage wherein the insurer's liability for personal injury coverage would be reduced by a scheduled percentage when its insured did not utilize available vehicle restraint systems. By way of illustrative example, personal injury benefits might be reduced 50% for failure to wear a lap belt, and an additional 20% for neglecting to wear the shoulder belt. (More accurate percentages might be determined by statistics dealing with the injury-reducing characteristics of the lap and shoulder belts.) The incremental savings and claims attributable to such a clause could be actuarially translated into a lower premium for this type of coverage. Thus, a policyholder could realize a lower premium by agreeing to utilize a seat belt at all times.

CAVEAT: The policy must explicitly and unequivocally state the condition of seat belt use as a prerequisite to personal injury coverage. See *Dairyland Insurance Co. v. Ward*, 83 Wn. 2d 353, 517 P.2d 966 (1974).

57. This contention has its origin in the utilitarian philosophy of John Stewart Mill. Mill persuasively posits that man surrenders to the social compact only the powers necessary for his governance. Hence, those powers not essential to the functioning of the state reside in its people. See generally J. MILL, *UTILITARIANISM, LIBERTY AND REPRESENTATIVE GOVERNMENT* 131-49 (1949).

58. See Note, *Motorcycle Helmets and the Constitutionality of Self-Protective Legislation*, 30 OHIO L.J. 355, 361 (1969), where the author suggests that in order to be constitutional, legislation interfering with a motorcyclist's decision on whether to wear a helmet must be supported by some ascertainable public need.

59. *Id.*

60. W. Ames, *The Constitutionality of Mandatory Seat Belt Use Legislation* 11-12, Dec. 1972 (unpublished report prepared by the Virginia Highway Research Council).

61. *Id.*

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use. Racing drivers since Barney Oldfield have recognized the value of seat belts and racing harnesses to hold them behind the wheel in violent maneuvers.⁶² Indeed, the lack of seat belt usage may actually *cause* accidents; far more easily than the experienced racing driver, the average motor vehicle operator may lose control by being thrown from the wheel by a spin, violent evasive action or sudden braking. A similar loss of control may be precipitated by the sliding or unseating of a vehicle passenger flung by inertial or centrifugal forces against the operator. The innocent motorist requires and deserves protection from the spectre of an oncoming, careening automobile whose driver has been jostled from its controls.⁶³

The first step in providing such protection has produced laws requiring installation of seat belts. The next step requires the judicial or legislative adoption of the seat belt rule as both reasonable and necessary for public safety.⁶⁴ The advent of the rule will facilitate a more equitable apportionment of damages between the respective parties in direct proportion to their relative degree of fault. The rule will also assure that proof of nonuse of seat belts, coupled with proof of medical causation between the nonuse and the party's injuries, will result in a proportionate reduction of the amount of a party's recoverable damages.⁶⁵ Thus, in Washington the new comparative negligence standard coupled with the seat belt rule will improve the equities of personal injury law.

62. *Id.* at 1. See also *Choosing a Small Car: The Safety Question*, 39 CONSUMER REPORTS 294, 296 (1974).

63. The number of accidents precipitated by the lack of seat belt usage is difficult, if not impossible, to establish. See notes 13 & 14 and accompanying text *supra*; cf. *Quinuis v. Estrada*, 448 S.W.2d 552 (Tex. Ct. Civ. App. 1969). The legislature, or the courts, need not, however, conclusively document its concerns but may proceed upon certain "unprovable assumptions." *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 62 (1973). Such legislation satisfies the requirements of due process, and is, therefore, a valid exercise of the police power.

64. Five states have enacted laws requiring the use of seat belts by occupants of *certain types* of vehicles, generally applicable to the drivers of school buses. California provides for mandatory use by the driver or passenger in driver training vehicles. Massachusetts, Minnesota and New York mandate seat belt use by school bus drivers. Rhode Island requires the drivers of buses (including school buses), trolleys or authorized emergency vehicles, to use seat belts. SEAT BELT LAWS, *supra* note 19, at 15-16.

The only jurisdiction in the United States to adopt a general mandatory seat belt use law is the city of Brooklyn, Ohio. The first violation is punishable by an oral reprimand. Second and third violations within a year carry maximum fines of \$2.00 and \$5.00 respectively. *Id.* at 16 n.106.

65. See section III-E *infra*.

III. COMPARATIVE NEGLIGENCE AND THE DUTY TO WEAR SEAT BELTS

Having established that the use of seat belts will substantially reduce the number and severity of automobile accidents, and that the courts of Washington might reasonably hold that in the absence of specific legislation the duty to wear seat belts exists under the new comparative negligence statute, it seems appropriate to postulate the application of the seat belt rule within the context of civil proceedings.

It has been suggested that the preferred basis for apportionment of damages under a comparative negligence statute is the relative degree of fault, rather than causation.⁶⁶ The most commonly discussed means for arriving at this determination is by the use of a special verdict form or interrogatories for the jury,⁶⁷ although it should also be noted that in some comparative negligence jurisdictions the court determines the causation percentages and apportions the damages accordingly.⁶⁸

A. A Three Step Procedure

It should be recognized that the proposed seat belt rule is a "double-edged sword" equally invokable by plaintiff or defendant to reduce the recoverable damages by the other. In practical application, it is suggested that after each party to a personal injury action proves the amount of damages actually suffered, the seat belt rule be applied in a three step procedure:

66. Note, *supra* note 1, at 712-13.

67. *Id.* at 713-14. Prosser has suggested a simple, yet complete, series of queries and responses for the jury to utilize under such a special verdict procedure. See Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465, 497-98 (1953), cited in Note, *supra* note 1, at 713-14 n.45. See also the Wisconsin example of special verdict form submitted by Kenneth P. Grubb of the Milwaukee Bar in Grubb & Roper, *Comparative Negligence*, 32 NEB. L. REV. 234, 242-43 (1952), set forth in Henry, *Why Not Comparative Negligence in Washington?*, 5 GONZAGA L. REV. 1, 13 (1969). Mr. Grubb indicates that the jury does not in such cases assess the damage to the parties, but rather the court after receiving the verdict, independently determines the final monetary judgment in accordance with the figures supplied by the jury. Grubb & Roper, *supra*, at 244. It is suggested that this is the proper procedure for Washington to follow.

It is also observed that the comparative rule of loss has for hundreds of years been recognized as the doctrine of division of loss in Admiralty. Thus, it has been suggested that the type of interrogatories submitted to the jury in maritime cases might be appropriate under our comparative negligence law. Henry, *supra*, at 8-11.

68. See, e.g., *Pasternack v. Poulton*, [1973] 1 W.L.R. 476 (Q.B.); *O'Connell v. Jackson*, [1972] 1 Q.B. 270 (C.A. 1971).

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(1) (a) The jury is initially instructed to answer the queries of a special verdict, designed to determine, on a percentage basis, the relative contribution of each party to the causation of the accident. This determination may be termed the “accident causation percentage.”

(b) The jury is then instructed to answer the queries of a special verdict designed to determine the degree of personal fault that a party should bear for the extent of, or the exacerbation of, the injuries he or she suffered due to personal negligence. This determination may be termed the “reduction percentage.”

(2) In order to render a final monetary apportionment, the trial judge will initially calculate the “gross recoverable damages” of each party by multiplying “actual proved damages” by the jury-found “accident causation percentage” and subtracting the result from “actual proved damages.” The court will then decrease the “gross recoverable damages” of each party by multiplying that figure by the jury-found “reduction percentage” for nonuse of seat belts and subtracting the result from “gross recoverable damages.” This final result may be termed the “net recoverable damages.”

(3) However, by a flexible application of equitable duties between the parties, the court may, in its discretion, adjust the “reduction percentage” for nonuse of seat belts and thereby alter a party’s “net recoverable damages.”⁶⁹

69. This three step procedure may be demonstrated by the following simple example:

Assume: Party A: “Actual proved damages” = \$10,000.

Party B: “Actual proved damages” = \$10,000.

Step 1: Jury Determinations:

(a) Party A: “Accident causation percentage” = 40%.

Party B: “Accident causation percentage” = 60%.

(b) Party A: “Reduction percentage” for
nonuse of seat belts = 30%.

Party B: “Reduction percentage” for
nonuse of seat belts = 10%.

Step 2: Calculate:

(a) Party A: “Gross recoverable damages” = \$6,000.
[\$10,000 - (\$10,000 × 40%)].

Party B: “Gross recoverable damages” = \$4,000.
[\$10,000 - (\$10,000 × 60%)].

(b) Party A: “Net recoverable damages” = \$4,200.
[\$6,000 - (\$6,000 × 30%)].

Party B: “Net recoverable damages” = \$3,600.
[\$4,000 - (\$4,000 × 10%)].

Step 3: Adjustment of reduction percentage:

In its discretion, the court may increase or decrease a party’s “reduction percentage.” Assume the court reduces Party A’s “reduction percentage” (jury-found at 30%) to 20%. Thus, Step 2 (b) must be recalculated as follows:

B. Proof of the Reduction Percentage for Nonuse of Seat Belts

Assuming that the duty to wear seat belts under Washington's comparative negligence statute is established,⁷⁰ the court should allow introduction of evidence that serves to show the following:

(1) An available seat belt was not worn by, or not worn properly by, the injured party.

(2) A prudent Washington driver would have worn his or her seat-belt under the circumstances, and that the failure to take such a safety precaution amounted to passive negligence under the comparative negligence statute.

(3) There is a causal connection or relationship between this failure and the injuries sustained.

In educating the jury by way of instruction, it will be crucial for counsel to make clear the distinction between the jury's determination of the "accident causation percentage" and its determination of the "reduction percentage" (for nonuse of seat belts). This distinction has been successfully made in other jurisdictions by use of carefully drawn jury instructions⁷¹ and by submission of a separate verdict form or separate set of jury interrogatories which carefully limits the jury's inquiry to the seat belt issue.⁷²

Party A—"Net recoverable damages" = \$4,800.
 [\$6,000 - (\$6,000 × 20%)].

For applications of this procedure in specific factual situations, see section III-E *infra*.

70. See notes 28-38 and accompanying text *supra*.

71. See the landmark case of *Bentzler v. Braun*, 34 Wis. 2d 362, 149 N.W.2d 626, 638 (1967); 1 WISCONSIN JURY INSTRUCTIONS: CIVIL, NEGLIGENCE, *Duties of Persons in Specific Situations* 1277 (1966). See also *Mays v. Dealers Transit, Inc.*, 441 F.2d 1344, 1350 (7th Cir. 1971); *Glover v. Daniels*, 310 F. Supp. 750, 752 n.3 (N.D. Miss. 1970).

72. Probably the best examples of special verdict forms are found in Wisconsin cases since that jurisdiction has had the most experience in this area. The Wisconsin form, excerpted below, could be easily reworded to apply to defendant and plaintiff alike under Washington's "pure" comparative negligence law.

Special Verdict

Question 1: On (date) at the time of the collision in question, was the plaintiff Guest negligent in failing to guard herself against injury by not wearing the seat belt which was provided for her use?

Answer: _____

Question 2: If you answered question 1, "yes," then answer this question:

Was such negligence on the part of plaintiff Guest in failing to wear her seat belt a cause of her injury?

Answer: _____

Question 3: Was the conceded negligence on the part of Defendant A and Defendant B in causing the collision a cause of the plaintiff Guest's injury?

Answer: _____

C. Causal Connection Between Injury and Nonuse of Seat Belts

Establishing that the nonuse of seat belts in fact contributed to or increased the injuries suffered presents a most difficult and critical task. Recent decisions have held that there is no presumption that nonuse of seat belts caused or aggravated a party's injuries.⁷³ Consequently, competent expert or other testimony must be submitted⁷⁴ which will establish that the injuries of a party would have been reduced or minimized if seat belts had been used, or were caused or aggravated by the failure to use a seat belt.⁷⁵ In the absence of any proof of causation, the trial court should properly refuse the proffered instructions or special verdict on the question of negligent nonuse of seat belts.⁷⁶ Moreover, a quantum of causation proof and of adequate

Question 4: If you find by your answers to questions 1 and 2, that plaintiff Guest was negligent in failing to wear her seat belt and that such negligence was a cause of her injury; and if you have found, by your answer to question 3, that the conceded negligence on the part of the defendants also caused her injury, then answer this question:

Taking all of the negligence that may have caused the injury to plaintiff Guest as 100%, what percentage of this negligence is attributable to:

- (a) Plaintiff Guest? Answer: _____
- (b) The Defendants A and B? Answer: _____

Total: 100%

C. R. HEFT & C. J. HEFT, COMPARATIVE NEGLIGENCE MANUAL, App. III, Form 21, at 54-55 (1971). See also *Sonnier v. Ramsey*, 424 S.W.2d 684, 689 (Tex. Civ. App. 1968).

It is observed that special verdicts appear to be the favored method for determining the apportionment of damages under Washington's comparative negligence law. See Note, *supra* note 1, at 713-15; Henry, *supra* note 67, at 13. Jury apportionment has also appeared to work successfully in other jurisdictions utilizing comparative negligence formulations. See Henry, *supra* note 67, at 15, 17; Grubb & Roper, *supra* note 67 at 242-43; Heft & Heft, *Comparative Negligence: Wisconsin's Answer*, 55 A.B.A.J. 127 (1969); Oliver, *Let Us All be Frank about Comparative Negligence*, 28 L.A.B. BULL. 119, 142-43 (1953); Note, *Negligence—Mississippi's Comparative Negligence Statute—Wisconsin Statute Compared*, 20 MISS. L.J. 99, 101 (1948); Note, *Comparative Negligence in Pennsylvania?* 17 TEMPLE L.Q. 276, 284 (1943).

73. See *Toperoff v. Mor*, (unreported decision of Judge Dean, Q.C., at Newcastle upon Tyne, Nov. 1972), commented on in Kerse, *Some Recent Decisions on Wearing Seat Belts*, 117 SOLICITORS' J. 625 (1973).

74. This necessity will perforce develop a pool of medical experts for utilization by the trial bar. This need is clearly not insuperable, as evidenced by numerous other litigation-spawned groups of experts, and more notably by the present existence of such persons in the greater Puget Sound medical community. See Address by Dr. Peter Fisher, Ass't Clinical Professor of Medicine, Univ. of Wash., to Seattle Kiwanis Club, in Seattle, Mar. 7, 1972, reported in Dieffenbach, *Doctor calls air bags in automobiles safety hoax*, Seattle Times, Mar. 9, 1972, at § D, p.16, col. 1.

75. See *Bentzler v. Braun*, 34 Wis. 2d 362, 149 N.W.2d 626, 641 (1967).

76. *Id.* A fortiori, the reverse of the above causal relationship should justify an increase in the gross recoverable damages by a party; i.e., if one establishes that the use of available seat belts substantially caused or contributed to the injuries of a party, recovery should be allowed as part of one's general or specific damages.

expert opinion are requisite to establish the exact reduction percentage for nonuse of seat belts. In the cases surveyed, this reduction percentage has been calculated to be from 5 to 33 percent of a party's recoverable damages.⁷⁷ Clearly the calculation should not be left to jury speculation alone.

D. *Alteration of Reduction Percentage for Nonuse of Seat Belts*

As mentioned above, the third proposed step in applying the seat belt rule is the trial court's determination of each party's recoverable damages.⁷⁸ The simplest application of this procedure will obtain in the situation involving two drivers, neither of whom was wearing seat belts at the time of collision.⁷⁹ Equitable fault apportionment becomes more difficult, however, when a guest-passenger sues a host-driver⁸⁰ since there may be a cognizable, equitable duty to promote seat belt usage, owed by the driver to his passenger.⁸¹ Upon finding that a host-driver failed in some respect to fulfill this duty a trial judge could mitigate the reduction percentage for passenger nonuse of seat belts found by the jury.

In the recent case of *Pasternack v. Poulton*,⁸² the High Court of London applied this novel "mitigation" approach in a host-guest situation. The plaintiff, a front seat passenger in defendant's car, suffered facial injuries in a collision caused solely by the defendant's negligence. Plaintiff was not wearing a seat belt and did not know one was

77. See, e.g., *Pasternack v. Poulton*, [1973] 1 W.L.R. 476 (Q.B.) (5% reduction); *Sonnier v. Ramsey*, 424 S.W.2d 684 (Tex. Civ. App. 1968) (5% reduction); *O'Connell v. Jackson*, [1972] 1 Q.B. 270 (C.A. 1971) (15% reduction); *Purnell v. Shields* (unreported decision) (20% reduction), *commented on in Kerse, supra* note 73, at 626; *Toperoff v. Mor* (unreported decision of Judge Dean, Q.C., at Newcastle upon Tyne, Nov. 1972) (25% reduction), *commented on in Kerse, supra* note 73; *McGee v. Francis Shaw & Co.* (unreported H.C., Manchester, decision) (33.3% reduction), *commented on in Kerse, supra* note 73, at 626.

78. See sections III-B *supra* & III-E *infra*.

79. See Example 1, section III-E *infra*.

80. It is noted that the Washington State Legislature repealed the "host-guest" statute, WASH. REV. CODE §§ 46.08.080-.086, during the 1974 session. Ch. 3, [1974] Wash. Laws, 1st Ex. Sess. (effective July 24, 1974).

81. A British commentator has concluded that recent cases in England indicate that drivers of motor vehicles owe a number of affirmative duties toward their guest passengers: the duty to drive safely; the duty to take steps to see that available belts are worn; the duty to encourage by his own example; the duty to point out the seat belts' existence in the car; and, where necessary, the duty to give assistance or instruction for their use. See *Kerse, supra* note 73, at 627; note 48 *supra*.

82. [1973] 1 W.L.R. 476 (Q.B.).

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available, although she was familiar with seat belts generally and had worn them on other occasions. The defendant driver had not worn a belt himself and failed to either point out the existence of belts or encourage his passenger to use her own. The Court held that the plaintiff passenger was guilty of contributory negligence for failure to wear her seat belt,⁸³ and that the defendant driver was negligent toward his passenger for failure to encourage seat belt use.⁸⁴ In apportioning the damages between the parties, the Court further held that the proportion of blame to be borne by the plaintiff for her injuries should be a mere 5 percent. In contrast, other British tribunals have held that a party's damages should be reduced from 15 to 30 percent for failure to use seat belts.⁸⁵

It should also be apparent that a passenger may owe a duty to the driver to maintain a cautious lookout, to sound a warning of imminent or hidden dangers⁸⁶ or to instruct the driver in the proper operation of the vehicle.⁸⁷ Although Washington trial courts may hesitate to follow the British jurists in weighing these equitable factors directly against the jury-determined reduction percentage for nonuse of seat

83. *Id.* at 482.

84. *Id.* at 482-83.

85. See note 77 *supra*. In *Toperoff v. Mor*, (unreported decision of Judge Dean, Q.C., at Newcastle upon Tyne, Nov. 1972), commented on in Kerse, *supra* note 73, the plaintiff passenger had been asked to wear his seat belt and had done so at the commencement of the journey. After a brief stop, however, the plaintiff neglected to rebuckle his belt; the defendant driver had used his belt at all times and was not seriously injured. *Held*: The plaintiff's failure to use his belt, in view of the defendant's example and encouragement, must be considered more than a mere act of inadvertence for which he could be excused; his recoverable damages were reduced by 25%.

In *McGee v. Francis Shaw & Co.*, (unreported H.C., Manchester, decision), commented on in Kerse, *supra* note 73, at 626, the plaintiff passenger was not wearing a seat belt at the time of the accident, although the subject of wearing a belt had been mentioned to him and he had obviously elected not to wear one. The defendant was wearing his belt and was not injured. Upon establishing that a causal connection existed between the plaintiff's injuries and his nonuse of the belt, *Held*: Plaintiff's recoverable damages were to be reduced by 33%. See note 77 and accompanying text *supra*.

86. See note 77 and accompanying text *supra*. These duties were sought to be imposed in *Mays v. Dealers Transit, Inc.*, 441 F.2d 1344 (7th Cir. 1971), where plaintiff's decedent, a passenger, was alleged to have failed to warn his partner-driver of impending danger from defendants' vehicles.

87. This purported duty might well arise in a situation involving an owner-host who is the passenger in his vehicle operated by a friend who seeks to "try out" the car. The more likely situation would involve the professional or nonprofessional driving instructor who fails to set a proper example or neglects to teach his pupil basic safety measures. See, e.g., *Nettleship v. Weston*, [1971] 2 Q.B. 691 (C.A.), where the learner-driver and the experienced, but not professional, passenger-instructor were held to be jointly liable for the injuries each suffered (damages were divided equally). *Id.* at 703.

belts, under Washington's comparative negligence law it would be reasonable and proper for them to do so. However, a reluctant trial judge might instead choose to employ the special verdict form in the host-guest situation, as is done in Wisconsin.⁸⁸

*E. Application of Seat Belt Rule to Specific Factual Situations*⁸⁹

The operation of the proposed seat belt rule is made clearer by the following factual examples.⁹⁰ *Example 1.* Party A (plaintiff or defendant) and Party B (plaintiff or defendant) collide; both are driving and neither is wearing a seat belt. Actual proved damages of A and B are \$10,000 each. The jury finds Party A to be 30 percent actively negligent and Party B to be 70 percent actively negligent in causing the accident. Party A's gross recoverable damages are therefore \$7,000; B's are \$3,000.

The jury also finds that Party A, through nonuse of a seat belt, was 25 percent at fault, or passively negligent, for his own injuries; Party B is found to be only 20 percent at fault for his own injuries due to his nonuse of a seat belt. Party A's net recoverable damages are then computed by the trial judge by multiplying the reduction percentage for nonuse of a seat belt by A's gross recoverable damages and subtracting the result from the gross amount, to arrive at A's net recovery of \$5,250 ($\$7,000 \times .25 = \$1,750$; $\$7,000 - \$1,750 = \$5,250$). Party B's net recovery, computed in the same manner, amounts to \$2,400.

Example 2. Assume the same situation as in Example 1, except that

88. The Washington statute itself gives little or no guidance as to the role of the trial judge in making such determinations, nor does the language authorize the broad use of the Wisconsin special verdict procedure in doing so. However, it has been persuasively argued that use of special verdicts is easily accomplished under Washington court rules, and is probably the better procedure to be utilized because more of the specific factual determinations can be made by the jury, thus "controlling the jury" and restraining unreasonable exercises of discretion by guiding the trial bench. See Note, *supra* note 1, at 714.

Alternatively, the trial judge may merely instruct the jury on all of the additional factors mentioned above, preparatory to its determination of the reduction percentage for seat belt nonuse. See note 72 *supra*.

89. Reference should also be made to the factual situations set forth in Note, *supra* note 1, at 711-12, which exemplify the specific operation of the pure comparative negligence law in determining the gross recoverable amount of damages for each party. See note 69 and accompanying text *supra*.

90. See the example pertaining to personal injury coverage under automobile contracts of insurance, note 56 and accompanying text *supra*.

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the trial judge admits the following evidence: Party A was doing a favor for Party B by helping him drive B's second car to a friend's home, and Party A was not familiar with Party B's foreign car, nor did B take time to explain its safe operation or how to use the complicated seat belt apparatus. Party A, however, was familiar with seat belts generally and had used them consistently in his own car.

After receiving the jury verdict based on the above facts, the trial judge in his discretion decides to lower the reduction percentage to only 15 percent rather than the 25 percent found by the jury against Party A for his passive negligence. Thus, Party A's net recoverable damages are \$5,950.⁹¹

Example 3. Party A is a passenger in Party B's vehicle which collides with a tree. Party A sustains actual proved damages of \$10,000 and Party B sustains only minor injuries. Party A wore no seat belt, despite Party B's insistence that he do so; Party B wore a seat belt.

The jury finds Party B solely negligent for the accident, but also finds that 50 percent of Party A's injuries were due to his passive negligence in not using a seat belt. The judge reduces Party A's recovery by the reduction percentage of 50 percent, netting A \$5,000.

Example 4. Assume the same situation as in Example 3, with these additional facts: Party B does not wear a seat belt and sustains \$10,000 in damages; Party B did not indicate to Party A that seat belts were available, nor did B urge A to wear them.

As in Example 3, the jury finds Party B solely negligent for the accident, but also finds that 50 percent of Party A's injuries were due to A's failure to wear a seat belt. The judge, however, diminishes the reduction percentage for nonuse of seat belts to 10 percent because of Party B's passively negligent omissions. Party A's gross recoverable damages are thereby reduced by only 10 percent and A recovers \$9,000 from Party B; B can recover only from his insurance company, should B's policy permit him to do so.

Example 5. Party A is a passenger in Party B's vehicle, which collides with Party C's vehicle. Party A wears no seat belt, although requested to do so by Party B; B wore a seat belt at all times; and Party C wore no seat belt. Party A also saw Party C's vehicle and recog-

⁹¹. The computations are as follows: $\$7,000 \times .15 = \$1,050$; $\$7,000 - \$1,050 = \$5,950$. The court may in its discretion decrease the jury's reduction percentage for nonuse of seat belts. See note 69 and accompanying text *supra*.

nized the imminent danger from C's actions, but said nothing to his driver, Party B.

Party A sustains \$15,000 in actual proved damages; Party B sustains only minor injuries; and Party C sustains \$10,000 in actual proved damages. The jury finds that Party A was 20 percent passively negligent for failure to warn Party B of impending danger. Both Party B and Party C are charged with 40 percent active negligence for the accident. The gross recoverable damages for the parties under pure comparative negligence would be: Party A—\$12,000; Party B—\$0; Party C—\$6,000.

The jury also finds that Party A's injuries would have been reduced by 60 percent had Party A worn a seat belt; and Party C's injuries would only have been reduced by 20 percent had Party C worn a seat belt. Thus the reduction percentage for the passive negligence attributable to nonuse of seat belts is 60 percent for A and 20 percent for C.

Applying these reductions, the trial court awards net recoverable damages of \$4,800 to Party A and \$4,800 to Party C.⁹² Since there is no right to contribution between joint tortfeasors,⁹³ and since a party guilty of active negligence cannot collect from a party guilty of passive negligence,⁹⁴ Party A may proceed against Parties B and C jointly and severally to recover \$4,800. Party C, however, must seek a \$4,800 recovery from Party B alone.⁹⁵

IV. CONCLUSION

The plethora of statistical information and authoritative studies presently available inexorably substantiates the effectiveness of seat belts in reducing the number of injuries and deaths, and their attendant rising social and economic costs, caused by motor vehicle accidents. While our legal system has dealt laboriously with the seat belt

92. The computations are as follows: Party A—\$12,000 damages \times .60 = \$7,200; \$12,000-\$7,200 = \$4,800 net recoverable damages. Party C—\$6,000 damages \times .20 = \$1,200; \$6,000-\$1,200 = \$4,800 net recoverable damages.

93. This is the law in a majority of jurisdictions. W. PROSSER, *LAW OF TORTS* 305-10 (4th ed. 1971).

94. See *Reefer Queen Co. v. Marine Construction & Design Co.*, 73 Wn. 2d 783, 440 P.2d 453 (1968).

95. This result has been criticized as unduly burdensome under comparative negligence theory. See Note, *supra* note 1, at 727; cf. *Reefer Queen Co. v. Marine Construction & Design Co.*, 73 Wn. 2d 783, 440 P.2d 453 (1968); *Rufener v. Scott*, 46 Wn. 2d 240, 280 P.2d 253 (1955).

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under antiquated ideas of contributory fault, the adoption of comparative negligence laws has led to a new era of conceptualization. Under comparative negligence laws, recovery of that portion of one's injuries which results from failing to take the reasonable, prudent precaution of fastening one's seat belt can no longer be justified.

While some initial procedural difficulty and confusion is to be anticipated, this ephemeral throe will subside with the establishment of the seat belt rule. Application of the rule will require each individual to bear the responsibility for injuries which result from one's own negligence and will precipitate the most equitable apportionment of damages achievable under modern systems of civil or comparative law.