Florida Law Review

Volume 19 | Issue 4 Article 3

March 1967

The National Traffic and Motor Vehicle Safety Act: Must the Reasonable Man be Concerned?

Michael W. Crews

James W. Crabtree

LEGISLATION

FEDERAL LEGISLATION:

THE NATIONAL TRAFFIC AND MOTOR VEHICLE SAFETY ACT: MUST THE REASONABLE MAN BE CONCERNED?

Nearly 50,000 deaths and over four million injuries resulted from motor vehicle traffic accidents in 1965.[1] Over 1.5 million persons have died in traffic accidents since the first fatal accident in 1899.[2] Innervated by these tragic statistics and the ominous prospect of an even greater death and injury rate in the future, Congress enacted the National Traffic and Motor Vehicle Safety Act of 1966.[3] The declared purpose of the Act is "to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents."[4]

This note seeks: (1) to explain briefly the major provisions of the Traffic Safety Act; (2) to suggest how federal safety standards should affect common-law tort liability of the motorist; and (3) to suggest that comparative negligence, as opposed to contributory negligence, could more adequately deal with the problems of motor vehicle accidents and the federal safety standards.

PROVISIONS OF THE ACT

Congress recognized that for too many years the public's concern over safe driving habits and capacity of the driver and the quality of highways and streets, though proper, had been permitted to overshadow the role of the vehicle itself in reducing traffic accidents.[5] The Traffic Safety Act focuses on this third cause of accidents and aims at reducing deaths and injury resulting from the "second collision"—the impact of the occupant against parts of the vehicle's interior.[6]

---

1. *Hearings Before the Senate Committee on Commerce*, 89th Cong., 2d Sess., ser. 49, at 493 (1966) (statement of James R. Hoffa, General President, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers); *Hearings Before the House Committee on Interstate and Foreign Commerce*, 89th Cong., 2d Sess., ser. 37, pt. 1, at 501 (1966) (statement of Dr. Arnold Constad, Secretary, Physicians for Automotive Safety).

2. This figure represents approximately *three times* the number of deaths inflicted by all the nation's wartime enemies since 1775. 112 CONG. REC. 13592 (daily ed. June 24, 1966) (remarks of Senator Cotton); 112 CONG. REC. 18776 (daily ed. Aug. 17, 1966) (remarks of Rep. Bennett).

3. 80 Stat. 718, 15 U.S.C. §§1381-1425 (Supp. 1966) (signed by the President Sept. 9, 1966).

4. 80 Stat. 718, 15 U.S.C. §1381 (Supp. 1966). See generally COMMERCE CLEARING HOUSE, MOTOR VEHICLE AND HIGHWAY SAFETY ACTS OF 1966 (1966).

5. S. REP. No. 1301, 89th Cong., 2d Sess. 3 (1966).

6. 112 CONG. REC. 13592 (daily ed. June 24, 1966) (remarks of Senator

The legislative history of the Traffic Safety Act reveals a frank admission that the safety standards will not significantly reduce traffic accidents themselves.[7] Congress drew a critical distinction between cause of the accident (usually driver error and/or unsafe driving conditions) and cause of the resulting death or injury.[8] The Traffic Safety Act is directed primarily at the latter cause. The Act requires the manufacture of certain safety features on motor vehicles that might mean the difference between a bruised forehead and a fractured skull to the accident victim. In essence, the Traffic Safety Act will compel the production of motor vehicles that are not unduly accident prone. Of even greater importance, it will require that vehicles be "crashworthy," enabling their occupants to survive with minimal injuries.[9]

The Secretary of Commerce is authorized by the Act to establish "reasonable, practicable, and appropriate" motor vehicle safety standards.[10] A "motor vehicle" for purposes of the Traffic Safety Act is: "[A]ny vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways. . . ."[11]

Cotton); S. REP. No. 1301, 89th Cong., 2d Sess. 3 (1966). See generally NADER, UNSAFE AT ANY SPEED 81-146 (1965).

7. 112 CONG. REC. 18776 (daily ed. Aug. 17, 1966) (remarks of Rep. Cunningham); 112 CONG. REC. 20603 (daily ed. Aug. 31, 1966) (remarks of Senator Cotton).

8. S. REP. No. 1301, 89th Cong., 2d Sess. 3 (1966); 112 CONG. REC. 13592 (daily ed. June 24, 1966) (remarks of Senator Cotton: "The best figures I have found, published by the Travelers Insurance Co., of Hartford, Conn., show that 87 percent of accidents which caused highway deaths and injuries were the direct result of driver violations of the rules of the road, excessive speed, driving on the wrong side of the road, failing to yield the right-of-way, reckless driving, and the like. The safety standards . . . will do nothing to reduce accidents caused by such factors as these.").

9. S. REP. No. 1301, 89th Cong., 2d Sess. 5 (1966).

10. 80 Stat. 719, 15 U.S.C. §1392(a), (f) (3) (Supp. 1966). The initial motor vehicle safety standards issued pursuant to 80 Stat. 719, 15 U.S.C. §1392(h) (Supp. 1966) are: §101 accessible location and ready identification of control devices; §102 standardized transmission shift lever sequence, starter interlock, and automatic transmission braking effect; §103 windshield defrosting and defogging systems; §104 minimum requirements for windshield wiping and washing systems; §105 minimum requirements for hydraulic service brakes and emergency brakes; §106 minimum requirements for hydraulic brake hoses; §107 glare reduction paint surfaces; §108 minimum requirements for lights and reflective devices; §111 inside and outside rearview mirrors; §201 padded instrument panels, sun visors and seat backs, recessed control devices, folding armrests; §§203-04 minimum requirements for energy-absorbing steering control systems; §205 anti-shatter glazing materials for windshields and windows; §206 minimum load requirements for door latches and hinges; §207 minimum requirements for seat anchorages; §§208-10 seat belts; §211 preclusion of winged projections from wheel nuts, discs, and hub caps; §301 minimum requirements for fuel tanks, filler pipes, and connections. Initial Federal Motor Vehicle Safety Standards, 32 Fed. Reg. 2407 (1967).

11. 80 Stat. 718, 15 U.S.C. §1391(3) (Supp. 1966).

The Act thus applies to passenger cars, buses, trucks, and motorcycles. The effective establishment of a federal safety standard preempts the field, for the Act prevents a state from establishing or continuing in effect any safety standard, applicable to the same safety feature, "which is not identical to the Federal standard."[12]

After a standard is established and in effect, any motor vehicle or item of motor vehicle equipment that is manufactured for sale, sold, offered for sale, introduced or delivered in interstate commerce, or imported into the United States must conform to all applicable standards.[13] Such conformity, however, is not required of any motor vehicle after its first purchase "in good faith for purposes other than resale."[14] In other words, the federal safety standards have no direct effect on used motor vehicles.[15]

Manufacturers, distributors, or dealers who violate any of the provisions of the Traffic Safety Act are subject to a civil penalty of up to 1,000 dollars for each violation, the maximum penalty for any related series of violations being 400,000 dollars.[16] Additionally, an injunction may be issued to restrain further commerce of a nonconforming motor vehicle upon petition by a United States attorney,[17] and criminal contempt proceedings are available to enforce this provision.[18] Every manufacturer or distributor must furnish certification at the time of delivery that a motor vehicle conforms to all applicable safety standards.[19] Reasonable ignorance, however, that a motor vehicle does not so conform is a defense in any action.[20] The Act further provides that compliance with any federal safety standard will not exempt the motor vehicle industry from common-law liability.[21]

Effect of the Act on the Motor Vehicle Industry

The Traffic Safety Act directly affects only manufacturers, distributors, and dealers of motor vehicles and motor vehicle equipment. It seeks to supplement their frequently uncertain and variable common-law duties[22] with unequivocal and nationally uniform statutory duties.

12. 80 Stat. 719, 15 U.S.C. §1392 (d) (Supp. 1966).
13. 80 Stat. 722, 15 U.S.C. §1397 (a) (1) (Supp. 1966).
14. 80 Stat. 722, 15 U.S.C. §1397 (b) (1) (Supp. 1966).
15. *But see* 80 Stat. 722, 15 U.S.C. §1397 (b) (1) (cls. 2-6) (Supp. 1966), relating to a study of state used car safety standards and provision for future federal safety standards for used cars.
16. 80 Stat. 723, 15 U.S.C. §1398 (a) (Supp. 1966).
17. 80 Stat. 723, 15 U.S.C. §1399 (a) (Supp. 1966).
18. 80 Stat. 723, 15 U.S.C. §1399 (b) (Supp. 1966).
19. 80 Stat. 726, 15 U.S.C. §1403 (Supp. 1966).
20. 80 Stat. 722, 15 U.S.C. §1397 (b) (2) (Supp. 1966).
21. 80 Stat. 722, 15 U.S.C. §1397 (c) (Supp. 1966).
22. See 1-2 Frumer & Friedman, Products Liability §§1-20.05 (1964); 3

It is true that recent years have witnessed the steady decline of doctrinal obstacles to manufacturers' liability for injury caused by defective products.[23] But the Traffic Safety Act attempts to overcome a different type of obstacle. Courts have generally ignored the fact that in traffic accidents the "second collision" with the interior of the vehicle is the major cause of the injury itself.[24] This suggests that vehicle design might well enter into a determination of legal responsibility for traffic accident injuries. Cases holding the manufacturer liable for unsafe vehicle design, however, as opposed to mere defective parts, are few.[25] The probable reason for this is the public's preoccupation with the idea that responsibility for both accident *and* injury should fall on the motorist.[26] By the Traffic Safety Act Congress compels a departure from this idea and places definite and significant responsibility for vehicle accidents *and* injuries upon the manufacturer. The common-law doctrines will probably continue to operate as the bases for damage recoveries from manufacturers by plaintiffs injured by substandard motor vehicles.[27] But the punitive provisions of the Act will compel the motor vehicle industry to improve the fundamental safety design of motor vehicles even before injury occurs and litigation results.

The Act should succeed in making available to motorists a more "crashworthy" vehicle. The probable impact of the Act is relatively clear as applied to members of the motor vehicle industry.[28] Definite

---

HURSH, AMERICAN LAW OF PRODUCTS LIABILITY §§17:1-65 (1961); Philo, *Automobile Products Liability Litigation*, 4 DUQUESNE L. REV. 181 (1965).

23. *E.g.*, Greenman v. Yuba Power Prods., Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963) (strict liability); Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960) (warranty); MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916) (negligence). See generally GILLAM, PRODUCTS LIABILITY IN THE AUTOMOBILE INDUSTRY (1960).

24. See Nader, *Automobile Design: Evidence Catching up With the Law*, 42 DENVER L. CENTER J. 32 (1965).

25. *E.g.*, Carpini v. Pittsburgh & Weirton Bus Co., 216 F.2d 404 (3d Cir. 1954) (negligent design of braking system); Goullon v. Ford Motor Co., 44 F.2d 310 (6th Cir. 1930) (negligent design of tractor steering wheel); Zahn v. Ford Motor Co., 164 F. Supp. 936 (D. Minn. 1958) (negligent design and construction of ashtray); Railway Express Agency v. Spain, 249 S.W.2d 644 (Tex. Civ. App. 1952) (negligent design of truck door). See Katz, *Liability of Automobile Manufacturers for Unsafe Design of Passenger Cars*, 69 HARV. L. REV. 863 (1956).

26. Nader, *supra* note 24, at 32-33.

27. See 80 Stat. 722, 15 U.S.C. §1397 (c) (Supp. 1966).

28. *But cf.* Close, *Automobile Safety: Its Legal Implications*, 33 INS. COUNSEL J. 601, 605-06 (1966), where the writer suggests several important legal questions which might arise: What weight will compliance with the safety standards have in an action charging negligent or defective design? Will manufacturers be held strictly liable if, in an action by an injured plaintiff, noncompliance with a safety standard is proved?

statutory duties will be imposed upon manufacturers, distributors, and dealers to produce and market vehicles in compliance with the federal safety standards when they are established.

Effect of the Act on Motorists

Litigation resulting from motor vehicle accidents involves conduct that takes place after the provisions of the Traffic Safety Act cease to operate directly. This is because motor vehicle accidents necessarily involve *used* motor vehicles; the Act has no direct application after a vehicle leaves the showroom floor.[29] The effect of the Traffic Safety Act on the common-law tort liability of a motorist, consequently, is not clear. The central question is whether the federal safety standards will raise the duty of care by which the "reasonable man" must abide, that is to say, whether the safety standards will impose continuing legal duties on the motorist to maintain the "passive" safety features and to use the "active" safety features that will be available for self-protection in motor vehicles.[30] For example: Is the accident victim whose injury was proximately caused by his being thrown through the windshield negligent if he failed to buckle his seat belt? Should he be denied recovery even though the accident itself was the result of a collision with an automobile driven by an obviously negligent driver? Is the vehicle owner who failed to repair the inoperative rear window defroster and who, by so repairing, might have avoided the rear end collision, negligent for failing to maintain that safety feature?

Nothing on the face of the Act indicates whether Congress intended for the safety standards to impose a common-law duty on the motorist to maintain and/or use the safety features. Since the standards have not yet received judicial interpretation, it is too early to say with assurance whether courts will find such a duty and use the

29. *But see* 80 Stat. 725, 15 U.S.C. §1402 (Supp. 1966), which provides for notice to purchasers when manufacturers discover a motor vehicle defect after sale. The Act contemplates the future establishment of uniform federal safety standards for used cars. 80 Stat. 722, 15 U.S.C. §1397 (b) (1) (cls. 2-6) (Supp. 1966). Even when established, however, the question posed by this note will still be relevant: Should the safety standard raise a common-law duty of self-protection, the breach of which by a plaintiff will reduce or preclude his damage recovery?

30. Some of the initial motor vehicle safety standards, *supra* note 10, do not yield themselves to "maintenance" and/or "use" by the motorist. Such safety features as padded instrument panels, recessed control devices and instruments, and padding for seat backs are relatively permanent installations which need be neither "maintained" nor "used" under normal circumstances. They are part of the vehicle. But seat belts and defrosting devices must be used and brake systems and glare reduction paint surfaces must be maintained in order for them to accomplish their safety functions.

standards as "reasonable man" requirements in motor vehicle tort litigation. It is not too early, however, to reflect upon the functional distinction drawn by Congress between cause of an accident and cause of resulting injury. This distinction, when considered alongside the overriding public policy behind the legislation, should influence courts to impose common-law duties on motorists. The distinction, meaningful because accidents do not per se cause injuries, adds an entirely new dimension to motor vehicle tort litigation.[31]

The Fault Concept

A great deal has been written on the desirability of compensating victims of traffic accidents without resort to pinpointing "fault."[32] In this regard, some writers have advocated use of the insurance device to distribute traffic accident losses in a manner similar to the way in which workmen's compensation statutes distribute the loss resulting from industrial accidents.[33] But to date no such plan has been adopted in any American jurisdiction.[34] Furthermore, many people have serious doubts as to the workability of such a plan in the motor vehicle accident field.[35] In any event, it seems safe to say that liability for traffic accidents will for many years remain based on the familiar fault concept:[36] He who is at fault in causing the injury must bear the resulting loss.

31. Nader, *supra* note 24, at 39. *Mickle v. Blackmon*, an unreported trial court case in the Circuit Court, 6th Judicial Circuit, York County, New York, March 1963, graphically illustrates the point that, although the accident was not the fault of the engineering design, the injury resulting from the "second collision" was. Plaintiff was thrown against the gear shift lever by the force of a collision with another vehicle. The lever entered her back and penetrated her spinal cord, rendering her a paraplegic. Judgment was rendered against the vehicle manufacturer for unsafe design of the gear shift lever.

32. Cohen, *Fault and the Automobile Accident: The Lost Issue in California*, 12 U.C.L.A. L. REV. 164 (1964); Fleming, *More Thoughts on Loss Distribution*, 4 OSGOOD HALL L.J. 161 (1966); James, *Accident Liability Reconsidered: The Impact of Liability Insurance*, 57 YALE L.J. 549 (1948); Johnson, *An Insurance Executive Looks at Problems of Automobile Claims Administration*, 33 INS. COUNSEL J. 527 (1966); Lang, *Compensation of Victims—A Pious and Misleading Platitude*, 54 CALIF. L. REV. 1559, 1567-68 (1966); Marx, *A New Approach to Personal Injury Litigation*, 19 OHIO St. L.J. 278 (1958).

33. *Ibid.*

34. Compare the compensation plan adopted in the Province of Saskatchewan, Canada. REV. STAT. SASK. ch. 371 (1953). See generally Lang, *The Nature and Potential of the Saskatchewan Insurance Experiment*, 14 U. FLA. L. REV. 352 (1962).

35. Flynn, *Answering Justice Hofstadter—Compensation Is No Solution*, 27 N.Y.S.B. BULL. 406 (1955); Greene, *Must We Discard Our Law of Negligence in Personal Injury Cases?*, 19 OHIO ST. L.J. 290 (1958); Ryan & Greene, *Pedestrianism: A Strange Philosophy*, 42 A.B.A.J. 117 (1956).

36. Maloney, *From Contributory to Comparative Negligence: A Needed Law*

Fault being the ultimate determinant of liability then, the next logical question is what conduct constitutes fault sufficient to bar or reduce recovery for injuries suffered in motor vehicle accidents. In Florida, the rule is that every person using the highway is required to exercise ordinary care for his own safety and protection.[37] If one's failure to exercise ordinary care for his own safety and protection "contributed appreciably to his own injury,"[38] this failure is to be taken into account in determining liability and awarding damages. This has been the law in Florida for many years.[39] However, Florida has ignored the distinction between fault in causing the motor vehicle accident and fault in causing the injury.[40] With only a few exceptions,[41] all jurisdictions have ignored this distinction. Indeed, until legislatures began directing their attention toward traffic safety and the "second collision," there was no need for such a distinction. The cause of the first impact (the accident) was the only legally cognizable cause of the injury. Comparatively recent seat belt legislation,[42] however, has inspired an argument to which the Traffic Safety Act will lend even more credence: The legislative standard requiring the safety equipment raises a common-law duty to maintain the equipment and use it for self-protection.

Recent Seat Belt Cases

This contention was successfully made under a Wisconsin seat belt statute in *Stockinger v. Dumisch,*[43] a trial court decision. In that case, it was argued that the legislature, in requiring installation of seat belts, implicitly required their use; otherwise, the statute would be meaningless. Sustaining defendant's contention, the court allowed a ten per cent reduction in the amount of damages awarded to the

Reform, 11 U. FLA. L. REV. 135, 141 (1958); 8 FOR THE DEFENSE 9 (1967).

37. Bassett v. Edwards, 158 Fla. 848, 852, 30 So. 2d 374, 376 (1947). See 3 FLA. JUR. *Automobiles* §169 (1955).

38. Miami Coca Cola Bottling Co. v. Mahlo, 45 So. 2d 119, 121 (Fla. 1950).

39. *E.g.,* Petroleum Carrier Corp. v. Robbins, 52 So. 2d 666, 668 (Fla. 1951); J. G. Christopher Co. v. Russell, 63 Fla. 191, 195-96, 58 So. 45, 47 (1912).

40. Brown v. Kendrick, 192 So. 2d 49 (1st D.C.A. Fla. 1966).

41. *Mickle v. Blackmon, supra* note 31; *Stockinger v. Dumisch* reported in 5 FOR THE DEFENSE 79 (1964) (Wisconsin trial court decision) and 8 PERSONAL INJURY NEWSLETTER 163 (1964).

42. *E.g.,* CAL. VEHICLE CODE §27309 (Deering Supp. 1966); GA. CODE ANN. §68-1801 (Supp. 1964); ILL. ANN. STAT. ch. 95½, §217.1 (Smith-Hurd Supp. 1966); WIS. STAT. ANN. §347.48 (Supp. 1967). See generally 16 AM. JUR. PROOF OF FACTS *Seat Belt Accidents* §§1-58 (1965); Brown, *Are Seat Belts Preventive Law?,* 40 CAL. S.B.J. 831 (1965); Note, *Motor Vehicles—A Comparative Analysis of Seat Belt Legislation,* 14 DEPAUL L. REV. 152 (1964).

43. Reported in 5 FOR THE DEFENSE, 79 (1964) and 8 PERSONAL INJURY NEWSLETTER 163 (1964).

plaintiff. The significance of the decision is that it held failure to use seat belts to be negligent conduct. In a contributory negligence jurisdiction, the decision takes on ever greater significance. Failure to use seat belts and the finding that such is contributory negligence might well preclude *any* recovery.[44]

A recent unreported trial court case in Milwaukee, Wisconsin,[45] appears to have done just that. Mrs. Kathleen Busick was driving her automobile along an icy street when an automobile driven by a Bruno R. Budner skidded into it from the rear. Claiming various injuries as a result of the collision, Mrs. Busick sued Budner for 30,000 dollars. When the case came to trial, it appeared to be a routine personal injury suit. It took on a new dimension, however, when Budner cited a state statute that required all new Wisconsin automobiles to be equipped with seat belts.[46] Though her car was properly equipped with seat belts, Mrs. Busick's belt was unbuckled at the time of collsion. As a result, the judge instructed the jury to consider whether she was guilty of negligence by failing to utilize the device that might have prevented her injuries. The jury absolved Budner and awarded no damages to Mrs. Busick.[47]

The same contention was raised in *Butorac v. Kavanagh*,[48] but the defendant was not successful. In *Butorac* the plaintiff, a guest in an automobile, lost an eye when he struck the rearview mirror during a collision with the defendant's car. Testimony was adduced showing that had the plaintiff used the available seat belt, he could not have possibly sustained such an injury. The court, however, stated that it would not consider the public policy and legislative purpose behind the seat belt statute — reduction of automobile injuries — in holding that failure to use the seat belt constituted negligence. Consequently, it did not allow such a finding to be made by the jury.[49]

---

44. See Note, *Automobile Seat Belts: Protection for Defendants as Well as for Motorists?*, 38 So. CAL. L. REV. 733 (1965).

45. Time, July 22, 1966, p. 46.

46. WIS. STAT. ANN. §347.48 (Supp. 1967).

47. This verdict appears to be inconsistent with Wisconsin's comparative negligence statute. WIS. STAT. §331.045 (1961). However, the statute bars recovery if the plaintiff is found by the jury to be more negligent than the defendant. Frei v. Frei, 263 Wis. 430, 57 N.W.2d 731 (1953).

48. Cause No. S-62-7793, Superior Court of Marion, Indiana (1965). See Note, *supra* note 44, at 736-37.

49. A possible explanation for the court's refusal to allow such a finding is the fact that the statute requiring seat belts, IND. ANN. STAT. §47-2241 (1965) (enacted in 1963), had not been passed at the time the accident occurred in 1961. See Note, *supra* note 44, at 737.

Other Federal Safety Legislation

The discussion of public policy and legislative purpose in *Butorac* suggests a meaningful comparison of the Traffic Safety Act with similar federal safety legislation. The Safety Appliance Acts of 1893,[50] 1903,[51] and 1910[52] require designated safety features[53] on all railway locomotives and cars engaged in interstate commerce. There are, of course, fundamental differences between the Safety Appliance Acts and the Traffic Safety Act.[54] But there are also significant parallels that permit a meaningful estimate of how the Traffic Safety Act might be interpreted and applied by the courts.

The Safety Appliance Acts were enacted at a time when the railroads were the major cause of death and injury to the traveling public. Today, motor vehicles driven on streets and highways far surpass railroads in this respect. The avowed purpose of both acts is to alleviate death and injury and to promote safety.[55] Courts interpreting the Safety Appliance Act have kept this purpose in mind, and by so doing, have imposed high standards of care which have significantly reduced death and injury.

It was observed in *Swinson v. Chicago, St. Paul, Minneapolis & Omaha Ry.*[56] that "the Safety Appliance Act has been liberally construed so as to give a right of recovery for every injury the proximate cause of which was a failure to comply with a requirement of the Act."[57] In *United States v. Houston Belt & Terminal Ry.*[58] it was held that the Safety Appliance Act should be "liberally construed to effectuate its humanitarian purpose to protect the lives and limbs of those engaged in the hazardous operation of railroading and the

50. 27 Stat. 531 (1893), 45 U.S.C. §§1-7 (1934).

51. 32 Stat. 943 (1903), 45 U.S.C. §§8-10 (1934).

52. 36 Stat. 298 (1910), 45 U.S.C. §§11-16 (1934).

53. Driving wheel brakes, automatic couplers, handholds, standard height drawbars, et cetera.

54. The Safety Appliance Acts apply directly to the actual operators and owners of railroad locomotives and cars; the Traffic Safety Act applies directly only to manufacturers, distributors, and dealers. The Safety Appliance Acts impose a statutory duty upon railroads to install, maintain, and use the safety equipment; the Traffic Safety Act imposes only a common-law duty for motorists (if it imposes a duty at all).

55. Tipton v. Atchison, T. & S.F. Ry., 78 F.2d 450, 452 (9th Cir.), *aff'd*, 298 U.S. 141 (1936); United States v. Philadelphia & R. Ry., 223 Fed. 215, 216 (E.D. Pa. 1915); 80 Stat. 718, 15 U.S.C. §1381 (Supp. 1966).

56. 294 U.S. 529 (1935).

57. *Id.* at 531.

58. 210 F.2d 421 (5th Cir. 1954); *accord*, Lilly v. Grand Trunk W. R.R., 317 U.S. 481, 486 (1943); Southern Pac. Co. v. Carson, 169 F.2d 734, 737 (9th Cir. 1948); United States v. Chicago, St. P., M. & O. Ry., 43 F.2d 300, 302 (8th Cir. 1930).

safety of the public generally."[59] The question whether the railroads were under a continuing duty to maintain the safety appliances required by statute was answered affirmatively by the United States Supreme Court at an early date in *Texas & Pacific Ry. v. Rigsby*.[60] Later in *Fairport, Painesville & Eastern R.R. v. Meredith*[61] the Court extended the continuing duty to maintain the required safety features beyond passengers and employees to highway travelers. If courts seek to effectuate the humanitarian purpose of the Traffic Safety Act, as they have the Safety Appliance Acts, the duty of motorists to maintain and/or use the required safety features might well become firmly established.

The Duty of Self-Protection vis-à-vis Negligence Doctrine

The primary basis for asserting the existence of a duty to maintain and use installed safety equipment is the idea that lives will be saved and injuries reduced.[62] That use and maintenance of the various safety features will, in fact, contribute significantly to the prevention of injury and death should be clearly shown before duties are imposed upon motorists to use and/or maintain them. This empirical determination is explicitly required by the Traffic Saftey Act itself. Before prescribing safety features the Secretary of Commerce is required to "consider relevant available motor vehicle safety data, including the results of research, development, testing and evaluation activities . . . ."[63] He is also required to consult with the Vehicle Equipment Safety Commission[64] and other state or interstate agencies.[65] Finally, the standards must be "reasonable, practicable and appropriate" and must "contribute to carrying out the purposes" of the Act[66]—"to reduce traffic accidents and deaths and injuries."[67]

Negligence is "conduct which involves an unreasonably great risk of causing damage,"[68] and risk necessarily involves a recognizable danger based upon knowledge of the existing facts and a reasonable belief that injury may follow.[69] When a risk is serious because the threat-

59. United States v. Houston Belt & Terminal Ry., 210 F.2d 421, 425 (5th Cir. 1954).

60. 241 U.S. 33, 43 (1916); *accord*, Fairport, P. & E. R.R. v. Meredith, 292 U.S. 589, 593 (1934).

61. 292 U.S. 589, 593-95 (1934).

62. See Note, *supra* note 44, at 736.

63. 80 Stat. 719, 15 U.S.C. §1392 (f) (1) (Supp. 1966).

64. 80 Stat. 718, 15 U.S.C. §1391 (13) (Supp. 1966).

65. 80 Stat. 719, 15 U.S.C. §1392 (f) (2) (Supp. 1966).

66. 80 Stat. 719, 15 U.S.C. §1392 (f) (3), (4) (Supp. 1966).

67. 80 Stat. 718, 15 U.S.C. §1381 (Supp. 1966).

68. Terry, *Negligence*, 29 HARV. L. REV. 40 (1915).

69. PROSSER, TORTS §31 (3d ed. 1964); Seavey, *Negligence—Subjective or Ob-*

ened injury is great (as in motor vehicle accidents), reasonable care demands precautions against "that occasional negligence which is one of the ordinary incidents of human life and therefore to be anticipated . . . ."[70] The apparent and foreseeable dangers inherent in the combination of powerful automobiles, unpredictable drivers, and frequently substandard roads necessarily reveal a significant risk to the reasonable man. He must, therefore, reasonably anticipate and guard against involvement in a motor vehicle accident. By requiring knowledge of such a real possibility, the law would not impose an unreasonable burden. The tragedy of motor vehicle injuries, weighed against the relatively light burden of guarding against them, strongly supports this argument.[71] More demanding knowledge requirements have often been imposed by courts, even when the activity involved was far less dangerous than the operation of a motor vehicle.[72]

Arguably, the Traffic Safety Act's accident-injury distinction requires of the reasonable man additional knowledge—knowledge of the lifesaving value of the safety features installed pursuant to the Act. Does the reasonable man know that use of the restraining harness will probably prevent impact with the vehicle's interior and ejection from the vehicle? Does he realize the possible consequences of failure to repair a receding steering column after he knows it has become inoperative? He should be held to such knowledge. Because the operation of motor vehicles has become such a highly dangerous activity, the law should require such knowledge whether or not it in fact exists in a particular case. It is improbable that the average motorist will be ignorant of the value of the safety features. Instructions contained on the vehicles, mass communications-media campaigns,[73] and common sense would probably "educate" him of this value. At any rate, it would do no violence to motor vehicle tort law to require the reasonable man to know the lifesaving value of safety features that science and industry have developed and made available.[74]

---

jective, 41 HARV. L. REV. 1, 5-7 (1927).

70. RESTATEMENT, TORTS §302, comment *l* at 821 (1934). See RESTATEMENT (SECOND), TORTS §302A (1965).

71. See PROSSER, TORTS §33 (3d ed. 1964).

72. See PROSSER, TORTS §33 (3d ed. 1964); RESTATEMENT, TORTS §290 (1934).

73. National Safety Council literature, "buckle up and live" spot commercials on television and radio, advertisements in newspapers and magazines, press releases, billboard posters, et cetera. See 16 AM. JUR. PROOF OF FACTS *Seat Belt Accidents* §4 (1965).

74. Negligent ignorance is equivalent to actual knowledge. Carter v. Hector Supply Co., 128 So. 2d 390, 392 (Fla. 1961); Easler v. Downie Amusement Co., 125 Me. 334, 337, 133 Atl. 905, 906 (1926).

The Guest Statute

The possible imposition of common-law duties predicated upon the federal safety standards necessitates an examination of Florida's motor vehicle guest statute.[75] This statute prevents a nonpaying passenger from recovering against the vehicle owner or operator unless the operator was grossly negligent in causing the accident and the resulting injury. Contributory negligence is frequently pleaded in such cases to prevent recovery when the driver was admittedly grossly negligent.[76] With the advent of federal safety standards the successful use of this defense should increase. Because of the distinction drawn by the Traffic Safety Act between accident cause and injury cause, a passenger might now be precluded from recovering from even a grossly negligent driver if he failed to buckle a seat belt, or if he simply rode in a car without the required safety features. In addition to providing for an assumption-of-risk defense, the guest statute expressly provides that the gross negligence of the driver must be the proximate cause of the *injury* as well as the accident. While it is not reasonable to financially burden the driver with injury caused by his passenger's own negligence, neither is it reasonable to force a passenger to assume the full brunt of a grossly negligent driver's irresponsibility by the act of merely accepting a ride in a vehicle that lacks required safety features.[77] Problems such as this will require judicial resolution.

The legal significance of a passenger's failure to buckle seat belts received judicial attention in Florida for the first time in a recent guest statute case, *Brown v. Kendrick*.[78] An action was brought against an automobile owner by a passenger who had been injured in an automobile driven by the owner's son. In his answer the defendant asserted that the plaintiff's failure to buckle her seat belt constituted contributory negligence, but this defense was stricken by the court upon motion of the plaintiff. Defendant was also prevented at trial from introducing evidence regarding seat belts. On appeal, the granting of the motion to strike and the sustaining of the objections to seat belt evidence were affirmed. The First District Court of Appeal observed that the legislature did not require seat belts on vehicles and held: "[I]t is not within the province of this court to legislate on the

75. FLA. STAT. §320.59 (1965).

76. *E.g.*, Mascarenas v. Johnson, 280 F.2d 49, 51 (5th Cir. 1960); Henley v. Carter, 63 So. 2d 192 (Fla. 1953); Gavel v. Girton, 183 So. 2d 10, 13 (2d D.C.A. Fla. 1966).

77. The guest statute situation fits squarely within the gross-slight concept of comparative negligence. See text accompanying note 101 *infra*.

78. 192 So. 2d 49 (1st D.C.A. Fla. 1966).

subject."[79] The court did state, however, that "after further research by various safety committees, the law may be changed to require the use of seat belts and to affix some element of negligence for failure to use same."[80] Relying on *Bessett v. Hackett*,[81] the court drew no distinction between the cause of the accident and the cause of the injury. It stated:[82]

> Certainly . . . the plaintiff's failure to fasten her seat belt was not such negligence as to contribute to the occurrence of the accident, nor to be the proximate contributing cause of the injury in the absence of a showing that the accident could have been avoided in the absence of such a negligent act . . . . [T]he driver's recklessness or negligence caused the accident . . . .

It is suggested that the *Kendrick* case misses the point. The plaintiff sought recovery in damages not because the defendant negligently caused an accident, but rather because of the ensuing injury. Given the safety equipment available, the accident was only one of the causes of that injury. If the plaintiff could have prevented the injury inflicted during the accident by the simple act of fastening a seat belt, would it not be entirely appropriate and reasonable for the law to impose the duty to do so? The duty would be to minimize damages resulting from a wrong that had already been done. Unlike most duties to minimize damages, the action required of the plaintiff would have to take place *before* the initial wrong occurred. But certainly this distinction should not constitute a reason not to impose the duty. The plaintiff in this case should have been allowed recovery only for those injuries that she still would have incurred even if she had worn the seat belt. She should have been denied recovery for those injuries that would have been prevented by use of the seat belt.[83]

---

79. *Id.* at 51.

80. *Ibid.*

81. 66 So. 2d 694, 701 (Fla. 1953). See note 113 *infra*.

82. Brown v. Kendrick, 192 So. 2d 49, 51 (1st D.C.A. Fla. 1966). *But see* Sams v. Sams, 148 S.E.2d 154 (S.C. 1966).

83. See Kirk v. United States, 161 F. Supp. 722 (S.D. Idaho 1958) (in a Federal Tort Claims action by the widow of a construction worker who was killed while working on a government dam, the decedent's contributory negligence consisting of failure to wear a safety belt was held to bar all recovery even if there was negligence on the part of the Government); Wertz v. Lincoln Liberty Life Ins. Co., 152 Neb. 451, 41 N.W.2d 740 (1950) (in action by administratrix, failure to use safety belt in washing windows held to be contributory negligence); Note, *Automobile Seat Belts: Protection for Defendants as Well as for Motorists?*, 38 So. CAL. L. REV. 733, 739 (1965); text accompanying notes 68-71 *supra*.

Negligence Per Se?

When used car safety standards are established,[84] statutory duties will be imposed on the motorist. This will raise an additional question: Should violation of a safety standard constitute statutory negligence? And if so, negligence per se, or merely prima facie evidence of negligence? In Florida, violation of a motor vehicle traffic statute does evidence negligence.[85] Apparently, though, Florida courts are unwilling to declare such violations negligence per se. They are viewed as only prima facie evidence of negligence.[86] The recently increased emphasis on traffic safety, however, might well influence a change in this respect.[87]

The Traffic Safety Act seeks "to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents."[88] This purpose can be more completely effectuated only by requiring motorists to maintain and use the safety equipment once it has been installed by the manufacturers. It should follow, therefore, that any conduct that ignores such duties of self-protection and contributes in some measure to an injury should necessarily constitute some degree of negligence. In other words, the motorist who does not properly maintain or take advantage of the safety equipment installed in his motor vehicle is running an unreasonable risk and should be at least partially responsible for any resulting injuries. If tort liability continues to depend on "fault,"[89] contributory and comparative negligence doctrines will require that an errant motorist be at least partially precluded from recovery for the injury caused by his negligent failure to protect himself. But which doctrine would better and more justly accomplish this result?

Contributory or Comparative Negligence?

In recent years there has been a significant hue and cry by legal authorities for a change in the system of apportioning legal responsi-

84. See 80 Stat. 722, 15 U.S.C. §1397 (b) (1) (Supp. 1966).

85. Allen v. Hooper, 126 Fla. 458, 463, 171 So. 513, 516 (1937); Hendrick v. Strazzulla, 168 So. 2d 156, 159 (2d D.C.A. Fla. 1964); Delevis v. Troyer, 142 So. 2d 783, 785 (2d D.C.A. Fla. 1962).

86. *Ibid.*

87. Compare Texas & Pac. Ry. v. Rigsby, 241 U.S. 33, 43 (1916) (noncompliance with Safety Appliance Act held to be negligence per se); Chicago, St. P., M. & O. Ry. v. Muldowney, 130 F.2d 971, 975 (8th Cir. 1942) (violation of Safety Appliance Act held to be negligence per se); Hernandez v. Murphy, 46 Cal. App. 2d 201, 115 P.2d 565, 569 (1st D.C.A. 1941) (failure to comply with statute requiring rearview mirror held to be negligence per se).

88. 80 Stat. 718, 15 U.S.C. §1381 (Supp. 1966).

89. See text accompanying notes 32-36 *supra*.

bility for injury resulting from automobile accidents. The primary thrust of the arguments is that the comparative negligence rationale, instead of the contributory negligence doctrine, should be utilized in determining compensation.[90] These arguments, when read together with the Traffic Safety Act, reveal a strengthened case for comparative negligence that might well require its adoption. The issue is whether negligent breach of the common-law duty raised by the Traffic Safety Act[91] should operate to negate recovery or simply to mitigate damages, that is, whether contributory or comparative negligence should be applied.

The majority of American jurisdictions apply the contributory negligence doctrine to motor vehicle accident litigation.[92] But the modern trend has been to modify the inherent harshness of the doctrine. It has been recognized that juries tend to reject it when its application forces a harsh result. They tend to treat it as mitigating, rather than as negating, liability.[93] The doctrine of last clear chance, the decline of the successful use of the negligence per se doctrine, and the categorization of a defendant's conduct as willful, wanton, and reckless have all served to avoid, or at least minimize, the harsh effect of the contributory negligence doctrine.[94]

---

90. Haines, *Canadian Comparative Negligence Law*, 23 INS. COUNSEL J. 201 (1956); Lambert, *Case for Comparative Negligence*, 2 TRIAL L.Q. 16 (1965); Maloney, *From Contributory to Comparative Negligence: A Needed Law Reform*, 11 U. FLA. L. REV. 135 (1958). *Contra*, Benson, *Can New York State Afford Comparative Negligence?*, 27 N.Y.S.B. BULL. 291 (1955); Benson, *Comparative Negligence—Boon or Bane?*, 23 INS. COUNSEL J. 204 (1956); Varnum, *Comparative Negligence in Automobile Cases*, 24 INS. COUNSEL J. 60, 61 (1957).

91. This portion of the note on comparative negligence presupposes that courts will impose such duties.

92. The origin of the doctrine is the English case of Butterfield v. Forester, 11 East 59, 103 Eng. Rep. 926 (K.B. 1809). This case involved a defendant who negligently obstructed a highway and a plaintiff who violently rode a horse into the obstruction and injured himself. The court found the plaintiff to have been injured because of "his own fault," *id.* at 61, 103 Eng. Rep. at 927, and denied recovery. Following this case, the English courts adopted the rule of strict contributory negligence for all actions except those concerning admiralty. See Maloney, *supra* note 90, at 141. The United States generally accepted the English rule of contributory negligence. Exceptions, however, are apparent in federal and state legislation concerning railroads and public carriers. Federal Employers' Liability Act, 35 Stat. 65 (1908), as amended, 45 U.S.C. §53 (1954). The state legislation is collected and briefly summarized in INSTITUTE OF JUDICIAL ADMINISTRATION, COMPARATIVE NEGLIGENCE 24-32 (1955).

93. Haeg v. Sprague, Warner & Co., 202 Minn. 425, 430, 281 N.W. 261, 263 (1938) ("We but blind our eyes to obvious reality to the extent that we ignore the fact that in many cases juries apply it [apportionment of damages] in spite of us."); KALVEN, REPORT ON THE JURY PROJECT, CONFERENCE ON AIMS AND METHODS OF LEGAL RESEARCH 155 (1955).

94. Maloney, *supra* note 90, at 145.

In spite of the reasoned criticisms advanced against comparative negligence,[95] the experience of those states that employ it has been favorable.[96] In Wisconsin, there has been a marked decline in negligence litigation with no indication of an increase in the amount of verdicts.[97] Moreover, since 1887, Florida juries have been using a comparative negligence rule in apportioning railroad negligence damages with no apparent difficulty.[98]

There are six states that currently utilize a comparative negligence doctrine in general negligence cases.[99] The statutes either permit recovery regardless of the degree of plaintiff's negligence,[100] permit recovery only when the plaintiff is slightly negligent while the defendant is grossly negligent,[101] or permit recovery only if the plaintiff is less negligent than the defendant.[102]

Florida has adopted comparative negligence in cases involving hazardous occupations[103] and railroads,[104] but the railroad statute was held unconstitutional in 1965, because it denied railroads due process and equal protection of law.[105] The import of this decision is that, while the special treatment of railroads may have been merited when the comparative negligence statue was first enacted,[106] it now operates to burden them because the motor vehicle, an equally dangerous mode

95. See Benson, *Can New York State Afford Comparative Negligence?*, 27 N.Y.S.B. BULL. 291 (1955); Benson, *Comparative Negligence — Boon or Bane?*, 23 INS. COUNSEL J. 204 (1956).

96. See Maloney, *supra* note 90, at 163.

97. Hayes, *New York Should Adopt a Comparative Negligence Rule*, 27 N.Y.S.B. BULL. 288, 289 (1955).

98. *E.g.*, Atlantic Coast Line R.R. v. Pidd, 197 F.2d 153, 155-56 (5th Cir.), *cert. denied*, 344 U.S. 874 (1952); Atlantic Coast Line R.R. v. Shouse, 83 Fla. 156, 193, 91 So. 90, 103 (1922). Florida Cent. & P. R.R. v. Foxworth, 41 Fla. 1, 55-59, 25 So. 338, 342-43 (1899). *But cf.* Georgia So. & Fla. Ry. v. Seven-up Bottling Co., 175 So. 2d 39 (Fla. 1965) (comparative negligence statute held unconstitutional).

99. Mississippi, South Dakota, Nebraska, Georgia, Wisconsin, Arkansas. See generally Glass, *Comparative Negligence and the Federal Tort Claims Act*, 26 FED. B.J. 52 (1966). But see Willson, *Contributory, Concurrent, or Comparative Negligence Under the New Iowa Statute?*, 15 DRAKE L. REV. 97 (1966). In 1943, the Florida Legislature passed a general comparative negligence act, but it was vetoed by the Governor, FLA. S. JOUR. 717 (1943).

100. MISS. CODE ANN. §1454 (1956).

101. NEB. REV. STAT. §25-1151 (Reissue 1964); S.D. CODE §47.0304-1 (Supp. 1960).

102. ARK. STAT. ANN. §§27-1730.1-.2 (1962); GA. CODE ANN. §105-603 (1956); WIS. STAT. §331.045 (1961).

103. FLA. STAT. §769.03 (1965).

104. Fla. Laws 1891, ch. 4071, §2, at 113-14.

105. Georgia So. & Fla. Ry. v. Seven-Up Bottling Co., 175 So. 2d 39 (Fla. 1965). See U.S. CONST. amend. XIV, §1; FLA. CONST. Decl. of Rights §12.

106. Fla. Laws 1887, ch. 3744, §1, at 117.

of transportation, is excluded from comparative treatment.[107] The hazardous occupation statute has not yet been challenged. It would appear, though, that its constitutionality could well be called into question in light of *Georgia Southern & Florida Ry. v. Seven-Up Bottling Co.*[108]

The above developments in contributory and comparative negligence assume added significance when the possible legal impact of the Traffic Safety Act is considered. It is with this impact in mind that the writers suggest a change in Florida's law regarding the apportionment of legal responsibility for motor vehicle injuries.

As previously mentioned, the overriding purpose of the Traffic Safety Act is to reduce death and injury resulting from the "second collision."[109] The writers have adopted the premise that, in order to accomplish this goal, the law must constantly emphasize safety not only in the manufacture, but also in the maintenance and use of motor vehicle safety equipment. The obvious question, from a viewpoint of compensation, is to what degree a motorist will be penalized should he fail to maintain his vehicle properly or use his available safety equipment. Should a driver who replaces a damaged padded visor with a nonpadded one, and who is subsequently involved in an accident, be precluded from recovering for a head injury? Or would it seem more reasonable to determine the degree of injury he would have suffered had his head struck the padded visor? To graphically illustrate the point, assume a doubtful hypothetical: where should a plaintiff stand whose injuries resulted from failing to fasten his seat belt, thus striking a replaced, nonreceding steering wheel, with further injuries being sustained as a result of ejection from his automobile because the door locking device was not repaired—all injuries resulting from an accident the sole proximate cause of which was an intoxicated defendant? The Florida Legislature faced analagous problems many years ago with regard to railroads and hazardous occupations and resolved them in favor of apportioning damages by comparative negligence doctrine.[110]

The tendency of juries to soften the defense of contributory negligence[111] should become even more pronounced with the advent of federal safety standards. Juries will be faced with fact situations that

107. It has been suggested that the *Georgia Southern* decision might provide the impetus for legislative enactment of a general comparative negligence law. Comment, 18 U. FLA. L. REV. 166, 167 (1965).

108. 175 So. 2d 39 (Fla. 1965).

109. See text accompanying note 6 *supra*.

110. Fla. Laws 1891, ch. 4071, §2, at 113-14; FLA. STAT. §769.03 (1965). It is interesting to note that the legislature included "operating automobiles for public use" in the hazardous occupation statutes. FLA. STAT. §769.01 (1965).

111. See text accompanying note 93 *supra*

would previously have allowed recovery, but that may now preclude it under court-imposed duty-of-care instructions. It seems patently inconsistent to pay lip service to a doctrine that in application is effectively circumvented. It should be noted that contributory negligence to date has applied only to the "first collision" and not to the "second collision."[112] But as the Traffic Safety Act is implemented, action (or inaction) previously proper (or, at least, ignored) will be rendered improper, and thus, negligent. Failure to fasten a seat belt will not cause an accident, but it will cause injury, or perhaps, more injury than if it were fastened. The problem, then, centers more on degree or percentage of injury than on the cause of the accident. Before the Traffic Safety Act, the only problem was the cause of the motor vehicle accident. Courts looked to the litigants' culpability only as to the accident without any consideration of the actual injury.[113] Now, the accident *and* the injury must be examined for culpability to determine ultimate fault and legal responsibility.

The Traffic Safety Act's accident-injury distinction strongly supports a responsibility allocation plan based on some kind of scale, rather than the current system of absolute allowance or denial of recovery. Comparative negligence doctrine readily lends itself to this problem. Did *A* proximately cause the accident? Did *B* contribute to his own injury by not using or maintaining a safety feature? With a contributory negligence rule, an affirmative answer to both questions would preclude any recovery by *B*. Under the circumstances of the accident, such a result might be harsh and unjust. Comparative negligence doctrine would allow a less harsh and more realistic result.

CONCLUSION

This note has raised several questions that will have to be answered by the legislature and courts of Florida. It appears obvious that national frustration with death and injury on the highways, codified

112. *But see* Sams v. Sams, 148 S.E.2d 154 (S.C. 1966) (striking from defendant's answer allegation referring to contributory negligence of plaintiff because of failure to use seat belts held to be error); *Busick v. Budner*, reported in Time, July 22, 1966, p. 46 (Wis. 1966); *Stockinger v. Dumisch*, reported in 5 FOR THE DEFENSE 79 (1964) and 8 PERSONAL INJURY NEWSLETTER 163 (1964).

113. *E.g.*, Bessett v. Hackett, 66 So. 2d 694, 701 (Fla. 1953) ("As to whether or not an act of negligence on the part of a plaintiff can be said to have proximately contributed to his injury arising from an accident, the rule is that a negligent act on the part of a plaintiff cannot be said to be the proximate contributing cause of the injury unless the accident could have been avoided in the absence of such act of negligence."); Theunissen v. Guidry, 244 La. 631, 645, 153 So. 2d 869, 874 (1963); D & D Planting Co. v. Employers Cas. Co., 240 La. 684, 694, 124 So. 2d 908, 912 (1960).

in the Traffic Safety Act, should force a change in the law regarding the duties and liabilities of motorists. No longer should courts look only to the cause of an *accident* as the determinant of liability. Recognition of the "second collision," in addition to the "first collision," adds to motor vehicle tort law a new dimension that is accorded great significance by the Act's requirement that safety, rather than decor and performance, be the predominant consideration in motor vehicle design.

Courts will be faced with the awesome task of determining injury, as well as accident responsibility. They should not be forced to face it with an obsolete tool. The Florida Legislature should lend guidance to the courts of this state by recognizing the fact that contributory negligence is unrealistic, unnecessarily harsh, and needful of replacement. Enactment of a comparative negligence statute would facilitate judicial effectuation of the purpose of the Traffic Safety Act. If contributory negligence doctrine is retained, juries may be forced to either reach unconscionable decisions or circumvent the doctrine. Moreover, courts might even refrain from imposing duties on motorists to maintain and use safety devices in order to avoid decisions required under a doctrine of contributory negligence. If Florida is to adjust its motor vehicle tort law to meet the needs of the Traffic Safety Act and the ensuing common law that will develop as a result, adoption of comparative negligence doctrine affords an attractive means.

Courts have been slow in recognizing the public policy that demands a decrease in automotive deaths and injuries. It seems legitimate, however, to view the recent seat belt cases[114] as a realistic approach—and possibly the start of a trend—toward a recognition of this policy. Only when courts become cognizant of the need to impose a duty on motorists to drive defensively as to both the first *and* second collisions will the purpose of the Traffic Safety Act be fully effectuated.[115]

MICHAEL W. CREWS
JAMES W. CRABTREE

---

114. Cases cited note 112 *supra*.

115. See Lipscomb v. Diamiana, 226 A.2d 914 (Del. Super. Ct. 1967); Kavanagh v. Butorac, 221 N.E.2d 824, 829-33 (Ind. App. Ct. 1966), *affirming* Butorac v. Kavanagh, notes 48-49 *supra*; Bentzler v. Braun, 34 Wis. 2d 362, 149 N.W.2d 626, 638-41 (1967) (there is a common law duty to use available seat belts independent of any statutory mandate, but the court's failure to instruct on that issue was not error since there was no evidence of a causal relationship between the passenger's injuries and her failure to use the seat belt); Roethe, *Seat Belt Negligence in Automobile Accidents*, 1967 WIS. L. REV. 288; Note, *Seat Belts and Contributory Negligence*, 12 S. D. L. REV. 130 (1967).