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CIVIL LITIGATION UPDATES

Issue: The Application of California's Seatbelt Defense

Under California law all occupants of a motor vehicle must wear a seatbelt during the operation of the vehicle. Cal. Vehicle Code §27315(d)(1). Failure to wear a seatbelt is a violation of California Vehicle Code section 27315(d)(1). If the plaintiff is found to have failed to wear a seatbelt at the time of the accident, the defendant may assert this seatbelt defense against the plaintiff in any litigation arising from the accident.[1] The law governing California's seatbelt defense has not changed and its application is rare. Most people wear seatbelts during the operation of their vehicles. Even in those circumstances in which the defendant *believes* the plaintiff was not wearing a seatbelt at the time of the accident, this is often very difficult to prove.

Nevertheless, there are still some cases in which California's seatbelt defense remains viable. We briefly address two situations in which the seatbelt defense may be applicable. First, does the defense apply when the plaintiff is parked on the side of the road? Next, does this seatbelt defense extend to the driver and owner of the vehicle when the passengers violate this law? We first outline the law and its application.

CALIFORNIA'S SEATBELT DEFENSE

California Vehicle Code section 27315(d) (1) holds that "a person shall not operate a motor vehicle on a highway unless that person and all passengers 16 years of age or over are properly restrained by a safety belt." *Truman v Vargas*, (1969) 275 Cal.App.2d 976. As more fully set forth below, if the plaintiff was in violation of this section of the California Vehicle Code the defendant may be able to raise this as a defense in any subsequent litigation. In order to establish this *seatbelt defense*, the defendant is required to present evidence that (1) the vehicle was equipped with operative seatbelts; (2) that the seatbelts were available to the plaintiff, (3) that the plaintiff was not wearing the seatbelt and (4) that if the plaintiff had been wearing seatbelts the injuries, if any, would have been less severe.[2] This latter point requires expert witness testimony. *Truman*, at 343; *Franklin v Gibson*, (1982) 138 Cal.App.3d 340.

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[1] Though this "seatbelt defense" may be raised against the plaintiff it is not necessarily a complete bar to recovery. Instead, the principles of comparative fault apply to reduce the damages asserted by the plaintiff.
[2] CACI 712.

A close reading of the statute raises an issue regarding its applicability to civil cases. Pursuant to California Vehicle Code section 27315(i), "in a civil action, a violation of subdivision (d) …, does not establish negligence as a matter of *law* or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation." In other words, merely because the operator of the motor vehicle was neither cited nor convicted under this statute does not mean that the defendant cannot present evidence in support of a claim of comparative fault. See *Housley v Godinez,* 4 Cal. App. 4th 737, 746. Consequently, the statute applies to civil cases.[3]

The law governing California's seatbelt defense is set forth in the California jury instructions [CACI].

> CACI 712 reads:
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> The defendant claims that plaintiff was negligent because he/she failed to wear a seatbelt. In order to prevail on this seatbelt defense the defendant must prove the following:
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> 1) That the vehicle was equipped with seatbelts;
> 2) That a reasonable person would have used seatbelts at the time he/she occupied the vehicle;
> 3) That the plaintiff failed to wear the seatbelts; and
> 4) That the plaintiff's injuries would have been avoided or less severe if he had been wearing the seatbelts.

In order for the Court to give this jury instruction the defendant must show that there is evidence that the plaintiff was *operating* the vehicle and was not wearing a seatbelt at the time of the accident. This raises an issue of what constitutes "operating" a vehicle.

1. Does the seatbelt defense apply when the plaintiff is parked on the side of the road without the engine running?

Wasson & Associates has asserted the seatbelt defense in actions by plaintiffs who have argued that they were not *operating* the vehicle at the time of the accident and therefore the seatbelt defense is inapplicable. In one case, the plaintiff was parked waiting for his girlfriend. He was not wearing his seatbelt at the time of the accident. The defendant lost control of his vehicle and struck the plaintiff's vehicle allegedly causing him to suffer personal injuries. The defendant argued that in this case the plaintiff was "operating" the vehicle on the highway. The term "operating" as used within the context of this statute should be given a broader

[3] This also means that this will be a question to be determined by the jury.

interpretation than the term "driving". The term "operating" means the doing of any act such as utilizing the mechanical or electrical system in the vehicle. *Isaac v Department of Motor Vehicles*, (2007) 155 Cal.App. 4th 851, 861. The Court noted that the words "'operating' a vehicle …[is] not limited to or dependent on volitional movement of a vehicle. In fact, most cases uphold a finding of 'operation' or 'being in actual physical control' even when … the arrestee was found asleep, slumped over the steering wheel of an operable car with its [motor] running." *Id.* (*quoting Mercer v Department of Motor Vehicles* (1991) 53 Cal.3d 753, 767.). Accordingly, sitting in the front seat of the vehicle may constitute "operating" the vehicle for purposes of the statute.

The next issue is whether the actions of the plaintiff were reasonable. In our case the plaintiff argued that he had gone up to his girlfriend's apartment and returned to his vehicle because it was too hot in the apartment. When he returned to the car, he turned on the ignition in order to activate the vehicle's air conditioner but had not put on his seatbelt. We argued that by turning on the ignition he was "operating the vehicle" and was therefore under a duty to wear the seatbelt. In addition, we argued that under these circumstances a reasonable person would have worn the seatbelt.

The next issue is the determination that the failure of the plaintiff to wear the seatbelt was the cause of his injuries. In other words, if he had been wearing the seatbelt he would not have been hurt. In many of our cases, the impact to the plaintiff's vehicle is very minor and the forces of the impact are usually insufficient to cause injury. As a result, Wasson & Associates looks for alternative *reasons* the plaintiff suffered injuries. In this case, the plaintiff claimed to have suffered soft-tissue injuries to his neck, lower back and shoulder. These are the most common subjective complaints raised by plaintiffs arising from an automobile accident. But in this case, the plaintiff also claimed to have struck his left knee on the dashboard. We focused our attention on this particular complaint to the knee. Using biomechanical experts and an orthopedic surgeon, we were able to present evidence that if the plaintiff had been fully restrained in the vehicle at the time of the accident, his left knee would not have struck the dashboard and the knee injury would not have occurred. Additionally, we argued that the *other* soft-tissue injuries to the neck, back and shoulder were also *related* to the knee injury in that the failure to wear the seatbelt caused the plaintiff's body to move far greater than had he been restrained by the seatbelt. During both the plaintiff's deposition and in subsequent discovery we focused up developing specific facts to support this argument. We believe we have established a sufficient basis for asserting the seatbelt defense as a complete bar to the plaintiff's entire claim for the recovery of personal injuries in this case.[4]

2. Can the seatbelt defense be raised against the drivers and owners of the vehicle?

The next issue is whether the seatbelt defense can apply to the driver or owner of the vehicle.

[4] The case remains active and therefore the result of this seatbelt defense remains an open question.

We have asserted that the driver of the vehicle is responsible to insure that the passengers in the vehicle are wearing seatbelts. *People v Hansen* (1992) 10 Cal. App.4th 1065, 1077-78; *People v Weems*, (1997) 54 Cal. App.4th 854, 861. As a result, if the passengers in the plaintiff's vehicle were not wearing seatbelts at the time of the accident, the driver and the owner of the plaintiff's vehicle may be responsible for the injuries to these passengers proximately caused by their failure to wear seatbelts.

This analysis has the effect of expanding the use of the seatbelt defense by spreading the apparent risk of loss arising from an accident in which the passengers were not wearing seatbelts to the driver and owner of the vehicle. Though this is an admittedly rare situation, in catastrophic injuries cases in which there are legitimate issues associated with the maintenance and effectiveness of the seatbelts, this may be a critical issue for the defense.

CONCLUSION

California's seatbelt defense remains a viable even when the plaintiff is not actually driving the vehicle at the time of the accident. Additionally, this defense may be used to spread the risk of loss in cases in which the passengers in the plaintiff's vehicle were not wearing seatbelts. It is because these types of cases are rare that taking pause to revisit the issue has merit.