

# Failure to Wear a Seatbelt

## Failure to Wear a Seatbelt Revisited

Our society has made a push in recent years (and wisely so) to improve the health and welfare of its citizens. For example, recent smoking bans by local governments have passed in order to protect non-smokers from the real threat of secondhand smoke. Another example has been seatbelt usage. Over the last decade, the “Click It or Ticket” campaign has brought to light the importance of seatbelt usage for the health and welfare of vehicle occupants. The importance of seatbelt usage has been stressed by the Indiana Attorney General’s office and the Governor’s office as well as by state legislators and local government officials. As evidenced by Indiana Code § 9-19-10, the importance of passenger restraint systems has not been ignored by the Indiana legislature. This chapter requires front seat occupant use of safety belts (9-19-10-2); vehicles being manufactured with safety belts in the front seat (9-19-10-5); and infractions for non-seatbelt use (9-19-10-7).

In the civil litigation arena, the most controversial statute regarding safety belt usage is found at Indiana Code § 9-19-10-7, which provides:

- (a) Failure to comply with section 1, 2, 3, or 4 of this chapter does not constitute fault under IC 34-51-2 and does not limit the liability of an insurer.
- (b) Except as provided in subsection (c), evidence of the failure to comply with section 1, 2, 3, or 4 of this chapter may not be admitted in a civil action to mitigate damages.
- (c) Evidence of a failure to comply with this chapter may be admitted in a civil action as to mitigation of damages in a product liability action involving a motor vehicle restraint or supplemental restraint system. The defendant in such an action has the burden of proving noncompliance with this chapter and that compliance with this chapter would have reduced injuries, and the extent of the reduction.

Rightly or wrongly, most courts which have faced the issue of admitting non-seatbelt usage into evidence have precluded such evidence, relying on the above statute. It is interesting to note that the statute specifically addresses the admissibility of the sections of the chapter by indicating that failing to comply with those sections is inadmissible. However, the statute does not address the situation where one seeks to admit into evidence the failure to wear a seatbelt without mentioning the statutory requirements. For example, in a case the undersigned recently handled, a defendant pulled out in front of a plaintiff’s vehicle, causing a T-bone collision. During the collision, the front seat passenger had her seatbelt on and received minor injuries, while the driver, who was not wearing a seatbelt, was killed. Under such a scenario, Indiana Code § 9-19-10-7 clearly provides that the defendant would be precluded from introducing into evidence the violation of the statute by the plaintiff. However, does the statute preclude a defendant from introducing evidence that the plaintiff failed to wear a seatbelt without introducing the statute? More important, should the failure to wear a seatbelt be introduced under the mitigation of damages defense? A recent Indiana Supreme Court decision suggests the answer is yes.

In *Kocher v. Getz*, 824 N.E.2d 671 (Ind. 2005), defendant admitted liability for an accident following a motor vehicle collision in which a west bound motorist failed to yield the right of way to a south bound motorist, but the defendant asserted the mitigation of damages defense. During the trial, the Court refused instructions the defendant submitted on comparative fault relating to mitigation of damages. On appeal, the Court of Appeals reversed in *Kocher v. Getz*, 787 N.E.2d 418 (Ind. Ct. App. 2003). In granting transfer and affirming the actions of the trial court, the Indiana Supreme Court addressed in detail the issue of mitigation of damages under the Comparative Fault Act (I.C. § 34-51-2, et seq.). Analyzing the Comparative Fault Act, the Court concluded that in cases arising under the Act, the defense of mitigation of damages based on the plaintiff’s acts or omissions occurring after an accident or initial injury should not be included in the determination and allocation of “fault” under the Comparative Fault Act. *Id.* at 674. However, the Court noted that the phrase “unreasonable failure to avoid an injury or to mitigate damages” included in the definition of “fault” under Indiana Code § 34-6-2-45(b) applies when a plaintiff’s conduct occurs before an accident or initial injury.

In Kocher, the Court uses as an example of such unreasonable failure to avoid an injury a claimant's failure to use appropriate safety devices, i.e., wearing safety goggles while operating machinery that presents a substantial risk of eye damage. Similarly, in an automobile accident, a driver or passenger failing to exercise reasonable care by not wearing a seat belt is the type of conduct that occurs before an accident and is the type of conduct that constitutes "fault" under the Comparative Fault Act.

It makes no sense that in a case where a plaintiff suffers an eye injury while using an electric saw fault can be assessed to the plaintiff for not wearing safety glasses while a driver operating a motor vehicle without a seatbelt who sustains an injury due to the lack of a seatbelt is not assessed fault. If anything, a reasonable man's knowledge of the protection which is afforded a vehicle occupant when using a seatbelt is much greater than almost any other safety device that is currently on the market today. It can hardly be said that anyone today is unaware that reasonable care requires the use of appropriate safety devices such as a seatbelt, to avoid or mitigate injuries/damages.

It is significant in Kocher that the Supreme Court did not except out the failure to use a seatbelt in their example of what constitutes fault in a mitigation setting. In fact, the holding of Kocher can easily be applied in harmony with Indiana Code § 9-19-10-7 by simply noting that while the statute precludes a defendant from introducing failure to comply with Indiana Code § 9-19-10, et seq., in a civil action, there is nothing that precludes defendant from introducing a failure to wear a seatbelt as constituting conduct before an accident which is included in the definition of "fault" under the Comparative Fault Act.

Recently, there have been attempts in the Indiana state legislature to modify Indiana Code § 9-19-10-7 in such a way that a failure to wear a seatbelt should be admissible into evidence, but only as to reducing the damages sustained by the plaintiff. Such activity clearly is contrary to the Kocher holding and is contrary to the interpretation of Indiana Code § 34-6-2-45(b). Rather than attempting to modify I.C. § 9-19-10-7, courts should properly interpret the statute as precluding evidence in a civil action of a violation of the seatbelt statute but as not precluding the introduction of evidence in assessing fault under the Indiana Comparative Fault Act of a driver or passenger who failed to wear/was not wearing a seatbelt. To hold otherwise defies common sense and is inconsistent with our society's commitment to increase seatbelt usage and to improve the health and welfare of our citizens.