

8.21 NONUSE OF SEATBELT INCLUDING ULTIMATE OUTCOME¹
(Approved 12/2009; Revised 11/2022)

As I told you earlier², defendant's contention that plaintiff was not wearing a seatbelt is not relevant in deciding who is at fault for causing the accident. But it may be meaningful in determining the amount of money plaintiff may recover for any injuries you find plaintiff received. I would now like to tell you how this works.

In order to succeed on this reduction of damages issue, defendant must prove by the greater weight of the evidence that:

1. Plaintiff was not using an available seatbelt at the time of the accident.³
2. Plaintiff was negligent in not using that seatbelt at the time of the accident.

¹ This charge incorporates the standards of *Waterson v. General Motors Corp.*, 111 N.J. 238 (1988). It does not incorporate the standard charge on ultimate outcome regarding liability, which appears at the Comparative Negligence: Ultimate Outcome charge, MCJC 7.31.

² This refers to the Motor Vehicle and Highway – Nonuse of Seatbelt on Issue of Negligence charge, MCJC 5.30K.

³ Under Federal Motor Vehicle Safety Standards, all passenger automobiles manufactured after June 30, 1986, must be equipped with a safety seat belt system. Since the determination of *Waterson* that the enactment of *N.J.S.A. 39:3-76.2(e) et seq.* reinforced a public policy encouraging the use of seat belts, and since those statutes require the driver and front seat passenger to wear a properly adjusted and fastened seat belt, several questions continue after *Waterson*. For example, could plaintiff be negligent for knowingly occupying a vehicle with a non-functioning seat belt? If there is a factual dispute whether the available seat belt was functional, who has the burden of proving that it was functional? Does the rationale of *Waterson* apply to vehicles other than passenger automobiles? Does *Waterson* apply to situations exempted under *N.J.S.A. 39:3-76.2(g)* from seat belt usage requirements?

3. Plaintiff's injuries were made greater or more severe because plaintiff was not using a seatbelt. In other words, some or all of plaintiff's injuries could have been prevented or avoided if plaintiff had been using a seatbelt.⁴

I would like now to talk with you about how you go about deciding if defendant has proven each of these three points to you. You may note that each of these points is set out on the jury verdict sheet as questions [_____].

The first point you must decide is whether defendant has shown that plaintiff was not using an available seatbelt at the time of the accident.

The second point that defendant must show is that plaintiff was negligent for not using the seatbelt.

Negligence in this type of situation is the failure to use the degree of care for one's own safety and protection that a reasonably prudent person would use in the same or similar circumstances. By a reasonably prudent person I mean neither the most cautious person nor one who is unusually bold, but rather one of reasonable vigilance, caution, and prudence.

⁴ Normally, this will require expert testimony. See, *Dunn v. Durso*, 219 N.J. Super. 383, 388-389 (Law Div. 1986); *Barry v. The Coca Cola Co.*, 99 N.J. Super. 270, 274-275 (Law Div. 1967).

New Jersey law⁵ requires the driver [and front seat passengers] of a car to wear a properly adjusted and fastened seatbelt while the vehicle is in operation on any street or highway of this State. If you find that the plaintiff was in violation of that law at the time of the accident, you may consider that violation of a statutory duty of care on the issue of negligence. However, the violation is not conclusive as to the issue of whether plaintiff was negligent.⁶ It is a factor or circumstance which you should consider in assessing the negligence, if any, of the plaintiff. You may also take into account the prevailing custom of seatbelt use at the time of the accident.⁷ [That is, what percentage generally of the drivers (and front seat passengers) used a seatbelt at the time of the accident?] Think about all of these factors in deciding whether plaintiff acted as a reasonably prudent person and, therefore, was or was not negligent in not using a seatbelt.

If you decide that a reasonably prudent person would not have been using a seatbelt, then you should find that the plaintiff was not negligent and stop deliberating on the seatbelt damage reduction claim.⁸ However, if you decide that a reasonably

⁵ *N.J.S.A.* 39:3-76.2(f). The statute applies only to passenger automobiles, not other vehicles.

⁶ *Waterson, supra*, 111 *N.J.* at 263.

⁷ *Waterson, supra*, 111 *N.J.* at 266.

⁸ See *Bleeker v. Trickolo*, 89 *N.J. Super.* 502 (App. Div. 1965); *Johnson v. Salem Corp.*, 97 *N.J.* 78, 97-98 (1984).

prudent person would have used a seatbelt in that situation at that time, then you should find that the plaintiff was negligent and continue deliberating on the seatbelt damage reduction claim.

If you find that the plaintiff was negligent, you must then decide whether the failure to use a seatbelt increased the extent or severity of plaintiff's injuries. In making this decision, you are to consider all of the evidence in this case, including the testimony of the expert witness(es) who testified. Think about the total extent of plaintiff's injuries and whether any of those injuries would have been avoided if plaintiff had been using a seatbelt. [**WHERE APPLICABLE**: If you find that the plaintiff was severely injured, and the evidence shows that plaintiff's severe injuries could not have been avoided by the use of a seatbelt, it is immaterial that some very minor injuries could have been avoided by seatbelt use. Therefore, if the negligent failure to wear a seatbelt had no impact on the extent of the injury, you should cease to consider the seatbelt issue. If, on the other hand, you find that the negligent failure to wear a seatbelt increased the extent or severity of injuries, you must then evaluate the impact of the failure to wear a seatbelt.]⁹

If you decide three facts — one, plaintiff was not using an available seatbelt at the time of the accident; two, plaintiff was negligent in not using the seatbelt; and three,

⁹ *Waterson, supra*, 111 N.J. at 272.

as a result, plaintiff's injuries were made greater or more severe — then you must make two more decisions. You will see that these appear as questions [_____] on your jury verdict sheet.

The first is to decide what part of plaintiff's injuries would have been avoided if a seatbelt had been used. The defendant has the burden of proving this to you. To do this, you must first determine the value of the total damages which plaintiff incurred. Then, you must set the amount of the damages that would have been sustained in the accident if a seatbelt had been used. You will subtract that amount from the total damages actually sustained in order to obtain what I will call seatbelt damages.

The final decision you must make about the seatbelt claim is whether you will allocate or assign some percentage of negligence or fault to plaintiff because of plaintiff's failure to use a seatbelt. This is a separate consideration of fault from your earlier one concerning the fault of the parties in causing the accident. The percentage of negligence or fault I am talking about now is only in connection with the increased injuries. For how much of that fault — in a percentage ranging from one to one hundred percent — do you find plaintiff is responsible?¹⁰

You may be wondering why you have to make all of these decisions and how they may affect the final outcome of this case. I want to describe that to you now.

¹⁰ Query: Does this apply when the plaintiff-front seat passenger is between 5 and 17 years of age? See *N.J.S.A.* 39:3-76.2(f)(b).

From the jury verdict sheet, you can see that you are making two separate decisions about fault. The first one is as to the cause of the accident. The second is as to the cause of any enhanced or increased injuries which occurred by not using a seatbelt.

Understand that you are not being asked to make the mathematical calculations; that will be my job — to put your findings into effect. But I am going to give you some idea as to how your decisions will work in affecting the final outcome in this case.¹¹

What I shall do is begin with your total amount of damages, and then separate that money amount into two portions. One portion shall be the sum you calculated for the plaintiff's enhanced injuries as a result of not wearing a seatbelt, which I have been calling seatbelt damages, and the other shall be the remainder sum of the non-seatbelt damages, which is the total damages, less seatbelt damages.

I shall reduce the non-seatbelt damages by the percentage of fault, if any, you decide is plaintiff's for causing the accident. I shall reduce the seatbelt damages by the total amount which you decide is plaintiff's for the fault of the accident and the failure to wear the seatbelt, taking into consideration defendant's fault for causing the

¹¹ The process is fully described in *Waterson, supra*, 111 N.J. at 270-275, especially at 274 and Note to Judge below.

accident. I shall then add the two reduced amounts together to arrive at the total award to the plaintiff.

But, as I said a moment ago, you do not do these calculations. I do them, based on your answers on the jury verdict sheet.

NOTE TO JUDGE

Per *Waterson, supra*, 111 N.J. at 272-275:

After the jury has . . . found (1) that the failure to use a seat belt constituted negligence and (2) that plaintiff sustained avoidable, second-collision injuries, the jury must then determine the percentage of plaintiff's comparative fault for damages arising from those injuries. The *total* negligence for these second-collision or seat-belt damages consists of (a) defendant's negligence in causing the accident (since without that negligence there would have been no accident and no injuries of any kind), (b) plaintiff's comparative negligence, if any, in causing the accident (since, again, without plaintiff's comparative negligence there would have been no accident and no injuries), and (c) plaintiff's negligence in failing to use a seat belt (since without that negligence there would not have been any second collision injuries). The total fault for these seat-belt damages, as for all damages, is one-hundred percent. Thus, the jury must determine the percentage of plaintiff's fault for these damages that are attributable to plaintiff's failure to wear a seat belt. If the jury previously found a percentage division of fault between plaintiff and defendant in causing the accident, the jury must be told that the court, when finally molding the jury findings into the verdict, will continue that proportion of fault when adding in the percentage attributable to plaintiff's failure to wear a seat belt.

For example, if a jury found plaintiff twenty percent liable for an accident and defendant eighty percent liable for the accident, and, further, that plaintiff was twenty percent liable for plaintiff's seat-belt damages due to his failure to use a seat belt, the court would mold these three findings of fault in determining plaintiff's recovery for those damages. The three percentages of fault add up to 120%. The court would add the two findings of plaintiff's negligence (twenty percent for causing the accident, twenty percent for failure to use a seat belt), which total forty percent. The sum of forty percent would become the numerator of a fraction in which the denominator would be 120, or the total of all three findings of negligence (defendant's eighty percent fault for causing the accident, plaintiff's twenty percent fault for causing the accident, and plaintiff's twenty percent fault for not wearing a seat belt). This fraction results in a finding of $33\frac{1}{3}\%$, which reflects the amount by which the court would reduce plaintiff's recovery for seat-belt damages due to the negligent failure to use a seat belt. Assuming seat-belt damages of \$300,000, the court would reduce plaintiff's recovery for those injuries by \$100,000. This calculation serves two purposes. First, the calculation insures that the relative fault of the plaintiff and defendant in causing the accident divides *all* damages that flow from the accident proportionately. Thus, the calculation guarantees that fault in causing the accident affects a plaintiff's recovery in the manner prescribed by the comparative negligence law. The second purpose of this calculation is to insure that the seat belt damages, and *only* those damages, are further reduced by plaintiff's fault in not wearing a seat belt.

In sum, the jury and the court would apply the following equation:

(1) The jury determines total damages as if there were no seat belt issue at all.

(2) The jury determines the comparative fault of each party in causing the accident and expresses those determinations in terms of a percentage (*e.g.*, General Motors for the defective axle and plaintiff for any applicable negligence on her part, such as if it could be shown that she knew of the defective axle and drove anyway or that she drove inattentively and at an excessive rate of speed).

(3) The jury determines whether plaintiff's nonuse of a seat belt increased the extent or severity of plaintiff's injuries and whether plaintiff's nonuse of a seat belt constituted negligence.

(4) The jury determines plaintiff's second-collision injuries, or seat-belt damages.

(5) The jury determines the percentage of plaintiff's comparative fault for the second-collision injuries or seat-belt damages. The court should inform the jury that plaintiff's fault for failure to wear a seat belt will be added to plaintiff's fault, if any, in causing the accident to reduce further plaintiff's award in an amount proportionate also to defendant's relative fault in causing the accident.

(6) The court determines plaintiff's recovery by molding the jury's damages and negligence findings.

In applying step 5 we would not eliminate a defendant from liability for seat-belt damages, even if plaintiff was more than fifty percent at fault for causing the second-collision injuries, after the calculation made in step 5. Thus, for example, if a jury found plaintiff sixty percent negligent for not wearing a seat belt and found that there existed second-collision injuries, defendant would be liable for the remaining forty percent of the damages

arising from those injuries, assuming defendant was one-hundred percent at fault for the accident. This formula essentially is the formula adopted by the court in *Dunn v. Durso*, except that we reject the notion that a plaintiff's *total* damages should be reduced if a jury concludes the plaintiff was negligent for failure to wear a seat belt.

**JURY VERDICT SHEET
(Including Seatbelt Damages)**

1. Was Defendant negligent in the operation of Defendant's motor vehicle?

Yes _____ go on to 2.

No _____ end your discussions.

2. If Defendant was negligent, was Defendant's negligence a proximate cause of the accident?

Yes _____ go on to 3.

No _____ end your discussions.

3. Was Plaintiff negligent in the operation of Plaintiff's motor vehicle?

Yes _____ go on to 4.

No _____ skip over 4 and 5, and go on to 6.

4. If Plaintiff was negligent, was Plaintiff's negligence a proximate cause of the accident?

Yes _____ go on to 5.

No _____ skip over 5 and go on to 6.

5. Comparison of negligence in causing the accident:

Plaintiff _____ %

Defendant _____ %

Total 100 %

Go on to 6 only if the negligence of Defendant in causing the accident is 50% or more. If Defendant's negligence in causing the accident is less than 50%, end your discussions.

6. Was Plaintiff using an available seatbelt at the time of the accident?

Yes _____ skip over 7 and 8 and go on to 9.

No _____ go on to 7.

7. Was Plaintiff negligent for not using a seatbelt?

Yes _____ go on to 8.

No _____ skip over 8 and go on to 9.

8. Were Plaintiff's injuries made greater or more severe because Plaintiff was not using a seatbelt?

Yes _____ go on to 9.

No _____ go on to 9.

9. Plaintiff's total damages from the accident: \$_____.

Go on to 10 only if you answered 8 as "yes." If you answered 6 as "yes" or if you answered 7 or 8 as "no," end your discussions.

10. Plaintiff's damages, if Plaintiff had used a seatbelt: \$_____.

Go to 11.

11. Plaintiff's seatbelt damages (answer to 9 minus answer to 10): \$_____.

Go to 12.

12. Plaintiff's negligence for not using a seatbelt: _____% (from 1% to 100%).

End your discussions; return your verdict.