no-fault newsline
A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS
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Insurers Not Strapped by Statutory Limit of Reduction of Damages for Unbelted Backseat Passengers

By Andrew S. Gipe **November 1, 2023**

MCL 257.710e provides specific requirements for seatbelt usage for operators and passengers of motor vehicles, as well as a limitation of the recovery of damages of not more than 5% for violation of same found in subsection (8). Specifically, MCL 257.710e(3) mandates, with some exceptions, that "each *operator and front seat passenger* of a motor vehicle operated on a street or highway…shall wear a properly adjusted and fastened safety belt…" (emphasis added). MCL 257.710e(8) states that "failing to wear a safety belt in violation of this section may be considered evidence of negligence and may reduce the recovery for damages arising out of the ownership, maintenance, or operation of a motor vehicle. However, that negligence shall not reduce the recovery for damages by more than 5%."

SECREST WARDLE NOTES

MCL 257.710e(8) cannot be applied to limit the reduction of a backseat passenger plaintiff's damages based on comparative negligence. Because the plain and unambiguous language of MCL 257.710e(3) requires that only operators and front seat passengers wear safety belts, defendants can introduce, without limitation, evidence of a backseat passenger's comparative negligence under common law to reduce a plaintiff's damages. Defendants are not limited to the 5% reduction.

In *Clinton v Singh, et al.*, unpublished per curiam opinion of the Court of Appeals, issued October 12, 2023 (Docket No. 364398), Defendant no-fault insurer appealed a trial court ruling that denied its Motion in Limine to preclude the application of a statutory limitation by which Plaintiff's recovery could be reduced for failing to wear a seatbelt. At the time of loss, Plaintiff was a backseat passenger and was not wearing a seatbelt. Defendant argued that because MCL 257.710e did not apply in this case, it should be allowed to produce evidence of Plaintiff's comparative negligence without limitation. The Court of Appeals agreed.

The Court of Appeals found that MCL 257.720e(8) [*sic*], which limits the reduction of damages to no more than 5% for violating the requirement to wear a seatbelt, did not apply to Plaintiff at the time of loss because Plaintiff was a backseat passenger to which MCL 257.710e(3) does not apply. The Court noted that "[t]he plain language of MCL 257.710(e)(3) clearly and unambiguously applies to front seat passengers of motor vehicles only"; therefore, Plaintiff, a rear seat passenger, was not in violation of MCL 257.710e. As such, the Court held that "[the] Plaintiff's alleged comparative negligence for failing to wear a seat belt need not be limited to [five percent]," and MCL 257.720e(8) [*sic*] cannot be applied to limit the reduction of Plaintiff's damages. In reaching its conclusion, the Court relied on a prior ruling in *Lowe v Estate Motors Ltd*, 428 Mich 439 (1987) which held

that MCL 257.710e and MCL 257.710e(8) do not apply to backseat passengers. The Supreme Court in *Lowe* also stated that the safety belt statute and its cap do not apply "when evidence of the failure to use a safety belt is admitted under common-law comparative negligence."

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