2009 PA Super 102

TARA GAUDIO, INDIVIDUALLY and as The ADMINISTRATRIX of the ESTATE of ANDREW M. GAUDIO, as well as in HER CAPACITY as PARENT to PATRICIA GAUDIO, CATHERINE GAUDIO, ROCCO J. GAUDIO, BROOKLYN GAUDIO, Minors,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
v.	:	
FORD MOTOR COMPANY, AUTOLIV, GIBBONS FORD, MASTHOPE RAPIDS PROPERTY OWNERS COUNCIL,	:	
Appellees	:	No. 1021 EDA 2007

Appeal from Judgment of the Order entered April 4, 2007,
Court of Common Pleas, Pike County,
Civil Division at No. 1135-2002

BEFORE: DONOHUE, McEWEN, P.J.E. and FITZGERALD*, JJ.

OPINION BY DONOHUE, J.: **FILED JUNE 1, 2009**

¶ 1 Appellant Tara Gaudio ("Gaudio"), both individually and as the administratrix of the estate of Andrew M. Gaudio (the "Deceased"), appeals from the trial court's order dated April 4, 2007 entering judgment in favor of Appellee Ford Motor Company ("Ford") after a jury trial that resulted in a verdict in Ford's favor. Gaudio appeals various evidentiary rulings made by the trial court prior to and during trial, and further contends that the trial court erred in certain of its instructions to the jury. For the reasons set forth herein, we reverse and remand for a new trial.

*Former Justice specially assigned to the Superior Court.

¶ 2 The basic factual and procedural background of this case is not in dispute. At approximately 4:15 a.m. on June 20, 2001, the Deceased was driving a 1996 Ford F-150 pickup truck in his private community association in Lackawaxen, Pennsylvania on his way to work. As he approached a "T" intersection where the stop sign had been knocked down, he applied his brakes but skidded through the intersection into a ditch, where he hit a dirt embankment. When emergency personnel arrived on the scene, the Deceased was found dead in the passenger seat. The truck's air bag had deployed. The Deceased was not wearing a seat belt. Expert witnesses for Gaudio and Ford agreed that the Deceased had been traveling between 30-34 miles per hour before applying his brakes. Gaudio's experts estimated that he was traveling at a barrier equivalent speed of 8.6 mph when he hit the embankment, while Ford's experts estimated the speed at the time of impact to be 14 mph. An investigative report prepared by the National Highway Transportation Safety Association ("NHTSA"), entitled the "Veridian Report", estimated his speed at 11.6 miles per hour.

¶ 3 On November 13, 2002, Gaudio filed this civil action against, *inter alia*, Ford,[1] asserting claims sounding in negligence and strict liability. Prior to trial, the trial court issued a series of evidentiary rulings in response to motions *in limine* filed by the parties. Rulings on these motions relevant to

[1] Gaudio's claim against Masthope Rapids Property Owners Counsel, which was responsible for the fallen stop sign, settled prior to trial.

this appeal included denials of Gaudio's motions to exclude evidence and argument related to the Deceased's non-use of a seat belt, expert testimony regarding the Deceased's pre-impact conduct, and various statistical and risk/benefit evidence.

¶ 4 The case proceeded to trial only on Gaudio's strict liability claims. Gaudio presented evidence at trial to attempt to prove that the design of the F-150's air bag system was defective because (1) the placement and quantity of the timing sensors caused the driver's side air bag to deploy at a low collision speed where it should not have deployed at all, or (2) that it deployed too late, causing the Deceased's body to be too close to the steering wheel at the time of deployment. Gaudio argued that if the air bag had not deployed at all, or had deployed in a timely fashion, the Deceased would have suffered only minor injuries, if any.

¶ 5 Ford argued that its air bag system was not defective and that the air bag deployed precisely as designed. Through expert witnesses, Ford contended that the Deceased's heavy breaking at the intersection, his failure to use a seat belt, and perhaps other pre-impact conduct (e.g., reaching for something on the truck's floor) caused him to be out of position and too close to the steering wheel at the time of air bag deployment. Ford also argued that if the air bag had not deployed, Gaudio would have suffered significant injuries in the crash.

¶ 6 The jury returned a verdict in favor of Ford, indicating on the verdict form that the F-150's air bag crash sensor system was not defective. Based upon this finding, the jury did not reach the issues of causation or damages. The trial court denied Gaudio's post-trial motions and entered judgment in favor of Ford.

¶ 7 This timely appeal followed, in which Gaudio contests a number of the trial court's evidentiary rulings and jury instructions. Gaudio challenges the trial court's evidentiary rulings on the Deceased's non-use of a seat belt, Ford's introduction of evidence relating to the Deceased's pre-impact behavior, the F-150's compliance with government safety standards, various generalized statistics, and risk/benefit evidence. Gaudio raises four objections to the trial court's charge to the jury, contending that the charge failed to instruct the jury regarding the definition of crashworthiness and the irrelevance of Ford's due care, the Deceased's pre-impact behavior, and compliance with industry and government standards. Appellants' Brief at 9.

¶ 8 Before addressing these issues, we will first respond to Ford's argument that the trial court erred in denying its motions for a compulsory nonsuit and directed verdict on Gaudio's strict liability-crashworthiness claims, which Ford contends should have been granted as a result of our Supreme Court's decision in ***Pennsylvania Dep't of General Services v. United States Mineral Products Co.***, 587 Pa. 236, 898 A.2d 590 (2006) ("***General Services I***"). To this end, we will briefly review the history of

products liability law and the crashworthiness doctrine in this Commonwealth. Our Supreme Court first adopted section 402A of the Restatement (Second) of Torts in ***Webb v. Zern***, 422 Pa. 424, 220 A.2d 853 (1966). To state a section 402A products liability claim in Pennsylvania, the plaintiff must prove that the defendant sold a product "in a defective condition," that the defect existed when the product left the defendant's hands, and that the defect caused the plaintiff's injuries. ***See, e.g., Hadar v. AVCO Corp.***, 886 A.2d 225, 228 (Pa. Super. 2005). A product is "in a defective condition" when it lacks "any element necessary to make it safe for its intended use or possessing any element that renders it unsafe for the intended use." ***Azzarello v. Black Bros. Co., Inc.***, 480 Pa. 547, 559, 391 A.2d 1020, 1027 (1978). Because the key inquiry in all products liability cases is whether or not there is a defect, it is the product, and not the defendant's conduct, that is on trial. ***See, e.g., Hutchinson v. Penske Truck Leasing Co.***, 876 A.2d 978, 983 (Pa. Super. 2005), *affirmed*, 592 Pa. 38, 922 A.2d 890 (2007).

¶ 9 The crashworthiness doctrine is a subset of strict products liability law that most typically arises in the context of vehicular accidents. ***See, e.g., Colville v. Crown Equip. Corp.,*** 809 A.2d 916, 922 (Pa. Super. 2002), *appeal denied,* 574 Pa. 742, 829 A.2d 310 (2003). First explicitly recognized as a specific subset of product liability law by this Court in ***Kupetz v. Deere & Co., Inc.***, 644 A.2d 1213 (Pa. Super. 1994), the term

"crashworthiness" means "the protection that a motor vehicle affords its passenger against personal injury or death as a result of a motor vehicle accident." ***Id.*** at 1218. The doctrine extends the liability of manufacturers and sellers to "situations in which the defect did not cause the accident or initial impact, but rather increased the severity of the injury over that which would have occurred absent the design defect." ***Id.*** To avoid liability, a manufacturer must design and manufacture the product so that it is "reasonably crashworthy," or, stated another way, the manufacturer must include accidents as intended uses of its product and design accordingly. ***Id.***

¶ 10 A crashworthiness claim requires proof of three elements. First, the plaintiff must prove that the design of the vehicle was defective, and that at the time of design an alternative, safer, and practicable design existed that could have been incorporated instead. ***Id.*** Second, the plaintiff must identify those injuries he or she would have received if the alternative design had instead been used. ***Id.*** Third, the plaintiff must demonstrate what injuries were attributable to the defective design. ***Id.***

¶ 11 In recognizing the crashworthiness doctrine in ***Kupetz***, this Court relied upon our Supreme Court's prior decision in ***McCown v. International Harvester Co.***, 463 Pa. 13, 342 A.2d 381 (1975), which adopted the principle tenet of the crashworthiness doctrine, i.e., manufacturers are strictly liable for defects that do not cause the accident but nevertheless

cause an increase in the severity of injuries that would have occurred without the defect. In ***McCown***, the plaintiff's truck hit a guardrail as he was attempting to make a right turn. The collision caused the steering wheel to spin rapidly to the left, and when this occurred the spokes of the steering wheel struck plaintiff's right arm, resulting in fractures to his wrist and forearm. The manufacturer admitted that the steering wheel mechanism was defective, but claimed that the defect was not the cause of the accident. Our Supreme Court rejected the manufacturer's contributory negligence defense (i.e., that the plaintiff's careless driving caused the accident) and affirmed the judgment in plaintiff's favor. ***Id.*** at 17, 342 A.2d at 382. In so doing, the Court recognized that for purposes of a products liability claim, the defect does not have to be the cause of the accident resulting in the plaintiff's injuries, and instead acknowledged that a strict liability claim may allow recovery for injuries resulting after the collision occurred. ***Id.***

¶ 12 Against this background, in ***General Services I***, the Commonwealth brought a strict products liability property damage claim against a chemical manufacturer and others for contamination of a government office building. In the aftermath of a fire, the presence of polychlorinated biphenyls ("PCBs") was detected on surfaces and in the ambient air inside the building. The Commonwealth brought suit against, *inter alia*, the Monsanto Company (the PCB manufacturer) as well as the manufacturers and installers of PCB-

containing building products used in construction. Monsanto argued that it could not be held responsible for chemical contamination resulting from the fire because subjecting a building product to a fire is an abnormal use of the building product, not an intended use. The Commonwealth acknowledged the role of the fire in spreading the PCBs, but argued that fire is a foreseeable event against which Monsanto should have guarded. Trial resulted in a $90 million verdict against Monsanto.

¶ 13 Our Supreme Court agreed with Monsanto and ordered a new trial. The Court recognized at an "abstract theoretical level" that the "overall concept of intended use should include all reasonably foreseeable uses and/or occurrences." ***General Services I***, 587 Pa. at 257, 898 A.2d at 603. It refused, however, to "import[] the foreseeability concept into existing strict liability doctrine in a generalized fashion" because the "central tenets of such liability scheme have been constructed on the contrary notion that negligence concepts are foreign to it." ***Id.*** As a result, the Supreme Court concluded that "a manufacturer can be deemed liable only for harm that occurs in connection with a product's intended use by an intended user; the general rule is that there is no strict liability in Pennsylvania relative to non-intended uses even where foreseeable by a manufacturer." ***Id.*** at 253, 898 A.2d at 600 (citing ***Phillips v. Cricket Lighters***, 576 Pa. 644, 841 A.2d 1000 (2003) (plurality decision)). Put another way, the Supreme Court held

that because incineration was not an intended use of building products, the manufacturer had no obligation to make the products "fireworthy".[2]

¶ 14 Ford argues that our Supreme Court's decision in ***General Services I*** precludes the application of the crashworthiness doctrine in this case. Ford contends that the fundamental basis for the crashworthiness doctrine is that crashes are intended uses of automobiles because they are foreseeable, and thus manufacturers must design their products to make them "crashworthy." Appellees' Brief at 15-19. As such, Ford concludes that "[w]hile [***General Services I***] was a 'fireworthiness' case rather than a 'crashworthiness' case, a holding that motor vehicle manufacturers – and only motor vehicle manufacturers – can be held strictly liable for harm resulting from foreseeable but unintended uses of products without the protection of the 'level field' available under negligence law would be flatly inconsistent with the holding of that decision." ***Id.*** at 18-19.[3]

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[2] On remand, the Commonwealth tried the case again, on the theory that an unsafe level of PCBs existed in the building for reasons unrelated to the fire. The Commonwealth argued that the PCB contamination resulted from the intended use of the building materials (i.e., as construction supplies), and that vapors from the PCB-laden building materials had spread throughout the building from the ordinary use of the heating and ventilation systems. The retrial resulted in a defense verdict, which has subsequently been affirmed by both the Commonwealth Court, 927 A.2d 717 (Pa. Commw. 2007), and the Supreme Court, -- Pa. --, 956 A.2d 967 (2008).

[3] The Product Liability Advisory Council, Inc. filed an *amicus curiae* brief in support of this position. ***See*** Brief of *Amicus Curiae* Product Liability Advisory Council, Inc. in Support of Defendants-Appellees at 3 ("Crashworthiness cannot qualify as a strict liability theory under

¶ 15 We disagree. Our Supreme Court in ***General Services I*** carefully avoided eliminating the crashworthiness doctrine as a cognizable subset of strict liability law and refused to equate crashworthiness with "fireworthiness". It began by describing the crashworthiness doctrine as follows:

> [C]rashworthiness doctrine has developed as a discrete facet of product liability jurisprudence, having particularized elements requiring the fact finder to distinguish non-compensable injury (namely, that which would have occurred in a vehicular accident in the absence of any product defect) from the enhanced and compensable harm resulting from the product defect. ***See generally Kupetz v. Deere & Co., Inc.***, 435 Pa. Super. 16, 26-27, 644 A.2d 1213, 1218 (1994).

General Services I, 587 Pa. at 255, 898 A.2d at 601. Without disapproving the discrete use of the foreseeable use concept in crashworthiness cases (i.e., motor vehicle accidents), the Supreme Court refused to extend the foreseeability test to other products:

> [W]e are of the view that the metamorphosis of the particularized crashworthiness doctrine into a generalized conditions-of-use/outside-cause-or-instigator exception to the bar against resort to foreseeability concepts in the strict liability arena would, in fact, represent an extension of the type

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Pennsylvania law. . . . The Supreme Court agrees. Only last year, it rejected 'fireworthiness' as a basis for strict liability on exactly the same rationale. [citing ***General Services I***]").

> that was disapproved by a majority of Justices in ***Phillips***.[4]

Id. at 257, 898 A.2d at 603.

¶ 16 Thus, contrary to the interpretation urged by Ford, the Supreme Court in ***General Services I*** did not reject the crashworthiness doctrine. Although the Supreme Court refused to extend the rationale of the crashworthiness doctrine to other products, it clearly recognized the continued viability of the doctrine as a targeted exception to the prohibition against utilizing an analysis of the foreseeability of an intended use in strict liability law in Pennsylvania. ***Id.*** at 254 n.10, 257, 898 A.2d at 601 n.10, 603. The case *sub judice* presents a straightforward application of the

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[4] In ***Phillips v. Cricket Lighters***, 576 Pa. 644, 841 A.2d 1000 (2003) (plurality), our Supreme Court affirmed the trial court's grant of summary judgment in favor of the manufacturer on a strict liability design defect claim after a small child's use of a butane lighter resulted in a fire. Based upon the finding that small children were not the intended users of butane lighters, the Supreme Court ruled that "in a strict liability design defect claim, the plaintiff must establish that the product was unsafe for its intended user." ***Id.*** at 657, 841 A.2d at 1006. In so ruling, the Supreme Court emphasized that the limitation on the scope of strict liability only to intended users was necessary because extending liability to use by all foreseeable users "would improperly import negligence concepts into strict liability law." ***Id.***

In a concurring opinion in ***Phillips***, Justice Saylor suggested that the negligence concepts included in Section 2 of the Restatement (Third) of Torts should be introduced into Pennsylvania's strict liability law, rather than continued adherence to Section 402A of the Restatement (Second) of Torts. ***Id.***. at 664-82, 841 A.2d at 1012-23 (Saylor, J., concurring). We note that the Supreme Court has granted appeal in a more recent case, ***Bugosh v. Allen Refractories Co.***, 932 A.2d 901 (Pa. Super. 2007), *appeal granted*, 596 Pa. 265, 942 A.2d 897 (2008), to address the specific issue of "[w]hether this Court should apply § 2 of the Restatement (Third) of Torts in place of § 402A of the Restatement (Second) of Torts".

crashworthiness doctrine, as Gaudio argues that if the air bag had not deployed at all, or had timely deployed, the Deceased would have suffered at most only minor injuries. Accordingly, we find no error in the trial court's refusal to grant Ford a compulsory nonsuit or a directed verdict.

Evidentiary Issues

¶ 17 We turn now to the issues Gaudio raises on appeal, starting with her challenges to the trial court's evidentiary rulings. Although Gaudio raises a wide variety of such issues, for sake of discussion we will divide them into five broad categories: (1) evidence regarding seat belt usage, (2) evidence of the pre-impact conduct of the Deceased, (3) evidence of Ford's compliance with federal safety standards, (4) various statistical evidence, and (5) evidence relating to risk/benefit analysis.

¶ 18 In considering these issues raised by Gaudio, we note that our standard of review is a narrow one:

> When we review a trial court's ruling on admission of evidence, we must acknowledge that decisions on admissibility are within the sound discretion of the trial court and will not be overturned absent an abuse of discretion or misapplication of law. In addition, for a ruling on evidence to constitute reversible error, it must have been harmful or prejudicial to the complaining party.

Stumpf v. Nye, 950 A.2d 1032, 1036 (Pa. Super. 2008); A party suffers prejudice when the trial court's error could have affected the verdict.

Trombetta v. Raymond James Financial Services, Inc., 907 A.2d 550, 561 (Pa. Super. 2006).

(1) Evidence Regarding Seat Belt Usage

¶ 19 In Motion *in Limine* No. 3, Gaudio asked the trial court for an order excluding, *inter alia*, any evidence or argument that the Deceased was not wearing his seat belt at the time of the accident. Gaudio further requested that the seat belt system in the Deceased's vehicle, including its role in the vehicle's overall restraint system, not be mentioned at trial, and that questions of defect and causation be decided without reference to the presence or use of a seat belt.

¶ 20 The trial court denied Gaudio's Motion *in Limine* No. 3, ruling that "the parties shall be permitted to include evidence and arguments regarding the pre-impact circumstances, but shall not be permitted to argue negligence or comparative fault of the decedent." Trial Court Order, 6/1/06, at 2. Based upon this ruling, Ford was permitted to introduce expert testimony at trial opining that the Deceased's failure to wear his seat belt explained why he was "out of position" and therefore too close to the air bag when it deployed. Notes of Testimony ("N.T."), 6/14/06, at 75. Ford's expert witnesses were also permitted to testify that the F-150's air bag system is referred to as a "supplemental restraint system" because the seat belts (lap and shoulder) are the primary restraint system and keep vehicle occupants in a proper seating position, thereby reducing the risk of them being out of position at

the time of air bag deployment. ***See, e.g.***, 6/13/06 at 65-67, 134, 154, 222-23.

¶ 21 As part of Pennsylvania's Occupant Protection Act, section 4581 of the Vehicle Code is entitled "Restraint Systems." 75 Pa.C.S.A. § 4581. Subsection 4581(a)(2) requires drivers and front seat passengers to wear a properly adjusted and fastened safety seat belt. Subsection (e) then addresses the admissibility of evidence of non-use of a seat belt system in civil actions:

> **(e) Civil actions.** In no event shall a violation or alleged violation of this subchapter be used as evidence in a trial of any civil action; nor shall any jury in a civil action be instructed that any conduct did constitute or could be interpreted by them to constitute a violation of this subchapter; nor shall failure to use a child passenger restraint system or safety seat belt system be considered as contributory negligence **nor shall failure to use such a system be admissible as evidence in the trial of any civil action. . ..**

75 Pa.C.S.A. § 4581(e) (emphasis added).

¶ 22 In this case, the trial court ruled that subsection 4581(e) "does not mandate an absolute bar" on evidence of seat belt usage, and that instead it merely prohibits the use of such evidence to prove contributory negligence. Trial Court Opinion, 6/14/07, at 7. The trial court found that the subsection does not prohibit the introduction of seat belt evidence "for the purpose of proving causation in a products liability claim," and that "to disallow such

evidence where it is necessary to disprove a products liability claim would be unjust." ***Id.*** at 8.

¶ 23 The application of a statute is a question of law, and our standard of review is plenary. ***Commonwealth v. Baird,*** 856 A.2d 114, 115 (Pa. Super. 2004). When interpreting a statute, the Statutory Construction Act dictates our approach. 1 Pa.C.S.A. § 1921; ***Baird,*** 856 A.2d at 115. "When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. § 1921(b). "The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S.A. § 1921(a). "When the words of a statute are clear and free from all ambiguity, they are presumed to be the best indication of legislative intent." ***Chanceford Aviation Properties, L.L.P. v. Chanceford Tp. Bd. Of Supervisors***, 592 Pa. 100, 107-08, 923 A.2d 1099, 1104 (2007) (quoting ***Hannaberry HVAC v. Workers' Comp. Appeal Bd. (Snyder Jr.)***, 575 Pa. 66, 77, 834 A.2d 524, 531 (2003)); ***see also Commonwealth v. Bradley***, 575 Pa. 141, 151, 834 A.2d 1127, 1132 (2003) ("As a general rule, the best indication of legislative intent is the plain language of the statute.").

¶ 24 We find that the language in subsection 4581(e) highlighted above clearly and unambiguously expresses the intent of the Legislature that evidence of non-use of seat belts should be strictly prohibited in civil actions tried in Pennsylvania courts, for any purpose. Because the highlighted

language neither contains nor references any exceptions to its rule, we construe the legislative intent of the provision to be a blanket exclusion of evidence of seat belt usage in civil actions for any purpose, including to prove not only contributory negligence but also defect, causation and/or damages. ***Cf. Kmonk-Sullivan v. State Farm Mut. Auto. Ins. Co.,*** 567 Pa. 514, 525, 788 A.2d 955, 962 (2001) ("As a matter of statutory interpretation, although 'one is admonished to listen attentively to what a statute says[;][o]ne must also listen attentively to what it does not say.'") (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes,* 47 Colum. L.Rev. 527, 536 (1947))).

¶ 25 We disagree with the dissent that subsection 4581(e) may be interpreted to preclude only evidence of contributory negligence, for at least two reasons. First, the highlighted language prohibits the use of non-seat belt usage "as evidence in the trial of any civil action," without any limitation that the evidence at issue must pertain to contributory negligence. Listening attentively to what the statute does not say, we may not interpret the language to express a limitation it simply does not contain. Second, the third clause of the subsection in its entirety contains two independent provisions. The first provision is a specific bar to use of non-seat belt evidence to show contributory negligence ("nor shall failure to use a . . . safety seat belt system be considered as contributory negligence"). The second provision (the highlighted language) is a general bar to usage of

non-seat belt evidence for any purpose ("nor shall failure to use such a system be admissible as evidence in the trial of any civil action"). The dissent's recommended interpretation of the third clause would render the second provision as merely duplicative of the first provision, as both provisions would express precisely the same evidentiary exclusion (i.e., evidence to prove contributory negligence).[5] Under our rules of statutory construction, we must give effect to every word in every provision of a statute, and we may not interpret statutory language in a manner that renders any provision as superfluous or mere surplusage. ***Holland v. Marcy***, 584 Pa. 195, 206, 883 A.2d 449, 455 (2005) (plurality decision); ***Keystone Aerial Surveys, Inc. v. Pa. Prop. & Cas. Ins. Guar. Ass'n***, 777 A.2d 84, 90 (Pa. Super. 2001), *affirmed*, 574 Pa. 147, 829 A.2d 297

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[5] We take issue with the trial court's reliance on this Court's decision in ***Kreiensieck and Kreiensieck v. Saab-Scania A.B. et al.***, 2207 EDA 2001 (filed June 4, 2002). ***Kreiensieck*** was decided by unpublished memorandum and therefore has no precedential value. ***See*** 65 Pa. Code § 65.37 ("An unpublished memorandum decision shall not be relied upon by a Court or a party in any other action . . .."). Moreover, because one member of the three-judge panel dissented and a second concurred only in the result, the unpublished memorandum decision in ***Kreiensieck*** represented the views of a single judge. ***See Commonwealth v. Blee***, 695 A.2d 802 (Pa. Super. 1997) (a decision offered by one member of a three-member Superior Court panel, with the remaining two judges either dissenting or concurring in the result, is of no precedential value); ***McDermott v. Biddle***, 647 A.2d 514 (Pa. Super. 1994) (for any principle of law expressed in a decision of this Court to be considered precedent, it must command a majority of judges voting both as to disposition and principle of law expressed), *reversed on other grounds*, 544 Pa. 21, 674 A.2d 665 (1996). Thus, it is clear that even if published, ***Kreiensieck*** would have had no precedential value.

(2003); ***Wiernik v. PHH U.S. Mortg. Corp.***, 736 A.2d 616, 620 (Pa. Super. 1999), *appeal denied*, 561 Pa. 700, 751 A.2d 193 (2000).

¶ 26 In at least three cases, this Court has interpreted the highlighted language in subsection 4581(e) to preclude the introduction of evidence of seat belt usage. In ***Pulliam v. Fannie***, 850 A.2d 636, 641 (Pa. Super. 2004), *appeal denied*, 583 Pa. 696, 879 A.2d 783 (2005), this Court ruled that "[t]here is no ambiguity in the statute which sets forth an absolute prohibition against the introduction of such evidence and thus, we conclude that the court's evidentiary ruling permitting inquiry into the matter was error." In ***Nicola v. Nicola***, 673 A.2d 950 (Pa. Super. 1996), this Court concluded that the language in subsection 4581(e) "speaks to the failure to use a safety seat belt system, generally, and directs that such facts cannot be considered contributory negligence *and cannot be used as evidence in the trial of any civil proceeding.*" ***Id.*** at 951 (emphasis added). And in ***Grim v. Betz***, 539 A.2d 1365 (Pa. Super. 1988), we found that "Section (E) of § 4581 clearly states that the failure to use a 'child passenger restraint system' or 'safety seat belt system' shall not be considered, in any civil action, as contributory negligence, *and shall not be admissible as evidence in any civil action.*" ***Id.*** at 1369 (emphasis added).

¶ 27 Whether or not the application of a blanket exclusion of evidence of non-seat belt usage in a products liability case was "unjust", as the trial court concluded, was not for the trial court and is not for this Court to

decide. In enacting subsection 4581(e), the Legislature determined the public policy of the Commonwealth with respect to this issue. ***Commonwealth v. Newman,*** 534 Pa. 424, 429, 633 A.2d 1069, 1071 (1993) ("Subject only to constitutional limitations, the legislature is always free to change the rules governing competency of witnesses and admissibility of evidence.").[6] It is the function of this Court to determine the legislative intent of an enactment and give effect to that intention. ***Commonwealth v. Reefer,*** 816 A.2d 1136, 1141 (Pa. Super.), *appeal denied*, 574 Pa. 759, 831 A.2d 599 (2003); ***Commonwealth v. Campbell***, 758 A.2d 1231, 1233-34 (Pa. Super. 2000). In this regard, we must assume that the Legislature understood that the outcomes of civil actions, including products liability claims for defectively designed vehicles, might be affected by a blanket rule prohibiting the introduction of evidence regarding

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[6] We reject Ford's contention that the evidentiary preclusion in subsection 4581(e) is unconstitutional under ***Rich Hill Coal Co. v. Bashore***, 334 Pa. 449, 7 A.2d 302 (1939). In ***Rich Hill***, our Supreme Court held that a rule of evidence adopted by the legislature may be unconstitutional if it either gives "probative value to a statement that has none" or if its application is not "impartial or uniform." ***Id.*** at 484-85, 7 A.2d at 319. The evidentiary rule in subsection 4581(e) does not give probative value to any statement, as it merely excludes certain evidence at trial. And it may be applied impartially and uniformly in this case, as neither party is permitted to introduce evidence regarding the F-150's seat belt system. The hypothetical issue raised by Ford in its brief, namely that in a proper case a plaintiff could introduce evidence that a vehicle occupant *was* using a seat belt (which the defendant could not rebut), is not before this Court and thus we will not address it.

seat belt usage. It is not this Court's role to substitute our judgment in this regard, just as it was not appropriate for the trial court to do so.

¶ 28 For these reasons, the trial court's denial of Gaudio's Motion *in Limine* No. 3 was error. In addition to its refusal to prohibit evidence of seat belt non-usage, the trial court should also have precluded evidence that the F-150 had a seat belt system and/or that the purpose of the seat belt system was to serve as the primary restraint system. In this regard, we find persuasive a decision from the United States District Court for the Eastern District of Philadelphia, ***Russo v. Mazda Motor Corp.***, 1992 WL 210232 (E.D. Pa., August 17, 1992), in which the court found that "allowing Defendant to introduce evidence of the existence of the seat belt system falls but a half step short of allowing Defendant to introduce evidence of the decedent's failure to use the seat belt system." ***Id.*** at *2. To the extent that Ford introduced evidence relating to the existence and purpose of the F-150's seat belt system from which the jury could infer that the Deceased was not wearing a seat belt at the time of the accident, then the evidence was prohibited by subsection 4581(e).

¶ 29 Moreover, because subsection 4581(e) precluded the introduction of evidence related to the Deceased's non-use of the seat belt, the existence of a seat belt system in the F-150 and the purposes of that system were not matters at issue in the case. As a result of the statutory prohibition, such evidence was irrelevant based upon a lack of materiality. ***See, e.g.,***

Commonwealth v. McNeely, 534 A.2d 778, 779-80 (Pa. Super. 1987) ("Relevance is comprised of two fundamental components: materiality and probative value. ... 'If the evidence is offered to help prove a proposition which is not a matter in issue, the evidence is immaterial.'") (quoting McCormick, *Evidence*, § 185, at 541 (Cleary 3rd ed. 1984))), *appeal denied*, 520 Pa. 582, 549 A.2d 915 (1988).

(2) Evidence Regarding Deceased's Pre-Impact Conduct

¶ 30 In Motion *in Limine* No. 1, Gaudio asked the trial court for an order excluding any evidence or argument regarding the negligence or comparative fault of the Deceased.[7] The trial court granted Gaudio's request with respect to argument regarding Deceased's negligence or comparative fault, but ruled that "[t]he parties shall be permitted to include evidence and arguments regarding the impact circumstances giving rise to the collision." Trial Court Order, 6/1/06, at 5.

¶ 31 Based upon the trial court's ruling, Ford's expert witnesses were permitted to testify regarding the Deceased's pre-impact conduct. For example, Dr. James Benedict offered the following testimony:

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[7] Gaudio's Motions *in Limine* Nos. 7-10 requested orders prohibiting Ford's expert witnesses from, *inter alia*, testifying about the pre-impact behavior of the Deceased. The trial court denied Motions Nos. 7-9 and granted in part and denied in part Motion No. 10, ruling that "such evidence may be introduced through expert testimony, so long as such testimony is based upon a reasonable degree of professional certainty." Trial Court Order, 6/1/06, at 6.

Q. Now, Dr. Benedict, do you have an opinion or have you developed any conclusions with respect to this case that you hold to a reasonable degree of engineering certainty and medical certainty?

A. Yes, sir I have.

Q. What are those opinions, doctor?

A. My opinions [sic] basically that I believe it's my opinion to a reasonable degree of biomedical certainty that No. 1, [Deceased] is caught by surprise, that there's an element of surprise in this whole accident event, accident sequence. He is riding down a road that he is familiar with, he drives it on a regular basis, something on this day obviously, in my opinion, had him distracted because he was caught unaware, it is the whole accident sequence which is geared toward someone who is in a panic breaking, cannot control his vehicle, was cause unaware in a familiary interaction, so I think that's No. 1.

No. 2, is that it's my opinion that he is unrestrained at the time that this event occurred. No. 3, it is my opinion, during the braking phase because of whatever he is doing whether he is reaching down to the side for something, reaching for the radio, reaching for the ashtray, reaching for something on the floor, CB, the box on the seat, something has him distracted that I think begins to get him [sic] that he is not in a normal position because of his distraction.

I think that at the time he begins to realize – it is my opinion that at the time he begins to realize he is in danger, he is not in an optimal position to provide protection from either breaking the impact and that he is getting closer to the wheel, he is pre-impact braking which is going to be a panic type breaking, it is going to continue to move him forward and once he gets within a few inches of the wheel, then at the impact point he is going to be on to the wheel or very close to the wheel at the time of the interaction with the air bag.

* * *

> It is my opinion also that had he been properly belted and properly seated at the start of this I think he would not have been fatally injured. The potential for serious injury would be markedly reduced.

N.T., 6/12/06, at 134-36.

¶ 32 Gaudio contends that such testimony wrongly injected negligence principles in a strict liability case and should have been ruled inadmissible because comparative negligence is not a defense in a strict liability case. Appellants' Brief at 17. Ford counters that while evidence of the Deceased's pre-impact conduct was inadmissible to prove contributory negligence, it was nevertheless admissible to prove lack of defect and causation. Appellee's Brief at 24-25. The trial court agreed with Ford, finding that while someone could "inappropriately" put forth "an argument regarding negligence on the part of the [Deceased], the fact is that [the evidence relating to pre-impact conduct] was not used in that fashion." Trial Court Opinion, 6/14/07, at 5-6. Instead, the trial court concluded that "the evidence was admitted to prove [Ford's] theory regarding the [Deceased's] position in the vehicle at the time of air bag deployment and at the time of the vehicle's impact with the embankment." ***Id.*** at 6.

¶ 33 Our Supreme Court has explained the underlying philosophical basis for recovery in strict liability cases as follows:

> The development of a sophisticated and complex industrial society with its proliferation of new products and vast change in the private enterprise