

# Texas Supreme Court: Failure to Wear Seatbelt is Admissible When Apportioning Fault

In a landmark decision delivered last month in *Nabor Well Services, Ltd v. Romero*, the Texas Supreme Court overturned more than 40 years of precedent and unanimously reversed the Court's long-standing prohibition on evidence concerning a claimant's failure to use a seatbelt, says Matt Perkins of **Perkins & Associates** of Shreveport, La.

The court had previously held that such evidence was inadmissible to reduce a claimant's recovery for injuries sustained in an automobile accident, thus rendering such evidence easily susceptible to an objection on relevance grounds. (*Kerby v. Abilene Christian College*, 503 S.W.2d 526 (Tex. 1973); *Carnation v. Wong*, 516 S.W.2d 116 (Tex. 1974)) However, in *Romero*, the Court ultimately held that relevant evidence of use or nonuse of seatbelts is now admissible for the purpose of apportioning responsibility in civil lawsuits. (2015 WL 648858 at \*17)

Recently reported in DRI:

"While the practical impact of the Court's holding is yet to be seen, the Court's abrupt about-face is significant and signals the Court's willingness to revisit a rule that has outlived both its usefulness and its purpose.

"To summarize, the Texas Supreme Court held that relevant evidence of use or nonuse of seatbelts, and relevant evidence of a plaintiff's pre-occurrence, injury-causing conduct generally, is admissible for the purpose of apportioning responsibility under the Texas proportionate-responsibility

statute, provided that the plaintiff's conduct caused or was a cause of his damages. While it can certainly be argued that the Court is over a decade late to the party, it has, nevertheless, decisively eliminated a rule many believed anachronistic, and in doing so, has added another useful tool to the arsenal of the savvy defense attorney."

In this case, biomechanical evidence was attempted to explain why the injuries occurred, Perkins said. The district and appellate courts prohibited it, but the Texas Supreme Court said that such evidence is relevant.