

6.11 PROXIMATE CAUSE — ROUTINE TORT CASE WHERE NO ISSUES OF CONCURRENT OR INTERVENING CAUSES, OR FORESEEABILITY OF INJURY OR HARM (Approved 8/99)

NOTE TO JUDGE

This charge is designed to address proximate cause in the routine tort case when there is no issue as to concurrent or intervening causes or foreseeability. Beyond the “but for” instruction, the charge also contains substantial factor language to guide the jury’s deliberations in those cases when the injury or harm might have been sustained even if the actor had not been negligent. *Vuocolo v. Diamond Shamrock Chem.*, 240 N.J. Super. 289, 294-95 (App. Div. 1990), *certif. denied*, 122 N.J. 333 (1990). However, unless there is any serious issue relating to causation, the “substantial factor” portion of the charge can be abbreviated in the fashion suggested below.

By proximate cause, I refer to a cause that in a natural and continuous sequence produces the accident/incident/event and resulting injury/loss/harm and without which the resulting accident/incident/event or injury/loss/harm¹ would not have occurred.² A person who is negligent is held responsible for any accident/incident/event or injury/loss/harm that results in the ordinary course of

¹When charging proximate cause on liability, use accident/incident/event, as appropriate. When charging proximate cause on damages, use injury/loss/harm, as appropriate.

²*Vuocolo v. Diamond Shamrock Chem.*, 240 N.J. Super. at 294; *Cruz-Mendez v. ISU*, 156 N.J. 556 (1999). This language has been disapproved in those cases where there are concurrent or intervening causes of harm, *Conklin v. Hannotch Weisman*, 145 N.J. 395, 419 (1996), but can (continued on next page) still be employed in the routine case when a claim of concurrent or intervening cause is not raised.

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events from his/her/its negligence.³ This means that you must first find that the resulting accident/incident/event or injury/loss/harm to *[name of plaintiff or other party]* would not have occurred but for the negligent conduct of *[name of defendant or other party]*.⁴ Second, you must find that *[name of plaintiff or defendant]* negligent conduct was a substantial factor in bringing about the resulting accident or injury/loss/harm.⁵ By substantial, I mean that the cause is not remote, trivial or inconsequential.

If you find that *[name of defendant or other party]*'s negligence was a cause of the accident/incident/event and that such negligence was a substantial factor in bringing about the injury/loss/harm, then you should find that *[name of defendant or other party]* was a proximate cause of *[name of plaintiff]*'s injury/loss/harm.

³*Rappaport v. Nichols*, 31 N.J. 188, 203 (1959).

⁴The “but for” test for the routine case is derived from *Conklin v. Hannotch Weisman*, 145 N.J. 395, 417 (1996); and *Camp v. Jiffy Lube #114*, 309 N.J. Super. 305 (App. Div. 1998). See also, *Cruz-Mendez v. ISU*, *supra*.

⁵*Vuocolo v. Diamond Shamrock Chem.*, 240 N.J. Super. at 294.