5.40D-2 DESIGN DEFECT — INTRODUCTORY STATEMENT TO JURY (All Cases) (3/10)

The defendant *[name]* as the manufacturer/seller of a *[product]* has the duty[1] to make/sell a *[product]* that is reasonably safe. In this charge when I refer to a reasonably safe *[product]* I mean a *[product]* that is reasonably fit, suitable and safe for its intended or reasonably foreseeable uses.[2] Defendant *[name]* owes that duty to direct users of the *[product]*, to reasonably foreseeable users of the *[product]*, and to those who may reasonably be expected to come into contact with it.

The defendant *[name]* is liable only if *[insert name of the plaintiff]* proves that the *[product]* causing the harm was not reasonably safe for its intended or reasonably foreseeable uses. In this case the plaintiff *[name]* claims that the *[name of product]* was not reasonably safe for its intended purpose because the *[product]* was designed in a defective manner. (*N.J.S.A.* 2C:58C-2c.)

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[1] This duty may apply to a defendant independent contractor, such as a manufacturer of a component part of a product, or even a rebuilder where the part or product was built according to plans and specifications of the general manufacturer. The standard applied in assessing whether a component part manufacturer can be held liable for a design defect is set forth succinctly in *Boyle v. Ford Motor Co., 399 N.J. Super.* 18, 24 (App. Div. 2008), *certif. denied*, 196 *N.J.* 597. The respective contractual responsibilities of defendant manufacturers and producers vis-a-vis component parts and the finished product have no bearing upon the issue of proximate cause. *Michalko v. Cooke & Chem. Corp.*, 91 *N.J.* 386 (l982).

[2] *N.J.S.A.* 2A:58C-2 uses the phrase "not reasonably fit, suitable or safe." Although this model charge condenses the phrase, and then defines "safe" by including fitness and suitability, individual judges may feel more comfortable using the full phrase. In addition, if the phrase "fit" or "suitable" is more appropriate to the facts of the case, those words may be used instead of "safe." Refer also to *Freund v. Cellofilm Properties*, 87 *N.J.* 229, 242 (l981), for warning defect cases; and, generally, *Suter v. San Angelo Foundry & Machine Co.*, 81 *N.J.* 150, 176 (l979).