6.11 PROXIMATE CAUSE — ROUTINE TORT CASE WHERE NO ISSUES OF CONCURRENT OR INTERVENING CAUSES, OR FORESEEABILITY OF INJURY OR HARM

(Approved 08/99; Revised 04/16)

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. Its most recent revision is the result of the Supreme Court's opinion in *Komlodi v. Picciano,* 217 *N.J.* 387, 422-23 (2014), where it stated:

> The two forms of causation – "but for" and "substantial factor" – are mutually exclusive. A "but for" charge is appropriate when there is only one potential cause of the injury or harm. *See Conklin v. Hannoch Weisman, P.C.*, 145 *N.J.* 395, 417 (1996) ("In the routine tort case, 'the law requires proof that the result complained of probably would not have occurred "but for" the negligent conduct of the defendant.'" (citation omitted)). In contrast, the "substantial factor" test is given when there are concurrent causes potentially capable of producing the harm or injury. *Id*. at 419–20. Thus, "a tortfeasor will be held answerable if its 'negligent conduct was a substantial factor in bringing about the injuries,' even where there are 'other intervening causes which were foreseeable or were normal incidents of the risk created.'" *Brown v. United States Stove Co.*, 98 *N.J.* 155, 171 (1984) (quoting *Rappaport v. Nichols*, 31 *N.J.* 188, 203 (1959)). A substantial factor is one that is "not a remote, trivial or inconsequential cause." *Model Jury Charge (Civil) § 6.13*.

As a result of the above language in *Komlodi*, the Committee omitted the "substantial factor" language from this charge. When the

> evidence presented during the trial may suggest one or more concurrent causes bringing about the harm or injury, Model Jury Charge (Civil) 6.12 should be used.

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/harm[1] 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 events from his/her/its negligence.[3] This means that you must 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]

If you find that but for *[name of defendant or other party]'s* negligence the accident/incident/event or injury/loss/harm would not have occurred, then you

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[1]When 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. Hannoch Weisman*, 145 *N.J.* 395, 419 (1996), but can still be employed in the routine case when a claim of concurrent or intervening cause is not raised.

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

[4]The "but for" test for the routine case is derived from *Conklin v. Hannoch 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.*

should find that *[name of defendant or other party]* was a proximate cause of *[name of plaintiff]'s* injury/loss/harm.