6.12 PROXIMATE CAUSE — WHERE THERE IS CLAIM THAT CONCURRENT CAUSES OF HARM WERE PRESENT

(Approved 5/98; Revised 11/2023)

NOTE TO JUDGE

This charge is designed to address the more complex case where a defendant's (or a party's) negligent conduct combines with other causes that lead to the plaintiff's injury or harm. *Conklin v. Hannoch Weisman,* 145 *N.J.* 395, 417 (1996); *Camp v. Jiffy Lube #114,* 309 *N.J. Super.* 305, 309 (App. Div. 1998). However, the present charge is not intended to address those causes where there is an issue as to: (1) the foreseeability of the injury or harm; or (2) an intervening or superseding cause. The trial judge should employ Model Civil Charge 6.13 for cases where the foreseeability of the injury or harm is an issue. Depending upon the facts of the case, Model Civil Charge 6.14 should be used in conjunction with Model Civil Charge 6.12 or 6.13 if there is an issue as to intervening or superseding causes.

To find proximate cause, you must first find that *[defendant or other party]'s* negligence was a cause of the accident/incident/event. If you find that *[defendant or other party]* is not a cause of the accident/incident/event, then you must find no proximate cause.

Second, you must find that *[defendant or other party]'s* negligence was a substantial factor that singly, or in combination with other causes, brought about the accident/incident/event or injury/loss/harm claimed by *[plaintiff]*. By substantial, it

is meant that it was not a remote, trivial, or inconsequential cause.[1] The mere circumstance that there may also be another cause of the accident/incident/event or injury/loss/harm does not mean that there cannot be a finding of proximate cause. Nor is it necessary for the negligence of *[defendant or other party]* to be the sole cause of accident/incident/event or injury/loss/harm. If you find that *[defendant or other party]'s* negligence was a substantial factor in bringing about the accident/incident/event or injury/loss/harm, then you should find that *[defendant or other party]'s* negligence was a proximate cause of the accident/incident/event or injury/loss/harm.

[1] In toxic tort (i.e. asbestos exposure) cases where the plaintiff has presented competent and credible evidence that even a minimal exposure to the substance can cause the claimed injury or disease, it may be appropriate for the court to instruct the jury that a substantial factor is an "efficient cause" of the claimed injury or disease and not a remote or trivial cause having only an insignificant connection with the harm, but that liability should not attach based on casual or minimal contact with the product or imposed based on mere guesswork. *See Fowler v. Akzo Nobel Chemicals, Inc.*, 251 *N.J.* 300 (2022).