6.13 PROXIMATE CAUSE — WHERE THERE IS CLAIM THAT CONCURRENT CAUSES OF HARM ARE PRESENT AND CLAIM THAT SPECIFIC HARM WAS NOT FORESEEABLE
(Approved 05/1998; Revised 09/2021)

NOTE TO JUDGE

This instruction is based on the Supreme Court's decision in *Conklin v. Hannoch Weisman,* 145 *N.J.* 395, 416-22 (1996), and is designed to apply to appropriate negligence cases other than the legal malpractice situation discussed in *Conklin.* See also *Yun v. Ford Motor Co.,* 276 *N.J. Super.* 142 (App. Div. 1994), *rev'd*, 143 *N.J.* 162, 163 (1996) (relying on reasons stated in Baime, J.A.D., dissenting opinion, 276 *N.J. Super* at 159). For the proximate cause charge in legal malpractice cases, see Model Civil Charge 5.51B. This charge can also be modified to cover "failure to act" cases.

However, when foreseeability is a "red herring" in a particular case, *Conklin,* 145 *N.J.* at 420, it might be more appropriate to charge Model Civil Charge 6.12, which does not include foreseeability language. When there is a claim of an intervening or superseding cause, Model Civil Charge 6.14 should also be charged.

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

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

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

Third, you must find that some injury/loss/harm to *[name of plaintiff]* must have been foreseeable. For the injury/loss/harm to be foreseeable, it is not necessary that the precise injury/loss/harm that occurred here was foreseeable by *[name of defendant or other party]*. Rather, a reasonable person should have anticipated the risk that *[name of defendant or other party]'s* conduct *[omission]* could cause some injury/loss/harm[1] suffered by *[name of plaintiff]*. In other words, if some injury/loss/harm from *[name of defendant or other party]'s* negligence was within the realm of reasonable foreseeability, then the injury/loss/harm is considered foreseeable. On the other hand, if the risk of injury/loss/harm was so remote as not to be in the realm of reasonable foreseeability, you must find no proximate cause.

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[1] It is important to note that the severity of injury or harm is not germane to a proximate cause finding. See also *S.H. v. K & H Transp., Inc.*, 465 *N.J. Super.* 201 (App. Div. 2020) (reversing a trial court's grant of summary judgment in favor of a bus company on the basis that it was not foreseeable that its negligence in failing to drop a mentally disabled teenage girl at her mother's home as instructed would result in the girl being sexually assaulted).

In sum, in order to find proximate cause, you must find that the negligence of *[name of defendant or other party]* was a substantial factor in bringing about the injury/loss/harm that occurred and that some harm to *[name of plaintiff]* was foreseeable from *[name of defendant or other party]'s* negligence.