

# NOTICE TO THE BAR

## MODEL CIVIL JURY CHARGES UPDATE

The Supreme Court Committee on Model Civil Jury Charges has approved the following new and revised Model Civil Jury Charges for use by the bar and trial courts. All approved Model Civil Jury Charges, including the following charges, are available for downloading at <https://www.njcourts.gov/attorneys/civilcharges.html>.

### **5.10B Foreseeability (as Affecting Negligence)** (Approved before 1984; Revised 09/2021)

Reference to *S.H. v. K & H Transp., Inc.*, 465 N.J. Super. 201 (App. Div. 2020) is added to the Cases section. In *S.H.*, the Appellate Division reversed the 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. The court found whether the sexual assault was a foreseeable risk was impacted by the extent of the minor-plaintiff's disability, and that the trial court erred in resolving that question on disputed facts.

### **5.10C Undertaking Voluntarily Assumed** (Approved before 1984; Revised 09/2021)

Reference to *Diaz v. Reynoso, et al.*, No. A-1285-20 (App. Div. June 1, 2021) is added to the Cases section. In *Diaz*, the Appellate Division held that a volunteer who fails to discharge the volunteer's commitment to the police and willingly allows a visibly intoxicated motorist to resume driving can bear a portion of civil liability for an ensuing motor vehicle crash caused by that drunk driver. Also, reference to Section 324 of the Restatement (Second) of Torts is removed from the Cases section, and a reference to Section 44 of the Third Restatement is added to the Cases section.

### **5.20F Duty Owed — Condition of Premises** (Approved 03/2000; Revised 09/2021)

The title of Section 10 is revised to accurately reflect the content of the section. Additionally, reference to *Ellis v. Hilton United Methodist Church*, 455 N.J. Super. 33 (App. Div. 2018) is added to footnote 2. In *Ellis*, the Appellate Division held that an owner of a vacant residential or noncommercial property owed no duty absent evidence of prior commercial use.

#### **5.40C Failure to Warn/Instruct (Approved 3/00; Revised 09/2021)**

Reference to *Whelan v. Armstrong Int'l, Inc.*, 242 N.J. 311 (2020) is added to footnote 2. In *Whelan*, the Supreme Court held that manufacturers and distributors can be found strictly liable for failure to warn of the dangers of their products, including their asbestos-containing components and third party's replacement components, provided a plaintiff proves the elements set forth in the opinion.

#### **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)**

Reference to *S.H. v. K & H Transp., Inc.*, 465 N.J. Super. 201 (App. Div. 2020) is added to footnote 1. In *S.H.*, the Appellate Division reversed the 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. The court found whether the sexual assault was a foreseeable risk was impacted by the extent of the minor-plaintiff's disability, and that the trial court erred in resolving that question on disputed facts.

#### **6.14 Proximate Cause — Where There is Claim of Intervening or Superseding Cause for Jury's Consideration (Approved 08/1999; Revised 09/2021)**

Reference to *S.H. v. K & H Transp., Inc.*, 465 N.J. Super. 201 (App. Div. 2020) is added to footnote 2. In *S.H.*, the Appellate Division reversed the 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. The court found whether the sexual assault was a foreseeable risk was impacted by the extent of the minor-plaintiff's disability, and that the trial court erred in resolving that question on disputed facts.

#### **8.11A Damages Charges — General – Medical Expenses (Non-Auto) (Approved 12/96; Revised 09/2021)**

A comment is added in the Note to Judge section on Collateral Sources based on a request by a practitioner to provide additional clarification with respect to the Collateral Source Rule. The comment addresses a jury's consideration of medical expenses pursuant to *N.J.S.A. 2A:15-97, Deduction of Duplicate Benefits*.

Questions regarding this and other model civil jury charges may be directed to Kristi Jasberg Robinson, Esq., Chief, Civil Practice Liaison, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; phone (609) 815-2900 ext. 54900; e-mail [Kristi.Robinson@njcourts.gov](mailto:Kristi.Robinson@njcourts.gov).



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