

The Linear Construct of a Negligence Claim

By Joshua Bauchner

Lawyers can recite from memory the elements of a negligence cause of action: duty, breach, causation and damages. However, what many practitioners fail to appreciate is that the order of the elements is critical to any claims analysis. Only by first defining the scope and extent of an alleged duty can one determine whether that duty was breached by a defendant, or if liability was truncated by a superseding or intervening cause.

It is all too common for litigants to argue that an intervening cause “cuts off” a defendant’s *duty* to the plaintiff. In fact, before considering the effect of an intervening cause, a court must first determine that the defendant owed a duty to the plaintiff and breached that duty; in essence, finding that the defendant was, in fact, negligent but that the negligent conduct did not cause the plaintiff’s injury.

By engaging in a superseding cause analysis before consideration of the duty element, attorneys and judges fail to determine what obligations to the plaintiff are reasonably foreseeable as a result of the defendant’s duty. Only where the superseding cause is unforeseeable to a defendant does it curtail liability. If foreseeable, it falls within the scope of the defendant’s duty to the plaintiff and is not an intervening cause, but a reasonably anticipated result of the defendant’s breach.

This article will address the proper, linear analysis of a negligence claim in the face of an alleged superseding cause defense.

To establish negligence under New Jersey law, a plaintiff must prove four core elements: (1) a duty of care; (2) a breach of that duty; (3) proximate cause; and (4) actual damages. *Polzo v. County of Essex*, 196 N.J. 569, 584 (2008). The question of an unforeseeable superseding cause



only arises *after* first establishing that a defendant actually breached a duty owed to a plaintiff. As the New Jersey District Court explained:

The Supreme Court of New Jersey has explained that the doctrine of superseding cause focuses on whether events or conduct that *intervene subsequent to the defendant’s negligence* are sufficiently unrelated to or unanticipated by that negligence to warrant termination of the defendant’s responsibility. *Lynch v. Scheininser*, 162 N.J. 209, 230, 744 A.2d 113 (2000). ... Courts resolve questions of superseding cause by focusing on whether the intervening cause is so closely connected with the *defendant’s negligent conduct* that responsibility should not be terminated, *id.* at 227, 744 A.2d 113, or, conversely, whether the resulting injury is so attenuated from *defendant’s negligent conduct* that responsibility should be terminated. The shorthand term for that inquiry is whether the intervening cause is foreseeable.

Flint v. Langer Transp. Corp., 762 F. Supp. 2d 735, 739-40 (D.N.J. 2011) (emphasis added).

“Because the number and kinds of causes that can intervene *after a defendant’s negligence* are virtually without limit, courts have attempted to resolve questions of superseding cause by focusing on whether the intervening cause is so closely connected with the *defendant’s negli-*

gent conduct that responsibility should not be terminated.” See also *Lynch v. Scheininger*, 162 N.J. 209, 227 (2000) (emphasis added).

Courts and practitioners often struggle with this paradox: In challenging a negligence action by arguing that there was a superseding event which caused the plaintiff’s injury, the defendant must actually first acknowledge that it acted negligently. The superseding event simply serves to truncate the defendant’s negligence with respect to injuries which were not foreseeable as a result of the breach of its duty to the plaintiff. See *Bandel v. Friedrich*, 235 N.J. Super. 384, 390 (Super. Ct. App. Div. 1989) (“A tortfeasor is answerable for the consequences of wrongful conduct despite the occurrence of an intervening cause of the harm so long as the intervening cause was foreseeable.”) (emphasis added); *McKenna v. City of Philadelphia*, 649 F.3d 171, 178 (3d Cir. 2011) (applying federal law) (“Proximate cause requires only some direct relation between the injury asserted and the injurious conduct alleged, and excludes only those link[s] that are too remote, purely contingent, or indirect. ... A cause can be thought superseding only if it is a ‘cause of independent origin that was not foreseeable.’”).

Only once the scope and extent of a defendant’s duty to a plaintiff are established can a court determine whether liability was terminated as a result of an unforeseeable intervening cause. It is simply impossible to determine if an act was unforeseeable without first determining what was foreseeable.

By example, in *Flint*, defendant Langer Transport Corp., a trucking company, instructed its employee Jackson to transport a load of the chemical Versene for defendant IMTT. *Flint*, 762 F. Supp. 2d at 737-38. Unfortunately, the chemical was loaded into an aluminum tanker, risking corrosion, rather than a stainless-steel one. En route, Jackson noticed the effects of corrosion and was advised by Langer to rendezvous with plaintiff Flint, another employee of Langer, who operated a truck with a stainless-steel tanker. Langer further instructed Jackson and Flint to transload the Versene from Jackson’s aluminum tanker to Flint’s stainless-steel tanker. Through a bizarre series of events, the transload could not readily be completed and, ultimately, in attempting to switch tankers, Flint fell from the top of his truck, suffering injury.

In assessing proximate causation and the question of superseding (i.e., unforeseeable) events, the *Flint* court first considered the scope of IMTT’s duty to plaintiff Flint. The court concluded that IMTT’s duty extended only to “putting Versene into the wrong type of tanker” and did not extend to the events which subsequently arose during transport and transload at Langer’s instruction. Thus, the court reasoned, regardless of whether IMTT breached its defined duty, it could not be held liable for unforeseeable events outside the scope of that duty. The *Flint* court presumed, for the purposes of its analysis, that IMTT was negligent for loading Versene into the wrong type of tanker, but ultimately concluded that it was not liable for plaintiff Flint’s unforeseeable injuries arising from the intervening acts of Langer.

Many courts and practitioners struggle with this analysis because it requires acknowledging that the defendant is negligent but not actually liable for the injuries arising from that negligence. Accepting that a defendant had a duty and breached that duty is usually enough, and any foreseeable events causing harm to the plaintiff resulting from that breach establish liability. However, where the events are unforeseeable, they do not fall within the scope and extent of the defendant’s duty, and only then may they qualify as an intervening cause terminating liability to a plaintiff for injuries arising from those unforeseen events.

This distinction is critical if for no other reason than a court determines the scope and extent of the duty element as a matter of law, and the trier of fact determines the question of proximate causation. Thus, by first considering what is foreseeable to define a defendant’s duty—rather than whether the alleged superseding event was proximately caused by the defendant’s breach—a court more readily may resolve negligence claims at the summary judgment stage rather than requiring a trial. If the event was foreseeable, then it falls within the defendant’s duty to the plaintiff, and the defendant is liable for its negligence. ■

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