Causation in Product Liability Cases

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Framework

• Apparent defect
• Undisputed injury or damage
• Where’s the defense? — CAUSATION

Definition

• Proximate cause is a cause which in natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff’s injuries, and without which the injuries would not have occurred, and one from which a person of ordinary prudence could have reasonably foreseen that such a result, or consequences of a generally injurious nature, was probable under all the facts as they existed. Kanoy v. Hinshaw, 273 N.C. 418, 160 S.E.2d 296 (1968)
Two pronged test for proximate cause:
1. Cause-in-fact
2. Reasonable foreseeability.


- Cause in fact = Actual cause
- Reasonable foreseeability (i.e. proximate cause) = Legal cause

Definition (cont'd)

• Does not require that defendant should have been able to foresee the injury in the precise form in which it actually occurred.

• Instead, must prove that in “the exercise of reasonable care, the defendant might have foreseen that some injury would result from his act or omission, or that consequences of a generally injurious nature might have been expected.” Hart v. Curry, 238 N.C. 448, 449, 78 S.E.2d 170, 170 (1953) (citation omitted).

• The law requires only reasonable prevision. A defendant is not required to foresee events which are merely possible but only those which are reasonably foreseeable. Bennett v. R.R., 245 N.C. 261, 96 S.E.2d 31 (1957)

Foreseeability Test
When two or more proximate causes join and concur in producing the result complained of, the author of each cause may be held for the injuries inflicted. The defendants are jointly and severally liable. Hall v. Carroll and Moore v. Carroll, 255 N.C. 326, 121 S.E.2d 547 (1961)

**Multiple Causes**

- A new proximate cause which breaks the connection with the original cause and becomes itself solely responsible for the result in question. It must be an independent force, entirely superseding the original action and rendering its effect in the causation remote. Cole v. Duke Power Co., 81 N.C. App. 213, 344 S.E.2d 130 (1986).
- It is immaterial how many new events or forces have been introduced if the original cause remains operative and in force. In order for the conduct of the intervening agent to break the sequence of events and stay the operative force of the negligence of the original wrongdoer, the intervening conduct must be of such nature and kind that the original wrongdoer had no reasonable ground to anticipate it. Id.
- “In order to be effective as a cause superseding prior negligence, the new, independent, intervening cause must be one not produced by the wrongful act or omission, but independent of it, and adequate to bring about the injurious result; a cause which interrupts the natural sequence of events, turns aside their course, prevents the natural and probable result of the original act or omission, and produces a different result, that reasonably might not have been anticipated.” Id.

**Insulating Cause (Definition)**

- Where a horse is left unhitched in the street and unattended, and is maliciously frightened by a stranger and runs away: but for the intervening act, he would not have run away and the injury would not have occurred; yet it was the negligence of the driver in the first instance which made the runaway possible. This negligence has not been superseded nor obliterated, and the driver is responsible for the injuries resulting. If, however, the intervening responsible cause be of such a nature that it would be unreasonable to expect a prudent man to anticipate its happening, he will not be responsible for damage resulting solely from the intervention. Ross v. Atlantic Greyhound Corporation, 223 N.C. 239, 25 S.E.2d 852 (1943).
Negligence

A plaintiff asserting a products liability claim grounded in negligence must prove:
1. The product was defective when it left the defendant's control;
2. The defendant's negligence caused the defect; and
3. The defect proximately caused damage to the plaintiff.


- Note two layers of causation necessary
- No strict liability in NC (N.C. Gen. Stat. § 99B-1.1)

Breach of Warranty

A products liability claim based on a defendant's alleged manufacture of unmerchantable goods under implied warranty of merchantability requires a plaintiff to prove:
1. The defendant warranted the product, express or implied, to the plaintiff;
2. There was a breach of that warranty in that the product was defective or was in some other condition rendering it unmerchantable at the time it left the defendant's control; and
3. The defect or other condition proximately caused the plaintiff damage.


Alteration / Modification (N.C. Gen. Stat. § 99B-3)

- Application of intervening cause
- No manufacturer or seller of a product shall be held liable in any product liability action where a proximate cause of the personal injury, death, or damage to property was either an alteration or modification of the product by a party other than the manufacturer or seller, which alteration or modification occurred after the product left the control of such manufacturer or such seller unless:
  - The alteration or modification was in accordance with the instructions or specifications of such manufacturer or such seller;
  - The alteration or modification was made with the express consent of such manufacturer or such seller.
- Note – no mention of foreseeability
Example 1

- Protective helmet with onboard power supply (design defect)
- Plaintiff suffered cardiac arrest
- Multiple layers of causation
  - Timing
  - Exposure
  - Quantity
  - Medical

Example 2

- Aerial lift with defective weld (manufacturing defect)
- Ample evidence of failure to maintain
  - Contributory negligence?
  - Insulating cause?
  - Foreseeable neglect?

Example 3

- Power cord plug head with track record of causing fires
- But, did it cause this fire?
- Cause and origin investigation
  - Did not originate from plug head
  - Likely cause – faulty outlet
  - Note – similar scorch patterns in other room with different cords
Example 4

- Fire caused by light tube
- Plaintiff can’t identify manufacturer, but records narrow to two
- Plaintiff still must prove actual cause
- NC does not recognize alternative, enterprise, or market share liability in NC (Griffin v. Tenneco Resins, Inc., 648 F. Supp. 964 (1980 WDNC))
  - Alternative - Two hunters negligently fired toward plaintiff, who was unable to show which of them actually fired the bullet which struck him. Each defendant bears the burden of proving himself not to have been the responsible actor. (CA)
  - Enterprise - Where 13 plaintiffs were injured by exploding blasting caps in 12 separate incidents, and where plaintiffs could not identify the particular manufacturer producing the injurious cap in each case, all companies comprising the blasting cap industry and their trade association were proper defendants unless they could bear the burden of exonerating themselves. (NY)
  - Market Share - Plaintiff alleged that she had been exposed in utero to DES. Since she could not identify the manufacturer (or manufacturers) of the particular drug causing her injury, she joined a group of DES manufacturers in order to impose joint and several liability upon them all. The court allowed the joinder of a body of defendants constituting a “substantial share” of the DES market at the time and place of plaintiff’s exposure, and allotted the burden of proof from plaintiff to defendants, and ruled that damages would be apportioned among the defendants on the basis of the share of the relevant DES market attributable to each. (CA)

Questions?

Thank You!

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