431. Causation: Multiple Causes

A person's negligence may combine with another factor to cause harm. If you find that [*name of defendant*]'s negligence was a substantial factor in causing [*name of plaintiff*]'s harm, then [*name of defendant*] is responsible for the harm. [*Name of defendant*] cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing [*name of plaintiff*]'s harm.

Directions for Use

This instruction will apply only when negligence is the theory asserted against the defendant. This instruction should be modified if the defendant is sued on a theory of product liability or intentional tort.

Sources and Authority

· Multiple causation, or "concurrent cause," is the basis for the doctrine of comparative fault: "For there to be comparative fault there must be more than one contributory or concurrent legal cause of the injury for which recompense is sought." (*Doupnik v. General Motors Corp.* (1991) 225 Cal.App.3d 849, 866 [275 Cal.Rptr. 715].)

· In *Logacz v. Limansky* (1999) 71 Cal.App.4th 1149, 1152 [84 Cal.Rptr.2d 257], the appellate court held that the trial court's error in refusing a concurrent cause instruction was prejudicial.

· In *Espinosa v. Little Company of Mary Hospital* (1995) 31 Cal.App.4th 1304 [37 Cal.Rptr.2d 541], the Court of Appeal reversed the trial court's grant of nonsuit in a medical malpractice case. The plaintiff produced evidence indicating that three causes were responsible for his brain damage, including two that were attributable to the defendants. The trial court ruled in favor of the nonsuit, finding that the plaintiff had not shown causation. The reviewing court disagreed: "Clearly, where a defendant's negligence is a concurring cause of an injury, the law regards it as a legal cause of the injury, regardless of the extent to which it contributes to the injury." (*Id*. at pp. 1317-1318.)

· A concurrent cause can be either another party's negligence or a natural cause. In *Hughey v. Candoli* (1958) 159 Cal.App.2d 231 [323 P.2d 779], the court held that the defendant's negligence in an automobile accident was a proximate cause of the death of a fetus, even though the fetus also had a heart defect: "In this situation the concurrence of the nontortious cause does not absolve defendant from liability for the tortious one." (*Id*. at p. 240.)

Secondary Sources

6 Witkin, Summary of California Law (9th ed. 1988) Torts, § 970, pp. 360-361

1 Levy et al., California Torts, Ch. 2, *Causation*, § 2.11 (Matthew Bender)

California Tort Guide (Cont.Ed.Bar 1996) § 1.16

4 California Trial Guide, Unit 90, *Closing Argument*, § 90.89 (Matthew Bender)

California Products Liability Actions, Ch. 7, *Proof*, § 7.06 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence* (Matthew Bender)

16 California Points and Authorities, Ch. 165, *Negligence*, §§ 165.280-165.284 (Matthew Bender)

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