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Date Submitted: December 16, 2002

Re: Rutledge v. Wood and Chandler
C.A. No. 01C-12-007

Dear Counsel:

This case comes before the Court for consideration of Defendant-Chandler's Motion for Summary Judgment. The motion is denied for the reasons stated herein.

I. Facts

On July 3, 2002, Edward Rutledge ("Rutledge"), driving a Ford Ranger pickup truck, was traveling south on Route 1 near Milford, Delaware. Stephen Wood ("Wood"), driving a Pontiac Grand Am, attempted to pass Rutledge on the right shoulder of the highway. At some point, Wood lost control of his vehicle and veered back into the right hand lane of the highway, where he collided with Rutledge's vehicle. The impact forced Rutledge into the left hand lane and into another vehicle.

Rutledge glanced off of this car and sailed back into and across the right hand lane. His car flipped over at least once before coming to a rest on the side of the road.

Police reports filed subsequent to the accident revealed that Wood had been in pursuit of a black Acura, driven by Jeffrey Chandler ("Chandler"). Wood and Chandler had engaged in inappropriate driving conduct that resulted in a collision between the two vehicles, neither of which stopped. Testimony differs as to whether Wood sought to obtain Chandler's license plate number or to further antagonize him but all parties agree that Wood was chasing Chandler at the time of Wood's collision with Rutledge. Testimony reveals that both cars were weaving in and out of traffic and were traveling at speeds between 65 and 100 miles per hour.

Rutledge sued both Wood and Chandler, jointly and severally, for the damages he and his vehicle sustained as a result of the collision between Rutledge and Wood. Chandler moves for summary judgment as to the counts against him because his negligence, if any, did not cause the accident between Wood and Rutledge.

II. Discussion

A. Standard of Review

Summary judgment may be granted only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact. *Moore v. Sizemore,* 405 A.2d 679, 680 (Del. 1979). Once the moving party meets its burden, then the burden shifts to the non-moving party to establish the existence of material issues of fact. *Id.* at 681. Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, then the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial. Super. Ct. Civ. R. 56(e); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986). If, after discovery, the non-moving party cannot make a

sufficient showing of the existence of an essential element of his or her case, then summary judgment must be granted. *Burkhart v. Davies,* 602 A.2d 56, 59 (Del. 1991), *cert. denied,* 504 U.S. 912 (1992); *Celotex Corp. v. Catrett, supra.* If however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is inappropriate. *Ebersole v. Lowengrub,* 180 A.2d 467, 470 (Del. 1962).

B. Causation

Rutledge's theory of recovery against Chandler is premised upon negligent driving, precipitated by the earlier accident and failing to stop following the Wood-Chandler collision. Rutledge alleges that Chandler traveled at an unreasonable speed, drove in a careless and distracted manner, made erratic lane changes, drove aggressively, and drove with wilful and wanton disregard for the safety of persons and property. Chandler was stopped by the police soon after the accident and later pled guilty to reckless driving.

Chandler correctly notes that a finding of negligence on behalf of a defendant, alone, will not sustain an action for damages; rather, a plaintiff must also prove that the defendant's negligence was the proximate cause of his injuries. *See Duphily v. Delaware Elec. Co-op.*, 662 A.2d 821, 828 (Del. 1995). "Proximate cause exists if a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred." *Wilmington Country Club v. Cowee*, 747 A.2d 1087, 1097 (Del. 2000).

The Supreme Court's discussion of causation in negligence cases in *Duphily* is instructive:

> Delaware recognizes the traditional "but for" definition of proximate causation. *Laws v. Webb,* 658 A.2d 1000 (Del. 1995); *Moffitt v. Carroll*, 640 A.2d 169, 174 (Del. 1994); *Culver v. Bennett*, 588 A.2d 1094, 1097 (Del. 1991). "Our time-honored definition of proximate cause ... is that direct cause without which an accident would not have occurred." *Chudnofsky v. Edwards,* 208 A.2d 516, 518 (Del. 1965) (quoted in *Laws*, 658 A.2d at 1007; *Moffitt*, 640 A.2d at 174; *Culver*, 588 A.2d at 1097). In other words, a proximate cause is one "which in natural and continuous sequence, *unbroken by any efficient intervening cause,* produces the injury and without which the result would not have occurred." *Culver*, 588 A.2d at 1097 (quoting *James v. Krause*, 75

> A.2d 237, 241 (Del. Super. 1950)) (emphasis added).
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> An intervening cause is one which comes into active operation in producing an injury *subsequent* to the negligence of the defendant. *Restatement (Second) of Torts* § 440 (1965); W. Page Keeton, *et al., Prosser and Keeton on Torts,* § 44 (5th ed. 1984). The mere occurrence of an intervening cause, however, does not automatically break the chain of causation stemming from the original tortious conduct. This Court has long recognized that there may be more than one proximate cause of an injury. *Laws*, 658 A.2d at 1007; *Moffitt*, 640 A.2d at 174; *McKeon v. Goldstein*, 164 A.2d 260, 262 (Del. 1960). In order to break the causal chain, the intervening cause must also be a superseding cause, that is, the intervening act or event itself must have been neither anticipated nor reasonably foreseeable by the original tortfeasor. *Stucker v. American Stores Corp.*, 171 A. 230, 233 (Del. 1934); 1 J.D. Lee & Barry A. Lindahl, *Modern Tort Law: Liability & Litigation,* § 4.07 (1994).
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>> In a case of negligent conduct followed by an intervening act causing injury, liability of the [original] tortfeasor should turn on whether the risk of particular consequences is sufficiently great to lead a reasonable [person] ... to anticipate them, and to guard against them.
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> *Sirmans v. Penn,* 588 A.2d 1103, 1107 (Del. 1991) (quoting *Delmarva Power & Light Co. v. Burrows*, 435 A.2d 716, 719 (Del. 1981); W. Prosser, *The Law of Torts* 145 (4th ed. 1971)); *see also Nutt v. GAF Corp.*, 526 A.2d 564, 567 (Del. Super. 1987) (holding that original tortfeasor remains liable if the intervening act "ought to have been foreseen, or if, according to the usual experience of mankind, the result ought to have been apprehended"); *McKeon*, 164 A.2d at 262 (holding that liability of original tortfeasor depends upon "whether or not the negligence of the [third party] under the circumstances was something which should have been reasonably foreseeable or reasonably anticipated by the [defendant]"); *Szymanska v. Equitable Life Ins. Co.*, 183 A. 309, 312 (Del. Super. 1936) (holding that "in the field of negligence, the intervening negligent act of a third party does not relieve a defendant from liability for his own negligence, if the former was reasonably to be anticipated.").
>
> In short, a superseding cause is a new and independent act, itself a proximate cause of an injury, which breaks the causal connection between the original tortious conduct and the injury. If the intervening negligence of a third party was reasonably foreseeable, the original tortfeasor is liable for his negligence because the causal connection between the original tortious act and the resulting injury remains unbroken. 57A Am. Jur.2d *Negligence* § 621 (1989). If, however, the intervening negligence was not reasonably foreseeable, the intervening act supersedes and becomes the *sole* proximate cause of the plaintiff's injuries, thus relieving the original tortfeasor of liability. *See Sears, Roebuck & Co. v. Huang*, 652 A.2d 568, 573 (Del. 1995) (holding that "if one defendant's negligence is found to be the sole proximate cause of the plaintiff's injury, it is a superseding cause which shields the other defendants from liability.").

Duphily, 662 A.2d at 828-29 (footnote omitted).

Generally, the issue of proximate causation is a question of fact, which must be determined by the trier of fact. *Id.* at 830 (citing authorities). Indeed, the issue of proximate cause "is to be determined, on the facts, upon mixed considerations of logic, common sense, justice, policy and precedent." *Chudnofsky*, 208 A.2d at 518. Where, as here, another's actions lead to the injury, "only where there can

be no reasonable difference of opinion as to the conclusion to be reached on the question of whether an intervening cause is abnormal, unforeseeable, or extraordinary negligent, should the question [of proximate causation] be determined by the Court as a matter of law." *Duphily*, 622 A.2d at 831.

Chandler argues that Wood's actions were independent of Chandler's. In support of this contention, he points to facts in the record which support the conclusions that Chandler's vehicle was "several seconds" ahead of Wood's and that Chandler's vehicle was "probably a tenth of a mile" from the actual accident. Thus, Chandler argues, even in the event Chandler's actions were negligent, Wood's actions constituted an supervening cause and broke the chain of causation. This argument is unpersuasive.

Under the facts presented, Chandler was operating his vehicle in such a fashion that a trier of fact could conclude that defensive and offensive reactions of his fellow motorists were foreseeable. The fact-finder could conclude that Chandler was aware, or should have been aware of, the chaos he left in his wake and the repercussions his actions would have. On the other hand, the trier of fact could find that Chandler was sufficiently removed from the accident in both time and space to relieve him of responsibility for Rutledge's injuries.

An event is considered foreseeable if "a defendant should have recognized the risk of injury under the circumstances. It is irrelevant whether the particular circumstances were foreseeable." *Delaware Elec. Co-op. v. Pitts*, 633 A.2d 369, 1993 LEXIS 409, at *4, Horsey, J. (Del. 1993) (ORDER). Reasonable minds could differ as to whether Chandler's actions were negligent and whether they were a legal cause of the injuries sustained by Rutledge. Thus, the issue of causation may not be determined as a matter of law.

IV. Conclusion

Because the issue of proximate causation is typically a question reserved for a trier of fact and

Chandler has failed to rebut this presumption with sufficient evidence, his Motion for Summary Judgment is denied.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

oc: Prothonotary's Office