**3.09 SUPERSEDING CAUSE**

Defendant claims that [he] [she] is not responsible for plaintiff’s harm because a later act or event was a superseding cause of the harm.

The later act or event may be a superseding cause if both of the following statements are more likely true than not true:

(1) the other act or event was outside the scope of the foreseeable risk posed by the defendant's conduct, and had no reasonable connection to it; and

(2) in hindsight, it is highly extraordinary that the defendant's conduct would bring about the plaintiff's harm.

If you find that both of these statements are true, then you may find that the other act or event was a superseding cause and that the defendant is not responsible for the plaintiff's harm.

# Directions for Use

This instruction should be given immediately following Instruction 3.08 (Multiple Causes) if the facts present an issue of an intervening force which may be a superseding cause.

Comment

A force which actively operates to produce harm to another after the defendant’s negligent act or omission has been committed is an intervening force. *Sharp v. Fairbanks North Star Borough*, 569 P.2d 178, 182 (Alaska 1977). In some circumstances, an intervening force may constitute a superseding legal cause of the plaintiff’s injuries relieving a responsible defendant of liability. *See, e.g., Griffith v.* Taylor, 12 P.3d 1163, 1168 (Alaska 2000); *City of Fairbanks v. Nesbett*, 432 P.2d 607, 611 n.7 (Alaska 1967).

The doctrine of superseding cause also applies to claims for strict liability in tort. *See, e.g., Dura Corp. v. Harned*, 703 P.2d 396, 402 (Alaska 1985); *Keogh v. W.R. Grasle, Inc.,* 816 P.2d 1343 (Alaska 1991). A superseding cause instruction may be appropriate when a component part manufacturer alleges that the injury was caused by an inappropriate design decision by the manufacturer of a device into which the component part is incorporated, rather than by a defect in the component part. *Colt Industries Operating Corp. v. Frank W. Murphy Manufacturer, Inc.*, 822 P.2d 925 (Alaska 1991).

The source of the first numbered statement is W. Prosser, *Law of Torts* Section 44, at 281 (4th ed. 1971). It precludes a finding of superseding cause when an intervening force lies within the scope of or has a reasonable connection to the foreseeable risk caused by defendant’s conduct. *E.g., Keogh v. W.R. Grasle, Inc.*, 816 P.2d 1343, 1350 (Alaska 1991). This rule is intended to prevent a foreseeable intervening force from constituting a superseding cause. *Sharp*, 569 P.2d at 182 n. 9. It has been applied in a number of decisions. *E.g., Fancyboy v. Alaska Village Electric Cooperative, Inc.*, 984 P.2d 1128, 1134 (Alaska 1999); *Loeb v. Rasmussen*, 822 P.2d 914, 920 (Alaska 1991); *Gonzales v. Krueger*, 799 P.2d 1318, 1321 (Alaska 1990); *Gordon v. Alaska Pacific Bancorporation*, 753 P.2d 721, 725 (Alaska 1988).

The source of the second numbered statement is Section 442(b) of the Restatement (Second) of Torts. It precludes an intervening force from constituting a superseding cause unless the intervening force or “the consequences thereof appear after the event to be extraordinary.” *Id.* Foreseeability to the defendant is irrelevant. *E.g., Williford v. L.J. Carr Investments, Inc.*, 783 P.2d 235, 237 (Alaska 1989). The standard is whether, looking back on the defendant’s conduct, the intervening force, and the resulting harm, it would be highly extraordinary to hold defendant responsible for plaintiff’s injuries. *E.g., Chenega Corp. v. Exxon Corp.*, 991 P.2d 769, 798 (Alaska 1999); *Fancyboy,* 984 P.2d 1128, 1134 (Alaska 1999); *Keogh*, 816 P.2d at 1350; *Williford*, 783 P.2d at 237-38. *Cf. State v. Malone*, 819 P.2d 34, 37 (Alaska App. 1991) (criminal case on superseding cause).

Although not included in the instruction, five other factors set out in the Restatement (Second) of Torts section 442 as considerations important to determining whether an intervening force is a superseding cause have been referred to by the Alaska Supreme Court on several occasions.  *E.g., Sharp*, 569 P.2d at 183. With the exception of the extraordinariness factor in section 442(b), however, the Restatement factors have not been expressly adopted by the court as a necessary element of superseding cause. The court has also suggested that the Section 442 factor regarding the wrongful nature of the intervening act may be of questionable significance. *Chenega*, 991 P.2d at 998 (“the oft-cited maxim that criminal acts are superseding causes is merely a rule of thumb”). *See Division of Corrections v. Neakok*, 721 P.2D 1121, 1136 (Alaska 1986). *But see Griffith v. Taylor*, 12 P.3d 1163, 1168 (Alaska 2000) (A criminal act will ordinarily break the chain of causation.)