

NOTES ON CAUSE IN FACT, PROXIMATE CAUSE, AND SUPERSEDING FORCES

Cause in Fact is also called the '*but/for*' test. It is a simple method for establishing Cause in Fact. 'But for the negligence of the Defendant, would the Plaintiff have been injured?' This is usually answered fairly easily. However, the next prong is the Proximate Cause test and that is much more difficult to prove due to various *superseding* and *intervening* factors.

Proximate cause can be difficult to prove in toxic tort cases for a variety of reasons. The primary reason is because there are many other influences that cause cancer and other illnesses, such as lifestyle and genetic disposition. .

A **Superseding Force** is a force that comes into being after the Defendant's negligent act- which cancels the Defendant's liability by breaking the '*chain of causation*' from the Defendant's act to the Plaintiff's injury. If an **intervening force** is unforeseeable, it will normally be viewed as *superseding*. An example of this would be a tornado rising and destroying an ambulance that is taking a car accident victim to the hospital (the victim is not dead when picked up by the ambulance). The liable driver (the Defendant), who caused the accident, would **not** be the Proximate Cause of the injured driver's death.

* Think of the Cause in Fact as the '*but/for*' cause; would the child have been injured but for the actions of the violent father? Proximate Cause is a bit different. Think about this: You cause a car accident and break someone's leg. On the way to the hospital, an earthquake hits and the ambulance falls into a crack in the Earth and all are killed. Are you liable for the victim's death? No. What happened was an *unforeseeable intervening cause*. Therefore, you are the Cause in Fact but not the Proximate Cause of death, and the '*chain of causation*' is broken and thus no liability.