

N.C.P.I.—Motor Vehicle 102.20
PROXIMATE CAUSE—PECULIAR SUSCEPTIBILITY.
MOTOR VEHICLE VOLUME
REPLACEMENT FEBRUARY 2024

102.20 PROXIMATE CAUSE—PECULIAR SUSCEPTIBILITY.

In deciding whether the [injury¹ to the plaintiff] [death of the decedent] was a reasonably foreseeable consequence of the defendant's negligence, you must determine whether such negligent conduct, under the same or similar circumstances, could reasonably have been expected to [injure] [cause the death of] a person of ordinary [physical] [mental] condition.² If so, the harmful consequences resulting from the defendant's negligence would be reasonably foreseeable and, therefore, would be a proximate cause of the [plaintiff's injury] [decedent's death]. Otherwise, the harmful consequences resulting from the defendant's negligence would not be reasonably foreseeable and, therefore, would not be a proximate cause of the [plaintiff's injury] [decedent's death].

NOTE WELL: Use the below parenthetical language when prior knowledge of susceptibility to injury is at issue.

(Furthermore, even if a person of ordinary [physical] [mental] condition would not be reasonably expected to [be injured] [die], you must determine whether the defendant had knowledge or a reason to know of the plaintiff's peculiar or abnormal [physical] [mental] condition.³ If so, the harmful consequences resulting from the defendant's negligence would be reasonably foreseeable and, therefore, would be a proximate cause of the [plaintiff's injury] [decedent's death]. Under such circumstance(s), the defendant would be liable for all the harmful consequences which occur, even though these harmful consequences may be unusually extensive because of the peculiar or abnormal [physical] [mental] condition which [happens] [happened] to be present in the [plaintiff] [decedent].⁴

On the other hand, if you determine that the defendant did not have knowledge or a reason to know of the plaintiff's peculiar or abnormal [physical] [mental] condition, the harmful consequences resulting from the

N.C.P.I.—Motor Vehicle 102.20
PROXIMATE CAUSE—PECULIAR SUSCEPTIBILITY.
MOTOR VEHICLE VOLUME
REPLACEMENT FEBRUARY 2024

defendant’s negligence would not be reasonably foreseeable and, therefore, would not be a proximate cause of the [plaintiff's injury] [decedent's death].)

1. “Injury” includes all legally recognized forms of personal harm, including activation or reactivation of a disease or aggravation of an existing condition. See N.C.P.I.—Civil 102.22 (Proximate Cause—Activation/Aggravation).

2. *Hughes v. Webster*, 175 N.C. App. 726, 625 S.E.2d 177 (2006); *Potts v. Howser*, 274 N.C. 49, 53-54, 161 S.E.2d 737, 741 (1968); *Lockwood v. McCaskill*, 262 N.C. 663, 670, 138 S.E.2d 541, 546 (1964); *Wyatt v. Gilmore*, 57 N.C. App. 57, 59-60, 290 S.E.2d 790, 791-92 (1982); *Lee v. Regan*, 47 N.C. App. 544, 550, 267 S.E.2d 909, 912, cert. denied, 301 N.C. 92, 273 S.E.2d 299 (1980); *Hinson v. Sparrow*, 25 N.C. App. 571, 573-74, 214 S.E.2d 198, 199-200 (1975); *Redding v. F. W. Woolworth Co.*, 9 N.C. App. 406, 409-10, 176 S.E.2d 383, 385 (1970).

3. The Court of Appeals described the impact of prior knowledge of susceptibility on the foreseeability standard as follows:

Negligence is the failure to use due care under the circumstances. One of the circumstances in a particular case might be the known susceptibility to injury of a person to whom the duty of due care is owed. Obviously, in the exercise of due care one may not act toward a frail old lady in the same way one could act toward a robust young man. The duty owed, to exercise due care, is the same in each instance, but in fulfilling that duty the difference in circumstances requires a difference in conduct by the actor.

Hinson v. Sparrow, 25 N.C. App. 571, 574, 214 S.E.2d 198, 200 (1975). In such cases, the following supplement to the above charge may be used: “A negligent person is held responsible for knowing of the peculiar condition when, under the circumstances, [he] [she] should have known or anticipated it.”

4. *Potts v. Howser*, 274 N.C. 49, 54, 161 S.E.2d 737, 742 (1968).