ALVORD, J., dissenting. In hindsight, virtually all harms are literally foreseeable. *RK Constructors, Inc.* v. *Fusco Corp.*, 231 Conn. 381, 386, 650 A.2d 153 (1994). For that reason, "[i]n every case in which a defendant's negligent conduct may be remotely related to a plaintiff's harm, the courts must draw a line, beyond which the law will not impose legal liability." *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 578, 717 A.2d 215 (1998). Otherwise, the imperfect vision of reasonable foreseeability would be converted into the perfect vision of hindsight. Id. I respectfully dissent because I conclude that the defendant, Michael E. Nunan, who had stopped his vehicle in his travel lane and was waiting to make a left turn, had no duty to the drivers traveling in the opposite direction to keep his wheels positioned in a particular manner to avoid being pushed into their path in the event he was rear-ended.

The majority opinion correctly states that the only allegation of negligence being addressed on appeal concerns the direction of the defendant's vehicle and its tires. See footnote 2 of the majority opinion. Basically, the plaintiff, Marie E. Sic, claims that the defendant owed her the duty to anticipate that he would be struck from behind by another vehicle as he was stopped in his proper travel lane, waiting for a safe opportunity to make a left turn, and, therefore, he should have kept the wheels of his vehicle straight so that he would have been pushed forward rather than into the path of her vehicle. The trial court succinctly and properly framed the dispositive issue as "whether a driver, who is stopped while preparing to make a left turn, owes a duty of care to oncoming drivers to foresee and defend against the general possibility that a third driver will violate the law, or otherwise operate unsafely, and smash into the rear of his or her stopped vehicle and thrust it into the path of oncoming traffic."[1] The court concluded that, under the circumstances of this case, no such duty existed. I agree.

The existence of a duty is a question of law. *Leon* v. *DeJesus*, 123 Conn. App. 574, 576, 2 A.3d 956 (2010). If a court determines, as a matter of law, that the defendant owes no duty to the plaintiff, the plaintiff cannot recover in negligence from the defendant. *Lachowicz* v. *Rugens*, 119 Conn. App. 866, 868, 989 A.2d 651, cert. denied, 297 Conn. 901, 994 A.2d 1287 (2010). "[T]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law." (Internal quotation marks omitted.) *Mozeleski* v. *Thomas*, 76 Conn. App. 287, 290, 818 A.2d 893, cert. denied, 264 Conn. 904, 823 A.2d 1221 (2003).

"The essential elements of a cause of action in negligence are well established: duty; breach of that duty;

causation; and actual injury. . . . Duty is a legal conclusion about relationships between individuals, made after the fact, and [is] imperative to a negligence cause of action. . . . Thus, [t]here can be no actionable negligence . . . unless there exists a cognizable duty of care. . . . [T]he test for the existence of a legal duty entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case. . . .[2]

"A simple conclusion that the harm to the plaintiff was foreseeable . . . cannot by itself mandate a determination that a legal duty exists. Many harms are quite literally foreseeable, yet for pragmatic reasons, no recovery is allowed. . . . [D]uty is not sacrosanct in itself, but is only an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is entitled to protection. . . . While it may seem that there should be a remedy for every wrong, this is an ideal limited perforce by the realities of this world. *Every injury has ramifying consequences*, *like the rippling of the waters*, *without end. The problem for the law is to limit the legal consequences of wrongs to a controllable degree.* . . . The final step in the duty inquiry, then, is to make a determination of the fundamental policy of the law, as to whether the defendant's responsibility should extend to such results." (Citation omitted; emphasis added; internal quotation marks omitted.) *Mazurek* v. *Great American Ins. Co.*, 284 Conn. 16, 29–30, 930 A.2d 682 (2007).

With respect to the test of foreseeability, "due care does not require that one guard against eventualities which at best are too remote to be reasonably foreseeable. See *Palsgraf* v. *Long Island R. Co.*, 248 N.Y. 339, 345, 162 N.E. 99 [1928] . . . . Due care is always predicated on the existing circumstances." (Citations omitted; internal quotation marks omitted.) *Lodge* v. *Arett Sales Corp.*, supra, 246 Conn. 575. "Liability may not be imposed merely because it might have been foreseeable that some accident could have occurred; rather, liability attaches only for *reasonably* foreseeable consequences." (Emphasis in original.) Id., 577.

In the present case, I would conclude that the plaintiff's injury was not a foreseeable consequence of the defendant's conduct. It is undisputed that the defendant's vehicle was stopped and in its proper travel lane. His vehicle was then rear-ended by another driver's vehicle. The defendant was "entitled to assume that other users of the highway will obey the law, including lawful traffic regulations, and observe reasonable care,

until he knows or in the exercise of reasonable care should have known that the assumption has become unwarranted." *Gross* v. *Boston, W. & N. Y. St. Ry. Co.*, 117 Conn. 589, 596, 169 A. 613 (1933). As noted by the trial court in its memorandum of decision, "[n]o evidence was proffered . . . that the defendant possessed any specific information that would have caused an ordinarily vigilant driver to know that another vehicle was about to collide violently into the rear of his properly stopped car." Further, as acknowledged by the plaintiff's expert in his deposition testimony, there is no statute or regulation requiring a driver to keep his vehicle's wheels straight when waiting to turn. Finally, it was not the position of the defendant's wheels that caused the plaintiff's injury, but, rather, it was Jessica Thoma's vehicle pushing the defendant's vehicle into the plaintiff's vehicle that caused the injury. Under these circumstances, I believe it was appropriate for the trial court to render summary judgment on the ground that the defendant did not owe the plaintiff a legal duty of care.

Because I would conclude that the plaintiff fails to meet the foreseeability prong of the test for a duty of care, it is not necessary to address the public policy prong of that test. See footnote 2 of this dissenting opinion. Nevertheless, I fail to see any public policy reason for extending the duty of care to the plaintiff in this case. In considering whether public policy suggests the imposition of a duty, "[a court is to] consider the following four factors: (1) the normal expectations of the participants in the activity under review; (2) the public policy of encouraging participation in the activity, while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions."[3] (Internal quotation marks omitted.) *Monk* v. *Temple George Associates, LLC*, 273 Conn. 108, 118, 869 A.2d 179 (2005). Not one of the four factors leads me to the conclusion that public policy would favor imposing liability on the driver of a stopped vehicle who, without any evidence that he knew or should have known that he was about to be rear-ended, is pushed into the path of an oncoming vehicle.

I therefore conclude that, under the particular circumstances of this case, the defendant cannot be held liable to the plaintiff for her injury caused by his vehicle when it was rear-ended and pushed into her vehicle. The law should not countenance the extension of legal responsibility to such an attenuated result. I would affirm the judgment of the trial court and, accordingly, I respectfully dissent.

[1] The trial court did not focus on the direction of the tires of the defendant's vehicle when it was rear-ended by the vehicle driven by Jessica Thoma. The defendant has not conceded that his wheels were turned to the left, as alleged by the plaintiff. That factual determination, however, is not material to the issue on appeal. The issue is whether an individual in the defendant's position should have anticipated being hit from behind and have taken precautionary measures to avoid hitting any other vehicles when his vehicle

was propelled by the collision.

Query if the defendant had stopped to make the left turn and a motorcycle, also waiting to make a left turn, had been in front of him. Would the defendant then have had the duty to turn his wheels to the left to avoid hitting the motorcycle when he was rear-ended, or would the defendant have had the duty to keep his wheels straight to avoid hitting the plaintiff's vehicle in the oncoming traffic? To whom would the defendant have owed the duty of care? Does the duty to one driver supersede the duty to the other?

[2] To establish the existence of a legal duty, the plaintiff must satisfy both prongs of the two part test. The absence of foreseeability, which is a necessary component of duty, forecloses the existence of a duty of care. There is no need to perform an analysis under the foreseeability prong, however, if a duty is not found to exist under the public policy prong of the test. *Ryan Transportation, Inc.* v. *M & G Associates*, 266 Conn. 520, 528–29, 832 A.2d 1180 (2003).

[3] With respect to the fourth factor, courts in New York and the District Court in New Jersey have concluded that no legal duty exists under similar circumstances. See *Ross* v. *Szoke*, 196 Misc. 2d 588, 763 N.Y.S.2d 389 (2003); *Stretch* v. *Tedesco*, 263 App. Div. 2d 538, 693 N.Y.S.2d 203 (1999); *Fiscella* v. *Gibbs*, 261 App. Div. 2d 572, 690 N.Y.S.2d 713 (1999); *Lipski* v. *Vanselous*, United States District Court, Docket No. 04-6009, 2006 U.S. Dist. LEXIS 2334 (D. N.J. January 18, 2006).