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ILLINOIS LAW MANUAL

CHAPTER II NEGLIGENCE

D. *RES IPSA LOQUITUR*

1. Basic Law

Res ipsa loquitur is a doctrine of circumstantial evidence. The Latin phrase literally means "the thing itself speaks." Courts have used this expression when certain factual circumstances create an inference that negligence caused an injury, but there is no proof of direct causation. It is merely a short way of saying that some circumstances are of such a character that their occurrence alone creates a presumption that negligence caused them. Cobb v. Marshall Field & Co., 22 Ill. App. 2d 143 (1959).

Where the court determines that the doctrine of *res ipsa loquitur* may be applied, the plaintiff is not required to show direct proof of causation that the defendant's conduct resulted in the plaintiff's injuries. Rather, it becomes the function of the trier of fact to weigh the strength of the inference of fact to weigh the strength of the inference of general negligence. Imig v. Beck, 115 Ill. 2d 18 (1986). The use of *res ipsa loquitur*, however, does not relieve the plaintiff of the burden of proving negligence by a preponderance of the evidence. That burden of proof never shifts to the defendant, except in the very limited sense that if the defendant offers no evidence to overcome the *prima facie* case made by the plaintiff in reliance on the doctrine, he

runs the risk that the jury may find against him. Id., Dean v. Young, 263 Ill. App. 3d 964 (1994).

In a *res ipsa loquitur* case, there is an inference of negligence arising from circumstantial evidence. This inference creates a presumption of fact and not of law. It does not disappear when contrary evidence is presented, but remains to be considered with all other evidence. Metz v. Central Illinois Electric & Gas Co., 32 Ill. 2d 446 (1965).

The mere fact that an accident has occurred will not give rise to the presumption. Mort v. Walter, 98 Ill. 2d 391 (1983). Rather, the presumption applies only when the occurrence "itself speaks" of negligence.

2. Elements of the Doctrine

Negligence is presumed whenever *res ipsa loquitur* is applicable, but the plaintiff still has the burden of proving that the defendant's conduct was the proximate cause of the claimed injury. Under the doctrine, the facts of the occurrence show, *prima facie*, the defendant's negligence if the plaintiff establishes:

- a) That the occurrence is one that ordinarily does not occur in the absence of negligence; and
- b) That the instrumentality or agency that caused the injury was within the special knowledge or under the control of the defendant.

at a time when the patient was in the exclusive care of the hospital personnel and, because of his incapacity or incompetence, could not have negligently injured himself, a presumption of the hospital's negligence will arise.

Dyback v. Weber, 114 Ill. 2d 232, 242 (1986); see also, Harris Trust & Sav. Bank v. Otis Elevator Co., 297 Ill. App. 3d 383 (1998); Perry v. Murtagh, 278 Ill. App. 3d 230 (1996).

When these elements are shown, the fact of the occurrence itself "affords reasonable evidence, in the absence of explanation by the party charged, that it arose from want of proper care." Metz, 32 Ill. 2d at 449. The defendant can rebut the presumption of negligence by explaining some other rational cause for the occurrence or by showing that the instrumentality which caused the damages/injuries was not under the defendant's control at the time of the occurrence.

3. Analysis

Some of the more common examples of the application of *res ipsa loquitur* include:

- a) Fires that occur in an area of the premises where the defendant is in exclusive control and the fires are not of the type which ordinarily happen in the absence of negligence. If the plaintiff could not have reasonably prevented the fires from damaging his property, the doctrine will be applied; and
- b) In a hospital when a patient is discovered to have sustained an injury

In some situations, the act itself "speaks negligence," yet the doctrine will not be applied because of a missing element. Loizzo v. St. Francis Hospital, 121 Ill. App. 3d 172 (1984), provides an example. Plaintiff had been treated for a heart condition for a number of years and, in 1977, discovered that a 12-inch catheter had been left in his heart. Plaintiff, who had been treated at more than one hospital and by more than one doctor, could not say which doctor or which hospital had failed to remove the catheter. Plaintiff sued all of the doctors and hospitals that had recently treated him for his heart condition and attempted to invoke the *res ipsa loquitur* doctrine. Plaintiff argued that all of these entities had exclusive control of him and that, although he could not say which one actually did it, one of them must have left the catheter in his body.

The trial court granted summary judgment to all defendants because plaintiff was unable to show that they had control of the catheter or were acting jointly, because the treatment was performed by different entities at different times and at different locations. The appellate court affirmed the trial court's decision and ruled that the defendants necessarily did not act together. Thus, even if the plaintiff could show that one of them must have left the catheter inside of him, he could not satisfy the element of exclusive control. Hence, the doctrine did not apply. Id. at 180.