

INVOKING RES IPSA LOQUITUR TO ESTABLISH THE NEGLIGENCE OF ALL MEDICAL PERSONNEL INVOLVED IN PATIENT CARE

Fact Pattern:

Plaintiff suffered an injury to his right peroneal nerve while he was unconscious having his appendix removed.

Plaintiff required an emergency appendectomy by Dr. Switzer at a CA Public hospital. Plaintiff was anesthetized by Dr. Rosen. Plaintiff awoke the next morning in his hospital room attended by two nurses. When Plaintiff awakened he had a drop foot on the right lower extremity. After his release from the hospital Plaintiff's drop foot did not improve and his EMG/NC was diagnostic for a right peroneal neuropathy across the fibular head. Dr. Rosen and the nurses were employed by the hospital, and Dr. Switzer is an independent contractor.

During discovery which included depositions of Dr. Rosen, Dr. Switzer, and two nurses, there was no testimonial evidence to support negligent conduct that could have caused the peroneal neuropathy

Question:

Where an unexplained injury occurs during medical procedure to a part of the body not under treatment, does res ipsa loquitur apply to permit negligence to be inferred against all of the doctors and medical employees who took part in caring for the injured patient?

**Res Ipsa Loquitur: A rule of law giving rise to an inference of negligence where the instrument inflicting the injury is in the exclusive control of the defendant and where such harm could not ordinarily result in the absence of negligence.*

Rule

Where an unexplained injury occurs during a medical procedure to a part of the body not under treatment, res ipsa loquitur applies against all of the doctors and medical personnel who take part in caring for the patient.

Discussion

Where there has been an injury to a healthy part of the body not the subject of treatment, *res ipsa loquitur* applies to permit the inference of negligence against all doctors and medical employees who were entrusted with the patient's care. Every defendant in whose custody (or control) Plaintiff was placed for any period was under a duty to exercise ordinary care for his safety. The control at one time or another of one or more of the various agencies or instrumentalities which might have harmed George was in the hands of every defendant or of his employees or temporary servants.

Plaintiff was unconscious; it is unreasonable to require him to identify any one person as the one who did the negligent act in order to get his case before a jury. Without the aid of *res ipsa loquitur* a patient who received serious injuries, obviously as a result of someone's negligence, would be unable to recover damages unless the doctors and nurses in attendance voluntarily chose to disclose the identity of the negligent person and the facts establishing liability. Plaintiff received unusual injuries while unconscious and during the course of medical treatment, all those defendants who had any control over his body may be called upon to meet the inference of negligence by providing an explanation of their conduct.

Outcome

Plaintiff will be required in the complaint that *Res Ipsa* applies to be successful in an action for damages resulting from the right peroneal neuropathy. *Res Ipsa* applies in many situations such as unexplained explosions, or food poisoning cases.