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August 24 **2012**

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The Legal Doctrine of *Res Ipsa Loquitur*

Have you ever wondered what would happen if you were just walking down the street and out of nowhere something fell on you and seriously injured you? If this thought has crossed your mind then you may have followed it down the logical trail and realized the serious dilemma of how you would ever prove a case for your injuries. Certainly somebody somewhere did something negligent. One does not simply get beaned on the noggin without someone acting at the very least negligently. But how on earth do you prove whom specifically acted negligently when, for example, you are walking past a whiskey warehouse and a barrel cracks you on the head?

Fear not my faithful reader. Though the law may be fraught with problems and doctrines that laugh in the face of common sense, this problem has a straight forward – albeit complicated from a legal standpoint – solution. The solution is the doctrine of *res ipsa loquitur*. The name, simplified into English from Latin, translates as "the thing speaks for itself." At this point you may well recognize a bit of irony in that you know that I am about to launch into an explanation of the doctrine that speaks for itself. Nevertheless, I believe a bit of an explanation is called for in this case.

What the doctrine means is that there are times when the law recognizes that the mere fact that the act occurred can stand as evidence to show that a defendant had to have been negligent. Just a couple of days ago Chief Judge Robb for the Indiana Court of Appeals discussed Indiana's interpretation of the doctrine of *res ipsa loquitur*. She wrote:

> The doctrine of res ipsa loquitur is an exception to the general rule that the mere fact of an injury will not create an inference of negligence. Res ipsa loquitur is a rule of evidence which allows an inference of negligence to be drawn based on the facts and circumstances of the injury. The doctrine may be applied and negligence inferred when the plaintiff establishes that the injuring instrumentality was within the defendant's exclusive management and control and the accident is of a type that does not ordinarily happen if those who have the management and control exercise proper care. In determining if the doctrine is applicable, the question is whether the incident more probably resulted from the defendant's negligence than from another cause. The plaintiff may show, by common knowledge or expert testimony, that the injury is one that would not ordinarily occur in the absence of due care on the part of those controlling the instrumentality.

While this may seem like a pretty straightforward doctrine, I assure you that it is much more treacherous than it might seem upon first blush. The rub, as Hamlet might say, is typically whether the item was "within the defendant's exclusive management."

To help elucidate this point a bit, let us look at two of the most famous *res ipsa loquitur* cases. The first case is the 1863 English decision in *Byrne v. Boadle*. What makes *Byrne* the most famous *res ipsa loquitur* case is quite simple – it was the case that created the doctrine. To put this case into historical perspective, it was authored just shy of five months after General Meade and the Army of the Potomac defeated General Robert E. Lee's Army of Northern Virginia at Gettysburg. In fact, this decision was published just six days after President Lincoln spoke the legendary Gettysburg Address. While that is probably more of a history lesson than you expected, bear in mind that your author is both the son of two teachers and an avid history buff. Thus, I never miss an opportunity to teach, especially when it comes to history.

Returning to the case, the facts of *Byrne* are quite simple. A man was walking on a sidewalk outside of a flour warehouse when a barrel fell from the building and injured the man. Chief Barron Pollock upon hearing the merits of the case held:

> The present case upon the evidence comes to this, a man is passing in front of the premises of a dealer in flour, and there falls down upon him a barrel of flour. I think it apparent that the barrel was in the custody of the defendant who occupied the premises, and who is responsible for the acts of his servants who had the controul of it; and in my opinion the fact of its falling is primâ facie evidence of negligence, and the plaintiff who was injured by it is not bound to shew that it could not fall without negligence, but if there are any facts inconsistent with negligence it is for the defendant to prove them.

Chief Barron Pollock's decision not only created the doctrine of *res ipsa loquitur* but he gave it the confines that are still present in modern American law. To summarize his holding: if a person is injured by something that is within the control of the defendant then the plaintiff has by his very injur provided a case for negligence and the burden is shifted onto the defendant to prove that he was not actually negligent – which is no small task. You may notice that this is the basic fact pattern that I used for the example in the opening paragraph, except my example had a barrel of whiskey. I made the change because I figured that most readers would rather imagine being struck by a barrel of whiskey than a barrel of flour.

As I stated before, the difficulty in establishing *res ipsa loquitur* is usually proving that the item was within the control of the defendant. A good example of this is the 1948 California case *Larson v. St. Francis Hotel*. While you may have thought your history lesson was over after *Byrne*, you were mistaken. In order to understand *Larson* you need to understand a bit of the historical importance of the events surrounding the case. The plaintiff in *Larson* was injured on August 14, 1945 while walking past a hotel in San Francisco when someone tossed a heavy stuffed armchair out of a window. If August 14, 1945 means nothing to you then have coffee with someone from the Greatest Generation before it is too late and have a discussion about WWII. August 14, 1945 is known as VJ Day. It was the day that Japan surrendered and World War II came to an end. Needless to say, the whole of the nation was in a festive mood celebrating the end of one of the bloodiest periods in world history. That is, except for Miss Beulah Larson who was probably having a great day until she had a heavy piece of furniture fall on top of her. After sustaining serious injuries she brought a case against the hotel arguing that the hotel's negligence was proven by the doctrine of *res ipsa loquitur*. The trial court and then the California Court of Appeals disagreed. The Court of Appeals held that hotels do not have exclusive control over the furniture in their rooms. The fact that the hotel guests have at least some partial control over the furniture defeats application of the doctrine.

On the surface the two cases seem almost identical. In both *Byrne* and *Larson* a person was walking by a building owned and operated by a business when out of the blue a heavy object fell on the person. However, the view from the plaintiff's perspective is not the ultimate answer as to whether the doctrine can be applied. Ultimately, the crux of the matter is whether the defendant had control over the item that caused injury. In *Byrne*, the flour warehouse had exclusive and complete control over everything within the warehouse. In *Larson*, the hotel ceded at least partial control to hotel patrons by renting them rooms and thus, the hotel did not have that necessary – at least by California law – exclusive control over the furniture within its building.

Let us return for a moment to the Indiana Court of Appeals case authored by Chief Judge Robb. The case, *Tucker v. Harrison*, provides an interesting example of how the doctrine is applied today. Realize that the doctrine of *res ipsa loquitur* goes beyond merely being struck by an object falling from a building. In *Tucker*, the plaintiff sought to use the doctrine to prove medical malpractice. Unfortunately for the plaintiff, the specific facts of her case were not sufficient for application of the doctrine. However, the interesting value of the case is a slight overview of some of the cases in which plaintiffs have been able to prove medical malpractice using *res ipsa loquitur*. Some examples that Indiana courts have recognized for cases where the doctrine applies are: when a surgeon operates on the wrong limb; when a patient's oxygen mask caught fire during surgery; or when foreign objects are left in a patient's body after surgery – the cited case involved a wire left in the breast of a patient after a biopsy.

A further interesting aspect to these medical malpractice cases in which *res ipsa loquitur* applies is the need for expert witnesses. As explained by the Supreme Court of Indiana in *Wright v. Carter*, the egregious nature of the act or omission is so obvious that a jury does not even need an expert witness to testify. It is always a breath of fresh air when the law recognizes that the common sense of jurors can actually be a worthwhile part of a case.

As you can see, there is a delicate line between winning a *res ipsa loquitur* case as in *Byrne* or losing as in *Larson*. Thus, it is extremely important to seek knowledgeable and experienced counsel that knows the procedural intricacies of the doctrine of *res ipsa loquitur*.

Join us again next week for another peak behind the curtain that is the law.

Sources

- *Byrne v. Boadle*, 2 H. & C. 722, 159 Eng. Rep. 299 (Exch. 1863).
- *Larson v. St. Francis Hotel*, 83 Cal. App.2d 210, 188 P.2d 513 (1948).

- *Tucker v. Harrison*, ___ N.E.2d ___, No. 79A05-1108-CT-404 (Ind. Ct. App. Aug. 22, 2012).

- *Wright v. Carter*, 622 N.E.2d 170, 171 (Ind. 1993).