



Case Study

## **Res Ipsa Loquitur** When a Plaintiff Does Not Have to Prove Negligence

— by Jennifer Krumm

In Latin, the term “*res ipsa loquitur*” means “the thing speaks for itself.” Similarly, in legal circles, the term means: “The plaintiff does not have to prove that the defendant did anything wrong because it is obvious that he did.”

In Oregon, like many states, a plaintiff may use the doctrine of *res ipsa loquitur* in only narrow circumstances. Specifically, a plaintiff may only use the doctrine in cases in which the plaintiff can show that: 1) she was injured; 2) her injury ordinarily would not have occurred unless someone was negligent; and 3) the negligence was probably attributable to a particular defendant or defendants. See Fieux v. Cardiovascular & Thoracic Clinic, PC, 159 Or. App. 637 (1999).

There are a number of contexts in which the doctrine of *res ipsa loquitur* may arise. The traditional example is of a person that is injured when a 100-pound weight drops out of a window of a high-rise building. The person in the example would not be obligated to prove that the weight was dropped negligently, although she likely would have to prove the identity of the person that dropped the weight or owned building that the weight was dropped from.

Another common example involves surgeries in which something is left inside a patient’s body. For example, in Fieux v. Cardiovascular & Thoracic Clinic, PC, 159 Or. App. 637 (1999), a plaintiff sued a surgeon and the hospital after a serrefine clamp was left behind his heart after an open heart surgery. The defendants argued that the plaintiff needed expert testimony to prove that they had been negligent, but the Oregon Court of Appeals disagreed, concluding that the doctrine of *res ipsa loquitur* applied.

A recent example in which the court held that *res ipsa loquitur* did not apply involved a plaintiff who attempted to claim uninsured motorist benefits because of the negligent acts of an unknown driver, even though she could not prove what those negligent acts were. In the recent case of Bingenheimer v. State Farm Mutual Auto Insurance Company, 196 Or. App. 316 (11/24/04), the plaintiff was injured in a single-car accident when she lost control of her vehicle while driving down the interstate. Shortly after the accident, a witness saw a 10’ x 15’ area of the road covered with an oil-like substance.

The plaintiff filed a lawsuit seeking coverage for her injuries under her uninsured motorist (UM) policy with State Farm. The plaintiff’s theory was that the accident had been caused by the negligence of a “phantom vehicle” that had left the oil-like substance in the road. State Farm filed a motion for summary judgment, arguing that there was no evidence that the phantom driver had been negligent. The motion was granted, and the plaintiff appealed.

The Oregon Court of Appeals affirmed, noting that there were other explanations for the presence of the oil-like substance, such as a mechanical breakdown, an unknown defect in the phantom vehicle, or recent unknown damage to the phantom vehicle. Because there were other explanations for the presence of the oil-like substance, the plaintiff was required to present evidence showing that the phantom driver’s negligence was the most likely cause. Because the plaintiff failed to present such evidence, the Court of Appeals concluded that the trial court properly granted summary judgment to State Farm. ❖

**Adjusting Pointer: The doctrine of *res ipsa loquitur* allows a plaintiff to recover on a negligence theory even though the plaintiff cannot prove that the defendant was negligent. To use the doctrine, a plaintiff must be able to show both that the accident probably could not have happened unless someone was negligent, and that the negligence is attributable to a particular defendant or defendants.**

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