

Res Ipsa Loquitur and Direct Evidence Not Mutually Exclusive in Med Mal Suit, Pa. Supreme Court Rules

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A medical malpractice suit can return to a trial court with a jury instruction to consider certain circumstantial evidence in addition to direct evidence following a split decision from the state Supreme Court.

The high court determined Dec. 22 that a plaintiff can use the doctrine of res ipsa loquitur—in which certain injuries can be assumed to be the result of negligence—in cases where the plaintiff has enough direct evidence that the doctrine is not the only way to reach a finding of liability.

The majority [opinion](#), written by Justice David Wecht, said that in a case “where the evidence available to the plaintiff is equivocal and less than conclusive on the elements of negligence, asking the plaintiff to choose which evidentiary approach to pursue is manifestly unfair.”

Justice Thomas Saylor [dissented](#), and Chief Justice Max Baer issued a concurring and dissenting [opinion](#).

The justices' majority opinion affirmed a Superior Court ruling that reversed the trial court's decision declining to give the jury a res ipsa loquitur instruction. In the absence of the instruction, the jury found in favor of the defendant, and the plaintiff appealed.

The plaintiff, H. Elizabeth Lageman, had undergone an emergency laparotomy at York Hospital in 2012. The attending anesthesiologist, John Zepp, misplaced a central venous pressure line during the operation. Following the procedure, Lageman was diagnosed with one or more strokes and had little to no movement in her left-side extremities, and she sued Zepp and the hospital for malpractice.

The plaintiff's expert testified that the injury could not have occurred if Zepp had properly conducted the procedure, but the defendants' expert said Zepp adhered to the standard of care.

Lagerman said that, in light of her expert's opinion, she had prima facie evidence entitling her to the res ipsa loquitur instruction, but the trial court disagreed.

The high court majority, however, found that she made a successful prima facie case, which the opinion said should be the driving question in determining whether the instruction is warranted.

Wecht said that interpreting the res ipsa loquitur doctrine and direct evidence as mutually exclusive ignored the nuance that exists in complex medical malpractice cases.

“We cannot fairly hold that res ipsa loquitur may be invoked in complex, medical malpractice cases requiring expert testimony, then subject the doctrine to an oversimplified view of the interplay of direct and circumstantial evidence,” Wecht wrote.

Baer agreed with Wecht’s conclusion that the two approaches can coexist, but said he did not believe that Lagerman made a prima facie case for the res ipsa loquitur instruction.

“Simply said,” wrote Baer, “this is not a res ipsa case, but rather a classic case where two versions of the same story were properly presented to the jury without presumptions, in favor or against, either party.”

Saylor wrote in his dissenting opinion that he not only believed that Lagerman already had a fair chance to make her case, but that the majority did not fully consider the effects the res ipsa loquitur instruction could have on a jury verdict.

He wrote that “the concerns of the medical community that judicial authorization of the inference will foster confusion among jurors, unduly increase the cost of medical services, and serve to undermine the quality of health care in the commonwealth ... do not seem to me to have been assessed in any meaningful fashion.”

Joseph Melillo of Navitsky, Olson & Wisneski represented Lageman, by and through her power of attorney and daughter, Adrienne Lageman. Attorneys with Saxton & Stump represented Zepp and York Hospital. Neither side responded to requests for comment.

The case is captioned *Lageman v. Zepp*.

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