

Leg Fracture: Hospital Or Ambulance Mishandled Patient, Court Applies *Res Ipsa Loquitur*.

An eighty-three year old woman lived with her daughter. She was bedridden, her left leg had been amputated due to diabetes, she was unable to speak because of a stroke and she was fed through a gastrostomal tube.

The daughter had her mother taken to the hospital by ambulance while she went out of town. Five days later the same private ambulance company returned the patient to her daughter's home.

However, on her return the patient winced in pain when her leg was moved and her leg was visibly swollen.

The daughter called 911 and city paramedics took her to a second hospital where a fractured right distal tibia and fibula and dehydration were the diagnoses.

Physician's Report Links Injury To Negligence

The daughter sued the first hospital and the ambulance company as personal representative of her mother's estate.

Her lawyers obtained a report from a physician whom they hired to review the medical records. His report stated that the leg injury and dehydration could not have happened in the absence of negligence.

Further, the physician noted that during the time in question the ambulance company and the hospital had exclusive control and management of the patient.

Court Applies *Res Ipsa Loquitur* Defendants Have To Disprove Fault

The Appellate Court of Illinois ruled that having two defendants does not rule out *res ipsa loquitur*, a legal doctrine often used in medical litigation.

The court put the burden the first hospital and the ambulance company to prove which of them did not cause the injury, or both of them would be jointly liable. The assessment data and chart notes seemed to be lacking to prove just how it happened, a fact the court ruled should prejudice the defendants rather than the plaintiff.

Collins v. Superior Air-Ground Ambulance Service, Inc., ___ N.E. 2d ___, 2003 WL 1971813 (Ill. App., April 29, 2003).

There is compelling medical evidence that it had to have been one defendant or the other that injured the patient.

This is different from the usual *res ipsa loquitur* case, but having to sue more than one defendant does not deprive the patient's personal representative of her day in court.

Res ipsa loquitur means, "It speaks for itself." When an injury happens that normally does not happen without negligence, and the patient was exclusively under the defendant's control and management, the defendant has to disprove negligence.

Res ipsa loquitur gives patients the benefit of the doubt in cases where there is solid proof a wrong has been committed but no real proof how it happened.

The rationale should not change with two defendants, assuming there is solid proof one or the other committed a wrong and no one else could have been responsible.

The two defendants will have to look for evidence with which to sort it out.

APPELLATE COURT OF ILLINOIS
April 29, 2003

Labor Law: Court Lets Nurses Wear Buttons At Work.

The hospital banned staff nurses from wearing "No F.O.T." (No Forced Overtime) buttons anywhere in the hospital. The National Labor Relations Board (NLRB) upheld the union's unfair labor practice complaint against the hospital.

Employees have the right to wear union insignia at work, unless there are special circumstances.

The "No Forced Overtime" buttons worn by the nurses were a silent protest of their employer's policies.

There was no evidence that by wearing the buttons the nurses engaged in an illegal strike, slowdown, work stoppage or boycott or that the buttons disrupted work productivity.

The NLRB did not believe the nurses were trying to proselytize their message to patients, which would have been illegal.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
May 15, 2003

The US Circuit Court of Appeals for the Sixth Circuit sided with the nurses.

Clearly there was nothing wrong with union informational activities in non-patient-care areas like the nurses' lounge. It was a closer call *vis a vis* patient-care areas. The court accepted the NLRB's decision that the buttons caused no disruption of care and were not an attempt by the nurses to carry their message to the hospital's patrons. **Mt. Clemens General Hospital v. N.L.R.B.**, ___ F. 3d ___, 2003 WL 21078179 (6th Cir., May 15, 2003).