**03.05 RES IPSA LOQUITUR**

[There are two ways by which the plaintiff may prove that the defendant was negligent. The first way is by using evidence of the defendant’s conduct to prove that the defendant did not use reasonable care. The second way is by proving circumstances from which it may be inferred that the defendant did not use reasonable care.]

[The plaintiff may prove that the defendant was negligent by proving circumstances from which it may be inferred that the defendant did not use reasonable care.]

You may decide the defendant was negligent based on the circumstances if you find it more likely true than not true that:

(1) the event that caused the harm does not ordinarily happen unless someone is negligent;

(2) the harmful event was caused by something that was under the defendant’s exclusive control; and

(3) the plaintiff in no way contributed to or caused the harmful event.

You may, but you are not required to, find the defendant was negligent if you find it more likely true than not true that all three conditions are met. The mere fact that harm occurred does not mean that someone was negligent.

Directions for Use

When *res ipsa loquitur* is an issue, this instruction should be used immediately after Instruction 03.03A (Negligence Defined – Adult) and before Instruction 3.07 (Substantial Factor), the instruction on causation. The bracketed first paragraph should be given when the plaintiff relies on specific acts of alleged negligence in addition to *res ipsa loquitur*. The bracketed second paragraph should be used in all other cases involving *res ipsa loquitur*.

There may be instances where the court may decide as a matter of law that one or more of the *res ipsa* elements exists. In such a case it may be appropriate to follow the listing of the elements with an instruction to that effect.

# Comment

The doctrine of *res ipsa loquitur* permits the finder of fact to infer negligence from the circumstances of an injury. *E.g.,* [*Widmyer v. Southeast Skyways, Inc.,* 584 P.2d 1, 10 (Alaska 1978)](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=661&FindType=Y&ReferencePositionType=S&SerialNum=1978130554&ReferencePosition=10). The doctrine “is a bridge, dispensing with the requirement that a plaintiff specifically prove breach of duty, once that duty and proximate cause have been established.” *Falconer v. Adams*, 974 P.2d 406, 414 n.12 (Alaska 1999).

The instruction sets out the elements required to invoke *res ipsa loquitur* as stated in decisions of the Alaska Supreme Court. *E.g.,* *State Farm Fire & Cas. Co. v. Municipality of Anchorage*, 788 P.2d 726, 730 (Alaska 1990); *Lynden Transport, Inc. v. Haragan*, 623 P.2d 789, 793 (Alaska 1981).

Plaintiff is entitled to a *res ipsa loquitur* instruction when the court determines, viewing the evidence in a light most favorable to plaintiff, that a jury could reasonably conclude the required elements were met. *E.g.,* *State Farm Fire*, 788 P.2d at 730. Such an instruction is inappropriate in a case where there is evidence of negligence which provides a complete explanation for the incident. *E.g.*, *Norris v. Gatts*, 738 P.2d 344, 348 (Alaska 1987). The doctrine does not apply to medical malpractice cases. *E.g.*, *Parker v. Tomera*, 89 P.3d 761, 770 (Alaska 2004).