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THE NEGLIGENCE CASE: RES IPSA LOQUITUR

We enclose your 2023 Cumulative Supplement Pamphlets to *The Negligence Case: Res Ipsa Loquitur*, the most authoritative resource available today on the evidentiary doctrine of res ipsa loquitur. This supplement discusses scores of recent cases decided by state and federal courts reflecting ongoing developments in this dynamic and useful area of law.

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Highlights

Among the many new developments and changes regarding res ipsa loquitur law discussed in your new 2023 Cumulative Supplement Pamphlets are the following:

A New York appellate decision in a case by the tenants of a house against the homeowner for injuries the tenants sustained when the deck separated from the house while the tenants were on it, in which the court held that the doctrine of res ipsa loquitur was applicable, concluding that the exclusive control element of the doctrine was satisfied because the evidence showed that the deck had been under the control of defendant since it was built approximately nine years prior to the accident, and defendant testified at her deposition that she and her husband, who acted as the property manager, were the only ones responsible for maintaining and inspecting the property. *See McGirr v. Shifflet in § 2:18*

A decision of the Pennsylvania Supreme Court in a medical malpractice action in which the court, in finding that the trial court erred by refusing to charge the jury on res ipsa loquitur, held that plaintiff's reliance upon res ipsa loquitur was OVER

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not precluded because plaintiff also presented direct expert evidence of negligence. *See Lageman v. Zepp in § 5:20.*

Two New York appellate decisions involving injuries from elevators, one from misleveling and one from dropping two floors, in which the courts found res ipsa loquitur to be applicable, concluding that elevator misleveling does not occur in the absence of negligence, nor is an elevator drop the type of event that normally occurs in the absence of negligence. *See Rivera v. Slade Industries, Inc. and Aponte v. Bronx Preservation Housing Development Fund Corp. in § 15:17.*

A Seventh Circuit opinion which concluded that Illinois law recognizes a method for proving a strict liability claim for a defective product which resembles the common law doctrine of res ipsa loquitur under which the plaintiff may resort to circumstantial evidence that supports an inference that the product was defective by showing that the product failed to perform as expected, that the product was not being used abnormally, and that there were no reasonable secondary causes of the product's failure, but held that expert evidence was required to satisfy these elements and the plaintiff had failed to provide such evidence. *See Donaldson v. Johnson & Johnson in § 28:1.*

An Eighth Circuit opinion holding that in order for res ipsa loquitur to apply in a products liability case, a plaintiff must reasonably eliminate improper handling by others as a potential cause of the accident, and that where lapse of time and substantial opportunity for mishandling of a product by third parties make it equally probable a defective condition developed after leaving the defendant's control, the principles of res ipsa loquitur will not support a finding of liability. *See Boda v. Viant Crane Service, LLC in § 28:1.*

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