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## *Unusual Injury Suffered While Riding a Roller Coaster Allows a Plaintiff to Utilize the Doctrine of Res Ipsa Loquitur*

**From the Desk of Kyle Riley:** In personal injury lawsuits alleging negligence, the plaintiff has the burden of proving that a defendant breached a duty owed to the plaintiff. In some cases, however, plaintiffs are able to utilize the legal doctrine of res ipsa loquitur when they are unable to supply evidence of any breach. The doctrine potentially relieves plaintiffs of the burden of proving a breach by showing that the injury would not have ordinarily occurred in the absence of negligence. What does a plaintiff need to prove to utilize res ipsa loquitur? Read on to find out.

**Claims Pointer:** While riding a roller coaster, a plaintiff struck her head on the safety harness and was diagnosed with a subdural hematoma requiring brain surgery. Plaintiff sued the operators and manufacturers of the roller coaster, alleging that her subdural hematoma was the result of some unspecified act of negligence on their behalf. However, plaintiff was unable to point to any specific act of negligence. Accordingly, she sought to utilize the doctrine of res ipsa loquitur, which would allow her to bring her suit to the jury *without* evidence of a specific act of negligence. After the trial court dismissed her lawsuit, finding that the doctrine was unavailable, the Washington Court of Appeals reversed. It held that, because a subdural hematoma is not the type of injury one would expect while riding a roller coaster, plaintiff was entitled to utilize the doctrine of res ipsa loquitur.

### Brugh v. Fun-Tastic Rides, et al., Wash. Ct. App. No. 51055-3-II (Mar. 26, 2019).

IWhile attending the Washington State Fair, Jodi Brugh ("Plaintiff") rode a roller coaster that was operated by Fun-Tastic Rides Co. During the last turn of the roller coaster—one that Plaintiff described as a "sudden and violent jolt"—she struck her head on both sides of the safety harness and lost hearing in her right ear. Fearing a blown eardrum, she went to the fair's medical tent for assistance, where she received a recommendation to go to urgent care or to see her physician the next day. The next day, Plaintiff was bleeding from her ears and presented to her physician, who attributed her injuries to an ear infection. A couple of weeks later, Plaintiff again presented to her physician with "severe and debilitating" head and neck pain. Plaintiff was diagnosed with a subdural hematoma and underwent brain surgery.

Plaintiff filed a lawsuit alleging that her injuries were caused by defendants' negligence. After limited discovery, Fun-Tastic moved for summary judgment but the motion was denied by the trial court. After Fun-Tastic filed a motion for reconsideration, the court heard oral argument and granted the motion, dismissing Plaintiff's claim because it found that res ipsa loquitur was inapplicable. Plaintiff appealed the dismissal focusing on the applicability of res ipsa loqutiur to Plaintiff's claim.

In an action for negligence, a plaintiff must prove (1) the existence of a duty; (2) breach of that duty; (3) resulting injury; and (4) proximate cause. The doctrine of res ipsa loquitur "provides an inference as to the defendant's breach of duty." Further, the doctrine "allows the plaintiff to establish a prima facie case of negligence when he cannot prove

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a specific act of negligence." In order to rely on the doctrine, the plaintiff must meet three elements: "(1) the accident or occurrence that caused the plaintiff's injury would not ordinarily happen in the absence of negligence, (2) the instrumentality or agency that caused the plaintiff's injury was in the exclusive control of the defendant, and (3) the plaintiff did not contribute to the accident or occurrence." On appeal, the parties disputed the applicability of the first element. Specifically, they disputed whether Plaintiff's injury allegedly caused by her head striking the safety harness would have ordinarily occurred in the absence of negligence.

A plaintiff is able to satisfy that first element by showing any of three conditions: (1) when the event is "so palpably negligent that it may be inferred as a matter of law…"; (2) when "the general experience and observation of mankind teaches that the result would not be expected without negligence"; or (3) "when proof by experts in an esoteric field creates an inference that negligence caused the injuries." The parties focused on the second element and, accordingly, the court sought to answer whether the general experience and observation of mankind teaches that Plaintiff's subdural hematoma would not have been expected to occur without negligence.

In support of her position, Plaintiff argued that "general experience teaches that [the] impact [that] led to her brain injury does not ordinarily occur on roller coasters, absent negligence." In response, Fun-Tastic argued that Plaintiff was required to "show something more than just the extent of her injuries to show that the roller coaster operated abnormally." Fun-Tastic argued that "the roller coaster operated as expected and that any jolts were the normal jolts of the roller coaster." Thus, the court determined, the dispute was whether res ipsa loquitur is provable by showing that the *resulting injury* would not be expected without negligence. The court concluded that it could.

Because the court concluded that the extent of the resulting injury can conclusively prove that "the result would not be expected without negligence," the court focused on the types of injuries that *could* be expected from riding a roller coaster. The court concluded that "general experience" teaches that people may receive minor bumps and minor whiplash from riding a roller coaster, not a subdural hematoma. Accordingly, the court found that "the nature of [Plaintiff's] injury is not of a type that one would expect while riding a roller coaster." For that reason, the court held that the doctrine of res ipsa loquitur applies to Plaintiff's case and the trial court erred in granting Fun-Tastic's motion for summary judgment.

View full opinion at: *https://www.courts.wa.gov/opinions/pdf/D2%2051055-3-II%20Published%20Opinion.pdf*

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