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# Defending Against the Res Ipsa Loquitur Doctrine – Liability Considerations

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A doctrine of limited applicability, *res ipsa loquitur*, stands for the proposition that the “things speaks for itself.” This doctrine allows a plaintiff to shift their evidentiary burden of proof to the defendant where a court can infer negligence from the fundamental nature of an accident or injury. We’re noticing a dangerous trend of more plaintiffs seeking to apply this doctrine in liability cases and clients need to know how to defend themselves. When faced with a person claiming that they sustained injuries while on your property, ask yourself: did your business have exclusive control of the instrumentality plaintiff alleges caused their injury? Would the accident have occurred without the negligence of the one in control of the instrumentality?

The Fifth District Court of Appeal recently provided favorable guidance overturning a trial court decision allowing a plaintiff a *res ipsa* jury instruction in a premises liability case where the plaintiff sued Orange County for injuries that she sustained when a jail security gate slammed and fell on her causing her to suffer injuries. See *Orange Cty. v. Whitehead*, 309 So. 3d 311 (Fla. 5th DCA 2020). The Fifth District Court of Appeal held that because the plaintiff did not establish that the accident would not occur in the ordinary course of events without negligence, she failed to carry the initial burden of establishing that *res ipsa loquitur* applied. Considerations taken by the Court in reaching their decision included the plaintiff failing to establish whether the gate itself malfunctioned or whether the county negligently maintained the gate. *Id.* at 314. The County argued that neither it nor the officer who controlled the gate acted negligently and instead, the plaintiff either tripped on a sensor or there was a malfunction that caused the gate to close on her. *Id.* at 312-313. Therefore, the Fifth District Court of Appeal found that the *res ipsa loquitur* jury instruction was not appropriate and reversed the trial court’s ruling and remanded the case for a new trial.