

13-1623. Circumstantial evidence of negligence ("Res ipsa loquitur").

The plaintiff, in order to prove _____ (*insert name of person or entity*) was negligent, is not required to prove specifically what _____ (*insert name of person or entity*) did or failed to do that was negligent. In order for the jury to find _____ (*insert name of person or entity*) negligent, the plaintiff has the burden of proving each of the following propositions:

1. that the injury or damage to _____ was proximately caused by _____ (*insert name of instrumentality or occurrence*) which was _____'s (*insert name of person or entity*) responsibility to manage and control;
and
2. that the event causing the injury or damage to _____ (*insert name of person*) was of a kind which does not ordinarily occur in the absence of negligence on the part of _____ (*insert name of person or entity*) in control of _____ (*insert name of instrumentality or occurrence*).

If you find that _____ (*insert name of person*) proved each of these propositions, then you may, but are not required to, infer that _____ (*insert name of person or entity*) was negligent and that the injury or damage proximately resulted from such negligence.

If, on the other hand, you find that either one of these propositions has not been proved or, if you find, notwithstanding the proof of these propositions, that _____ (*insert name of person or entity*) used ordinary care for the safety of others in [his] [her] [its] control and management of the _____ (*insert name of instrumentality or occurrence*) then the evidence would not support a finding of negligence.

USE NOTES

The names of the various individuals and the name or description of the instrumentality or occurrence should be inserted in the appropriate blanks. Care should be used that the correct names are placed in the various blanks.

What was previously labeled *res ipsa loquitur* has been retitled "circumstantial evidence of negligence". The fact that there is other evidence of the specific cause of the injury does not preclude the use of this instruction. *Mireles v. Broderick*, 117 N.M. 445, 872 P.2d 863 (1994). Exclusive control by the defendant, of the instrumentality or circumstance at issue is not a prerequisite for its use. *Trujeque v. Service Merchandise Company*, 117 N.M. 388, 872 P.2d 361 (1994); *Mireles v. Broderick*, 117 N.M. 445, 872 P.2d 863 (1994). As a factual matter, two or more persons may conceivably share responsibility of the management of the object, activity, or circumstances at issue. [As amended, effective November 1, 1991; August 1, 1999.]