

### **13-1420. Res ipsa loquitur.**

Plaintiff relies in part upon the doctrine of "res ipsa loquitur" which is a Latin phrase and means "the thing speaks for itself." Plaintiff relies upon this doctrine to prove that the claimed defective condition of the product existed at the time the product was supplied by defendant [and that the defective condition was the result of a failure to use ordinary care]. In order for the jury to find that plaintiff has proved [this] [these] element[s] of [his] [her] claim by reliance upon "res ipsa loquitur", plaintiff has the burden of proving:

1. that a defective condition existed at the time [he] [she] used the product;
2. the reasonable probability that the condition of the product was not substantially changed after it left the defendant's possession[; and]
- [3. that the defect is of a kind which usually does not exist unless the supplier of the product has failed to use ordinary care].

If you find that plaintiff has proved [this] [these] proposition[s], then the law permits you to infer that the defective condition of the product existed at the time the product was supplied by defendant [and that the defect arose because of the supplier's failure to use ordinary care].

If, on the other hand, you find that plaintiff has not proved [this] [these] proposition[s], or if you find, notwithstanding such proof, that the product was not supplied in a defective condition [or that defendant used ordinary care], then plaintiff cannot prove [this] [these] element[s] of [his] [her] claim by reliance upon "res ipsa loquitur".

#### **USE NOTES**

The bracketed material is applicable only to a negligence action and shall not be given if the sole theory of plaintiff's case is strict liability.

This instruction is to be used where plaintiff's claim of products liability, on either a negligence or strict liability theory, rests upon the existence of a flaw in, or contamination of, the product. It has no application where the product was made as intended by the manufacturer, and liability is based solely upon contentions of inadequate warning or design. The instruction must not be given unless the court first determines, as a matter of law, that circumstantial evidence or expert testimony is of sufficient probative value to permit the jury to find that the condition of the product was not substantially changed or altered after the product left the supplier's hands. This determination involves consideration of the nature of the product (*i.e.*, sealed container), nature of the alleged defect, lapse of time between manufacture and sale of the product and the accident, nature of intermediate handling and use of the product, nature of the accident and any other pertinent factors.

[As amended, effective November 1, 1991.]