

BRADLEY & GMELICH

Lawyers

Barry A. Bradley
Thomas P. Gmelich
Lena J. Marderosian
Jonathan A. Ross
Gary J. Bradley

700 N. Brand Boulevard, 10th Floor
Glendale, California 91203
Telephone (818) 243-5200
Facsimile (818) 243-5266

Northern California Office
2033 Gateway Place, 5th Floor
San Jose, California 95110
Telephone (408) 573-6267
Facsimile (408) 437-1201

www.bglawyers.com

Robert A. Crook
John K. Flock
Lindy M. Fried
Mark I. Melo
Arnold S. Levine
Shirley R. Sullinger
Kathryn Canale
G. Dean Guerrero
Jaimee K. Wellerstein
James N. Kahn
Sumithra Rao
Michelle McCoy Wolfe
Mirth White

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COURT OF APPEAL EXPANDS REACH OF *RES IPSA LOQUITUR* DOCTRINE?

In *Howe v. Seven Forty Two Company*, the Court of Appeal appears to have expanded the application of the *res ipsa loquitur* doctrine. The case is significant because it allows a plaintiff to argue the doctrine of *res ipsa loquitur* in a case where defendants have typically prevailed on motions for summary judgment, and because it shifts the burden of proof onto the defense to prove it was not negligent.

In *Howe*, patron brought an action against a restaurant owner for negligence and premises liability after falling off a counter stool. The appellant (Howe) entered the restaurant, an IHOP, and proceeded to sit in one of seven counter stools. Each of the wood seats was attached to the metal base by three wood screws. The screws at issue in the complaint had broken off; however, the breaks in the screws were not apparent upon visual inspection. Also, appellant testified that he did not notice anything unusual about the seat when he initially went to sit down, and managers of the restaurant testified that the seats were regularly inspected visually and that there had never been any previous instances where the screws on the counter stools had broken. Appellant himself did not know what caused the screws to break.

Respondent brought a motion for summary judgment, arguing that it had no notice of a problem with the stool and that it conducted regular inspections of the stools. At the hearing on the summary judgment motion, appellant claimed that respondent's inspection program was unreasonable, and that fact was supported by an inference of negligence under the doctrine of *res ipsa loquitur*. The trial court granted respondent's motion for summary judgment.

The Appellate Court reversed, stating that in order to apply the doctrine of *res ipsa loquitur*, one must establish three conditions, all of which were present in this case:

- (1) the event must be of the kind which ordinarily does not occur in the absence of someone's negligence;
- (2) it must be caused by an agency or instrumentality within the exclusive control of the defendant; and
- (3) it must not have been due to any voluntary action or contribution on the part of the Plaintiff.

The Appellate Court found that all of these three conditions were met. First, the Court found that a counter stool does not fall off its base when used normally in the absence of negligence. Second, the stool was in the exclusive control of Respondent. Finally, the customer was using the stool as intended.

Once the doctrine of *res ipsa loquitur* is applied, the burden of producing evidence to rebut the presumption of negligence shifts to **the defense** to prove lack of negligence or lack of proximate cause that the injury claimed was the result of the alleged negligence. If evidence is presented to refute the presumption of the presumed fact, the presumption of negligence is negated, but if no facts to rebut the presumption of negligence are presented, then the trier of fact must rely on the presumption of negligence.

However, the Appellate Court left appellant with one last "out," stating that "the jury may still be able to draw an inference that the accident was caused by the defendant's lack of due care from the facts that gave rise to the presumption" in the first place. As such, the trial court's ruling was reversed.