Torts—Res Ipsa Loquitur—Texas Does Not Apply the Doctrine of Res Ipsa Loquitur in Medical Malpractice Cases. *Louis v. Parchman*, 493 S.W.2d 310 (Tex. Civ. App.—Fort Worth 1973, writ ref'd n.r.e.).

Marjorie A. Louis entered Harris Hospital in Fort Worth, Texas, for a hysterectomy and anterior and posterior vaginal repair. Dr. Hugh Parchman performed this surgery on June 6, 1966.[1] Mrs. Louis was given a general anesthetic and placed in the lithotomy position with her legs suspended from foam rubber padded straps and slightly bent at the knee. The operation lasted 1 hour 25 minutes. She complained of numbness from her waist down when she awoke in the recovery room. Her postoperative condition developed into common peroneal palsy[2] of the right leg. Before her surgery, Mrs. Louis had never had difficulty with her right leg. Mrs. Louis and her husband sued Dr. Parchman for medical malpractice to recover damages for this injury. They alleged specific acts of negligence and res ipsa loquitur.[3] The trial court sustained the defendant's special exceptions to the plaintiffs' plea of res ipsa loquitur, and the cause was tried on the alleged acts of negligence.[4] The trial court granted the defendant's motion for a directed verdict at the close of the plaintiffs' evidence.[5] The Fort Worth Court of Civil Appeals affirmed the directed verdict and the trial court's action sustaining the defendant's special exceptions to the plaintiffs' plea of res ipsa loquitur.[6] The court held that the doctrine of res ipsa loquitur is not applicable in medical malpractice cases in the absence of "extraordinary circumstances."[7]

The court of civil appeals in *Louis v. Parchman*[8] gave several reasons for refusing to allow the plaintiffs to plead res ipsa loquitur. The court reaffirmed the Texas rule that res ipsa loquitur is not applicable to medical malpractice cases.[9] The court noted the existence of an excep-

1. Louis v. Parchman, 493 S.W.2d 310, 312 (Tex. Civ. App.—Fort Worth 1973, writ ref'd n.r.e.).

2. Peroneal palsy, commonly called foot-drop, is a paralysis of the foot caused by pressure, stretching, or a combination of the two, on the knee, where the peroneal nerve is located. *Id.* at 318.

3. *Id.* at 313, 319.

4. *Id.* at 319.

5. *Id.* at 313.

6. *Id.*

7. *Id.* at 320.

8. Louis v. Parchman, 493 S.W.2d 310 (Tex. Civ. App.—Fort Worth 1973, writ ref'd n.r.e.).

9. Howe v. Citizens Memorial Hosp., 426 S.W.2d 882, 884 (Tex. Civ. App.—Corpus Christi 1968, *rev'd on other grounds*, 436 S.W.2d 115); Bell v. Umstattd, 401 S.W.2d 306, 313 (Tex. Civ. App.—Austin 1966, writ dism'd); Shockley v. Payne, 348 S.W.2d 775, 778 (Tex. Civ. App.

tion to this rule for cases involving extraordinary circumstances. It said extraordinary circumstances were a failure to remove a surgical sponge from the body, an X-ray burn, or an operation on the wrong part of the body.[10] Because Mrs. Louis did not allege one of these circumstances, her case did not fit within the exception.[11] Further, the court determined that Mrs. Louis could not have established negligence under res ipsa loquitur because there was no evidence that the injury was more likely than not caused by the defendant's negligence.[12] Expert testimony established that the injury could have occurred despite a properly performed operation[13] and the defendant testified that the plaintiff could have injured herself upon awakening after the operation.[14]

The doctrine of res ipsa loquitur is a rule of evidence that permits the introduction of circumstantial evidence from which the jury may infer specific acts of negligence by the defendant.[15] Traditionally, four

—Amarillo 1961, writ ref'd n.r.e.); Baker v. Heaney, 82 S.W.2d 417, 419 (Tex. Civ. App. —San Antonio 1935, writ dism'd).

Texas cases which have stated that res ipsa loquitur has been applied only where extraordinary circumstances are present include: Louis v. Parchman, 493 S.W.2d 310, 320 (Tex. Civ. App.—Fort Worth 1973, writ ref'd n.r.e.); Hunter v. Robison, 488 S.W.2d 555, 560 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.); Goodnight v. Phillips, 418 S.W.2d 862, 868 (Tex. Civ. App.—Texarkana 1967, writ ref'd n.r.e.), *on remand*, 458 S.W.2d 196 (Tex. Civ. App.—Houston [1st Dist.] 1970, writ ref'd n.r.e.); Henderson v. Mason, 386 S.W.2d 879, 882 (Tex. Civ. App.—El Paso 1964, no writ). The cases cited in these opinions as authority for the proposition that extraordinary circumstances are necessary for the application of res ipsa loquitur do not support that proposition. For example, the failure to remove a surgical sponge from a patient's body was cited as an extraordinary circumstance. In such situations, however, the courts did not apply res ipsa loquitur. Instead, they held that the failure to remove a sponge was negligence as a matter of law. Thompson v. Barnard, 142 S.W.2d 238, 240 (Tex. Civ. App.—Waco 1940), *aff'd*, Barnard v. Thompson, 138 Tex. 277, 158 S.W.2d 486 (1942); Moore v. Ivey, 277 S.W. 106 (Tex. Comm'n App. 1925, holding approved). Martin v. Eschelman, 33 S.W.2d 827 (Tex. Civ. App.—Texarkana 1930, writ ref'd), a case involving an X-ray burn, has been cited for its use of res ipsa loquitur. In *Martin*, however, the doctrine was not used because the physician admitted that if he had burned the plaintiff it constituted negligence. Therefore, the only fact issue was whether a specific act occurred. Extraordinary circumstances have been found when the negligence is so obvious as to be within the comprehension of a layman. Hunter v. Robison, *supra* at 560. However, proof of a specific act of negligence is still required to establish a physician's liability. Harle v. Krchnak, 422 S.W.2d 810, 815 (Tex. Civ. App.—Houston [1st Dist.] 1967, writ ref'd n.r.e.). Cases which require specific acts of negligence are inconsistent with the doctrine of res ipsa loquitur because the doctrine is designed to aid proof of negligence without a specific act.

10. Louis v. Parchman, 493 S.W.2d 310, 320 (Tex. Civ. App.—Fort Worth 1973, writ ref'd n.r.e.).

11. *Id.*

12. *Id.* It was not clear in the opinion whether the holding would have been different had the plaintiff introduced such evidence.

13. *Id.*

14. *Id.* at 315.

15. H.E.B. Food Stores v. Mercado, 486 S.W.2d 591, 595 (Tex. Civ. App.—Beaumont 1972,

elements may be required for the application of the doctrine.[16] Most courts require that the accident must be one which usually does not occur in the absence of negligence[17] and that the object or instrumentality that caused the accident must have been under the exclusive management and control of the alleged tort-feasor.[18] Additionally, other courts also require that the injury must not have been caused by the injured party[19] and that the defendant must have superior knowledge or means of obtaining information concerning the cause of the injury.[20] When the plaintiff establishes these elements the jury may infer that the defendant committed some specific act of negligence.[21] The doctrine aids the plaintiff by allowing the case to be submitted to the jury even though a specific act of negligence has not been established by direct evidence.[22]

Even if Texas courts utilized traditional res ipsa loquitur, the plaintiff in *Parchman* would not have been able to establish the four requisite elements of the doctrine. The first element, that the accident does not usually occur in the absence of negligence, could not be established because evidence showed that the injury could have occurred without negligence.[23] The defendant's testimony that Mrs. Louis could have inflicted the injury[24] negated establishment of the other three elements:

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no writ); O'Day v. Sakowitz Bros., 462 S.W.2d 119, 126-27 (Tex. Civ. App.—Houston [1st Dist.] 1970, writ ref'd n.r.e.); Pittsburgh Coca-Cola Bottling Works v. Ponder, 443 S.W.2d 546, 547 (Tex. 1969); Wichita Falls Traction Co. v. Elliott, 125 Tex. 248, 257-58, 81 S.W.2d 659, 663-64 (1935).

16. Barnes v. United States, 349 F.2d 553, 554-55 (5th Cir. 1965); Capps v. American Airlines, Inc., 81 Ariz. 232, ____, 303 P.2d 717, 718 (1956).

17. San Juan Light & Transit Co. v. Requena, 224 U.S. 89, 98-99 (1912); Barnes v. United States, 349 F.2d 553, 554-55 (5th Cir. 1965); Sansone v. National Food Stores, Inc., 352 S.W.2d 375, 377 (Mo. Ct. App. 1961); Motte v. First Nat'l Stores, Inc., 76 R.I. 349, ____, 70 A.2d 822, 825 (1950); Bearden v. Lyntegar Elec. Cooperative, Inc., 454 S.W.2d 885, 887 (Tex. Civ. App.—Amarillo 1970, no writ); Gratton v. Fitch, 352 S.W.2d 902, 903 (Tex. Civ. App.—El Paso 1961, no writ); Honea v. Coca-Cola Bottling Co., 143 Tex. 272, 275, 183 S.W.2d 968, 969 (1944).

18. Cases cited note 17 *supra*.

19. Many courts require this third element. *E.g.*, San Juan Light & Transit Co. v. Requena, 224 U.S. 89, 98-99 (1912); Weigand v. Pennsylvania R.R., 166 F. Supp. 843, 846 (W.D. Pa. 1958), *rev'd on other grounds* 267 F.2d 281 (3d Cir. 1959). *See generally* 58 AM. JUR. 2d *Negligence* § 480 (1971); PROSSER, HANDBOOK OF THE LAW OF TORTS § 39, at 214 (4th ed. 1971).

20. Some courts require this element in addition to the third. *E.g.*, Capps v. American Airlines, Inc., 81 Ariz. 232, ____, 303 P.2d 717, 718 (1956). Some use this element instead of the third. New York, C. & St. L. R.R. v. Henderson, 237 Ind. 456, ____, 146 N.E.2d 531, 536 (1957); Sansone v. National Food Stores, Inc., 352 S.W.2d 375, 377 (Mo. Ct. App. 1961); Motte v. First Nat'l Stores, Inc., 76 R.I. 349, ____, 70 A.2d 822, 825 (1950).

21. Appalachian Ins. Co. v. Knutson, 242 F. Supp. 226, 234 (W.D. Mo. 1965), *aff'd*, 358 F.2d 679 (8th Cir. 1966); Bond v. Otis Elevator Co., 388 S.W.2d 681, 686 (Tex. 1965). *See generally* 65A C.J.S. *Negligence* § 240.4 at 530 (1966).

22. Cases cited note 21 *supra*.

23. 493 S.W.2d at 318.

24. *Id.*

the defendant might not have had control of the instrumentality causing the injury; the injured plaintiff might have caused the incident; and knowledge of the cause might not have been more accessible to the defendant.[25]

In recent decisions the courts in several states have expanded the use of res ipsa loquitur in medical malpractice cases.[26] The circumstantial evidence sufficient to invoke the doctrine has been broadened to allow submission of the cause to the jury when it might not be allowed under the traditional doctrine.[27]

The first element of res ipsa loquitur has been satisfied if the injury is the result of external force[28] applied to an unconscious patient[29] and the injury is to part of the body outside the operative field.[30] This element has been satisfied even where the evidence has shown the injury could happen without negligence,[31] that there are several possible causes,[32] or that the injury is a known and calculated risk.[33] One court

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25. See text accompanying notes 16-20 *supra*.

26. Patrick v. Sedwick, 391 P.2d 453 (Alas. 1964); Quintal v. Laurel Grove Hosp., 62 Cal. 2d 154, 397 P.2d 161, 41 Cal. Rptr. 577 (1964); Frost v. Des Moines Still College of Osteopathy & Surgery, 248 Iowa 294, 79 N.W.2d 306 (1956); Gormley v. Montana Deaconess Hosp., 149 Mont. 12, 423 P.2d 301 (1967); St. John's Hosp. & School of Nursing, Inc. v. Chapman, 434 P.2d 160 (Okla. 1967); Horner v. Northern Pac. Beneficial Ass'n Hosps., 62 Wash. 2d 351, 382 P.2d 518 (1963).

Ybarra v. Spangard, 25 Cal. 2d 486, 154 P.2d 687 (1944), was the forerunner for the liberal application of res ipsa loquitur.

27. Cases cited note 26 *supra*.

28. Ybarra v. Spangard, 25 Cal. 2d 486, ____, 154 P.2d 687, 690 (1944); Frost v. Des Moines Still College of Osteopathy & Surgery, 248 Iowa 294, ____, 79 N.W.2d 306, 311 (1956). *See also* Horner v. Northern Pac. Beneficial Ass'n Hosps., 62 Wash. 2d 351, ____, 382 P.2d 518, 524 (1963); Beaudoin v. Watertown Memorial Hosp., 32 Wis. 2d 132, ____, 145 N.W.2d 166, 169 (1966).

29. Ybarra v. Spangard, 25 Cal. 2d 486, ____, 154 P.2d 687, 690 (1944); Horner v. Northern Pac. Beneficial Ass'n Hosps., 62 Wash. 2d 351, ____, 382 P.2d 518, 523-24 (1963); Beaudoin v. Watertown Memorial Hosp., 32 Wis. 2d 132, ____, 145 N.W.2d 166, 169 (1966).

30. Ybarra v. Spangard, 25 Cal. 2d 486, ____, 154 P.2d 687, 690 (1944); Frost v. Des Moines Still College of Osteopathy & Surgery, 248 Iowa 294, ____, 79 N.W.2d 306, 312 (1956); Mayor v. Dowsett, 400 P.2d 234, 243 (Ore. 1965); Horner v. Northern Pac. Beneficial Ass'n Hosps., 62 Wash. 2d 351, ____, 382 P.2d 518, 524 (1963).

One Texas court, in dicta, said that an extraordinary circumstance would exist where an injury is caused by external force applied while the patient lay unconscious, but this proposition has never been applied. Hunter v. Robison, 488 S.W.2d 555, 560 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.) cited the California case of Ybarra v. Spangard, 25 Cal. 2d 486, 154 P.2d 687 (1944) as an example of this type situation. *Hunter* was not a case involving external force.

31. Patrick v. Sedwick, 391 P.2d 453, 457 (Alas. 1964); St. John's Hosp. & School of Nursing, Inc. v. Chapman, 434 P.2d 160, 173 (Okla. 1967).

32. Ybarra v. Spangard, 25 Cal. 2d 486, ____, 154 P.2d 687, 690 (1944); Beaudoin v. Watertown Memorial Hosp., 32 Wis. 2d 132, ____, 145 N.W.2d 166, 167 (1966).

33. Tomei v. Henning, 67 Cal. 2d 319, ____, 431 P.2d 633, 635, 62 Cal. Rptr. 9, 11 (1967); Quintal v. Laurel Grove Hosp., 62 Cal. 2d 154, ____, 397 P.2d 161, 164, 41 Cal. Rptr. 577, 580

has held that the doctrine is applied in every case unless the defendant can show more than a possibility of a cause other than negligence.[34] Another court has held the doctrine applicable if expert testimony shows that the injury was an unexpected result and a layman could conclude that it was the result of negligence.[35]

The second element of res ipsa loquitur, that the defendant had control of the instrumentality causing the injury, exists if the plaintiff was under the care of the defendant when the injury occurred.[36] The plaintiff is unable to identify the specific instrumentality if he was unconscious at the time of injury. Normally, the hospital and its employees have control of the plaintiff before, during, and after an operation. Most plaintiffs avoid the difficulty of proving who was in control of the instrumentality or the plaintiff himself at the time of injury by joining the hospital as a defendant.[37]

The third element of the doctrine requires that the injured party was not the cause of the accident. Courts in other states dismiss this possibility when the patient complains of pain from an injury outside the operative field immediately upon awakening from anesthesia.[38] The patient could not voluntarily contribute to the injury while he was unconscious.[39]

(1965); Beaudoin v. Watertown Memorial Hosp., 32 Wis. 2d 132, ____, 145 N.W.2d 166, 170 (1966).

34. Beaudoin v. Watertown Memorial Hosp., 32 Wis. 2d 132, ____, 145 N.W.2d 166, 169 (1966).

35. Younger v. Webster, ____ Wash. ____, ____, 510 P.2d 1182, 1184 (1973). *See also* Mayor v. Dowsett, 400 P.2d 234, 244 (Ore. 1965).

36. Quintal v. Laurel Grove Hosp., 62 Cal. 2d 154, ____, 397 P.2d 161, 167, 41 Cal. Rptr. 577, 583 (1965); Ybarra v. Spangard, 25 Cal. 2d 486, ____, 154 P.2d 687, 691 (1944); Frost v. Des Moines Still College of Osteopathy & Surgery, 248 Iowa 294, ____, 79 N.W.2d 306, 311 (1957); Gormley v. Montana Deaconess Hosp., 149 Mont. 12, ____, 423 P.2d 301, 306 (1967); St. John's Hosp. & School of Nursing, Inc. v. Chapman, 434 P.2d 160, 168 (Okla. 1967); Horner v. Northern Pac. Beneficial Ass'n Hosps., 62 Wash. 2d 351, ____, 382 P.2d 518, 523 (1963); Beaudoin v. Watertown Memorial Hosp., 32 Wis. 2d 132, ____, 145 N.W.2d 166, 169 (1966).

The specific instrumentality need not be identified in medical malpractice cases. Ybarra v. Spangard, *supra*; Beaudoin v. Watertown Memorial Hosp., *supra*. *See also* Frost v. Des Moines Still College of Osteopathy & Surgery, *supra*, and Horner v. Northern Pac. Beneficial Ass'n Hosps., *supra*. In these cases, the instrumentality did not have to be identified since the injuries were due to external force while the patient was unconscious.

37. *E.g.*, Quintal v. Laurel Grove Hosp., 62 Cal. 2d 154, 397 P.2d 161, 41 Cal. Rptr. 577 (1965); Ybarra v. Spangard, 25 Cal. 2d 486, 154 P.2d 687 (1944); Frost v. Des Moines Still College of Osteopathy & Surgery, 248 Iowa 294, 79 N.W.2d 306 (1957); Gormley v. Montana Deaconess Hosp., 149 Mont. 12, 423 P.2d 301 (1967); St. John's Hosp. & School of Nusing, Inc. v. Chapman, 434 P.2d 160 (Okla. 1967); Horner v. Northern Pac. Beneficial Ass'n Hosps., 62 Wash. 2d 351, 382 P.2d 518 (1963).

38. Ybarra v. Spangard, 25 Cal. 2d 486, ____, 154 P.2d 687, 689 (1944); Horner v. Northern Pac. Beneficial Ass'n Hosps., 62 Wash. 2d 351, ____, 382 P.2d 518, 523 (1963).

39. Cases cited note 38 *supra*.

The fourth element, that the defendant has superior knowledge as to the cause, is satisfied if the injury was inflicted while the patient was unconscious.[40] The patient obviously does not know what occurred during his unconsciousness. He could not recover without the doctrine of res ipsa loquitur unless the defendant voluntarily disclosed the cause of injury.[41] Physicians seldom reveal this information.

Thus, courts which liberally apply the res ipsa loquitur doctrine submit the cause to the jury when these circumstances are present. The question submitted to the jury inquires whether the injury was more likely than not the result of negligence.[42] The jury may make any reasonable inferences raised by the evidence. The ultimate effect is to force the physician to come forward with evidence that he was not negligent.

If liberal res ipsa loquitur had been applied in *Parchman*, sufficient circumstantial evidence existed to justify submission of the negligence issue to the jury. The first element was met because external force was a possible cause, Mrs. Louis was unconscious, and her injury was to a part of her body outside the operative field. Res ipsa loquitur should not have been precluded by the existence of more than one possible cause or by the possibility that the injury could have happened without negligence.[43] Dr. Parchman's control of Mrs. Louis while she was in the operating room satisfies the requirement that the defendant have control of the instrumentality.[44] The possibility that Mrs. Louis' injury was self-inflicted was negated when she complained of numbness immediately upon awakening. Finally, the evidence was more accessible to the defendant because Mrs. Louis was unconscious.

The presence of these four elements does not mean that Mrs. Louis would have won her case. It does mean, however, that sufficient circumstantial evidence existed to satisfy the requirements of the liberal doctrine of res ipsa loquitur and require submission of the cause to the jury.

Justification for invoking res ipsa loquitur in medical malpractice cases rests on strong policy considerations. The reluctance of physicians to testify against one another is well-known.[45] This conspiracy of silence

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40. Ybarra v. Spangard, 25 Cal. 2d 486, ___, 154 P.2d 687, 689 (1944).

41. *Id.*

42. Tomei v. Henning, 67 Cal. 2d 319, ___, 431 P.2d 633, 635, 62 Cal. Rptr. 9, 11 (1967); Quintal v. Laurel Grove Hosp., 62 Cal. 2d 154, ___, 397 P.2d 161, 167, 41 Cal. Rptr. 577, 583 (1965); Younger v. Webster, ___ Wash. ___, ___, 510 P.2d 1182, 1184 (1973).

43. See notes 31-33 *supra* and accompanying text.

44. See note 36 *supra* and accompanying text.

45. Salgo v. Leland Stanford Jr. Univ. Bd. Trustees, 154 Cal. App. 2d 560, ___, 317 P.2d 170, 175 (1957); Morgan v. Rosenbery, 370 S.W.2d 686, 695 (Mo. Ct. App. 1963); Halldin v. Peterson, 39 Wis. 2d 668, ___, 159 N.W.2d 738, 741 (1968); 1 LOUISELL & WILLIAMS, MEDICAL

makes it difficult for a plaintiff to prove negligence when expert testimony is required as it is in Texas.[46] Thus, a plaintiff's medical malpractice case, though meritorious, may fail for lack of proof due to the inability to secure expert testimony.[47]

In earlier times, res ipsa loquitur was not applied to medical malpractice cases because medicine was an inexact science. For this reason, courts refused to apply res ipsa loquitur when there was evidence that the injury could have occurred in the absence of negligence. This gave physicians and surgeons a preferred position over other defendants in negligence cases. Today, however,medical science is approaching a greater degree of perfection.[48] The California Supreme Court addressed itself to this distinction in *Ybarra v. Spangard*:[49]

> The passenger sitting awake in a railroad car at the time of a collision, the pedestrian walking along the street and struck by a falling object or the debris of an explosion, are surely not more entitled to an explanation than the unconscious patient on the operating table. Viewed from this aspect, it is difficult to see how the doctrine can, with any justification, be so restricted in its statement as to become inapplicable to a patient who submits himself to the care and custody of doctors and nurses, is rendered unconscious, and receives some injury from instrumentalities used in his treatment.[50]

Therefore, a plaintiff should not be denied the use of the doctrine simply because the defendant is a physician.[51]

MALPRACTICE 420 (1970); PROSSER, HANDBOOK OF THE LAW OF TORTS § 39, at 227 (4th ed. 1971); Markus, *Conspiracy of Silence*, 14 CLEV.-MAR. L. REV. 520, 522 (1965); Seidelson, *Medical Malpractice Cases and the Reluctant Expert*, 16 CATH. U.L. REV. 158 (1968); Comment, *Negligence—Res Ipsa Loquitur—Application to Medical Malpractice Actions: 1951-1961*, 60 MICH. L. REV. 1153, 1154 (1962).

46. Hart v. Van Zandt, 399 S.W.2d 791, 792 (Tex. 1965); Porter v. Puryear, 153 Tex. 82, 87, 262 S.W.2d 933, 935 (1953), *rev'd on other grounds* 153 Tex. 92, 264 S.W.2d 689 (1954); Bowles v. Bourdon, 148 Tex. 1, 5, 219 S.W.2d 779, 782 (1949); Howe v. Citizens Memorial Hosp., 426 S.W.2d 882, 887 (Tex. Civ. App.—Corpus Christi 1968), *rev'd on other grounds, sub nom.* Constant v. Howe, 436 S.W.2d 115 (Tex. 1968); Harle v. Krchnak, 422 S.W.2d 810, 814-15 (Tex. Civ. App.—Houston [1st Dist.] 1967, writ ref'd n.r.e.); Bell v. Umstattd, 401 S.W.2d 306, 309 (Tex. Civ. App.—Austin 1966, writ dism'd); Shockley v. Payne, 348 S.W.2d 775, 780 (Tex. Civ. App.—Amarillo 1961, writ ref'd n.r.e.).

47. Broder, *Res Ipsa Loquitur in Medical Malpractice Cases*, 18 DEPAUL L. REV. 421, 425 (1969).

48. Prosser, *Res Ipsa Loquitur in California*, 37 CAL. L. REV. 183, 211 (1949).

49. 25 Cal. 2d 486, 154 P.2d 687 (1944).

50. *Id.* at 689.

51. Comment, *Negligence—Res Ipsa Loquitur—Application to Medical Malpractice Actions: 1951-1961*, 60 MICH. L. REV. 1153, 1155 (1962).

These policy considerations suggest that Texas courts should re-evaluate their position on the use of res ipsa loquitur in medical malpractice cases. The doctrine is appropriately applicable where an unconscious patient has received serious injury to a previously healthy part of his body. Requiring the plaintiff to prove a specific act of negligence without the aid of the doctrine is unconscionable. Either traditional or liberal res ipsa loquitur would alleviate this proof problem. Texas courts should adopt one form of the doctrine as the general rule in medical malpractice cases.

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