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When the Thing Does Not Speak: The Seventh Circuit Rejects Expansion of *Res Ipsa Loquitur*

by Lucy Dennis

"*Res ipsa loquitur*"—the thing speaks for itself. Though its name is rooted in Latin, the doctrine became a fixture of the common law. Traditionally reserved for accidents that themselves suggest negligence, *res ipsa loquitur* remains a narrow exception to ordinary evidentiary requirements. Surprisingly, in a published opinion, the U.S. Court of Appeals for the Seventh Circuit recently addressed a class of plaintiffs' attempt to invoke the doctrine in a case involving airline employees' uniforms. Applying Illinois law, the court properly refused to expand its application in *Zurbriggen v. Twin Hill Acquisition Co.*—an outcome other federal courts should emulate if given the opportunity.

The Origins of *Res Ipsa Loquitur*

In 1863, on a busy street in Liverpool, England, a bag of flour fell from a second-story warehouse window, striking and injuring a passerby. Although eyewitnesses saw the accident unfold, none could definitively point to the exact cause of this toppled bag of flour. Unable to produce direct evidence of the specific way the bag was dropped or identify a particular act by the defendant's employees that resulted in the accident, the plaintiff invoked the doctrine *res ipsa loquitur*, reasoning that the accident itself was enough to prove negligence. The judge agreed: because the nature of the accident was so obvious, and bags of flour do not simply fall from warehouse windows without a certain measure of negligence or fault, the plaintiff did not need to prove precisely how it happened. Here, as with future cases of sudden, circumstantial mishaps, the accident "speaks for itself."

Long before *Byrne v. Boadle*, however, the phrase had appeared in Roman rhetoric. In a speech defending a friend accused of murder, Cicero invoked *res ipsa loquitur* to argue that the surrounding circumstances made the truth apparent—that the killing was an act of self-defense. *Res ipsa loquitur*, directly translating to "the thing itself speaks," or "the thing speaks for itself," existed as a rhetorical idea for nearly two millennia before it became a legal doctrine. Even within English law, courts had applied similar reasoning before 1863: stagecoaches, horses, and trains—frequent subjects of transportation accidents—had already seen courts apply a kind of "presumptive negligence" when something went wrong that ordinarily would not.

The Modern Doctrine and Its Limited Application

A shortcut to a negligence claim, *res ipsa* allows negligence to be inferred from the mere occurrence of an accident rather than from specific proof of what a defendant did wrong. It exists on

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the basis of probability; from the fundamental nature of the accident itself, certain things simply do not happen unless someone is careless. From industrial barrels to soda bottles to malfunctioning airbags, courts have applied this same logic across certain state and federal cases.

With its presence largely limited to first-year law school torts classes, this English common law doctrine rarely appears in modern court cases. The few cases that do invoke it are personal injury, medical malpractice, and defective products claims. In *Zurbriggen v. Twin Hill Acquisition, Inc.*, decided on June 16, 2026, the Seventh Circuit addressed an attempt to expand this exceptional rule beyond its traditional bounds.

Zurbriggen v. Twin Hill: Facts and Procedural History

In 2015, American Airlines contracted with Twin Hill Acquisition, Inc. to manufacture new uniforms for roughly 65,000 employees. In the months following the rollout, hundreds of employees complained of rashes, hives, itchy eyes, scratchy throats, and respiratory issues, prompting a class of plaintiffs to sue Twin Hill and American Airlines, alleging the uniforms were defective and caused emotional distress. In response to those complaints, American Airlines ordered testing first by an independent laboratory and then requested the federal government's National Institute for Occupational Safety and Health (NIOSH) to test them. Both the independent testing and NIOSH's confirmed the uniforms were not defective and detected only trace levels of chemicals unlikely to cause the reported reactions. Although the testing revealed no issues, American Airlines nevertheless replaced the uniforms.

In federal court, the judge excluded the plaintiffs' expert testimony as inadmissible, leaving them without evidence that the uniforms caused the plaintiffs' harms. In response, the plaintiffs argued *res ipsa loquitur*. Twin Hill and American moved for summary judgment, and the district court granted their motion.

Strict Liability Under *Tweedy*

On appeal, the plaintiffs raised two separate theories of *res ipsa.* The first was a strict liability shortcut the Illinois Supreme Court established in *Tweedy v. Wright Ford Sales, Inc.* Under *Tweedy*, a plaintiff must only show that a product failed to perform as reasonably expected, with no abnormal use or other reasonable secondary cause, to argue strict liability. In *Tweedy* itself, a car's brakes failed inexplicably, and the resulting crash was clearly the consequence of some defect, with no other reasonable cause.

The Seventh Circuit held that *Tweedy* does not apply to Zurbriggen's claims. Brake failure and a crash have an obvious causal link while uniforms and the plaintiffs' wide range of symptoms do not. The uniforms didn't fail in the way courts require—they didn't break, collapse, or malfunction—and the plaintiffs' inconsistent, individually varying symptoms left room for other logical explanations. Clothing does not qualify as a mechanical device that can malfunction in a manner that would indicate defectiveness.

The Negligence Theory

The plaintiffs' second theory was the traditional negligence variant of *res ipsa*, which requires that the plaintiff show the injury occurred in a way that ordinarily doesn't happen without negligence, and that the instrumentality causing it was within the defendant's exclusive control. That theory failed, too. In addition to lacking a clear performance threshold like the airbags in *Bensenberg v. FCA US LLC*, the defendants did not possess exclusive control over the uniforms. By the time of the alleged injuries, Twin Hill had long since relinquished control over the uniforms, which had passed through multiple factories and intermediaries and had already been washed and worn. Thus, plaintiffs could not prove they were injured because of negligent manufacturing.

Why the Seventh Circuit Was Correct

The Seventh Circuit held that the "thing" in this case—airline uniforms—did not speak for itself. Unlike the falling barrel in *Byrne*, nothing about the plaintiffs' alleged symptoms unmistakably identified the uniforms as their cause or supported an inference of defect through circumstance alone.

Far from sudden, dramatic, or instantaneous like the aforementioned cases, *Zurbriggen* lies beyond the realm of *res ipsa*—an accident of such obvious culpability that it demands no explanation. Unlike the establishing case of the doctrine, the uniforms are far from bags of flour, Twin Hill bearing no resemblance to that negligent warehouse owner. *Zurbriggen*, the court rightfully found, was not a case of a defective product failing to meet a threshold performance level. Nor was it a display of an identifiable accident for which there are no other reasonable causes. There was no obvious "thing" here, only a loose string of claims and disparate symptoms vaguely tied to the uniforms, with plaintiffs hoping the mere appearance of a fault might stand in the gap for concrete evidence.

Conclusion: Preserving the Limits of Liability Doctrine

In rejecting the plaintiffs' invocation of this common law doctrine, the court resisted an expansion of liability that could have permitted *res ipsa loquitur* to eclipse additional causes of action, not just strict liability and negligence. That is, far removed from the application of carelessly dropped barrels and faulty machinery, claims could emerge against manufacturers, employers, and other defendants whose connection to an injury is far more removed. Expanding the doctrine would enable courts to increasingly employ it to bypass traditional proof of causation altogether, exposing businesses to unforeseeable liability, an unwarranted shift of evidentiary burden to defendants, a relaxed standard for expert testimony, and expansion into sectors far removed from where it was meant to apply.

The Seventh Circuit properly held the line here; a doctrine meant for obvious, self-evident accidents has no business swallowing claims defined by disparate symptoms, plausible alternatives, and an absent connection between alleged defect and injury.