



Lageman v. Zepp (Pa. S. Ct.)

Topics Covered: Abusive Litigation Against Physicians

Issue

The issue in this case is whether, in a medical malpractice action, the trial judge erred in refusing to give a jury instruction on *res ipsa loquitur* where the underlying case was medically complex, and the plaintiff had otherwise established direct evidence of negligence.

AMA Interest

The AMA supports efforts to curb lawsuit abuse against physicians.

Case Summary

Mrs. Lageman was hospitalized for a bowel obstruction. Two days later, she underwent an emergency laparotomy and lysis of adhesions, with Dr. Zepp as the anesthesiologist for the surgery. Dr. Zepp inserted a needle into what he believed was the jugular vein, and he then slipped a small catheter over the needle. A simultaneous ultrasound revealed that the catheter was located in the carotid artery rather than in the jugular vein, a complication known as arterial cannulation. Although the bowel surgery was successful, Mrs. Lageman sustained a stroke that left her paralyzed on her left side.

Prior to submission of the case to the jury, Plaintiff proposed a jury instruction on *res ipsa loquitur* (an evidentiary doctrine permitting the jury to infer negligence and causation from the mere occurrence of the event). The doctrine allows plaintiffs, without direct evidence of the elements of negligence, to present their case to the jury based on an inference of negligence. The trial court refused to give the *res ipsa* instruction, stating that this was not the type of case where the doctrine should be applied. After six days of trial, the jury returned a verdict in favor of Defendants, specifically finding no negligence on the part of Dr. Zepp.

Plaintiff appealed to the Pennsylvania Superior Court, which vacated the trial court's judgment and remanded for a new trial. It found that Plaintiff established all three elements of *res ipsa loquitur*, and having done so, the trial court abused its discretion in refusing to instruct the jury on it. As to the three *res ipsa* elements, the Superior Court found that 1) Plaintiff introduced expert medical testimony that the arterial cannulation ordinarily would not have occurred absent negligence, 2) Plaintiff ruled out other responsible causes for the arterial cannulation, and 3) Plaintiff established that the negligence occurred within the scope of Dr. Zepp's duty.

Dr. Zepp has appealed the Superior Court ruling to the Pennsylvania Supreme Court.

Litigation Center Involvement

The Litigation Center and the Pennsylvania Medical Society filed an *amicus* brief in support of Dr. Zepp.

Pennsylvania Supreme Court Brief