

1 **13-1623. Circumstantial evidence of negligence ("Res ipsa loquitur").**

2 The plaintiff, in order to prove _____ (*insert name of person or entity*) was
3 negligent, is not required to prove specifically what _____ (*insert name of person*
4 *or entity*) did or failed to do that was negligent. In order for the jury to find _____
5 (*insert name of person or entity*) negligent, the plaintiff has the burden of proving each of the
6 following propositions:

7 1. that the injury or damage to _____ was proximately caused
8 by _____ (*insert name of instrumentality or occurrence*) which
9 was _____'s (*insert name of person or entity*) responsibility to
10 manage and control;

11 and

12 2. that the event causing the injury or damage to _____ (*insert*
13 *name of person*) was of a kind which does not ordinarily occur in the absence of
14 negligence on the part of _____ (*insert name of person or entity*)
15 in control of _____ (*insert name of instrumentality or occurrence*).

16 If you find that _____ (*insert name of person*) proved each of these
17 propositions, then you may, but are not required to, infer that _____ (*insert name*
18 *of person or entity*) was negligent and that the injury or damage proximately resulted from such
19 negligence.

20 If, on the other hand, you find that either one of these propositions has not been proved or,
21 if you find, notwithstanding the proof of these propositions, that _____ (*insert*
22 *name of person or entity*) used ordinary care for the safety of others in ~~[[his] [her] [its]]~~
23 _____'s (*insert name of person or entity*) control and management of the

1 _____ (*insert name of instrumentality or occurrence*) then the evidence would not
2 support a finding of negligence.

3 USE NOTES

4 The names of the various individuals and the name or description of the instrumentality or
5 occurrence should be inserted in the appropriate blanks. Care should be used that the correct names
6 are placed in the various blanks.

7 What was previously labeled *res ipsa loquitur* has been retitled "circumstantial evidence
8 of negligence". The fact that there is other evidence of the specific cause of the injury does not
9 preclude the use of this instruction. *Mireles v. Broderick*, 1994-NMSC-041, 117 N.M. 445, 872
10 P.2d 863[~~(1994)~~]. Exclusive control by the defendant, of the instrumentality or circumstance at
11 issue is not a prerequisite for its use. *Trujeque v. [~~Service Merchandise Company~~]**Serv. Merch.*
12 *Co.*, 1994-NMSC-036, 117 N.M. 388, 872 P.2d 361[~~(1994)~~]; *Mireles*[~~*v. Broderick*~~], 1994-
13 NMSC-041[~~117 N.M. 445, 872 P.2d 863 (1994)~~]. As a factual matter, two or more persons may
14 conceivably share responsibility of the management of the object, activity, or circumstances at
15 issue.

16 [As amended, effective November 1, 1991; August 1, 1999; as amended by Supreme Court Order
17 No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

18 **Committee commentary.** — The circumstantial evidence of negligence instruction has been
19 drafted in response and is phrased in lay terms. All arcane, magic and "sacred" language, including
20 even "res ipsa," have been eliminated. *Res ipsa* is a rule of circumstantial negligence and therefore
21 has been characterized as such.

22 *Trujeque v. Service Merchandise* [~~*Company*~~]*Co.*, 1994-NMSC-036, 117 N.M. 388, 872 P.2d 361
23 [~~(1994)~~]and *Mireles v. Broderick*, 1994-NMSC-041, 117 N.M. 445, 872 P.2d 863[~~(1994)~~]

1 indicate that exclusive control of the instrumentality or circumstances giving rise to the injury is
2 not a prerequisite for utilizing this instruction. Consequently, the exclusivity requirement has been
3 eliminated and the requirement of management and control is substituted in its place.

4 The occurrence of an accident or event is not enough in itself. It must be of the kind which does
5 not ordinarily occur in the absence of negligence on the part of the person in control of the
6 instrumentality. *Martinez v. Teague*, 1981-NMCA-043, 96 N.M. 446, 631 P.2d 1314[~~(Ct. App.~~
7 ~~1981)~~]; *Hisey v. Cashway Supermarkets, Inc.*, 1967-NMSC-081, 77 N.M. 638, 426 P.2d 784[
8 ~~(1967)~~].

9 The circumstantial evidence of negligence doctrine does not impose liability as a matter of law. It
10 only avoids a directed verdict against the person proving the application of the doctrine. The jury
11 may weigh the conflicting inferences and return a verdict in favor of the person against whom the
12 doctrine has been proven even though there is no evidence offered by or on behalf of the person
13 to rebut the inference of negligence. *Tuso v. Markey*, 1956-NMSC-029, 61 N.M. 77, 294 P.2d
14 1102[~~(1956)~~]; *McFall v. Shelley*, 1962-NMSC-109, 70 N.M. 390, 374 P.2d 141[~~(1962)~~]; *Pack v.*
15 *Read*, 1966-NMSC-216, 77 N.M. 76, 419 P.2d 453[~~(1966)~~]; *Archibeque v. [Horwich]Homrich*,
16 1975-NMSC-066, 88 N.M. 527, 543 P.2d 820[~~(1975)~~]; *Strong v. Shaw*, 1980-NMCA-171, 96
17 N.M. 281, 629 P.2d 784[~~(Ct. App. 1980)~~].

18 In New Mexico, a party using the circumstantial evidence of negligence doctrine is not required
19 to establish compliance with ordinary care. *Chapin v. Rogers*, 1969-NMCA-097, 80 N.M. 684,
20 459 P.2d 846[~~(Ct. App. 1969)~~].

21 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]