A complaint filed on behalf of a woman against a nursing home and an ambulance service included the following allegations:

The woman, who was 86 years old and unable to speak after suffering a stroke, was picked up from her daughter's house by the ambulance service and taken to the nursing home to stay while her daughter was out of town. When the woman's daughter returned a few days later, the ambulance service picked up the woman from the nursing home and returned her to the daughter's house. The daughter was shocked to discover that the woman had a broken leg; her leg had been uninjured when she left for the nursing home.

A physician's report attached to the complaint stated that the woman's leg injury would not have occurred in the absence of negligence.

The complaint further alleged that the woman was under the control, successively, of the ambulance service and the nursing home during the time when she must have sustained the injury, and that either the ambulance service or the nursing home must have negligently moved or handled the woman, causing the injury to her leg.

Both defendants have argued that the allegations in the complaint are inadequate to support a negligence claim.

What is the best response to the defendants' argument?

A. Both defendants owed a duty to the woman.

B. One of the two defendants probably caused the injury, and the circumstances of the injury are primarily within the knowledge and control of the defendants rather than the woman or her representative.

C. The defendants are concurrent tortfeasors, so each is vicariously liable for any tortious act committed by the other.

D. There are grounds for the fact finder to infer that both defendants were negligent.

Explanation:

The ambulance service and nursing home argued that the allegations in the woman's complaint are inadequate to support her negligence claim. This is likely because the woman cannot identify the direct cause of her injury—the ambulance service's or nursing home's negligence. In such a situation, the doctrine of **res ipsa loquitur** allows a **defendant's** (or, in this case, defendants') **negligence** to be **inferred** from circumstantial evidence when:

the plaintiff suffered a **type of harm** that is **usually caused by negligence** of someone in the defendant's position (as stated in the physician's report) *and*

the evidence tends to **eliminate other potential causes** of that harm (eg, evidence that the injury did not exist before the woman left her daughter's house).

This suggests that evidence regarding the cause of the plaintiff's injury is primarily within the defendants' knowledge and control and allows the fact finder to infer that one of the defendants caused the injury. Therefore, res ipsa loquitur is the woman's best response to support her negligence claim.

(Choice A) Both defendants owed the woman a duty of reasonable care because she was entrusted to their control. But this is not her *best* response since it does not address the other elements of her negligence claim—namely, the cause of her injury.

(Choice C) Even if the defendants are concurrent tortfeasors, they are not vicariously liable for each other's actions since they do not share an agency relationship (eg, employer-employee).

(Choice D) The woman alleged grounds for the fact finder (eg, jury) to infer that one (not both) of the defendants was negligent.

Educational objective:

The doctrine of res ipsa loquitur allows a defendant's negligence to be inferred from circumstantial evidence if (1) the plaintiff suffered a type of harm that is usually caused by negligence of someone in the defendant's position and (2) the evidence tends to eliminate other potential causes of that harm.

References

Restatement (Second) of Torts § 328D (Am. Law Inst. 1965) (defining the doctrine of res ipsa loquitur).

Collins v. Superior Air-Ground Ambulance Serv., Inc., 789 N.E.2d 394, 402 (Ill. App. Ct. 2003) (explaining how res ipsa loquitur can be alleged in an action involving multiple defendants).

Res ipsa loquitur—"the thing speaks for itself"
(*Byrne v. Boadle*)