



Medical Malpractice / Healthcare Law

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We've Got to Get Back to the Future: *Johnson v Advocate Health* and the Appellate Court's Recognition of the Need to Get Back to 1995 for the Appropriate Sole Proximate Cause

“Roads? Where we’re going, we don’t need roads”
—Doc Brown, BACK TO THE FUTURE (Universal Pictures 1985).

In the trailer for the hit classic *Back to the Future*, which turned 40 this summer, a very young Michael J. Fox, dressed in Nikes and a puffer vest, is sitting inside the DeLorean time machine. He lowers the window to the DeLorean and a female voice off screen asks, “How far you going?” Fox raises his aviator shades and quips, “About 30 years.” Strains from Hewey Lewis & The News’ song for the movie “Back in Time” urge viewers to see the upcoming (and future hit) summer flick. Trailer: BACK TO THE FUTURE (Universal Pictures 1985).

Similarly, the Illinois Appellate Court for the First District has put the Illinois Civil Jury Instruction for Sole Proximate Cause back on the appropriate footing in the May 7, 2025 decision of *Johnson v. Advocate Health*, 2025 IL App (1st) 230087. Before getting into the specifics of *Johnson*, an understanding of the development of sole proximate cause, particularly how it applies in medical malpractice matters, is key.

Sole Proximate Cause: A Brief History

In 1995, the Illinois Supreme Court issued its decision in *Leonardi v. Loyola University*, 168 Ill. 2d 83 (1995), which was also a medical malpractice lawsuit. *Leonardi* involves a claim for the brain injury and ultimate death of Michela Lopez, a woman who arrived for the delivery of her baby. *Leonardi*, 168 Ill. 2d at 88-90. During the admission, the laboring mother experienced placenta previa (placenta is found in the lower part of the uterus and blocking the infant from descending through the cervix), placenta accreta (abnormal adherence of placenta to the uterine wall, often causing extensive blood loss). *Id.* Lopez was under the care of Dr. Tierney, assisted by several residents. *Id.* at 88. Though the infant was delivered via c-section, a hysterectomy was required to stop the subsequent blood loss. *Id.* at 89. Post-op, the mother experienced some respiratory issues, which seemed to resolve with supplemental oxygen. *Id.* at 90. However, several hours later, she experienced hypotension and was diagnosed with a saddle pulmonary embolism (where a blood clot obstructs the bifurcation of the main pulmonary artery, blocking blood flow to both lungs). *Id.* at 90. Surgery was performed to remove the pulmonary embolism, but the embolism broke into many pieces and traveled into the arteries. As a result, the mother suffered irreversible brain damage. *Leonardi*, 168 Ill. 2d at 90. She lived in a skilled nursing facility for the nearly five years before her death. *Id.*

Leonardi, the administrator of Lopez's estate, filed suit against Loyola University Medical Center and several physicians under the Survival Act for negligence in the cesarean section, administration of anesthesia, and resuscitation, and for wrongful death. *Id.* at 91. The initial complaint named Dr. Tierney, who died during the pendency of the lawsuit. *Id.* The Leonardi Estate settled with Dr. Tierney's Estate prior to the selection of a jury. *Id.*

At trial, the Estate attempted to prevent the defendant physicians from presenting evidence to the jury of Dr. Tierney's care and conduct both by filing motions in limine, which were denied, and objecting to an expert witness from testifying to hypothetical causation opinions regarding the care provided by Dr. Tierney. *Id.* at 92. On appeal, the Estate argued that the trial court erred for allowing evidence of Dr. Tierney's conduct arguing that if the defendants were negligent, evidence of any other negligence was not relevant. *Leonardi*, 168 Ill. 2d at 93 (noting plaintiff's argument that "there can be more than one proximate cause of an injury, and that a person is liable for his or her negligent conduct whether it contributed wholly or partly to the plaintiff's injury as long as it was one of the proximate causes of the injury.").

The *Leonardi* Court confirmed that a defendant's general denial of causation in an answer opens the door for that defendant to bring forward evidence of other causes of injury. *Id.* at 93-94. "The element of proximate cause is an element of the *plaintiff's* case. The defendant is not required to plead lack of proximate cause as an affirmative defense." *Id.* (emphasis in original). Further, the *Leonardi* Court found:

A defendant has the right not only to rebut evidence tending to show that defendant's acts are negligent and the proximate cause of claimed injuries, but also has the right to endeavor to establish by competent evidence that the conduct of a third person, or some other causative factor, is the sole proximate cause of plaintiff's injuries. Further, if the evidence is sufficient, the defendant is entitled to an instruction on this theory.

Id. at 100 (citing to *Frech v. City of Springfield*, 5 Ill. App. 3d 368, 374 (4th Dist. 1972)). The Leonardi Court then went on to find that the appropriate proximate cause jury instruction was then IPI instruction 12.04:

More than one person may be to blame for causing an injury. If you decide that a [the] defendant[s] was [were] negligent and that his [their] negligence was a proximate cause of injury to the plaintiff, it is not a defense that some third person who is not a party to the suit may also have been to blame.
[However, if you decide that the sole proximate cause of injury the plaintiff was the conduct of some person other than the defendant, then your verdict should be for the defendant.]

Leonardi, 168 Ill. 2d at 100 (quoting Illinois Pattern Jury Instructions, Civil, No. 12.04 (3d Ed. 1989)).

The decision in *Leonardi* has remained good law allowing defendants, particularly in medical negligence matters, to offer evidence that a third person's conduct or condition was the sole proximate cause of the plaintiff's injuries. *See also*, *Bosco v. Janowitz*, 388 Ill. App. 3d 450, 466 (1st Dist. 2009) (finding the long form of IPI 12.04 was appropriate where there was evidence that a neuroradiologist failed to appropriately read an MRI in a post-surgical patient); *Ready v. United/Goeddecke Services, Inc.*, 238 Ill. 2d 582 (2010) (finding that the defendant "was entitled to present evidence to support a sole proximate cause jury instruction" and if there is some evidence to support it, the second paragraph of IPI 12.04 should be provided to the jury).

Consistent with these cases, the Illinois Pattern Instructions in Civil Cases included two possible instructions for concurrent negligence 12.04 or "intervention of outside agency" involving another force, like an infection or cancer in medical malpractice matters in 12.05. Medical conditions have been found to be causative factors that constitute the actual or legal cause of plaintiff's injury, and IPI 12.05 addressed just those types of situations. For example, in *Krklus*

v. Stanley, 359 Ill. App. 3d 471 (1st Dist. 2005), the lethal nature of an aortic dissection or underlying uncontrolled high blood pressure were found to be “something other than the conduct of the defendant” that was the cause of the plaintiff’s injury, and the long form of IPI 12.05 was appropriate. *Krklus*, 359 Ill. App. 3d at 494.

Change of IPI 12.04 and 12.05 to Exclusively 15.01

The August 2021 amendments to the Illinois Pattern Instructions set forward by the Jury Instruction Committee included withdrawal of IPI 12.04 and 12.05. See Illinois Supreme Court Committee on Jury Instructions in Civil Cases, Illinois Pattern Jury Instructions—Civil (2021-2022 Edition), Section 12. The Committee Notes identified the reason for the change was “the intent of harmonizing the proximate cause instruction to avoid unnecessary confusion and consternation.” *Id.* at Committee Notes for IPI 15.01. Telling is the labeling of 12.04 and 12.05 as “confusing” and “consternating” in the Committee Notes. As has been known for decades, the plaintiff’s bar is not a fan of the sole proximate cause/empty chair defense. However, the singular mention of *Leonardi* is for the proposition that a plaintiff has the burden of proof of causation and that a defendant need not plead an affirmative defense of sole proximate cause in order to bring forward evidence at trial. *Id.* The Comments fail to address the importance of the sole proximate cause/empty chair defense, particularly in medical negligence matters, and how the *Leonardi* decision and its progeny were considered in the 2021 revisions.

In its place, the Committee and Notes on Usage recommended providing the entirety of IPI 15.01:

When I use the expression “proximate cause,” I mean a cause that, in the natural or ordinary course of events, produced the plaintiff’s injury. [It need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with another cause resulting in the injury.]

[If you decide that a [the] defendant[s] was [were] negligent and that his [their] negligence was a proximate cause of injury to the plaintiff, it is not a defense that [something] [or] [someone] else may also have been a cause of the injury. However, if you decide that the defendant’s conduct was not a proximate cause of the plaintiff’s injury, then your verdict should be for the defendant.]

Id. at 15.01. As many attorneys representing defendants where there is evidence of someone or something else being the sole proximate cause in trials since August 2021, we have argued that IPI 15.01 does not adequately state Illinois law and the Illinois Supreme Court’s decision in *Leonardi*.

Enter *Johnson v. Advocate Health*

Tried after the 2021 revisions to the IPI and with echoes of *Leonardi*, *Johnson v. Advocate Health* involves claims against the medical professionals involved in the delivery on behalf of an infant who was born with multiple medical issues. *Johnson v. Advocate Health*, 2025 IL App (1st) 230087. At trial, Plaintiff Johnson’s experts opined that the cause of Baby Johnson’s medical issues and subsequent deficits was hypoxic ischemic encephalopathy, brain damages due to the lack of oxygen during “a prolonged period” during the 45 minutes immediately before delivery. *Johnson*, 2025 IL App (1st) at ¶ 18. The defense experts, in comparison, testified that Baby Johnson’s subsequent deficiencies were caused

by FGR [fetal growth restriction which is descriptive in nature and encompasses a number a possible causes] consistent with the decreases in the baby’s size toward the end of the pregnancy while in utero. *Id.* at ¶ 19.

At trial, Plaintiff Johnson tendered IPI 15.01, which the defendants objected to. *Id.* at ¶ 20, 22. The defense tendered a modified jury instruction for 15.01 which added the language: “However, if you decide that the sole proximate cause of the injury to Plaintiff was something else or the conduct of someone else other than Defendants, then your verdict should be for the Defendants.” *Id.* at ¶ 21. During the jury instruction conference, the trial court rejected the defense’s modified 15.01 and gave IPI 15.01 instead. *Id.* at ¶ 22.

After a verdict for plaintiff, an appeal was filed arguing in part that IPI 15.01 did not adequately instruct the jury on the issue of sole proximate cause. The First District Appellate Court evaluated history and committee notes for IPI No. 15.01 and withdrawn IPI Nos. 12.04 and 12.05. *Id.* at ¶ 55. In particular, the Appellate Court noted the difference between the instructions:

The withdrawn paragraphs instructed jurors to find for the defendant if they decided that the sole proximate cause of the plaintiff’s injury was someone or something other than the defendant’s conduct. By contrast, sentence two in the revised instruction instructs juror to find for the defendant if they “decide that the defendant’s conduct was not a proximate cause of the plaintiff’s injury.”

Johnson, 2025 IL App (1st) at ¶ 56 (quoting in part IPI No. 15.01). The First District sharpened its focus on language from the decision in *Leonardi* that a defendant:

Has the right *not only* to rebut evidence tending to show that defendant’s acts are negligent and the proximate cause of claimed injuries, *but also* has the right to endeavor to establish by competent evidence that the conduct of a third person, or some other causative factor, is the sole proximate cause of plaintiff’s injuries.

Id. at ¶ 58 (emphasis in original). The *Johnson* Court recognized the distinction between a defendant contesting proximate cause and a defendant arguing that some “third party or other causative factor” is the proximate cause of a plaintiff’s injury. *Id.* The *Johnson* Court concluded that though the two sentences of IPI 15.01 are an “accurate statement of law on proximate cause in general, it does not state the law regarding the sole proximate cause defense with the specificity *Leonardi* requires.” *Id.* at ¶ 59. The defense in *Johnson* was entitled to a non-IPI instruction to address the proximate cause defense.

Despite the clear deficiency in the jury instructions provided to the jury, the Appellate Court did not find that there was “serious prejudice” to the defendants. *Id.* at ¶ 65. In order to establish prejudice, the appellate court found that a special interrogatory should have been used to “make the jury specify what it found to be the cause” of the injury. *Id.* at ¶ 69.

As an attorney defending medical care who will advocate for IPI 12.04 and/or 12.05 where sole proximate cause is an issue, we must be on the defense for an argument by plaintiff that under *Johnson*, a special interrogatory is needed to go along with the sole proximate cause instructions. A close inspection of *Johnson* makes clear that the First District Court of Appeals was not concluding that 12.04 and/or 12.05 should be used in conjunction with a special interrogatory. Instead, the appellate court noted that the *Johnson* defendants, having improperly been denied IPI 12.04 and 12.05, could have offered a special interrogatory addressing FGR being the cause of Baby Johnson’s medical conditions. It also would have supported the appellate court’s finding that there had been “serious prejudice” to the defense. This of course ignores that had a special interrogatory been tendered and decided in favor of the defense, there would not have been a jury verdict for the plaintiff, or possibly an appeal addressing the appropriateness of IPI 12.04 and 12.05. It also ignores the



clear Illinois law that the burden of proof on the issue of proximate cause lies squarely with the plaintiff. *Leonardi*, 168 Ill. 2d at 93-94. Requiring a special interrogatory to accompany the use of IPI 12.04 and 12.05 would ostensibly and incorrectly push the burden of proof to the defendant. This would be in contradiction of the Supreme Court's warning in *Leonardi*: "Obviously, if there is evidence that negates causation, a defendant should show it. However, in granting the defendant the privilege of going forward, also called the burden of production, the law in no way shifts to the defendant the burden of proof." *Id.* at 94.

Getting Back in Time

In light of the *Johnson* decision, the reasonable defense practitioner must be well prepared for the jury instruction conference to tender multiple versions of the proximate cause instruction which incorporate former IPI 12.04 and 12.05 as well as the *Leonardi* decision.

Professor William Prosser famously wrote in his hornbook on Torts (or at least for those of us in the legal field): "The fatal trespass done by Eve was the cause of all our woe." WILLIAM PROSSER, THE LAW OF TORTS 240 (3d Ed. 1964). This often the broad scope by which a plaintiff's attorney seeks to frame proximate cause. Said a different way, what was the proximate cause of the McFly Family's downturn in financial prospect at the beginning of *Back to the Future*? Was it his father's failure to stand up to bullies? Was it the actions of bully Biff Tannen? Was it the historical McFly's inability to brush off being called chicken? Was it Reaganomics? The *Johnson* decision puts the Illinois medical liability defense practitioner back in time to argue that IPI 12.04 and 12.05 are the appropriate instructions to the jury deciding a case where sole proximate cause/empty chair defense is at issue.

However, the prudent practitioner must also be concerned for the scope and language of the special interrogatory submitted. Nothing in either the 2021 IPI changes or *Johnson* alter that a plaintiff has the burden of proof on the issue of causation.

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