

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

JOHN A. GRIFFITHS,
Plaintiff-Appellant,

v.

SIEMENS AUTOMOTIVE, L.P.; SIEMENS
PERSONAL ACCIDENT INSURANCE PLAN,
Defendants-Appellees,

No. 95-2563

and

BRENDA LIVELY,
Defendant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Newport News.
Robert G. Doumar, District Judge.
(CA-92-28-4)

Submitted: January 11, 1996

Decided: January 31, 1996

Before RUSSELL, HALL, and WILKINSON,
Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

John A. Griffiths, Appellant Pro Se. James Patrick McElligott, Jr.,
David Frederick Dabbs, MCGUIRE, WOODS, BATTLE &
BOOTHE, L.L.P., Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

John A. Griffiths appeals from a district court judgment for Defendants. We affirm.

Griffiths was burdened on remand with showing that he suffered an accident covered by his employer's insurance plan. See *Griffiths v. Siemens Automotive, L.P.*, No. 92-2118 (4th Cir. Nov. 16, 1994) (unpublished). His sole evidence during trial was that his treatment for a duodenal ulcer should not have resulted in organic brain disease and an abdominal hernia. Because the proof failed to show an accident or malpractice that would constitute an accident during treatment, *Fitzgerald v. Manning*, 679 F.2d 341, 347 (4th Cir. 1982); *Raines v. Lutz*, 341 S.E.2d 194, 197 (Va. 1986), and was insufficient to support application of the *res ipsa loquitur* doctrine, *Easterling v. Walton*, 156 S.E.2d 787, 789-91 (Va. 1967); *Danville Community Hosp., Inc. v. Thompson*, 43 S.E.2d 882, 886-87 (Va. 1947), the district court correctly found Griffiths failed to support his claim for payment of insurance proceeds. Griffiths's claims of error on appeal are moot in light of his failure to meet his burden of proof.

Therefore, we affirm the district court judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED