

Avoiding Trouble Following In Limine Rulings

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 Trials often are preceded or interrupted by hearings on motions in limine, where parties attempt to limit the evidence or arguments that their opponents can utilize in the trial. These hearings are often fast-paced, with rulings for and against each side. Unfortunately, in such hearings, it is common for counsel to make off-the-cuff comments that, while intended to lessen the tension in the room, create potential problems if the case is later lost and those pre-trial rulings become the subject of an appeal. Such a comment can be seen in *Nomat v. Mota*, 2016 IL App (1st) 140102-U, 2015 WL 9915490 (Ill. Ct. App. 2015), where the plaintiff successfully moved in limine to exclude testimony from a defense expert. After the trial court ruled, the defendant's counsel stated, "I understand your ruling, your Honor, and I acknowledge the ruling. *I'm not going to contest it.*" Not surprisingly, when the defendant later lost the trial and contested the ruling on appeal, the plaintiff argued that the comment constituted a waiver. Fortunate for the defendant, the appellate court disagreed with the waiver argument and reached the merits of the exclusion. **Preservation Issues:** Waiving a position on a motion in limine through loose language after the trial court makes an adverse ruling **Tip:** When a trial judge rules on a motion in limine, especially at a hearing where many such motions are being considered, avoid unnecessary comments that may later be argued as abandoning or waiving a position. Phrases such as "thank you," "I understand," and "this is just for the record" may seem like simple courtesies to reduce the tension in the courtroom, but, depending on exactly what is said, they may create unnecessary appellate issues. The better approach—easier said than done, but important nonetheless—is to follow an adverse ruling by politely confirming an objection to the court's ruling before moving on to the next issue.

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