

Motions In Limine, Contemporaneous Objections, and the Need to Adequately Preserve the Record

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You have filed your motions *in limine* and obtained rulings prior to trial. You put the motions in a box in the back of the courtroom and figure all of your objections have been preserved. Wrong! It is always a good practice—and in many jurisdictions a necessary preservation practice—to make a contemporaneous objection when the evidence at issue is offered at trial. The rule is grounded in common sense. The court's understanding of the evidence and the parties' theories may change as the trial develops. A contemporaneous objection allows the court to consider the admissibility of the evidence in light of the current record as it exists before the jury. Here is a simple example. In a health insurance coverage case, plaintiff claims that she was underpaid for a particular medication. She seeks to introduce evidence that other family members received the same drug in the past and were reimbursed a greater amount. The defendant moves to exclude evidence of the payments to family members arguing the testimony is hearsay, and it is irrelevant because it actually involved a different drug. The court denies the motion, finding that (1) the plaintiff has personal knowledge of the payments made to family members because she deposited the reimbursement checks; and (2) it was for the same drug. At trial, however, the plaintiff testifies that she lacks personal knowledge of the claim payments to family members and she concedes that she cannot confirm the similarity of the claims. Without that renewed argument, you may not only lose an opportunity to convince the court to change its mind, but also lose the opportunity to raise the issue on appeal. So take the extra step and make a contemporaneous objection at trial.

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