

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

December 22, 2014

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.

Authored By



Julianna Thomas McCabe

Related Practices

[Appellate & Trial Support](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.