

Preserving Violations of Orders Granting Motions in Limine: Object Contemporaneously or Forever Hold Your Peace

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You file a motion in limine seeking to preclude certain arguments during closing. The court grants your motion. In closing argument, opposing counsel violates the ruling. Must you contemporaneously object to the argument that violates the ruling to preserve the issue for appeal? Lest there be any doubt, the Georgia Supreme Court has answered that question with a resounding "yes." A contemporaneous objection must be made at the time a violation of the order granting the motion in limine occurs at trial - whether during the presentation of evidence or in opening statements or closing arguments - to preserve the issue for appeal. In *Williams v. Harvey*, after the jury had returned a verdict and judgment was entered in favor of the plaintiff, the defendants filed a motion for a new trial in which they argued, for the first time, that plaintiff's counsel violated several of the court's motion in limine rulings during closing argument, including those prohibiting arguments intended primarily to inflame the emotions of the jury and violations of the "golden rule." After the trial court denied the defendants' new trial motion, the defendants appealed. The Georgia Court of Appeals reversed, holding that, although the defendants did not make a contemporaneous objection, plaintiff's counsel made an improper and prejudicial statement in closing argument that clearly violated the trial court's order granting the defendants' motion in limine. This month, the Georgia Supreme Court reversed that decision, emphasizing the importance of the contemporaneous objection rule - which allows the trial court to correct error when it occurs, thereby reducing the likelihood of appeal - and stating that "there is no reason to review unpreserved claims of error in closing argument in civil cases." The court expressly overruled *Stolte v. Fagan*, and other cases that had been relied on for the proposition that some appellate review of improper closing argument was available even if the issue was unpreserved. The court also held that the defendants would have been required to contemporaneously object in any event because the particular motion in limine at issue "was so vague and overly broad as to render it virtually meaningless as a vehicle to decide an issue before it was raised in context at trial" and found no

abuse of discretion in the trial court's determination that the plaintiff's statement during closing argument was not a violation of the ruling on the defendants' motion in limine.

Practice Tips:

- Specificity is paramount. If you file a motion in limine, point the trial court to specifically prejudicial evidence or argument, rather than simply asking it to follow the law. This becomes important if you need to challenge the court's ruling but also if you need to claim a violation of the in limine ruling.
- If opposing counsel violates an in limine ruling during trial, don't wait to raise the issue until after the jury's reached a verdict. Ask for a sidebar if you're worried about the optics of contemporaneous objections during opening statement or closing argument.

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