


Don't Rest on Your Laurels: The Importance of Adapting Objections to Changed Circumstances

February 10, 2016

 Without a crystal ball, trial lawyers can make objections only on the basis of what has occurred or what they reasonably expect might occur based on the facts and circumstances existing at the time. Litigation, however is a fluid process and an objection that was sufficient at point X might not be sufficient at point Y. A recent Pennsylvania case provides an illustration of this. In *Shinal v. Toms*, No. 1714 MDA 2014, 2015 WL 5021355 (Pa. Aug. 25, 2015), the plaintiffs sought a new trial because, *inter alia*, they were required to exhaust peremptory challenges on jurors they argued should have been stricken for cause. The Pennsylvania Supreme Court disagreed, finding that the plaintiffs failed to preserve the argument by not making a timely and specific objection to being forced to exhaust peremptory challenges, and plaintiffs did not request additional challenges. The Court also found that an earlier-filed motion to strike that did raise the exhaustion argument was insufficient to preserve the argument because the circumstances of the case had changed in the interim. The contemporaneous objection rule is well-known and was easily applied in the *Shinal* case because during voir dire, the court asked counsel whether they had “[a]nything else” and counsel “did not respond.” Arguments that had not been asserted before such a colloquy will almost always be considered to be waived or even invited error, and then subjected to a fundamental error analysis – assuming that even is available. The finding that the plaintiffs’ earlier-filed motion to strike jurors did not preserve the issue presents a more different question – **when is a party is entitled to rely upon prior objections and standing objections?** This issue frequently comes up with respect to motions in limine, but as *Shinal* demonstrates, the issue is more universal. **Tips:** Just what can change in litigation is essentially infinite. *Shinal* involved the changed circumstances brought upon by the dismissal of parties. But the change need be hardly so drastic. A pretrial hearsay objection might be appropriate based upon the anticipated course of proceedings. If circumstances change, however (perhaps a claim gets dismissed), and counsel asserts only a contemporaneous relevance objection,

a court likely would consider the earlier hearsay objection waived. Or, if it becomes apparent that certain evidence is also both unfairly prejudicial and cumulative in light of what has ensued at trial, counsel must object to the evidence when it is offered on these new bases. Consequently, unless it is clear that the court has issued a definitive ruling on every basis upon which an objection could be reasonably lodged, the safest course for counsel is to renew objections previously made and assert any grounds appropriate in light of circumstances that have changed during the proceedings. This applies equally to standing objections because the grounds preserved in the standing objection will not be sufficient to preserve the arguments a party might want to make on appeal based upon circumstances that change after the standing objection was granted.

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