

Unforced Errors: Don't Leave a Ground of the Court's Ruling Unchallenged

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We have previously explained the importance of appealing every aspect of a trial court's order granted on multiple, independent grounds. The Eleventh Circuit recently reminded us of that, but also that in opposing motions at the trial court level, attorneys must address *all* of the grounds relied on for the court's earlier ruling.

Federal Deposit Insurance Corp. v. Loudermilk, 930 F.3d 1280 (11th Cir. 2019), is remarkable in several respects and worth a read by every appellate practitioner. But of particular importance is its reason for its affirmance of the district court's evidentiary ruling.

The defendants, directors of a bank under receivership, intended to offer evidence at trial that the Great Recession was an intervening cause that absolved them of liability. The FDIC moved in limine to exclude the evidence on two grounds: first, because it was irrelevant; and second, because the court had *already ruled* that the defendants could not present such evidence after the defendants withdrew their intervening-cause affirmative defense.

The district court granted the motion in limine on both grounds, explaining in its order that in opposing the motion, the directors had not challenged the earlier evidentiary ruling. Instead, they contested the relevance arguments only.

The Eleventh Circuit affirmed. Although the defendants explained to the appellate court why they withdrew the intervening-cause affirmative defense, they never explained why they failed to challenge the district court's earlier evidentiary ruling when opposing the motion in limine, or why that ruling was error. Because the district court was simply enforcing its earlier *unchallenged* ruling, the Eleventh Circuit explained, "we cannot say that it abused its discretion."

Practice Tips

The circumstances in *Loudermilk* were "a little unusual," but the lesson remains for a broad range of trial rulings. As a general rule, to obtain a reversal of a ruling on appeal, all of the grounds announced for the ruling must be demonstrated to be error. Indeed, in some jurisdictions, that would be the case under the "right-for-any-reason" rule even if the alternative ground was not expressly stated by the trial court as a basis for its ruling.

Even at the trial court level, attorneys should consider and address *all* of the grounds raised by the other side in motions and other filings, including those based on earlier rulings. If the other side relies on an earlier ruling to support a position made later in litigation, and that earlier ruling was incorrectly made, do not fail to challenge it and explain why it, too, is error.