

More Is Usually Better: One Objection to An Expert's Opinion Will Not Necessarily Preserve a Challenge to Its Admission

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In challenging the admission of an expert opinion, you should not assume that, because you objected on one basis, you have properly preserved for appeal objections on other grounds.

In *Russo v. Corey Steel Company*, No. 1-18-0467, 2018 WL 7246798 (Ill. App. Ct. 2018), the plaintiff sued to recover damages for injuries he sustained while working at the defendant's plant. At trial on the issue of damages only, the jury returned a verdict for the plaintiff awarding \$9.9 million.

The plaintiff's expert had opined that the plaintiff needed surgery in the future. After objection, the plaintiff attempted to lay a foundation for the opinion. The defendant objected again, arguing that the expert, who was licensed in occupational medicine but was not an orthopedic surgeon, was not qualified to offer an opinion on the plaintiff's need for surgery. The trial court ruled that this argument went to the weight of the opinion, not admissibility, and allowed the expert to offer the opinion. On cross-examination, the expert conceded that he could not say to a reasonable degree of medical certainty whether it was more likely than not that the plaintiff would need surgery. The defendant did not, however, object and move to strike the expert's prior testimony.

In a motion for new trial, the defendant argued that the trial court erred in admitting the opinion because the plaintiff's expert was not qualified to offer it, there was no foundation for it, and the expert could not offer the opinion to a reasonable degree of medical certainty. The post-trial judge agreed that the expert was not qualified to offer such an opinion, and granted a new trial.

The appellate court reversed, agreeing with the trial judge that defendant's challenge to the expert's qualifications went to the weight and not admissibility of the opinion. It further held that the objection to the expert's qualifications was not sufficient to preserve for appeal defendant's argument that the opinion itself was not admissible because the expert admitted he could not offer the opinion to a reasonable degree of medical certainty. The appellate court explained that the defendant waived this argument when it failed to raise this objection – and move to strike the expert's prior testimony – at the time the expert testified.

Practice Tip

- As always, know your jurisdiction's rules for preservation.
- Do not assume that you have preserved all objections to an expert's opinion just because you have objected to it on some ground during trial. To the extent that you have multiple grounds for challenging its admissibility, make those objections as specific as possible, and raise them at the time the expert offers the testimony you wish to challenge.
- If an expert offers testimony that calls into question the admissibility of an opinion to which the expert has already testified, object and move to strike the prior testimony.

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