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ARTICLES

Top Tips for Top-Notch Motions in Limine

Thanks to motions in limine, trials may be won or lost before they even begin.

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By definition, motions in limine are pretrial evidentiary motions. In practice, however, they are—or at least can be—far, far more. Experienced trial lawyers know that thanks to motions in limine, trials may be won or lost before they even begin. Yet, often, such motions are underused and underappreciated, or they are prepared in a way that diminishes their impact on the outcome of a case. This article contains a few tips for making the most of your motions in limine.

Start Early—Literally

Although *limine* is the Latin word for *threshold*, many of us don't think about our motions in limine at the threshold of a case. Instead, we begin thinking about them in the roar to trial, as the deadline to file draws near.

But be careful about waiting this late—that approach could leave a lot of opportunity on the table. Although we can't always predict early on all the motions in limine that we will ultimately file, quite often we can predict the most important ones. Filing important motions in limine well before the deadline—even during discovery, if the grounds for the motion are clear and won't change—may result in your client gaining an important strategic advantage early in the life of the case. On the flip side of the coin, a loss early on may provide helpful clarity for you and your client about how the court is thinking about the case and the potential trial. Think early and often about whether there are particular motions in limine that could and/or should be put before the court well before the crush of pretrial prep arrives.

Use Frustration-Free Packaging, Always

How many times have you filed or seen filed an omnibus motion in limine with 15 grounds set forth, resulting in an order that says, "Motion granted in part and denied in part, as discussed at the hearing." If the hearing wasn't crystal clear about what would come in and what would stay out, that long and expensive omnibus motion may have resulted in relatively little strategic gain—or, even worse, may have generated confusion and uncertainty about how the case could be tried.

To avoid this frustrating result, if an omnibus motion is not required, consider separately numbered motions together with separately numbered proposed orders (or one proposed order with a line for each separate motion), so that the court's ruling on each motion will be clear to all parties. And if an omnibus motion is required, package it thoughtfully, be sure that the most important grounds are set forth first, pay extra-careful attention to the relief requested at the end of the motion, and build out a proposed order that makes it easy for the court to provide a clear ruling on each ground.

Target Practice: Align Motions with Goals

About those 15 grounds: Be wary of (and careful with) the "shotgun" approach to your motions in limine.

To be sure, there are issues about which it can be helpful to educate the court early on, even if there's relatively little chance of success on the motion itself. And, in a similar vein, it can be helpful to call to the court's attention moves that you expect your adversary to make that are objectionable, even if the court decides to reserve its ruling on those particular issues until they present themselves at trial.

But outside of those limited circumstances, the better approach may be with rifle shots only—i.e., filing only those motions in limine that you assess as having a very good chance of success at the in limine phase. The party that files three motions in limine and wins all three is on a winning streak, whereas the party that files 13 motions in limine and loses 10 but wins three is on a losing streak, even if both parties won the same three motions. Think carefully about what your goal for each motion is, and for your motions in limine overall, and target your approach accordingly.

Invest in a Very Good Title

How many times have we heard a court ask during a motion in limine hearing, "So, what exactly are you asking me to do?" To avoid this, think carefully about your titles when you draft your motions. Titles are cheap insurance for confusion, and they can go a long way toward communicating (and obtaining) the specific ruling that you want. If you're asking the court to limit a witness's testimony (but not exclude it entirely), be sure the title indicates exactly that. If you're asking the court to exclude evidence when it is offered only for some purposes but have no objection to the same evidence if offered for other purposes, be sure that the title makes your position clear.

For an important motion, the title may be drafted, edited, and revised. Once the title is set, be sure that the relief requested matches it (and your proposed order, if you supply one) exactly. A clear ask is the first step toward a clear ruling.

Consider Settlement Issues

Often, when settlement negotiations have stalled or failed and trial looms, the only person left at the table with any ability to move the needle is the court. A devastating ruling on motions in limine could be the way that your adversaries finally come to appreciate their vulnerabilities: a win might seem not-quite-so-sure once they learn that they will not be allowed to try the case on their favorite theory. So, too, for you, so keep this in mind in deciding whether to file that motion that is a bit of a "reach"—if you file it and lose it, the ruling may diminish the likelihood of reaching a favorable settlement on the eve of trial.

Jump the Gun

When filing day arrives for motions in limine, be ready well ahead of time and file early in the day. Many judges conduct hearings by hearing first-filed motions before later-filed motions. If there are dozens of motions or grounds to be heard, you'd rather yours be the first batch than the second. On balance, there is likely more strategic advantage to be gained by having your motion(s) be the first up at the hearing than there is to be gained by filing your client's motion(s) at 11:59 p.m.

Stick to Your Guns

If the court reserves ruling on your motion, repackage it for trial as a bench brief or a renewed motion. Keep the title the same so that the court is reminded down the road that this is the same ask you made in limine. If there were helpful comments from the court or partial concessions

from your adversary during the in limine hearing, be sure to remind the court of those when your motion is (re)considered at trial.

In many jurisdictions, this is required for preservation purposes if the court denies your motion in limine—and if you have to renew the objection at trial to preserve it, the best way to do so is to have the objection in hand and in writing. Worst-case scenario: If the trial ultimately becomes the appeal, you'll be glad that you set forth all your grounds in writing and with support.

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