Get Specific With In Limine Motions

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There have been a number of times in my career when weeks of effort to prepare motions in limine were nullified by a last-minute settlement. To nudge a stack of completed, un-reviewed motions in limine into the recycling bin upon word that a case had been resolved is never fun.

But, of course, this can be viewed as part of the thrill of trial preparation. And, in any event, it is beneficial to have a stable of past motions in limine from which you can draw in future cases.

History and modern use

The term in limine derives from the Latin phrase essentially meaning "at the threshold." This rarefied appellation is perhaps fitting given the motion's amorphous statutory origins. In federal practice, it is cobbled together from portions of the Federal Rules of Evidence and Federal Rules of Civil Procedure. In California, its contours are addressed in the Rules of Court, but the basic authority to deal with evidentiary issues "in limine" is not specifically set forth in the Code of Civil Procedure, but is instead a tradition ingrained in years of court practice.

In modern practice, motions in limine are simply pre-trial motions to resolve anticipated evidentiary issues. Regardless of the venue, judges tend to disfavor boilerplate motions in limine. Indeed, to avoid these, many courts codify generally accepted motions in limine as part of their local rules. It is crucial to verify whether this is the case before you begin the process of writing your motions. These presumed exclusions can be a time saver, but may also mean you need to "override" a presumed exclusion via a separate motion.

One of the more common motions in limine is to exclude evidence that the parties to a civil lawsuit had insurance. However, if you are a defendant in a personal injury action, you may need to present evidence of insurance adjustments to medical bills in order to avoid the prejudicial admission of raw medical costs. In this scenario, frame the motion as seeking a limited exception to any presumed exclusion for the purpose of introducing insurance adjustment information pursuant to *Howell v. Hamilton Meats* and its recent progeny.

As in the above example, obtaining precision in motion in limine rulings can be very important. For instance, in an auto accident case focusing on issues of road design, it should be an easy

call that grisly accident scene photos should be excluded unless absolutely necessary to deal with accident reconstruction or design issues. But don't just seek an order enforcing these general parameters—go one step further: if possible, go through the entire series of available photographs and choose the specific photographs to exclude. Vague in limine rulings can become vulnerable to interpretation at trial, when enforcement can be stretched as the parties race to put on their cases.

Sometimes a stipulation between parties, as part of a give-and-take negotiation process, can facilitate this clarity more than a judge's ruling. Indeed, in complex cases where the parties can sometimes amass upwards of 50 motions in limine, it is advisable to meet and confer extensively beforehand. Depending on the dynamic, it may be a good idea to hire a court reporter to memorialize the meet-and-confer session in the event there is a disagreement at a later time about the terms and scope of an evidentiary concession. In any event, making concessions that will allow you to pare down the motions at issue will be appreciated by the trial judge.

Evidential quality trumps quantity

Because the most successful motions in limine are those that provide the judge with specific portions of evidence to rule on, it is important to exercise restraint in selecting evidence to address in limine. Along those lines, evidence so stark or memorable that it "cannot be unheard" should be considered first and foremost. But similarly worthy for in limine treatment is less immediately compelling evidence that nonetheless will require application of complex or extensive law. For example, excluding testimony about certain damages because a plaintiff lacks standing to assert them is an evidentiary issue so steeped in the underlying case authority that it is better addressed and briefed beforehand by motion than via a whispered sidebar while the jury waits.

Even if you do not ultimately prevail on the motion, judges are often willing to deny a motion in limine "without prejudice." For instance, attempts to exclude experts in limine are often denied without prejudice and renewed by objection during the testimony of that expert. Assuming that a 402 hearing is not an option, the judge is ultimately more likely to exclude the testimony when initially familiarized with the underlying arguments via a motion in limine.

But even in defeat, there is a certain value to having knowledge of the judge's evidentiary ruling prior to the commencement of trial. If the ruling is significant enough, your client still has time to adjust to its impact on the case and make a reasoned settlement decision that might not be feasible during the heat of trial.
