

From: Don Drinko
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Gallagher Sharp Shop Talk: Workers' Compensation

This week, I want to discuss two evidentiary issues relevant to common pleas court appeals that were addressed at length in a recent decision from the 12th District Court of Appeals, *Williams v. Parker Hannifin Corporation*, 188 Ohio App.3d 715, 2010-Ohio-1719. Specifically, the Court discussed objections in trial depositions and the admission of a "demonstrative" chart into evidence.

Williams involved an employee who injured his back in the "course and scope" of his employment. Later, the claimant sought to have the claim additionally allowed for a "herniated disc." The employer contested the request, which was denied administratively, prompting the claimant to file an appeal to the common pleas court. In preparing the matter for trial, the attorneys scheduled several doctors for videotaped "trial" depositions. During these depositions, both sides objected and moved to strike responses to several questions, including objections to several lengthy hypothetical questions, but did not state the basis for the objections on the record. At trial the parties attempted to play the tapes and have the trial court rule on the objections, but instead the trial court summarily denied all objections and instructed the jury to disregard them. In addition, claimant's counsel sought to introduce a large chart (7 feet by 2 feet) depicting month-by-month summaries of prescriptions and treatment. The employer objected, arguing that the chart should not be admitted into evidence. The trial court disagreed and permitted the chart to be introduced, prompting an appeal by the employer.

On appeal, the 12th District affirmed the trial court on all points. With regard to the objections, the Court cited Evid. R. 103(A)(1), the "contemporaneous objection rule," in holding that the employer failed to state a basis for the objection at the time it was made, and therefore waived the objections. (In *Williams*, the problems were incomplete or incorrect hypotheticals.) The purpose of this rule is to give the opposing party an opportunity to correct the objectionable issue. The Court also determined that the hypothetical questions were themselves not objectionable, and there was no basis for arguing that an abuse of discretion had occurred. As for the chart, the Court concluded that its admission into evidence was within the sound discretion of the trial court, particularly because the chart highlighted some of the inconsistent hypotheticals.

I found this decision significant because many attorneys, fearful of rebuke from trial courts, refrain from "speaking" objections, even in trial depositions. *Williams* highlights the need to make a record as to the basis for an objection, and the need to address the admissibility of demonstrative evidence, preferably in a motion *in limine*.

Donald G. Drinko, Esq.
Certified Workers' Compensation Specialist,
Ohio State Bar Association
Gallagher Sharp
1501 Euclid Avenue
Cleveland, OH 44115
Direct: 216.522.1326
ddrinko@gallaghersharp.com
www.gallaghersharp.com