

APPELLATE AND COMPLEX LITIGATION BLOG

To File or Not to File Post-Trial Motions

AUTHOR: ANDREW REMESELNIK

CONTRIBUTOR: MICHAEL LECINSKI, TIMOTHY SANSONE

The importance of following the rules and requirements related to appeals—though daunting and often confusing for attorneys who do not focus in this area—is something appellate practitioners frequently discuss with each other. One of those requirements involves preserving errors for review. In most cases, before you can accuse a trial court of committing an error, you must give that court an opportunity to correct the error. An appellate court nearly always will reject an attempt to “sandbag” the trial court.

The Illinois Appellate Court recently reiterated this requirement in *Midwest Mailing & Shipping Systems, Inc., v. Schoenberg*. 2023 IL App (1st) 220562□□. There, a Wisconsin corporation received legal advice from its attorneys to reorganize the corporation by creating a new business entity in Illinois and assigning its business to the new entity. The attorneys neglected to consider the impact on the corporation’s business agreements, resulting in the near destruction of the business and loss of its largest supplier’s “Territorial Exclusivity” right to sell products.

The Trial

Not surprisingly, what resulted was a legal malpractice claim. During the trial, the corporation moved to introduce its expert’s opinion on the damages sustained. The corporation’s former attorneys, however, argued that the expert’s calculation was speculative and moved to bar the evidence. Over their objection, the court admitted the expert’s opinion, and the jury was allowed to consider the opinion in awarding the corporation \$700,000 on its claim against one of its former attorneys.

Believing the trial court erred in permitting the opinion, that former attorney timely filed a notice of appeal, but did not file a post-trial motion.

The Appeal

The Appellate Court noted that any arguments raised in an appeal after a jury trial *must* be placed before the trial court in a post-trial motion; in contrast, such a motion is not required after a bench (non-jury) trial. Because the corporation’s former attorney did not file a post-trial motion, his claims of trial court error were waived.

The Takeaway

This case serves as yet another reminder of the importance of knowing how to properly position a case for a future appeal—*before* the appeal is actually filed. After the result in *Midwest Mailing*, there could now be yet another legal malpractice claim, this time against the attorneys who represented the corporation's former attorneys—to be precise, against the (presumably now) former attorneys of the former attorneys.