

Lynne Liberato and Natasha Breaux in Houston Lawyer: Objecting to Summary Judgment Evidence in State Court: Recent Clarifications and Remaining Complications

By Lynne Liberato, Natasha Breaux | October 19, 2018

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For something as seemingly simple as objecting to evidence, attempts to do so in summary judgment proceeding are fraught with complications.

Here are key questions concerning objections to summary judgment evidence:

1. Does the granting of a summary judgment implicitly sustain objections by the winning party (and overrule objections by the loser)?
2. When can evidentiary defects be raised for the first time on appeal?
3. Must rulings on objections be written?
4. What actions should be taken if the trial judge refuses to rule on objections?

To add to the complication, some of these questions have sub-questions that must be answered before reaching the best decision on how to proceed. This year, the Texas Supreme Court in *Seim v. Allstate Texas Loyds* answered many of these questions. Others linger in the intermediate appellate courts. The answers are detailed below.

Preserving error matters if a summary judgment is appealed.

Rules for error preservation that apply in trial also apply in summary judgment proceedings. To preserve a complaint for appellate review that evidence is inadmissible, (1) a party must complain to the trial court in a timely request, objection, or motion, and (2) the trial court must rule or refuse to rule. But, application of these rules is easier said than done. ...

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[First published in the September/October 2018 issue of *The Houston Lawyer*.](#)