

IAAO PRESENTS



# PREP&TRIAL

**JULY 10 - 11, 2025**  
**COLUMBUS, OH**



## Mock Trial

### 421 Properties v. Assessor

# Plaintiff's Case In Chief





# Owner's Ability to Testify to Value of Property

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## Owner's Ability to Testify to Value of Property



Owner may testify to value of property, if owner is familiar with characteristics of the property and knowledge of the uses and purpose and has experience dealing with the property. *First Interstate Dev. Corp. v. Ablanado*, 476 So. 2d 692 (Fla. 5<sup>th</sup> DCA 1985)

Owner of property may testify to value, however, “The weight of such testimony is of course, affected by the owner’s knowledge of circumstances which affect value, and as an interested witness, it is for the jury to evaluate the credibility of his testimony” *J & H Auto Trim Co., Inc. v. Bellefonte Ins. Co.*, 677 F.2d 1365, 1369 (11<sup>th</sup> Cir. 1982)

Officers of corporation may not testify as to value of corporate property unless qualified by virtue of experience, management of affairs and knowledge of relevant value. *Mercury Marine v. Boat Town, USA, Inc.*, 444 So. 2d 88 (Fla. 4<sup>th</sup> DCA 1984)



# Objection – Hearsay and Relevance

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## Objection – Relevance and Hearsay

Relevance: (1) Proximity to date of value – 7 years; (2) Change in market conditions and physical attributes; (3) Value premise of appraisal; and (4) Hotel not completed at time of appraisal

Admissibility of appraisal not valuing property on date of value at issue in case depends on remoteness of date and change in conditions during gap between appraisal date and date of valuation in case. *Culbertson v. State Road Dept.*, 165 So. 2d 255 (Fla. 1<sup>st</sup> DCA 1964)



## Objection – Relevance and Hearsay



**F.R.E. Rule 801(c)** “Hearsay” means a statement that:

- (1) the declarant does not make while testifying at the current trial or hearing; and
- (2) a party offers in evidence to prove the truth of the matter asserted in the statement.



## Objection – Relevance and Hearsay

**F.R.E. Rule 801(d)** A statement is not hearsay if – **(2)** Admission by party opponent. The statement is offered against a party and is (A) the party’s own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship...”



## Objection – Relevance and Hearsay



Appraisal relied upon by owner to arrive at value used in public document was relevant to consider credibility of owner's appraisal for litigation. *Bonstores Realty One, LLC. v. City of Wauwatosa*, 839 N.W. 2d 893 (Ct. App. Wi. 2013)

*State ex. rel. N/S Assoc. v. Bd. of Review of Village of Greendale*, (Ct. App. WI. 1991) Owner represented to investors in quarterly reports which aligned with appraisals done at request of owner – admissible as admission by party opponent.

*In re Equalization Appeal of Andover Antique Mall, LLC*, (Ct. App. KS 2004). Appraisal commissioned by lender not admission on part of property owner where engagement letter was between lender and appraiser.

*Transbay Auto Serv. V. Chevron USA, Inc.*, (U.S. Dist. Ct. 9<sup>th</sup> Cir. 2015) – Where party gave independent appraisal to lender, action constitutes adoption of the statements contained therein, even if 3<sup>rd</sup> party never itself uses or relies on the document.



# Stipulate to the Expert's Qualifications?

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## Stipulating to the Expert's Qualifications

- Advantages
  - Mute impressive credentials
  - Gain goodwill with judge
- Disadvantages
  - Cannot contrast with your expert's qualifications
  - Experience is a part of the Rule 702 analysis



# Stipulating to the Expert's Qualifications



## F.R.E. – Rule 702 – Testimony by Expert Witness

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) The testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.



# Court's Discretion to Admit Experts

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## Court's Discretion to Admit Experts



- “...an appraiser’s opinion may be subject to impeachment or to having its weight reduced because of its failure to properly consider one of the many factors that may influence an opinion as to value, but that failure should not prevent the opinion’s admission, nor cause its complete exclusion from the jury’s consideration.” *Florida Department of Transp. v. Armadillo Partners, Inc.*, 849 So. 2d 279 (Fla. 2003)
- Court had discretion to admit valuation opinion of unlicensed person who had extensive background in economics and real estate. *Davis v. South Fla. Water Management Dist.*, 715 So. 2d 996 (Fla. 4<sup>th</sup> DCA 1998)



# Rendering Opinion Before Providing Underlying Support

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## F.R.E. – Rule 702 – Testimony by Expert Witness

**A witness** who is qualified as an expert by knowledge, skill, experience, training, or education **may testify in the form of an opinion** or otherwise **if the proponent demonstrates** to the court that **it is more likely than not** that:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;**
- (b) The testimony is based on sufficient facts or data;**
- (c) the testimony is the product of reliable principles and methods; and**
- (d) the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.**



## Rendering Opinion Before Providing Underlying Support



Daubert v. Merrell Dow Pharms., Inc.

“Faced with a proffer of expert scientific testimony, then, the trial judge must determine *at the outset*, pursuant to Rule 104(a) whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. *This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.*”



## Rendering Opinion Before Providing Underlying Support



- Federal Rule of Evidence 705 – “Unless the court orders otherwise, an expert may state an opinion – and give the reasons for it – without first testifying to the underlying facts or data on cross-examination.”
- Failure to cross-examine re: underlying basis for report precludes appellate challenge to appraisal based upon failure to provide underlying facts and data. *Witchell v. Londono*, 707 So. 2d 796 (Fla. 1<sup>st</sup> DCA 1998)



# Objection – Hearsay Use of Authoritative Treatise to Support Opinion

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### **Federal Rule of Evidence 702**

“ A witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise *if the proponent demonstrates to the court* that it is more likely than not that: (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) *the testimony is the product of reliable principles and methods*; and (d) the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.”



## ***Daubert v. Merrell Dow Pharms., Inc.***

“Another pertinent consideration is whether the theory or technique has been subjected to peer review and publication.”



## Objection – Hearsay: Use of Authoritative Treatise



**F.R.E. 803** The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

**(18)** Statements in Learned Treatises, Periodicals, or Pamphlets.

A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.



# Objection – Hearsay Information from Others Contained in Report

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## Objection – Hearsay: Information from Others in Report



F.R.E. 703 – “An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. (If admissible may be disclosed in probative value outweighs prejudicial effect.)

Appraiser cannot testify as to architect’s opinion that property was functionally obsolete (poor design for current use) *Harrison v. Savers Fed. Sav. And Loan*, 549 So. 2d 712 (Fla. 1<sup>st</sup> DCA 1989)

Reliance by expert exclusively on information not admissible at trial was improper; expert cannot be conduit for otherwise inadmissible information. *Riggins v. Mariner Boat Works, Inc.*, 545 So. 2d 430 (Fla. 2d DCA 1989)



## Objection – Hearsay: Information from Others in Report



“Expert witness can rely upon facts not in evidence, and even inadmissible evidence in forming their opinions. Further, the expert can disclose these facts to the jury so long as they are of the type reasonably relied upon by experts in forming their opinions, and the trial judge determines they meet minimum standards of trustworthiness and reliability.”

*Venn v. St. Paul Fire and Marine Ins. Co.*, 173 B.R. 759 (N.D. Fla. 1994)



# **Objection – Relevance Use of Post-Valuation Date Data**

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## Objection – Relevance: Post Valuation Date Data



- “Generally speaking, post-assessment date sales are disfavored by the courts because they represent information unknown to prospective purchasers on the applicable assessment date.” *Lane Cnty. Assessor v. Authentic Models, Inc.*, 2011 Or. Tax LEXIS 380
- . “...the appraisers were still required to ascertain a value predicated on facts known or reasonably ascertainable as of (the valuation date).” “While the use of subsequent events as direct evidence of value is not appropriate, a valuation predicated on subsequent events may, in an appropriate situation, be utilized to corroborate an opinion independently arrived at and based on facts known or reasonably ascertainable as of the critical date.” *Borough of Fort Lee v. Invesco Holding Corp.*, 3 N.J. Tax 332 (N.J. Tax 1981)



## Objection – Relevance: Post Valuation Date Data



- Comparables sales occurring after date of sale may be used to verify the opinion of value which is based on data known as of the valuation date. *Sabin v. Dept. of Rev.*, 1985 Or. Tax LEXIS 56
- Facts in existence at time of valuation, but undiscovered until after valuation date are relevant, as “reasonable hypothetical buyers and sellers would have been aware of those facts at the time of valuation. *Doherty v. Commissioner Internal Revenue Service*, 16 F. 3d 338 (9<sup>th</sup> Cir. 1994)



# Cross Examination Gone Wrong

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## Cross-Examination Gone Wrong



**Mr. Bilzerian:** Now, you indicated that you just disregarded the sale in the year 2004 as being suspicious. Is that what your testimony was, the sale of the subject?

**Mr. Jay:** I don't think I used the word suspicious.

**Judge Paskay:** He didn't use that.

**Mr. Bilzerian:** Did he say it smelled bad? That sure sounds like suspicious to me.

**Judge Paskay:** He didn't say it smelled either.

**Mr. Bilzerian:** Did you say it smelled bad?

**Mr. Jay:** Did not.



## Cross-Examination Gone Wrong



**Mr. Bilzerian:** Now, you indicated that you just disregarded the sale in the year 2004 as being suspicious. Is that what your testimony was, the sale of the subject?

**Mr. Jay:** I don't think I used the word suspicious.

**Judge Paskay:** He didn't use that.

**Mr. Bilzerian:** Did he say it smelled bad? That sure sounds like suspicious to me.

**Judge Paskay:** He didn't say it smelled either.

**Mr. Bilzerian:** Did you say it smelled bad?

**Mr. Jay:** Did not.

**Judge Paskay:** I would say it smelled, but he didn't say that.