

**SELECT EVIDENTIARY**  
**CONSIDERATIONS FOR**  
**CONSTRUCTION CASE**

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# INTRODUCTION

- RELEVANCY
- FOUNDATION
- SPOILIATION
- WITNESSES
- DEPOSITIONS

# RELEVANCY

- ER 401
  - Evidence having any tendency to make the existence of any fact that is of consequence to determine the action more or less probable
- ER 402
  - All relevant evidence is admissible, ... . Evidence which is not relevant is not admissible.
- ER 403
  - Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

# FOUNDATION

- In General
  - When evidence law makes proof of a fact or event a condition to the admission of an item of evidence, that fact or event is part of the foundation for the evidence's admission.
- Laying Foundation on Direct
  - W Questions
- Laying Foundation on Cross
  - Lead don't Argue

# SPOLIATION

- Spoliation is a situation when evidence which would properly be part of a case is within the control of a party whose interest it would naturally be to produce it and that party fails to do so, without satisfactory explanation, then the inference of that failure must be unfavorable to that party.
- Spoliation is the destruction or significant alteration of evidence or the failure to preserve property for another's use as evidence, in pending or future litigation, once the duty to do so has been triggered.

## **SPOILIATION, CONT.**

- (1) the potential importance or relevance of the missing evidence
  
  
  
  
  
  
  
  
  
  
- (2) the culpability or fault of the adverse party

# WITNESSES

- Who & Where

- Experts

# DEPOSITIONS

- OBJECT TO FORM
- DISRUPTION/INTERRUPTION/COACHING