

Error Resuscitation & Resurrection

Hon. Daryl L. Moore & Kelsi S. White

AZA

1



Error Resuscitation

When Error is on Life Support

AZA

2

Error Resuscitation

Error that can be asserted for the first time *after trial* in post-verdict motions.



Expert Motions

- Failure to make reliability challenge in *Robinson* motion

Trial

- Unobjected-to testimony

Charge Conference

- Unobjected-to questions

AZA

3



Resuscitating Complaints About Experts

AZA

4

Experts: *Coastal Transport Co. v. Crown Central Petroleum*, 136 S.W.3d 227 (Tex. 2004)

Negligence and gross-negligence case

- Explosion in bulk loading facility caused by gasoline spill and engine spark

Expert testimony on conscious indifference for gross negligence

- “In your opinion, did Coastal have an actual subjective awareness of the risk involved in failing to stop using probes that can have [sensor failure] problems?”
- “And in your opinion, did Coastal nevertheless proceed with conscious indifference to the rights, safety or welfare of others?”
- No objection

Procedural history

- Trial court directs a verdict because no evidence of gross negligence
- COA reverses directed verdict because of failure to object to expert’s testimony
- SCOTX reverses and renders, affirming trial court’s judgment

AZA

5

Experts: *Coastal Transport Co. v. Crown Central Petroleum* (Tex. 2004)

Conclusory

- “Non-probative on its face”
- No evidence
- No objection necessary

Methodology

- “Looks beyond what expert said”
- Reliability
- Objection necessary

AZA

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Error Resurrection

First appeared as part of the conference materials for the
32nd Annual Conference on State and Federal Appeals session
"Error Resurrection"