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Measuring a Civil-Discovery Sanction for Failure to Turn over Requested Material: *Goodyear Tire v. Haeger* (15-1406)

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Measuring a Civil-Discovery Sanction for Failure to Turn Over Requested Material

CASE AT A GLANCE

A sanction that is unrelated to misconduct is criminal and requires criminal instead of civil procedure. In a product liability lawsuit, the respondent, Goodyear, failed to turn over important tests before the parties settled. The petitioners, the Haegers—a couple who alleged Goodyear’s tires caused injuries—sought approval of a sanction based on their attorney fees. Complex and technical civil procedural rules and statutes, contempt, and the court’s inherent power will govern the Supreme Court’s decision. The issue before the Court is the specificity of the causal link between Goodyear’s misconduct and the amount of the civil sanction.

Goodyear Tire v. Haeger
Docket No. 15-1406

Argument Date: January 10, 2017
From: The Ninth Circuit

by Doug Rendleman
 Washington and Lee Law School, Lexington, VA

ISSUE

Is a federal court required to tailor compensatory civil sanctions imposed under inherent powers to harm directly caused by sanctionable misconduct when the court does not afford sanctioned parties the protections of criminal due process?

FACTS

The Haegers brought a product liability lawsuit against tire manufacturer, Goodyear, charging that Goodyear’s G159 tire had failed, injuring them seriously. Civil discovery is the pretrial process where the parties exchange information leading to the full disclosure that prevents surprise and supports decisions on the merits. The Haegers’ discovery sought Goodyear’s tests of the tires. The Haegers and Goodyear settled the case on the first day of trial.

During the pretrial-discovery process, Goodyear and its lawyers failed to produce certain important tests. After the settlement, the Haegers’ lawyer learned about those tests and moved for sanctions. The district court judge found that Goodyear should have produced the tests, and that Goodyear and its lawyers, hereafter just Goodyear, should be sanctioned because of “repeated and deliberate attempts to frustrate the resolution of this case on the merits.” Because Rule 37, section 1927 and Rule 11, the usual bases for sanctions, weren’t available, the judge based the sanction on the court’s inherent power.

The judge measured the Haegers’ compensatory award by their attorney fees. The \$2,741,201.16 attorney fees awarded began to accrue with the Haegers’ First Request, the moment when Goodyear should have produced the tests. The trial judge wrote that “if Goodyear had responded to Plaintiffs’ First Request with

all responsive documents, Goodyear might have decided to settle the case immediately.” It was possible to “conclude practically all of Plaintiffs’ fees and costs were due to misconduct.”

On appeal of the compensatory award, the Court of Appeals held that the trial judge hadn’t abused discretion in either resorting to the inherent power or in finding Goodyear’s bad faith. Nor was measurement by the Haegers’ attorney fee an abuse of discretion.

The dissenting judge argued that the award was punitive, not compensatory, because it was not shown that the misconduct caused the amount of the award. Thus, according to contempt decisions, the judge should have followed criminal instead of civil procedure before imposing the punitive sanction.

CASE ANALYSIS

Goodyear argues that a judge’s inherent-power sanction must be limited by causation principles. An award not caused by the wrongdoer’s misconduct is not compensatory, but criminal. A criminal sanction may not follow mere civil procedure. Instead, notes Goodyear, due process requires criminal procedure to mete out punitive punishment. Direct causation is required, and Goodyear asserts, that simply was not shown here.

The Haegers counter that recovery of their attorney fee is tied to, and caused by, their loss from Goodyear’s failure to produce the test. The trial judge and the Court of Appeals acknowledged the need for a causal link and determined that Goodyear’s breach had resulted in the Haegers’ attorney fees. Goodyear’s failure to produce the tests permeated the whole case and caused the Haegers to expend attorney fees almost from the beginning. Directness in causation,

the Haegers argue, isn't required and doesn't add anything to causation. The Court of Appeals appropriately approved the district court's decisions articulating the causal-link standard, finding a causal link, and setting the amount of attorney fees to award.

Like most discovery sanction cases, *Goodyear Tire & Rubber v. Haeger* is protracted and technical. As argued, it combines a court's inherent power with compensatory contempt. The implied power here is the judge's ability to sanction a litigant's bad-faith misconduct that isn't covered by another rule or statute. Compensatory contempt is a money award to the aggrieved party for breach of a court order.

The inherent power has been a wild card in the legal deck, perhaps the joker. Contempt, including compensatory contempt, is also contested and imprecise because it is difficult to distinguish coercive contempt, compensatory contempt, and criminal contempt. Attorney fees are often awarded under the inherent power and for both compensatory contempt and an opponent's procedural and discovery misconduct.

The proper measurement rule for a sanction and its specific application are different questions. Measurement of recovery is often uncertain. For example, pain and suffering and punitive damages leave a lot of discretion to the judge or jury. An approach to measurement requires a claimant's proof of the loss to be only as specific as the situation permits. A court will place the burden of uncertainty on the wrongdoer who caused the loss.

The rule to measure a compensatory contempt award is the aggrieved party's "actual harm," from the contemnor's misconduct; "actual" means that the misconduct caused the harm. Requiring aggrieved parties to prove their loss prevents the judge from following civil procedure to punish misconduct under the guise of compensatory contempt.

Imprecision in measurement lurks in reaching a precise figure here. If Goodyear had produced the test, would it then have settled right away for more money? This is what the trial judge and the Court of Appeals majority thought and what the Haegers argue. Or as Goodyear argues, would it have followed production of the test with digging in for a trial or a later less-generous settlement? The problem of setting the aggrieved party's harm from the misconduct is how to construct the counterfactual world that would have occurred without the misconduct, here Goodyear's nondisclosure. A counterfactual is inescapably uncertain and speculative.

SIGNIFICANCE

The case is important for litigators and business defendants. Courts haven't been firm on discovery sanctions. A decision affirming an attorney-fees sanction for the \$2,741,201.16 that the judge awarded the Haegers will send a message to lawyers and litigants that discovery is crucial to decisions on the merits and will strengthen judges' hands in discovery disputes.

An opinion that clarifies the relationship between contempt, compensatory variety, and the inherent power in civil discovery sanctions would reduce confusion and improve the law.

The decision might go either way. The case is factually complex, and the legal issues are inherently technical and controversial. The governing law and the lower courts' opinions are murky. Either way, a divided opinion seems likely.

Doug Rendleman is Huntley Professor at Washington and Lee Law School. He has written about the inherent power and compensatory contempt in *Complex Litigation: Injunctions, Structural Remedies, and Contempt* (2010) and *Compensatory Contempt: Plaintiff's Remedy When Defendant Violates an Injunction*, 1980 U.Ill.L.F. 971. He can be reached at rendlemad@wlu.edu or 540.458.8934.

PREVIEW of United States Supreme Court Cases, pages 111–112.
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