

Seventh Circuit Chastises Lawyer for Raising Too Many Issues on Appeal (Among a Litany of Other Missteps)

Friday, July 3, 2015

Not much went right for the plaintiffs' lawyer in the Seventh Circuit's decision yesterday in [Pierce v. Visteon Corp.](#), No. 14-2542 (7th Cir. July 1, 2015), but the opinion provides a few good lessons for appellate practitioners. Judge Easterbrook wrote for the court, in an opinion joined by Chief Judge Wood and Judge Flaum.

The appeal concerned Visteon's violation of the Consolidated Omnibus Budget Reconciliation Act of 1985, or COBRA as it is more commonly known, and the \$1.85 million that the district court awarded to a class of 741 former Visteon employees, in addition to approximately \$303,000 of attorneys' fees and costs. The plaintiffs' appeal, as the court summarized it, "contend[ed] that the penalties are too low, the class too small, and the attorneys' fees too modest."

Unfortunately plaintiffs' counsel turned those three simple arguments into 13 distinct issues for decision in his merits brief, "violating the principle that appellate counsel must concentrate attention on the best issues."

Judge Easterbrook explained the problem this way:

To brief more than three or four issues not only diverts the judges' attention but also means that none of the issues will be addressed in the necessary depth; an appellate brief covering 13 issues can spend only a few pages on each.

It didn't help matters that much of what the plaintiffs' lawyer had written was "ungrammatical" and "convey[ed] the impression of 'dictated but not read.'" The opinion quoted two sentences from the lawyer's merits brief: "This Court should be entered a high daily statutory penalty in this matter. Respectfully, the award of the District Court to the contrary law and an abuse of discretion."

And it didn't end there. Further confounding matters was a supplemental brief filed by the lawyer that "ignored" the court's question in the order for supplemental briefing, a principal brief that led off with the argument that some of his clients had received *too much* money, bungling the time to appeal the merits decision below, and, on top of all that, asking (apparently without notifying his clients) for a larger award of attorneys' fees at the expense of his clients' award.

The court wasn't amused by any of this, noting that the lawyer "is in no position to contend that his compensation is too low." It affirmed the judgment below as to the fees and costs; the rest of the appeal was too late.

The lawyer was lucky, in our view, to have walked away with what he did—and without a sanction.

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