

814.43 CIVIL RICO - CONSPIRACY.

The (*state number*) issue reads:

“Did the

[defendant conspire with another [person] [entity]]

[defendants conspire with [each other] [one or more other [persons]  
[entities]]]

[to engage in a pattern of racketeering activity]

[to, [through a pattern of racketeering activity] [through  
proceeds derived from a pattern of racketeering activities],

[acquire] [maintain], directly or indirectly, any

[interest in] [control of] any

[enterprise] [real property] [personal  
property of any nature, including money]

[to, through a pattern of racketeering activity, [conduct]  
[participate in], directly or indirectly, any enterprise]?<sup>1</sup>

The burden of proof on this issue is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, five things:

First, that the [defendant conspired with another] [defendants conspired with [each other] [another]] to

[engage in a pattern of racketeering activity]

[, [through a pattern of racketeering activities] [through proceeds derived from a pattern of racketeering activities],

[acquire] [maintain], directly or indirectly, any

[interest in] [control of] any

[enterprise] [real property] [personal property of  
any nature, including money]]

[, through a pattern of racketeering activity, [conduct] [participate  
in], directly or indirectly, any enterprise].

A conspiracy is an agreement of two or more persons to accomplish  
some unlawful purpose, or some lawful purpose by unlawful means.<sup>2</sup>

“Racketeering activity” means to [commit] [attempt to commit]  
[[solicit] [coerce] [intimidate] another person to commit] [an act] [acts]  
which would be chargeable by indictment for (*state crime(s)*).<sup>3</sup>

“Pattern of racketeering activity” means engaging in at least two  
incidents of racketeering activity that have the same or similar purposes,  
results, accomplices, victims, or methods of commission or otherwise are  
interrelated by distinguishing characteristics and are not isolated and  
unrelated incidents, provided at least one of such incidents occurred after  
October 1, 1986, and that at least one other of such incidents occurred  
within a four-year period of time of the other, excluding any periods of  
imprisonment, after the commission of a prior incident of racketeering  
activity.

Second, that at least one of the incidents of racketeering activity  
[involved] [would have involved] something other than mail fraud, wire  
fraud or fraud in the sale of securities.<sup>4</sup>

Third, that as a result of such conspiracy, the plaintiff suffered  
[injury] [damage] to *his* [business] [property].<sup>5</sup>

Fourth, that the [defendant] [defendants] obtained pecuniary gain  
as a result of the conspiracy.

And Fifth, that the plaintiff is an innocent person.<sup>6</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the

[defendant conspired with another]

[defendants conspired with [each other] [another]]

[to engage in a pattern of racketeering activity]

[to, [through a pattern of racketeering activity] [through proceeds derived from a pattern of racketeering activities],

[acquire] [maintain], directly or indirectly, any

[interest in] [control of] any

[enterprise] [real property] [personal property of any nature, including money]]

[to, through a pattern of racketeering activity, [conduct] [participate in], directly or indirectly, any enterprise],

that at least one of the incidents of racketeering activity [involved] [would have involved] an act other than mail fraud, wire fraud or fraud in the sale of securities,

that as a result of such conspiracy, the plaintiff suffered [injury] [damage] to *his* [business] [property],

that the [defendant] [defendants] obtained pecuniary gain as a result of the conspiracy, and

that the plaintiff is an innocent person, then it would be your duty to answer this issue "Yes," in favor of the plaintiff. If you do not so find, then it would be your duty to answer this issue "No," in favor of the [defendant] [defendants].

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1 N.C. Gen. Stat. § 75D-4(a) provides that a person shall not:

- (1) Engage in a pattern of racketeering activity or, through a pattern of racketeering activities or through proceeds derived therefrom, acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money; or
- (2) Conduct or participate in, directly or indirectly, any enterprise through a pattern of racketeering activity whether indirectly, or employed by or associated with such enterprise; or
- (3) Conspire with another or attempt to violate any of the provisions of subdivision (1) or (2) of this subsection.

Because commission of an act prohibited by North Carolina RICO constitutes a civil offense only and not a crime, "a mens rea or criminal intent is not an essential element of any of the civil offenses set forth in this section." N.C. Gen. Stat. § 75D-4(b).

2 See *State v. Brewer*, 258 N.C. 533, 538, 129 S.E.2d 262, 266 (1963); *State v. Gallimore*, 272 N.C. 528, 532, 158 S.E.2d 505, 508 (1968).

3 The crimes which may be considered are:

- a. Article 5 of Chapter 90 of the North Carolina General Statutes;
- b. Chapter 14 of the General Statutes except Articles 9, 22A, 38, 40, 43, 46, 47, 59; and N.C. Gen. Stat. §§ 14-78.1, 14-82, 14-86, 14-145, 14-146, 14-147, 14-177, 14-178, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-202, 14-247, 14-248, 14-313; and
- c. Any conduct involved in a "money laundering" activity.

*NOTE WELL: The meaning of "racketeering activity" also includes the description found in 18 U.S.C. § 1961(1). N.C. Gen. Stat. § 75D-3(c).*

4 N.C. Gen. Stat. § 75D-8(c).

5 See *Gilmore v. Gilmore*, 229 N.C. App. 347, 357, 748 S.E.2d 42, 49 (2013), citing *In re Bostic Constr., Inc.*, 435 B.R. 46, 67 (M.D.N.C. 2010).

6 N.C. Gen. Stat. § 75D-8(c) ("Any innocent person who is injured or damaged in his business or property by reason of any violation of G.S. 75D-4 involving a pattern of racketeering activity shall have a cause of action for three times the actual damages sustained and reasonable attorneys fees. . . .")

*[NOTE WELL: The statute does not define "innocent person." The counterpart federal statute, 18 U.S.C. § 1964(c), does not contain the word*

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N.C. Gen. Stat. §75D-4(a)(3).  
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*"innocent." Noting the difference, the North Carolina Court of Appeals has said that "no legally significant distinction between . . . these provisions" exists (albeit with respect to a different question). See Kaplan v. Prolife Action League of Greensboro, 123 N.C. App. 720, 729, n.3, 475 S.E.2d 247, 254 (1996), aff'd per curiam, 347 N.C. 342, 493 S.E.2d 416 (1997). For discussion of burden of proof, see endnote 8 to CIVIL RICO-ENGAGING IN A PATTERN OF RACKETEERING ACTIVITY. (814.41).]*