

870.73 IDENTITY THEFT - IDENTIFYING/PERSONAL INFORMATION.<sup>1</sup>

The (*state number*) issue reads:

“Was the property or person of the plaintiff injured by reason of the defendant’s broadcasting or publishing personal information of the plaintiff?”

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

First, that the defendant<sup>2</sup> knowingly broadcast or published<sup>3</sup> to the public [on radio, television, or cable television] [in a writing of any kind] [on the Internet] personal information<sup>4</sup> of the plaintiff.

Personal information means a person’s first name or first initial and last name in conjunction with that person’s [social security or taxpayer identification numbers] [drivers license, State identification card, or passport numbers] [checking account, savings account, credit card or debit card numbers] [Personal Identification (PIN) Code<sup>5</sup>] [digital signatures] [any numbers or information that can be used to access a person’s financial resources] [biometric data] [fingerprints] [passwords].<sup>6</sup>

[Personal information does not include [publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including name, address and telephone number] [information made lawfully available to the general public from federal, state or local government records]].<sup>7</sup>

[I instruct you that (*state type of personal information*) would be personal information.]

Second, that the defendant acted with actual knowledge that the plaintiff whose personal information was disclosed had previously objected to any such disclosure; and

Third, that the person or property of the plaintiff was injured by reason of the defendant's broadcasting or publishing personal information of the plaintiff.

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 knowingly broadcast or published to the public personal information of the plaintiff, that the defendant acted with actual knowledge that the plaintiff whose personal information was disclosed had previously objected to any such disclosure, and that the person or property of the plaintiff was injured by reason of the defendant's broadcasting or publishing personal information of the plaintiff, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. "Any person whose property or person is injured by reason of an act made unlawful by . . . a violation of N.C. Gen. Stat. § 75-66, may sue for civil damages." N.C. Gen. Stat. § 1-539.2C(a) (2009).

N.C. Gen. Stat. § 75-66(a) (2009), contained within the "Identity Theft Protection Act," states that it is a violation of the Act

for any person to knowingly broadcast or publish to the public on radio, television, cable television, in a writing of any kind, or on the Internet, the personal information of another with actual knowledge that the person whose personal information is disclosed has previously objected to any such disclosure.

2. Under N.C. Gen. Stat. § 75-66(b), the defendant may be "any individual, partnership, corporation, trust, estate, cooperative, association, or other entity, but does not include any:

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JUNE 2010  
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(1) Government, government subdivision or agency.

(2) Entity subject to federal requirements pursuant to the Health Insurance Portability and Accountability Act (HIPPA)."

3. See N.C. Gen. Stat. § 75-66(d)(2) (providing that "[n]othing in this section shall . . . [a]pply to the collection, use, or release of personal information for a purpose permitted, authorized, or required by any federal, state, or local law, regulation, or ordinance.").

4. See N.C. Gen. Stat. § 75-66(c).

5. "'Personal identification code' means a numeric and/or alphabetical code assigned to the cardholder of a financial transaction card [(FTC)] by the issuer to permit authorized electronic use of that FTC." N.C. Gen. Stat. § 14-113.8(6)(2009).

6. N.C. Gen. Stat. § 75-66(c).

7. See N.C. Gen. Stat. § 75-61(10) (2009).