

813.20 TRADE REGULATION - VIOLATION - ISSUE OF CONTRACTS AND
CONSPIRACIES IN RESTRAINT OF TRADE.¹

The (*state number*) issue reads:

"Did the defendant(s) enter into a [contract] [conspiracy]² in unreasonable restraint of trade or commerce in the State of North Carolina?"

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(s) entered into a [contract] [conspiracy].

*[Here instruct the jury on the definition of a contract. See N.C.P.I.-Civil 500.00 et seq.]*³

[Here instruct the jury on the definition of conspiracy. See N.C.P.I.-Civil 813.22.]

Second, that the [contract] [conspiracy] was in restraint of trade or commerce in North Carolina. A [contract] [conspiracy] is in restraint of trade or commerce in North Carolina if it has a tendency to suppress competition in this State.⁴

Third, that the restraint of trade or commerce was unreasonable.⁵ In determining whether the restraint was unreasonable, you should take into consideration:

(1) the nature of the business to which the restraint is applied;

(2) the condition of the business before and after the restraint was imposed;

(3) the nature of the restraint and its effect, actual or probable, on the public; and

(4) (*state other factors as shown by the evidence.*)

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(s) entered into a [contract] [conspiracy] in unreasonable restraint of trade or commerce in North Carolina, 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.

1. This instruction is the general "little Sherman Act" charge. It will normally be used when the statutory *per se* violations and common law *per se* violations (see N.C. Gen. Stat. § 75-2, and N.C.P.I.-Civil 813.22) do not apply. However, there may be instances when both the general charge and one or more of the statutory or common law *per se* violation charges should be given.

In a treble damages action this instruction should be used in conjunction with N.C.P.I.-Civil 813.70 (Issue of Proximate Cause) and N.C.P.I.-Civil 813.80 (Issue of Damages).

2. The statute also refers to "combination," which means the same as "conspiracy."

3. In some cases the parties may have entered into an express written contract, and the key question will not be whether they combined, but whether the contract produced an unreasonable restraint of trade. In these cases a preemptory instruction on the contract may be sufficient for the first element.

4. See *State v. Atlantic Ice and Coal Co.*, 210 N.C. 742, 746, 188 S.E. 412, 416 (1936). Another definition of "restraint of trade" is: trade or commerce has been restrained if it has been adversely and substantially affected. *Hospital Building Company v.*

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Trustees of Rex Hospital, 425 U.S. 738, 743 (1976).

5. *Rose v. Vulcan Materials Co.*, 282 N.C. 643, 657, 194 S.E.2d 521, 531 (1973).