

813.70 TRADE REGULATION - PROXIMATE CAUSE - ISSUE OF PROXIMATE CAUSE.¹

*NOTE WELL: A claim for an unfair or deceptive trade practice stemming from an alleged misrepresentation requires a plaintiff to demonstrate reliance on the misrepresentation in order to show the necessary proximate cause.*²

The (*state number*) issue reads:

"Was the defendant's conduct a proximate cause of the [plaintiff's injury] [injury to the plaintiff's business]?"

You will answer this issue only if you have found in the plaintiff's favor on the (*state number*) issue.

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, two things:

First, that [the plaintiff has suffered an injury] [the plaintiff's business has been injured], and

Second, that the defendant's conduct was a proximate cause of [the plaintiff's injury] [the injury to the plaintiff's business].

Proximate cause is a cause which in a natural and continuous sequence produces the injury, and is a cause which a reasonable and prudent person could have foreseen would probably produce such injury or some similar injurious result.³

There may be more than one proximate cause of an injury. Therefore, the plaintiff need not prove that the defendant's conduct was the sole proximate cause of the [plaintiff's injury] [injury to the plaintiff's business]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's conduct was a proximate cause.

NOTE WELL: In those cases where the jury has answered

"Yes" to special interrogatories in N.C.P.I.-Civ. 813.21 regarding representations made by the defendant that form the basis for a N.C. Gen. Stat. § 75-1.1 claim, the following language also must be used:

[In (state number) issue,⁴ if you answered "Yes" that the defendant represented [identify each representation allegedly made by the defendant set forth in the special interrogatories that forms the basis for a N.C. Gen. Stat. § 75-1.1 claim], then in order to establish that the defendant's conduct was the proximate cause of [the plaintiff's injury] [the injury to the plaintiff's business], the plaintiff must show (1) that [he] [it] actually relied on the representation made by the defendant and (2) that the plaintiff's reliance was reasonable.⁵

"Actual reliance" requires that the plaintiff affirmatively incorporated the alleged misrepresentation into *his* decision-making process; that is, if it were not for the misrepresentation, then the plaintiff would likely have avoided the injury altogether.⁶

The plaintiff's reliance would be reasonable if, under the same or similar circumstances, a reasonable person, in the exercise of ordinary care for *his* own interests, would have relied on the misrepresentation.^{7]}

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 plaintiff has suffered an injury] [the plaintiff's business has been injured], and that the defendant's conduct proximately caused the [plaintiff's injury] [injury to it], 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.

N.C.P.I.-Civil. 813.70
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1 N.C. Gen. Stat. § 75-16 does not use the term "proximate cause." However, North Carolina's courts have consistently held in private actions under N.C. Gen. Stat. § 75-16 that "a plaintiff must have 'suffered actual injury as a proximate result of' [defendant's conduct]." *Ellis v. Northern Star Co.*, 326 N.C. 219, 225, 388 S.E.2d 127, 131 (1990), quoting *Pearce v. Am. Defender Life Ins. Co.*, 316 N.C. 461, 471, 343 S.E.2d 174, 180 (1986). See also *Olivetti Corp. v. Ames Bus. Sys.*, 319 N.C. 534, 545, 356 S.E.2d 578, 585 (1987); *Process Components, Inc. v. Baltimore Aircoil Co., Inc.*, 89 N.C. App. 649, 651, 366 S.E.2d 907, 910, *aff.*, 323 N.C. 620, 374 S.E.2d 116 (1988); *Ellis v. Smith-Broadhurst, Inc.*, 48 N.C. App. 180, 184, 268 S.E.2d 271, 273-74 (1980).

While the North Carolina courts have been guided by decisions under federal law (Sherman Act, Clayton Act, FTC Act) in interpreting and applying N.C. Gen. Stat. § 75-1.1, the federal notions of "antitrust injury" and "antitrust causation" have not been adopted by the North Carolina courts in applying N.C. Gen. Stat. § 75-16. The cases referenced above require only (1) actual injury (2) proximately caused by the conduct of the defendant. Thus, N.C.P.I.-Civil 813.70 has been substantially rewritten to reflect the state courts' adherence to the conventional common law meaning of proximate cause in private actions under N.C. Gen. Stat. § 75-16.

2 *Bumpers v. Community Bank of N. Va.*, ___ N.C. ___, ___, 747 S.E.2d 220, 226 (2013).

3 *Goodman v. Wenco Foods, Inc.*, 333 N.C. 1, 18, 423 S.E.2d 444, 452 (1992); *Murphy v. Georgia Pacific Corp.*, 331 N.C. 702, 706, 417 S.E.2d 460, 463 (1992).

4 See N.C.P.I.-Civil 813.21 Trade Regulation - Violation - Issue of Unfair Methods of Competition and Unfair or Deceptive Acts or Practices.

5 *Bumpers*, ___ N.C. at ___, 747 S.E.2d at 226.

6 *Id.* ___ N.C. at ___, 747 S.E.2d at 227 (citing *Hageman v. Twin City Chrysler-Plymouth, Inc.*, 681 F. Supp. 303, 308 (M.D.N.C. 1988) ("[A] plaintiff must prove that he or she detrimentally relied on the defendant's . . . misrepresentation.")). See also *Tucker v. Blvd. at Piper Glen LLC.*, 150 N.C. App. 150, 154, 564 S.E.2d 248, 251 (2002) ("[T]he plaintiff must show 'actual reliance' on the alleged misrepresentation in order to establish that the alleged misrepresentation 'proximately caused' the injury of which plaintiff complains." (citation omitted)).

7 "Reliance is not reasonable where the plaintiff could have discovered the truth of the matter through reasonable diligence, but failed to investigate." *Sullivan v. Mebane Packaging Grp., Inc.*, 158 N.C. App. 19, 26, 581 S.E.2d 452, 458 (citations omitted), *disc. rev. denied*, 357 N.C. 511, 588 S.E.2d 473 (2003).