

813.94 MISAPPROPRIATION OF TRADE SECRET¹ - DEFENSE TO
MISAPPROPRIATION.

The (*state number*) issue reads:

"Did the defendant acquire the trade secret [by independent development] [by reverse engineering] [from another person who had the right to disclose the trade secret]?"

You will answer this issue only if you have answered the (*state number*) issue(s) "Yes" in favor of the plaintiff.

On this issue the burden of proof is on the defendant. This means the defendant must prove, by the greater weight of the evidence, that *he* acquired the trade secret [by independent development] [by reverse engineering] [from another person who had the right to disclose the trade secret].²

Finally, as to this (*state number*) issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the defendant acquired the trade secret [by independent development] [by reverse engineering] [from another person who had the right to disclose the trade secret], then it would be your duty to answer this issue "Yes" in favor of the defendant.

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 plaintiff.

1. Trade Secrets Protection Act, N.C. Gen. Stat. § 66-152 *et. seq.*

2. N.C. Gen. Stat. §§ 66-152(1) and 66-155. See *Glaxo, Inc. v. Novopharm, Ltd.*, 931 F.Supp. 1280 (E.D.N.C. 1996), *aff'd*, 110 F.3d 1562 (Fed. Cir. 1997).