

N.C.P.I.—Civil 814.42
CIVIL RICO—ENTERPRISE ACTIVITY.
GENERAL CIVIL VOLUME
MAY 2016
N.C. Gen. Stat. § 75D-4(a)(2).

814.42 CIVIL RICO—ENTERPRISE ACTIVITY. N.C. Gen. Stat. § 75D-4(a)(2).

The (*state number*) issue reads:

“Was the plaintiff [injured] [damaged] by the [defendant’s] [defendants’] [conduct of] [participation in] any enterprise through a pattern of racketeering activity?”¹

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, six things²:

First, that the [defendant] [defendants] directly or indirectly [conducted] [participated in] an enterprise.

“Enterprise” means any person, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this State, or other legal entity; or any unchartered union, association or group of individuals associated in fact although not a legal entity. It includes a governmental entity, and an entity formed or operated for a legal purpose as well as an entity formed or operated for an illicit or illegal purpose.³

Second, that the enterprise engaged in a pattern of racketeering activity.

“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)*).⁴

“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

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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.

Third, that at least one of the incidents of racketeering activity involved something other than mail fraud, wire fraud or fraud in the sale of securities.⁵

Fourth, that as a result of such racketeering activity, the plaintiff suffered [injury] [damage] to *his* [business] [property].⁶

Fifth, that the [defendant] [defendants] obtained pecuniary gain as a result of the racketeering activity.

And Sixth, that the plaintiff is an innocent person.⁷

If you find, by the greater weight of the evidence, that the [defendant] [defendants] directly or indirectly [conducted] [participated in] an enterprise, that the enterprise engaged in a pattern of racketeering activity, that at least one of the incidents of racketeering activity involved something other than mail fraud, wire fraud or fraud in the sale of securities, that as a result of such racketeering activity, the plaintiff suffered [injury] [damage] to *his* [business] [property], that the [defendant] [defendants] obtained pecuniary gain as a result of the racketeering activity, 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)(2).

2 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).

3 N.C. Gen. Stat. § 75D-3(a).

4 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).

5 N.C. Gen. Stat. § 75D-8(c).

6 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)).

7 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 “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).]

