

2800 CONSPIRACY: DEFINED

A "conspiracy" is a combination of two or more persons acting together to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means. The essence of a conspiracy is a combination or agreement to violate or disregard the law.

Mere similarity of conduct among various persons and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish the existence of a conspiracy.

The evidence need not show that the members entered into any express or formal agreement or that they directly, by words spoken or written, stated between themselves what their objectives or purposes were, or the details of them, or the means by which the objectives or purposes were to be accomplished. A conspiracy may be established by evidence that the members in some way or manner, or through some contrivance, positively or without it being openly expressed, came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence need not show that all the means or methods claimed by the plaintiff(s) were agreed upon to carry out the alleged conspiracy; nor that all means or methods which were agreed upon were actually used or put into operation. Nor need the evidence show that all persons alleged to have been members of the claimed conspiracy were indeed members.

COMMENT

This instruction and comment was approved in 1980 and revised in 1984 and 1991. This instruction was revised in 2002 to conform the language regarding the burden of proof to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205, the instructions on the civil burdens of proof. See Wis. JI-Civil 200, Comment. The comment was updated in 1984, 1995, 1998, 1999, and 2018.

Abdella v. Catlin, 79 Wis.2d 270, 275, 255 N.W.2d 516 (1977); Radue v. Dill, 74 Wis.2d 239, 241, 246 N.W.2d 507 (1976); Onderdonk v. Lamb, 79 Wis.2d 241, 246-47, 255 N.W.2d 507 (1977); Dalton v. Meister, 71 Wis.2d 504, 520, 238 N.W.2d 9 (1976); North Highland Inc. v. Jefferson Mach. & Tool Inc., 2017 WI 75, 377 Wis. 2d 496, 898 N.W. 2d 741. See also Scarpace v. Sears, Roebuck & Co., 113 Wis.2d 608, 335 N.W.2d 844 (1983); Maleki v. Fine-Lando Clinic, 162 Wis.2d 73, 469 N.W.2d 629 (1991); Modern Materials v. Advanced Tooling Spec., 206 Wis.2d 435, 557 N.W.2d 835 (Ct. App. 1996); City of Milwaukee v. NL Industries, 2005 WI App 7, 278 Wis.2d 313, 691 N.W.2d 888.

Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940); Eastern States Retail Lumber Dealers' Ass'n v. United States, 342 U.S. 600, 611, 612 (1914); c.f., United States v. Standard Oil Co., 316 F.2d 884, 889 (7th Cir. 1963). See also United States v. First Nat'l Bank & Trust Co. of Lexington, 376 U.S. 665 (1964); 3 Devitt and Blackmar, Federal Jury Practice and Instructions, 3d § 90.07 at 155-56.

The Wisconsin Supreme Court has repeatedly held that there is no such thing as a civil action for conspiracy. Instead, there is an action for damages incurred by acts performed pursuant to the conspiracy. A recent expression of this rationale is contained in Onderdonk v. Lamb, 79 Wis.2d 241, 146-47, 255 N.W.2d 507 (1977), wherein the court stated:

The gravamen of a civil action for damages resulting from an alleged conspiracy is thus not the conspiracy itself but rather the civil wrong which has been committed pursuant to the conspiracy and which results in damage to the plaintiff. The resultant damages in a civil conspiracy action must necessarily result from overt acts, whether or not those overt acts in themselves are unlawful. Radue, *supra* at 244. Such a conclusion was reached by the federal court in Weise v. Reisner, 31 F. Supp. 580, 583 (E.D. Wis. 1970):

. . . . However, in an action for civil conspiracy, it is not the conspiracy, as such, that constitutes the cause of action, but the overt acts that result from it. Thus, any concomitant damage to the plaintiffs stems from the acts done in furtherance of the conspiracy, not from the conspiracy itself. See Hoffman v. Halden, 268 F.2d 280, 295 (9th Cir. 1959).

The necessity for overt acts is also reflected in the following passage from a 1977 decision of the supreme court:

At a minimum, to show a conspiracy there must be facts that show some agreement, explicit or otherwise, between the alleged conspirators on the common end sought and some cooperation toward the attainment of that end. Augustine v. Anti-Defamation Lg. B'nai B'rith, 75 Wis.2d 207, 216, 249 N.W.2d 547 (1977). (Emphasis added.)

The word "unlawful" need not be a criminal act since any willful, actionable violation of a civil right is sufficient. Cranston v. Bluhm, 33 Wis.2d 192, 198, 147 N.W.2d 337 (1967), appeal after remand 42 Wis.2d 425, 167 N.W.2d 236 (1969); Martens v. Reilly, 109 Wis. 464, 473, 84 N.W. 840 (1901).

Conspiracy to Convert. A civil conspiracy entails two or more persons knowingly committing wrongful acts. Bruner v. Heritage Co., 225 Wis.2d 728, 593 N.W.2d 814 (Ct. App. 1999). A conspiracy to convert involves the knowing or intentional conversion of property. It contemplates an agreement to commit wrongful acts. Bruner, supra, at 738.