

2808 CONSPIRACY BETWEEN AFFILIATED CORPORATIONS

INSTRUCTION WITHDRAWN.

COMMENT

This instruction was withdrawn by the committee in 2009. The withdrawn instruction (approved in 1980) read:

Affiliated corporations are separate entities or "persons" in the eyes of the law. Accordingly, even though the defendants are affiliated, they are capable of conspiring with one another, as well as with others.

In Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984), the Supreme Court held that a parent corporation and its wholly-owned subsidiary were unable to conspire within the meaning of § 1 of the Sherman Antitrust Act, 15 U.S.C. § 1 (2000). The Supreme Court held that because of the complete unity of interests between a parent corporation and its wholly-owned subsidiary they could not conspire together for the purposes of antitrust law. The Copperweld decision overruled cases cited by this committee to support the former instruction.

There may be cases where it is disputed whether there is sufficient unity of interests between or among alleged co-conspirators for the intracorporate conspiracy doctrine articulated in Copperweld to apply. See Brew City Redevelopment Group v. The Ferchill Group, 2006 WI 128, ¶ 47-50, 297 Wis.2d 606, 724 N.W.2d 879. If the trial judge concludes that the intracorporate conspiracy doctrine does not apply because of insufficient unity of interest among affiliated defendants, then the trial judge may wish to instruct the jury that the affiliated entities are capable of conspiring with one another, as well as with others.