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ILLINOIS LAW MANUAL

CHAPTER VIII VICARIOUS LIABILITY

B. CIVIL CONSPIRACY AND CONCERT OF ACTION

Concert of action exists when two or more persons perform wrongful acts pursuant to a common design or one person gives substantial assistance to another knowing that the other's conduct constitutes a breach of legal duty. Civil conspiracy involves two or more persons who combine for the purpose of accomplishing, by their concerted action, either a lawful purpose by unlawful means or an unlawful purpose by lawful means. Smith v. Eli Lilly & Co., 137 Ill. 2d 222 (1990); Vance v. Chandler, 231 Ill. App. 3d 747 (1992).

A conspirator need not participate in all activities of a conspiracy, nor become a member at its inception. It is only necessary that he knowingly contribute his efforts in furtherance of it. A passenger in a motor vehicle who verbally encourages and assists the driver of that vehicle to drive recklessly can be held liable on a theory of concert of action (civil conspiracy) for the injuries resulting to other passengers injured in an accident caused by the reckless driving. Sanke v. Bechina, 216 Ill. App. 3d 962 (1991). Similarly, it has been held that parallel conduct of two or more persons or companies may serve as circumstantial evidence of a civil conspiracy among

manufacturers of the same or similar products. McClure v. Owens Corning Fiberglas Corp., 188 Ill. 2d 102, 135 (Ill. 1999).

The basis of the legal theory of concert of action is found in Section 876 of the Restatement (Second) of Torts (1979). That section provides that a person can be legally liable for harm resulting to a third person from the tortious conduct of another if that person:

- (a) does a tortious act in concert with the other or pursuant to a common design with him;
- (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so conduct himself; or
- (c) gives substantial assistance or encouragement to the other in accomplishing a tortious result, and his own conduct, separately considered, constitutes a breach of duty to the third person.