

South Carolina Abolishes “Special Damages” Element for Civil Conspiracy Claims, Overruling Decades of Precedent

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In a lawsuit by a terminated employee claiming former supervisors conspired to target her with negative performance reviews which ultimately resulted in dismissal, the employee now has an easier path to recovery following a recent South Carolina Supreme Court decision. In *Paradis v. Charleston Cty. Sch. Dist.*, No. 2018-002025, 2021 WL 1992245, at *1 (S.C. May 19, 2021), the South Carolina Supreme Court held that an employee is no longer required to plead “special damages” as an element for a claim of civil conspiracy, overruling decades of precedent as a result.

Stated simply, a civil conspiracy is an agreement between two or more individuals to do some act which results in harm to another. Since 1986, an employee asserting an allegation of civil conspiracy in South Carolina has been required to plead three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the employee, (3) which causes the employee special damage. Special damages are damages which cover measurable, economic losses resulting from an injury or harm, while general damages are damages that can't easily be assigned a monetary value, such as pain and suffering and emotional harm. Although general damages may be alleged without particularity, special damages must be specifically pled to avoid surprise and give notice to the opposing party.

Prior to *Paradis*, South Carolina was the only state to require pleading special damages as an element of civil conspiracy. This pleading requirement became known as the *Todd* rule, named after the case *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 285, 278 S.E.2d 607 (1981). In *Todd*, the plaintiff alleged five causes of action stemming from the termination of his employment. The five causes of action significantly overlapped with each other, with each cause of action incorporating all of the prior allegations. One of the issues the Court considered is whether the fifth cause of action stated a claim for civil conspiracy. First, the *Todd* Court explained that while the essence of a criminal conspiracy is the *agreement* to do some act, the essence of a civil conspiracy is the *damage* resulting

from some act pursuant to that agreement. Thus, a civil conspiracy becomes actionable only once some overt act occurs that proximately causes damage to the plaintiff. As a result, the Court held that in order to support a claim of civil conspiracy, a plaintiff must plead additional acts in furtherance of the conspiracy, so as to avoid duplicative recoveries for the same acts.

However, cases after *Todd* began requiring plaintiffs to plead the element of special damage when asserting an allegation of civil conspiracy. While the requirement of pleading special damages became known as the *Todd* rule, *Todd* never actually imposed that requirement. Instead, the court of appeals announced the three-element test for civil conspiracy, including the “special damage” element, in *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986). Over time, later cases began reciting *Lee*’s three-part test that developed post-*Todd*, but attributed the test to *Todd*. Thus, labeling the special damage requirement as the *Todd* rule was actually a misnomer.

The *Todd* rule resulted in the dismissal of civil conspiracy actions that did not expressly plead special damages on the basis they failed to adequately allege a cause of action. Cases relying on *Todd*, or rather a misinterpretation of *Todd*, stated that if a plaintiff merely repeated the damages from another claim without specifically listing special damages as part of the civil conspiracy claim, then the civil conspiracy claim must be dismissed.

Almost four decades after *Todd* and *Lee*, the Supreme Court clarified in *Paradis* that “the essential principal *Todd* intended to address was the need to plead an overt act in furtherance of the agreement, not special damages.” As a result, the Court expressly overruled *Todd* and other cases relying on it to impose a requirement of pleading and proving special damages. This decision has brought South Carolina in line with other states’ requirements for pleading a claim of civil conspiracy. Following *Paradis*, an employee asserting a civil conspiracy claim must now establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages.

As a result of *Paradis*, employees now face a lower bar for pleading a civil conspiracy claim because they are no longer required to assert special damages. Thus, employees are more likely to assert a civil conspiracy claim against their employers. If you would like more information on this or any related matter, please contact the Nexsen Pruet Employment & Labor Law team.

This article was co-authored by Law Clerk Nick Nybo.