

45.04A Wrongful Death Act--Survival Act--Verdict Form A--Contributory Fault of Decedent Only

We, the jury, find for the Estate of _____, deceased, and against the following defendants:

_____	Defendant 1	Yes _____	No _____
_____	Defendant 2	Yes _____	No _____

We further find the following:

First: We find that the total amount of damages suffered by the Estate of _____, deceased, is \$_____, itemized as follows:

[Loss of money, goods and services]: \$_____ \$

[Loss of society] and [loss of sexual relations]: \$_____

(Other damages: insert from 30.04, 30.04.01, 30.05, 30.05.01, 30.06, 30.07, 30.09 or as applicable) \$_____

PLAINTIFF'S TOTAL DAMAGES \$_____

Second: Assuming that 100% represents the total combined[negligence] [fault] [responsibility] of all [persons] [or entities] whose[negligence] [fault] [responsibility] proximately caused the death of [decedent], we find the percentage of [negligence] [fault] [responsibility] attributable to each as follows:

- a) _____ %
 decedent
- b) _____ %
 Defendant 1
- c) _____ %
 Defendant 2

Third: After reducing the plaintiff's total damages from paragraph "First" by the percentage of [negligence] [(other damage reducing defense)] if any, of [decedent] from line (a) in paragraph "Second," we award [plaintiff] recoverable damages in the amount of \$_____

Foreperson

Add additional lines for juror signatures.

Notes on Use

Use this verdict form in conjunction with *IPI B31.08* when the contributory fault of only the decedent is an issue for the jury. If there is an issue of contributory fault of a beneficiary alone or a beneficiary and a decedent, use verdict form *IPI 45.04B*. Add additional lines on the damage itemization as appropriate if a Family Expense Act claim is part of the plaintiff's case.

Comment

The contributory fault of the decedent is a defense in a wrongful death action, which was created by statute in Illinois. 740 ILCS 180/2.

The Survival Act is not a statutory cause of action, but rather a statute that allows for the continued existence of a cause of action that arose during the lifetime of the decedent. *Myers v. Heritage Enters., Inc.*, 332 Ill.App.3d 514, 516-517 (4th Dist. 2002). The decedent's contributory fault is a defense to a claim brought under the Survival Act.