

**45.04C Wrongful Death Act--Survival Act--Verdict Form C--Contributory Fault of Beneficiary and Decedent or Beneficiary Only**

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

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

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, benefits, goods and services]:	\$ _____
[Grief, sorrow and mental suffering]:	\$ _____
[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)]	\$ _____
<b>PLAINTIFF'S TOTAL DAMAGES</b>	<b>\$ _____</b>

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) \_\_\_\_\_ %  
Beneficiary
- c) \_\_\_\_\_ %  
Defendant 1
- d) \_\_\_\_\_ %  
Defendant 2

\_\_\_\_\_  
Foreperson

\_\_\_\_\_

*Add additional lines for juror signatures.*

### **Notes on Use**

Use "other damages" if there is a Survival Act count. Use this verdict form in conjunction with IPI B31.08 or B31.08.01 when the contributory fault of one or more of several beneficiaries and the decedent is at issue. Use this verdict form in conjunction with IPI B31.08 and B31.08.02 when the contributory fault of the sole beneficiary and the decedent is at issue. Use this verdict form in conjunction with IPI B31.08.01 when the contributory fault of only one or more of several beneficiaries is at issue. Use this verdict form in conjunction with IPI B31.08.02 when the contributory fault of only the sole beneficiary is at issue. If there is no issue as to contributory fault, use verdict form IPI 45.04A. If there is only an issue as to the decedent's contributory fault, 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 a beneficiary is a potential defense to that beneficiary's right to recover damages in a wrongful death action created by statute in Illinois. 740 ILCS 180/2. The trial court makes the findings of dependency post verdict, and any adjustments to the amount of the judgment that may be occasioned by findings of a beneficiary's contributory fault are made after the assessment of dependency. 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, 773 N.E.2d 787, 266 Ill. Dec. 32 (4th Dist. 2002). The decedent's contributory fault is a defense to a claim brought under the Survival Act, but the Committee found no authority for allowing the contributory fault of a beneficiary under the decedent's estate to reduce the judgment or award to that person in a Survival Act claim.