

## 45.00

### FORMS OF VERDICTS

#### INTRODUCTION

The following instructions and related verdict forms are for illustrative purposes only. In drawing verdict forms, care must be taken to ensure that they cover every possible finding the jury may make.

Additional verdict forms specific to particular topics are to be found in other chapters.

#### SPECIAL NOTE ON USE

*The following notes and instructions were drafted prior to the amendment of 735 ILCS 5/2-1117, which became effective 6/4/03. This amendment should be considered when utilizing the following instructions and notes.*

**B45.01 Instruction on Use of Verdict Forms—  
Negligence Only--Single Plaintiff and  
Defendant**

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdict must be unanimous.

Forms of verdicts are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate form of verdict and return it to the court. Your verdict must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

If you find for [plaintiff's name] and against [defendant's name] and if you further find that [plaintiff's name] was not contributorily negligent, then you should use Verdict Form A.

If you find for [plaintiff's name] and against [defendant's name] and if you further find that [plaintiff's name]'s injury was proximately caused by a combination of [defendant's name]'s negligence and [plaintiff's name]'s contributory negligence and that [plaintiff's name]'s contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then you should use Verdict Form B.

If you find for [defendant's name] and against [plaintiff's name], or if you find that plaintiff's contributory negligence was more than 50% of the total proximate cause of the injury or damage for which recovery is sought, then you should use Verdict Form C.

**Notes on Use**

This instruction has been drafted for a negligence case. It must be modified if there are willful and wanton allegations.

This instruction, or a variation of it, should be used in cases where there is one plaintiff and one defendant and no counterclaim. If the claim involves multiple counts, the operative paragraphs may need to be repeated for each count with the count identified, e.g., “under Count \_\_\_\_\_.”

If there are multiple plaintiffs and a single defendant, separate instructions regarding verdict forms and separate verdict forms must be submitted for each plaintiff.

If there is no issue as to plaintiff's contributory negligence, delete all references to contributory negligence.

The letters used to designate the verdict forms and their corresponding references in the instruction (A, B, C, etc.) should begin with “A” and be consecutive.

*See* IPI B45.02 and B45.03, and their Notes on Use.

**B45.01.A Verdict Form A--Single Plaintiff and  
Defendant--No Contributory Negligence  
Pleaded**

**VERDICT FORM A**

We, the jury, find for [plaintiff's name] and against [defendant's name]. We assess the damages in the sum of \_\_\_\_\_\$, [itemized as follows:]

[Signature Lines]

**B45.01.B Verdict Form B--Single Plaintiff and  
Defendant--Contributory Negligence—  
Less Than 50%**

**VERDICT FORM B**

We, the jury, find for [plaintiff's name] and against [defendant's name] and further find the following:

First: Without taking into consideration the question of reduction of damages due to the negligence of [plaintiff's name], we find that the total amount of damages suffered by [plaintiff's name] as a proximate result of the occurrence in question is \_\_\_\_\$, [itemized as follows:]

Second: Assuming that 100% represents the total combined negligence of all persons whose negligence proximately contributed to the plaintiff's [injuries] [damages], including [plaintiff's name] and [defendant's name] [and all other persons], we find that the percentage of such negligence attributable solely to [plaintiff's name] is \_\_\_\_ percent (%).

Third: After reducing the total damages sustained by [plaintiff's name] by the percentage of negligence attributable solely to [plaintiff's name], we assess [plaintiff's name]'s recoverable damages in the sum of \_\_\_\_\$.

*[Signature Lines]*

**B45.01.C Verdict Form C--Single Plaintiff and  
Defendant--Contributory Negligence—  
More Than 50%**

**VERDICT FORM C**

We, the jury, find for [defendant's name] and against [plaintiff's name].

*[Signature Lines]*

**B45.02 Instruction on Use of Verdict Forms—  
Negligence Only--Single Plaintiff and  
Defendant--Counterclaim**

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdicts must be unanimous.

Forms of verdicts are supplied with these instructions. After you have reached your verdicts, fill in and sign the appropriate forms and return them to the court. You must return one verdict as to the [complaint] [claim of [plaintiff's name] against [defendant's name]], and one verdict as to the [counterclaim] [claim of [defendant's name] against [plaintiff's name]]. [Since there is more than one plaintiff in this action, you must return one verdict as to each plaintiff's complaint and a second verdict as to any claim of a defendant against any plaintiff.]

Your verdicts must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

If you find for [plaintiff's name] and against [defendant's name] on [plaintiff's name]'s complaint, and if you further find that [plaintiff's name] was not contributorily negligent, then you should use Verdict Form A.

If you find for [plaintiff's name] and against [defendant's name] on [plaintiff's name]'s complaint, and if you further find that [plaintiff's name]'s injury was proximately caused by a combination of [defendant's name]'s negligence and [plaintiff's name]'s contributory negligence and that [plaintiff's name]'s contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then you should use Verdict Form B.

If you find for [defendant's name] and against [plaintiff's name] on [plaintiff's name]'s complaint, or if you find that plaintiff's contributory negligence was more than 50% of the total proximate cause of the injury or damage for which recovery is sought, then you should use Verdict Form C.

If you find for [counterplaintiff's name] and against [counterdefendant's name] on [counterplaintiff's name]'s counterclaim, and if you further find that [counterplaintiff's name] was not contributorily negligent, then you should use Verdict Form D.

If you find for [counterplaintiff's name] and against [counterdefendant's name] on [counterplaintiff's name]'s counterclaim, and if you further find that [counterplaintiff's name]'s injury was proximately caused by a combination of [counterdefendant's name]'s negligence and [counterplaintiff's name]'s contributory negligence, and that [counterplaintiff's name]'s contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then you should use Verdict Form E.

If you find for [counterdefendant's name] and against [counterplaintiff's name] on [counterplaintiff's name]'s counterclaim or if you find that [counterplaintiff's name]'s contributory negligence was more than 50% of the total proximate cause of the injury or damage for which

recovery is sought, then you should use Verdict Form F.

### **Notes on Use**

This instruction has been drafted for a negligence case. It must be modified if there are willful and wanton allegations.

This instruction, or a variation of it, should be used in cases where there is one plaintiff and one defendant, but the defendant makes a counterclaim. If the claim or counterclaim involves multiple counts, the operative paragraphs may need to be repeated for each count with the count identified, e.g., “under Count \_\_\_\_.”

If there are multiple plaintiffs and multiple defendants, a separate set of verdict forms should be given for each plaintiff (B45.02 and Verdict Forms A-F inclusive, modified to reflect the plurality of defendants and naming each plaintiff).

If there is no issue as to plaintiff's contributory negligence, delete all references to contributory negligence.

The letters used to designate the verdict forms and their corresponding references in the instruction (A, B, C, etc.) should begin with “A” and be consecutive.

**B45.02.A Verdict Form A--Single Plaintiff and  
Defendant--No Contributory Negligence  
Pleaded**

**VERDICT FORM A**

We, the jury, find for [plaintiff's name] and against [defendant's name]. We assess the damages in the sum of \$\_\_\_\_, [itemized as follows:]

*[Signature Lines]*

**B45.02.B Verdict Form B--Single Plaintiff and  
Defendant--Contributory Negligence  
Alleged--Less Than 50%**

**VERDICT FORM B**

We, the jury, find for [plaintiff's name] and against [defendant's[s'] name[s]] and further find the following:

First: Without taking into consideration the question of reduction of damages due to the negligence of [plaintiff's name], we find that the total amount of damages suffered by [plaintiff's name] as a proximate result of the occurrence in question is \$\_\_\_\_\_ .

Second: Assuming that 100% represents the total combined negligence of [plaintiff's name] and of [defendant's[s'] name[s]] [and all other persons], we find that the percentage of negligence attributable solely to [plaintiff's name] is \_\_\_\_ percent (%).

Third: After reducing the total damages sustained by [plaintiff's name] by the percentage of negligence attributable solely to [plaintiff's name], we assess [plaintiff's name]'s recoverable damages in the sum of \$\_\_\_\_\_, [itemized as follows:]

*[Signature Line]*

**B45.02.C Verdict Form C--Single Plaintiff and  
Defendant--Contributory Negligence  
Alleged--More Than 50%**

**VERDICT FORM C**

We, the jury, find for [defendant's name] and against [plaintiff's name].

*[Signature Lines]*

**B45.02.D Verdict Form D--Single Plaintiff and  
Defendant--Counterclaim--No  
Contributory Negligence Pled**

**VERDICT FORM D**

We, the jury, find against [plaintiff's name] and for [defendant's name] on [plaintiff's name]'s complaint.

We further find for [defendant's name] and against [plaintiff's name] on [defendant's name]'s counterclaim. We assess [defendant's name]'s damages on his counterclaim in the sum of \$\_\_\_\_\_, [itemized as follows:]

*[Signature Lines]*

**B45.02.E Verdict Form E--Single Plaintiff and  
Defendant--Counterclaim--Contributory  
Negligence Alleged--Less Than 50%**

**VERDICT FORM E**

We, the jury, find for [counterplaintiff's name] and against [counterdefendant's name] and further find the following:

First: Without taking into consideration the question of reduction of damages due to the negligence of [counterplaintiff's name], if any, we find that the total amount of damages suffered by [counterplaintiff's name] as a proximate result of the occurrence in question is \$ \_\_\_\_\_

Second: Assuming that 100% represents the total combined negligence of [counterplaintiff's name] and of [counterdefendant's name] [and of all other persons], we find that the percentage of negligence that was a proximate cause of [counterplaintiff's name]'s [injury] [or] [damage] attributable solely to [counterplaintiff's name] is \_\_\_\_ percent (%).

Third: After reducing the total damages sustained by [counterplaintiff's name] by the percentage of negligence attributable to [counterplaintiff's name], we assess [counterplaintiff's name]'s recoverable damages in the sum of \$ \_\_\_\_\_, [itemized as follows:]

*[Signature Lines]*

**B45.02.F Verdict Form F--Single Plaintiff and  
Defendant--Counterclaim--Contributory Negligence  
Alleged--More Than 50%**

**VERDICT FORM F**

We, the jury, find for [counterdefendant's name] and against [counterplaintiff's name].

*[Signature Lines]*

**B45.03 Instruction on Use Of Verdict Forms—  
Negligence Only--Single Plaintiff and  
Multiple Defendants**

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdict[s] must be unanimous.

Forms of verdicts are supplied with these instructions. After you have reached your verdict[s], fill in and sign the appropriate form[s] and return [it] [them] to the court. Your verdict[s] must be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

The parties in this case are:

**Plaintiff:** [name of plaintiff]

**Defendants:** [names of defendants]

\_\_\_\_\_

If you find for the plaintiff and against any of the defendants and if you further find that plaintiff was not contributorily negligent, then you should use Verdict Form A, writing in “0%” on Line “(a)” of Paragraph “Second” of Verdict Form A.

If you find for [plaintiff's name] and against one or more of the defendants, and if you further find that [plaintiff's name]'s injury was proximately caused by a combination of the negligence of that defendant or defendants and [plaintiff's name]'s contributory negligence, and that [plaintiff's name]'s contributory negligence was 50% or less of the total proximate cause of the injury or damage for which recovery is sought, then you should use Verdict Form A, writing in the percentage of the plaintiff's contributory negligence on Line “(a)” of Paragraph “Second” of Verdict Form A.

If you find in favor of all defendants or that [plaintiff's name]'s contributory negligence was more than 50% of the total proximate cause of the injury or damage for which recovery is sought, then you should use Verdict Form B.

**Notes on Use**

This instruction has been drafted for a negligence case. It may need to be modified if there are willful and wanton allegations or other theories of liability.

This instruction, or a variation of it, should be used in cases where there is one plaintiff and more than one claimed tortfeasor. If there are multiple counts, the operative paragraphs may need to be repeated for each count with the count identified, e.g., “under Count \_\_\_\_.”

If there is no issue as to plaintiff's contributory negligence, delete all references to contributory negligence.

The letters used to designate the verdict forms and their corresponding references in the instruction (A, B, etc.) should begin with "A" and be consecutive.

**B45.03.A Verdict Form A--Single Plaintiff and  
 Claimed Multiple Tortfeasors—  
 Comparative Negligence--Verdict for  
 Plaintiff Against Some But Not All Defendants**

**VERDICT FORM A**

We, the jury, find for [plaintiff's name] and against the following defendant or defendants:

Name of defendant 1	Yes	No
	_____	_____
Name of defendant 2	Yes	No
	_____	_____
Name of defendant 3	Yes	No
	_____	_____

We further find the following:

First: Without taking into consideration the question of reduction of damages due to the [negligence] [other damage reducing defense] of [plaintiff's name], if any, we find that the total amount of damages suffered by [plaintiff's name] as a proximate result of the occurrence in question is \$\_\_\_\_\_, itemized as follows:

The reasonable expense of past medical and medically related expenses: \$\_\_\_\_\_

(Other damages, insert from IPI 30 series) \$\_\_\_\_\_

PLAINTIFF'S TOTAL DAMAGES: \$\_\_\_\_\_

Second: Assuming that 100% represents the total combined legal responsibility of all [persons] [or] [entities] who [that] proximately caused [plaintiff's name] injury, we find the percentage of legal responsibility attributable to each as follows:

a) Plaintiff's name \_\_\_\_\_%

b) Defendant #1's name \_\_\_\_\_%

c) Defendant #2's name \_\_\_\_\_%

d) Other<sup>1</sup> \_\_\_\_\_%

TOTAL 100%

<sup>1</sup> Under *Bofman v. Material Service Corporation*, 125 Ill.App.3d 1053, 1064 (1st Dist. 1984) and *Smith v. Central Illinois Public Service Company*, 176 Ill.App.3d 482 (4th Dist. 1988), in a case where there is a potential finding of contributory fault by the plaintiff, the jury should evaluate the fault of non-parties because "it is essential for determining liability commensurate with

degree of total fault.” The fault of the settling parties, however, should be disregarded for purposes of the 2-1117 calculation. *Ready v. United/Goedecke Services, Inc.*, 232 Ill.2d 369, 385 (2008)

*(Instructions to Jury: If you find that plaintiff was not [contributorily negligent] [other damage reducing defense], or if you find any other party listed on the verdict form was not legally responsible in a way that proximately caused plaintiff's injury, you should enter a zero (0)% as to that party.)*

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

[Signature lines]

*Verdict Form, Notes and Comment revised January 2010. Notes revised June 1, 2012.*

### **Notes on Use**

This instruction should be used when there is a claim of contributory fault of the plaintiff. However, if the plaintiff suffers multiple, separable injuries and not all of the defendants are alleged to have caused each of the separable injuries then a modified verdict form may be necessary. See *Auten v. Franklin*, 404 Ill.App.3d 1130, 942 N.E.2d 500, 347 Ill.Dec. 297 (4<sup>th</sup> Dist. 2010). If there is no claim of contributory fault, use IPI Civil B45.03A2. If contribution is sought against third-party defendants, use IPI 600.14 or 600.14A.

The bracketed itemization of damages in paragraph [First] should be used in any case where itemization of damages is required under 735 ILCS 5/2-1117 (joint and several liability) or if requested pursuant to 735 ILCS 5/2-1109, by any party. Also, if requested, each element of damages should be further itemized to provide separate lines for past and future loss pursuant to 735 ILCS 5/2-1109 (economic loss) and *Maddox v. Rozek*, 265 Ill. App. 3d 1007, 1011, 639 N.E.2d 164, 167, 203 Ill. Dec. 125, 128 (1st Dist. 1994) (non-economic loss). See also *Doering v. Janssen*, 76 Ill. App. 3d 62, 67, 394 N.E.2d 721, 725, 31 Ill. Dec. 519, 523 (3d Dist. 1979) where the court held it was not error to submit an itemized verdict form for both economic and noneconomic loss with separate lines for past and future damages.

Fill in the names of the parties and others before submitting this form to the jury.

Where “Defendant A,” “Defendant B,” etc. appear, insert the names of each defendant on a separate line. Provision is made for the possible inclusion on the verdict form of tortfeasors who are not parties.

This instruction, or a variation of it, should be used in cases where there is one plaintiff and more than one defendant. If there are multiple counts, the operative paragraphs may need to be repeated for each count with the count identified, e.g. “under Count.”

In the event that any party moves for a separate verdict on any count, separate verdicts in addition to this verdict must be submitted. 735 ILCS 5/2-1201(c).

The committee believes that the italicized language could be helpful to explain the verdict form to the jury.

### Comment

This computational verdict form is to be used in cases involving a single plaintiff and more than one entity which could or might have caused the plaintiff's injury or damage, and where comparative negligence, contribution between defendants or joint and several liability is an issue. IPI 600.14 is identical to this instruction, with the addition of a paragraph in that instruction providing for express findings for or against third-party defendants. Because there are many issues in common between the use of a verdict form involving multiple tortfeasors (but not contribution) and cases which do involve contribution, this comment is a combined discussion of matters pertaining to both this instruction and IPI 600.14.

Four verdict forms (IPI B45.03A, B45.03A2, 600.14 and 600.14A) are intended to reflect the jury's findings as to damages and fault, which provide the data for the calculations necessary to the entry of a judgment or judgments.

The need for the jury to consider the fault of nonparty tortfeasors arose subsequent to the adoption of comparative negligence in *Alvis v. Ribar*, 85 Ill.2d 1 (1981). Consideration of the negligence of both parties and non-parties to an action is essential for determining liability commensurate with degree of total fault." *Bofman v. Material Serv. Corp.*, 125 Ill.App.3d 1053 (1st Dist. 1984). In cases where contributory negligence is involved, it is permissible to introduce evidence of the liability of a non-party. The liability of non-party tortfeasors may be considered in order to determine the extent of plaintiff's responsibility for his injuries." *Smith v. Central Ill. Pub. Serv. Co.*, 176 Ill.App.3d 482 (4th Dist. 1988). See also *American Motorcycle Ass'n v. Superior Court*, 20 Cal.3d 578, 146 Cal.Rptr. 182, 190, 578 P.2d 899, 906 (1978).

In *Bofman*, a plaintiff was able to obtain reversal of a verdict because the jury was not properly instructed to account for the negligence of a settled nonparty. While *Ready v. United/Goedecke Services, Inc.*, 232 Ill.2d 369 (2008) held that the percentage fault of a defendant who settled is not part of the calculation under 735 ILCS 5/2-1117, that case did not reduce the vitality of *Bofman* or *Smith*. If the jury hears evidence to suggest fault on the part of settled parties and if contributory negligence is claimed, the settled parties should be listed on the verdict form to correctly determine the percentage contributory fault of the plaintiff. The fault of the settling parties, however, should be disregarded for purposes of the 2-1117 calculation. *Ready*, supra at 385 ("We hold that section 2-1117 does not apply to good-faith settling tortfeasors who have been dismissed from the lawsuit."). See also, *Heupel v. Jenkins*, \_ N.E.2d \_, 2009 WL 3762941 (1st Dist. 2009).

Persons or entities that were never sued are not part of the 2-1117 calculation either. *Jones v. DHR Cambridge Homes, Inc.*, 381 Ill.App.3d 18, 31-32, 885 N.E.2d 330 (1st Dist. 2008).

Before this form of verdict was adopted, two separate forms were used, which permitted inconsistent calculations by the jury of plaintiff's fault and the 2-1117 calculation. That inconsistency led to a reversal in *Hackett v. Equip. Specialists, Inc.*, 201 Ill.App.3d 186 (1st Dist. 1990). In *Hackett*, the jury found the defendant to be 55% at fault with respect to the plaintiff, but

not at fault at all with respect to the third-party defendant. The appellate court held that the fault of the defendant could not simply have disappeared for contribution purposes. This form of verdict should prevent similar problems.

If contribution claims are tried simultaneously with the plaintiff's underlying action, this verdict form (in the event of only counterclaims among defendants) or IPI 600.14 (in the event of third-party claims) is to be used as the form of verdict for both the plaintiff's claim and those contribution claims. This verdict form is also to be used in those cases where contribution is not sought but where one or more defendants seek to be held only severally liable.

This form eliminates the need for separate calculations or allocations by the jury for comparative negligence, joint and several liability, and contribution. Further, it was designed to provide the bar with sufficient resemblance to the prior verdict forms such that the transition would be comfortable. Although it is not practically or legally necessary, provision is made for the jury to continue the former practice of calculating the plaintiff's net recovery by reducing the plaintiff's total damages by the plaintiff's fault.

*Burke v. 12 Rothschild's Liquor Mart*, 148 Ill.2d 429 (1992), holds that a willful and wanton tortfeasor cannot use the plaintiff's comparative negligence to reduce damages. *Ziarko v. Soo Line R.R.*, 161 Ill.2d 267 (1994), holds that "a defendant found guilty of willful and wanton conduct may seek contribution from a defendant found guilty of ordinary negligence if the willful and wanton defendant's acts were found to be simply reckless and thus were determined to be less than intentional conduct." *Ziarko* and *Burke* raise a number of comparative fault issues among all parties that must be considered in the preparation and use of instructions and verdict forms.

First, if it is known prior to the submission of the case to the jury that one of the defendants can be liable *only* upon a willful and wanton theory, the calculation of the percentage to be attributable to that defendant's conduct may still be an issue for the jury's consideration, even if that defendant is not entitled to a reduction of damages for comparative negligence purposes. Both the plaintiff (for comparative negligence purposes as to the other defendants) and the other defendants and third-party defendants (for several liability purposes, and perhaps for contribution purposes) might wish to argue that the percentage of causation attributable to the willful and wanton defendant be compared with the rest of the causal fault.

Second, a particular defendant might be liable for (1) negligent conduct, (2) "reckless" willful and wanton conduct, or (3) that type of willful and wanton conduct described in *Ziarko* as "intentional." If the plaintiff's case and the contribution issues are submitted together to the same jury, the court must determine: (1) the allowable basis of comparison between the party or parties found to be negligent and the party or parties whose fault was willful and wanton; (2) whether any aspect of those issues is to be decided by the court as a matter of law as opposed to being determined by the jury; and (3) the extent to which any willful and wanton defendant's fault is not considered in allocating fault. The committee takes no position on these issues.

Because of the absence of case law on various issues, the committee does not yet have sufficient guidance from the courts to draw instructions that would expressly accommodate every situation. In the meantime, it is anticipated that most cases can be tried using these forms and instructions accompanied by special interrogatories on the issue of willful and wanton conduct.

The committee recommends that a non-party not be included on the verdict form until the trial judge first makes the determination that sufficient evidence has been presented to support a jury finding of fault with respect to that nonparty. Assuming sufficient evidence is presented and if the jury will need to decide whether plaintiff was contributorily negligent, then the non-party should be listed on the verdict form based on *Bofman, supra*, and *Smith, supra*. If there is no issue of contributory negligence, the Committee recommends against including non-parties on the verdict form. *Ready, supra* at 385; *Jones, supra* at 31.

**B45.03A2 Verdict Form A--Single Plaintiff and  
 Claimed Multiple Tortfeasors--No  
 Comparative Negligence--Verdict for  
 Plaintiff Against Some But Not All Defendants**

**VERDICT FORM A**

We, the jury, find for [plaintiff's name] and against the following defendant or defendants:

Name of defendant 1	Yes	No
	_____	_____
Name of defendant 2	Yes	No
	_____	_____
Name of defendant 3	Yes	No
	_____	_____

We further find the following:

First: We find that the total amount of damages suffered by [plaintiff's name] as a proximate result of the occurrence in question is \$ \_\_\_\_\_, itemized as follows:

The reasonable expense of past medical and medically related expenses: \$ \_\_\_\_\_

(Other damages, insert from IPI 30 series) \$ \_\_\_\_\_

PLAINTIFF'S TOTAL DAMAGES: \$ \_\_\_\_\_

Second: Assuming that 100% represents the total combined legal responsibility of all [persons] [or] [entities] who [that] proximately caused [plaintiff's name] injury, we find the percentage of legal responsibility attributable to each as follows:

a) Defendant #1's name \_\_\_\_\_ %

b) Defendant #2's name \_\_\_\_\_ %

c) Defendant #3's name \_\_\_\_\_ %

TOTAL 100%

*(Instructions to Jury: If you find that any party listed on the verdict form was not legally responsible in a way that proximately caused plaintiff's injury, you should enter a zero (0)% as to that party.)*

[Signature lines]

### **Notes on Use**

This verdict form should be used when there is no claim of contributory fault of the plaintiff. However, if the plaintiff suffers multiple, separable injuries and not all of the defendants are alleged to have caused each of the separable injuries then a modified verdict form may be necessary. See *Auten v. Franklin*, 404 Ill.App.3d 1130, 942 N.Ed.2d 500, 347 Ill.Dec. 297 (4<sup>th</sup> Dist. 2010). If there is a claim of contributory fault, use B45.03A. If there is a contribution claim pending against a third party, use IPI 600.14 or 600.14A.

The bracketed itemization of damages in paragraph [First] should be used in any case where itemization of damages is required under 735 ILCS 5/2-1117 (joint and several liability) or if requested pursuant to 735 ILCS 5/2-1109, by any party. Also, if requested, each element of damages should be further itemized to provide separate lines for past and future loss pursuant to 735 ILCS 5/2-1109 (economic loss) and *Maddox v. Rozek*, 265 Ill. App. 3d 1007, 1011, 639 N.E.2d 164, 167, 203 Ill. Dec. 125, 128 (1st Dist. 1994) (non-economic loss). See also *Doering v. Janssen*, 76 Ill. App. 3d 62, 67, 394 N.E.2d 721, 725, 31 Ill. Dec. 519, 523 (3d Dist. 1979) where the court held it was not error to submit an itemized verdict form for both economic and noneconomic loss with separate lines for past and future damages.

Fill in the names of the parties and others before submitting this form to the jury. Where “Defendant A,” “Defendant B,” etc. appear, insert the names of each defendant on a separate line.

This instruction, or a variation of it, should be used in cases where there is one plaintiff and more than one defendant. If there are multiple counts, the operative paragraphs may need to be repeated for each count with the count identified, e.g. “under Count.”

In the event that any party moves for a separate verdict on any count, separate verdicts in addition to this verdict must be submitted. 735 ILCS 5/2-1201(c).

The committee believes that the italicized language could be helpful to explain the verdict form to the jury.

### **Comment**

See Comment to B45.03A.

**B45.03.B Verdict Form B--Single Plaintiff and Multiple Defendants**

**VERDICT FORM B**

We, the jury, find for all of the defendants and against the plaintiff.

*[Signature Lines]*

**45.04A Wrongful Death Act--Survival Act--Verdict Form A—No Contributory Fault**

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, 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)]                      \$ \_\_\_\_\_

PLAINTIFF'S TOTAL DAMAGES                      \$ \_\_\_\_\_

\_\_\_\_\_  
Foreperson                      \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Add additional lines for juror signatures*

*Verdict Form, Notes and Comment revised May 2014.*

**Notes on Use**

Use "other damages" if there is a Survival Act count. If there is an issue of contributory fault of decedent only, also use verdict form IPI 45.04B. If there is an issue of contributory fault of a beneficiary alone or a beneficiary and a decedent, also use verdict form IPI 45.04C. Add additional lines on the damage itemization as appropriate if a Family Expense Act claim is part of the plaintiff's case.

## Comment

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).

**45.04B Wrongful Death Act--Survival Act--Verdict  
Form B--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, 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)	_____	_____ %
	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.*

*Verdict Form, Notes and Comment revised May 2014.*

### **Notes on Use**

Use "other damages" if there is a Survival Act count. 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 no issue as to contributory fault, use verdict form IPI 45.04A. If there is an issue of contributory fault of a beneficiary alone or a beneficiary and a decedent, use verdict form IPI 45.04C. 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, 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.

**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.