

### **B31.08.02 Damages--Wrongful Death--Contributory Fault -- Sole Beneficiary**

If you find that the beneficiary contributed to cause the death of the decedent, then you must determine the percentage of the contributory (fault) (negligence) of the beneficiary.

The contributory (fault) (negligence) of the beneficiary affects his/her right to recover damages.

If you find that the contributory (fault) (negligence) of the beneficiary was more than 50% of the total proximate cause of the death of the decedent, then your verdict should be for the defendant(s).

If you find that the contributory (fault) (negligence) of the beneficiary was 50% or less of the total proximate cause of the death of the decedent, then your verdict should be for the plaintiff and the beneficiary's damages shall be reduced in that proportion and the Court shall make the adjustments required by law with respect to the recovery of the beneficiary.

*Instruction, Notes and Comment approved May 2014.*

#### **Notes on Use**

This instruction should be used whenever there is an issue of contributory fault by the sole beneficiary on whose behalf the suit is brought. If there is an issue of contributory fault as to two or more of the beneficiaries on behalf of whom the suit is brought, use IPI B31.08.01.

#### **Comment**

Contributory fault of a beneficiary no longer bars recovery, but will only reduce that beneficiary's recovery if no greater than 50% of the total fault. 740 ILCS 180/2. The jury's verdict will be adjusted by the Court after a hearing on the issue of dependency. See provisions of 740 ILCS 180/2 for the proper procedure. If the contributory fault of the sole beneficiary is more than 50% of the total fault, the beneficiary takes nothing and the verdict should be for the defendant(s). If the contributory fault of the sole beneficiary is not more than 50% of the total fault, the damages he or she would recover based on the percentage of dependency are reduced by his or her fault, thus reducing the total judgment amount payable by the defendant(s).