

**45.04B Wrongful Death Act--Survival Act--Verdict
Form A--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, 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) _____ %
 beneficiary
- c) _____ %
 Defendant 1
- d) _____ %
 Defendant 2

Foreperson

Add additional lines for juror signatures.

Notes on Use

Use this verdict form in conjunction with *IPI B31.08* or *B31.08.01* when the contributory fault of a beneficiary or a beneficiary and the decedent is at issue. If there is only an issue as to the decedent's contributory fault, use verdict form 45.04A. 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, 516-517 (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.