04.05B WRONGFUL DEATH DAMAGES — RECOVERY BY STATUTORY BENEFICIARIES

If you decide that [statutory beneficiar(y)(ies)] [is][are] entitled to recover for harm caused by the death of [decedent], you must decide what amount of money will fairly and justly compensate [statutory beneficiar(y)(ies)]. [You must decide a separate amount for each person who is entitled to recover.]

The claimed losses fall into two categories: economic losses and noneconomic losses.

Economic losses may include:

[1] loss of financial support;

[2] loss of assistance or services;

[3] medical and funeral expenses; and

[4] loss of future savings.

Noneconomic losses may include:

[1] loss of the relationship with [decedent];

[2] sorrow, grief, and emotional distress; and

[3] loss of education and training that [decedent] would have provided.

You may not assume because I list an item of loss or explain how to measure a particular loss that you are required to award damages for that loss.

For each item of claimed loss, you must decide whether it is more likely true than not true:

(1) [statutory beneficiary] had such a loss or is reasonably likely to have such a loss in the future; and

(2) [defendant]’s conduct was a substantial factor in causing the loss.

[Defendant]’s conduct was a substantial factor if:

(a) the loss would not have occurred without [defendant]’s conduct; and

(b) [defendant]’s conduct was important enough in causing the loss that a reasonable person would hold [defendant] responsible. [Defendant]’s conduct cannot be a remote or trivial factor.

[Paragraph (a) does not apply if two events operated to cause the loss, one because of [defendant]’s conduct and the other not, and each event by itself was sufficient to cause the harm.]

If both of these things are true, then you must decide how much money will fairly compensate [statutory beneficiary] for that item of loss. If one or both of these things are not true with respect to a particular item of loss, you may not make an award for that loss.

# **Use Note**

This instruction should be used only when the personal representative represents one or more of the designated statutory beneficiaries (spouse, children, or other dependents). When there are no statutory beneficiaries, use Instruction 04.12.

This instruction should be used with Instruction 04.03 and with Instructions 04.06 ‑ 04.11, as needed.

This instruction identifies the items of claimed loss and explains the burden of proof. The appropriate categories of loss should be selected for the particular case. Other categories of loss allowed by law may be added. For each beneficiary, specify which items of loss are claimed.

**Comment**

AS 09.55.580 provides that when a deceased is survived by a spouse, child or other dependent the damages in a wrongful death claim are for their exclusive benefit. *See* Comment to Instruction 04.03. When there is more than one statutory beneficiary, the court has held that the trier of fact must make separate awards for each. *Horsford v. Estate of Horsford*, 561 P.2d 722, 727 (Alaska 1977).

AS 09.55.580(a) provides that the amounts to be recovered by each beneficiary are those the jury decides are "fair and just." This appears to be the basic standard for the damage award.

The original version of this instruction included the following language:

You may also consider other items of loss suffered by each beneficiary and supported by the evidence in this case.

That language was expressly disapproved as unauthorized and potentially confusing in *Tommy's Elbow Room, Inc. v. Kavorkian*, 727 P.2d 1038, 1045‑46 (Alaska 1986).

AS 09.17.040(a) requires the jury to itemize past and future economic and noneconomic losses. Noneconomic losses are subject to the cap in AS 09.17.010. The Alaska Supreme Court has ruled that juries should not be instructed on the cap on non-economic damages. *Kodiak Island Borough v. Roe*, 63 P.3d 1009 (2003). *See also Central Bering Sea Fishermen's Ass'n v. Anderson*, 54 P.3d 271 (Alaska 2002).