

31.14 Funeral Expenses – Independent Action by Administrator/Executor

If you find for the plaintiff, then in assessing damages under Count ____, brought by the [administrator] [executor] of the estate of [decedent's name], you must then fix the amount of money that will reasonably and fairly compensate the estate for the funeral and burial expenses proved by the evidence to have been incurred by the estate.

[Further, if you decide for the plaintiff on the question of liability, you must then fix the amount of money that will reasonably and fairly compensate the estate for medical bills proved by the evidence to have resulted from the [negligence] [wrongful conduct] of the defendant during the period between the time of the decedent's injuries and the time of [his/her] death.]

Whether any of the elements of damages has been proved by the evidence is for you to determine.

Instruction, Notes on Use and Comment approved May 2018.

Notes on Use

Where there is a wrongful death, but no claim under the “Family Expense Statute” (750 ILCS 65/15), the administrator or executor of the decedent's estate may bring an independent action seeking the funeral and burial expenses paid by the estate and the medical expenses caused by the defendant's negligent or wrongful conduct. This instruction may be used to address damages for funeral and burial expenses and medical expenses incurred by the decedent's estate that are not otherwise recoverable under a Survival Act claim.

The bracketed words “wrongful conduct” in the first paragraph may be used instead of “negligence” when the misconduct alleged includes a charge such as willful and wanton conduct or other fault.

Other phrases may be substituted for the bracketed terms “negligence” or “wrongful conduct” or “wrongful conduct of the defendant” where appropriate, such as “unreasonably dangerous condition of the product.”

Comment

Where a decedent leaves no spouse or parent, expenses for medical and/or funeral expenses cannot be recovered under the “Family Expense Statute” (750 ILCS 65/15). In the circumstance where there is no surviving spouse or parent, the administrator or executor of an estate can bring an independent action for medical and funeral expenses. *Eggimann v. Wise*, 56 Ill.App.2d 385, 206 N.E.2d 472 (3rd Dist. 1964); *Chidester v. Cagwin*, 76 Ill.App.2d 477, 222 N.E. 2d 274 (2nd Dist. 1966); *Strandell v. Jackson County, Ill.*, 684 F. Supp. 126 (1986). The damages for funeral expenses are not otherwise collectable under a Wrongful Death Act claim. See *Sanders v. Schultz*, 20 Ill.2d 301, 170 N.E. 2d 163 (1960), *Baez v. Rosenburg*, 409 Ill.App.3d 525, 949 N.E. 2d 250 (1st Dist. 2011).

The Survival Act has been interpreted to include only those damages sustained by the decedent prior to “succumbing” to the injuries at issue. *See Murphy v. Martin Oil*, 56 Ill.2d 423, 308 N.E.2d 583 (1974); *Harrison v. Burlington Northern R. Co.*, 750 F. Supp. 316 (N.D. Ill. 1990). As such, funeral expenses may be excluded from claims under the Survival Act. Medical expenses that are not recoverable under the “Family Expense Statute” may also be recovered by the estate. *See Eggimann v. Wise*, 56 Ill.App.2d 385, 206 N.E.2d 472 (3rd Dist. 1964).