

31.02(a) Measure of Damages--Wrongful Death--Stillborn or Infant Decedent--Collateral Next of Kin Surviving

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate the [collateral next of kin, *e.g.*, brother] of the decedent for the pecuniary loss proved by the evidence to have resulted to the [collateral next of kin, *e.g.*, brother] from the death of the decedent. "Pecuniary loss" may include loss of money, benefits, goods, services, and society as well as grief, sorrow and mental suffering.

In determining pecuniary loss, you may consider what the evidence shows concerning the following:

- [1. What the decedent's health and physical and mental characteristics would have been;]
- [2. What the relationship between [collateral next of kin, *e.g.*, brother] and [decedent] would have been;]
- [3. The grief, sorrow, and mental suffering of the next of kin.]

Whether pecuniary loss has been proved by the evidence is for you to determine.

Instruction revised August 2026; Instruction, Notes on Use and Comment created October 2007.

Notes on Use

This instruction should be used with IPI 31.09 which explains why the suit is brought in the name of the personal representative of the deceased and with IPI 31.11 defining "society."

This instruction should be used when the decedent was stillborn or when there had been insufficient time between the decedent's birth and his death for family members to establish a relationship with the child.

Any instruction given to the jury with respect to a family's loss of a child's society should clearly indicate that the determination of the loss is not dependent upon the family having enjoyed a past relationship with the decedent, but is a consideration of the future companionship the family may have enjoyed with the decedent. *Thornton v. Garcini*, 364 Ill. App. 3d 612 (3rd Dist. 2006).

For causes of action that accrue before May 31, 2007, paragraph 3 should be deleted from this instruction. Under P.A. 95-2, effective May 31, 2007, lineal next of kin may recover damages for their grief, sorrow, and mental suffering.

Comment

Regardless of the state of gestation, an unborn fetus is recognized as a person and the next of kin may recover damages for pecuniary loss resulting from the death of the fetus. *Seef v.*

Sutkus, 145 Ill. 2d 336 (1991); *Smith v. Mercy Hosp. & Med. Ctr.*, 203 Ill. App. 3d 465 (1st Dist. 1990); *Illinois Wrongful Death Act*, 740 ILCS 180/2.2. The next of kin's right to recover for loss of society does not depend upon whether there has been some exchange of society in the past, but whether but for the defendant's negligence, society would have been exchanged. *Seef*, 145 Ill. 2d at 342. Although consideration of the length, intensity, and quality of the relationship may in some cases be useful in measuring the magnitude of the next of kin's loss, it does not determine whether a loss occurred. *Seef*, 145 Ill. 2d at 344; *Thornton v. Garcini*, 364 Ill. App. 3d 612 (3rd Dist. 2006).