

810.54 WRONGFUL DEATH DAMAGES - FINAL MANDATE (REGULAR).

*(For medical malpractice cases filed on or after 1 October 2011, use N.C.P.I.-Civil 809.154. Use N.C.P.I.-Civil 810.56 in place of N.C.P.I.-Civil 810.54 when a per diem argument has been made.)*

I instruct you that your findings on the (*state number*) issue must be based on the evidence and the rules of law I have given you with respect to the measure of damages.<sup>1</sup> You are not required to accept the amount of damages suggested by the parties or their attorneys.

Your award must be fair and just. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally, as to the (*state number*) issue on which the estate has the burden of proof, if you find by the greater weight of the evidence the amount of actual damages [proximately caused by the negligence] [caused by the wrongful conduct] of the defendant, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space provided.

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1. Damages may not be based on sheer speculation, *Stetson v. Easterling*, 274 N.C. 152, 161 S.E.2d 531 (1968) and *Gay v. Thompson*, 266 N.C. 394, 146 S.E.2d 425 (1966), but, by necessity, some speculation is necessary to determine damages, *Beck v. Carolina Power & Light Co.*, 57 N.C. App. 373, 291 S.E.2d 897, *aff'd*, 307 N.C. 267, 297 S.E.2d 397 (1982), and this is acceptable as long as there are sufficient facts to support necessary speculation, *Gay, supra*, and *Beck, supra*.