

735.25 ACTION FOR SERVICES RENDERED A DECEDENT - ISSUE OF RECOVERY.

This issue reads:

"What amount, if any, is plaintiff (*name plaintiff*) entitled to recover of the defendant (*name decedent's representative*)?"

If the plaintiff is entitled to recover, *he* is entitled to recover the fair market value of *his* services performed (pursuant to the agreement between *him* and (*name decedent*) for which *he* has not been paid. The burden of proof is on the plaintiff to satisfy you by the greater weight of the evidence, what, if anything, *he* is entitled to recover.

Where there is no agreement as to the amount of compensation to be paid for services (or where such agreement is not enforceable), the person performing them is entitled to recover the fair market value of those services, based upon the time and labor expended, the skill, knowledge and experience involved, and other attendant circumstances. The value of such services is to be determined by what they are reasonably worth in the market, as between one willing to pay for such services, but not compelled to do so, and one willing to render such services, but not compelled to do so.<sup>1</sup>

*(If supported by the evidence, any of the following instructions should be included here:*

*N.C.P.I.-Civil 735.35, evidence of value of specific property;*

*N.C.P.I.-Civil 735.30, benefits or offsets;*

*N.C.P.I.-Civil 735.40, effect of statute of limitations.)*

So I charge you that you will answer this issue in such amount, if

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any, as the plaintiff has satisfied you by the greater weight of the evidence is the reasonable fair market value of services rendered by *him* to (*name decedent*) [during the period of time for which you find *he* was entitled to payment for such services]<sup>2</sup> [for which *he* has not been paid] [less the reasonable value of any benefits you find that *he* received from (*name decedent*) as compensation].<sup>3</sup>

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1. There must be evidence of the fair market value of the services before plaintiff is entitled to more than nominal damages. *Cline v. Cline*, 258 N.C. 295 (1962); *Johnson v. Sanders*, 260 N.C. 291 (1963).

2. Use if N.C.P.I.-Civil 735.40 has been given.

3. Use if N.C.P.I.-Civil 735.30 has been given.