

810.40 WRONGFUL DEATH DAMAGES - ISSUE AND BURDEN OF PROOF.

The (*state number*) issue reads:

"What amount is the estate of (*name deceased*) entitled to recover for wrongful death?"

If you have answered the (*state number*) issue "Yes" (and the (*state number*) issue "No") in favor of the estate, the estate is entitled to recover nominal damages even without proof of actual damages.¹

Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damages incurred by the estate.

The estate may also be entitled to recover actual damages.² On this issue, the burden of proof is on the estate. This means the estate must prove, 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.

1. *Porter v. Leneave*, 119 N.C. App. 343, 458 S.E.2d 513 (1995).

2. N.C. Gen. Stat. § 28A-18-2(b).